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 Debtors In Possession

**UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA -
 WESTERN DIVISION -LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

CALIFORNIA NURSES ASSOCIATION
 (CNA)

Plaintiff,

v.

VERITY HEALTH SYSTEMS OF
 CALIFORNIA, INC., a California Corporation;
 ST. FRANCIS MEDICAL CENTER, an
 Affiliate; ST. VINCENT MEDICAL CENTER,
 an Affiliate; SETON MEDICAL CENTER, an
 Affiliate; ST. FRANCIS MEDICAL CENTER
 OF LYNWOOD, an Affiliate; ST. VINCENT
 DIALYSIS CENTER, INC., an Affiliate;
 VERITY HOLDINGS, LLC, an Affiliate;
 DEPAUL VENTURES, LLC, an Affiliate;
 RICHARD ADCOCK, an Individual; STEVEN
 SHARRER, an Individual, and DOES 1 through
 500,

Defendants

District Court Case No. 2:20-cv-02623-SVW

Lead Bankruptcy Case No. 2:18-bk-20151-ER
 Chapter 11 Cases
 Hon. Judge Ernest M. Robles

Adversary No. 2:20-ap-01051-ER

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF OPPOSITION TO
 PLAINTIFF'S MOTION TO WITHDRAW
 THE REFERENCE**

Hearing Date and Time:

Date: June 1, 2020

Time: 1:30 p.m.

Place: Courtroom 10A

310 W. 1st Street, 10th Floor

Los Angeles, California 90012

Judge: Hon. Steven V. Wilson

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1820151200505000000000007

Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Bankruptcy Cases”) pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) and the defendants herein, hereby request that the Court take judicial notice of the following documents filed and entered in the Bankruptcy Cases and the Adversary Proceeding No. 2:20-ap-1051, pursuant to Rule 201 of the Federal Rules of Evidence,¹ in support of the *Defendants’ Opposition to California Nurses Association’s Motion to Withdraw the Reference* filed concurrently herewith:

1. *Notice of Debtors’ Motion and Motion to Dismiss Complaint under Rule 12(b), with Prejudice.* [Bankruptcy Adv. Docket No. 12]. A true and correct copy is attached hereto as Exhibit “1.”

2. *Request for Judicial Notice In Support of Debtors’ Motion to Dismiss Complaint under Rule 12(b), with Prejudice.* [Bankruptcy Adv. Docket No. 14]. A true and correct copy is attached hereto as Exhibit “2.”

3. *Opposition to Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Bankruptcy Docket No. 3914]. A true and correct copy is attached hereto as Exhibit “3.”

4. *Notice of Appearance and Request for Special Notice and Inclusion of Mailing List* [Bankruptcy Docket No. 200]. A true and correct copy is attached hereto as Exhibit “4.”

5. *Notice of Appointment and Appointment of Committee of Creditors Holding Unsecured Claims* [Bankruptcy Docket No. 197]. A true and correct copy is attached hereto as Exhibit “5.”

6. *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Bankruptcy Docket No. 8]. A true and correct copy is attached hereto as Exhibit “6.”

7. *Debtors’ Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM,*

¹ Rule 201 of the Federal Rules of Evidence provides that the Court “may take judicial notice at any stage of the proceeding.” See FED. R. EVID. 201(d).

1 3) *Termination of Retiree Healthcare Benefits and 4) Related Relief* [Bankruptcy Docket No.
2 3604]. A true and correct copy is attached hereto as Exhibit “7.”

3 8. *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara*
4 *County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving*
5 *The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting*
6 *Related Relief.* [Bankruptcy Docket No. 1153]. A true and correct copy is attached hereto as
7 Exhibit “8.”

8 9. *Debtors’ Notice of Motion and Motion for the Entry of (I) An Order (1) Approving*
9 *Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders;*
10 *(2) Approving Auction Sale Format, Budding Procedures and Stalking Horse Bid Protections; (3)*
11 *Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling of a Court*
12 *Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures*
13 *Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An*
14 *Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens, and*
15 *Encumbrances.* [Bankruptcy Docket No. 1279]. A true and correct copy is attached hereto as
16 Exhibit “9.”

17 10. *Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse*
18 *Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
19 *Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided*
20 *To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The*
21 *Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory*
22 *Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free*
23 *And Clear Of All Claims, Liens And Encumbrances; Memorandum Of Points And Authorities In*
24 *Support Thereof* [Bankruptcy Docket No. 1572]. A true and correct copy is attached hereto as
25 Exhibit “10.”

26 11. *Asset Purchase Agreement* [Bankruptcy Docket No. 2305-1]. A true and correct
27 copy is attached hereto as Exhibit “11.”

28 12. *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Strategic*

1 *Global Management, Inc. free And Clear Of Liens, Claims, Encumbrances, And Other Interests;*
2 *(B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C)*
3 *Granting Related Relief* [Bankruptcy Docket No. 2306]. A true and correct copy is attached
4 hereto as Exhibit "12."

5 13. *Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order*
6 *Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale is Free and*
7 *Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That*
8 *the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV)*
9 *Granting Related Relief; Memorandum of Points and Authorities and Declarations In Support*
10 *Thereof* [Bankruptcy Docket No. 3188]. A true and correct copy is attached hereto as Exhibit
11 "13."

12 14. *Excerpts from transcript of hearing in the Bankruptcy Case on October 15, 2019.*
13 True and correct copies of excerpts from this transcript are attached hereto as Exhibit "14."

14 15. *Memorandum of Decision Granting Debtors' Emergency Motion to Enforce the*
15 *Sale Order* [Bankruptcy Docket No. 3446]. A true and correct copy is attached hereto as Exhibit
16 "15."

17 16. *Stipulation By Verity Health System of California, Inc. and the California Attorney*
18 *General Resolving "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The*
19 *Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is*
20 *Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III)*
21 *Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale;*
22 *And (IV) Granting Related Relief* [Bankruptcy Docket No. 3572]. A true and correct copy is
23 attached hereto as Exhibit "16."

24 17. *Notice of Lodgment Filed by Debtor Verity Health System of California, Inc.*
25 *regarding Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order*
26 *Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale is Free and*
27 *Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That*
28 *the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV)*

1 *Granting Related Relief; Memorandum of Points and Authorities and Declarations In Support*
2 *Thereof* [Bankruptcy Docket No. 3574]. A true and correct copy is attached hereto as Exhibit
3 “17.”

4 18. *Objection relating to Dkt. 3574 Notice of Lodgment filed by Debtor Verity Health*
5 *System of California, Inc.* [Bankruptcy Docket No. 3582]. A true and correct copy is attached
6 hereto as Exhibit “18.”

7 19. *Order Granting 'Debtors' Emergency Motion For The Entry Of An Order: (I)*
8 *Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding*
9 *That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By*
10 *The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing*
11 *Conditions On That Sale; and (IV) Granting Related Relief;* [Bankruptcy Docket No. 3611]. A
12 true and correct copy is attached hereto as Exhibit “19.”

13 20. *Order Granting (1) finding that SGM is obligated to promptly close the SGM sale*
14 *under §8.6 of the APA, provided that all other conditions to closing have been satisfied and (2)*
15 *granting debtors' motion for a continuance of the hearing to approve the disclosure statement*
16 *from November 20, 2019 at 10:00 a.m. to November 26, 2019 at 10:00 a.m.* [Docket No. 3633].
17 A true and correct copy is attached hereto as Exhibit “20.”

18 21. *Order Granting Memorandum of Decision (1) finding that SGM is obligated to*
19 *promptly close the SGM sale under §8.6 of the APA, provided that all other conditions to closing*
20 *have been satisfied and (2) granting debtors' motion for a continuance of the hearing to approve*
21 *the disclosure statement* [Bankruptcy Docket No. 3632]. A true and correct copy is attached
22 hereto as Exhibit “21.”

23 22. *Motion to (A) Continue Hearing on Motion of the Debtors for an Order*
24 *Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III)*
25 *Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related*
26 *Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections, and*
27 *(C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter*
28 [Bankruptcy Docket No. 3644]. A true and correct copy is attached hereto as Exhibit “22.”

23. *Notice Of Hearing And Motion Of The Debtors For An Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III) Notice and Objection Procedures For Confirmation Of Debtors' Plan; And (IV) Granting Related Relief.* [Bankruptcy Docket No. 2995]. A true and correct copy is attached hereto as Exhibit "23."

24. *Disclosure Statement Describing Debtors' Chapter 11 Plan of Liquidated (Dated September 3, 2019).* [Bankruptcy Docket No. 2994]. A true and correct copy is attached hereto as Exhibit "24."

25. *Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* [Bankruptcy Docket No. 3773]. A true and correct copy is attached hereto as Exhibit "25."

26. *Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center* [Bankruptcy Docket No. 3906]. A true and correct copy is attached hereto as Exhibit "26."

27. *Order Granting Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center* [Bankruptcy Docket No. 3934]. A true and correct copy is attached hereto as Exhibit "27."

28. *Memorandum Of Decision Granting Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center* [Bankruptcy Docket No. 3933]. A true and correct copy is attached hereto as Exhibit "28."

29. *California Nurses Association Objection to Debtors' Motion under § 1113 of the Bankruptcy Code to Modify, Reject, and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Hospital.* [Bankruptcy Docket No. 1269]. A true and correct copy is attached hereto as Exhibit "29."

Dated: May 4, 2020

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TANIA M. MOYRON

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

Attorneys for Verity Health Systems of
California, Inc., *et al.*

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EXHIBIT 1

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA -
LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Bankruptcy Case No. 2:18-bk-20151-ER
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
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CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

Adversary No. 2:20-ap-01051-ER

**NOTICE OF DEBTORS' MOTION AND
MOTION TO DISMISS COMPLAINT
UNDER RULE 12(b), WITH PREJUDICE**

Hearing Date and Time:

Date: May 6, 2020
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple St.
Los Angeles, CA 90012



1820151200407000000000003

CALIFORNIA NURSES ASSOCIATION (CNA)

Plaintiff,

v.

VERITY HEALTH SYSTEMS OF CALIFORNIA,
INC., a California Corporation; ST. FRANCIS
MEDICAL CENTER, an Affiliate; ST. VINCENT
MEDICAL CENTER, an Affiliate; SETON
MEDICAL CENTER, an Affiliate; ST. FRANCIS
MEDICAL CENTER OF LYNWOOD, an
Affiliate; ST. VINCENT DIALYSIS CENTER,
INC., an Affiliate; VERITY HOLDINGS, LLC, an
Affiliate; DEPAUL VENTURES, LLC, an
Affiliate; RICHARD ADCOCK, an Individual;
STEVEN SHARRER, an Individual, and DOES 1
through 500,

Defendants.

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1 **PLEASE TAKE NOTICE** that Verity Health System of California, Inc., Seton Medical
2 Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center,
3 Verity Holdings, LLC and DePaul Ventures, LLC (collectively, the “Institutional Defendants”),
4 eight of seventeen debtors (collectively, the “Debtors”), in the above-captioned Chapter 11
5 bankruptcy cases (the “Cases”), hereby move (the “Motion”) for entry of an order, pursuant to
6 Federal Rule of Civil Procedure 12(b)(6) incorporated by Federal Rule of Bankruptcy Procedure
7 7012(b), dismissing the complaint in the above-captioned adversary proceeding (the “Adversary
8 Proceeding”) commenced by the California Nurses Association.

9 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this Notice and
10 Motion, the attached Memorandum of Points and Authorities, and the concurrently filed Request
11 for Judicial Notice, the arguments of counsel and other admissible evidence properly brought
12 before the United States Bankruptcy Court for the Central District of California (the “Bankruptcy
13 Court”) at or before the hearing on this Motion, if any.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
15 1(f), any party opposing or responding to the Motion must file a response (the “Response”) with
16 the Bankruptcy Court and serve a copy of it upon the moving party and the United States Trustee
17 not later than 14 days before the date designated for the hearing. A Response must be a complete
18 written statement of all reasons in opposition to the Motion or in support, declarations and copies
19 of all evidence on which the responding party intends to rely, and any responding memorandum
20 of points and authorities.

21 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
22 1(h), the failure to file and serve a timely a Response to the Motion may be deemed by the Court
23 to be consent to the relief requested herein.

24 **PLEASE TAKE FURTHER NOTICE** that if any Responses are filed and a hearing is
25 needed on the Motion, the hearing will be held on **May 6, 2020 at 10:00 a.m. (prevailing Pacific**
26 **Time)**, at the U.S. Bankruptcy Court, 255 E. Temple Street, Los Angeles, CA 90012. Pursuant to
27 Amended General Order 20-02 issued by the Bankruptcy Court on April 1, 2020, all appearances
28 at hearings must be telephonic; the telephone conference call-in number is (866) 582-6878. The

1 telephone conference call-in number is (866) 582-6878.

3 Dated: April 6, 2020

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TANIA M. MOYRON

By /s/ Tania M. Moyron
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Verity Health System of California, Inc. (“VHS”), Seton Medical Center (“SMC”), St.
3 Vincent Medical Center (“SVMC”), St. Vincent Dialysis Center, Inc. (“SVDC”), St. Francis
4 Medical Center (“SFMC”), Verity Holdings, LLC (“Holdings”) and DePaul Ventures, LLC
5 (“DePaul,” and collectively with VHS, SMC, SVMC, SVDC, SFMC, and Holdings, the
6 “Institutional Defendants”), eight of seventeen debtors (collectively, the “Debtors”) in the above-
7 captioned cases (the “Chapter 11 Cases”) proceeding under chapter 11 of title 11 of the United
8 States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),¹ hereby move (the “Motion”) for
9 entry of an order, pursuant to Federal Rule of Civil Procedure (“Civil Rules”) 12(b)(6)
10 incorporated by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy
11 Rules”), dismissing the complaint in the above-captioned adversary proceeding (the “Complaint”
12 or “Adversary Proceeding”) commenced by the California Nurses Association (“Plaintiff” or
13 “CNA”), and as more fully set forth in the below Memorandum of Points and Authorities, and
14 further supported by a joinder to the Motion filed separately by the individual defendants, Richard
15 G. Adcock, Steven Sharrer and Does 1-500 (the “Individual Defendants”), assert as follows:

16 **I.**

17 **INTRODUCTION**

18 After the public refusal of Strategic Global Management, Inc. (“SGM”) to close the
19 acquisition of the Debtors’ remaining hospital facilities in December 2019, the Debtors were
20 compelled to pursue and take alternative actions and transactions. Among the most immediate
21 actions was the closure approved by this Court in early January 2020 of SVMC and its on-campus
22 dialysis center, SVDC (collectively, “St. Vincent”), a facility that had lost approximately \$65
23 million in 2019 alone.

24 Throughout this process, CNA received notice of all pleadings,² actively participated in

25 _____
26 ¹ Unless specified otherwise, all chapter, “§” and section references are to the Bankruptcy Code,
and all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure.

27 ² CNA filed a Notice of Appearance in the Bankruptcy Court on September 17, 2018, and has
28 been receiving ECF service of all filings since then. *See* Request for Judicial Notice (“RJN”), Ex.
1, *Notice of Appearance and Request for Special Notice and Inclusion on Mailing List* [Docket

1 both its individual capacity as representative of nurses at St. Vincent (and other existing and
2 previously Debtor-owned facilities) and as a member of the Official Committee of Unsecured
3 Creditors (the “Committee”)³ in the Chapter 11 Cases, and was at all times aware of the potential
4 closure of St. Vincent. CNA received notice of St. Vincent’s potential closure through various
5 pleadings filed during 2019 and notice of the motion to close St. Vincent in January 2020, which
6 CNA actively opposed. *See* RJN, Ex. 29, *Opposition to Debtors’ Emergency Motion for*
7 *Authorization to Close St. Vincent Medical Center*, filed January 7, 2020 [Docket No. 3914]
8 (“CNA Closure Objection”). It is also indisputable that upon St. Vincent’s closure, CNA-
9 represented nurses received payment of all remaining wages for the period worked and unused
10 administrative and priority period allowable paid time off (“PTO”).⁴

11 After St. Vincent’s closure, the Debtors engaged in bargaining with CNA and another
12 union (“SEIU-UHW”) in order to terminate or otherwise modify the operative collective
13 bargaining agreements (“CBAs”) and to resolve claims associated with the closure of St. Vincent.
14 Those discussions resulted in a settlement with SEIU-UHW that was approved by this Court on
15 an expedited basis. *See* RJN, Ex. 3, [Docket No. 4340].⁵

16 In contrast to SEIU-UHW, CNA commenced this Adversary Proceeding, which seeks
17 relief under four counts. The first two counts are asserted under the Federal Worker Adjustment
18 and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the “WARN Act”) and the California
19 WARN Act, California Labor Code §§ 1400-1408 (“Cal-WARN Act”, and collectively with the
20 WARN Act, the “WARN Acts”) (Count I and Count II, respectively) against the Institutional
21

22 No. 200.] CNA has also filed a proof of claim in the Bankruptcy Cases against the Debtors. *See*
23 RJN 4, [Docket No. 3604].

24 ³ *See* RJN, Ex. 2, *Notice of Appointment of Committee of Creditors Holding Unsecured Claims*
[Docket No. 197, Exhibit A].

25 ⁴ Allowed priority wage and benefits claims are subject to the statutory priority cap under
26 § 507(a)(4) and (5).

27 ⁵ A full list of exhibits is provided in the *Defendants’ Request for Judicial Notice in Support of*
28 *Their Motion to Dismiss Complaint Under Rule 12(b)(6), with Prejudice*, filed contemporaneously herewith. All citations to exhibits are with reference thereto.

Defendants. The remaining counts seek claims of “Intentional Misrepresentation by Concealment” and “Negligent Misrepresentation” (Count III and Count IV, respectively) against the Institutional Defendants, as well as two corporate individuals—Richard G. Adcock (Chief Executive Officer for VHS) and Steven Sharrer, Chief Human Resources Officer for VHS—and unnamed individuals labeled DOES 1 - 500. For damages, CNA seeks “civil penalties” (under the WARN Act), as well as “compensatory damages, including lost wages and employment benefits,” “damages for mental pain and anguish and emotional distress,” “punitive damages,” “interest” and “[t]reatment of all damages as first priority administrative expenses pursuant to 11 U.S.C. § 503(b)(1)(A)(i)-(ii)” (Compl., ¶¶ 119-22, 124-25). Such damages, which CNA seeks to have treated as “administrative” while unspecified in amount, undoubtedly exceed any unpaid administrative and priority severance claims CNA had previously agreed should be treated under an accrual method of calculation, with administrative and priority amounts paid after plan confirmation. *See* RJN, Ex. 4, *Debtors’ Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* [Docket No. 3604, ¶ 39].⁶

Leaving aside CNA’s blatant attempt, yet again, to elevate and expand what constitutes an administrative claim, while simultaneously seeking to punish Defendants for taking necessary actions to mitigate SGM’s failure to close, none of the Counts have merit and each should be dismissed with prejudice.⁷ CNA’s WARN Act claims fail for several reasons; although for the

⁶ That settlement was reached in connection with the CBA modification and assignment to SGM. By its terms, that settlement was rendered null and void by SGM’s failure to close the sale transaction. *See* RJN, Ex. 4 [Docket No. 3604, Ex. 1, ¶ 12] (“Terms of this Agreement shall be null and void in the event that 1) the Sale does not close[.]”) Although the settlement was rendered void, no agreement has been reached to accelerate the payment of administrative or priority severance prior to any plan effective date.

⁷ CNA objected to the Wage Motion (defined herein)—notwithstanding the fact that the Debtors unilaterally agreed to pay more than a million dollars in post-petition accruing pension contributions for active and unfrozen CNA-represented employees in 2018-2019—because the Wage Motion did not also seek to pay pre-petition pension related contributions. *See* RJN, Ex. 56 [Docket No. 223].

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1 purposes of this Motion, the Defendants focus on one: due to the emergency closure of St.
2 Vincent, the Institutional Defendants constitute a “liquidating fiduciary” and are not employers
3 for purposes of the WARN Acts. The record before this Court provides all evidence necessary to
4 support this defense and, as such, Counts I and II should be dismissed with prejudice.

5 Likewise, the claims against the Institutional and Individual Defendants for alleged
6 “intentional” and “negligent” misrepresentation (Counts III and IV) are devoid of color and
7 should be dismissed with prejudice for at least two reasons. First, CNA lacks associational
8 standing to assert the intentional and negligent misrepresentation claims. Second, CNA fails to
9 allege the requisite elements to support either intentional misrepresentation or negligent
10 misrepresentation.

11 Further, it should be noted that although CNA has filed a motion in the District Court
12 seeking to withdraw the reference of this Adversary Proceeding, no stay has been sought, let
13 alone granted, and accordingly nothing prohibits this Court from making a determination of this
14 Motion.

15 For these and other reasons, the Court should dismiss the Adversary Proceeding, with
16 prejudice.

17 II.

18 **RELIEF REQUESTED**

19 By this Motion, Defendants request entry of an Order dismissing the Adversary
20 Proceeding filed by CNA with prejudice, on the basis that the Complaint fails to state a claim
21 upon which relief can be granted.

22 III.

23 **JURISDICTION AND VENUE**

24 This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This
25 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Venue is proper in this Court pursuant
26 to 28 U.S.C. §§ 1408 and 1409.

27 The statutory predicate for the relief requested herein is Civil Rule 12(b)(6), as made
28 applicable to adversary proceedings in bankruptcy courts by operation of Bankruptcy Rule

1 7012(b).

2 IV.

3 **STATEMENT OF FACTS**

4 **A. General Background**

5 1. On August 31, 2018 (the “Petition Date”), the Debtors each filed a voluntary
6 petition for relief under chapter 11 of the Bankruptcy Code.

7 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole
8 corporate member of the other Debtor California nonprofit public benefit corporations that
9 operated acute care hospitals and other facilities in the state of California. *See* RJN, Ex. 5,
10 *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8]
11 (the “First-Day Decl.”), ¶ 11.

12 3. From the outset of the Chapter 11 Cases, the Debtors emphasized that their
13 vulnerable condition, caused by years of inherited legacy liabilities and generous employee
14 benefits, state law demands and reimbursement and operational difficulties, necessitated the
15 bankruptcy filing and the objective to transfer the hospitals as operating entities. *Id.* at ¶¶ 96-110,
16 139.

17 4. The Debtors incorporate the First-Day Decl. for further general background.

18 **B. St. Vincent**

19 5. SVMC was founded as the first hospital in Los Angeles in 1856. *Id.* at ¶ 34. In
20 1971, a new facility was constructed at the Hospital’s current location at 2131 West Third Street,
21 Los Angeles, CA 90057. *Id.* The Hospital expanded to a 366 licensed bed, regional acute care,
22 tertiary referral facility, specializing in cardiac care, cancer care, total joint and spine care, and
23 multi-organ transplant services. *Id.* The Hospital served both local residents and residents from
24 Los Angeles, San Bernardino, Riverside, and Orange Counties. *Id.* SVMC provided medical
25 care for both inpatients (*i.e.*, patients who remain in the hospital for more than 24 hours) and
26 outpatients (*i.e.*, patients who receive outpatient services, such as MRIs). *Id.* SVMC owns real
27 property commonly known as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the
28

1 hospital and all of the facilities located thereon; and (ii) vacant land in Salton Sea, California. *Id.*
2 at ¶ 23.

3 6. SVMC's campus had a dialysis center, SVDC, where SVMC's kidney disease
4 patients received dialysis services, including hemodialysis and isolated ultrafiltration treatments
5 as part of SVMC's end-stage renal disease program. *Id.* at ¶ 36. SVMC and SVDC had separate
6 corporate identities, and SVMC was the sole corporate member of SVDC. *Id.* Both SVMC and
7 SVDC were exempt from federal income taxation as an organization described in § 501(c)(3) of
8 the Internal Revenue Code of 1986. *Id.* at ¶ 21.

9 7. As of the Petition Date, St. Vincent employed approximately 1,099 employees, of
10 which 897 were full time, 42 were part time, and 160 were *per diem*. *Id.* at ¶ 59(f).

11 8. St. Vincent had consistently lost money for many years due to, among other
12 things, unfavorable payor contracts, rising health care costs, high pension obligations and certain
13 requirements imposed on SVMC by the Attorney General for the State of California (the
14 "Attorney General"). *See id.* at ¶¶ 95, 99. SVMC was also dramatically under-invested in
15 structural improvements necessary to meet California's state-mandated seismic and clean energy
16 requirements. *Id.*

17 9. While the Debtors collectively have a poor financial history, St. Vincent was
18 particularly troubled. *See* RJN, Ex. 44, *Declaration of Peter C. Chadwick in Support of Debtors'*
19 *Emergency Motion to Authorization to Close St. Vincent Medical Center* [Docket No. 3906], ¶ 6.
20 On the Petition Date, although SVMC accounted for approximately only 23% of the patient
21 volume of the entire Verity Health System, the hospital accounted for approximately 60% of the
22 operating losses. *Id.* Before closing SVMC, the Debtors projected continuing operating losses by
23 SVMC. Relevant reported financial statements reflect that, in fiscal year 2019 (ended June 30,
24 2019), it lost approximately \$65 million, which was an 18% and 103% increase over the fiscal
25 years 2018 and 2017, respectively. *Id.* at ¶ 8.

1 **C. The CNA CBA And The Represented Employees**

2 9. CNA represents employees at St. Vincent under a collective bargaining agreement.
3 See RJN, Ex. 4, [Docket No. 3604].⁸ In addition to St. Vincent, CNA represents employees at
4 SMC and previously represented employees at Saint Louise Regional Hospital and O'Connor
5 Hospital (the latter two having been sold to Santa Clara County). Additionally, Defendants
6 Holdings and DePaul have no employees and CNA has not at any relevant time represented
7 employees at Defendant SFMC. See RJN, Ex. 4, [Docket No. 3604] (referencing Debtor facilities
8 where CNA has represented employees).

9 10. On the Petition Date, the Debtors filed their *Emergency Motion Of Debtors For*
10 *Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And*
11 *Salaries, And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II)*
12 *Authorizing And Directing The Applicable Bank To Pay All Checks And Electronic Payment*
13 *Requests Made By The Debtors Relating To The Foregoing; Memorandum Of Points And*
14 *Authorities In Support Thereof* [Docket No. 22] (the “Wage Motion”), which requested authority
15 to pay priority employee claims and to pay employees in the ordinary course of business for post-
16 petition work. See RJN, Ex. 6. On October 22, 2018, this Court granted the Wage Motion⁹ and
17 authorized the payment of priority and administrative wage and benefit claims, including for
18 union-represented employees.¹⁰

19 ⁸ In addition, CNA is party to other collective bargaining agreements with the Debtors, including
20 a collective bargaining agreement with SMC, and a “Master” collective bargaining agreement
21 with SMC and St. Vincent. *Id.*

22 ⁹ See *Final Order Granting the [Debtors’] Emergency Motion of Debtors for Entry of Order: (I)*
23 *Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and*
24 *Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing*
25 *the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors*
26 *Relating to the Foregoing* [Docket No. 612]; and concurrently issued *Memorandum of Decision*
27 *(1) Overruling Objections to the (A) Prepetition Wages Motion and (B) Financing Motions and*
28 *(2) Denying Motion for Reconsideration of the Final Financing Order* [Docket No. 614]
(together, the “Wage Order”). See RJN, Exs. 7 & 8.

¹⁰ Unlike other labor unions, whose benefit accruals under certain defined pension plans were
frozen as a function of the Wage Order, CNA continued to accrue new benefits under a large
multiemployer pension plan (the RPHE), into which the Debtors received authority to make
payments under a specified budget. [Docket No. 614, § I. B.].

D. Marketing and Sale Efforts

11. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and solicit interest in their assets (collectively, the “Assets”). See RJN, Ex. 9, *Declaration of James M. Moloney in Support of the Debtors’ Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 2220] (the “Moloney Sale Decl.”), at ¶ 4.

12. As part of these prepetition efforts, the Debtors engaged Cain Brothers, a division of KeyBanc Capital Markets (“Cain”), to assist in identifying potential buyers of some or all of the Assets and commenced discussions with those potential buyers. *Id.* at ¶¶ 1, 4. In that initial marketing process, Cain contacted more than 100 potential partners to evaluate their interest in exploring a transaction involving some or all of the Assets. *Id.* at ¶ 4. By August 2018, as a result of its ongoing and broad marketing process, Cain received 11 “Indications of Interest” from potential buyers of some or all of the Assets. *Id.*

13. Post-petition, the Debtors effectuated a sale of certain Assets to Santa Clara County, which was approved by this Court on December 27, 2018. See RJN, Ex. 10, [Docket No. 1153]. Thereafter, SGM emerged as a leading potential candidate to be selected as the stalking horse bidder for the Debtors’ remaining Assets. *Moloney Sale Decl.* at ¶ 6.

E. The Failed SGM Sale

14. The Debtors selected SGM as the stalking horse bidder (the “Stalking Horse Bidder”) for substantially all of the Debtors’ remaining Assets, including SVMC, and requested approval of the same (the “Sale and Bidding Procedures Motion”). See RJN, Ex. 59, [Docket No. 1279] at ¶ 22. On February 19, 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered an order approving the Sale and Bidding Procedures Motion (the “Bidding Procedures Order”). See RJN, Ex. 11, [Docket No. 1572]. SGM served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. The Bidding Procedures Order also approved that certain asset purchase agreement [Docket No. 2305-1] (the “APA”) as modified therein. See RJN, Ex. 12.

1 15. On May 2, 2019, after briefing and a hearing, the Court entered the *Order (A)*
2 *Authorizing The Sale Of Certain Of The Debtors' Assets To Strategic Global Management, Inc.*
3 *Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The*
4 *Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related*
5 *Relief* [Docket No. 2306] (the "Sale Order"), approving the sale to SGM pursuant to the APA (the
6 "SGM Sale"). See RJN, Ex. 13.

7 16. One of the conditions to closing under the APA was (i) the approval by the
8 Attorney General, pursuant to California Corporations Code § 5914 and title 11 of the California
9 Code of Regulations, § 999.5, and (ii) that the Attorney General did not impose any conditions
10 that were "materially different" than those set forth in Schedule 8.6 to the APA. APA, § 8.6.
11 Under Section 8.6 of the APA, the APA also provided that SGM "shall reasonably cooperate in
12 any efforts to render the Supplemental Sale Order a final, non-appealable order." *Id.*

13 17. In anticipation of the SGM Sale, on August 12, 2019, the Debtors sent a notice
14 under the WARN Act (generally, a "WARN Notice") to CNA and each of its members (the
15 "August 12, 2019 Notice") (Compl., Ex. 1) stating in relevant part:

16 This notice is being issued to you under the Worker Adjustment
17 and Retraining Notification Act, 29 U.S.C. §§2101 et seq. (the
18 "WARN Act") and the California WARN Act, California Labor
19 Code §§1400-1408 ("Cal-WARN Act"). The purpose of this notice
20 is to inform you of the sale of St. Vincent Medical Center, located
21 at 2131 West Third Street, Los Angeles, CA 90057 and St. Vincent
22 Dialysis Center, located at 201 S. Alvarado St., Los Angeles, CA
23 90057 (together, "St. Vincent"). . . .

24 On April 17, 2019, the Bankruptcy Court entered an order
25 approving the Sale.

26 In connection with the Sale, the Debtors will be separating the
27 employment of all of St. Vincent's employees, which may result in
28 an "employment loss" within the meaning of the WARN Act and
the Cal-WARN Act. Under the Asset Purchase Agreement between
the Debtors and the Purchaser, the Purchaser has agreed to make
offers of employment to substantially all of St. Vincent's
employees, subject to the other terms and conditions contained in
such Asset Purchase Agreement.

 The closing of the Sale is subject to certain regulatory and other

1 approvals and the satisfaction of certain other conditions agreed to
2 between the Debtors and the Purchaser. While the Debtors are
3 optimistic that the Sale will close, there is a possibility that the Sale
4 will be unsuccessful. In that event, St. Vincent may close and none
5 of its employees may be hired by the Purchaser. Even if the Sale
6 closes and St. Vincent remains open, employees at St. Vincent may
7 suffer an “employment loss” within the meaning of the WARN Act
and Cal-WARN Act because the Debtors will separate the
employment of all of St. Vincent's employees upon the closing of
the Sale. For those employees, if any, who are not hired by the
Purchaser, the employment loss is expected to be permanent.

8 (Compl., Ex. 1).

9 18. The August 12, 2019 Notice explained that “[b]ased on the best information
10 available to date, we believe the Sale and separations of employment will occur between October
11 18, 2019 and October 31, 2019.” *Id.*

12 19. On September 25, 2019, the Attorney General approved the SGM Sale, subject to
13 certain conditions that included additional conditions that were materially different than those
14 SGM contractually agreed to in Schedule 8.6 of the APA (the “2019 Conditions”). Accordingly,
15 the Debtors filed a motion that sought the entry of an order enforcing the Sale Order, finding that
16 the SGM Sale was free and clear of the 2019 Conditions, and limiting the SGM Sale to only those
17 conditions that SGM developed and then contractually agreed to in Schedule 8.6 of the APA (the
18 “Enforcement Motion”). *See* RJN, Ex. 14, [Docket No. 3188.] In support of the Enforcement
19 Motion, the Debtors filed a Declaration of CEO Richard Adcock, stating that the likely outcome
20 of SGM not closing the sale was that SVMC would likely close. *See* RJN, Ex. 14, [Docket No.
21 3188, p. 33] (“If the SGM Sale does not close, the most likely outcome is that at least three of the
22 Hospitals will have to close.” (emphasis added)).¹¹

23 20. On October 15, 2019, the Court held a hearing on the *Debtors’ Emergency Motion*
24 *for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global*
25 *Management, Inc; (II) Finding That the Sale is Free and Clear of Conditions Materially Different*
26 *Than Those Approved by the Court; (III) Finding That the Attorney General Abused His*

27 ¹¹ CNA indisputably had actual knowledge of this filing and, indeed, specifically referenced it in
28 its CNA Closure Objection, filed January 7, 2020 [Docket No. 3914, p. 3]. *See* RJN, Ex. 29.

1 *Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief. See* RJN, Ex.
2 14, [Docket No. 3188, filed September 30, 2019]. Counsel for CNA appeared at the hearing,
3 during which the Court underscored the significance of the SGM Sale and the consequences to
4 employees if the SGM Sale fell through:

5 Ms. Skogstad: Good Morning, your Honor. Kyrsten Skogstad, in-
6 house counsel, on behalf of the California Nurses Association.

7 * * *

8 The Court: . . . This is the culmination of this case. We have at
9 some point a plan and disclosure statement hearing, but all of that
10 posits that we have a sale of the assets of this case. If we don't, it
11 makes no sense to have a plan and disclosure statement. So this is
12 the day and this is the hour. The sale is the linchpin of the plan.
13 So, without a sale, there's no point to going forward, and I reiterate
14 that because I'm not sure if all of the participants at this morning's
15 hearing fully appreciate what that means. If we don't have a plan
16 and disclosure statement that can be approved by the Court, then,
17 on the Court's own motion, or on a motion of an interested party,
18 the Court may dismiss the case, in which case I think that that
19 would spell a disaster for every party that is represented here this
20 morning.

21 * * *

22 More importantly, throughout another set of hearings with respect
23 to a sale to some other entity, with all of the time that would be
24 occasioned by that, there is no money to fund the continued
25 operations of the Debtor, which would inure to the detriment of
26 thousands of patients, thousands of employees, and not to mention
27 the creditors in the case.

28 *See* RJN, Ex. 15 (Oct. 15, 2019 Hr'g Tr. at 1:23-25, 4:15-5: 4, 6:15-21) (emphasis added).

21. In light of the status of the SGM Sale transaction, on October 23, 2019, the
Debtors issued a WARN extension notice ("October 23, 2019 Notice") (Compl., Ex. 2) stating, in
relevant part:

This notice is being provided in follow up to the August 12, 2019
notice you received under the Worker Adjustment and Retraining
Notification Act and the California WARN Act *advising that*
separations of employment would occur between October 18, 2019
and October 31, 2019.

The October 23, 2019 Notice also provided an update regarding the SGM Sale, stating:

The Agreement requires satisfaction of certain milestones to
complete the Sale. Not all of the milestones have been met.

Consequently, the separations of employment must be postponed and will not occur at the time originally anticipated. At this time, we anticipate the Sale and separations of employment will occur between **November 17, 2019 and November 30, 2019.**

We will continue to keep you apprised of any new developments and will provide you with updated information should circumstances change with respect to the Sale and the separations of employment.

(Compl., Ex. 2) (emphasis added).

22. On October 23, 2019, the Court issued a *Memorandum of Decision Granting the Debtors' Emergency Motion to Enforce the Sale Order*. See RJN, Ex. 16, [Docket No. 3446]. In the memorandum, the Court ruled for the Debtors on all issues, holding, among other things, that the Attorney General's conditions that were materially different than the conditions in Schedule 8.6 were not enforceable under the Bankruptcy Code and state law.

23. Thereafter, following negotiations, the Debtors and the Attorney General reached a *Stipulation Resolving "Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief"* [Docket No. 3572] and lodged a related order [Docket No. 3574]. See RJN, Exs. 17 & 18.

24. On November 11, 2019, SGM filed an objection to the proposed order, stating in relevant part:

While SGM remains fully committed to the transaction, fundamental to SGM's rights as a purchaser is the protection to which it is entitled under APA section 8.6 in the form of a clearly and unambiguously written order which forecloses, to the extent possible, any disputes or controversies as to SGM's protection from such Additional Conditions, its right not to comply with, perform or adhere to any of the Additional Conditions, and SGM's ability to come to this court if there are future disputes or controversies over the interpretation or enforcement of such order

* * *

Unfortunately, the AG's effort to avoid the precedential effect of

1 this Court's ruling has created an unnecessarily ambiguous order
2 which may actually result in litigation between the AG and SGM.
3 The AG's verbatim extraction of specific language from § 8.6,
4 while superficially appealing, is grammatically unartful. Whether
5 by design to obscure the outcome of the Court's ruling or simply
6 poor draftsmanship, the end result is an order that does not do
7 justice to, or fairly reflects, this Court's ruling and leaves SGM
8 open to litigation.

9 See RJN, Ex. 19, [Docket No. 3582 at pp. 3-4] (emphasis added).

10 25. On November 14, 2019, following a hearing, the Court issued an *Order Granting*
11 *"Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the*
12 *Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of*
13 *Conditions Materially Different Than Those Approved by the Court; (III) Finding That the*
14 *Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting*
15 *Related Relief"* (the "Enforcement Order"). See RJN, Ex. 20, [Docket No. 3611]. The
16 Enforcement Order provided, in relevant part, that "the Additional Conditions (as defined in
17 Section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the 'APA')) were an
18 'interest in property' for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA)
19 were being sold free and clear of the Additional Conditions without the imposition of any other
20 conditions which would adversely affect the Purchaser (as defined in the APA)." [Docket No.
21 3611 at ¶ 3]. The findings in the Enforcement Order mirrored the findings required under the
22 APA.

23 26. APA Section 1.3 obligated SGM to close the sale "promptly but no later than ten
24 (10) business days following the satisfaction" of all conditions precedent. APA, § 1.3. On
25 November 18, 2019, the Court entered an order [Docket No. 3633] and related memorandum
26 [Docket No. 3632] finding that: "The Debtors have complied with their obligation under the
27 APA to obtain a final, nonappealable Supplemental Sale Order. Consequently, SGM is now
28 obligated to promptly close the SGM Sale, provided that all other conditions to closing have been
satisfied." See RJN, Exs. 21 and 22.

29 27. The conditions to close under the APA had been satisfied, and the transaction
30 should have promptly closed by December 5, 2019. *Id.* On November 18, 2019, however,

SGM's CEO, Peter Baronoff, contacted a Cain representative and stated that SGM could not obtain sufficient financing for the transaction, contrary to Section 3.9 of the APA. *See* RJN, Ex. 27, [Docket No. 3644 at ¶ 12]. That telephone call immediately resulted in the Debtors' request for an order [entered at Docket No. 3646] continuing the hearing on the Debtors' motion [Docket No. 2995] for approval of its disclosure statement [Docket No. 2994]. *See* RJN, Exs. 57 & 58. Specifically, on November 19, 2019, the Debtors filed a *Motion to (A) Continue Hearing on Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections, and (C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter.* *See* RJN, Ex. 27, [Docket No. 3644]. The Debtors' motion explained:

The [November 18, 2019] Order also provided that Strategic Global Management, Inc. ("SGM") was obligated to promptly close the SGM sale (the "SGM Sale"), provided that all other conditions have been satisfied. Despite the foregoing, there remains a significant amount of uncertainty regarding the SGM sale transaction. As of the last motion [Docket No. 3621] to continue the hearing on the Disclosure Statement Motion, the Debtors anticipated receiving formal correspondence from SGM that would be material to the sale transaction. The Debtors have yet to receive the correspondence, but have been informed that it is forthcoming. Further, since the Orders, SGM orally communicated new information that undermines the Debtors' confidence in a prompt closing of the sale.¹²

Id. at p. 2 (emphasis added).

28. Given the Debtors' understanding that the SGM Sale would not close by November 30, 2019 as anticipated, the Debtors issued a WARN extension notice on November 25, 2019 (the "November 25, 2019 Notice") (Compl., Ex. 3). This notice informed CNA and its members that "*the separations of employment will be further postponed* due to the circumstances noted below" and explained:

¹² CNA received and was aware of these filings and, indeed, specifically referenced one of them in its CNA Closure Objection [Docket No. 3914, p. 3].

1 The Debtors continue to work expeditiously for a prompt close of
2 the Sale with SGM. For example, the Debtors obtained an order
3 from the court regarding the Attorney General conditions and
4 reached a settlement with the U.S. Department of Health and
5 Human Services. We are notifying you that we anticipate the Sale
6 and *separations of employment will occur* between **December 6,**
7 **2019 and December 19, 2019.**

8 We will keep you apprised with respect to the Sale and the
9 separations of employment.

10 *Id.* (emphasis added).

11 29. On November 25, SGM filed a Reservation of Rights, alleging (among other
12 things) that “there are genuine disputes of material fact as to the [sic] whether there have been
13 Material Adverse Effects under the terms of the APA.” *See* RJN, Ex. 30, [Docket No. 3701 at p.
14 6]. SGM’s Reservation of Rights further stated:

15 On November 22, 2019, SGM, through counsel, delivered two
16 letters to Verity . . . In the SGM Letters, SGM notified Verity that
17 Verity had breached a number of material covenants,
18 representations, warranties and conditions, as a result of which
19 there had occurred and would continue to occur “Material Adverse
20 Effects” as that term is used throughout the APA.

21 * * *

22 [...] SGM is desirous of proceeding with the transaction reflected
23 in the APA. However, the significant and material issues which
24 have emerged and which are set forth in SGM’s Letter of
25 November 22, 2019, must be addressed and resolved. SGM
26 believes that the most effective mechanism to resolve these issues is
27 not to rush to Court on an expedited and profoundly unfair process.
28 Rather, it would be more productive for SGM to meet and confer
with Verity and the other stakeholders, including the secured
lenders and the Unsecured Creditors Committee, to see if the
transaction can be salvaged and closed without the necessity of
litigation.

29 *Id.* at pp. 2-3, 9-10.

30 30. In response, the Debtors submitted to the Court SGM’s November 22, 2019
Letters under seal. *See* RJN, Exs. 31 & 32, [Docket Nos. 3697 & 3699]. On the same date, SGM
filed an *Objection to Debtor’s Ex Parte Motion for an Order Allowing the Debtors to File
Correspondence Regarding the SGM Sale Under Seal*, stating:

[C]ertain disputes and controversies have arisen between SGM and
the Debtors with regard to the APA and, as a result of the

1 emergence of those issues, the parties have exchanged letters; the
2 Debtor's letter to SGM dated November 19, 2019 and SGM's letter
3 to the Debtors dated November 22, 2019.

4 See RJN, Ex. 33, [Docket No. 3698 at p. 2].

5 31. On November 26, 2019, the Court held a Status Conference, at which the Court
6 rejected SGM's arguments, stating (among other things) that "[a]s far as the Court is concerned"
7 SGM is the "proud owner" of the Debtors' assets as set forth in the APA, and that SGM "has an
8 obligation to close" the transaction pursuant to the APA. See RJN, Ex. 34, [Nov. 26, 2019 Hr'g
9 Tr. at 12:22-24, 14:10-11]. Additionally, at the Status Conference, the Debtors announced that
10 they had reached a settlement agreement in principle with the California Department of Health
11 Care Services ("DHCS") on November 22, 2019 ("DHCS Settlement"), given SGM's objection
12 to the sufficiency of the Court's prior Orders regarding DHCS. [*Id.* at 10:17-24.]

13 32. On November 27, 2019, the Court issued an Order finding that, "[p]ursuant to §
14 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019"
15 ("Closing Order"). See RJN, Ex. 35, [Docket No. 3724]. The Memorandum Decision supporting
16 the Closing Order concluded, among other things, that (i) "Adjudication of SGM's Obligations
17 Under the APA Does Not Require an Adversary Proceeding," (ii) "Adjudication of SGM's
18 Obligations Under the APA Is Not Premature," (iii) "SGM Is Not Entitled to Appeal the Court's
19 Determination Regarding a Material Adverse Effect," (iv) "No Material Adverse Effect Has
20 Occurred," (v) "All Conditions Precedent to Closing Have Been Satisfied." See RJN, Ex. 36,
21 [Docket No. 3723]. The Court further concluded that:

22 SGM's contention that it is not obligated to close is a cynical
23 attempt to extract a better purchase price. A key component of
24 SGM's negotiation strategy is its attempt to delay as long as
25 possible the adjudication of its obligations under the APA. The
26 Court will not facilitate SGM's dubious tactics.

27 * * *

28 By presenting non-meritorious arguments as to why it is not
obligated to close, SGM is holding the estates, creditors, and
patients of the Hospitals hostage in an attempt to extort a better
purchase price. SGM's cynical tactics are especially offensive
given the significant harm that closure of the Hospitals would
impose upon patients. For example, two of the Hospitals that

1 would likely close upon failure of the SGM Sale contain large
2 populations of long-term patients suffering from severe illnesses,
all of whom would have to be relocated to other facilities.

3 *Id.*, pp. 4, 6-7 (emphasis added).

4 33. On November 29, 2019, SGM filed two notices of appeal [Docket Nos. 3726 &
5 3727] related to (i) the order granting the Enforcement Motion [Docket No. 3611], and (ii) the
6 order finding that SGM is obligated to promptly close the transaction under Section 8.6 of the
7 APA provided all other conditions to closing are satisfied [Docket No. 3633]. *See* RJN, Exs. 20
8 & 21.

9 34. SGM failed to close the SGM Sale by December 5, 2019, as ordered by the Court.
10 Accordingly, on December 6, the Debtors filed an *Emergency Motion for (I) Issuance of an Order*
11 *to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by*
12 *December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic*
13 *Global Management, Inc. to Close the Sale Transaction by December 5, 2019.* *See* RJN, Ex. 39,
14 [Docket No. 3773] (the “Emergency Motion”). The Emergency Motion explained that SGM had
15 failed to close the SGM Sale and SGM’s conduct suggested it lacked the financial wherewithal to
16 do so. Specifically, the motion stated that, “[o]n November 19, 2019, SGM’s CEO, Peter
17 Baronoff, telephoned the Debtors’ investment banker and stated that SGM could not obtain
18 sufficient financing for the transaction,” and explained:

19 Despite the clear requirements of the APA and in direct
20 contravention of this Court’s prior Orders, SGM announced that it
21 would not close the SGM Sale—and, then, did not close the SGM
22 Sale—by December 5, 2019. In a transparent attempt to delay this
23 proceeding, frustrate the Debtors’ ability to transfer the Hospitals
pursuant to the APA, and manufacture a context to renegotiate the
purchase price under the APA, SGM has filed three frivolous
appeals

24 * * *

25 SGM has intentionally frustrated the closing process by refusing to
26 participate. In addition to announcing that it would not close the
SGM Sale on December 5, as ordered by the Court, throughout the
27 week leading up to the filing of this Motion, SGM has refused to
28 participate in the regular, pre-scheduled joint closing calls and
operational transition calls, apparently based on the advice of its
counsel.

* * *

Given the actions and inactions of SGM over the past month, which suggest SGM lacks the financial ability to close the SGM Sale, the Debtors have made repeated and direct requests that SGM state whether it has the financial ability to close the SGM Sale, and whether it intends to do so. SGM has refused to respond, attempting to distract from its apparent financial inability to perform and seeking to preserve the ability to argue at some later date that the Debtors breached the APA by deciding prematurely to distribute their assets in a different manner, i.e. “Plan B” as it was referred to during the November 26, 2019, status conference.

Id. at pp. 2-3, 6 (emphasis added).

35. The Emergency Motion asked the Court to find SGM in material breach of the APA by failing to close the SGM Sale on December 5, 2019, and order SGM and its principals, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court’s Order and close the SGM Sale by December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction. [Docket No. 3773].

36. By Order dated December 9, 2019, the Court denied the Emergency Motion, explaining:

Requiring SGM’s representatives to testify as to SGM’s reasons for not closing the SGM Sale would not increase the likelihood of the sale actually closing. By failing to close, SGM risks the loss of its \$30 million good-faith deposit as well as the possibility of damages for breach of contract in an amount of up to \$60 million. Being compelled to offer testimony will not motivate SGM to close where the threat of the loss of up to \$90 million has failed to accomplish that end. In the future, the Debtors will have the opportunity to litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain SGM’s good-faith deposit. In the meantime, the Debtors’ efforts would be better spent ensuring the health and safety of the patients at the affected Hospitals.

The prompt closing of the SGM Sale would be in the best interests of all constituents in these cases, and the Court remains hopeful that SGM will fulfill its obligation to close. However, the estates’ precarious cash position requires that the Debtors have the ability to immediately explore options for the alternative disposition of the Hospitals. The Court finds that any efforts undertaken by the Debtors with respect to the alternative disposition of the Hospitals will not violate the Debtors’ obligation under Article 12.1 of the

APA to cooperate with SGM to consummate the SGM Sale; nor shall any such efforts constitute a material default by the Debtors under any other provision of the APA.

See RJN, Ex. 40, [Docket No. 3783 at pp. 2-3] (emphasis added).

37. The potential implications of SGM's actual and threatened conduct was clear to CNA and hospital employees. On December 10, 2019, the Medical Staff of Seton Medical Center filed an Expression of Concern, stating: "The Medical Staff of Seton Medical Center hereby expresses its profound concern over the delay in the closing of the sale." See RJN, Ex. 41, [Docket No. 3790]. The pleading was served on CNA [Docket No. 3790, Proof of Service], and attached a letter sent to the CEOs of SGM and Verity, stating:

On or about November 15th, 2019, VHS sent the attached letter to approximately 1,000 nurses and ancillary staff at Seton, terminating them and inviting them to retrieve their severance packages on December 2, 2019 (the "Severance Letter"). It was originally assumed that the Severance Letter would be coupled with an employment offer from SGM, but SGM has been very slow to make just a few offers, and so the only definitive statement that has been received by the vast majority of Seton's 1,000 nurses is VHS's Severance Letter, terminating them as of December 2, 2019.

* * *

The uncertainty about whether the Buyer will perform has caused 6 nurses to leave the Emergency Room, severely reducing its ability to function. The majority of the nurses in the Intensive Care Unit have accepted jobs elsewhere over the last three weeks [...]

See RJN, Ex. 41 (emphasis added).

38. The following day, the Committee, of which CNA is a member, filed its own Expression of Concern, stating that it "shares the concerns of the Medical Staff of Seton Medical Center and urges SGM to promptly close the sale[.]" See RJN, Ex. 42, [Docket No. 3803]. This pleading was also served on CNA. [Docket No. 3803, Proof of Service].

39. On December 18, 2019, in follow-up to the November 25, 2019 Notice advising that separations of employment would occur on December 19, 2019, the Debtors advised St. Vincent employees via email that "KPC Group . . . failed to close the sale transaction, as ordered by the Bankruptcy Court" and notified them that "your employment will NOT end on December 19, 2019, as we had anticipated." (Compl., Ex. 4).

40. As a result of SGM's wrongful conduct regarding the SGM Sale, on January 3, 2020, certain of the Debtors filed a complaint for breach of contract, promissory fraud and tortious breach of contract, thereby commencing an adversary proceeding against SGM, among others. *See* RJN, Ex. 43, [Adv. P. No. 20-01001, Docket No. 1].

41. Left with no other choice, on January 6, 2020, the Debtors filed their *Emergency Motion for Authorization to Close St. Vincent Medical Center* (the "Closure Motion"), under which the Debtors sought authorization to close St. Vincent (the "Closure"), pursuant to a "Closure Plan" (as defined in the Closure Motion). *See* RJN, Ex. 44, [Docket No. 3906]. On January 7, 2020, CNA filed the CNA Closure Objection. *See* RJN, Ex. 29, [Docket No. 3914]. In the CNA Closure Objection and at the hearing held on the Closure Motion, CNA argued that improper notice had been given and that the Closure was not necessary because of a potential sale or recovery from SGM. *Id.*

42. On January 9, 2020, the Court granted the Closure Motion, overruled the CNA Closure Objection, and authorized the Closure Plan. *See* RJN, Ex. 45, [Docket No. 3934]. The Court explained this order through a memorandum decision (the "Closure Decision"), where the Court found:

- a. "Upon initiation of the Closure Plan, St. Vincent will enter the process of liquidation and will no longer be an operating business." Closure Decision, at 5. (Emphasis added).
- b. "Premature publication of notice of closure would have harmed employee retention and morale, confused patients, and caused vendors to cease furnishing critical supplies. These serious harms would have undercut the central objective of the § 363 sale process—providing the Debtors the opportunity to realize the optimal value of their assets." *Id.*
- c. "The Debtors have articulated a sufficient business justification for closing St. Vincent." *Id.* at 7.
- d. "No buyer has presented a realistic bid to purchase St. Vincent as a stand-alone hospital." *Id.*

1 e. “St. Vincent is generating substantial operating losses. As of the Petition Date, St.
2 Vincent accounted for approximately 23% of the patient volume of the entire
3 Verity Health System, but was responsible for 60% of the operating losses . . . [and
4 that the] Debtors lack sufficient funds to continue to subsidize St. Vincent’s
5 operating losses. Absent the closure of St. Vincent, the Debtors will be unable to
6 continue operating their other hospitals. Chadwick Decl. at ¶ 9.” *Id.*

7 f. “The speculative possibility of a future cash infusion based upon SGM’s alleged
8 breach is not a solution to St. Vincent’s current funding crisis. Nor is pursuing a
9 sale, another alternative suggested by CNA.” *Id.* at 8.

10 *See* RJN, Ex. 46, [Docket No. 3933].

11 43. Immediately after the Court’s order, entered on January 9, 2020, approving the
12 closure of St. Vincent, the Debtors provided yet another WARN Notice, dated January 10, 2020,
13 to CNA and its members (the “January 10, 2020 Notice”) (Compl., Ex. 5). This notice informed
14 Plaintiff’s “of the permanent closure of St. Vincent Medical Center . . . and St. Vincent Dialysis
15 Center” and explained:

16 We know that you were aware of the separations of employment at
17 St. Vincent based on the prior WARN notice you received. We had
18 hoped there would be an opportunity for continued employment
19 with SGM when the sale closed. In light of the unforeseen
20 circumstances relating to the sale and the unexpected need to close
St. Vincent as a last resort, this additional WARN notice is being
provided to you as soon as practicable after the Order.

21 (Compl., Ex. 5).

22 44. The Debtors have now substantially implemented the Closure Plan, as described
23 more fully in their status reports: *Status Report Re Closure Of St. Vincent Medical Center*, dated
24 January 23, 2020, *see* RJN, Ex. 47, [Docket No. 3982]; *Debtors’ Status Report Re Closure of St.*
25 *Vincent Medical Center*, dated February 6, 2020, *see* RJN, Ex. 48, [Docket No. 4053]; *Debtors’*
26 *Status Report Re Closure of St. Vincent Medical Center*, dated February 20, 2020, *see* RJN, Ex.
27 49, [Docket No. 4126]; *Debtors’ Status Report Re Closure of St. Vincent Medical Center*, dated
28 April 2, 2020, *see* RJN, Ex. 50, [Docket No. 4410]. *See* RJN, Ex. 51, [Docket No. 4265, ¶ 6]

1 *Declaration of Richard G. Adcock In Support of Debtors’ Motion for Approval of Settlement*
2 *Agreement with SEIU-UHW Related to the Closure of St. Vincent Medical Center, Including*
3 *Allowance of Certain Claims and Consensual Modification of the Applicable Collective*
4 *Bargaining Agreement.*

5 45. The Debtors’ management team, however, has worked to create opportunities for
6 the affected employees, including arranging for approximately 61 different healthcare
7 organizations to participate in on-site job fairs, where hundreds of employees received offers on
8 the spot or within days of the job fair. *Id.* at ¶ 7. In addition, affiliate and Defendant SFMC has
9 made employment offers to approximately 50 employees from St. Vincent. *Id.*

10 V.

11 ARGUMENT

12 Civil Rule 12(b)(6), as made applicable to adversary proceedings in bankruptcy cases by
13 Bankruptcy Rule 7012(b), allows a court to dismiss a complaint for “failure to state a claim upon
14 which relief can be granted.” The Bankruptcy Court may dismiss a complaint based on either
15 “the lack of a cognizable theory or the absence of sufficient facts alleged under a cognizable legal
16 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). In reviewing a
17 motion to dismiss in an adversary proceeding, the Bankruptcy Court can take judicial notice of
18 court documents from the underlying bankruptcy case and documents incorporated by reference
19 in the Complaint. *See e.g., United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (providing
20 that the court may consider documents incorporated by reference in complaint, such as those that
21 form the basis of the plaintiff’s claims); *In re Century City Doctors Hosp., LLC*, BAP No. CC-09-
22 1235-MkJaD, 2010 WL 6452903, at *6 (B.A.P. 9th Cir. Oct. 29, 2010) (“[C]ourt documents filed
23 in an underlying bankruptcy case are subject to judicial notice in related adversary
24 proceedings[.]”). The Court should dismiss a complaint without leave to amend when
25 amendment cannot cure the deficiencies in the complaint. *See e.g., Cervantes v. Countrywide*
26 *Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011).

27 Here, the law and facts as alleged in the Complaint and supported in the existing
28 Bankruptcy Court record demonstrate that the Complaint fails to state a claim upon which relief

1 can be granted and the defect is so pronounced that dismissal should be granted with prejudice.

2 **A. Neither the WARN Act nor the California WARN Act Applies to Defendants as**
3 **Liquidating Fiduciaries**

4 The Complaint is predicated on CNA's assertion that notwithstanding service of multiple
5 WARN Notices prior to the motion seeking St. Vincent's closure, its represented employees
6 should be entitled to 60 days of additional wages plus other damages, even though they were
7 terminated after the Closure Motion was granted and the Debtors were liquidating St. Vincent at
8 that time. *See* RJN Ex. 46. While the Debtors are prepared to challenge CNA's narrow reading
9 of the WARN Act if ultimately necessary, CNA's position is irrelevant to the Motion and need
10 not be addressed now to dispose of the Complaint with prejudice. This is because the WARN Act
11 claims fail because the Debtors were liquidating fiduciaries as to St. Vincent at the time of the
12 terminations and were thus not "employers" subject to the WARN Acts.¹³

13 The liquidating fiduciary exception "reflects a limitation on the statutory definition of
14 employer." *Century City Doctors Hosp.*, 2010 WL 6452903, at *8. The WARN Acts only
15 require "employers" to give notice of plant closings and mass layoffs. 29 U.S.C. § 2102(a); Cal.
16 Labor Code. §1401(a). The WARN Act defines "employer" as "any *business enterprise* that
17 employs" the requisite number of employees. 29 U.S.C. § 2101(a)(1) (emphasis added). In turn,
18 a "business enterprise" is a business that operates "in the normal commercial sense" "as a going
19 concern." *Chauffeurs, Sales Drivers, Warehousemen & Helpers Union Local 572 v. Weslock*

20
21 ¹³ CNA has named DePaul and Holdings as Defendants in its Complaint. Neither of these
22 Defendants have any employees and therefore are not subject to the WARN Acts. 29 U.S.C. §
23 2102(a); Cal. Labor Code §1401; *see also* RJN, Ex. 5 at ¶¶ 58-59; Compl. ¶ 120. Likewise
24 SFMC, which CNA seeks to include as a Defendant, cannot be subject to liability for alleged
25 WARN damages under the Complaint because CNA does not represent employees at SFMC and
26 SFMC is not otherwise a party to a CBA that covers employees at SVMC. First Day Decl., ¶ 60
27 ("The Debtors' Employees are represented by the following unions with the respective
28 contractual obligation . . . (v) 'C[NA] (Nurses) St. Vincent, O'Connor, St. Louise, Seton, Seton
Coastside . . . [SFMC not included]; *see also* RJN, Ex. 4, Exhibit 1 to *Debtors' Omnibus Motion*
for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of
Modified Collective Bargaining Agreements to SGM, 3) Termination of Retiree Healthcare
Benefits and 4) Related Relief [Docket No. 3604] (notes CBAs to which CNA is a party and does
not include SFMC); *see also* 29 U.S.C. § 2102(a) (Written notice of plant closing by employer to
be provided "to each representative of the affected employees...." (Emphasis added).

1 *Corp.*, 66 F.3d 241, 244 (9th Cir. 1995) (discussing the Department of Labor’s comments on the
2 final WARN Act regulations at 54 Fed. Reg. 16,045 (1989)). An entity does not qualify as a
3 business enterprise, and thus is not an employer, if it operates for the purpose of preserving or
4 liquidating assets for creditors. Fed. Reg. 16045 (1989) (“[A] fiduciary whose sole function in
5 the bankruptcy process is to liquidate a failed business for the benefit of creditors does not
6 succeed to the notice obligations of the former employer because the fiduciary is not operating a
7 “business enterprise” in the normal commercial sense.”); *Weslock Corp.*, 66 F.3d at 244; *see also*
8 *Century City Doctors Hosp.*, 2010 WL 6452903, at *1, 6 (trustee was not an employer where the
9 trustee was authorized to operate hospital temporarily and for sole purpose of closing the
10 hospital’s operations in a safe manner); *In re United Healthcare Sys., Inc.*, 200 F.3d 170, 176-79
11 (3d Cir. 1999) (hospital in Chapter 11 bankruptcy did not qualify as employer because it “was
12 operating not as a ‘business operating as a going concern,’ but rather as a business liquidating its
13 affairs”). The same analysis has been applied to determine “employer” status under the
14 California WARN Act. *Estrada v. Salyer Am.*, No. C 09-05618 JW, 2010 WL 11580074, at *5
15 (N.D. Cal. Mar. 31, 2010) (holding “absent any conflicting state law, the Court applies the
16 *Chauffeurs* standard to determine whether a secured creditor is an employer for purposes of
17 liability” and finding defendants could not be held liable as employers under the California
18 WARN Act).

19 On January 9, 2020, the Court granted the Debtors’ emergency motion to close St.
20 Vincent. *See* RJN, Ex. 45, [Docket No. 3934]. From that moment on, St. Vincent was no longer
21 being operated as a “going concern” but rather for the sole purposes of safely discharging patients
22 and preserving the remaining hospital assets for the bankruptcy estate. (*See* RJN, Ex. 46 [Docket
23 No. 3933] Closure Decision at 5 (“Upon initiation of the Closure Plan, St. Vincent will enter the
24 process of liquidation and will no longer be an operating business.”)). Critically, the relevant
25 time period for analyzing when the liquidating fiduciary exception applies is “at the time of the
26 plant closing or mass layoff.” *See, e.g., Chauffeurs*, 66 F.3d at 244 (“[T]he crucial question is not
27 the status of the defendant’s legal relationship to the business, but instead, if *at the time of the*
28 *plant closing* or mass layoff the defendant is responsible for operating the business as a going

1 concern.”) (emphasis added); *Century City Doctors Hosp.*, 2010 WL 6452903, at *7 (relevant
2 time period is “at the time of the terminations”); *In re MF Glob. Holdings Ltd.*, 481 B.R. 268, 283
3 (Bankr. S.D.N.Y. 2012) (key question was “whether the Debtors were liquidating or attempting to
4 reorganize *when the layoffs occurred*”) (emphasis added); *see also Estrada v. Salyer Am.*, No. C
5 09-05618 JW, 2010 WL 11580074, at *3 (N.D. Cal. Mar. 31, 2010) (same).

6 Here, Defendants were liquidating St. Vincent at the time of the layoffs and were thus
7 exempt from both the Federal and California WARN Acts. *See* RJN Ex. 46, Closure Order at 5
8 [Docket No. 3933]. For these reasons, the Federal and California WARN Act counts I and II
9 should be dismissed with prejudice.¹⁴

10 **B. CNA Fails to State Claims for Intentional and Negligent Misrepresentation**

11 Counts III and IV, which seek damages for intentional and negligent misrepresentation,
12 should also be summarily dismissed with prejudice. Dismissal is justified because CNA lacks
13 associational standing and has failed and cannot otherwise allege adequate facts to support either
14 theory of misrepresentation.¹⁵

15
16
17 ¹⁴ Even assuming arguendo that Federal and California WARN Act claims were to survive this
18 Motion (which they should not), such claims should only be afforded general unsecured, not
19 administrative, status, as St. Vincent was liquidating at the time the claims accrued. *See Reading*
20 *v. Brown*, 391 U.S. 471 (1968) (providing that tort claims arising from the *continued operation* of
21 a business enterprise in a chapter 11 proceeding are entitled to administrative priority) (emphasis
22 added); *In re 800Ideas.com, Inc.*, 496 B.R. 165, 178 (B.A.P. 9th Cir. 2013) (concluding that
Reading did not apply when the “[t]rustee was not operating the business of debtor under the
common meaning of the term”); *In re Res. Tech. Corp.*, 662 F.3d 472, 476-77 (7th Cir. 2011)
(providing that when a debtor has ceased to operate as a business, and instead exists to liquidate, a
tort claim is entitled to unsecured, not administrative status).

23 ¹⁵ Notably, CNA has filed two unfair labor practice charges with the National Labor Relations
24 Board (“NLRB”) over the same conduct it alleges in its complaint constituted misrepresentation
25 under state law. On January 31, 2020, CNA filed Charge 31-CA-255580, which it amended on
26 March 20, 2020, alleging that Defendants “failed to provide CNA with adequate advance notice
27 of [the SVMC] closure to allow for meaningful effects bargaining” and “refused to engage in
28 effects bargaining” in violation of Section 8(a)(5)” of the NLRA. *See* RJN, Ex. 52. On February
21, 2020, CNA filed Charge 31-CA-256890 alleging that Defendants “engaged in bad faith
bargaining” regarding “the effects of the closure of St. Vincent Medical Center in violation of
section 8(a)(5)” of the NLRA during “the last six months.” RJN, Ex. 54. Thus, CNA seeks two
shots at recovery for the same conduct--state law tort remedies and federal labor law remedies.

1 **1. CNA Lacks Associational Standing to Assert the Intentional and Negligent**
2 **Misrepresentation Claims**

3 A court should dismiss an action if it finds that the moving party lacks standing. *Warth v.*
4 *Seldin*, 422 U.S. 490, 498 (1975) (“In essence the question of standing is whether the litigant is
5 entitled to have the court decide the merits of the dispute or of particular issues.”). CNA cannot
6 meet its burden to show that it has standing to pursue the state law tort claims. *See, e.g., Lujan v.*
7 *Def. of Wildlife*, 504 U.S. 555, 561 (1992) (“The party invoking federal jurisdiction bears the
8 burden of establishing these [standing] elements.”). For an association to have standing to sue on
9 its members’ behalf, it must meet three requirements:

10 (a) its members would otherwise have standing to sue in their own
11 right; (b) the interests it seeks to protect are germane to the
12 organization’s purpose; and (c) neither the claim asserted nor the
13 relief requested requires the participation of individual members in
14 the lawsuit.

15 *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977); *Am. Diabetes Ass’n v.*
16 *U.S. Dep’t of the Army*, 938 F.3d 1147, 1155 (9th Cir. 2019); *Bhd. of Teamsters & Auto Truck*
17 *Drivers v. Unemployment Ins. Appeals Bd.*, 190 Cal. App. 3d 1515, 1522 (1987) (applying *Hunt*
18 standing requirements under California law).

19 The Supreme Court has held that the third requirement means that an association may not
20 seek damages for its members when “damages claims are not common to the entire membership,
21 nor shared by all in equal degree.” *Warth*, 422 U.S. at 515. “The courts that have addressed this
22 issue have consistently held that claims for monetary relief necessarily involve individualized
23 proof and thus the individual participation of association members, thereby running afoul of the
24 third prong of the *Hunt* test.” *United Union of Roofers, Waterproofers, & Allied Trades No. 40 v.*
25 *Ins. Corp. of Am.*, 919 F.2d 1398, 1400-01 (9th Cir. 1990) (“[T]he requirements for associational
26 standing under California and federal law are nearly identical.”). Indeed, courts have routinely
27 held that unions do not have associational standing to pursue claims for monetary relief on behalf
28 of their members. *See e.g. Lake Mohave Boat Owners Ass’n v. Nat’l Park Serv.*, 78 F.3d 1360,
1367 (9th Cir. 1995) (“Awarding restitution to LMBOA on behalf of its members would require
individualized proof[]” and “[t]herefore, LMBOA lacks standing to bring a claim for this remedy

1 on behalf of its members.”); *SEIU, Local 721 v. Cty. of Riverside*, No. EDCV 09-00561-VAP
2 (JTLx), *Carpenters* (C.D. Cal. Apr. 27, 2011) (union lacked standing to pursue money damages
3 on behalf of its members); *United Bhd. of Carpenters & Joiners of Am. v. Metal Trades Dep’t*,
4 No. 11-CV-5159-TOR, 2012 WL 3817789, at *2-3 (E.D. Wash. Sep. 4, 2012) (union lacked
5 standing to pursue monetary relief on behalf of members because such claims “require the
6 participation of individual members”).

7 Here, CNA’s state law claims for intentional and negligent misrepresentation seek
8 monetary damages, including, among others, damages for mental pain and anguish and emotional
9 distress, on behalf of its nurse-members. These damages claims necessarily require the
10 participation of individual nurses to determine their mental pain and anguish and emotional
11 distress, which are necessarily individualized. (Compl., ¶¶ 114-15). Likewise damages for lost
12 wages will depend on the individual nurse members’ wage rates.

13 Because CNA seeks damages on behalf of the CNA nurse-members including damages
14 for mental pain and anguish and emotional distress, which are highly individualized, CNA lacks
15 associational standing to bring the state law intentional and negligent misrepresentation claims on
16 behalf of its members.

17 **2. CNA’s Claim for Intentional Misrepresentation Fails**

18 Fraud must be alleged with particularity under Civil Rule 9(b), which requires a plaintiff
19 to plead the “who, what, when, where, and how” of the alleged misconduct. *Vess v. Ciba-Geigy*
20 *Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). “State law causes of action brought in federal
21 court must comply with these heightened pleading requirements where applicable.” *Yamauchi v.*
22 *Cotterman*, 84 F. Supp. 3d 993, 1018 (N.D. Cal. 2015) (citing Fed. R. Civ. P. 9(b)). The
23 specificity requirement is even more stringent for fraud claims against a corporation: “When
24 pleading fraud against a corporation, a plaintiff must allege the name (or names) of the person(s)
25 who made the representations, along with ‘their authority to speak, to whom they spoke, what
26 they said or wrote, and when it was said or written.’” *Livermore v. Wells Fargo Bank*, Case No.
27 17-cv-03347-BLF, 2017 WL 6513649, at *9 (N.D. Cal. Dec. 20, 2017) (citing *Tarmann v. State*
28 *Farm Mut. Auto Ins. Co.*, 2 Cal. App. 4th 153, 157 (1991)); *Land v. Gonsalves*, 281 F.R.D. 444,

1 451 (E.D. Cal. 2012).

2 “The elements of fraud, which give[] rise to the tort action for deceit, are (a)
3 misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity
4 (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e)
5 resulting damage.” *L.A. Mem’l Coliseum Com. v. Insomniac, Inc.*, 233 Cal. App. 4th 803, 831
6 (2015); *see also GemCap Lending, LLC v. Quarles & Brady, LLP*, 269 F. Supp. 3d 1007, 1040
7 (C.D. Cal. 2017), *aff’d sub nom. GemCap Lending I, LLC v. Quarles & Brady, LLP*, 787 F.
8 App’x 369 (9th Cir. 2019) (elements of a claim of concealment include: “(1) concealment of a
9 material fact; (2) duty to disclose the fact; (3) intent to defraud; (4) the plaintiff was unaware of
10 the fact and would have acted differently if the plaintiff knew; and (5) resulting damage.”);
11 *Punian v. Gillette Co.*, No. 14-CV-05028-LHK, 2016 WL 1029607, at *10 (N.D. Cal. Mar. 15,
12 2016) (same). “To maintain a cause of action for fraud through nondisclosure or concealment of
13 facts, there must be allegations demonstrating that the defendant was under a legal duty to
14 disclose those facts.” *L.A. Mem’l Coliseum*, 233 Cal. App. 4th at 831.

15 Here, CNA’s intentional misrepresentation claim fails because they have not alleged (1)
16 an intentional misrepresentation or concealment of fact, (2) a duty to disclose, and (3) detrimental
17 reliance. The record in this case prevents them doing so.

18 **a. CNA Fails To Allege An Intentional Misrepresentation**

19 To state a claim for fraud, a plaintiff must identify a specific factual representation made
20 by the defendant and “set forth what is false or misleading about [the] statement, and why it is
21 false.” *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1085 (N.D. Cal. 2017) (emphasis
22 added). CNA fails to meet this standard.

23 Here, the only alleged misrepresentation is a misquoted email from Richard Adcock.
24 Specifically, in Paragraph 103 of their Complaint, CNA alleges that Mr. Adcock sent an email
25 stating that “the nurses’ employment would ‘NOT’ end.” (Compl., ¶ 103). CNA alleges that, as
26 a result, the nurses believed their “employment at St. Vincent was likely to continue even though
27 the sale to SGM had not occurred as ordered.” (Compl., ¶112). CNA has *materially misquoted*
28 the document attached to their Complaint. Read in whole, the email makes clear that Mr. Adcock

1 was advising that the nurse-members’ “employment will NOT end on December 19, 2019, as we
2 had anticipated.” (Emphasis added) (Compl., Ex. 4). As the Complaint confirms, Mr. Adcock’s
3 statement was true—the nurses’ employment did not end on December 19, 2019.

4 Moreover, CNA does not allege any misrepresentations by De Paul and Holdings, neither
5 of which has any employees.

6 Accordingly, CNA fails to allege any intentional misrepresentation.

7 **b. CNA Fails To Allege a Concealment of a Material Fact**

8 Nor has CNA alleged any basis for a fraudulent concealment claim. CNA identifies four
9 alleged facts that they contend Defendants failed to disclose. Because the exhibits to the
10 Complaint and the Court record confirm that CNA, which received notice of and actively
11 participated in both its individual capacity as representative of nurses at St. Vincent and as a
12 member of the Committee, was on notice of those alleged facts, they cannot support fraud
13 liability. *See GemCap Lending*, 787 F. App’x at 369 (“A concealment cause of action requires
14 proof of the following elements: (1) *concealment of a material fact . . .*” (emphasis added)).

15 First, CNA asserts that Defendants failed to disclose that “[*n*]ew information had arisen
16 and then continued to arise that made it increasingly unlikely the sale would close” (Compl., ¶¶
17 101-02, 110-11) (emphasis added). But the Court record confirms CNA was well aware as of
18 November 2019, that (1) “SGM orally communicated new information that undermines the
19 Debtors’ confidence in a prompt closing of the sale,” *see* RJN, Ex. 27, [Docket No. 3644 at p. 2],
20 (2) “certain disputes and controversies have arisen between SGM and the Debtors with regard to
21 the APA,” *see* RJN, Ex. 33 [Docket No. 3698 at p. 2], and (3) “SGM [was] holding the estates,
22 creditors, and patients of the Hospitals hostage in an attempt to extort a better price.” *See* RJN,
23 Ex. 36, [Docket No. 3723 at p. 6].

24 Second, CNA asserts that Defendants failed to disclose that they “anticipated permanently
25 shutting down St. Vincent entirely and expeditiously in the increasingly likely event that the sale
26 did not close.” (Compl., ¶¶ 101-02, 110-11). But the record confirms CNA was aware, as of at
27 least August 12, 2019, that “there is a possibility that the Sale will be unsuccessful” and that “[i]n
28 that event, St. Vincent may close and none of its employees may be hired by the Purchaser.”

(Compl., Ex. 1). In addition, CNA was notified on September 30, 2019 that, “[i]f the SGM Sale does not close, the most likely outcome is that at least three of the Hospitals will have to close.” [Docket No. 3188]. CNA was again notified on November 27, 2019 that “two of the Hospitals [] would likely close upon failure of the SGM Sale” [Docket No. 3723].

Third, CNA asserts that Defendants failed to disclose that “[t]he sale fell through.” (Compl., ¶¶ 101-02, 110-11) (emphasis added). But CNA was well aware of SGM’s failure to close the SGM Sale. It was notified on December 6, 2019, that “SGM announced that it would not close the SGM Sale” and “did not close the SGM Sale-by December 5, 2019” [Docket No. 3773 at p. 2]. On December 9, 2019, CNA was served with the Debtors’ Emergency Motion for Contempt, seeking an Order “[r]equiring SGM’s representatives to testify as to SGM’s reasons for not closing the SGM Sale would not increase the likelihood of the sale actually closing.” [Docket No. 3783 at p. 2]. In addition, CNA received further notice on December 18, 2019, that “KPC Group . . . failed to close the sale transaction.” (Compl., Ex. 4).

Finally, CNA asserts that Defendants failed to disclose that “Defendants were planning to shut down St. Vincent entirely” (Compl., ¶¶ 101-102, 110-111) (emphasis added). But CNA cannot demonstrate that it was unaware of the likelihood that the hospital would close if the SGM Sale fell through. CNA was on notice since the August 12, 2019 Notice that “there is a possibility that the Sale will be unsuccessful” and that “[i]n that event, *St. Vincent may close* and none of its employees may be hired by the Purchaser.” (Compl., Ex. 1) (emphasis added). And again, on September 30, 2019, CNA was advised that “[i]f the SGM Sale does not close, *the most likely outcome is that at least three of the Hospitals will have to close.*” See RJN, Ex. 14, [Docket No. 3188 at ¶ 50]. Further, CNA was again notified on November 27, 2019 that “two of the Hospitals [] would likely close upon failure of the SGM Sale” See RJN, Ex. 36, [Docket No. 3723 at pp. 6-7].

Moreover, CNA does not allege any concealment by DePaul and Holdings, neither of which has any employees. Nor may CNA allege concealment by SFMC with whom CNA has no connection.

In short, CNA fails to specifically identify any alleged fact that was concealed from it. As

1 a result, CNA fails to allege a fraudulent concealment claim.

2 **c. CNA Fails To Allege Reasonable Reliance**

3 In addition, CNA's claim for intentional misrepresentation fails on the independent
4 ground that CNA fails to allege reasonable reliance. "Reliance exists when the misrepresentation
5 or nondisclosure was an immediate cause of the plaintiff's conduct which altered his or her legal
6 relations, and when without such misrepresentation or nondisclosure he or she would not, in all
7 reasonable probability, have entered into the contract or other transaction." *All. Mortg. Co. v.*
8 *Rothwell*, 10 Cal. 4th 1226, 1239 (1995). "[W]hether a party's reliance was justified may be
9 decided as a matter of law if reasonable minds can come to only one conclusion based on the
10 facts." *Id.* at 1239. "In determining whether one can reasonably or justifiably rely on an alleged
11 misrepresentation, the knowledge, education and experience of the person claiming reliance must
12 be considered." *Guido v. Koopman*, 1 Cal. App. 4th 837, 843 (1991).

13 Here, CNA fails to allege that each of its nurse-member Plaintiffs reasonably relied on any
14 alleged statements or omissions by Debtors. Instead, CNA only vaguely alleges that those "St.
15 Vincent nurses who would have looked for other work . . . did not do so because they were
16 intentionally kept ignorant of these facts." (Compl., ¶ 105).

17 Moreover, CNA cannot establish any basis for reasonable reliance because the record
18 confirms CNA was apprised of the status of the SGM Sale and the likelihood that the nurse-
19 members' employment would be terminated even if the SGM Sale did not close:

- 20 ■ The August 12 Notice specifically advised Plaintiffs:

21 *[T]here is a possibility that the Sale will be unsuccessful. In that*
22 *event, St. Vincent may close and none of its employees may be hired*
23 *by the Purchaser.* Even if the Sale closes and St. Vincent remains
24 open, employees at St. Vincent may suffer an "employment loss"
25 within the meaning of the WARN Act and Cal-WARN Act because
26 the Debtors *will separate the employment of all of St. Vincent's*
27 *employees upon the closing of the Sale.* (Compl. Ex. 1) (emphasis
28 added).

- 26 ■ The Declaration of Richard Adcock in support of the Debtors' Emergency Motion,
27 filed on September 30, 2019, explained, "If the SGM Sale does not close, *the most*

1 *likely outcome is that at least three of the Hospitals will have to close*” (emphasis
2 added). See RJN 14, [Docket No. 3188, Richard G. Adcock Declaration at ¶ 9].

- 3 ■ The October 23, 2019 Notice advised Plaintiffs that “the *separations of*
4 *employment must be postponed* and will not occur at the time originally
5 anticipated. At this time, we anticipate the Sale *and separations of employment*
6 *will occur between . . .*” (Compl. Ex. 2) (emphasis added).
- 7 ■ The Closing Order stated “two of the Hospitals that would likely close upon failure
8 of the SGM Sale contain large populations of long-term patients[.]” [Docket No.
9 3723 at pp. 6-7].
- 10 ■ The November 30, 2019 Notice further advised Plaintiffs that “the *separations of*
11 *employment will be further postponed*” and that the “*separations of employment*
12 *will occur between December 6, 2019 and December 19, 2019*” . (Compl. Ex. 3)
13 (emphasis added)..

14 In fact, the purpose of the WARN Act is to provide advance notice of mass layoffs. (20
15 CFR § 639.1). Any argument that the nurse-members were unaware of their impending
16 terminations and reasonably relied on Defendants’ numerous WARN communications, *issued for*
17 *the sole purpose to advise employees of impending separations of employment*, as a promise of
18 future employment, would strain credulity.

19 Because Plaintiffs have not alleged reasonable reliance on any alleged misrepresentation
20 or concealment by Defendants, their fraud claim fails.

21 **3. CNA’s Claim for Negligent Misrepresentation Fails**

22 “The elements of a cause of action for fraud and a cause of action for negligent
23 misrepresentation are very similar. . . . However, the state of mind requirements are different.
24 Negligent misrepresentation lacks the element of intent to deceive.” *Earlywine v. USAA Life Ins.*
25 *Co.*, No. 3:17-CV-328-CAB-NLS, 2017 WL 2733939, at *2 (S.D. Cal. June 23, 2017) (citations
26 omitted); *Oushana v. Lowe’s Home Ctrs., LLC*, No. 1:16-cv-01782-AWI-SAB, 2017 WL
27 2417198, at *3 (E.D. Cal. June 5, 2017) (“The tort of negligent misrepresentation requires the
28 same elements [as fraud] with the exception of intent to defraud.”).

1 Here, CNA's claim for negligent misrepresentation is based on the same alleged
2 statement(s) at issue in its intentional misrepresentation claim. Accordingly, the negligent
3 misrepresentation claim fails on the same grounds as set forth in the arguments above.

4 In addition, because claims for negligent misrepresentation cannot be based on omissions,
5 CNA's negligent misrepresentation claim fails to the extent it is based on alleged omissions.
6 *Oushana*, 2017 WL 2417198, at *6 (providing that claims for negligent misrepresentation, as
7 opposed to intentional misrepresentation "require[] a positive assertion" and "nondisclosures-
8 cannot give rise to liability for negligent misrepresentation") (internal citations omitted); *Lopez v.*
9 *Nissan N. Am., Inc.*, 201 Cal. App. 4th 572, 596 (2011) ("A negligent misrepresentation claim
10 'requires a positive assertion,' not merely an omission."); *Wilson v. Century 21 Great W. Realty*,
11 15 Cal. App. 4th 298, 306 (1993) ("Negligent misrepresentation is a species of fraud or deceit
12 specifically requiring a 'positive assertion'").

13 **C. Dismissal Should Be With Prejudice**

14 This Court should dismiss CNA's Complaint with prejudice and without leave to amend
15 because amendment would be futile. *See e.g., Cervantes*, 656 F.3d at 1041 (providing that a court
16 "may dismiss without leave where a plaintiff's proposed amendments would fail to cure the
17 pleading deficiencies and amendment would be futile"). Based on the detailed record in this case,
18 it is without legitimate dispute that CNA cannot amend its Complaint to allege any specific
19 factual allegations that could salvage its claims.

20 **D. CNA's Motion for Withdrawal of the Reference Does Not Preempt Resolution of**
21 **This Motion**

22 CNA filed a *Notice of Motion and Motion of Plaintiff for Withdrawal of Reference of*
23 *Adversary Proceedings Pending in Bankruptcy Court* in the District Court on March 20, 2020.
24 *See* RJN, Ex. 55. "The filing of a motion for withdrawal of a case or proceeding . . . shall not stay
25 the administration of the case or any proceeding therein before the bankruptcy judge except that
26 the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending
27 disposition of the motion." Fed. R. Bankr. P. Rule 5011(c).

28 As of the date of this Motion, CNA has not filed an application for a stay of this

1 proceeding. As a result, nothing prohibits this Court, which is already intimately familiar with all
2 the relevant facts, from ruling on this Motion.

3 **VI.**

4 **RESERVATION OF RIGHTS**

5 This Motion relates solely to the Defendants' request to dismiss the Complaint as set forth
6 in this Motion. Nothing contained herein is intended or shall be construed as: (i) a waiver of the
7 Defendants' or any appropriate party in interest's rights to dispute, object to or otherwise
8 challenge the substantive relief sought by CNA as set forth in the Complaint; or (ii) a waiver of
9 any claims, causes of action, defenses, objections or other rights to respond which may exist
10 against CNA in any forum.

11 **VII.**

12 **CONCLUSION**

13 For the foregoing reasons, the Bankruptcy Court should dismiss CNA's Adversary
14 Proceeding for failure to state a claim, with prejudice and without leave to amend and for all other
15 relief that Bankruptcy Court may find warranted by law or equity.

16
17
18 Dated: April 6, 2020

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

19
20
21 By /s/ Tania M. Moyron
22 Tania M. Moyron

23 Attorneys for Verity Health Systems of
24 California, Inc., *et al.*

EXHIBIT 2 - Part 1

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA -
LOS ANGELES DIVISION**

In re
VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Bankruptcy Case No. 2:18-bk-20151-ER
Jointly Administered With:

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

Adversary No. 2:20-ap-01051-ER

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEBTORS' MOTION TO
DISMISS COMPLAINT UNDER RULE 12(b),
WITH PREJUDICE**

Hearing Date and Time:

Date: May 6, 2020
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple St.
Los Angeles, CA 90012



18201512004070000000000005

CALIFORNIA NURSES ASSOCIATION (CNA)

Plaintiff,

v.

VERITY HEALTH SYSTEMS OF CALIFORNIA, INC., a California Corporation; ST. FRANCIS MEDICAL CENTER, an Affiliate; ST. VINCENT MEDICAL CENTER, an Affiliate; SETON MEDICAL CENTER, an Affiliate; ST. FRANCIS MEDICAL CENTER OF LYNWOOD, an Affiliate; ST. VINCENT DIALYSIS CENTER, INC., an Affiliate; VERITY HOLDINGS, LLC, an Affiliate; DEPAUL VENTURES, LLC, an Affiliate; RICHARD ADCOCK, an Individual; STEVEN SHARRER, an Individual, and DOES 1 through 500,

Defendants.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Bankruptcy Cases”) pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) and the defendants herein, hereby request that the Court take judicial notice of the following documents filed and entered in the Bankruptcy Cases, pursuant to Rule 201 of the Federal Rules of Evidence,¹ in support of the *Defendants’ Motion to Dismiss California Nurses Association’s Complaint* filed concurrently herewith:

1. *Notice of Appearance and Request for Special Notice and Inclusion of Mailing List* [Bankr. Docket No. 200]. A true and correct copy is attached hereto as Exhibit “1.”

2. *Notice of Appointment and Appointment of Committee of Creditors Holding Unsecured Claims* [Bankr. Docket No. 197]. A true and correct copy is attached hereto as Exhibit “2.”

3. *Order Granting Debtor’s Motion For Approval Of Settlement Agreement With SEIU-UHW Related To The Closure Of St. Vincent Medical Center* [Bankr. Docket No. 4340]. A true and correct copy is attached hereto as Exhibit “3.”

4. *Debtors’ Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* [Bankr. Docket No. 3604]. A true and correct copy is attached hereto as Exhibit “4.”

5. *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Bankr. Docket No. 8]. A true and correct copy is attached hereto as Exhibit “5.”

6. *Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors Relating To The Foregoing; Memorandum Of Points And Authorities In Support Thereof* [Bankr. Docket No. 22].

¹ Rule 201 of the Federal Rules of Evidence provides that the Court “may take judicial notice at any stage of the proceeding.” See FED. R. EVID. 201(d).

1 A true and correct copy is attached hereto as Exhibit “6.”

2 7. *Final Order Granting the Emergency Motion of Debtors for Entry of Order: (I)*
3 *Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and*
4 *Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing*
5 *the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors*
6 *Relating to the Foregoing* [Bankr. Docket No. 612]. A true and correct copy is attached hereto as
7 Exhibit “7.”

8 8. *Memorandum of Decision (1) Overruling Objections to the (A) Prepetition Wages*
9 *Motion and (B) Financing Motions and (2) Denying Motion for Reconsideration of the Final*
10 *Financing Order* [Bankr. Docket No. 614]. A true and correct copy is attached hereto as Exhibit
11 “8.”

12 9. *Declaration of James M. Moloney in Support of the Debtors’ Memorandum. in*
13 *Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims,*
14 *Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated*
15 *Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Bankr. Docket No.
16 2220]. A true and correct copy is attached hereto as Exhibit “9.”

17 10. *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara*
18 *County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving*
19 *The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting*
20 *Related Relief.* [Bankr. Docket No. 1153]. A true and correct copy is attached hereto as Exhibit
21 “10.”

22 11. *Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse*
23 *Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
24 *Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided*
25 *To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The*
26 *Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory*
27 *Contracts And Unexpired Leases; And (Ii) An Order (A) Authorizing The Sale Of Property Free*
28 *And Clear Of All Claims, Liens And Encumbrances; Memorandum Of Points And Authorities In*

18. *Notice of lodgment Filed by Debtor Verity Health System of California, Inc. regarding Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order*

1 *Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale is Free and*
2 *Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That*
3 *the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV)*
4 *Granting Related Relief; Memorandum of Points and Authorities and Declarations In Support*
5 *Thereof* [Bankr. Docket No. 3574]. A true and correct copy is attached hereto as Exhibit “18.”

6 19. *Objection relating to Dkt. 3574 Notice of Lodgment filed by Debtor Verity Health*
7 *System of California, Inc.* [Bankr. Docket No. 3582]. A true and correct copy is attached hereto as
8 Exhibit “19.”

9 20. *Order Granting 'Debtors' Emergency Motion For The Entry Of An Order: (I)*
10 *Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding*
11 *That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By*
12 *The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing*
13 *Conditions On That Sale; and (IV) Granting Related Relief;* [Bankr. Docket No. 3611]. A true
14 and correct copy is attached hereto as Exhibit “20.”

15 21. *Order Granting (1) finding that SGM is obligated to promptly close the SGM sale*
16 *under section 8.6 of the APA, provided that all other conditions to closing have been satisfied and*
17 *(2) granting debtors' motion for a continuance of the hearing to approve the disclosure statement*
18 *from November 20, 2019 at 10:00 a.m. to November 26, 2019 at 10:00 a.m.* [Docket No. 3633].
19 A true and correct copy is attached hereto as Exhibit “21.”

20 22. *Order Granting Memorandum of decision (1) finding that SGM is obligated to*
21 *promptly close the SGM sale under section 8/6 of the APA, provided that all other conditions to*
22 *closing have been satisfied and (2) granting debtors' motion for a continuance of the hearing to*
23 *approve the disclosure statement* [Bankr. Docket No. 3632]. A true and correct copy is attached
24 hereto as Exhibit “22.”

25 23. *Order Approving Stipulation Re: Assumption And Assignment Of Medicare*
26 *Provider Agreements To Strategic Global Management, Inc.* [Bankr. Docket No. 3680]. A true
27 and correct copy is attached hereto as Exhibit “23.”

28 24. *Order Authorizing Debtors To Sell Medi-Cal Provider Agreements, Free And*

1 *Clear Of Interests Asserted By The California Department Of Health Care Services* [Bankr.
2 Docket No. 3372]. A true and correct copy is attached hereto as Exhibit “24.”

3 25. *Stipulation By Verity Health System of California, Inc. and California Department*
4 *of Health Care Services, and Office of the Attorney General of the State of California; Stipulation*
5 *Re: Assumption and Assignment of Medi-Cal Provider Agreements to Strategic Global*
6 *Management, Inc.* [Bankr. Docket No. 3786]. A true and correct copy is attached hereto as
7 Exhibit “25.”

8 26. *Order Approving Stipulation Re: Assumption And Assignment Of Medi-Cal*
9 *Provider Agreements To Strategic Global Management, Inc.* [Bankr. Docket No. 3787]. A true
10 and correct copy is attached hereto as Exhibit “26.”

11 27. *Motion to (A) Continue Hearing on Motion of the Debtors for an Order*
12 *Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III)*
13 *Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related*
14 *Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections, and*
15 *(C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter*
16 [Bankr. Docket No. 3644]. A true and correct copy is attached hereto as Exhibit “27.”

17 28. *Order Granting Motion To (A) Continue Hearing On Motion Of The Debtors For*
18 *An Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting*
19 *Procedures; (III) Notice And Objection Procedures For Confirmation Of Debtors' Plan, And (IV)*
20 *Granting Related Relief; (B) Continue The Debtors' Reply Deadline With Respect To Disclosure*
21 *Statement Objections, And (C) Use The November 26, 2019, 10:00 A.M. Hearing Date For A*
22 *Status Conference On This Matter* [Bankr. Docket No. 3646]. A true and correct copy is attached
23 hereto as Exhibit “28.”

24 29. *Opposition to Debtors' Emergency Motion for Authorization to Close St. Vincent*
25 *Medical Center* [Bankr. Docket No. 3914]. A true and correct copy is attached hereto as Exhibit
26 “29.”

27 30. *Strategic Global Management, Inc.'s Reservation of Rights in Connection With*
28 *Debtors Status Conference Report* [Bankr. Docket No. 3701]. A true and correct copy is attached

hereto as Exhibit “30.”

31. *Debtors' Ex Parte Motion for an Order Allowing the Debtors to File Correspondence Regarding the SGM Sale Under Seal* [Bankr. Docket No. 3697]. A true and correct copy is attached hereto as Exhibit “31.”

32. *Order Granting Debtors' Ex Parte Motion for an Order Allowing the Debtors to File Correspondence Regarding the SGM Sale Under Seal* [Bankr. Docket No. 3699]. A true and correct copy is attached hereto as Exhibit “32.”

33. *Objection to Debtor's Ex Parte Motion for an Order Allowing the Debtors to File Correspondence Regarding the SGM Sale Under Seal* [Bankr. Docket No. 3698]. A true and correct copy is attached hereto as Exhibit “33.”

34. *Excerpts from transcript of hearing in this action on Nov. 26, 2019.* True and correct copies of excerpts from this transcript are attached hereto as Exhibit “34.”

35. *Order (1) finding that SGM is obligated to close the SGM sale by no later than December 5, 2019 and (2) setting continued hearing on debtors' motion for approval of disclosure statement to December 12, 2019 at 10:00 a.m.* [Bankr. Docket No. 3724]. A true and correct copy is attached hereto as Exhibit “35.”

36. *Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale by No Later than December 5, 2019* [Bankr. Docket No. 3723]. A true and correct copy is attached hereto as Exhibit “36.”

37. *Notice of Appeal and Statement of Election to Bankruptcy Appellate Panel Filed by Interested Party Strategic Global Management, Inc.* [Bankr. Docket No. 3726]. A true and correct copy is attached hereto as Exhibit “37.”

38. *Notice of Appeal and Statement of Election to Bankruptcy Appellate Panel* [Bankr. Docket No. 3727]. A true and correct copy is attached hereto as Exhibit “38.”

39. *Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* [Bankr. Docket No. 3773]. A true and correct

copy is attached hereto as Exhibit “39.”

40. *Memorandum Of Decision Denying Debtors' Emergency Motion For Issuance Of An Order To Show Cause Re: Closing Of The SGM Sale* [Bankr. Docket No. 3783]. A true and correct copy is attached hereto as Exhibit "40."

41. *Expression of Concern Filed by Interested Party Medical Staff of Seton Medical Center* [Bankr. Docket No. 3790]. A true and correct copy is attached hereto as Exhibit “41.”

42. Official Committee of Unsecured Creditors of Verity Health System of California, Inc. *Expression of Concern* [Bankr. Docket No. 3803]. A true and correct copy is attached hereto as Exhibit “42.”

43. *Complaint for Breach of Contract, Promissory Fraud, and Tortious Breach of Contract (Breach of Implied Covenant of Good Faith and Fair Dealing)* [Adv. P. No. 20-01001, Docket No. 1]. A true and correct copy is attached hereto as Exhibit “43.”

44. *Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center* [Bankr. Docket No. 3906]. A true and correct copy is attached hereto as Exhibit “44.”

45. *Order Granting Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center* [Bankr. Docket No. 3934]. A true and correct copy is attached hereto as Exhibit “45.”

46. *Memorandum Of Decision Granting Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center* [Bankr. Docket No. 3933]. A true and correct copy is attached hereto as Exhibit “46.”

47. *Debtors' Status Report Regarding Closure Of St. Vincent Medical Center, dated January 23, 2020* [Bankruptcy Docket No. 3982]. A true and correct copy is attached hereto as Exhibit “47.”

48. *Debtors' Status Report Regarding Closure of St. Vincent Medical Center, dated February 6, 2020* [Bankr. Docket No. 4053] . A true and correct copy is attached hereto as Exhibit “48.”

49. *Debtors' Status Report Regarding Closure of St. Vincent Medical Center, dated February 20, 2020* [Bankr. Docket No. 4126]. A true and correct copy is attached hereto as

1 Exhibit "49."

2 50. *Debtors' Status Report Regarding Closure of St. Vincent Medical Center, dated*
3 *April 2, 2020* [Bankr. Docket No. 4410]. A true and correct copy is attached hereto as Exhibit
4 "50."

5 51. *Declaration of Richard G. Adcock In Support of Debtors' Motion for Approval of*
6 *Settlement Agreement with SEIU-UHW Related to the Closure of St. Vincent Medical Center,*
7 *Including Allowance of Certain Claims and Consensual Modification of the Applicable Collective*
8 *Bargaining Agreement* [Bankr. Docket No. 4265]. A true and correct copy is attached hereto as
9 Exhibit "51."

10 52. CNA's January 31, 2020 National Labor Relations Board ("NLRB") Charge 31-
11 CA-255580. A true and correct copy is attached hereto as Exhibit "52."

12 53. CNA's March 20, 2020 amended NLRB Charge 31-CA-255580. A true and
13 correct copy is attached hereto as Exhibit "53."

14 54. CNA's February 21, 2020 NLRB Charge 31-CA-256890. A true and correct copy
15 is attached hereto as Exhibit "54."

16 55. *Motion to Withdraw Reference of Adversary Proceeding No. 2:20-ap-1051-ER to*
17 *the U.S. Bankruptcy Court for Case No. 2:18-bk-20151-ER.*, District Court for the Central
18 District of California Case No. 2:20-cv-02623-SVW, [District Docket No. 1]. A true and correct
19 copy is attached hereto as Exhibit "55."

20 56. *Objection to Motion for Entry of Final Order: (I) Authorizing The Debtors To (A)*
21 *Pay Prepetition Employee Wages And Salaries And (B) Pay And Honor Employee Benefits And*
22 *Other Workforce Obligations; And (III) Authorizing And Directing The Applicable Bank To Pay*
23 *All Checks And Electronic Payment Requests Made by The Debtors Relating to The Foregoing.*
24 [Bankr. Docket No. 223]. A true and correct copy is attached hereto as Exhibit "56."

25 57. *Notice Of Hearing And Motion Of The Debtors For An Order Approving: (I)*
26 *Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III) Notice and*
27 *Objection Procedures For Confirmation Of Debtors' Plan; And (IV) Granting Related Relief.*
28 [Bankr. Docket No. 2995]. A true and correct copy is attached hereto as Exhibit "57."

1 58. *Disclosure Statement Describing Debtors' Chapter 11 Plan of Liquidated (Dated*
2 *September 3, 2019).* [Bankr. Docket No. 2994]. A true and correct copy is attached hereto as
3 Exhibit "58."

4 59. *Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving*
5 *Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders;*
6 *(2) Approving Auction Sale Format, Budding Procedures and Stalking Horse Bid Protections; (3)*
7 *Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling of a Court*
8 *Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures*
9 *Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An*
10 *Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens, and*
11 *Encumbrances.* [Bankr. Docket No. 1279]. A true and correct copy is attached hereto as Exhibit
12 "59."

13
14 Dated: April 6, 2020

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

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17
18 By /s/ Tania M. Moyron
 Tania M. Moyron

19 Attorneys for Verity Health Systems of
20 California, Inc., *et al.*

EXHIBIT 1

KYRSTEN B. SKOGSTAD (SBN 281583)
NICOLE J. DARO (SBN 276948)
CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT
155 Grand Avenue
Oakland, CA 94612
(510) 273-2200 (telephone)
(510) 663-4822 (facsimile)
kskogstad@calnurses.org
ndaro@calnurses.org

Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re	)	Case No.: 2:18-bk-20151-ER
)	
)	
	)	CHAPTER 11
)	
VERITY HEALTH SYSTEM OF	)	NOTICE OF APPEARANCE AND
CALIFORNIA, INC.,	)	REQUEST FOR SPECIAL NOTICE AND
	)	INCLUSION ON MAILING LIST
Debtor.)	
)	
)	
)	
)	

PLEASE TAKE NOTICE that the undersigned attorneys enter their notice of appearance in the above-entitled case on behalf of creditor California Nurses Association (“CNA”) and give this notice of appearance and request of all matters that must be noticed to creditors, the Trustee, the Debtors, or other parties in interest, and further request notice of Limited Notice Proceedings. For purposes of notice and service, the following address shall be used:



Kyrsten B. Skogstad, Esq.
Nicole J. Daro, Esq.
CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT
155 Grand Avenue
Oakland, CA 94612
(510) 273-2200 (telephone)
(510) 663-4822 (facsimile)
Electronic Mail: kskogstad@calnurses.org
ndaro@calnurses.org

This request includes the type of notice referred to in Bankruptcy Rules 2002(i) and 3017(a), 4001, 9007 and Section 1109 of the Bankruptcy Code, and also includes without limitation, all schedules, notices of any orders, applications, complaints, answers, demands, replies, hearings, motions, petitions, pleadings, disclosure statements, plans, requests, memoranda or briefs in support of any of the foregoing, and any other documents brought before the court in this case, whether formal or informal, whether written or oral, and whether transmitted or conveyed by mail delivery, telephone, facsimile transmission or otherwise.

Dated: September 17, 2018

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By s/ Kyrsten B. Skogstad
Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

EXHIBIT 2

PETER C. ANDERSON
 UNITED STATES TRUSTEE
 JILL M. STURTEVANT, State Bar No. 089395
 ASSISTANT UNITED STATES TRUSTEE
 HATTY YIP, State Bar No. 246487
 ALVIN PAN MAR, State Bar No. 151482
 TRIAL ATTORNEY
 OFFICE OF THE UNITED STATES TRUSTEE
 915 Wilshire Blvd., Suite 1850
 Los Angeles, California 90017
 (213) 894-1507 telephone
 (213) 894-2603 facsimile
 Email: hatty.yip@usdoj.gov

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:) Lead Case No.: 2:18-bk-20151-ER

**VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC. *et al.*,**

Debtor(s).

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

Debtors and Debtors In Possession

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

Chapter 11 Cases

**NOTICE OF APPOINTMENT AND
 APPOINTMENT OF COMMITTEE OF
 CREDITORS HOLDING UNSECURED
 CLAIMS**



1 Pursuant to 11 U.S.C. Section 1102(a), the undersigned hereby appoints the following nine
2 (9) Creditors to serve on the Committee of Creditors holding unsecured claims:

3 SEE ATTACHED EXHIBIT A

4 DATED: September 17, 2018

Respectfully submitted,
PETER C. ANDERSON
UNITED STATES TRUSTEE

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7 By: Peter C. Anderson
8 United States Trustee

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EXHIBIT A

EXHIBIT A

EXHIBIT "A"

Aetna Life Insurance Company
Attn: Paul Weller, Head of Provider Litigation
1425 Union Meeting Road, Mail Stop U23S
Blue Bell, PA 19422
Telephone: (215) 775-0788
Email: pdweller@aetna.com

Allscripts Healthcare, LLC
c/o Greg Bianchi
10 Glenlake Parkway, Suite 500
Atlanta, GA 30328
Telephone: (404) 847-5901

California Nurses Association (CNA)
Attn: Krysten Skogstad, In-House Counsel
155 Grand Avenue
Oakland, CA 94612
Telephone: (510) 273-2273
Email: kskogstad@calnurses.org

Iris Lara
c/o Trisha Monesi
1875 Century Park East, Suite 100
Los Angeles, CA 90067
Telephone: (310) 712-8014
Email: trisha.monesi@capstonelawyers.com

Medline Industries, Inc.
Three Lakes Drive
Northfield, IL 60093
Telephone: (262) 367-7501 x 2252
Email: sreed@medline.com

Pension Benefit Guaranty Corporation ("PBGC")
Attn: Michael Strollo and Emily Lesniewski
1200 K Street, NW
Washington, DC 20005
Telephone: (202) 326-4000 ext 4907, 6137
Email: strollo.michael.pbgc.gov

SEIU United Healthcare Workers West
Attn: David Miller
560 Thomas L Berkeley Way
Oakland, CA 94612-1602
Telephone: (510) 251-1250
Email: dmiller@seiu-uhw.org

1 Sodexo Operations, LLC, a Delaware Limited Liability Company Sodexo CTM LLC
2 Attn: Brad Hamman
3 283 Cranes Roost Blvd, Ste 260
4 Altamonte Springs, FL 32701
5 Telephone: (407) 339-3230, ext 35204
6 Email: Brad.Hamman@sodexo.com

7 St. Vincent IPA Medical Corporation
8 c/o Mark Neubauer, Esq. and Donald Kirk, Esq.
9 Carlton Fields Jordan Burt, LLP
10 2000 Avenue of the Stars, Suite 530N
11 Los Angeles, CA 90067-4707
12 Telephone: (310) 843-6310 or (813) 229-4334
13 Email: dkirk@carltonfields.com

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF APPOINTMENT AND APPOINTMENT OF COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **9/17/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED LIST

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) **9/17/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED LIST

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **9/17/18**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

JUDGE'S COPY: [Pursuant to the UST's agreement with the U.S. Bankruptcy Court, Judge's Courtesy Copy was mailed via Federal Express overnight mail to the following address] U.S. Bankruptcy Court, 255 E. Temple St., Room 940, Los Angeles, CA 90012, Attn: Mail Room Clerk—Judges Copies

☐ Service information continued on attached page

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

9/17/18

Helen Cruz

Date

Printed Name

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Simon Aron saron@wrslawyers.com
- Alicia K Berry Alicia.Berry@doj.ca.gov
- Scott E Blakeley seb@blakeleyllp.com, ecf@blakeleyllp.com
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- Lori A Butler butler.lori@pbgc.gov, efile@pbgc.gov
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- Ralph J Swanson ralph.swanson@berliner.com, sabina.hall@berliner.com
- Gary F Torrell gft@vrmlaw.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Matthew S Walker matthew.walker@pillsburylaw.com, candy.kleiner@pillsburylaw.com
- Jason Wallach jwallach@ghplaw.com, g33404@notify.cincompass.com
- Kenneth K Wang kenneth.wang@doj.ca.gov,
Jennifer.Kim@doj.ca.gov;susan.lincoln@doj.ca.gov;yesenia.caro@doj.ca.gov
- Latonia Williams lwilliams@goodwin.com, bankruptcy@goodwin.com
- Hatty K Yip hatty.yip@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

- DEBTOR: Verity Health System of California, Inc., 2040 E. Mariposa Avenue, El Segundo, CA 90245
- DEBTOR'S ATTY: Samuel R Maizel, Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017
- MANUAL: Sam J Alberts, DENTONS US LLP, 1900 K Street NW, Washington, DC 20006
- MANUAL: Alicia Berry, California Attorney General, 300 South Spring St Ste 1702, Los Angeles, CA 90013
- MANUAL: Daniel S Bleck, Mintz, Levin, et al, One Financial Center, Boston, MA 02111
- MANUAL: Nathan F Coco, McDermott Will & Emery, 444 West Lake Street, Chicago, IL 60606-0029
- MANUAL: Ian A Hammel, Mintz Levin Cohn Ferris Glovsky & Popeo, One Financial Center, Boston, MA 02111
- MANUAL: Donald R Kirk, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000 Tampa, FL 33607-5780
- MANUAL: Claude D Montgomery, DENTONS US LLP, 1221 AVENUE OF THE AMERICAS, New York, NY 10020-1001
- MANUAL: Megan Preusker, McDermott Will & Emery, 444 West Lake Street, Chicago, IL 60606-0029
- MANUAL: Jason Reed, MASLON LLP, 3300 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET, MINNEAPOLIS, MN 55402
- MANUAL: Paul J Ricotta, Mintz Levin Cohn Ferris Glovsky and Pope, Chrysler Center, 666 Third Ave New York, NY 10017
- MANUAL: Clark Whitmore, MASLON LLP, 3300 WELLS FARGO CENTER, 90 S 7TH STREET, MINNEAPOLIS, MN 55402
- MANUAL: John Ryan Yant, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607-5780

50TH LARGEST UNSECURED CREDITORS:

- Waheed Wahidi, et al., c/o Law office of Kevin T Barnes, 1635 Pontius Ave., 2nd Fl., Los Angeles, CA 90025, Attn: Kevin T. Barnes
- Verity Health System Retirement Plan A, c/o John Hancock Retirement Plan Services, 690 Canton St., Westwood, MA 02090, Attn: Dawn Florio
- Retirement Plan for Hospital Employees, c/o Board of Trustees Retirement Plan For Hospital Employees Retirement Plan Office, P.O. Box 2949, San Francisco, CA 94126-2949, Attn: Larry Reid
- Department of Health Care Services (DHCS), c/o Department of Health Care Services, Mail Stop 1101, 1501 Capital Ave., Ste. 71.2048, Sacramento, CA 95814-5005, Attn: Brian Clausse
- Aetna Life Insurance Company, c/o Aetna Legal Department, 1425 Union Meeting Rd., Blue Bell, PA 19422, Attn: Paul Weller
- Ivonne Engelman, c/o One Wilshire Blvd., Ste. 2200, Los Angeles, CA 90017, Attn: Renee L. Campbell
- Iris Lara, Tanya Lara, Jarmaine Jonhs, c/o Mahoney Law Group, 249 E. Ocean Blvd., Ste. 814, Long Beach, CA 90802, Attn: Kevin Mahoney Treana Allen – Mahoney
- Josefina Robles, 2600 Michelson Dr., Ste. 1700, Irvine, CA 92612, Attn: Yolanda M. Medina
- Diane Nguyen, c/o Otkupman Law Firm, 28632 Roadside Dr., Ste. 203, Agoura Hills, CA 91301, attn.: Roman Otkupman
- Allscripts Healthcare LLC, 305 Church at N. Hill St., Raleigh, NC 27609, Attn: John Sage
- Medline Industries, Inc., Three Lakes Dr., Northfield, IL 60093, Attn: Mike Ogden
- Sodexo (Biomed Services), c/o Hunton Andrews Kurth, 50 California St., Ste. 1700, San Francisco, CA 94111, Attn: Susan Joo
- Heritage Provider Network (Regal Medical Group), 8510 Balboa Blvd., Ste. 150, Northridge, CA 91325, Attn: Lloyd Wilensky
- Premier Healthcare Solutions, Inc., 5882 Collections Center Dr., Chicago, IL 60693, Attn: Mike Morrelli
- McKesson Corporation, PO Box 98347, Chicago, IL 60693-8347, Attn: Tonoa Jordan
- Centers for Medicare & Medicaid Services, U.S. Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Attn: CMS Baltimore Headquarters
- Zimmer USA, 310 Interlocken Parkway, Ste. 120, Broomfield, CO 80021, Attn: Bart Hess
- Microsoft Licensing Gp, c/o BofA, 1950 N Stemmons Fwy. #5010 LB #842467, Dallas, TX 75207, Attn: Jason Baxley
- Medtronic USA Inc., 710 Medtronic Pkwy. NE, Minneapolis, MN 55432-5604, Attn: Samir Choksi
- Anthem Blue Cross, 21555 Oxnard St., 8th Fl., Woodland Hills, CA 91367, Attn: Nicole Brown

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

- Anthem Blue Cross, 2121 N. California Blvd., 7th Fl., Los Angeles, CA 94596, Attn: Frank Bird, VP
- Workday, Inc., 6230 Stoneridge Mall Rd., Pleasanton, CA 94588, Attn: Mark Overfelt
- Boston Scientific, 47201 Lakeview Blvd., Fremont, CA 94537-5120, Attn: Mykkia Cameron
- Stryker Corporation, Stryker Global Headquarters, 2825 Airview Blvd., Kalamazoo, MI 49002, Attn: Rick Kalinowski
- Stationary Engineers Local 39 Trust - Defined Benefit Plan, PO Box 1737, San Ramon, CA 94583
- Stationary Engineers Local 39 Trust - Defined Benefit Plan, 7180 Koll Center Pkwy., Ste. 200, Pleasanton, CA 94566, Attn: Mark Gong
- Cardinal Health, 7000 Cardinal Pl., Dublin, OH 43017, Attn: Jeff Reid
- St. Vincent Independent Physicians Assoc., c/o Carlton Fields Jordan Burt, LLP, 2000 Ave. of the Stars, Ste. 530 N. Tower, Los Angeles, CA 90067, Attn: Mark Neubauer
- Swinerton Builders, 2880 Lakeside Dr., Ste. 300, Santa Clara, CA 95054, Attn: Chris Morris
- UnitedHealthcare, UnitedHealthcare Customer Service, PO Box 29675, Hot Springs, AR 71903-9802, Attn: Luz Cabral
- Depuy Synthes, 4500 Riverside Dr., Palm Beach Gardens, FL 33410, Attn: Patty Pagett, Nathan Turk, Brendon Smith
- Appicare Medical Management, LLC, 18 Centerpointe Dr., La Palma, CA 90623, Attn: Richard Greene CFO
- Los Angeles County Tax Collector, 500 W. Temple St., Los Angeles, CA 90012
- Blue Shield, 3300 Zinfandel Dr., Rancho Cordova, CA 95670, Attn: Tracy Barnes
- CDW Government Inc., 75 Remittance Dr., Ste. 1515, Chicago, IL 60675, Attn: Matt Digate
- Stanford Hospital and Clinics, 300 Pasteur Dr., MC 5540, Stanford, CA 94305, Attn: Hoi Yeung
- Care 1st Health Plan, 601 Potero Grande Dr., Monterey Park, CA 91755, Attn: Delores Olague
- RightSourcing Inc., RightSourcing Headquarters, 9 Executive Circle, Ste. 290, Irvine, CA 92614, Attn: Christie Hayes
 - On Site Program Manager
- EOS Healthcare, 700 Longwater Dr., Norwell, MA 02061, Attn: Tod Dillon
- Smith Nephew Inc., P.O. Box 933782, Atlanta, GA 31193-3782, Attn: Keith Salaya
- American Red Cross, P.O. Box 73563, Chicago, IL 60673-7563, Attn: Michael Gregory
- Compspec, 425 E. Colorado St., #410, Glendale, CA 91205, Attn: Shellie Murph-Miller
- Sports, Orthopedic & Rehabilitation Associates, 500 Arguello St., Ste. 100, Redwood City, CA 94068, Attn: Customer Support
- FTG Builders Inc., 2975 Scott Blvd., Ste. 100, Santa Clara, CA 95054, Attn: Rodney Terra, Jr.
- Johnson & Johnson Health Care Systems, Inc., 425 Hoes Ln., Piscataway, NJ 08854, Attn: Vickey Corbett
- Cochlear Americas, c/o Cochlear Corp., 400 Inverness Dr. South, Ste. 400, Englewood, CO 80112, Attn: Brooke Phillips
- Mike Fayfel, 1180 S. Beverly Dr., Ste. 610, Los Angeles, CA 90035, Attn: Craig Ackerman, Tilajef Ackerman
- Touchpoint Support Services, 400 N. Ridge Rd., Sandy Springs, GA 30350, Attn: Todd Head
- Abbott Laboratories (formerly St. Jude), 3200 Lakeside Dr., Santa Clara, CA 95054, Attn: Karen Davidson
- Baxter Healthcare, 1 Baxter Pkwy., Deerfield, IL 60015, Attn: Paige Stuebe
- UHS Universal Hospital Services Inc., 6625 W. 78th St., Ste. 300, Minneapolis, MN 55439
- Pension Benefit Guaranty Corp., Office of the General Counsel, 1200 K St., NW, Washington, DC 20005, Attn: Judith Starr

EXHIBIT 3

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 Attorneys for the Chapter 11 Debtors and
 Debtors In Possession

FILED & ENTERED

MAR 24 2020

CLERK U.S. BANKRUPTCY COURT
 Central District of California
 BY gonzalez DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

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

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Jointly Administered With:

Debtors and Debtors In Possession.

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

☒ Affects All Debtors

Hon. Judge Ernest M. Robles

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

**ORDER GRANTING DEBTOR'S MOTION
 FOR APPROVAL OF SETTLEMENT
 AGREEMENT WITH SEIU-UHW RELATED
 TO THE CLOSURE OF ST. VINCENT
 MEDICAL CENTER, INCLUDING
 ALLOWANCE OF CERTAIN CLAIMS AND
 CONSENSUAL MODIFICATION OF THE
 APPLICABLE COLLECTIVE BARGAINING
 AGREEMENT**

Debtors and Debtors In Possession.

[Relates to Docket No. 4265]

Hearing:

Date: March 18, 2020

Time: 10:00 am

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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1 This matter came before the Court on the *Debtors' Motion for Approval of Settlement*
2 *Agreement with SEIU-UHW Related to the Closure of St. Vincent Medical Center, Including*
3 *Allowance of Certain Claims and Consensual Modification of the Applicable Collective*
4 *Bargaining Agreement; Declaration of Richard G. Adcock in Support Thereof* [Docket No. 4265]
5 (the "Motion"), filed by the above-referenced affiliated debtors and debtors in possession in the
6 above-captioned chapter 11 bankruptcy cases (the "Debtors"), no objections to the Motion were
7 filed; it further appearing that proper notice of the Motion had been provided; and for the reasons
8 set forth in the Court's tentative ruling on the Motion [Docket No. 4296], which the Court adopts
9 as its final ruling and which is incorporated herein by reference; and good and sufficient cause
10 having been shown

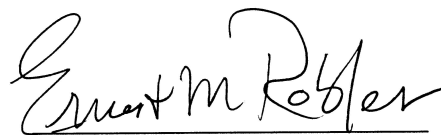
11 IT IS HEREBY ORDERED:

- 12 A. The Motion is granted in its entirety.
- 13 B. The Settlement Agreement attached as Exhibit "A" to the Motion is approved.
- 14 C. The CBA (as defined in the Motion) is modified in accordance with the terms of
15 the Modified CBA (as defined in the Motion).

16 IT IS SO ORDERED.

17 ###

24 Date: March 24, 2020

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Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 4

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Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**DEBTORS' OMNIBUS MOTION FOR APPROVAL
OF 1) SETTLEMENT AGREEMENTS WITH LABOR
UNIONS, 2) ASSUMPTION AND ASSIGNMENT OF
MODIFIED COLLECTIVE BARGAINING
AGREEMENTS TO SGM, 3) TERMINATION OF
RETIREE HEALTHCARE BENEFITS AND 4)
RELATED RELIEF
DECLARATION OF RICHARD G. ADCOCK IN
SUPPORT THEREOF**

Hearing:

Date: December 4, 2019

Time: 10:00 am

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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1 **PLEASE TAKE NOTICE** that, at the above-referenced date, time and location, Verity
2 Health System of California, Inc., a California nonprofit benefit corporation and a debtor herein,
3 and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-
4 captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), will move (the “Motion”),
5 pursuant to §§ 105, 363, 365, and 1113 and 1114 of the Bankruptcy Code,¹ and Rules 6006, 9007,
6 9014 and 9019 for the entry of an order approving settlement agreements (collectively, the
7 “Settlement Agreements”) with those labor unions who are parties to the remaining prepetition
8 collective bargaining agreements (“CBAs”) that cover represented employees at the Debtors’
9 remaining hospital facilities, which will be modified, assumed and assigned effective upon the
10 Closing² of the Sale of such assets to Strategic Global Management (together, with is applicable
11 affiliates, “SGM”), along with resolution of other issues, including the *nunc pro tunc* termination
12 of retiree healthcare benefits utilized by approximately eleven (11) individuals, ten (10) of whom
13 are represented by unions and one non-represented individual, and for related relief. More
14 specifically, the Debtors seek approval of the following:

- 15 • the “CNA Settlement Agreement” (attached hereto as **Exhibit 1**) between the
16 Debtors and the California Nurses Association (“CNA”), which, in turn, seeks, *inter*
17 *alia*, approval of the assumption and assignment to SGM effective upon Closing of
18 a (i) modified CNA/VHS Master Agreement between CNA and Debtors St. Vincent
19 Medical Center (“SVMC”) and Seton Medical Center (“SMC”), effective
20 December 22, 2016-December 21, 2020,³ (ii) modified SVMC Local Contract
21 2016-2020 between CNA and SVMC , effective December 22, 2016 to December

22
23 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
24 All “Rule” references are to the Federal Rules of Bankruptcy Procedure. All “LBR” references are to the Local
25 Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

26 ² All capitalized terms not defined herein have the meaning ascribed to them in the *Debtors’ Emergency Motion for*
27 *the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding*
28 *that the Sale is Free and Clear of Conditions Materially Different than those Approved by the Court; (III) Finding that*
the Attorney General Abused His Discretion in Imposing Conditions on that Sale and (IV) Granting Related Relief;
Memorandum of Points and Authorities and Declaration in Support Thereof [Docket No. 3188].

³ The Modified CBAs (as defined in the Motion) are not attached to the Motion because they are SGM’s confidential,
proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will
make the Modified CBAs available to proper requesting parties.

21, 2020, and (iii) modified SMC Local Contract 2016-2020 between CNA and SMC effective December 22, 2016-December 21, 2020;

- the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining Agreement between Local 20 and SMC, effective May 1, 2017-April 30, 2020;
- the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to NUHW effective upon Closing, of a modified Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside, effective November 1, 2016-October 31, 2019;
- the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between the Debtors SVMC and St. Francis Medical Center (“SFMC”) and the Service Employees International Union, United Healthcare Workers-West (“SEIU”), which, in turn, seeks, *inter alia*, the assumption and assignment to SEIU effective upon Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC, effective May 1, 2017-April 30, 2020;
- the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between the SFMC and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,” and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a modified Labor Management Collective Bargaining Agreement effective from December 29, 2017 to December 29, 2021;
- under the CNA Settlement Agreement, the NUHW Settlement Agreement, and the Local 20 Settlement Agreement, and by request contained in the Motion, the termination *nunc pro tunc* to the date of the Settlement Agreements of all “retiree

benefits,” as defined under § 1114, related to current and future retirees; and will provide to the 11 current retirees who are receiving actual retiree health care benefits (under the program that permits retirees who elect within a set period of time, a supplement to continue Debtor-provided healthcare) a one-time payment in the amount equal to the value of those payment supplements in the amount set forth on the schedule attached hereto as **Exhibit 6**;⁴ and

- discrete issues between the Debtors and the respective Unions.

PLEASE TAKE FURTHER NOTICE that this relief is required because: (a) the Debtors are liquidating their assets in chapter 11 and, will, at the end of the process, no longer operate their hospitals; (b) SGM has been approved as buyer of the Debtors’ remaining hospitals [Docket No. 2306] and; (c) as of the Closing, the Debtors will no longer employ the employees currently represented by the Unions at those hospitals. After the Closing, the Debtors have no justifiable reason to be bound by the terms of the CBAs or to incur further obligations under them, which, unless modified or terminated, will add additional and undue financial burden on the estates and otherwise harm the Debtors’ reorganization.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the attached *Declaration of Richard G. Adcock*, filed concurrently herewith, the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the *Declaration of James M. Moloney In Support of The Debtors Memorandum. In Support of Entry of an Order: (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens and Encumbrances; (B) Authorizing The Assumption and Assignment Of Designated Executory Contracts And Unexpired Leases; and (C) Granting Related Relief*, [Docket No. 2220]; the supporting statements, arguments and representations of counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

⁴ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first names identified so applicable retirees may identify themselves.

1 **PLEASE TAKE FURTHER NOTICE** that this Motion will be heard on December 4,
2 2019, at 10:00 a.m., Pacific Time.

3 **PLEASE TAKE FURTHER NOTICE** that any party opposing or responding to the
4 Motion must file and serve the response (“Response”) on the moving party and the United States
5 Trustee. A Response must be a complete written statement of all reasons in opposition thereto or
6 in support, declarations and copies of all evidence on which the responding party intends to rely,
7 and any responding memorandum of points and authorities.

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

11
12 Dated: November 13, 2019

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

13
14 By /s/ Tania M. Moyron
Tania M. Moyron

15
16 Attorneys for the Chapter 11 Debtors and
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	<i>In re Sabine Oil & Gas Corp.,</i>	
	555 B.R. 180 (Bankr. S.D.N.Y. 2016)	28
	<i>In re Tower Auto., Inc.,</i>	
	342 B.R. 158 (Bankr. S.D.N.Y. 2006)	24
	<i>In re Tribune Co.,</i>	
	464 B.R. 126 (Bankr. D. Del. 2011)	29

1	<i>In re UAL Corp.</i> ,	
2	408 F.3d 847 (7th Cir. 2005).....	18
3	<i>In re UAL Corp.</i> ,	
4	468 F.3d 456 (7th Cir. 2006).....	19
5	<i>United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.</i> ,	
6	579 B.R. 603 (N.D. Ala. 2016)	3, 19
7	<i>United States v. Alaska Nat’l Bank (In re Walsh Constr., Inc.)</i> ,	
8	669 F.2d 1325 (9th Cir. 1982).....	29, 31
9	<i>In re W.T. Grant & Co.</i> ,	
10	699 F.2d 599 (2nd Cir. 1983).....	29
11	<i>In re Walter Energy, Inc.</i> ,	
12	542 B.R. 859 (Bankr. N.D. Ala. 2015)	22, 23, 24
13	<i>In re Walter Energy, Inc.</i> ,	
14	911 F.3d 1121 (11th Cir. 2018).....	17, 19
15	<i>In re Wilde Horse Enterprises, Inc.</i> ,	
16	136 B.R. 830 (Bankr. C.D. Cal. 1991).....	28
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Verity Health System Of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”) move, pursuant to §§ 105, 363, 365, and 1113 and 1114 of the Bankruptcy Code¹ and Rules 6006, 9007, 9014 and 9019, for the entry of an order (i) approving settlement agreements (collectively, the “Settlement Agreements”) between the Debtors and those labor unions who are parties to prepetition collective bargaining agreements (“CBAs”), which will be modified, assumed and assigned effective upon the Closing² of the Sale to Strategic Global Management, Inc. (“SGM”), and (ii) approving related relief including the *nunc pro tunc* termination of retiree healthcare benefits utilized by for approximately eleven (11) individuals represented by certain of these unions and one non-union represented individual (collectively, the “Current Retirees” and each individually a “Current Retiree”).

More specifically, the Debtors seek approval of the following agreements and related relief applicable to the CBAs that is conditioned upon the Closing of the Sale to SGM under that Asset Purchase Agreement [Docket No. 2305] dated January 8, 2019 (the “APA”):

- the “CNA Settlement Agreement” (attached hereto as **Exhibit 1**) between SVMC/SMC and the California Nurses Association (“CNA”), which, in turn, seeks, inter alia, approval of the assumption and assignment to SGM effective upon Closing of the (i) modified CNAMaster Agreement between CNA and SVMC/SMC, effective December 22, 2016 to December 21, 2020 (the “CNA Master CBA”),³ (ii) modified SVMC Local Contract 2016-2020

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

² All capitalized terms not defined herein have the meaning ascribed to them in the *Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale is Free and Clear of Conditions Materially Different than those Approved by the Court; (III) Finding that the Attorney General Abused His Discretion in Imposing Conditions on that Sale and (IV) Granting Related Relief; Memorandum of Points and Authorities and Declaration in Support Thereof* [Docket No. 3188] unless otherwise noted.

³ e Modified CBAs (as defined *infra*) are not attached to the Motion because they are SGM’s confidential, proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will make the Modified CBAs available to proper requesting parties.

1 between CNA and St. Vincent Medical Center (“SVMC”) effective December 22, 2016 to
2 December 21, 2020 (the “CNA SVMC CBA”), and (iii) modified SMC Local Contract 2016-2020
3 between CNA and Seton Medical Center (“SMC”) effective December 22, 2016-December 21,
4 2020 (the “CNA SMC CBA,” referred to along with the CNA Master CBA and the CNA SVMC
5 CBA as the “CNA CBAs”);

6 • the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC
7 and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, inter alia, approval of the
8 assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining
9 Agreement between Local 20 and SMC, effective May 1, 2017 to April 30, 2020 (the “Local 20
10 CBA”);

11 • the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC
12 and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, inter alia,
13 approval of the assumption and assignment to NUHW effective upon Closing, of a modified
14 Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside (“SC”), effective
15 November 1, 2016 to October 31, 2019 (the “NUHW CBA”);

16 • the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between
17 SVMC/SFMC and the Service Employees International Union, United Healthcare Workers-West
18 (“SEIU”), which, in turn, seeks, inter alia, the assumption and assignment to SEIU effective upon
19 Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC,
20 effective May 1, 2017 to April 30, 2020 (the “SEIU CBA”);

21 • the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between SFMC
22 and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,”
23 and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks,
24 inter alia, approval of the assumption and assignment to SGM effective upon Closing of a modified
25 Labor Management Collective Bargaining Agreement effective from December 29, 2017 to
26 December 29, 2021 (the “UNAC CBA”);

27 • under the CNA Settlement Agreement, the NUHW Settlement Agreement, and the
28 Local 20 Settlement Agreement, and by request contained in the Motion, the *termination nunc pro*

1 *tunc* to the date of the Settlement Agreements of all “retiree benefits,” as defined under § 1114
2 which, in this case includes the program that permits retirees who elect, within a set period of time,
3 a supplement to purchase Debtor-provided healthcare (the “Retiree Healthcare Program”); and will
4 provide to the 11 current retirees who are receiving benefits under the Retiree Healthcare Program
5 (the “Retiree Health Benefits”) a one-time payment equal to the value of those payment
6 supplements in the amount set forth on the schedule attached hereto as **Exhibit 6**;⁴ and

- 7 • discrete issues between the Debtors and the respective Unions.

8 The requested relief is required because (a) the Debtors are selling their assets in chapter
9 11, and will, at the end of the process, no longer operate hospitals, (b) after a thorough marketing
10 process (the “Marketing Process”), no bidder (other than SGM) emerged seeking to acquire the
11 cumulative assets of SMC, SC, SVMC, SFMC, and St. Vincent Dialysis Center (together, the
12 “Hospitals”), (c) as of the Closing, the Debtors will no longer employ the employees currently
13 represented by the Unions at the Hospitals (though SGM will provisionally employ qualified
14 employees as of the Closing Date according to § 5.3 of the APA), (d) the Debtors need to settle and
15 terminate their retiree benefit liability to confirm a plan, and (e) acting through the process codified
16 in §§ 1113 and 1114 and Rule 9019 and structured under §§ 4.7 and 5.11 of the APA, the parties
17 have entered into a reasonable compromise to preserve going-forward unionized jobs, compensate
18 employees and preserve and maximize estate assets.

19 Relief is justified under §§ 105, 363, 365, 1113 and 1114 and Rule 9019. Without this
20 relief, the Debtors’ employees, the SGM Sale, and the prospect of confirming a successful Plan of
21 Liquidation [Docket No. 2993] (the “Plan”) will be imperiled. Congress passed §§ 1113 and 1114
22 to allow for unions and debtors to expediently collectively bargain for modifications to a CBA, and
23 the Debtors and the Unions (in conjunction with SGM) have fulfilled this goal.

24 For these and other reasons addressed below, the Court should grant all of the relief
25 requested in the Motion.

26
27
28 ⁴ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first names identified so applicable retirees may identify themselves.

II. JURISDICTION AND VENUE

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

III. STATEMENT OF FACTS

A. **General Background**

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of Debtor California nonprofit public benefit corporations that operate four acute care hospitals, including SFMC, SMC and SVMC and other facilities in the state of California. *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* at 4, ¶ 11 (the “First-Day Declaration”) [Docket No. 8].

3. The Debtors incorporate the First-Day Declaration for further general background, including the description of the Hospitals’ history and operations. First Day Declaration at ¶¶ 11-55.

B. **The CBAs And The Represented Employees**

4. The Local 20 CBA covers 31 active employees for SMC and one retired employee from O’Connor Regional Hospital (“OCH”)⁵ (with the employees as the “Local 20 Represented Employees”). The Local 20 Represented Employees are and were predominantly Clinical Laboratory Scientists who work primarily in the hospital laboratory.

5. The CNA CBAs cover 792 active employees at SVMC and SMC and eight retired employees from SMC, OCH and SLRH (the “CNA Represented Employees”). The CNA Represented Employees are and were registered nurses.

⁵ Although the assets of OCH have been sold to Santa Clara County under a prior Bankruptcy Case sale, Current Retirees who were employed at OCH while it was operating continue to receive Retiree Health Benefits.

1 6. The UNAC CBA covers 817 active employees for SMC (the “UNAC Represented
2 Employees”). The UNAC Represented Employees are and were registered nurses.

3 7. The SEIU CBA covers active 1,331 active employees for SVMC and SFMC (the
4 “SEIU Represented Employees”). The SEIU Represented Employees are and were comprised of
5 service workers including but not limited to environmental services aides, certified nurse assistants,
6 unit coordinators, and technical workers, including but not limited to radiological technician and
7 pharmacy technicians.

8 8. The NUHW CBA covers active 731 active employees and 1 retired employee for
9 SMC and Seton Medical Center Coastsides (the “NUHW Represented Employees”) (together, with
10 the Local 20 Represented Employees, the CNA Represented Employees, the UNAC Represented
11 Employees, the SEIU Represented Employees, the “Represented Employees.” The NUHW
12 Represented Employees are and were comprised of technicians, such as radiological technician,
13 pharmacy technicians, and service workers such as, environmental service aides, dietary aides,
14 cooks, clinical staff such licensed vocational nurse, certified nursing aides and administrative
15 workers such unit secretaries and clerks.

16 9. On the Petition Date, the Debtors filed their *Emergency Motion Of Debtors For*
17 *Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries,*
18 *And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing*
19 *And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By*
20 *The Debtors Relating To The Foregoing; Memorandum Of Points And Authorities In Support*
21 *Thereof* [Docket No. 26] (the “Wage Motion”) seeking an order to pay priority employee claims
22 and to pay employees in the ordinary course of business for post-petition work.

23 10. On October 22, 2018, the Court granted the Wage Motion in its *Final Order*
24 *Granting the [Debtors’] Emergency Motion of Debtors for Entry of Order: (I) Authorizing the*
25 *Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee*
26 *Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank*
27 *to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing*
28 [Docket No. 612], concurrently issued the *Memorandum of Decision (1) Overruling Objections to*

1 the (A) Prepetition Wages Motion and (B) Financing Motions and (2) Denying Motion for
2 Reconsideration of the Final Financing Order [Docket No. 614] (together, the “Wage Order”),
3 and ordered the payment of priority and administrative wage and benefit claims, including for
4 Represented Employees. The Court “denied without prejudice” union claimants’ ability to request,
5 by motion, that (contested as to classification) underfunded pre-petition pension liabilities be paid
6 as administrative claims by the Debtors. *Id.*

7 11. In connection with the previous sale of assets to Santa Clara County, the Debtors
8 obtained final orders [Docket Nos. 1575, 1576, 1577 and 1578] (the “SCC Rejection Orders”)
9 modifying and rejecting (the “SCC Rejection”) CBAs with Local 20, CNA, and SEIU covering
10 OCH and St. Louise Regional Hospital (“SLRH”) upon the closing of sale of these assets to Santa
11 Clara County (“SCC,” and the “SCC Sale,” respectively); *see also* Docket No. 1541 (tentative
12 decision/memorandum for SCC Rejection Orders) (the “Prior 1113 Decision”).⁶

13 **C. The Retiree Benefits**

14 12. There are 11 Current Retirees, 10 represented by Unions and one Current Retiree
15 who is not represented and who are receiving Retiree Healthcare Benefits under the Retiree
16 Healthcare Program. *See* Exhibit 6.

17 **D. The Unions’ Proofs Of Claim**

18 13. CNA has filed eleven proofs of claim in these cases: (claim nos. 6233, 6247, 6249,
19 6250, 6251, 6336, 6340, 6342, 6350, 6359 and 7847) against the Debtors (the “CNA Claim”). The
20 CNA Claim seeks pre-petition pension contributions, severance payments, grievances and rejection
21 damages.

22 14. Local 20 has filed a proof of claim in these cases (claim no. 5169) (the “Local 20
23 Claim”) against VHS. The Local 20 Claim seeks paid time off (“PTO”), extended sick leave,

24
25 ⁶ The SCC Rejection Orders approved the SCC Rejection through the two mechanisms: (i) a contested full rejection
26 and termination of collective bargaining agreement terms with CNA and SEIU for their collective bargaining
27 agreements covering OCH and SLRH [Docket Nos. 1577; 1578] and approval of two stipulations between the Debtors
28 and Local 20 and the Debtors and the California Licensed Vocational Nurses Association (“CLVNA”) [Docket Nos.
1575; 15776] entered into under § 1113(2) (the “SCC Stipulations”). In the SCC Stipulations, the parties agreed to the
rejection of the collective bargaining agreements with OCH and SLRH, reserved rights regarding the filing of claims
and objections to same, agreed that allowed Paid Time Off (“PTO”) would be treated as administrative expenses or
unsecured claims depending on its accrual date, and agreed that employees not re-hired by SCC would be entitled to
severance.

severance payments, and retiree benefits.

15. NUHW has not filed any proof of claim in these cases.

16. SEIU has filed fourteen proofs of claims in these cases: (claim nos. 4718, 4719, 4722, 4723, 4725, 4726, 5117, 5137, 5140, 5150, 5160, 5158, 6186, 6221) against the Debtors (the “SEIU Claim”). The SEIU Claim seeks, *et. al.*, pre-petition pension contributions, severance payments, grievances and rejection damages.

17. UNAC has filed fourteen proofs of claims in these cases (claim nos. 5911, 5912, 5913, 5917, 5918, 5920, 5925, 5927, 5928, 5931, 5932, 5933, 5934 and 5936) against the Debtors (together, the “UNAC Claim”) (together the CNA Claim, Local 20 Claim, and the SEIU Claim are referred to as the “Proofs of Claims”). The UNAC Claim seeks, *et. al.*, pre-petition pension contributions, severance payments, grievances and rejection damages.

E. The Debtors’ Pre-SGM Sale Efforts and Sale to SCC

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

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

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

21. From the Petition Date, the Debtors’ objective has been to sell substantially all of its assets as going concerns to maximize recovery to creditors while maintaining healthcare in their communities. First-Day Declaration at 25, ¶ 96

22. On December 27, 2018, the Court entered the *Order (A) Authorizing the Sale of*

1 *Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims,*
2 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
3 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving
4 a sale of OCH, SLRH through the SCC Sale.

5 23. The SCC Sale closed on February 28, 2019. After payment of certain cure costs,
6 closing costs and other items, the net remaining proceeds were approximately \$184.38 million,
7 which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the
8 "Post-Closing Escrow") by First American Title Insurance Company, the escrow agent. The Post-
9 Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors'
10 post-closing obligations and expires in February 2020.

11 **F. The SGM Sale Process And SGM APA**

12 24. On January 17, 2019, the Debtors filed a motion [Docket No. 1279]⁷ seeking entry
13 of an order (the "Bidding Procedures Motion"): (a) establishing SGM as the stalking horse bidder
14 for the Purchased Assets (as defined in the APA), including SFMC, SVMC and SMC; (b) approving
15 the form of the APA with SGM as a stalking horse bidder for this transaction; (c) setting bid
16 procedures to establish guidelines for parties interesting in making an overbid; (d) setting an auction
17 to be held if necessary; and (e) setting a hearing for the Court to approve the winning bidder.

18 25. The APA was the result of extensive negotiations between the Debtors and SGM.
19 Moloney Declaration at ¶ 7. SGM submitted a stalking-horse bid for \$610 million (\$420 million
20 allocated to St. Francis Medical Center, \$120 million allocated to St. Vincent Medical Center and
21 \$70 million allocated to Seton Medical Center and Seton Coastsides combined), plus payments of
22 cure costs, as set forth therein. *See generally*, APA.

23 26. The Debtors sought approval of the APA because, among other things, (i) SGM's
24 bid represented fair market value, and (ii) SGM would maintain the healthcare characteristics of

25
26 ⁷ Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder
27 and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid
28 Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To
Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of
Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and
Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof.

1 the Debtors' Hospitals and continue patient care for the communities served by the Hospitals. First-
2 Day Declaration at 25, ¶ 97 ("The goals of the Debtors' restructuring are to maintain the Debtors'
3 business operations; preserve the going-concern value of the Debtors' businesses, its stakeholders,
4 and parties in interest; and, most importantly, to protect the health and wellbeing of the patients
5 who are treated at the Hospitals and the jobs of the Debtors' approximately 7,000 employees.").

6 27. On February 19, 2019, the Court granted the Bidding Procedures Motion (the
7 "Bidding Procedures Order") [Docket No. 1572].

8 28. Under the APA, SGM agreed to the following terms with respect to hiring
9 employees:

10 (a) Purchaser agrees to make offers of employment, effective as
11 of the Effective Time, to substantially all persons (whether such
12 persons are full time employees, part-time employees, on short-term
13 or long-term disability or on leave of absence, military leave or
14 workers compensation leave) (the "**Hospital Employees**") who,
15 immediately prior to the Effective Time are: (i) employees of any
16 Seller; (ii) employees of any affiliate of any Seller which employs
17 individuals at the Hospital and are listed on Schedule 5.3; or (iii)
18 employed by an affiliate of any Seller and are listed on Schedule 5.3.
19 For the avoidance of doubt, the Hospital Employees shall not include
20 any employees of Verity or any other affiliate of Seller unless such
21 individual is listed on Schedule 5.3. Any of the Hospital Employees
22 who accept an offer of employment with Purchaser as of or after the
23 Effective Time shall be referred to in this Agreement as the "**Hired**
24 **Employees**." All employees who are Hired Employees shall cease
25 to be employees of the applicable Seller or its affiliates as of the
26 Effective Time.

27 (b) Purchaser shall give all Hired Employees full credit for paid
28 time off pay to such employees as of the Closing Date by crediting
such employees the time off reflected in the employment records of
the applicable Seller and/or any of its affiliates immediately prior to
the Effective Time, subject to compliance with applicable law and
regulation, including consent of such employees if required.

29 APA at § 5.3(a) & (b) (with § 5.3 of the APA as the "Hiring Clause"). The Hiring Clause is subject
30 in all respects to any other terms and conditions of the APA.

31 29. The APA also provided that SGM and the Debtors would work with the Unions to
32 effectuate a transfer of CBAs with modifications sought by SGM:

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4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonable requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonable withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, obligation under this Agreement. In addition, Sellers may, in their direction, seek to reject any or all of the collective bargaining agreement(s).

APA at §§ 4.7 and 5.11 (together, the "APA CBA Provisions").

30. Pursuant to the requirement of the Bidding Procedures Order, the Debtors continued

1 to market the Hospitals and related assets through Cain. Cain vigilantly monitored interest and
2 continued to communicate with parties that had expressed interest and that Cain had identified as
3 potential bidders, either as partial or aggregate bidders. Moloney Declaration at 1-3. However, no
4 Potential Bidder expressed interest in assuming in whole or in part, the CBAs. Moloney
5 Declaration at ¶ 13. As a result, no auction was conducted, and SGM was accepted as the winning
6 bidder. Docket No. 2035.

7 31. On May 2, 2019 the Bankruptcy Court entered an order approving the Sale to SGM.
8 Docket No. 2306.

9 **G. The Union § 1113 CBA Modification And § 1114 Retiree Healthcare Benefit**
10 **Termination Process**

11 32. After approval of the SGM Sale, the Debtors, SGM and Unions negotiated the
12 ultimate terms of the Settlement Agreements (the “Negotiations”) through a series of meetings and
13 exchanges with the Unions (the “Meetings”). The process began on February 1, 2019, when the
14 Debtors delivered to each of the Unions a proposal under § 1113 and, as applicable, § 1114
15 (collectively, the “First Proposals”).⁸ The First Proposals noted that SGM was amenable to
16 assuming existing CBAs, provided they were modified to comport with similar collective
17 bargaining arrangements that covered other facilities owned and operated by SGM. The First
18 Proposals further represented that the Debtors “stood ready” to discuss with the Unions any
19 counter-proposal and that the Debtors were “open to receive and consider all comments, concerns
20 and any counterproposals from [the Unions]” and told the Unions that “if you desire any specific,
21 relevant information, do not hesitate to ask for it.” None of the Unions submitted counter-proposals
22 to the Debtors. Declaration of Richard G. Adcock (“Adcock Declaration”) at ¶ 9.

23 33. After conducting discussions with SGM as to what it wished to modify with respect
24 to the CBAs, the Debtors and SGM then began to directly engage each of the Unions and provide
25 each Union with amended proposals, including proposed modified CBAs in redline form
26 (collectively, the “Amended Proposals”). *Id.* Specifically,

27 a. On or about July 11, 2019, and July 15, 2019, the Debtors and SGM met with CNA

28 ⁸ The Debtors will make the written copies of the First Proposals, as well as the Amended Proposals (as defined, *infra*)
to any proper requesting party.

- 1 and presented the applicable Amended Proposal, which included proposed redline
2 changes to the CNA CBAs. *Id.* at ¶ 9(a).
- 3 b. On or about July 19, 2019, the Debtors and SGM met with Local 20 and presented
4 the applicable Amended Proposal, which included proposed redline changes to the
5 Local 20 CBA. *Id.* at ¶ 9(b).
- 6 c. On or about July 25, 2019, the Debtors and SGM met with SEIU and presented the
7 applicable Amended Proposal, which included a proposed redline to the SEIU CBA.
8 *Id.* at ¶ 9(c).
- 9 d. On or about July 25, 2019, the Debtors and SGM met with UNAC and presented the
10 applicable Amended Proposal, which included a proposed redline to the UNAC
11 CBA. *Id.* at ¶ 9(d).
- 12 e. On or about July 25, 2019, the Debtors' counsel met with NUHW and presented the
13 applicable Amended Proposal, which included a proposed redline to NUHW CBA.
14 *Id.* at ¶ 9(e).
- 15 34. Thereafter, the Debtors continued to travel to and attend Meetings with the Unions
16 regarding the Amended Proposals and going-forward CBA terms with SGM, including:
- 17 f. with respect to UNAC, on August 2, 23, and 29, 2019, *Id.* at ¶ 10(a);
18 g. with respect to CNA, on August 7, 8, 20, 21, 2019, and September 5, 2019, *Id.* at ¶
19 10(b);
20 h. with respect to SEIU, on July 30, 2019, August 13, 2019, August 30, 2019 and
21 September 9, 2019, *Id.* at ¶ 10(c);
22 i. with respect to NUHW, on August 14 and 24, 2019 and September 10 and 15, 2019
23 *Id.* at ¶ 10(d); and
24 j. with respect to Local 20, on August 15, 2019. *Id.* at ¶ 10(e).
- 25 35. The in-person Meetings were also supplemented by substantial negotiations over
26 phone and by email, which culminated in the Debtors and the Unions executing the Settlement
27 Agreements attached hereto. *Id.* at ¶ 11.
28

H. The Settlement Agreements

36. Each Settlement Agreement incorporates modified versions of the applicable Unions' CBA or CBAs (the "Modified CBAs," or, individually each a "Modified CBA") which are to be modified under § 1113 and, as applicable § 1114 (the "Modification"). Through the Motion, the Debtors agree to assume and assign the CBA or CBAs (as modified under the Modified CBAs) to SGM (the "Assumption and Assignment"), which the Unions agree to not oppose (which process is defined in the Settlement Agreements and herein as the "Agreed Outcome").⁹ The parties reached the Settlement Agreement so that the SGM Sale is economically viable for SGM and the Debtors, while also providing just treatment for the Debtors' employees, including the Represented Employees. *See* Adcock Declaration at ¶ 12.

37. As a part of the Agreed Outcome, the Unions preserve their rights and remedies against SGM in connection with post-Closing operations, with SGM solely responsible for all post-closing obligations under the Modified CBAs.¹⁰

38. Likewise, under the Settlement Agreements, the Debtors: (a) will not have any liability or obligation to perform under the CBAs or Modified CBAs with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any Union claims that may be expressly preserved under the Settlement Agreements; and (c) shall in no way be liable for or otherwise responsible for any nonperformance or violation by SGM or any of its affiliates arising at any time.¹¹

39. The Settlement Agreements provide the following treatment of Unions claims:

- a. an allowed claim for PTO for each employee who is not offered a job with SGM's applicable acquiring and operating entity (the "Operator"), will be granted, under the "accrual method" (meaning the amount earned (in this case as to PTO) and yet unpaid or used: 1) on or after August 31, 2018, will be granted administrative status; 2) between March 4, 2018 to August 30, 2018, will be granted priority claim status

⁹ Settlement Agreements at § 3. The Settlement Agreements are substantially similar. For avoidance of doubt, the Settlement Agreement used for "Settlement Agreements at [##]" cites herein is the CNA Settlement Agreement. When there is such a citation, all Settlement Agreements will contain such a term.

¹⁰ Settlement Agreements at §§ 3; 4.

¹¹ Settlement Agreements at § 6.

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up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018, will be given general unsecured claim status.) The administrative and priority claim portions will be paid with the employee' last paycheck (upon the Closing);¹²

b. an allowed claim for severance for each employee who is not offered a job by the Operator no later than the Closing, will be calculated under the "accrual method." The administrative and priority claim portions will be paid within 30 business days of the Effective Date,¹³ provided further, that payment of severance to an employee is contingent on that employee executing a written general release;¹⁴

c. any allowed unpaid claim for reimbursement of educational expenses of employee represented by the Unions will be calculated under the "accrual method." The administrative and priority claim portions will be paid within 30 business days of the Effective Date;¹⁵

d. any grievance claim of an employee not settled as of the Effective Date will be treated in accordance with the treatment of claims and administrative expenses under the terms of the Plan. The parties agree to work with the Operator in the event that the remedy is or includes reinstatement of the employee post-Closing (the Unions' claims and rights expressly preserved in the Settlement Agreement relating to the CBAs are the "Preserved Claims");¹⁶ and

e. other than the Preserved Claims, all other prepetition claims, priority claims and administrative expense claims are deemed waived, including without limitation, any claims for unpaid pension; provided, however, the Unions may assert any wage or defined contribution claim that may arise and is unpaid as of the Effective Date.¹⁷

¹² Settlement Agreements at § 7(a).

¹³ Defined in the Plan as "a day, as determined by the Debtors, that is a Business Day as soon as reasonably practicable after all conditions to the Effective Date specified in Section 12.2 hereof have been satisfied or waived."

¹⁴ Settlement Agreements at §§ 7(b).

¹⁵ Settlement Agreements at § 7(d).

¹⁶ Settlement Agreements at § 7(c).

¹⁷ Settlement Agreements at § 7(f).

1 40. The Settlement Agreements are conditioned upon the Closing, with a purchase price
2 that is not materially less than APA's purchase price.¹⁸

3 41. The Unions agreed to withdraw any outstanding applicable information requests.¹⁹

4 42. In the applicable Settlement Agreements, the parties have also agreed under § 1114
5 with respect to the Retiree Health Benefits, that:

6 a. Subject to this subparagraph (c), the Unions agreed that the CBAs are to be deemed
7 automatically modified to immediately terminate and discontinue the Retiree Health
8 Benefit under § 1114;²⁰

9 b. The Unions agreed to further support the termination and discontinuation of the
10 Retiree Health Benefit with respect to all current and former employees, including
11 any relief sought under or in accordance with § 1114;²¹ and

12 c. The Debtors agreed to seek approval of a one-time payment to each Retiree equal to
13 the present value of each Retiree's Health Benefit, (the "Lump Sum Payment") (sub-
14 paragraphs a-c are the "1114 Agreements").²²

15 43. The Unions agreed not to oppose the "to not oppose the prompt Closing of the
16 [SGM] Sale"²³ and to support "any Plan of the Debtors that does not contradict the material terms
17 of this Agreement."²⁴

18 44. The CNA and SEIU Settlement Agreements include provisions allowing their
19 employees who were not hired by SCC to obtain severance, giving them the same treatment that
20 the Local 20 and CLVNA employees received in the SCC Stipulations.²⁵

21 45. CNA and SEIU also agreed to affirmatively support the SGM Sale in writing to the
22 AG, and did so by writing letters in support of the SGM Sale in the context of the AG's pending
23 review of the SGM Sale under California law.²⁶

24
25 ¹⁸ Settlement Agreements at § 12.

26 ¹⁹ Settlement Agreements at § 14.

27 ²⁰ Settlement Agreement at § 8(a).

28 ²¹ Settlement Agreement at § 8(b).

²² Settlement Agreements at § 8(c).

²³ Settlement Agreements at § 15.

²⁴ Settlement Agreements at § 11.

²⁵ Settlement Agreements at § 7(b).

²⁶ Settlement Agreements at § 15.

I. Related Relief for the One Non-Union Current Retiree Who Receives Retiree Health Care Benefits

46. The Debtors will also pay the only Current Retiree not represented by one of the Unions the value of their retiree benefits in cash under the same methodology provided to the Union-represented Current Retirees. The amount to be paid is reflected on Exhibit 6. Adcock Declaration at ¶ 13.

J. The Plan

47. On September 3, 2019, the Debtors filed their Plan and their related disclosure statement. *See Debtors' Chapter 11 Plan of Liquidation* [Docket No. 2993]; *Disclosure Statement Describing Debtors' Chapter 11 Plan of Liquidation* [Docket No. 2994] (the "Disclosure Statement"). The Plan states that "Prior to the Effective Date [of the Plan (the "Effective Date,")] the Debtors expect to receive approval for either the consensual or, pursuant to § 1113, the nonconsensual modification, assignment and/or termination of collective bargaining agreements." Plan at ¶ 15.2.

48. On September 11, 2019, the Court entered an order extending the exclusive period that the Debtors can file and solicit votes on a plan to October 25, 2019 and solicit acceptances to December 24, 2019. Docket No. 3039. On October 25, 2019, the Debtors filed a motion [Docket No. 3417] seeking to extend these deadlines, respectively, to December 31, 2019 and February 29, 2020.

IV. ARGUMENT

A. The Settlement Agreement Should Be Approved Under §§ 365, 1113 And 1114

In *PTC Alliance Corp., et. al.*, Case No. 09-13395-CSS ("PTC") (Bankr. D. Del.), the Bankruptcy Court for the District of Delaware approved a transaction between the debtor, a union and a buyer for the modification and assumption of a CBA *solely under the auspices of §§ 365 (for the assumption and the assignment), 1114 (to resolve retiree benefits) and 1113 (for the remaining relief)*. The debtor modified collective bargaining agreements as requested by a buyer and agreed to by the union, and then assumed and assigned the collective bargaining agreements upon the closing of a previously approved sale. The modifications included a new wage scale, new

bonus structure, the termination of the pension plan, and with a one-time lump sum payment made to a 401(k) plan. *PTC*, Docket No. 869 (order attached as **Exhibit 7-A**, with a sample approved modification agreement, *PTC*, Docket No. 847-1 attached as **Exhibit 7-B**). The modification was achieved through written memorandums of understanding that the previous clauses of the CBAs would continue to be binding on the purchaser, except as modified in the memorandum. *Id.* (the union, buyer and debtor “hereby agree to a new [collective bargaining agreement] which ... shall become effective conditioned upon and on the date of the closing of the sale [and] will be identical to the current labor agreement ... except for appropriate changes in dates and the changes set forth below [then listing modifications]”).

Following the example of the successfully approved *PTC* transaction, the Debtors request that this Court implement the Settlement Agreements under §§ 365, 1113 and 1114, effective upon the Closing.

a. **§§ 1113 and 1114 Grant the Court with Authority to Approve the Settlement Agreements And Related Relief**

The Debtors move to implement the Modification and applicable portions of the Settlement Agreements under §§ 1113 and § 1114, because, as courts recognize, these statutes (interpreted interchangeably due to their overlapping language and standards)²⁷ allow mutually agreed modification of CBAs, and “consistent with [the statutes] the parties [the debtor and a union] should have every opportunity to come to an agreement themselves.” *In re Nw. Airlines Corp.*, 346 B.R. 307, 315 (Bankr. S.D.N.Y. 2006) (authorizing debtor to institute new terms and conditions of employment as in proposal union had previously agreed to unless debtor and union agreed to alternative deal within two weeks). As explained by another Bankruptcy Court in this District, § 1113 (and § 1114) codified an “expedited form of collective bargaining” to allow unions and debtors to enter into settlements in distressed situations with a primary goal to “to protect the existence of collective bargaining agreements in chapter 11 cases.” *In re Certified Air Techs., Inc.*, 300 B.R. 355, 361 (Bankr. C.D. Cal. 2003) (citations omitted). Here, the parties have engaged in

²⁷ *In re Walter Energy, Inc.*, 911 F.3d 1121, 1129 n. 8, 39 (11th Cir. 2018), (“As we mentioned above Congress modeled § 1114 on § 1113, see *supra* note 8, so cases interpreting § 1113 are relevant to our understanding of § 1114.”).

1 the vigorous, expedited collective bargaining that §§ 1113 and 1114 was designed to engender and
2 have arrived at the equitable and necessary Modified CBAs and the Settlement Agreements.

3 **b. No Party other than the Debtors, the Unions or SGM has Standing to Object**
4 **to the CBA Modifications**

5 Sections 1113(d)(1) and 1114(k)(1) proscribe that only “interested parties” may participate
6 and appear at a hearing on a motion under the statutes. *In re UAL Corp.*, 408 F.3d 847, 849 (7th
7 Cir. 2005). Precedent holds that this group is limited to the unions, the debtor(s) and guarantors.
8 The §§ 1113/1114 process is not an open inquiry for third parties to pick at a transaction, because
9 the statutes are “designed to provide additional procedural requirements for the **rejection or**
10 **modification** of collective bargaining agreements [and] supersedes and supplements the provisions
11 in § 365.” *Massachusetts Air Conditioning & Heating Corp. v. McCoy*, 196 B.R. 659, 663 (D.
12 Mass. 1996). Congress placed special consideration on protecting collective bargaining and gave
13 debtors and unions the exclusive power to come to a consensual agreement to be approved on a
14 highly expedited basis, without third-party procedural interference. *Cf.* 11 U.S.C. § 1113(d)(2)
15 (court must rule 30 days after hearing or relief is deemed granted); § 1114(k)(2) (court must rule
16 90 days after hearing or relief is deemed granted).

17 For instance, in the leading Seventh Circuit *In re UAL* decision, third parties sought to
18 participate in § 1113 litigation because of their “concern that [the debtor] and the union may reach
19 a compromise” that would adversely affect them. 408 F.3d at 849. The Seventh Circuit denied
20 their participation:

21 The term “interested party” in Section 1113 “is most naturally read
22 to mean ‘party to the collective bargaining agreement’ or a guarantor
23 of that contract... the union acts as the employees' representative;
24 without the limitation, **every retiree would receive separate notice**
25 **and an opportunity to be heard; tax collectors, unsecured creditors**
26 **that might gain if the debtor altered its obligations to labor—the**
27 **list would go on and on” ... It is not hard to see the reasoning for**
28 **such a rule in the Section 1113 context ... a court [should not] hand**
...groups a potential veto over the ability for a debtor to enter into a
new collective bargaining agreement.

In re AMR Corp., 477 B.R. 384, 452 (Bankr. S.D.N.Y. 2012) (emphasis added) (following and
explaining *In re UAL Corp.*, 408 F.3d at 849). As further explained by the Seventh Circuit in a

1 follow-up decision, “[p]arties to a contract are always free to modify their contract without
2 considering the views of third parties, and [the debtor] and [the union] were the only parties to the
3 collective bargaining agreement ... [and, as] only “interested parties” may participate in a [§ 1113]
4 hearing on the debtor's proposal [under] 11 U.S.C. § 1113(d)(1), [this] means only the parties to
5 the agreement or a guarantor of it.” *In re UAL Corp.*, 468 F.3d 456, 459 (7th Cir. 2006)”
6 (emphasis added).

7 Here, the Debtors and the Unions are in agreement as to the Modification and the Settlement
8 Agreements, and no other party has standing to object.²⁸ The Court should approve the
9 Modification because the Unions and the Debtors have fulfilled the policy goal of §§ 1113 and
10 1114 of expediently entering into the new Modified CBAs during a bankruptcy.

11 **c. The Debtors have met the Test for Modification under §§ 1113 and 1114**

12 The Prior 1113 Decision described the test for modification or rejection of a CBA, as
13 originally articulated in *In re Am. Provision Co.*, 44 B.R. 907, 910 (Bankr. D. Minn. 1984), for
14 rejection of a CBA (the “1113/1114 Test”). This test applies to both §§ 1113 and 1114, because
15 “the statutory requirements for modification of retiree benefits are...substantially the same as the
16 requirements for rejection of collective bargaining agreements, [and] courts routinely analyze
17 motions for relief under Sections 1113 and 1114 simultaneously.” *United Mine Workers of Am.*
18 *1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603, 608 (N.D. Ala. 2016), *aff’d sub*
19 *nom. In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018) (citations omitted).

20 This 1113/1114 Test contains the following factors: (1) the debtors make a proposal; (2) the
21 proposal is based on the most complete and reliable information available at the time of the
22 proposal; (3) the proposed modifications or rejection are necessary to permit reorganization of the
23 debtor; (4) the modifications assure that all creditors, the debtors, and all other affected parties are
24 treated fairly and equitably; (5) the debtors provide the union relevant information as is necessary
25 to evaluate the proposal; (6) the debtors meet at reasonable times with the union between the time
26 of the proposal and the time of the hearing; (7) the debtors negotiate with the union in good faith at

27
28

²⁸ SGM, as assignee, would have standing as a de facto guarantor, but SGM has agreed to the relevant relief.

1 these meetings; (8) the union has refused to accept such proposal without good cause; and (9) the
2 balance of equities clearly favors the relief.

3 Here, the Unions have agreed in the Settlement Agreements that the Debtors have met
4 factors (1), (5) & (6) and (7),²⁹ which are procedural factors that apply to meetings, discussions and
5 the adequacy of information sharing between a debtor and a union. Factor (8) is rendered moot
6 because the Unions have not “refused” the Amended Proposals, they have accepted them.

7 The Debtors will therefore analyze the remaining four substantive factors: (2) (proposal
8 made on good information); (3) (proposal necessary for cases); (4) (parties treated fairly); and (9)
9 (balance of equities favor relief) which concern the substantive effects of the Modification.

10 **d. The Amended Proposals were based on the Most Complete and Reliable**
11 **Information Available**

12 To satisfy this factor, “the debtor is simply required to gather the most complete information
13 available at the time and to base its proposal on the information it considers reliable.” *In re*
14 *Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010). Here, the Debtors—unable to operate
15 the Hospitals without bankruptcy protection—made Amended Proposals (and Unions accepted
16 them) because the Marketing Process demonstrated that SGM is the only willing system buyer (and
17 offered the highest and best bid). SGM will not assume the CBAs without the Modification is
18 because the CBAs are not currently economically viable for the Hospitals. Prior 1113 Decision at
19 26 (“The unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs
20 is simply too great to permit the Hospitals to continue to sustainably operate.”).

21 The Proposals were based on current, complete and reliable information because the
22 Proposals were made shortly after SGM became the stalking horse bidder and then amended after
23 the Negotiations produced a result that treats labor and the claim fairly and allow the Hospitals to
24 become economically sustainable in the long-term instead of “kicking the can” for CBA issues.

25 **e. The Amended Proposals are Necessary to Permit a Successful Plan**
26 **Confirmation.**

27
28 ²⁹ All the Settlement Agreements contain provisions acknowledging that (i) the Debtors made a proposal (at 3), (ii) the
Unions do not have any outstanding informational requests (at ¶ 14), (iii) the Debtors met with the Unions to negotiate
and reached the Settlement Agreements (at 2-3) and (iv) the Debtors negotiated in good faith (at 2).

1 This Court has found that, “within the context of this [Verity] case, the term ‘necessary to
2 permit the reorganization of the debtor’ is best interpreted to mean ‘necessary to permit the Debtors
3 to confirm a liquidating plan.’” Prior 1113 Decision at 23. The Court explained:

4 This interpretation aligns most closely with the manner in which the
5 Debtors are prosecuting this case. *From the outset, the Debtors have*
6 *stated their intent to sell the six hospitals that they operate as going*
7 *concerns, and use the proceeds from the sales to fund a plan of*
8 *liquidation.* This process is well underway. The Court has already
approved the sale of two of the Debtors’ hospitals to Santa Clara, and
recently approved bidding procedures pertaining to the auction of the
remaining four hospitals.

9 *Id.* (emphasis added). The Court then adopted the testimony of the Debtors’ CEO that explicitly
10 stated the closing of successful and timely sales of the Hospitals were necessary for the
11 confirmation of a liquidating plan:

12 Selling the hospitals on a going concern basis is necessary to
13 maximize proceeds to the estate. The Debtors’ operational
difficulties and mounting losses require that the hospitals be sold
14 quickly. In [the First-Day Declaration], the Debtors’ CEO Richard
Adcock testified that the hospital system was losing \$175 million
15 annually on a cash flow basis ...

16 *Id.* at 24 (citing First Day Declaration at ¶ 95) (“[T]he Debtors have commenced these chapter 11
17 cases to protect the original legacy of the Daughters of Charity to the maximum extent possible by
18 retiring debt incurred over the past 18 years and freeing the hospital facilities and work force to
19 continue to operate as hospitals under new ownership and leadership without the accumulated crisis
20 of the past. To do that requires the bankruptcy court supervised sale of some or all of the
21 hospitals and related facilities.”) (emphasis added)). The Court correctly found that, without the
22 orderly and “quick” sales of the hospitals, there would be no efficient and fair way for a distribution
23 to the various creditors in this case—lenders, vendors, employees etc. *Id.*

24 Here, the Negotiations, Meetings and the §§ 1113 and 1114 process produced a consensual,
25 productive result—the Debtors, the Unions and SGM negotiated a structure for the CBAs to remain,
26 but modified them to reflect economic reality, and agreed to similar terms this Court previously
27 approved in the SCC Stipulation regarding the Unions’ claim treatment. As the parties recognized,
28 with no bidder willing to assume the CBAs in full as-is, and with SGM only willing to accept

1 assignment of the Modified CBAs, the Settlement Agreements' terms are necessary. *In re Walter*
2 *Energy, Inc.*, 542 B.R. 859, 893-94 (Bankr. N.D. Ala. 2015)³⁰ ("if the sale(s) consummate and the
3 [businesses] are sold as a going-concern, Debtors' employees have the best chance of future
4 employment"); *In re Nat'l Forge Co.*, 289 B.R. at 810–11.

5 Relief is also necessary to limit the Debtors' potential liability and expenses. As the Court
6 found in the SCC Rejection, unchecked, the CBAs in this case would expose the Debtors to
7 "substantial" administrative claims from unions for an enterprise that the Debtors would neither be
8 operating nor wish to be operating, with the total of these administrative claims in excess of the
9 estimated funds available to pay *all* administrative claims. *Id.* at 24-25 (citing *Declaration of David*
10 *Galfus* [Docket 1507]);³¹ see also *In re Chicago Const. Specialties, Inc.*, 510 B.R. 205, 217-18
11 (Bankr. N.D. Ill. 2014). Waiting to reject as a part of a confirmed plan, when such plan
12 confirmation process may be protracted and the intermediate period results in accrual of
13 administrative obligations, would not be in the best interest of the Debtors' estate as a whole.")
14 (citations omitted). This Court summarized the immediate "necessity" best in its Prior 1113
15 Decision (at 26):

16 Here, the Debtors are in the process of selling the Hospitals ... and
17 will no longer operate the Hospitals once the sale has closed. As was
18 the case in *Chicago Const.*, it makes little sense to require the Debtors
to remain bound by CBAs that pertain to assets which they will no
longer operate.

19 **f. The Modification and Settlement Agreement Treat all Creditors, the Debtors,**
20 **and all of the Affected Parties Fairly and Equitably, and the Balance of the**
21 **Equities Favors the Requested Relief.**

22 This Court, in finding that the SCC Rejection treated parties fairly, found:

23 In sum, prior to seeking bankruptcy relief, the Debtors diligently
24 attempted to put their operations on a sound financial footing. **The**
25 **unfortunate but undeniable reality is that the legacy cost**
26 **structure imposed by the CBAs is simply too great to permit the**
27 **Hospitals to continue to sustainably operate.** This reality was
28 confirmed by the recent sales process ... Many parties have been
required to make sacrifices to permit continued operations of the

³⁰ (aff'd sub nom. *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (N.D. Ala. 2016) and aff'd sub nom. *United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016)).

³¹ The Debtors incorporate this Declaration by reference herein.

Hospitals. Under these circumstances, the proposed rejection and/or modification of the CBAs is fair and equitable.

Prior 1113 Decision at 26-27 (emphasis added). The Court also cited precedent that, in a sale context, this factor does not require that unions are paid in full or that all employees are re-hired or re-represented, and instead the inquiry is whether the debtor is placing a disproportionate burden on non-represented employees. *Id.* (citing *Walter Energy*, 542 B.R. at 892); *see also In re Nat'l Forge Co.*, 289 B.R. at 811.

The Settlement Agreements place no disproportionate burden on the Represented Employees or anyone else. Like the previously approved SCC Stipulation, the Settlement Agreements, in consideration for the Unions' cooperation and waivers, allow the Preserved Claims but disallow other claims that otherwise have no basis, especially if the CBAs had been rejected. *In re Nw. Airlines Corp.*, 483 F.3d 160, 169–72 (2d Cir. 2007) (emphasis added) (citing *In re Blue Diamond Coal Co.*, 147 B.R. 720, 732-34 (Bankr. E.D Tenn. 1992), *aff'd* 160 B.R. 574, 576–77 (E.D.Tenn.1993) (denying rejection damages after a § 1113 rejection) (“The only conclusion this court can reach is that ***a claim for damages alleged to have resulted from the rejection of a collective bargaining agreement under § 1113 cannot be premised on § 365(g) nor can the claim be asserted pursuant to § 502(g)*** ... inasmuch as the Union is not a ‘creditor’ nor does it hold a claim otherwise allowable under § 502, it is not entitled to assert a claim for damages alleged to have resulted from the rejection of the [CBA].”) (emphasis added)); *In re AMR Corp.*, 523 B.R. 415, 422–23 (S.D.N.Y. 2014), *aff'd*, 622 Fed. Appx. 64 (2d Cir. 2015). Further, the Debtors' proposal to eliminate other general and rejection damages also was fair and equitable as it was consistent with the Bankruptcy Code for a rejected CBA. *See In re Chicago Constr. Specialties, Inc.*, 510 B.R. at 222 (“[T]he Debtor's proposal to reject the CBA simply treats CBA claims [as they would be liquidated and disposed of under the Bankruptcy Code].”).³² The Settlement Agreements also provide waivers of any and all “cure claims” that might otherwise said to exist based upon a technical assumption of the CBAs.

³² The Debtors take no position on the ultimate recovery or rights of the Unions or the Represented Employees to these claims.

Further, the APA includes the Provisional Hiring Clause for SGM to provisionally employ substantially all qualifying Represented Employees (who will then be covered under the Modified CBAs). *In re Nat'l Forge Co.*, 289 B.R. 803 at 808–09 (“where, as here, the evidence establishes that it is likely that some of the employees ‘may be employed by the successful buyer’ this supports a finding of fair treatment to employees”); *see also In re Walter Energy, Inc.*, 542 B.R. at 867 (“The record . . . indicate[s] the proposed going concern sale is the best chance for selling the [businesses] and to provide potential future employment for the Debtors’ represented employees.”).³³

g. **The 1114 Agreements and Lump Sum Payments are Necessary, Fair and Equitable.**

Further, the 1114 Agreements and the Lump Sum Payment are fair and equitable because they provide the Retirees the present value of their health benefits. By paying cash in full, the Debtors do not prejudice the Retirees and act in accord with Congress’ intent in protecting vulnerable retirees by giving them enhanced rights above unsecured creditors, such as requiring that a debtor either resolve the retirees’ liability under § 1114 or continue to pay retiree benefits after confirmation of a plan, *see* § 1129(a)(13)) and encouraging reorganizations by allowing debtors to formulate plans and unburden themselves of long-term financial obligations. *In re Tower Auto., Inc.*, 342 B.R. 158, 162 (Bankr. S.D.N.Y. 2006) (“the statute requires the parties to attempt to come to an agreement on terms. General unsecured creditors have no such specific protection in Chapter 11, either with respect to the process of bargaining or the substantive provisions of a plan [and] unless the Court approves a modification in accordance with § 1114 standards and procedures, a plan must provide for the continuation of retiree benefits for the duration of the period the debtor has obligated itself to provide such benefits” at an unmodified level . . . the Court has no reason not to endorse a settlement that satisfies the Debtors’ principal goal, saving cash, while affording significant protection for the rights that Congress required be preserved for the retirees.”) (citations omitted); *see also In re Garfinckels, Inc.*, 124 B.R. 3, 4–5 (Bankr. D.D.C. 1991) (“There is nothing in § 1114 that would prohibit modification, pursuant to an agreement being reached

³³ Further, the Debtors intend to honor the CBAs, in full, up to and until the Closing for post-petition liabilities accrued until the Settlement Agreement becomes effective, under the Wage Order.

1 under § 1114(e)(1)(B) or a motion being granted under § 1114(g), from applying to those benefits
2 that have arisen before the agreement is reached or the motion has been granted.”).³⁴

3 **h. The Settlement Agreements will Allow the Hospitals to Continue to Operate**
4 **and Employ Represented Employees**

5 The Settlement Agreements are necessary to keep the Hospitals operating into the future
6 with Represented Employees. The results of the Marketing Process, with no third parties willing
7 to assume the CBAs “as is,” and the Debtors’ inability to operate the Hospitals outside of these
8 Cases, are not within the Debtors’ (or the Unions’) control. Neither a debtor, nor a union, may
9 “base its rejection of its only suitor[’s] [conditions] on a speculative white knight with greater
10 riches.” *In re Karykeion, Inc.*, 435 B.R. at 678. Here, SGM has made the best offer for the Hospitals
11 that will allow the Hospitals to remain open to continue their mission of providing high-quality
12 patient care, offer payment to creditors, and offer provisional the continued unionization and
13 employment of the bulk of the Represented Employees. The SGM Sale is the best possible option
14 for the Represented Employees, the Hospitals, and the communities they serve—and the Sale
15 hinges on the § 1113 and § 1114 relief the Debtors seek herein.

16 **i. Section 365 Permits the Assumption and Assignment**

17 As approved in *PTC*, immediately after the agreed Modification (complete with the
18 abrogation of existing liabilities under the CBAs (except for the Preserved Claims)) occurs, the
19 Debtors move for the Assumption and the Assignment of the Modified CBAs to SGM under § 365.

20 Section 365 applies to the Assumption and Assignment because “given the ambiguity in §
21 1113, § 365(b) ... governs the procedure for assumption [and assignment] of a CBA [and] in
22 comparable settings, the courts have so held.” *In re Family Snacks, Inc.*, 257 B.R. 884, 900 (B.A.P.
23 8th Cir. 2001) (following *Massachusetts Air Conditioning & Heating Corp.*, 196 B.R. at 663; *Am.*
24 *Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 82 (3d Cir. 1999) (citing *Wien*
25 *Air Alaska, Inc. v. Bachner*, 865 F.2d 1106, 1111 n. 5 (9th Cir. 1989)). Also, the Debtors have

26 ³⁴ Section 1114’s provision that a committee of retirees may sometimes be appointed (§ 1114(d)) is obviated because
27 eleven out of twelve of the Retirees are represented by unions who have agreed to be their authorized representative,
28 leaving an effective “committee of one,” of the remaining retiree who is being paid in full and in cash. See 11 U.S.C.
§ 1114(b)(1), (c) (labor union acts as authorized representative of retirees unless affirmatively opting out); see also *In*
re N. Am. Royalties, Inc., 276 B.R. 860, 862 (Bankr. E.D. Tenn. 2002) (the union may remain the authorized
representative even if it represents current employees and retirees).

1 previously assumed and assigned contracts that have been modified. *See Order Granting Motion*
2 *to Approve Compromise under Rule 9019* [Docket No. 2461, May 29, 2019] (approving
3 modification of agreements with Premier, Inc. and assumption and assignment therein).

4 “The propriety of a decision to assume or reject an unexpired [contract] (*i.e.*, whether the
5 motion to assume/reject should be approved by the court) normally is determined under the
6 deferential ‘business judgment’ test.” *In re Hertz*, 536 B.R. 434, 442 (Bankr. C.D. Cal. 2015)
7 (citing *In re Pomona Valley Med. Grp. Inc.*, 476 F.3d 665, 670 (9th Cir.2007)). “The court must
8 presume that the debtor [is acting] ‘prudently, on an informed basis, in good faith, and in the honest
9 belief that the action taken was in the best interests of the bankruptcy estate.’ The court should
10 approve the debtor’s decision unless it is ‘manifestly unreasonable that it could not be based on
11 sound business judgment, but only on bad faith, or whim or caprice.’ The primary question to
12 guide the court in deciding whether a debtor has properly exercised its business judgment is
13 ‘whether rejection would benefit the general unsecured creditors.’” *Id.* (citations omitted).

14 Here, the Debtors move for the Assumption and the Assignment (and the Settlement
15 Agreements as a whole) in good faith for the benefit of unsecured creditors (as discussed in detail,
16 *supra*). Without the Assumption and Assignment, the Sale would be imperiled or delayed, the
17 Debtors would risk losing the benefit of having \$610 million in hand, and, instead, would be
18 hampered with unwanted CBAs and illiquid assets.

19 **i. The Unions’ Consent is Dispositive**

20 The Unions have agreed that the Debtors have met § 365(b)(1)’s requirements that a debtor
21 “cure any existing defaults under such agreements ... and provide adequate assurance of future
22 performance under the contract or lease” under 11 U.S.C. § 365(b)(1) through the total
23 consideration of the Settlement Agreements. *In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz.
24 1995); *In re AEG Acquisition Corp.*, 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), *aff’d*, 161 B.R. 50
25 (B.A.P. 9th Cir. 1993). This obviates the need for any further analysis. As the only parties with
26 standing in this inquiry, the Unions’ consent is dispositive. *In re ANC Rental Corp., Inc.*, 277 B.R.
27 226, 231 (Bankr. D. Del. 2002) (third party did not have standing in § 365 inquiry) (“Section 365
28 is designed to protect the rights of parties with whom debtors have contractual relationships.”).

1 **ii. The Debtors have Met § 365(b)(1)’s Requirements**

2 The Debtors have cured priority and post-petition obligations by their Wage Order
3 payments. Regarding any alleged pre-petition arrears, the Modification, to the extent it does not
4 “cure amounts” through the Unions’ agreement, rejects and replaces the Debtors CBAs with the
5 Modified CBAs and therefore abrogates any pre-petition “rejection” damages. *Nw. Airlines Corp.*,
6 483 F.3d at 169–72 (2d Cir. 2007). So, any and all cure issues are satisfied, either through the
7 consideration given through the Settlement Agreement or the legal power of § 1113.

8 Regarding the second prong of § 365—adequate assurance of future performance—SGM
9 meets this requirement of providing an adequate assurance of future performance under the
10 Modified CBAs because it is a large, sophisticated healthcare company, with a \$610 million cash
11 investment, an obligation to provisionally hire all the Represented Employees, who dedicated
12 months to re-negotiating the Modified CBAs, and who was approved by this Court as an able-
13 steward and of the Hospitals going-forward.

14 **B. The Debtors Have Satisfied § 363 and Rule 9019**

15 Though the Debtors urge the Court to apply § 1113 and § 1114 as umbrella statutes for their
16 entire deal with the Unions (as Congress intended), § 363(b), § 363(c) and Rule 9019 also support
17 the requested relief. *See In re Leslie Fay Companies, Inc.*, 168 B.R. 294, 301 (Bankr. S.D.N.Y.
18 1994) (finding that Rule 9019 would apply to a debtor’s decision to enter into new post-petition
19 CBA where transaction settled all liability by and between union and debtor). Therefore, the
20 Debtors move for approval of the Settlement Agreement under § 363(b), 363(c) and Rule 9019 as
21 well as under §§ 1113, 1114 and 365. This analysis is made simpler because the requirements for
22 approval under § 363 and Rule 9019 are highly complementary with the above-discussed
23 1113/1114 Test.

24 **a. The Debtors have Satisfied Section 363(b) and 363(c)**

25 Under § 363(b), the Court considers (i) whether the transaction is “is in the best interest of
26 the estates and is “fair and reasonable” (*cf.* 1113/1114 Test factors (3) (necessary for
27 reorganization) and (9) (balance of equities in favor)) and (ii) whether it has been given “adequate
28 marketing,” and “that it has been negotiated and proposed in good faith, and that the [counter-

party] is proceeding in good faith” in an “arms-length” transaction.” *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841–42 (Bankr. C.D. Cal. 1991) (collecting cases). Regarding the latter requirement, the above-discussed evidence establishes that the parties proceeded in good-faith and certainly remained arms-length in the Negotiations.

Likewise, the Court should apply § 363(c) to the underlying terms of the Modified CBAs by and between the Debtors and the Unions, and defer to the Debtors’ business judgment. Courts have determined that large corporate debtors, including hospital debtors, commonly enter into collective bargaining agreements and are entitled to business judgment deference as to their terms. *See In re Fairmont Gen. Hosp., Inc.*, 510 B.R. 783, 787–88 (Bankr. N.D. W.Va. 2014).

As to the balance of the analysis under § 363(b) and (c), the Debtors incorporate their above 1113/1114 Test analysis (and, to the extent necessary, their § 365 analysis) that they proceeded in good faith and have negotiated a fair, equitable and necessary set of transactions in the Settlement Agreements for moving under § 363(b) for the Settlement Agreements.

b. The Debtors have Satisfied Rule 9019

Under Rule 9019(a), “compromises are favored because they minimize costly litigation and further parties’ interests in expediting the administration of the bankruptcy estate” and the Court only needs to find that the settlement was negotiated in good faith and is reasonable, fair, and equitable by utilizing the following factors:

- the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it and the probability of success in the litigation;
- the difficulties, if any, to be encountered in the matter of collection;
- the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 256 (Bankr. S.D.N.Y. 2016).

As to the “paramount interest of the creditors” factor, the Debtors incorporate their above analysis that the Settlement Agreements are in the best and paramount interests of the creditors

(under the 1113/1114 Test, that the transaction is “necessary,” is in the “best interest” of the estate is “fair” to all parties and that the balance of equities favor it).

Further, the “difficulty of collection factor” is not relevant here, as the Debtors are the ones settling claims from the Unions and are not receiving cash consideration. However, the Debtors note that, without the Settlement Agreements, it would be much more difficult to “collect” the hundreds of millions of dollars of consideration from the Sale. This leaves the first listed *A&C* factor: “The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it and the probability of success in the litigation,” for consideration for Rule 9019 approval.

“The purpose of a compromise agreement [under Rule 9019] is to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested ... claims.” *In re A & C Properties*, 784 F.2d 1377, 1380-81. Accordingly, in approving a settlement agreement, the Court need not conduct an exhaustive investigation of the claims sought to be compromised. *See United States v. Alaska Nat’l Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). A court should not substitute its own judgment for the judgment of the debtor in possession. *Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). A court, in reviewing a proposed settlement, is not to decide the numerous questions of law and fact but rather to canvass the issues to determine whether the settlement falls below the lowest point in the range of reasonableness. *In re Tribune Co.*, 464 B.R. 126, 158 (Bankr. D. Del. 2011) (“the settlement need only be above the “lowest point in the range of reasonableness”); *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); The court should not conduct a “mini-trial” on the merits of the issues. *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849 (9th Cir. 1976).

The Settlement Agreements primarily dispose of two major pieces of litigation with five separate Unions: (1) §§ 1113/1114 litigation over modification or rejection of the CBA and Retiree Benefits and (2) litigation over the validity and amounts of the Unions’ claims.

As to the contesting unions in the SCC Sale, the SCC Rejection was an arduous, months-long undertaking involving novel § 1113 questions. Sections 1113 and 1114 are highly complex,

factually intensive statute, made particularly difficult to analyze in a liquidation context. *See In re Rufener Const., Inc.*, 53 F.3d 1064, 1067 (9th Cir. 1995) (“the procedural requirements imposed by § 1113 appear ill-suited to a liquidation proceeding”). The Debtors would be required to meet nine factors, marshal substantial evidence and rebut and reply to the Unions’ legal arguments under an expedited, contested setting. Further, if contested, a pivotal part of the Settlement Agreements — the permanent modification of the CBAs through § 1113—does not appear to have been addressed by a published Ninth Circuit case when a union has not consented. The Settlement Agreements avoid the potential labor unrest and disruption to the Debtors during the sensitive pre-Closing period that might be occasioned by a forced contract abrogation, and the obvious loss of value arising therefrom. The Settlement Agreements not only fulfill the express Congressional goals of compromise and “expedited collective bargaining,” they also resolve any uncertainty of potentially “sharply contested” §§ 1113 and 1114 process over the CBAs. *In re A & C Properties*, 784 F.2d at 1380-81.

Further, the Settlement Agreements streamline and settle key aspects of the Unions claims and Proofs of Claims and the Debtors liability for severance for re-hired employees and PTO. It allows the Unions the benefit of continuing to assert claims for pending grievances and arbitration, but also allows the Debtors and successors to contest these claims—allowing truly aggrieved employees their “day in court” while allowing unmerited grievances to be ultimately dismissed without interfering with the confirmation of the Plan. They also preclude any general “cure” or rejection claims or other claims that the Unions could assert from the Sale and resolve retiree benefits before the Plan process. *See* 11 U.S.C. § 1129(a)(13) (not allowing plan to dispose of retiree benefits unless it pays them in full).

Given the complexity of this potential litigation, interposed with the fact that the Debtors are in the largest healthcare case currently in the country, attorneys’ fees and costs (which would most likely run well into the six figures for each side) and attorneys and professionals investment in time and attention (and away from Plan and SGM Sale issues) to bring this matter to full fruition would be high compared to the total gain and exposure. *In re Lawrence & Esausquin, Inc.*, 124 B.R. 37, 39 (Bankr. N.D. Ohio 1990) (approving Rule 9019 settlement where “[i]f all the issues

1 which have been raised in this case were to be litigated by the Trustee, the litigation would be time
2 consuming, burdensome, somewhat risky, and would quite possibly cost the estate more than it
3 would generate for the payment of unsecured creditors.”); *In re Partsearch Techs., Inc.*, 453 B.R.
4 84, 105 (Bankr. S.D.N.Y. 2011) (approving Rule 9019 agreement where “the risks of litigation here
5 appear to be significant because of the substantial time and expense required to conduct a trial.”).
6 The Debtors have now filed their Disclosure Statement and Plan and wish to focus on making the
7 Effective Date effective instead of protracted labor litigation that can be avoided through a fair
8 compromise.

9 The Modified CBAs, the Proposal and all aspects of the Settlement Agreement result from
10 the arm’s length, protracted, and hard fought negotiations. The Debtors mediated the negotiations
11 between SGM and the Unions and arrived at the Modification for the Debtors to pass on their
12 Hospitals to SGM with an increased market competitiveness, while maintaining the loyalty and
13 morale of their employees and further settled liability and obtained other benefits for the Debtors
14 (such as CNA and SEIU writing to the AG to support the SGM Sale). The parties are entitled to
15 deference in their decisions. *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849;
16 *see also In re Yellowstone Mountain Club, LLC*, 460 B.R. 254, 265 (Bankr. D. Mont. 2011) (*citing*
17 *A& C Properties*, 784 F.2d 1381) (“rather than an exhaustive investigation or a mini-trial on the
18 merits, this court need only find that the settlement was negotiated in good faith and is reasonable,
19 fair and equitable”); *In re Adelphia Communications Corp.*, 327 B.R. 143, 163 (Bankr. S.D.N.Y.
20 2005), adhered to on reconsideration, 327 B.R. 175 (Bankr. S.D.N.Y. 2005) (approving settlement
21 of claims where debtor was to pay \$715 million even where court found there “there [was] quite a
22 high probability that [the debtor] would ultimately prevail on at least some of its claims,” because
23 “that litigation” had already “been hotly contested [through] numerous legal and factual defenses”
24 by the counterparty against the debtors’ claims and where debtors were not likely to “win quickly,”
25 given the “complexities of [the] situation,” and concluding that “even a successful outcome in such
26 litigation likely would take substantial time [and the] the [s]ettlement [a]greements eliminate these
27 risks.”); *In re MF Glob. Inc.*, 466 B.R. 244, 251 (Bankr. S.D.N.Y. 2012) (approving under Rule
28 9019 where “the [s]ettlement [a]greement will resolve all claims between the Parties related to the

1 Property and will save the costs of further litigation [and was the] result of arms-length negotiations
2 and good-faith dealings among the Parties.”).

3 The Settlement Agreements represent the type of rational, negotiated solutions that Rule
4 9019 encourages, and the Court should approve it. *See generally Protective Comm. for Indep.*
5 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 434, 88 S. Ct. 1157, 1168, 20
6 L. Ed. 2d 1 (1968) (“Litigation and delay are always the alternative to settlement, and whether that
7 alternative is worth pursuing necessarily depends upon a reasoned judgment as to the probable
8 outcome of litigation.”).

9 **V. CONCLUSION**

10 Based upon the foregoing, the Debtors respectfully request that the Court enter an order
11 granting the relief requested herein (i) granting and approving the Settlement Agreements as
12 attached as **Exhibits 1-5** so that, effective upon the Closing, (a) the Modification occurs, with (b)
13 the Modified CBAs then assumed and assigned through the Assumption and Assignment to SGM
14 (c) the other terms of the Settlement Agreement are given effect and (ii) for such other and further
15 relief as the Court may deem proper.

16 Dated: November 13, 2019

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

19 By /s/ Tania M. Moyron
Tania M. Moyron

20 Attorneys for the Chapter 11 Debtors and
21 Debtors In Possession

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of VHS and its above-captioned affiliates who have also filed for bankruptcy protection (collectively the “Debtors,” and each a “Debtor”) as well as those affiliated entities that are not in bankruptcy. I submit this Declaration in support of the *Debtors’ Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* (the “Motion”).³⁵

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

3. True and correct copies of the following documents are attached to the Motion as follows:

- the “CNA Settlement Agreement” (attached hereto as **Exhibit 1**) between the Debtors and the California Nurses Association (“CNA”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a (i) modified CNA/VHS Master Agreement between CNA and Debtors St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”), effective December 22, 2016-December 21, 2020,³⁶ (ii) modified SVMC Local Contract

³⁵ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

³⁶ Modified CBAs (as defined in the Motion) are not attached to the Motion because they are SGM’s confidential, proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will make the Modified CBAs available to proper requesting parties.

2016-2020 between CNA and SVMC , effective December 22, 2016 to December 21, 2020, and (iii) modified SMC Local Contract 2016-2020 between CNA and SMC effective December 22, 2016-December 21, 2020;

- the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining Agreement between Local 20 and SMC, effective May 1, 2017-April 30, 2020;
- the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to NUHW effective upon Closing, of a modified Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside, effective November 1, 2016-October 31, 2019;
- the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between the Debtors SVMC and St. Francis Medical Center (“SFMC”) and the Service Employees International Union, United Healthcare Workers-West (“SEIU”), which, in turn, seeks, *inter alia*, the assumption and assignment to SEIU effective upon Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC, effective May 1, 2017-April 30, 2020;
- the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between SFMC and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,” and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a modified Labor Management Collective Bargaining Agreement effective from December 29, 2017 to December 29, 2021;
- the schedule regarding the 11 current retirees who are receiving actual retiree health care benefits (under the program that permits retirees who elect within a set period

1 of time, a supplement to continue Debtor-provided healthcare) and the one-time
2 payment in the amount equal to the value of those payment, which is attached as
3 **Exhibit 6.**³⁷

4 **a. The CBAs And The Represented Employees**

5 4. The Local 20 CBA covers 31 active employees for SMC and one retired employee
6 from O'Connor Regional Hospital ("OCH")³⁸ (with the employees as the "Local 20 Represented
7 Employees"). The Local 20 Represented Employees are and were predominantly Clinical
8 Laboratory Scientists who work primarily in the hospital laboratory.

9 5. The CNA CBAs cover 792 active employees at SVMC and SMC and eight retired
10 employees from SMC, OCH and SLRH (the "CNA Represented Employees"). The CNA
11 Represented Employees are and were registered nurses.

12 6. The UNAC CBA covers 817 active employees for SMC (the "UNAC Represented
13 Employees"). The UNAC Represented Employees are and were registered nurses.

14 7. The SEIU CBA covers active 1,331 active employees for SVMC and SFMC (the
15 "SEIU Represented Employees"). The SEIU Represented Employees are and were comprised of
16 service workers including but not limited to environmental services aides, certified nurse assistants,
17 unit coordinators, and technical workers, including but not limited to radiological technician and
18 pharmacy technicians.

19 8. The NUHW CBA covers active 731 active employees and 1 retired employee for
20 SMC and Seton Medical Center Coastside (the "NUHW Represented Employees") (together, with
21 the Local 20 Represented Employees, the CNA Represented Employees, the UNAC Represented
22 Employees, the SEIU Represented Employees, the "Represented Employees." The NUHW
23 Represented Employees are and were comprised of technicians, such as radiological technician,
24 pharmacy technicians, and service workers such as, environmental service aides, dietary aides,
25 cooks, clinical staff such licensed vocational nurse, certified nursing aides and administrative
26

27 ³⁷ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first
names identified so applicable retirees may identify themselves.

28 ³⁸ Although the assets of OCH have been sold to Santa Clara County under a prior Bankruptcy Case sale, Current
Retirees who were employed at OCH while it was operating continue to receive Retiree Health Benefits.

workers such unit secretaries and clerks.

b. The Union § 1113 CBA Modification And § 1114 Retiree Healthcare Benefit Termination Process

9. After approval of the SGM Sale, but pending completion of AG Review, the Debtors, SGM and Unions negotiated the ultimate terms of the Settlement Agreements (the “Negotiations”) through a series of meetings and exchanges with the Unions (the “Meetings”). The process began on February 1, 2019, when the Debtors delivered to each of the Unions a proposal under § 1113 and, as applicable, § 1114 (collectively, the “First Proposals”).³⁹ The First Proposals noted that SGM was amenable to assuming existing CBAs, provided they were modified to comport with similar collective bargaining arrangements that covered other facilities owned and operated by SGM. The First Proposals further represented that the Debtors “stood ready” to discuss with the Unions any counter-proposal and that the Debtors were “open to receive and consider all comments, concerns and any counterproposals from [the Unions]” and told the Unions that “if you desire any specific, relevant information, do not hesitate to ask for it.” None of the Unions submitted counter-proposals to the Debtors. After conducting discussions with SGM as to what it wished to modify with respect to the CBAs, the Debtors and SGM then began to directly engage each of the Unions and provide each Union with amended proposals, including proposed modified CBAs in redline form (collectively, the “Amended Proposals”). Specifically,

- a. On or about July 11, 2019 and July 15, 2019, the Debtors and SGM met with CNA and presented the applicable Amended Proposal, which included proposed redline changes to the CNA CBAs.
- b. On or about July 19, 2019, the Debtors and SGM met with Local 20 and presented the applicable Amended Proposal, which included proposed redline changes to the Local 20 CBA.
- c. On or about July 25, 2019, the Debtors and SGM met with SEIU and presented the applicable Amended Proposal, which included a proposed redline to the SEIU CBA.
- d. On or about July 25, 2019, the Debtors and SGM met with UNAC and presented the

³⁹ The Debtors will make the written copies of the First Proposals, as well as the Amended Proposals (as defined, *infra*) to any proper requesting party.

1 applicable Amended Proposal, which included a proposed redline to the UNAC
2 CBA.

3 e. On or about July 25, 2019, the Debtors' counsel met with NUHW and presented the
4 applicable Amended Proposal, which included a proposed redline to NUHW CBA.
5 *Id.* at

6 10. Thereafter, the Debtors continued to travel to and attend Meetings with the Unions
7 regarding the Amended Proposals and going-forward CBA terms with SGM, including:

8 f. with respect to UNAC, on August 2, 23, and 29, 2019;

9 g. with respect to CNA, on August 7, 8, 20, 21, 2019, and September 5, 2019;

10 h. with respect to SEIU, on July 30, 2019, August 13, 2019, August 30, 2019 and
11 September 9, 2019;

12 i. with respect to NUHW, on August 14 and 24, 2019 and September 10 and 15, 2019;
13 and

14 j. with respect to Local 20, on August 15, 2019.

15 11. The in-person Meetings were also supplemented by substantial negotiations over
16 phone and by email, which culminated in the Debtors and the Unions executing the Settlement
17 Agreements attached hereto.

18 **C. The Settlement Agreements**

19 12. Each Settlement Agreement incorporates modified versions of the applicable
20 Unions' CBA or CBAs (the "Modified CBAs") which are to be modified under § 1113 and, as
21 applicable § 1114 (the "Modification"). Through the Motion, the Debtors agree to assume and
22 assign the CBA or CBAs (as modified under the Modified CBAs) to SGM (the "Assumption and
23 Assignment"), which the Unions agree to not oppose (which process is defined in the Settlement
24 Agreements and herein as the "Agreed Outcome").⁴⁰ The parties reached the Settlement
25 Agreement so that the SGM Sale is economically viable for SGM and the Debtors, while also
26 providing just treatment for the Debtors' employees, including the Represented Employees.

27 _____
28 ⁴⁰ Settlement Agreements at § 3. The Settlement Agreements are substantially similar. For avoidance of doubt, the Settlement Agreement used for "Settlement Agreements at [##]" cites herein is the CNA Settlement Agreement. When there is such a citation, all Settlement Agreements will contain such a term.

D. Related Relief for the One Non-Union Current Retiree Who Receives Retiree Health Care Benefits

13. The Debtors will also pay the only Current Retiree not represented by one of the Unions the value of their retiree benefits in cash under the same methodology provided to the Union-represented Current Retirees. The amount to be paid is reflected on Exhibit 6.

14. The Debtors have determined in their business judgment that the relief sought in the Motion is in the best interests of the Estates. To the extent that the Motion settles matters that the Debtors could litigate, the Debtors believe that settlement under the terms sought in the Motion is in the best interest of their estates in lieu of the expensive, unproductive and uncertain litigation that would ensue without relief. The Debtors have now filed their Disclosure Statement and Plan and wish to focus on making the Effective Date effective instead of protracted labor litigation that can be avoided through a fair compromise

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

Executed this 13 day of November, 2019, at Los Angeles, California.

By: [TO BE SUBMITTED]

RICHARD G. ADCOCK

EXHIBIT 1

Settlement Agreement

On this 19th day of September, 2019 (the “Settlement Date”), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the “Debtors,” and individually a “Debtor”), on the one hand, and the California Nurses Association (“CNA”) (collectively, the “Parties”), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the “Agreement”):

Recitals

WHEREAS, on August 31, 2018 (the “Petition Date”), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, CNA and St. Vincent Medical Center are parties to a certain SVMC Local Contract 2016-2020 effective December 22, 2016-December 21, 2020 (the “SVMC CBA”), CNA and Seton Medical Center are parties a certain SMC Local Contract 2016-2020 effective December 22, 2016-December 21, 2020 (the “SMC CBA”) and CNA and St. Vincent Medical Center, Seton Medical Center and other Debtors are parties to a certain CNA/VHS Master Agreement effective December 22, 2016 – December 21, 2020 (the “Master CBA,” and referred to with the SVMC CBA and SMC CBA as the “CBAs” and each individually a “CBA”);

WHEREAS, the Debtors previously obtained a final order rejecting their collective bargaining agreements with CNA covering O’Connor Hospital and St. Louise Regional Hospital (the “SCC Rejection”) upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the “SCC Closing”) and also modifying the Master CBA in the *Order Granting Debtors’ Motion Under Section 1113 Of The Bankruptcy Code To (A) Reject And Terminate The Terms Of California Nurses Association’s Collective Bargaining Agreements With Saint Louise Regional Hospital And O’Connor Hospital And (B) To Modify Related Provisions In A Certain Master Agreement Upon The Closing Of The Sale Of Hospitals To Santa Clara County* [Docket No. 1578] (the “SCC CBA Order”).

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (1) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The*

Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof [Docket No. 1279] (the “Remaining Hospitals Sale Motion”), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, (“SVDC”), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside (“SMC,” and referred to collectively with SFMC, SVMC and SVDC as the “Remaining Hospitals”) under a Stalking Horse Asset Purchase Agreement (the “APA”) between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation (“Verity”), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the “Sellers”) and Strategic Global Management, Inc., a California Corporation (“SGM”);

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the “Sale”) Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the “California AG”), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, CNA has filed a proof of claim (collectively, along with any and all amendments, the (“POC”) in the Bankruptcy Cases against the Debtors, which has been designated as claim number #5169;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBAs desired by SGM and to otherwise consensually resolve issues and claims of CNA;

WHEREAS, on February 1, 2019, the Debtors sent to CNA a proposal under §§ 1113/1114 to modify the CBAs and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented CNA with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBAs acceptable to SGM and CNA; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and CNA have met and negotiated on several occasions about modifying the CBAs and the Debtors and CNA have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBAs shall be modified in the form attached hereto as **Exhibit 1** (the “Modified CBAs”) under §§ 1113/1114 of the Bankruptcy Code (the “Modification”).
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBAs (as modified under the Modified CBAs) to SGM (the “Assumption and Assignment”).
3. CNA agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the “Agreed Outcome”) (b) support, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) CNA rights and remedies against SGM in connection with x) post-Closing operations at SMC and SVMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties’ rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBAs.
5. Upon Closing, the CBAs (as modified under the Modified CBAs) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBAs or Modified CBAs with respect to post-Closing activity; (b) shall in no way be liable

for or otherwise responsible for any “cure” obligations independent of any CNA claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.

7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: each employee who is not offered a job with SGM, including Global Medical Center of Downtown Los Angeles, LLC (“GMCDLA”) or Global Medical Center of San Mateo County, LLC (“GMCSMC”), will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);
 - b. Severance:
 - i) each employee who is not offered employment by SGM, including GMCDLA or GMCSMC, no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to CNA and the Debtors;

ii) notwithstanding anything to the contrary contained in or caused by the SCC CBA Order, each employee who was not offered employment by SCC by the SCC Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the SCC Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the SCC Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Bankruptcy Plan Effective Date, provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to CNA and the Debtors;

c. Grievance Claims:

i) Any grievance claim of an employee being represented by CNA that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with SGM in the event that the remedy is or includes reinstatement of the employee after the Closing;

ii) Kris Suzuki, who is a member of CNA, settled a termination-based grievance claim in June 2018 with one or more of the Debtors in the amount of \$70,000, and received \$25,000 of that amount prepetition, will receive an allowed priority claim under §507(a)(4) in the amount of \$12,850 and a general unsecured claim in the amount of \$27,150; and

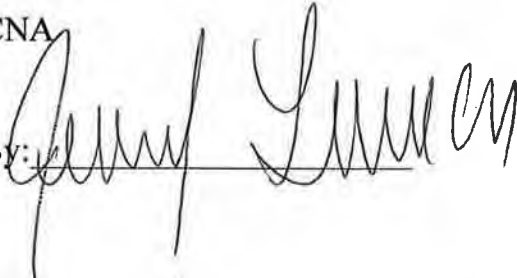
The claims in i) and ii) will be treated in the same manner as severance claims in paragraph 7(b) above.

d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by CNA will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will

be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- f. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) CNA does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and CNA maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.
8. With respect to Retiree Health Benefits:
- a. Subject to subparagraph (c), CNA agrees that the CBAs shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
 - b. CNA agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
 - c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on **Exhibit 2**.
9. As between CNA and the Debtors, to the extent there is any conflict between this Agreement and the CBAs or the Modified CBAs, this Agreement shall control.
10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
11. CNA agrees to support any Plan of the Debtors that does not contradict the material terms of this Agreement.

12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. CNA hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. CNA agrees to support the prompt Closing of the Sale, including sending to California AG as copy of the letter attached hereto as **Exhibit 3**.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by CNA.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

CNA
By: 

The Debtors
By: 

EXHIBIT 2

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, Local 20 has filed a proof of claim (collectively, along with any and all amendments, the ("POC") in the Bankruptcy Cases, which has been designated as claim number #5169;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of Local 20;

WHEREAS, on February 1, 2019, the Debtors sent to Local 20 a proposal under §§ 1113/1114 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented Local 20 with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and Local 20;

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and Local 20 have met and negotiated on several occasions about modifying the CBA and the Debtors and Local 20 have otherwise exchanged proposals to resolve the other issues between the Parties; and

WHEREAS, Debtors and Local 20 have tentatively agreed upon a Modified CBA subject to ratification by the bargaining unit.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, and ratification, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under §§ 1113/1114 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. Local 20 agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome") (b) not to oppose, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) Local 20 rights and remedies against SGM in connection with x) post-Closing operations at SMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any Local 20 claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: Each employee who is not offered a job with SGM, including KPC Global Medical Center of San Mateo County, LLC ("GMCSMC"), will be

allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);

- b. Severance: Each employee who is not offered employment with SGM, including GMCSMC no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to Local 20 and the Debtors;
- c. Grievance Claims: Any grievance claim of an employee being represented by Local 20 that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSMC in the event that the remedy is or includes reinstatement of the employee after the Closing;
- d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by Local 20 will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts

earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) Local 20 does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and Local 20 maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.

8. With respect to Retiree Health Benefits:

- a. Subject to subparagraph (c), Local 20 agrees that the CBA shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
- b. Local 20 agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
- c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on Exhibit 2.

9. As between Local 20 and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control. However, the Modified CBA is subject to ratification vote by the bargaining unit which shall be held on or before the end of September 2019.

10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.

11. Local 20 agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.
12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. Local 20 hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. Local 20 agrees to not oppose the prompt Closing of the Sale.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by Local 20.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

Local 20

By: 

The Debtors

By: 

EXHIBIT 3

Settlement Agreement

On this 16th day of September, 2019 (the "Settlement Date"), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and the National Union of Healthcare Workers ("NUHW") (collectively, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, NUHW and Seton Medical Center and Seton Medical Center-Coastside are parties to a certain Collective Bargaining Agreement, effective November 1, 2016 to October 31, 2019 (the "CBA");

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No. 1279] (the "Remaining Hospitals Sale Motion"), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation ("SFMC"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("SVMC"), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, ("SVDC"), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside ("SMC," and referred to collectively with SFMC, SVMC and SVDC as the "Remaining Hospitals") under a Stalking Horse Asset Purchase Agreement (the "APA") between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation ("Verity"), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the "Sellers") and Strategic Global Management, Inc., a California Corporation ("SGM");

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, NUHW has filed no proofs of claim in the Bankruptcy Cases;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of NUHW;

WHEREAS, on February 1, 2019, the Debtors sent to NUHW a proposal under §§ 1113/1114 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented NUHW with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and NUHW; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and NUHW have met and negotiated on several occasions about modifying the CBA and the Debtors and NUHW have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under §§ 1113/1114 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. NUHW agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome") (b) not to oppose, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) NUHW rights and remedies against SGM in connection with x) post-Closing operations at SMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any NUHW claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: each employee who is not offered a job with SGM, including KPC Global Medical Center of San Mateo County, LLC ("GMCSMC"), will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the "accrual method;" meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of

\$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018, will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee's last paycheck (upon the Closing);

- b. Severance: each employee who is not offered employment by KPC, including GMCSMC no later than the date of Closing, will be allowed a claim for severance calculated under the "accrual method"—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee's retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the "Bankruptcy Plan Effective Date"), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to NUHW and the Debtors;
- c. Grievance Claims: Any grievance claim of an employee being represented by NUHW that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSMC in the event that the remedy is or includes reinstatement of the employee after the Closing;
- d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by NUHW will be calculated under the "accrual method," meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess

granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) NUHW does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and NUHW maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.
8. With respect to Retiree Health Benefits:
- a. Subject to subparagraph (c), NUHW agrees that the CBA shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
 - b. NUHW agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
 - c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on Exhibit 2.
9. As between NUHW and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.
10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
11. NUHW agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.

12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. NUHW hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. NUHW agrees to not oppose the prompt Closing of the Sale.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by NUHW.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

NUHW

By:  9/17/19

The Debtors

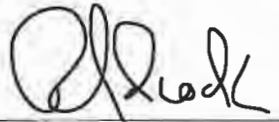
By: 

EXHIBIT 4

Settlement Agreement

On this 17th day of September, 2019 (the “Settlement Date”), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the “Debtors,” and individually a “Debtor”), on the one hand, and the Service Employees International Union - United Healthcare Workers West (“SEIU-UHW”) (collectively, the “Parties”), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the “Agreement”):

Recitals

WHEREAS, on August 31, 2018 (the “Petition Date”), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, the Debtors previously obtained a final order modifying the CBA to reject the terms of the CBA covering O’Connor Hospital and St. Louise Regional Hospital upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the “SCC Closing”) in the SCC CBA Order;

WHEREAS, SEIU-UHW and St. Francis Medical Center and St. Vincent Medical Center currently are parties to a Collective Bargaining Agreement effective November 1, 2018 - October 31, 2021 (the “CBA”), which was modified by the *Order Granting Debtors’ Motion Under § 1113 Of The Bankruptcy Code To Modify, Reject And Terminate The Terms Of Service Employee International Union-United Healthcare Workers-West’s Collective Bargaining Agreements With Certain Debtors Upon The Closing Of The Sale Of Hospitals To Santa Clara County* [Docket No. 1577] that, *inter alia*, removed O’Connor Hospital and Saint Louise Regional Hospital as parties thereto (the “SCC CBA Order”);

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No.

1279] (the “Remaining Hospitals Sale Motion”), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, (“SVDC”), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside (“SMC,” and referred to collectively with SFMC, SVMC and SVDC as the “Remaining Hospitals”) under a Stalking Horse Asset Purchase Agreement (the “APA”) between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation (“Verity”), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the “Sellers”) and Strategic Global Management, Inc., a California Corporation (“SGM”);

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the “Sale”) Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the “California AG”), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, SEIU-UHW has filed proofs of claim (collectively, along with any and all amendments, the “POCs”) in the Bankruptcy Cases against the Debtors, which have been designated with the following claims numbers: #4725, #5160, #6186 and #6221 (Verity Medical Foundation), #4723 and #5117 (Verity Health System of California, Inc.), #4722 and #5140 (St. Vincent Medical Center), #4719 and #5137 (St. Louise Regional Hospital), #4726 and #5150 (St. Francis Medical Center), #5158 and #4718 (O’Connor Hospital);

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of SEIU-UHW;

WHEREAS, on February 1, 2019, the Debtors sent to SEIU-UHW a proposal under § 1113 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented SEIU-UHW with an amended § 1113 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and SEIU-UHW; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and SEIU-UHW have met and negotiated on several occasions about modifying the CBA and the Debtors and SEIU-UHW have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the “Modified CBA”) under § 1113 of the Bankruptcy Code (the “Modification”).
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the “Assumption and Assignment”).
3. SEIU-UHW agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the “Agreed Outcome”) (b) support, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) SEIU-UHW rights and remedies against SGM in connection with x) post-Closing operations at SFMC and SVMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties’ rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.

5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any “cure” obligations independent of any SEIU-UHW claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: each employee who is not offered a job with SGM, including Global Medical Center of Downtown Los Angeles, LLC (“GMCDLA”) or Global Medical Center of South Los Angeles County, LLC (“GMCSLA”), will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. PTO replacement for cancelled hours, required as part of the Full-Guarantee Article 11, shall go back into the PTO bank as of the date used to replace cancellation. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);
 - b. Severance:
 - i) each employee who is not offered employment by SGM, including GMCDLA or GMCSLA, no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted

general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to SEIU-UHW and the Debtors;

ii) notwithstanding anything to the contrary contained in or caused by the SCC CBA Order, each employee who was not offered employment by SCC by the SCC Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the SCC Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the SCC Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Bankruptcy Plan Effective Date, provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to SEIU-UHW and the Debtors;

- c. Grievance Claims: Any grievance claim of an employee or group of employees being represented by SEIU-UHW that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law;
- d. Dmitry Zudzianau is owed a total of \$27,156.99 for previously-issued and uncashed checks for work performed during the period of March 4, 2018 to the Petition Date. Any amount remaining under the §507(a)(4) claim priority cap of \$12,850 for Dmitry Zudzianau will be granted priority claim status with the balance granted general unsecured claim status. These claims will be treated in the same manner as severance claims in paragraph 7(b) above; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) SEIU-UHW does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and SEIU-UHW maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.
8. As between SEIU-UHW and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.
9. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
10. SEIU-UHW agrees to support any provision of the Plan of the Debtors that deals with the material terms of this Agreement and does not contradict this Agreement.
11. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
12. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
13. SEIU-UHW hereby withdraws any outstanding information requests that relate to this Agreement or the § 1113 process.
14. SEIU-UHW agrees to support the prompt Closing of the Sale, including sending to the California AG a copy of the attached hereto as **Exhibit 2**.
15. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by SEIU-UHW.
16. The terms of this Agreement supersede any prior agreement(s) between the Parties.

EXHIBIT 5

Settlement Agreement

On this 19th day of September, 2019 (the "Settlement Date"), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and St. Francis Registered Nurses Association, United Nurses Associations of California/Union of Health Care Professionals, NUHHCE AFSCME AFL-CIO (collectively "UNAC"), (collectively, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, UNAC and one or more of the Debtors are parties to a certain *Labor Management Collective Bargaining Agreement* effective from December 29, 2017 to December 29, 2021 (the "CBA");

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No. 1279] (the "Remaining Hospitals Sale Motion"), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation ("SFMC"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("SVMC"), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, ("SVDC"), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside ("SMC," and referred to collectively with SFMC, SVMC and SVDC as the "Remaining Hospitals") under a Stalking Horse Asset Purchase Agreement (the "APA") between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation ("Verity"), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the "Sellers") and Strategic Global Management, Inc., a California Corporation (along with all affiliates, "SGM");

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, UNAC has filed proofs of claim (collectively, along with any and all amendments, the "POCs") in the Bankruptcy Cases against the Debtors, which have been designated with the following claims numbers: #5911 (Verity Business Services), #5912 (Verity Medical Foundation), #5913 (Verity Health System of California, Inc.), #5915 (St. Vincent Foundation), #5917 (De Paul Ventures, LLC), #5918 (O'Connor Hospital), #5920 (Verity Holdings, LLC), #5925 (O'Connor Hospital Foundation), #5926 (Seton Medical Center Foundation), #5927 (Saint Louise Regional Hospital Foundation), #5928 (St. Francis Medical Center), #5931 (St. Francis Medical Center of Lynwood Foundation), #5932 (De Paul Ventures - San Jose Dialysis, LLC), #5933 (St. Vincent Medical Center), #5934 (Seton Medical Center), and #5936 (St. Louise Regional Hospital);

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of UNAC;

WHEREAS, on February 1, 2019, the Debtors sent to UNAC a document that the Debtors aver constitutes a proposal under § 1113 to modify the CBA and to resolves other issues; UNAC, however, disputes the proposal constitutes a proper § 1113 proposal;

WHEREAS, on or about July 25, 2019, the Debtors presented UNAC with a § 1113 proposal which the Debtors aver constituted an amendment to the § 1113 proposal it delivered on February 1, 2019 and UNAC avers constitutes the first § 1113 proposal and,

along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and UNAC; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and UNAC have met and negotiated on several occasions about modifying the CBA and the Debtors and UNAC have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under § 1113 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. UNAC agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome"); (b) not to oppose, as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) UNAC rights and remedies against SGM in connection with x) post-Closing operations at SFMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any UNAC claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.

7. In further resolution, the following claims shall be allowed and receive the following treatment:

a. PTO: each employee who is not offered a job with KPC Global Medical Center of South Los Angeles, LLC (“GMCSLA”) will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);

b. Severance: each employee who is not offered employment by GMCSLA no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to UNAC and the Debtors;

c. Grievance Claims: Any grievance claim of an employee being represented by UNAC that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSLA in the event that the remedy is or includes reinstatement of the employee after the Closing;

d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by UNAC will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date

through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) UNAC does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and UNAC maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses (post-arbitral or otherwise); and 4) with respect to wages, health care flexible spending accounts, mileage or other non-pension, non-severance and non-educational claims, the Debtors will, prior to the Closing, represent and warrant that all such claims will receive treatment in the same manner as for Severance pursuant to Section 7(b), *supra*. For the avoidance of doubt, the Debtors' health care plans and programs related to UNAC-represented employees will be terminated effective upon the Closing.

8. As between UNAC and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.
9. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
10. UNAC agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.
11. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
12. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.

13. UNAC hereby withdraws any outstanding information requests that relate to this Agreement or the § 1113 process.
14. UNAC agrees to not oppose the prompt Closing of the Sale.
15. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by UNAC.
16. The terms of this Agreement supersede any prior agreement(s) between the Parties.
17. Any modification of this Agreement must be in writing and approved by both Parties.
18. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

For UNAC

Dated: 9/19/19

By: Joseph Guzynski
Joseph Guzynski
UNAC/UHCP Executive Director

Dated: 9/19/2019

DocuSigned by:
By: Ana Bergeron
77318524387343A
Ana Bergeron
SFRNA President

Dated: 9/19/19

By: Jessica Ludd
Jessica Ludd
UNAC/UHCP General Counsel

Dated: 9/19/2019

DocuSigned by:
By: Sandra Marques
Sandra Marques
UNAC/UHCP Staff Representative

DocuSign Envelope ID: 16F8A14B-8E61-494F-AF9D-3C3B1BD5A07B

For the Debtors

By:  _____

EXHIBIT 6

Qualified Bridge Retiree Information							Premium Data ^{1,2}																													
Union / NR	QBR Full Name	Date of Retirement	Date of Birth	Plan Description	Date of Age 65	Assignment End Date ³	Total	2019	QBR	Verity	%	Total	2020	QBR	VHS	Total	2021	QBR	VHS	Total	2022	QBR	VHS	Total	2023	QBR	VHS	Total	2024	QBR	VHS	Months to Assignment End ⁴	Total	Projected Cost	QBR	VHS
O'Connor Hospital CNA	Lisa B.	8/20/2018	6/5/1956	Medical EPO North	6/5/2021	5/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	23	\$18,532.94	\$4,633.12	\$13,899.82	
O'Connor Hospital CNA	Kathryn B.	2/5/2017	1/25/1959	Medical EPO North	1/25/2024	1/31/2024	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	55	\$44,317.90	\$11,079.20	\$33,238.70	
O'Connor Hospital CNA	Olga H.	6/13/2017	5/23/1956	Medical EPO North	5/23/2021	5/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	23	\$18,532.94	\$4,633.12	\$13,899.82	
O'Connor Hospital CNA	Kathleen R.	9/21/2018	3/24/1956	Medical EPO North	3/24/2021	3/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	21	\$16,921.38	\$4,230.24	\$12,691.14	
O'Connor Hospital CNA	Judith T.	6/4/2018	9/10/1955	Medical EPO North	9/10/2020	9/1/2020	\$805.78	\$402.89	\$402.89	50%	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	\$805.78	\$402.89	\$402.89	15	\$12,086.70	\$6,043.35	\$6,043.35	
O'Connor Hospital Non-Rep	Sue M.	8/2/2018	4/2/1955	MEDICAL PPO North	4/2/2020	3/31/2020	\$855.74	\$213.93	\$641.81	25%	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	\$855.74	\$213.93	\$641.81	9	\$7,701.66	\$1,925.37	\$5,776.29	
O'Connor Hospital Local 20 Thrpy+	Thu N.	1/8/2017	11/22/1955	Medical EPO North	11/22/2020	11/30/2020	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	17	\$13,698.26	\$3,424.48	\$10,273.78	
Seton Medical Center CNA	Yolanda M.	5/1/2018	8/5/1957	MEDICAL BSPPO	8/5/2022	7/31/2022	\$1,215.14	\$303.78	\$911.36	25%	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	37	\$44,960.18	\$11,239.86	\$33,720.32	
St. Louise Regional Hospital CNA	Diane T.	5/1/2018	2/18/1957	Medical EPO North	2/18/2022	2/28/2022	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	32	\$25,784.96	\$6,446.08	\$19,338.88	
O'Connor Hospital CNA	Joanne W.	2/1/2019	4/8/1956	Medical EPO North	4/8/2021	4/1/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	22	\$17,727.16	\$4,431.68	\$13,295.48	
Seton Medical Center NUHW	Mary G.	12/31/2018	4/5/1955	Medical EPO North	4/5/2020	3/31/2020	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	9	\$7,252.02	\$1,812.96	\$5,439.06	
																											Total Cost	\$227,516	\$59,899	\$167,617						
																											Total PEPM	\$865.08	\$227.75	\$637.33						

¹ This is not COBRA

² Rates are based on COBRA equivalent rates for QBR Only coverage

¹ This is not COBRA
² Rates are based on COBRA equivalent rates for QBR Only coverage
³ Assignment end date is to age 65
⁴ Months to end date calculated from 7/1/2019

EXHIBIT 7-A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	Case No. 09-13395 (CSS)
PTC ALLIANCE CORP., <i>et al.</i> , ¹	)	Jointly Administered
)	
_____ Debtors.	)	Re: Docket No. 847

**ORDER PURSUANT TO 11 U.S.C. §§ 365, 1113, AND 1114 AUTHORIZING THE
(I) MODIFICATION, ASSUMPTION AND ASSIGNMENT OF COLLECTIVE
BARGAINING AGREEMENTS AT ALLIANCE, OHIO AND DARLINGTON,
PENNSYLVANIA AND (II) TERMINATION OF CLOSING AGREEMENTS
AT MONACA, PENNSYLVANIA AND CHICAGO HEIGHTS, ILLINOIS**

Upon consideration of the Motion of the Debtors, PTC Alliance Corp., *et al.*, pursuant to 11 U.S.C. §§ 365, 1113, and 1114 for an Order Authorizing the (I) Modification, Assumption and Assignment of Collective Bargaining Agreements at Alliance, Ohio and Darlington, Pennsylvania and (II) Termination of Closing Agreements at Monaca, Pennsylvania and Chicago Heights, Illinois (the “Motion”),² and it appearing that: (i) appropriate notice of the Motion has been given; (ii) the Court has jurisdiction to consider the relief requested pursuant to 28 U.S.C. §§ 157 and 1334; and (iii) it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors, and after due deliberation and good and sufficient cause appearing, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are: PTC Alliance Corp. (2395), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090; Alliance Tubular Products Co. (7185), with a principal executive office located at 640 Keystone Street, Alliance, OH 44601; PACD Acquisition LLC (3405), with a principal executive office located at 4400 West 3rd, Beaver Falls, PA 15010; Enduro Industries, Inc. (4669), with a principal executive office located at 2001 Orchard Avenue, Hannibal, MO 64031; PTC Tubular Products LLC (9342), with a principal executive office located at 23041 E. 800 North Road, Fairbury, IL 61739-8824; Mid-West Mfg. Co. (0660), with a principal executive office located at 475 East 16th Street, Chicago Heights, IL 60411; and PT/VW Corporation (9385), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090.

² Capitalized terms used but not defined herein shall have the same meanings given to them in the Motion.

1. The Motion be, and hereby is, GRANTED.
2. Any objections to the Motion, including any relief requested therein, are hereby denied and overruled with prejudice.
3. Pursuant to 11 U.S.C §§ 1113 and 1114, the Debtors are hereby authorized to modify the terms of the Alliance Agreement in accordance with the Alliance MOA effective as of the closing of the Proposed Sale.
4. Pursuant to 11 U.S.C. § 365, the Debtors are hereby authorized to assume and to assign the Alliance Agreement as modified by, and in accordance with, the Alliance MOA to Acquisition Co., effective as of the closing of the Proposed Sale.
5. Pursuant to 11 U.S.C §§ 1113 and 1114, the Debtors are hereby authorized to modify the terms of the Darlington Agreement in accordance with the Darlington MOAs effective as of the closing of the Proposed Sale.
6. Pursuant to 11 U.S.C. § 365, the Debtors are hereby authorized to assume and to assign the Darlington Agreement as modified by, and in accordance with, the Darlington MOAs to Acquisition Co., effective as of the closing of the Proposed Sale.
7. Pursuant to 11 U.S.C. §§ 1113 and 1114, the Debtors are hereby authorized to terminate the Mid-West Closing Agreement in accordance with the Mid-West MOA effective as of the closing of the Proposed Sale.
8. Pursuant to 11 U.S.C. §§ 1113 and 1114, the Debtors are hereby authorized to terminate the Monaca Closing Agreement in accordance with the Monaca MOA effective as of the closing of the Proposed Sale.
9. The Monaca Closing Agreement and the Mid-West Closing Agreement are not being assumed by the Debtors or assigned to Acquisition Co. as part of the Proposed

Sale. Accordingly, Acquisition Co. will have no liability or obligation under either of such Closing Agreements, including without limitation any obligations or liabilities relating to pensions or retiree health benefits; provided, however, nothing herein shall release the Company of (i) its obligations to provide continuing benefit insurance coverage to retirees and their dependents, in accordance with the MOAs and Closing MOAs, until the VEBA becomes operational but in no event will coverage extend beyond December 31, 2010, and (ii) its obligations to make contributions to the VEBA as set forth in the MOAs and Closing MOAs.

10. The Debtors' 1113/1114 Motions, filed at Docket Nos. 693 and 733, shall be, and hereby are, withdrawn.

11. The Debtors are hereby authorized and empowered to take such steps as may be necessary to implement and effect the terms and requirements of this Order.

Dated: 8/11/10

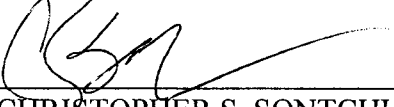

CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 7-B

EXHIBIT A

***July 17, 2010 Company-USW & USW Local 3059-01
Memorandum of Understanding ("MOA")***

**Between
ALLIANCE TUBULAR PRODUCTS CO.
(Alliance, OH Plant)
And
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED, INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-
CIO, CLC On Behalf of Its Local 3059-01**

Alliance Tubular Products, Co. ("Company") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO CLC, on behalf of itself and its Local Union No. 3059-01 (collectively called "Union" or "USW"), hereby agree to a new four (4) year Company-Union labor agreement which shall expire at 12:01 am on July 28, 2014, with the new labor agreement to become effective conditioned upon and on the date of the closing of the sale referred to in Paragraph 16 below. This new labor agreement will be identical to the current labor agreement, dated and effective November 28, 2007, except for appropriate changes in dates and the changes set forth below:

1. **SECTION I -- Paragraph 3.** Amend existing language as follows to replace "the chauffeur" with "janitors" as a bargaining unit exclusion, but permit the three displaced janitors six months to successfully bid into other jobs and shifts, take a modified bump, or be placed in the labor gang after the time frame listed above has expired, whichever is applicable, and consistent with the November 28, 2007 labor agreement, and they will receive the greater of the hourly rates of those jobs.

3. The term "employee" as used in this Agreement will include all production and maintenance employees employed at the Company's Alliance, Ohio Plant, excluding clerical employees, timekeepers, guards, janitors, and nurses, and all supervisory employees at or above the rank of foreman.

2. **SECTION IV – Wages – and Appendix A.** Amend existing Section IV base tables and Appendix A tables to reduce, across-the-board, all current and new employee straight time hourly wages by five percent (5%). In addition to any scheduled wage increases, the Company will restore those wage cuts, as rounded off to the nearest whole cent, as follows, during the new labor agreement:

<u>Effective Date</u>	<u>Percent Restored</u>
1st Anniversary of Effective Date of this MOA	Two Point Five Percent (2.5%)

2nd Anniversary of Two Point Five Percent (2.5%)
Effective Date of this MOA

3. **SECTION XIII -- Vacations -- Paragraph 1.** Amend existing language as follows to require an employee to work at least one (1) day in a calendar year to be eligible for vacation in that year, to lower the percentage of pay periods for eligibility from fifty percent (50%) to thirty percent (30%), and to permit an employee who fails to receive earnings in thirty percent (30%) of the pay periods to receive up to one (1) week of vacation if such employee would otherwise be entitled to that amount by seniority:

1. *Eligibility.* To be eligible for a vacation in any calendar year during the term of this Agreement, the employee must:

- a. Have one (1) year or more of continuous service;
- b. Work in that calendar year;
- c. Have received earnings in at least thirty percent (30%) of the pay periods in the preceding calendar year; except that, in the case of an employee who completes one (1) year of continuous service in the current calendar year, s/he will have received earnings in at least thirty percent (30%) of the pay periods during the twelve (12) months following the date of his or her original employment; and, further, except that an employee who received earnings in less than thirty percent (30%) of the pay periods during such twelve (12) month period will receive one (1) week of vacation so long as s/he is entitled to at least one (1) week according to his or her Plant seniority record, and provided, in determining vacation eligibility under this paragraph an employee who incurred a compensable disability in the preceding calendar year and did not receive earnings in one or more pay periods in that year because of such disability, will have the number of such pay periods included with the number of pay periods in which s/he received earnings for the year in which such disability occurred. The continuous service record of each employee will be governed by his or her Plant seniority record; and
- d. Once an employee has become eligible for vacation benefits, the employee will not subsequently lose the right to vacation pay by reason of the employee's death, resignation, discharge, break in service, or termination of this Agreement.

4. **SECTION XIV -- Seniority -- New Paragraph 6.** Add the following language as new Paragraph 6 to increase Company flexibility to make needed temporary transfers and renumber the remaining paragraphs of this Section, including renumbering any internal references within those renumbered paragraphs for accuracy:

6. The Union recognizes the Company's need to maintain uninterrupted production, therefore, in the event of an emergency or unforeseen daily absence, the Company will attempt to fill the vacancy through APPENDIX B, TEMPORARY ASSIGNMENT language first contained in the November 28, 2007 labor agreement. If, after exhausting the language listed above, the vacancy cannot be filled, the Company may fill the vacancy by using the most junior qualified employee from that shift.

5. **SECTION XXIII – Severance Allowance – Side Letter Agreement.** Retain existing Section XXIII, Severance Allowance. The Company and Union will execute a side letter which provides that there will be no claim for severance pay in connection with a transaction in which the Company satisfies its obligations under Appendix P, Successorship.

6. **SECTION XXVII – Complete Agreement – New Section XXVII.** Add the following language as new Section XXVII – Complete Agreement and renumber remaining sections:

1. This Agreement shall be considered a new labor agreement between the Company and the Union with respect to the wages, hours, and working conditions of all employees.

2. No modification of this Agreement will be effective unless signed by authorized officials of the Company and Union.

7. **SECTION XXVI – Termination Date.** Replace “October 2, 2011” with the new expiration date of “July 28, 2014.”

8. **Insurance and Pension Benefits Appendix-- New Appendix AA – Welfare Benefits Plans.** Pre-October 1, 2007 employees will, so long as they remain in the insurance plan in effect on January 1, 2010, pay monthly the following amounts:

Single:	\$120
Employee +1:	\$130
Employee +2	\$140
Employee +3	\$150

In addition, based upon proof of alternative coverage, any such employee may opt out of this existing Company-provided plan, and any employee who does will receive, in exchange, ten percent (10%) of the then prevailing individual coverage COBRA group insurance rate from the Company.

9. **Insurance and Benefit Appendix – Pensions & 401(k) Plan – New Appendix BB – 401(k) Plans.** Replace the “Pensions” and “Voluntary 401(k) plan” portions of the unlettered appendix to the existing Alliance labor agreement with the attached new Appendix BB containing 401(k) plans for existing employees and future hires, with the understanding and agreement that the Union will not oppose the termination of the existing pension plan, and,

further, that the specified 401(k) plans will be the sole and exclusive retirement plans provided by the Company to employees after the new labor agreement becomes effective.

10. **Appendices S & X -- TUBE Share Program & New Incentive Program Add-On to Appendix S or X.** Continue existing Appendices S and X, the existing TUBE Share Program following the assumption of the labor agreement described in Paragraph 16 until changed by Company-Union agreement on a replacement plan or an arbitrator's decision on a replacement plan, as stated below. During the first three (3) months following the assumption of the labor agreement described in Paragraph 16, the Company and Union will meet and attempt to reach agreement on a replacement incentive program designed to award incentive earnings equivalent to an average hourly target rate of two dollars (\$2.00) for achieving reasonably based group profitability, productivity, quality, quantity, tonnage, and other reasonable business milestones, to be distributed among actively employed employees in proportion to the hours each employee worked during the incentive time period. During this same three (3) month period, because of the possibility that the parties may fail to reach agreement on a replacement incentive program and the need for an expedited arbitration award to confirm the new program, the Company and Union will select an impartial arbitrator with an industrial engineering background and/or demonstrated experience in plant manufacturing incentive bonus plans and arrange an arbitration hearing for a date as close as practicable to the end of the initial three (3) month period.

Any agreed replacement program will become effective at or before the end of the initial three (3) month period, as the parties agree. If no agreement is reached by the end of those three (3) months, however, the alternate Company and Union versions of the new program will be grieved and appealed immediately to arbitration, as provided elsewhere in this Agreement. Within one (1) week following the arbitration hearing, and no later than two (2) months after the close of the initial three (3) month period, unless otherwise agreed, the previously selected Arbitrator will decide whether the Company or Union plan is the more reasonable, realistic program, on the basis of all relevant facts, by choosing only between the final versions of the two complete programs offered to each other by the Company and Union at or prior to the end of the initial three (3) month period. The Arbitrator's decision will be a simple award, with no written decision, that simply selects one plan over the other, without any modification of the plan selected.

This language will be added to existing Appendix S or X.

11. **APPENDIX P – Memorandum of Understanding Regarding Successorship – New Appendix P.** Replace existing Appendix P with the attached new Appendix P.

12. **New Appendix CC – Patient Protection and Affordable Care Act.** Add the attached new Appendix CC to the new labor agreement.

13. **New Appendix DD.** Add the attached appendix as new Appendix DD to the new labor agreement. In exchange for the payment specified in new Appendix DD, the Company will have no further obligation to provide any existing or future retirees with Company-provided

retiree medical or other insurance coverage (also called "OPEB," short for Other Post-Employment Benefits).

14. **Investment Commitment – New Appendix EE.** Add the attached new Appendix EE to the new labor agreement.

15. **Transferred Employees – Exhibit 1.** The Company will take the actions specified in the attached Exhibit 1, conditioned upon the sale and on the effective date of the sale referred to in Paragraph 16 below.

16. **Labor Agreement Assumption.** This MOA will become effective on the closing of the sale by the Company of its assets to BD PTC Acquisitions, Inc. ("Buyer"), which is an entity created by Black Diamond Capital Management LLC for the purpose of acquiring the Company's assets. The Union, on its own behalf and on behalf of its members, agrees to the assignment by the Company and the assumption of the new labor agreement by the Buyer on the effective date of the acquisition of the Alliance plant assets, with the Buyer to be fully responsible for all obligations arising under the new labor agreement after that date, and with the Company to be fully responsible for any such obligations arising on or prior to that date.

17. **Bankruptcy Court Approval.** The Company has filed a petition pursuant to Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court in Wilmington, Delaware at Case No. 09-13395 (CSS). Following ratification of this MOA, as stated below, the Company shall promptly file a motion with the Bankruptcy Court in this matter to approve this MOA and shall furnish the Union with a draft of such motion prior to filing. Further, upon entry of an order approving the MOA, the Company will withdraw, with prejudice, its motion filed under Sections 1113 and 1114 of the Bankruptcy Code, 11 U.S.C. 1113, 1114 with respect to the Alliance employees and retirees and Mid-West retirees.

18. **Grievance Settlements.** Subject to Bankruptcy Court approval of this MOA as addressed in Paragraph 17, with regard to the Drummond and vacation eligibility grievances, the Company will take all necessary steps to make the payments specified here. In the Drummond case, the Company will pay its portion of the Arbitrator's fee/expense statement and the Arbitrator-directed payment to Mr. Drummond. In the vacation eligibility grievances, the settlements will be on a non-precedent setting basis, and payment of denied 2009 and 2010 vacation pay will be made directly to the surviving spouse of the employee who died during 2009 and to employees who failed to receive 2009 and/ or 2010 vacation.

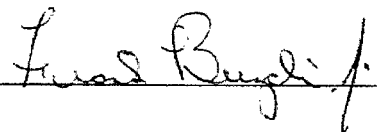
19. **Closing Bonuses.** Provided that this MOA, in its entirety, is ratified by the Local 3059-01 membership on or before July ___, 2010, and it otherwise becomes effective as stated here, a lump sum bonus of two thousand dollars (\$2000.00), less authorized or legally required deductions, will be paid on the payday following the closing of the transaction described in Paragraph 16, and a second lump sum bonus of one thousand dollars (\$1000.00), less authorized or legally required deductions, will be paid on the payday following the first year anniversary of such closing, to every employee accruing seniority as of the closing date for the first bonus and the first year anniversary for the second bonus.

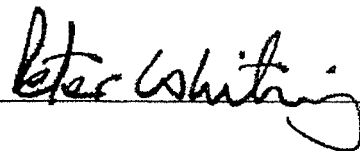
20. **Printing.** The Company will print, as soon as practicable after the Effective Date of this MOA, pocket-sized copies of an amended and restated collective bargaining agreement reflecting the terms and conditions set forth in this MOA.

21. **Other Proposals.** Except for matters agreed upon in this MOA, the Company and Union have withdrawn all other bargaining proposals.

This MOA has been tentatively agreed between the Company and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("International Union"), and its affiliated Local 3059-01, by and through the International and the USW Local 3059-01 bargaining committee officials whose signatures appear below. The International Union and the USW Local 3059-01 bargaining committee have agreed to unanimously recommend ratification of this MOA to the membership of USW Local 3059-01 in connection with the transaction described in paragraph 16 of this MOA. As addressed above, this MOA is subject to and will become effective only after (x) ratification by the Local 3059-01 membership, (y) the closing of the transaction described in Paragraph 16, and (z) entry of an order of the Bankruptcy Court approving this MOA.

UNITED STEEL, PAPER AND FORESTRY, ALLIANCE TUBULAR PRODUCTS, CO.
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

By 

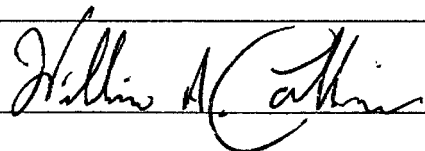
By 

BARGAINING COMMITTEE OF LOCAL
UNION NO. 3059-01 OF THE UNITED
STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION

By _____



By _____



APPENDIX P

MEMORANDUM OF UNDERSTANDING REGARDING SUCCESSORSHIP

1. In the case of a sale of the stock of PTC Alliance Corp., PTC Alliance Corp. will ensure that any such buyer is made aware of the contractual obligations of its subsidiary, Alliance Tubular Products Company ("Alliance Tubular"), to continue to honor the labor agreement between Alliance Tubular and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied, Industrial and Service Workers International Union, and its affiliated Local 3059-01 ("Union"), for the remaining lifetime of the Agreement.

2. In the case of an asset sale, the Company agrees that it will not sell, convey, assign or otherwise transfer, using any form of transaction, any Plant or significant part thereof covered by this Agreement (any of the foregoing, a Sale) to any other party (Buyer), unless the following conditions have been satisfied prior to the closing date of the Sale:

- a. the Buyer shall have entered into an agreement with the Union recognizing it as the bargaining representative for the Employees working at the plant(s) to be sold; and the Buyer shall have entered into an agreement with the Union establishing the terms and conditions of employment to be effective as of the closing date of the Sale; or
- b. the Buyer shall have assumed the Agreement.

3. This Section shall not apply to any transactions solely between the Company and any of its affiliates, or to a public offering of registered securities.

APPENDIX AA

WELFARE BENEFITS PLANS

A. *In General*

1. Effective upon signing this Agreement and for the duration of this Agreement, the parties agree on the following Welfare Benefit Plans for the employees under this Agreement. These Welfare Benefit Plans include group health, dental, vision and life insurance coverage as summarized below. The Company will determine the insurance carrier, if any, for the benefits shown below and any carrier changed by the Company will continue to provide these benefits during this Agreement. To the extent an inconsistency arises between language in this Appendix and the underlying insurance contract with regard to claim notification and/or processing procedures only, however, the terms of the applicable insurance contract will prevail.

2. The Company will maintain three Welfare Benefit Plans. All employees shall be entitled to a single monthly credit of \$62.50. Employee contributions for these plans will remain unchanged for the duration of this Agreement.

3. Pre-October 1, 2007 hires shall be eligible to participate in the Welfare Benefit Plan in effect at the Alliance facility as of January 1, 2010. So long as an employee remains in this plan, the employee shall pay the following amounts monthly:

Single:	\$120
Employee +1:	\$130
Employee +2:	\$140
Employee +3:	\$150

4. The Company shall maintain a 90/10 and an 80/20 plan for all Post-October 1, 2007 hires and for those Pre-October 1, 2007 hires who elect to participate in such plan. The election by a Pre-October 1, 2007 hire to participate in the 90/10 plan or 80/20 plan can be made on any enrollment date, however, once such an election is made, that election shall be binding for the duration of this Agreement and the employee may not move back to the plan in existence on January 1, 2010.

5. Except as otherwise required by laws such as the Family and Medical Leave Act of 1993 ("FMLA"), the Company's obligation to pay for the insurance coverage outlined below for employees whose active employment ceases temporarily or permanently (except for a quit, retirement, death, or discharge for cause) will terminate as follows:

YEARS OF SERVICE	INSURANCE END DATE
Less than 2 years	End of calendar month in which employment ends
2 but less than 10 years	End of sixth (6th) calendar month after employment ends
10 or more years	End of twelfth (12th) calendar month after employment ends

In the event of a quit, retirement, death, or discharge for cause, the Company's obligation will cease as of the end of the calendar month in which employment terminates, irrespective of the employee's years of service.

To the extent required by law, however, after the Company's insurance payment obligation terminates, an employee will have the opportunity to continue group insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") by prepaying the portion of the monthly premiums established by the Company consistent with COBRA.

6. During the term of this Agreement, federal and/or state laws may be passed to require the Company to provide certain medical or other related benefits for its employees, benefits that may duplicate or overlap similar benefits to be provided by this Agreement. If this happens, and to the extent these laws do not permit the Company to credit cost and benefits under this Agreement against those required by law, upon providing the Union with documentation of such additional costs to the Union's satisfaction, the Company may reduce the duplicated benefits to be provided by this Agreement without violating this Agreement to avoid any actual, practical, or otherwise unreasonable duplication of cost or benefits.

B. *Benefits*

1. *Sickness & Accident Benefit.*

The Sickness & Accident Weekly Benefit under the Program of Insurance Benefits (PIB) will be \$350 per week for disabilities.

2. *Life Insurance Benefit.*

The Life Insurance provisions will be as follows:

Life insurance coverage for active employees will be \$30,000.

3. Medical Plans.

(a) **Eligibility.** After working 720 hours, any employee will be eligible to participate in the health, dental and vision plans in effect and summarized at the end of this Appendix during this Collective Bargaining Agreement. The employee will have a choice of either Option I or Option II in connection with health and dental benefits.

(b) **Company Contribution.** Any employee who elects to participate in the medical plans will receive a Company contribution of \$62.50 per month towards the cost of their medical benefits.

(4) **Summary of Medical, Dental, and Vision Plans for 90/10 and 80/20 Plans.**

(i) Summary of PPO Benefits – Option I

With your PPO, or Preferred Provider Organization, if you receive services from a provider who is in the PPO network, you'll receive the highest level of benefits. If you receive services from a provider who is not in the PPO network, you'll receive the lower level of benefits. In either case, you coordinate your own care. There is no requirement to select a Primary Care Physician (PCP) to coordinate your care. Below are specific benefit levels that apply during your benefit period.

PTC Alliance

Option I

Benefit	Network	Out-of-Network
Benefit Period	Calendar Year	
Deductible (per benefit period)		
Individual	\$200	\$600
Family	\$600	\$1,800
Plan Payment Level -- Based on the provider's reasonable charge (PRC)	90% until out-of-pocket maximum is met; then 100%	70% until out-of-pocket maximum is met; then 100%
Out of Pocket Maximums		
Individual	\$600	\$1,800
Family	\$1,800	\$3,600
Lifetime Maximum (per person)	\$1,000,000	
Primary Care Physician Office Visits	100% after \$20 copayment	70% after deductible
Specialist Office Visits	100% after \$25 copayment	70% after deductible
Preventive Care		
<i>Adult</i>		
Routine physical exams	100% after \$20 copayment	Not Covered
Adult Immunizations	90%	70% after deductible
Routine gynecological exams	100% after \$20 copayment	70% after deductible

Benefit	Network	Out-of-Network
Annual Pap Test	90%	70% after deductible
Annual Mammogram	90%	70% after deductible
<i>Pediatric</i>		
Routine physical exams	100% after \$20 copayment	70% after deductible
Pediatric Immunizations	90%	Not Covered
Emergency Room Service	90% after \$50 copayment (waived if admitted) (copayment of \$30 for Instacare or other ER alternative instead of ER)	
Spinal Manipulations	90%	70% after deductible
	Limit: 13 visits/benefit period	
Physical Medicine	90%	70% after deductible
Speech Therapy	90%	70% after deductible
Occupational Therapy	90%	70% after deductible
Allergy Extracts and Injections	90%	70% after deductible
Ambulance	90% deductible does not apply	
Assisted Fertilization Procedures	Not Covered	
Dental Services Related to Accidental Injury	90%	70% after deductible
Diabetes Treatment	90%	70% after deductible
Diagnostic Services (including routine)	90%	70% after deductible
<i>Advanced Imaging</i> (MRI, CAT Scan PET Scan, etc.)		
<i>Basic Diagnostic Services</i> (standard imaging, diagnostic medical, lab/pathology, allergy testing)	90%	70% after deductible
Durable Medical Equipment, Orthotics and Prosthetics	90%	70% after deductible
Enteral Formulae	90%	70% after deductible
Home Infusion Therapy	90%	70% after deductible
Home Health Care	90%	70% after deductible
	Limit 100 visits/benefit period	
Hospice	90%	70% after deductible
Hospital Services		
Inpatient	90%	\$250 inpatient copayment then 70% after deductible
Outpatient	90%	70% after deductible
Infertility Counseling, Testing and Treatment (for medical conditions only)	90%	70% after deductible

Benefit	Network	Out-of-Network
Maternity Services		
Inpatient	90%	70% after deductible
Initial Visit	100% after \$20 Copayment	70% after deductible
Delivery	90%	70% after deductible
Medical Expenses	90%	70% after deductible
Surgical Expenses		
Facility	90%	70% after deductible
Professional	90%	70% after deductible
Mental Health		
Inpatient	90%	\$250 inpatient copayment then 70% after deductible
	Limit: 30 days/benefits period: 90 days/lifetime	
Outpatient	100% after \$20 copayment	70% after deductible
	Limit: 60 visits/benefit period	
Private Duty Nursing (excludes inpatient)	90%	70% after deductible
Respiratory Therapy	90%	70% after deductible
Skilled Nursing Facility Care	90%	70% after deductible
	Limit 100 days/benefit period	
Substance Abuse		
Inpatient Detoxification	90%	70% after deductible
	Limit: 7 days/admission: 1 admission/lifetime	
Inpatient Rehabilitation	90%	\$250 inpatient copayment then 70% after deductible
	Limit: 30 days/benefit period	
	Lifetime limit \$10,000 - 1 time admission/lifetime	
Outpatient	100% after \$20 copayment	70% after deductible
	Limit: 60 visits/benefit period	
Therapy Services (Cardiac Rehab, Infusion Therapy and Dialysis)	90%	70% after deductible
Transplant Services	90%	70% after deductible
Precertification Requirements	Performed by Member Penalty for Failure to Per-Certify: \$300 per confinement	
Premier Prescription Drug Program	Retail Drugs \$10 generic copayment \$20 brand formulary copayment \$40 copayment brand non-formulary copayment \$100 specialty copayment Mandatory Generic 30-day Supply Maintenance Drugs through Mail Order \$20 generic copayment \$40 brand formulary copayment \$80 copayment brand non-formulary copayment	

Benefit	Network	Out-of-Network
	\$200 specialty copayment Mandatory Generic 90-day Supply	

(ii) *Summary of PPO Benefits -- Option II*

With your PPO, or Preferred Provider Organization, if you receive services from a provider who is in the PPO network, you'll receive the highest level of benefits. If you receive services from a provider who is not in the PPO network, you'll receive the lower level of benefits. In either case, you coordinate your own care. There is no requirement to select a Primary Care Physician (PCP) to coordinate your care. Below are specific benefit levels that apply during your benefit period.

PTC Alliance

Option II

Benefit	Network	Out-of-Network
Benefit Period	Calendar Year	
Deductible (per benefit period)	\$300	\$900
Individual	\$900	\$2,700
Family		
Plan Payment Level -- Based on the provider's reasonable charge (PRC)	80% until out-of-pocket maximum is met; then 100%	60% until out-of-pocket maximum is met; then 100%
Out of Pocket Maximums		
Individual	\$900	\$2,700
Family	\$2,700	\$5,400
Lifetime Maximum (per person)	\$1,000,000	
Primary Care Physician Office Visits	100% after \$20 copayment	60% after deductible
Specialist Office Visits	100% after \$25 copayment	60% after deductible
Preventive Care		
Adult		
Routine physical exams	100% after \$20 copayment	Not Covered
Adult Immunizations	80%	60% after deductible
Routine gynecological exams	100% after \$20 copayment	60% after deductible
Annual Pap Test	80%	60% after deductible
Annual Mammogram	80%	60% after deductible
Pediatric		
Routine physical exams	100% after \$20 copayment	60% after deductible
Pediatric Immunizations	80%	Not Covered
Emergency Room Service	80% after \$50 copayment (waived if admitted) (copayment of	

Benefit	Network	Out-of-Network
	\$30 for Instacare or other ER alternative instead of ER)	
Spinal Manipulations	80%	60% after deductible
	Limit: 13 visits/benefit period	
Physical Medicine	80%	60% after deductible
Speech Therapy	80%	60% after deductible
Occupational Therapy	80%	60% after deductible
Allergy Extracts and Injections	80%	60% after deductible
Ambulance	80% deductible does not apply	
Assisted Fertilization Procedures	Not Covered	
Dental Services Related to Accidental Injury	80%	60% after deductible
Diabetes Treatment	80%	60% after deductible
Diagnostic Services (including routine) Advanced Imaging (MRI, CAT Scan PET Scan, etc.)	80%	60% after deductible
Basic Diagnostic Services (standard imaging, diagnostic medical, lab/pathology, allergy testing)	80%	60% after deductible
Durable Medical Equipment, Orthotics and Prosthetics	80%	60% after deductible
Enteral Formulae	80%	60% after deductible
Home Infusion Therapy	80%	60% after deductible
Home Health Care	80%	60% after deductible
	Limit 100 visits/benefit period	
Hospice	80%	60% after deductible
Hospital Services		
Inpatient	80%	\$250 inpatient copayment then 60% after deductible
Outpatient	80%	60% after deductible
Infertility Counseling, Testing and Treatment (for medical conditions only)	80%	60% after deductible
Maternity Services		
Inpatient	80%	60% after deductible
Initial Visit	100% after \$20 Copayment	60% after deductible
Delivery	80%	60% after deductible
Medical Expenses	80%	60% after deductible
Surgical Expenses		
Facility	80%	60% after deductible

Benefit	Network	Out-of-Network
Professional	80%	60% after deductible
Mental Health Inpatient	80%	\$250 inpatient copayment then 60% after deductible
	Limit: 30 days/benefits period: 90 days/lifetime	
Outpatient	100% after \$20 copayment	60% after deductible
	Limit: 60 visits/benefit period	
Private Duty Nursing (excludes inpatient)	80%	60% after deductible
Respiratory Therapy	80%	60% after deductible
Skilled Nursing Facility Care	80%	60% after deductible
	Limit 100 days/benefit period	
Substance Abuse Inpatient Detoxification	80%	60% after deductible
	Limit: 7 days/admission: 1 admission/lifetime	
Inpatient Rehabilitation	80%	\$250 inpatient copayment then 60% after deductible
	Limit: 30 days/benefit period	
	Lifetime limit \$10,000 - 1 time admission/lifetime	
Outpatient	100% after \$20 copayment	60% after deductible
	Limit: 60 visits/benefit period	
Therapy Services (Cardiac Rehab, Infusion Therapy and Dialysis)	80%	60% after deductible
Transplant Services	80%	60% after deductible
Precertification Requirements	Performed by Member Penalty for Failure to Per-Certify: \$300 per confinement	
Premier Prescription Drug Program	Retail Drugs	
	\$10 generic copayment	
	\$20 brand formulary copayment	
	\$40 copayment brand non-formulary copayment	
	\$100 specialty copayment	
	Mandatory Generic	
	30-day Supply	
	Maintenance Drugs through Mail Order	
	\$20 generic copayment	
	\$40 brand formulary copayment	
	\$80 copayment brand non-formulary copayment	
	\$200 specialty copayment	
	Mandatory Generic	
	90-day Supply	

(iii). **Dental Plan
 Comparison Chart**

Benefits currently available through Guardian Life Dental	Option 1		Option 2	
	Preferred Provider	Non- preferred Provider	Preferred Provider	Non- preferred Provider
Annual Deductable				
Individual	\$50	\$75	\$50	\$75
Family Maximum	\$150	\$225	\$150	\$225
Calendar Year Maximum	\$1,000		\$1,200	
Preventative/Diagnostic Services	100%-no deductible	100%-no deductible	100%-no deductible	100%-no deductible
Cleanings (limit 2 per year)				
Fluoride Treatment (1 per year under age 19)				
Oral Exams (limit 2 per year)				
Full mouth x-rays (one set in 60 months)				
Bitewing x-rays (adults-1/year; children 2/year)				
Minor Restorative Services	90%-no deductible	90%-no deductible	1st year- 70% after deductible	1st year- 70% after deductible
			2nd year- 80% after deductible	2nd year- 80% after deductible
Fillings, Extractions, Palliative Treatment				
Sealants (under the age of 14)				
Denture Repair (once in 38 months)				
Periodontics Scaling (4 treatments/period)				
Space Maintainers (covered to age 19)				
Major Services	Not Covered		1st year- 50% after deductible	1st year- 50% after deductible
Periodontics, Endodontics, Bridges			2nd year- 60% after	2nd year- 60% after

			deductible	deductible
Crowns, Inlays/Veneers, Onlays				
Oral Surgery, Anesthesia				
Replacement of Crowns, Inlays, Onlays (once every 5 years)				
Root Canal (one per tooth)				
Denture adjustment (min 8 months after installation)				
Denture reline & rebase (once every 36 months)				
ORTHODONTIA	Not Covered		50% - no deductible	50% - no deductible
Limited to children under 19				
Lifetime Maximum			\$1,500	

(iv) Vision Benefits

Benefits currently available through Vision Benefits of America (VBA)

Exams	12 months	
Lenses	12 months	
Frames	24 months	
Benefits	In Network	Out of Network
Exams		
Eye Exams	100% after %5 co-pay	\$35
Lenses		
Single	100% after %5 co-pay	\$30
Bifocal	100% after %5 co-pay	\$40
Trifocal	100% after %5 co-pay	\$60
Lenticular	100% after %5 co-pay	\$80
Frames	100% within the program's \$40 wholesale allowance (approximately \$80 - \$120 retail)	\$40

Contact Lenses		
In Lieu of Glasses	\$100	\$100
Medically Required	UCR**	\$250
** Usual, Customary and Reasonable		
***Cost of the Exam is included in the Contact Lense Allowance		

You can call VBA at 1-800-432-4966 to initiate your vision benefits

(v) Costs of Medical, Dental and Vision Benefits

Medical 90-10 Option 80-20 Option

Employee	\$50	\$25
Employee + 1	\$100	\$50
Employee + 2 or more	\$140	\$70

Dental Option 1 Option 2

Employee	\$12.10	\$22.84
Employee + 1	\$23.45	\$44.51
Employee + 2 or more	\$44.79	\$81.25

Vision

Employee	\$4.70
Employee + 1	\$8.35
Employee + 2 or more	\$11.35

* * * * *

APPENDIX BB

401(k) PLANS

I. 401(k) Plan for Employees Hired Prior to October 1, 2007

A. For employees hired prior to October 1, 2007, instead of a pension plan, the Company will continue its 401(k) Plan with the following elements:

- Payroll deduction
- Multiple investment options
- A contribution level up to the maximum allowed by federal law
- All contributions will be pre-tax
- Quarterly statements showing account levels
- Provisions to allow investment among the funds in 1% increments
- Provisions for changing investment directions, i.e., moving money from one fund to another or changing the direction of future investments

B. For such employees, the Company will contribute \$1.30 per hour for each hour worked during this Agreement. For purposes of this Appendix, "hours worked" shall mean hours worked (including straight time and overtime hours); vacation and holiday hours at the rate of eight (8) hours for each holiday or day of vacation; hours on Union business; and hours, at the rate of eight (8) hours for each day while receiving workers' compensation or sickness & accident benefits based on the number of days absent from work while receiving such benefits.

II. 401(k) Plan for Employees hired on or after October 1, 2007

A. Overview. The Company will make a 401(k) payroll deduction Savings Plan available to all actively employed bargaining unit employees. This will be the sole retirement plan of the Company. The Company does not sponsor a pension plan. The full Plan is contained in the Summary Plan Description Booklet dated January 1, 2007. Plan design, eligibility requirements, form design, vesting provisions, content, investment and all other provisions will be established at the discretion of the Company and be subject to change by the Company. The Plan design established by the Company will continue to contain the following major provisions:

- Payroll deduction
- Multiple investment options
- A contribution level up to the maximum allowed by federal law
- All contributions will be pre-tax

- Quarterly statements showing account levels
- Provisions to allow investment among the funds in 1% increments
- Provisions for changing investment directions, i.e., moving money from one fund to another or changing the direction of future investments

The Company will provide instruction to those employees interested in participating in the 401(k) Savings Plan.

B. Plan Details.

(1) After thirty (30) calendar days of uninterrupted employment, employees will be eligible to participate in the 401(k) Plan, as may be amended by the Company from time to time.

(2) If such employees make elective deferrals of 2% or more to the 401(k) Plan, they will be eligible to receive a matching contribution equal to 25% of the first 6% of their elective deferral amount ("Employer Matching Contributions").

(3) Employer Matching Contributions will be subject to a six-year graded vesting schedule. Your service with Alliance Tubular Products, LLC prior to the Effective Date of this Agreement will not be taken into account for purposes of determining your eligibility for, or the amount of, any contribution under the Plan. However, such prior service will be taken into account for the limited purpose of determining the extent to which you are vested in any Employer Matching Contributions made in regard to elective contributions that you make after the Effective Date of this Agreement. Investment options offered under the 401(k) Plan will be determined from time to time by the Plan Administrator.

III. Company Lump Sum Contributions into 401(k) Plans under I & II

Within sixty (60) days after the closing described in Paragraph 16, the Company will make the contributions specified below into the 401(k) account for each employee accruing seniority under the Agreement as of its effective date. The contributions will be paid in an amount which is the product of fifty dollars (\$50.00) multiplied by the sum of (x) each year of an employee's age and (y) his or her completed years of Company service as of June 30, 2010, with service dating from the later of either his or her hire date with the Company or the date of most recent rehire. For purposes of clarity, the lump sum contribution schedule follows:

Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment
22	\$1,100	43	\$2,150	64	\$3,200	85	\$4,250
23	\$1,150	44	\$2,200	65	\$3,250	86	\$4,300
24	\$1,200	45	\$2,250	66	\$3,300	87	\$4,350
25	\$1,250	46	\$2,300	67	\$3,350	88	\$4,400
26	\$1,300	47	\$2,350	68	\$3,400	89	\$4,450
27	\$1,350	48	\$2,400	69	\$3,450	90	\$4,500
28	\$1,400	49	\$2,450	70	\$3,500	91	\$4,550
29	\$1,450	50	\$2,500	71	\$3,550	92	\$4,600
30	\$1,500	51	\$2,550	72	\$3,600	93	\$4,650
31	\$1,550	52	\$2,600	73	\$3,650	94	\$4,700
32	\$1,600	53	\$2,650	74	\$3,700	95	\$4,750
33	\$1,650	54	\$2,700	75	\$3,750	96	\$4,800
34	\$1,700	55	\$2,750	76	\$3,800	97	\$4,850
35	\$1,750	56	\$2,800	77	\$3,850	98	\$4,900
36	\$1,800	57	\$2,850	78	\$3,900	99	\$4,950
37	\$1,850	58	\$2,900	79	\$3,950	100	\$5,000
38	\$1,900	59	\$2,950	80	\$4,000	101	\$5,050
39	\$1,950	60	\$3,000	81	\$4,050	102	\$5,100
40	\$2,000	61	\$3,050	82	\$4,100	103	\$5,150
41	\$2,050	62	\$3,100	83	\$4,150	104	\$5,200
42	\$2,100	63	\$3,150	84	\$4,200	105	\$5,250

Examples	
Age 35, Service 12	\$2,350
Age 47, Service 19	\$3,300
Age 54, Service 15	\$3,400
Age 60, Service 30	\$4,500
Age 25, Service 4	\$1,450

In addition to the above-specified lump sum contributions, and within the same time frame as these lump sum contributions, the Company will make a one-time only payment of one million three hundred and seventy-five thousand dollars (\$1,375,000.00), to be allocated on the basis of service as of June 30, 2010 (as reflected above). At the employee's election, an employee's allocation may be contributed into the employees' individual 401(k) accounts or paid directly to them in cash (less any authorized or legally required deductions) in a manner to be determined prior to the effective date of this MOA. Each individual employee's 401(k) account will belong solely and exclusively to him or her and the Company shall have no current or future claim to any monies contributed to an employee's account.

The amount of any and all contributions set forth in this Agreement shall be immediately vested in the employee's account notwithstanding any provisions of the 401(k) plan to the contrary.

APPENDIX CC

PATIENT PROTECTION AND AFFORDABLE CARE ACT

To the extent and in the event that the federal Patient Protection and Affordable Care Act ("PPACA") provides the Company with choices or other options in administering the PPACA--including plan design changes that might offset cost increases to the Company and/or resulting from any modifications to the plan required by PPACA- the Company will negotiate in good faith over any such choices or options prior to their implementation.

If, after bargaining, the Company and Union fail to reach agreement and the Company unilaterally implements changes to its plan, the USW retains the right to grieve and immediately appeal to arbitration the reasonableness of the Company's plan changes.

APPENDIX DD

At Company expense-including the fees and expenses of the legal and other professionals retained in connection with the establishment of the VEBA (Voluntary Employee Beneficiary Association)-- and subject to the approvals and recommendations of its accountants, the Company will establish a jointly administered, tax-qualified VEBA and will provide a total of \$6,000,000 in three (3) lump sums (\$3,000,000 on the establishment of the VEBA, \$1,500,000 on the first anniversary of the closing described in Paragraph 16, and \$1,500,000 on its second anniversary) for OPEB (Other Post-Employment Benefits) for existing and future retirees and their eligible dependants at Alliance and Darlington, including individuals covered by the Monaca and Mid -West closing agreements. Deducted from the initial \$3,000,000 payment will be the Company's cost of providing continuing benefit insurance coverage to retirees and their dependents until the VEBA becomes operational but in no event will such coverage extend beyond December 31, 2010. The VEBA itself will be responsible for all expenses and all its administrative and other costs when and after it becomes operational.

The Union concurs that the Company will have no obligation to pay any amounts toward OPEB or into the VEBA beyond what is specified herein.

The obligations addressed above will become due upon the effective date of each of the Darlington and Alliance Memoranda of Agreement ("MOAs"), but shall be paid upon the establishment of the VEBA. Upon ratification of the MOAs, sub-accounts will be established within the VEBA such that 67.9% of the assets shall be allocated to the Darlington, Monaca and Mid-West existing and future retirees and dependents and 32.1% of the assets shall be allocated to the Alliance existing and future retirees and dependents. All contributions to the VEBA and expenses and administrative costs of the VEBA shall be apportioned between the sub-accounts to reflect this allocation.

In the event that either the Darlington or Alliance bargaining unit fails to ratify the respective MOA, the parties shall agree, based upon reasonable actuarial standards, as to the allocation of contributions to the existing and future retirees and dependents of the ratifying bargaining unit and the retirees and dependents of Monaca and Mid-West. In the event that the parties are unable to agree to such allocation, the matter shall be submitted to binding arbitration on an expedited basis.

Any Alliance employee who retires sixty (60) or more days after the effective date of this MOA shall not participate in the VEBA. An Alliance employee who retires within sixty (60) days of the effective date of this MOA may elect his share of the lump sum distribution of the \$1,375,000.00 under Appendix BB or to participate in the VEBA and the amount he would otherwise have received will be contributed to the Alliance sub-account of the VEBA.

The Company, at its option, can appoint, as its trustee(s), non-employees as trustees and/or one or more corporate trustees such as a bank.

APPENDIX EE

INVESTMENT COMMITMENT

1. During this Agreement, the Company agrees to maintain the competitive status of the Alliance facility, taking into consideration factors affecting the Company and its facility, provided, however, that final decisions on such expenditures will be made in the sole discretion of the Board of Directors.
2. The Union agrees to contribute to the competitiveness of the facilities and work with the Company to maintain the competitive nature of the facilities.

Exhibit 1 – Employee Transition Matters

1. Each current Alliance Tubular Products Co. (called “PTC” for ease of reference) bargaining unit employee accruing continuous service under a collective bargaining agreement as of the Closing Date will thereupon become an employee of Buyer as defined in Paragraph 16 (“Transferred Employee”) regardless of whether s/he is actively at work or absent from work whether due to layoff, disability or any other inactive status recognized under the collective bargaining agreements with PTC, although those absent from work will continue in their respective status under the Buyer/USW CBA until their circumstances change.
2. With respect to any employee of PTC who was discharged prior to the Closing Date and who is actively pursuing a grievance concerning such discharge, Buyer shall, at its option, either (a) employ the dischargee as a Transferred Employee, placing him or her in accordance with the CBA, and taking no further action concerning such discharge; or (b) succeed to the position of PTC concerning such discharge, it being understood that such discharge shall be taken up and resolved pursuant to the grievance and arbitration procedure set forth in the Buyer/USW CBA. Buyer shall advise the USW within 15-days of the Closing Date as to which of the two options it will elect.
3. Buyer shall conduct no pre-hire or other drug testing of Transferred Employees in connection with its acquisition of the assets of PTC.
4. For all purposes under the Buyer/USW CBA, each Transferred Employee will be credited as of the Effective Date with all basic labor agreement service s/he accrued at PTC and its predecessors.
5. Buyer shall assume all liabilities for 2010 vacation, as well as for vacation accrued for 2011. Each vacation day taken by a Transferred Employee prior to the Closing Date shall be counted as a vacation day under the Buyer/USW CBA.
6. Each Transferred Employee absent from work due to disability who is receiving sickness and accident (or similar) benefits will be entitled to receive sickness and accident (or similar) benefits from Buyer for any remaining period of entitlement at the benefit level under the Buyer/USW CBA.
7. Buyer shall assume liabilities for Transferred Employees absent from work as of the Closing Date due to disability who are receiving workers compensation benefits. Upon qualifying under the criteria of the Buyer/USW CBA for return to active employment, the Transferred Employees covered by this paragraph shall be placed in active employment or otherwise in accordance with their seniority.
8. A Transferred Employee on layoff as of the Closing Date shall be subject to recall in accordance with their seniority and applicable provisions of the Buyer/USW CBA.

9. Each Transferred Employee absent from work as of the Closing Date due to Family and Medical Leave, Union leave, military leave, or other form of leave of a type recognized by the Buyer/USW CBA will be entitled to the same treatment from Buyer for the balance of such leave and upon its expiration as provided for under the Buyer/USW CBA.

EXHIBIT 5

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Proposed Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

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

(Proposed To Be) jointly administered with:

Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;
Case No. 18-_____; Case No. 18-_____;

Chapter 11 Cases

**DECLARATION OF RICHARD G. ADCOCK IN
SUPPORT OF EMERGENCY FIRST-DAY
MOTIONS**



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1 I, Richard G. Adcock, hereby state and declare as follows:

2 1. I am the Chief Executive Officer of Verity Health System of California, Inc.
3 (“VHS”). I became the Debtors’ Chief Executive Officer effective January 2018. Prior thereto, I
4 served as VHS’s Chief Operating Officer since August 2017.

5 2. I have extensive senior-level experience in the not-for-profit healthcare arena,
6 especially in the areas of healthcare delivery, hospital acute care services, health plan
7 management, product management, acquisitions, integrations, population health management,
8 budgeting, disease management and medical devices. I have meaningful experience in both the
9 technology and healthcare industries in the areas of product development, business development,
10 mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources,
11 and engineering.

12 3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and
13 Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the
14 Dakotas and is dedicated to health and healing. In this role, I was responsible for leading Sanford
15 Health’s growth and innovation, in addition to direct operational oversight of the following
16 related entities: Sanford Research, Sanford Health Plan, Sanford Foundation (a philanthropic
17 fundraising foundation), Sanford Frontiers (a commercial and real estate company), Profile by
18 Sanford (a scientific weight loss program), and Sanford World Clinic (which operates clinics in
19 multiple countries).

20 4. From 2012 to 2017, I served as the President of Sanford Frontiers and was
21 responsible for starting a new entity within Sanford Health focused on innovative ventures. From
22 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for
23 (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all
24 aspects of management, and (ii) Sanford World Clinics operations, including the design, opening
25 and operation of several global clinics. From 2006 to 2008, I served as the Vice President of
26 Sanford Clinic and was responsible for leading strategic, operational and financial aspects within
27 Sanford Clinic. From 2004 to 2006, I served as Director of Clinical Operations at Sanford
28

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1 Children's Specialty Clinic and was responsible for leading the Pediatric Subspecialty Physician
2 program and the clinical practice through all facets of the operation.

3 5. Prior to Sanford Health, I served as the Director of Engineering and Six Sigma
4 Master Black Belt at GE Medical Systems, and before that I was the Vice President of Research
5 and Development and the Co-Owner/Founder of Micro Medical Systems. I have a bachelor of
6 science in business administration and a masters of business administration in healthcare
7 management.

8 6. On the date hereof (the "Petition Date"), VHS and certain of its subsidiaries
9 (collectively, the "Debtors" or "Verity") filed voluntary petitions for relief under Chapter 11 of
10 Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy
11 Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court"). I am
12 knowledgeable and familiar with the Debtors' day-to-day operations, business and financial
13 affairs, and the circumstances leading to the commencement of these chapter 11 cases (the
14 "Chapter 11 Cases").

15 7. Except as otherwise indicated herein, this Declaration is based upon my personal
16 knowledge, my review of relevant documents, information provided to me by employees of the
17 Debtors and Integrity Healthcare, LLC ("Integrity") or the Debtors' legal and financial advisors,
18 or my opinion based upon my experience, knowledge, and information concerning the Debtors'
19 operations and the healthcare industry. If called upon to testify, I would testify competently to the
20 facts set forth in this Declaration.

21 8. I make this declaration for the purpose of apprising the Court and parties in
22 interest of the circumstances that compelled the commencement of these Chapter 11 Cases and in
23 support of the First-Day Motions (as defined below).

24 9. To enable the Debtors to minimize the adverse effects of the commencement of
25 these Chapter 11 Cases on their business, the Debtors have requested various types of relief in a
26 number of applications and motions (each a "First Day Motion," and, collectively, the "First Day
27 Motions"). The First-Day Motions seek relief intended to maintain the Debtors' business
28 operations; to preserve value for the Debtors, its stakeholders, and parties in interest; and, most

1 importantly, to protect the health and wellbeing of the patients who are being treated at the
2 Hospitals (defined below) operated by the Debtors and the employees of the Debtors. Each First
3 Day Motion is crucial to the Debtors' reorganization efforts and to the health and wellbeing of the
4 patients. Any capitalized term not expressly defined herein shall have the meaning ascribed to
5 that term in the relevant First-Day Motion.

6 10. Section I provides an overview of the Debtors and these Chapter 11 Cases.
7 Section II describes the Debtors' businesses. Section III describes the circumstances that
8 compelled the commencement of the Chapter 11 Cases. Section IV describes the Debtors'
9 corporate and capital structure. Section V describes the Debtors' sales efforts. Section VI
10 provides a summary of the First-Day Pleadings and factual bases for the relief requested therein.

11 I. OVERVIEW¹

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

19 12. VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health
20 System") operate as a nonprofit health care system in the state of California, with approximately
21 1,680 inpatient beds, six active emergency rooms, a trauma center, and a host of medical
22 specialties, including tertiary and quaternary care. The scope of the services provided by the
23 Verity Health System (defined below) is exemplified by the fact that in 2017, the Hospitals
24 provided medical services to over 50,000 inpatients and approximately 480,000 outpatients.

25 13. The VHS affiliated entities, including the Debtors, are as follows:

- 26 • O'Connor Hospital
- 27 • Saint Louise Regional Hospital

28 ¹ Capitalized terms used but not defined in this overview section shall have the meanings assigned to them below.

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- St. Francis Medical Center
- St. Vincent Medical Center
- Seton Medical Center, including
- Seton Medical Center Coastside campus
- Verity Business Services
- Marillac Insurance Company, Ltd.
- O'Connor Hospital Foundation
- Saint Louise Regional Hospital Foundation
- St. Francis Medical Center of Lynwood Foundation
- St. Vincent Medical Center Foundation
- Seton Medical Center Foundation
- St. Vincent de Paul Ethics Corporation
- St. Vincent Dialysis Center
- De Paul Ventures, LLC
- De Paul Ventures San Jose Dialysis, LLC
- De Paul Ventures San Jose ASC, LLC
- Verity Medical Foundation
- Verity Holdings, LLC

14. Verity Medical Foundation (“VMF”), incorporated in 2011, is a medical foundation, exempt from licensure under California Health & Safety Code § 1206(l). VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. With more than 100 primary care and specialty physicians, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Debtor Hospitals. VMF holds long-term professional services agreements with the following medical groups: (a) Verity Medical Group; (b) All Care Medical Group, Inc.; (c) CFL Children's Medical Associates, Inc.; (d) Hunt Spine Institute, Inc.; (e) San Jose Medical Clinic, Inc., D/B/A San Jose Medical Group; and (f) Sports, Orthopedic And Rehabilitation Associates.

15. Verity Holdings LLC (“Holdings”), a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance Verity’s interests in six medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the VHS Hospitals. Holdings’ real estate portfolio includes over 30 properties, as more fully described below.

16. Saint Louise Regional Hospital Foundation, St. Francis Medical Center Foundation, St. Vincent Medical Center Foundation, Seton Medical Center Foundation, and

1 O'Connor Medical Center Foundation handle fundraising and grant-making programs for each of
2 their respective Debtor Hospitals.

3 17. As of August 30, 2018, the Debtors' facilities had approximately 850 patients, and
4 are currently at approximately 50% occupancy.

5 18. As of August 31, 2018, the Debtors have approximately 7,385 employees, of
6 whom 4,733 are full-time employees. Approximately 74% of these employees are represented by
7 collective bargaining units. Specifically, 72% of the Debtors' Employees – approximately 5,331
8 Employees in total – are represented through California Nurses Associations ("CNA"), Service
9 Employees International Union ("SEIU"), National Union Healthcare Workers ("NUHW") and
10 United Nurses Association of California/Union of Health Care Professionals ("UNAC").

11 19. As part of the mission of Verity Health System to serve the community, VHS
12 provides care to patients even though they may lack adequate insurance or may participate in
13 programs that do not pay full charges.

14 20. All of the Debtors' Hospitals are licensed as general acute care hospitals by the
15 California Department of Public Health, certified to participate in the Medicare and Medicaid
16 programs, and managed by VHS.

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

20 22. St. Francis Medical Center owns real property commonly known as: (i) 3630 E.
21 Imperial Highway Lynwood, CA 90262, including the patient tower and all of the facilities
22 thereon; (ii) 2700 E. Slauson Ave, Huntington Park, CA 90255, and the Huntington Park Medical
23 Office Building thereon; and (iii) 5953 S. Atlantic Blvd. 5, Maywood, CA 90270, and Maywood
24 Medical Office Building thereon.

25 23. St. Vincent Medical Center owns real property commonly known as: (i) 2131 W
26 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities located thereon;
27 and (ii) vacant land in Salton Sea, California.
28

24. Saint Vincent Medical Foundation owns: (i) a fractional timeshare of a condominium commonly known as 2600 Avenida Del Presidente, San Clemente, CA 92672; and (ii) Lot 10 of Block 572 of Rio Grande Estates, Unit 25, Valencia, NM.

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

26. Saint Louise Regional Hospital owns real property commonly known as: (i) 9400 No Name Uno, Gilroy, CA 95020, and the hospital and helipad thereon; and (ii) 705 Las Animas Road, Gilroy, CA 95020.

27. Seton Medical Center owns (i) real property commonly known as 1900 Sullivan Avenue, Daly City, CA 94015, and the Hospital and the facilities thereon (the "Daly Property"), and (ii) an employee parking lot on the Daly Property.

II. The Debtors' Businesses

A. The Debtors' Current Business Operations.

28. A description of VHS, each Hospital and its respective subsidiaries and affiliates is described below, all of which are jointly-administered Debtors in these cases.

29. **Verity Health Systems.** As set forth above, VHS is a nonprofit regional healthcare system headquartered in El Segundo, California. VHS was originally established by the Daughters of Charity of St. Vincent de Paul, Province of the West, to support the mission of the Catholic Church through a commitment to the sick and poor. VHS operates six hospitals in California.

30. **Verity Business Services.** VHS operates Verity Business Services ("VBS"), a nonprofit public benefit corporation. VBS provides support services to Verity and its affiliated hospitals including accounting, finance, patient financial services, supply chain management, and purchasing services for the entire health system.

31. **Verity Medical Foundation.** As set forth above, VMF operates clinics and contracts with physicians to provide high quality, compassionate, patient-centered care to

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1 individuals and families throughout California. With more than 100 primary care and specialty
2 physicians, VMF offers medical, surgical and related healthcare services for people of all ages at
3 community-based, multi-specialty clinics conveniently located in areas served by the Hospitals.

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

10 33. **O'Connor Foundation.** O'Connor Foundation was incorporated in 1983 and is
11 governed by a Board of Trustees. Charitable donations and endowments help fund the acquisition
12 of new equipment, the expansion of O'Connor Hospitals' facilities, healthcare services, and
13 community outreach programs. O'Connor Hospital is the sole corporate member of O'Connor
14 Foundation. As of May 31, 2018, O'Connor Hospital Foundation had a balance of \$1,123,644.15
15 in temporarily restricted assets and a balance of approximately \$334,802.20 in permanently
16 restricted assets for the purpose of funding the cardiac catheterization lab capital, wound care
17 services, surgical services, and various other programs.

18 34. **St. Vincent Medical Center.** St. Vincent Medical Center was founded as the first
19 hospital in Los Angeles in 1856. In 1971, a new facility was constructed at the Hospital's current
20 location at 2131 West Third Street, Los Angeles, CA 90057. The hospital has expanded to a 366
21 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer
22 care, total joint and spine care, and multi-organ transplant services. The Hospital serves both local
23 residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. As a
24 provider of healthcare services for a high percentage of elderly patients, many of the hospital's
25 services and programs are focused on the treatment of various chronic diseases.

26 35. **St. Vincent Foundation.** St. Vincent Foundation was incorporated in 1989 as a
27 nonprofit public benefit corporation. Charitable donations and endowments raised by St. Vincent
28 Foundation help fund the acquisition of new equipment, the expansion of the Hospital's facilities,

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1 healthcare services, and community outreach programs. St. Vincent Foundation raises funds
2 through grants, special events, and individual donors. St. Vincent is governed by a Board of
3 Trustees, and St. Vincent Medical Center is the sole corporate member of the Foundation. St.
4 Vincent, as well as St. Vincent Foundation, holds donor-restricted funds. As of May 31, 2018, St.
5 Vincent Foundation had a balance of approximately \$1,590,149.89 in temporarily restricted assets
6 and a balance of approximately \$136,159 in board designated temporarily restricted assets for the
7 purpose of funding programs such as bone mineral density research, transportation for low-
8 income patients, the organ transplantation program, and oncology research and treatment.

9 36. **St. Vincent Dialysis Center.** St. Vincent Medical Center is the sole corporate
10 member of the St. Vincent Dialysis Center, located on the Hospital's campus. The St. Vincent
11 Dialysis Center provides dialysis services for kidney disease patients, including hemodialysis and
12 isolated ultrafiltration treatments as part of the Hospital's end-stage renal disease program.

13 37. **St. Francis.** St. Francis Medical Center was established in 1945 and gained
14 sponsorship from Daughters of Charity, Province of the West, in 1981. The hospital provides
15 comprehensive healthcare services and operates one of the busiest emergency trauma centers in
16 Los Angeles County. The Hospital serves 1.2 million residents of Southeast Los Angeles, located
17 in the communities of Lynwood, South Gate, Downey, Huntington Park, Bell Gardens,
18 Maywood, and Compton. As a provider of healthcare services for many Medi-Cal and uninsured
19 patients, the hospital receives significant Disproportionate Share Hospital funding. St. Francis
20 operates a 384 licensed bed, general acute care hospital located at 3630 East Imperial Highway in
21 Lynwood, California. The hospital has an emergency department with 46 licensed emergency
22 treatment stations and is designated a Level II Trauma Center. It also has nine surgical operating
23 rooms and three cardiac catheterization labs for inpatient and outpatient cardiac catheterization
24 services. The hospital offers a comprehensive range of services, including emergency and trauma
25 care, neonatal intensive, cardiovascular, oncology, pediatrics, behavioral health, and maternity
26 and child services. In addition to the inpatient programs and services, the Hospital also offers
27 various outpatient services, including ambulatory surgical services, laboratory services, imaging
28 services, infusion therapy, nuclear medicine services, respiratory therapy, and physical therapy.

Other outpatient services are provided at the following clinics: Orthopedics Clinic, Wound Care Clinic, Industrial Clinic, Lynwood Clinic, Downey Clinic , and Huntington Park Clinic. The Hospital is accredited by The Joint Commission.

38. **St. Francis Medical Center Foundation.** St. Francis Medical Center is the sole corporate member of St. Francis Medical Center Foundation. St. Francis Medical Center Foundation was incorporated in 1983 as a nonprofit public benefit corporation and is governed by a volunteer Board of Trustees. Charitable donations and endowments help fund the acquisition of new equipment, the expansion of the Hospital's facilities, healthcare services, and community outreach programs. St. Francis Foundation raises funds through grants, special events, and individual donors. As of May 31, 2018, St. Francis Foundation had a balance of \$656,118.24 in temporarily restricted assets for the purpose of funding programs such as the Children's Counseling Center, nurse education, and the annual Women's Luncheon in support of mammogram equipment. The Foundation also funds Health Benefit Resource Center, Healthy Communities Initiative, and Trauma Recovery.

39. **Seton Medical Center.** Seton Medical Center was originally founded as Mary's Help Hospital by the Daughters of Charity of St. Vincent De Paul in 1893. The original facility was destroyed in the San Francisco Earthquake of 1906, and by 1912, Mary's Help Hospital reopened a new facility in San Francisco. In 1965, the hospital was moved to its current location at 1900 Sullivan Avenue in Daly City. The hospital was renamed Seton Medical Center in 1983, is currently licensed for 357 beds and serves residents from San Francisco and San Mateo areas. Seton Medical Center has an emergency department with 18 licensed treatment stations. It also has 13 surgical operating rooms and three cardiac catheterization labs. Of the Hospital's 83 licensed skilled nursing beds, 39 are in suspense, and the remaining 44 beds are utilized as sub-acute care beds. Additionally, the hospital has 24 licensed acute psychiatric beds which have been placed in suspense. The hospital has a broad spectrum of medical services, including cancer, cardiac, emergency, surgical, rehabilitation, respiratory, orthopedic, and sub-acute care. The hospital is accredited by The Joint Commission. Seton Medical Center and Seton Coastsides share a consolidated license.

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1 40. **Seton Coastside.** Seton Coastside was founded as Moss Beach Rehabilitation
2 Hospital in 1970. In 1980, the City of Half Moon Bay acquired ownership of the hospital and
3 signed an agreement for Daughters of Charity to manage operations of the hospital and rename it
4 St. Catherine's Hospital. In 1993, St. Catherine's Hospital became Seton Coastside as it became
5 integrated with Seton Medical Center. Today, Seton Coastside is licensed for 116 skilled nursing
6 beds and five general, acute-care beds. Seton Coastside also operates the only 24-hour "standby"
7 Emergency Department along the 55-mile stretch between Santa Cruz and Daly City. Under a
8 consolidated license, Seton Medical Center and Seton Coastside share the same Board of
9 Directors, executive leadership team, charity care policies, and union collective bargaining
10 agreements.

11 41. **Seton Foundation.** Seton Foundation, governed by a Board of Trustees, raises
12 funds through grants, special events and individual donors. Charitable donations and endowments
13 raised by Seton Foundation help fund the acquisition of new equipment and the expansion of
14 facilities at the Seton Medical Center and Seton Coastside. Seton is the sole corporate member of
15 the Seton Foundation. As of May 31, 2018, Seton Foundation had a balance of \$2,693,778.66
16 million in temporary restricted assets and a balance of \$ 2,717,591 million in permanently
17 restricted assets for the purpose of funding programs such as oncology, the San Francisco Heart
18 & Vascular Institute, and women and delivery services.

19 42. **Saint Louise Hospital.** Saint Louise Hospital opened in 1989 in the Morgan Hill
20 area of Santa Clara County. In December 1999, the Daughters of Charity of St. Vincent de Paul
21 relocated the hospital to Gilroy and renamed it Saint Louise Regional Hospital. Today, the
22 Hospital's 93-bed facility and 24-hour emergency department provide services to the residents of
23 southern Santa Clara County, including Morgan Hill, San Martin, and Gilroy. Saint Louise
24 Regional Hospital operates a 93 licensed bed, general acute care hospital located at 9400 No
25 Name Uno, Gilroy, California 95020. The Hospital has an emergency department with eight
26 licensed emergency treatment stations. The Hospital also has five surgical operating rooms for
27 inpatient and outpatient surgical procedures. Ten of the Hospital's 21 licensed skilled nursing
28

1 beds are in suspense. The Hospital provides comprehensive healthcare services including cancer,
2 emergency, rehabilitation, and surgical care. The Hospital is accredited by The Joint Commission.

3 43. Saint Louise Regional Hospital owns and operates the De Paul Urgent Care
4 Center. The De Paul Urgent Care Center is located in Morgan Hill, and offers patients non-
5 emergency medical services seven days a week. The De Paul Urgent Care Center treats non-life
6 threatening cases, such as minor injuries and lacerations, strep throat, sinus infections, rashes,
7 nausea, vomiting, colds, flu, and fever.

8 44. **Saint Louise Foundation.** Saint Louise Foundation, governed by a Board of
9 Trustees, raises funds through grants, special events, and individual donors. Charitable donations
10 and endowments raised by Saint Louise Foundation help fund the acquisition of new equipment
11 and the expansion of the Hospital's facilities. Saint Louise is the sole corporate member of Saint
12 Louise Foundation. As of May 31, 2018, Saint Louise Regional Hospital Foundation had a
13 balance of approximately \$561,486.86 in temporarily restricted assets.

14 45. **De Paul Ventures, LLC.** De Paul Ventures, LLC is a wholly-owned and operated
15 holding company of Verity that was formed in August 2010 for the purpose of investing in a
16 freestanding surgery center and other healthcare entities.

17 46. **DePaul Ventures - San Jose Dialysis, LLC.** In April, 2013, DePaul Ventures,
18 LLC, formed DePaul Ventures - San Jose Dialysis, LLC ("Dialysis"). Dialysis is a general and
19 limited partner of Priday Dialysis, LLC, a healthcare center specializing in end-stage renal disease
20 treatment. Dialysis shares an interest in Priday Dialysis with Total Renal Care, Inc., which is a
21 subsidiary of DaVita.

22 47. **Verity Holdings, LLC.** As set forth above, Holdings is a direct subsidiary of its
23 sole member VHS and was created in 2016 to hold and finance Verity's interests in six medical
24 office buildings whose tenants are primarily physicians, medical groups, healthcare providers,
25 and certain of the VHS Hospitals. Holdings' real estate portfolio includes over 30 properties,
26 including, but not limited to, apartment buildings, parking lots, and condominiums. Holdings is
27 the borrower on approximately \$66.2 million of non-recourse financing secured by separate deeds
28 of trust and revenue and accounts pledges, including the rents on each medical office building

(collectively “MOB Financing”).

48. **Non-Debtor VHS Entities.** The Debtors’ have an interest in the entities described below that are not filing chapter 11.

49. Marillac Insurance Company, LTD. (“Marillac”), a wholly-owned subsidiary of VHS, was incorporated in the Cayman Islands on December 9, 2003, as an exempted company and was granted an Unrestricted Class “B” Insurer’s License effective December 15, 2003, which it holds subject to the provisions of the Insurance Law of the Cayman Islands. On November 1, 2012, The Insurance Law, 2010 (the “Law”) became effective. Under such law, Class B licenses were changed from “restricted” and “unrestricted,” as they had been described in previous revisions of the law, into three separate classes “(i),” “(ii)” and “(iii).” Insurers writing at least 95% of net premiums with their related business (in this case VHS) fell into Class B(i). The Company was granted a Class B(i) license, effective April 2, 2015. Marillac provides insurance coverage to VHS and its affiliates.

50. St. Vincent De Paul Ethics Corporation does not hold any assets and is a nondebtor entity. St. Francis Medical Center is its sole corporate member.

51. VHoldings MOB, LLC (“VHoldings”) is currently an inactive subsidiary of VHS and has no assets or obligations. It was created as a “special purpose entity” for a proposed financing that did not materialize. As part of the proposed transaction structure, four additional LLCs were established in which, VHoldings was the sole member of each. The four additional LLCs were dissolved on January 23, 2017.

52. De Paul Ventures – San Jose ASC, LLC (“San Jose ASC”), was formed in February 2011, by De Paul Ventures, LLC (which is a filing entity), and owns a 25% interest as a limited partner in a partnership with Physician Surgery Services, dba Advanced Surgery Center, a freestanding surgery center in San Jose. San Jose ASC’s only asset is a sale contract, pursuant to which it receives payments of \$125,000 every other month. Postpetition, San Jose ASC will continue to forward to VHS the \$125,000 received every other month. Once all payments are received, the Debtors will dissolve San Jose.

53. Robert F. Kennedy Medical Center is a nonprofit public benefit corporation that

1 operated a 229-bed general acute care hospital and served residents in Hawthorne, California,
2 until December 31, 2004. Robert F. Kennedy Medical Center Foundation is a nonprofit public
3 benefit corporation that raised funds for the Robert F. Kennedy Medical Center.

4 54. O'Connor Health Center I is a California limited partnership, formed in January
5 1996 ("OCH1"). O'Connor Hospital is a limited partner in OCH1 and the general partner is
6 OCH Forest 1, LP. OCH1 owns certain real property at 455 O'Connor Drive, San Jose,
7 California. Such property is leased by O'Connor Hospital.

8 55. Sports Medical Management, Inc. has no assets or obligations.

9 **B. Integrity's Management of Debtors.**

10 56. As set forth above, Integrity was formed in 2015 to carry out the management
11 services under the Management Agreement, for which Integrity is paid a monthly management
12 fee. Through June 30, 2017, Integrity was wholly owned by BlueMountain. In July 2017,
13 NantWorks, LLC ("NantWorks"), acquired a majority stake in Integrity from BlueMountain.
14 There were no significant changes to the terms of the Restructuring Agreement or the California
15 Attorney General requirements as a result of this transaction.

16 57. On a monthly basis, VHS records management fee expense and makes payments
17 to Integrity associated with the management services received under the Management Agreement.
18 During the initial fiscal year which ended June, 2016, the monthly management fee was
19 determined based on a specified percentage of trailing 12 month operating revenues for VHS.
20 Such management fees are adjusted each succeeding fiscal year based on changes in the
21 consumer price index. VHS defers payment for a portion of management fees based on its days'
22 cash on hand over the most recent 90 day period. All deferred management fees accrue interest at
23 2.82% per annum to the extent such amounts are not paid in the fiscal year that services are
24 received. Such deferred management fees are contingently payable based on the terms of the
25 Management Agreement, which include annual calculations of excess cash on hand.

26 **C. Verity's Employees.**

27 58. As set forth above, altogether, the Debtors employ approximately 7,385 employees
28 (the "Employees") – 6,907 excluding VMF and 478 under VMF. Almost three-quarters of the

1 Debtors' Employees – approximately 5,488 Employees in total – are represented through CNA,
2 SEIU, California Licensed Vocational Nurses' Association, and The International Union of
3 Operating Engineers, Stationary Local No. 39, AFL-CIO.

4 59. For W-2 tax and payroll purposes, the Debtors are divided into eight employers:

5 (a) VHS, which covers the Systems Office and the Philanthropic Foundations,
6 and as of the Petition Date employed approximately 294 employees, of which 289
7 are full-time, 3 are part time and 2 are employed on a per diem basis;

8 (b) Verity Business Services, which as of the Petition Date employed
9 approximately 307 employees, of which 285 are full-time, 11 are part time and 11
10 are per diem;

11 (c) O'Connor Hospital, which as of the Petition Date employed approximately
12 1,370 employees, of which 586 are full-time, 441 are part time and 343 are per
13 diem;

14 (d) Saint Louise Regional Hospital, which as of the Petition Date employed
15 approximately 480 employees, of which 153 are full-time, 159 are part time and
16 168 are per diem;

17 (e) St. Francis Medical Center, which as of the Petition Date employed
18 approximately 2,017 employees, of which 1,583 are full-time, 136 are part time
19 and 298 are per diem;

20 (f) St. Vincent Medical Center, which as of the Petition Date employed
21 approximately 1,099 employees, of which 897 are full-time, 42 are part time and
22 160 are per diem;

23 (g) Seton Medical Center, which includes Seton Medical Center Coastsides, and
24 as of the Petition Date employed approximately 1,340 employees, of which 516
25 are full-time, 551 are part time and 273 are per diem; and

26 (h) VMF, which as of the Petition Date employed approximately 478
27 employees, of which 424 are full-time, 15 are part-time and 39 are per diem.

28 60. The Debtors' Employees are represented by the following unions with the
respective contractual obligations: (i) SEIU-UHW (Non-Nursing Service Employees) at St. Francis
Medical Center, St. Vincent Medical Center, O'Connor Medical Center, Saint Louise Regional
Hospital; (ii) SEIU-UHW (Non-Nursing Service Employees) at Verity Medical Foundation; (iii)
NUHW (Non-Nursing Service Employees) at Verity Medical Foundation; (iv) NUHW (Non-Nursing
Service Employees) at Seton Medical Center, Seton Medical Center Coastsides; (v) CAN (Nurses) St.

Vincent, O'Connor, St. Louise, Seton, Seton Coastsides; (vi) UNAC (Nurses) at St. Francis; (vii) CLVNA (Licensed Vocational Nurses) (O'Connor); (viii) Local 20 (Clinical Laboratory Scientists) O'Connor, St. Louise, Seton; (ix) Local 39 (Stationary and Bio-medical Engineers) and O'Connor, St. Louise, Seton.

D. Pension and Other Postretirement Benefit Plans.

61. VHS maintains two single employer defined benefit pension plans and participates in two multi-employer defined benefit pension plans. The defined benefit pension plans have been frozen for all employees, except members of the CNA at certain facilities. Defined benefit pension plan benefits are generally based on age, years of service, and employee compensation. In addition, VHS and VMF maintain several defined contribution retirement plans for employees.

62. The significant multiemployer defined benefit pension plan is the Retirement Plan for Hospital Employees ("RPHE"). The VHS entities that participate in the RPHE are Seton Medical Center, Seton Medical Center Coastsides, O'Connor Hospital, Saint Louise Regional Hospital, and Verity Business Services. The RPHE is frozen as to these facilities, other than with respect to CNA members at O'Connor Hospital, Saint Louise Regional Hospital and Seton Medical Center. Benefits under the RPHE are generally based on years of service and employee compensation. Contributions to the RPHE are based on actuarially determined amounts by the RPHE Board of Trustees to meet benefits to be paid to plan participants and satisfy IRS funding requirements. VHS recorded benefit expenses of approximately \$20.46 million and \$17.22 million in cash contributions to the RPHE for the fiscal years ended June 30, 2017 and 2016, respectively. The VHS contributions accounted for approximately 43% and 40% of total contributions made to the RPHE for the fiscal years ending June 30, 2017 and 2016, respectively. Of the estimated remaining \$4.79 million for 2018 and expected \$12.68 million for 2019, VHS contributions to RPHE, approximately \$3.15 million and \$7.63 million, respectively, is for make-up of underfunded amounts that arose prior to VHS' acquisition from the Daughters of Charity Health System ("DCHS"). As of July 31, 2018, there were no unpaid contribution installment obligations owed by VHS to the RPHE.

63. In addition to the RPHE, Verity assumed in the Daughters of Charity restructuring

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1 certain obligations under a multiemployer plan commonly referred to as Stationary Engineers
2 Local 39 Pension Plan (the “Local 39 Plan”). As of July 31, 2018, there were no unpaid
3 contributions due on the Local 39 Plan.

4 64. VHS maintains two single-employer defined benefit pension plans (the “Verity A
5 & B Plans”). VHS personnel at St. Francis Medical Center, St. Vincent Medical Center,
6 O’Connor Hospital, Saint Louise Regional Hospital, and the VHS system office are eligible to
7 participate in these plans. However, only CNA members continue to earn new benefits under the
8 Verity Plan A; the Verity Plan B is completely frozen with no ongoing benefit accruals. VHS
9 contributed approximately \$41.68 million and \$9.92 million during the fiscal years ended June
10 30, 2017 and 2016, respectively. Of the estimated remaining \$10.12 million for 2018 and
11 expected \$35.53 million for 2019 VHS contributions to Verity Plan A, approximately \$8.10
12 million and \$28.05 million, respectively, is for make-up of underfunded amounts that arose prior
13 to VHS’ acquisition from the Daughters of Charity. As of July 31, 2018, there were no unpaid
14 contribution installment obligations owed by VHS to the Verity A & B Plans.

15 65. VHS and VMF also maintain several active defined contribution retirement plans
16 for eligible employees; eligibility for and benefits under the defined contribution retirement plans
17 vary according to facility, union status, and employee classification/hire date. These defined
18 contribution plans include the Verity Health System Supplemental Retirement Plan (TSA), the
19 Verity Health System Supplemental Retirement Plan (401(a)), the Verity Health System
20 Retirement Account (RPA), the Verity Medical Foundation 401(k) Plan, the Verity Medical
21 Foundation Management Bargaining Unit Employees 401(k) Plan for represented employees and
22 the Verity Health System Executive Long-Term Savings Plan (457(b)) Plan for nonrepresented
23 employees. These defined contribution plans are funded from employee and/or employer
24 contributions generally on a payroll by payroll basis. In addition to the above active defined
25 contribution plans, there are several small, frozen ancillary retirement plans. During the fiscal
26 years ended June 30, 2017 and 2016, the employer’s contribution expense for defined
27 contribution plans was approximately \$18.48 million and \$21.75 million respectively. As of July
28 31, 2018, there were no unpaid employer contributions owed on any of these defined contribution

1 plans other than unpaid contributions for current and recent payroll cycles consistent with
2 ordinary administrative practices.

3 66. VHS also maintains an early retiree health insurance program (the Postretirement
4 Healthcare Plan), which provides medical benefits to eligible retirees from early retirement to age
5 65 only. The postretirement health care benefits are determined based on age and years of
6 service. Certain employees at O'Connor Hospital, St. Louise Regional Hospital, Seton Medical
7 Center, and Seton Medical Center Coastsides are eligible to participate in this plan. The
8 Postretirement Healthcare Plan is an unfunded plan. VHS contributed \$50,000 and \$58,000 to the
9 Postretirement Healthcare Plan during the fiscal years ended June 30

10 **E. Insurance Policies**

11 67. The Debtors maintain various insurance policies issued by several insurance
12 carriers (collectively, the "Insurance Carriers"). Collectively, these policies provide for coverage
13 for, among other things: storage tank liability, commercial property, workers' compensation and
14 employers liability, commercial automobile, helipad liability & non-owned aircraft liability,
15 sexual misconduct and molestation liability, D&O liability, general liability, and professional
16 liability (collectively, the "Insurance Policies").²

17 68. Significant insurance is issued to the Debtors by its captive insurer Marillac. VHS
18 is the sole owner of Marillac. The policies issued by Marillac cover professional and general
19 liability (both at the primary and excess level) and additional excess coverage as to automobile
20 liability, heliport and non-owned aircraft liability, employer's liability and certain other general
21 liability. Marillac also issued a Deductible Liability Protection Policy which provides coverage
22 for the deductible obligations on the Debtors' workers' compensation policy issued by Old
23 Republic Insurance Company ("Old Republic").

24 69. Most of the Debtors' Insurance Policies will expire between September 5, 2018
25 and July 1, 2019. The Debtors have begun negotiating renewals, extensions and/or entries into
26 new insurance policies with respect to the expiring Insurance Policies.

27
28 ² The Insurance Policies include six (6) CA DHS patient Trust Bonds, which have an annual premium in the
aggregate of \$1,100 that was paid in full in December 2017 and will not come due for renewal until December 2018.

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70. In certain instances, the Debtors pay premiums for their Insurance Policies in full at the beginning of the policy and in other instances in quarterly installments. The total annual premium due for Insurance Policies is approximately \$18,647,036. Of that amount, the Debtors pay \$2,637,071 at the time of inception, and the remaining \$16,009,965 is paid in quarterly installments. As of the Petition Date, there are no outstanding unpaid premiums due. The total amount of annual insurance premiums which will come due postpetition is \$10,043,085.

a. Self-Insured Retentions

71. The Debtors maintain self-insured retentions of \$250,000 per claim under their D&O liability coverage, \$350,000 per claim under their employment practices coverage, \$50,000 per claim under their fiduciary liability coverage, \$100,000 per claim under their crime coverage, and \$50,000 per claim under their sexual misconduct and molestation liability coverage (the “Self-Insured Retentions” or “SIRs”). A SIR is a loss amount that the insured is obligated to pay before the insurer’s coverage obligation is triggered.

72. The Debtors’ Self-Insured Retentions are administered so that the Debtors pay directly for the losses under each policy as they are incurred up to the amounts of the Self-Insured Retentions. Such SIRs due prepetition have been paid. For the last year, no SIR amounts have been due for (a) the D&O liability coverage, (b) the employment practices coverage, (c) the fiduciary liability coverage, and (d) the crime coverage. There have also been no SIR amounts incurred under the sexual misconduct and molestation liability policy last year.

b. Deductibles

73. The Debtors maintain a workers’ compensation insurance policy with Old Republic with a \$500,000 deductible for each claim. Old Republic provides coverage under the policy up to \$1 million for each claim. On average, the monthly invoice amounts for deductibles (including ALAE) incurred under the workers’ compensation policy is between \$400,000 and \$650,000, which are timely paid by Marillac under the Deductible Liability Protection Policy.

74. The deductibles included in the Debtors’ other Insurance Policies are:

- Storage Tank Liability - ACE American Insurance Company (Chubb) - \$5,000 per Storage Tank Incident;

- Storage Tank Liability - Tokio Marine Specialty Insurance Company (Philadelphia) - \$25,000 per Confirmed Release;
- Commercial Property - American Guarantee and Liability Insurance Company (Zurich) - \$100,000 Basic Policy Deductible;
- Commercial Automobile - National Union Fire Insurance Company of Pittsburg, PA (AIG) - \$1,000 Comprehensive, \$1,000 Collision;
- Helipad Liability & Non-Owned Aircraft Liability - StarNet Insurance Company (Berkley Aviation) - \$1,000 Physical Damage per Occurrence; and
- General Liability - Chubb - \$10,000 per Occurrence.

75. The Debtors expect their prepetition deductible obligations, other than those deductibles owed under the workers' compensation policy (which are paid by Marillac, a non-debtor), to be minimal.

c. Letter of Credit

76. The Debtors provide a \$34,087,296 letter of credit to Old Republic as security for all of the Debtors' obligations, as required under their workers' compensation policy. Marillac is the account party on the letter of credit, and the letter of credit is fully secured by Marillac's assets - \$34,087,296 of liquid securities. Pursuant to the Program Agreement Endorsement to the workers' compensation policy, Old Republic may draw upon the letter of credit to reimburse Old Republic for payment of the Debtors' deductible obligations or for payment of other obligations of the Debtors under the workers' compensation policy, if not paid by Marillac. Old Republic may also draw down the \$34,087,296 letter of credit in full upon the Debtors' insolvency or filing of a bankruptcy petition.

77. The Debtors expect that Marillac will continue to honor its policy to insure the Debtors' obligations under the workers' compensation policy, and that Old Republic will not be harmed by the Debtors' chapter 11 filing.

d. Claims Administration Agreements

78. The Debtors have entered into administrative services contracts with Sedgwick Claims Management Services, Inc. ("Sedgwick"), for administration of claims submitted under

1 the Debtors' workers' compensation policy as well as their professional and general liability
2 policy.

3 79. The Debtors pay Sedgwick an annual estimated fee of \$702,000 which is paid in
4 quarterly installments of \$175,000 for services provided by Sedgwick under the Debtor's
5 workers' compensation policy. The actual fees owed to Sedgwick are based on the staffing
6 necessary for Sedgwick to provide claims services and are calculated by taking the actual
7 program salaries, bonuses and temporary expenses multiplied by the salary multiplier. Sedgwick
8 will periodically provide an accounting to determine the actual fees incurred. The Debtors are
9 entitled to a credit if the amount of actual fees owed to Sedgwick are less than the estimated fees
10 paid. On the other hand, Sedgwick bills the Debtors for the additional actual fee owed if the
11 actual fee amount is higher than the estimated fees.

12 80. With respect to administration of their professional and general liability policy, the
13 Debtors pay Sedgwick \$3,545 per claim and suit file, \$1,825 per Potentially Compensable Event
14 ("PCE") where an investigation has been requested, \$275 for a PCE where an investigation has
15 not been requested pursuant to this agreement. Fees are paid monthly as files are assigned to
16 Sedgwick by the Debtors. Debtors also pay Sedgwick a program management fee of \$1,250 each
17 month.

18 **F. Recent Financial Results.**

19 81. As of June 30, 2018, Verity's consolidated unaudited financial statements reflected
20 total assets of approximately \$847 million and total liabilities of approximately \$1,278 billion.

21 **III. The Need For Chapter 11 Relief And The Events Leading To The Commencement**
22 **Of These Chapter 11 Cases**

23 **A. Historical Challenges.**

24 82. The Hospitals and VMF were originally owned and operated by the Daughters of
25 Charity of St. Vincent de Paul, Province of the West (the "Daughters of Charity"), to support the
26 mission of the Catholic Church through a commitment to the sick and poor. The Daughters of
27 Charity began their healthcare mission in California in 1858 with the opening of Los Angeles
28 Infirmary, now known as St. Vincent Medical Center. The Daughters of Charity expanded its

1 hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to
2 ill, poverty-stricken individuals for more than 150 years.

3 83. In March 1995, the Daughters of Charity merged with Catholic Healthcare West
4 (“CHW”). In June 2001, the Daughters of Charity Health System (“DCHS”) was formed. In
5 October 2001, the Daughters of Charity withdrew from CHW. In 2002, DCHS commenced
6 operations and was the sole corporate member of the Hospitals, which at that time were
7 California nonprofit religious corporations.

8 84. Between 1995 and 2015, the Daughters of Charity and DCHS struggled to find a
9 solution to continuing operating losses, either through a sale of some or all of the hospitals or a
10 merger with a more financially sound partner. All these efforts failed. During these efforts,
11 however, the health system’s losses continued to mount. In 2005, DCHS issued \$364 million in
12 bonds to refinance existing debt and to fund future capital expenditures. Three years later, in
13 2008, they issued another \$143 million in bonds to refinance existing debt.

14 85. Between 2012 and 2014, DCHS participated in an affiliation with Ascension
15 Health Alliance (“Ascension”) in an effort to create greater operating efficiencies. Ascension is
16 the largest Catholic health system in the world and the largest non-profit health system in the
17 United States with facilities in 23 states and the District of Columbia. The affiliation between
18 DCHS and Ascension failed.

19 86. Despite continuous efforts to improve operations, operating losses continued to
20 plague the health system due to, among other things, mounting labor costs, low reimbursement
21 rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for
22 O’Connor Hospital, St. Louise Regional Hospital, Seton Medical Center and Seton Medical
23 Center Coastsides. In 2013, to avoid failing debt covenants, the Daughters of Charity Foundation,
24 an organization separate and distinct from DCHS, donated \$130 million to DCHS to allow it to
25 retire the 2008 Bonds in the total amount of \$143.7 million.

26 87. In early 2014, DCHS announced that they were beginning a process to evaluate
27 strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their
28 health system and, in October of 2014, they entered into an agreement with Prime Healthcare

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Services and Prime Healthcare Foundation (collectively, “Prime”) to sell the health system. However, to keep the hospitals open, DCHS, needed to borrow another \$125 million to mitigate immediate cash needs during the sale process; in other words, to allow DCHS to continue to operate until the sale could be consummated. Notably, DCHS’ goal in the transaction was to basically maintain the status quo; their guiding principles for the sale included protecting existing pensions, repaying all their bond debt, continuation of all collective bargaining agreements, maintenance of existing contracts for patient services, and obtaining promises for substantial capital expenditures. In early 2015, the California Attorney General consented to the sale to Prime, subject to conditions on that sale that were so onerous that Prime terminated the transaction.

88. In 2015, DCHS again marketed their health system for sale, and, again, focused on offers that maintained the health system as a whole, and assumed all the obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”).

89. In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of \$100 million to the hospital system, arrange loans for another \$160 million to the health system, and manage operations of the health system, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”), DCHS’s name was changed to Verity Health System, and Integrity was formed to carry out the management services under a new management agreement.

90. DCHS requested the California Attorney General’s consent to enter into the Restructuring Agreement and the BlueMountain Transaction. According to report prepared by MDS Consulting, an expert consulting firm retained to prepare healthcare impact reports for the AG, DCHS outlined the following reasons why the BlueMountain Transaction was either necessary or desirable:

- The current structure and sponsorship of DHCS was no longer plausible as a result of cash flow projections and dire financial conditions.
- In July and August of 2014, DCHS obtained a short-term financing bridge loan in the amount of \$125 million to mitigate the immediate cash needs for an estimated period of time long enough to allow for the transaction to close. Repayment of the funds was due on December 15, 2015, at which time if the full amount was not repaid, DCHS would be at risk of defaulting on both their 2014 and 2005 Revenue Bonds.
- Without bankruptcy protection or additional financial support, DHCS could not continue hospital operations if there is a default.

91. On December 3, 2015, the California Attorney General approved the BlueMountain Transaction, subject to conditions. The Attorney General conditions were imposed for periods ranging from 5 to 15 years. Generally, the terms of conditions (collectively, the “Conditions”) included: (1) limits on transfers of control; (2) maintenance of specific health services and specific bed counts; (3) required participation in Medicare and Medi-Cal programs; (4) required levels of community benefit programs; (5) required levels of charity care; (6) maintenance of certain county payor contracts; (7) requirements for local governing boards; (8) requirements for medical staff compliance; and (9) an annual attestation of compliance with the AG conditions.

92. Under the Restructuring Agreement, VHS, O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center and Seton Medical Center Coastsides, all of whom are members of the Obligated Group (as defined below), were converted from religious corporations to public benefit corporations.

93. Despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system did not prosper.

94. In July 2017, NantWorks, LLC acquired a controlling stake in Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another \$148 million to the Debtors.

95. Despite the infusion of capital and new management, it became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring. Thus, despite VHS’ great efforts to revitalize its Hospitals and improvements in performance and cash flow, the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining

1 agreements or payor contracts, the continuing need for significant capital expenditures for seismic
2 obligations and aging infrastructure, and the general headwinds facing the hospital industry, make
3 success impossible. Losses continue to amount to approximately \$175 million annually on a cash
4 flow basis.

5 96. Based on the foregoing, and while VHS has made improvements to the existing
6 system, the Debtors have commenced these chapter 11 cases to protect the original legacy of the
7 Daughters of Charity to the maximum extent possible by retiring debt incurred over the past 18
8 years and freeing the hospital facilities and work force to continue to operate as hospitals under
9 new ownership and leadership without the accumulated crisis of the past. To do that requires the
10 bankruptcy court supervised sale of some or all of the hospitals and related facilities, and the
11 comprehensive resolution of the Debtors financial obligations through a court approved plan of
12 reorganization.

13 97. The goals of the Debtors' restructuring are to maintain the Debtors' business
14 operations; preserve the going-concern value of the Debtors' businesses, its stakeholders, and
15 parties in interest; and, most importantly, to protect the health and wellbeing of the patients who
16 are treated at the Hospitals and the jobs of the Debtors' approximately 7,000 employees.

17 **B. Current Fiscal Crisis.**

18 98. As described above, the fiscal crisis is the confluence of various factors and
19 historical challenges. Below are a few of the most significant and expected funding requirements
20 in the immediate future.

21 **a. *Payor Rates.***

22 99. Verity is paid below market rates through its payor contracts with health plans.
23 Verity's contracts are 20-43% below market. These below market rates would make it difficult
24 for any hospital to break even. Summarized below is illustrative data, highlighting Verity's rates
25 as a percentage of Medicare relative to the market rates.

26 ///

27 ///

Managed Care Rates Expressed as a Percent of Medicare Rates (Combined Inpatient and Outpatient)

	BlueCross			BlueShield			United		
	Verity	Market	% Difference	Verity	Market	% Difference	Verity	Market	% Difference
SFMC	193%	223%	-15%	193%	226%	-17%	198%	237%	-20%
SVMC	139%	206%	-48%	156%	202%	-29%	139%	195%	-40%
OCH	164%	237%	-44%	229%	244%	-6%	151%	242%	-60%
SMC	207%	252%	-22%	235%	254%	-8%	228%	262%	-15%
SLRH	202%	280%	-38%	204%	280%	-37%	159%	289%	-82%
Average			-34%			-20%			-43%

b. Labor Rates.

100. Payroll costs in the last twelve months have increased nearly \$65,000,000 partially related to Verity's union contracts (~5% increases year over year forward).

c. Pension Obligations.

101. Under the Pension Plans (as defined above), there are expected pension funding requirements in the next year of over \$66 million. Only ~\$20M relates to current year costs. In other words, most is funding the underfunded status of the plans.

d. IT Investment.

102. VHS' system requires IT investment in the amount of nearly \$50 million over the next year alone. There is outdated electronic health records and enterprise resource planning (i.e., human resources, supply chain management, inventory management, etc.). Further, VHS needs significant upgrades to its IT assets in order to modernize its Hospitals and remain able to continue providing quality patient care services. For example, VHS needs to (i) immediately replace its outdated local area and wireless networking equipment with modern equipment to enable reliable access by all VHS system users (estimated cost \$15 million over a one-year implementation period), (ii) replace VHS' obsolete clinical systems — including its medical record systems and financial systems — in order to provide up-to-date patient records, improved clinical planning, care management, and better charge control (estimated cost \$220 million over a period of two years), and (iii) replace and upgrade such other information technology hardware and software, including for imaging clinics, that are necessary for operating a full range of healthcare services.

e. Seismic and Energy Requirements.

103. The Verity system requires seismic and energy expenditures of over \$150 million over the next few years. By way of example, there are significant improvements (including demolition of certain buildings) required by 2020 to St. Vincent Medical Center, Seton Medical Center, and O'Connor Medical Center. There are additional improvement required by 2030 to St. Vincent, Seton Medical Center, O'Connor Medical Center, and St. Louise Regional Hospital. These seismic improvement deadlines are part of the conditions imposed by the Attorney General in the BlueMountain Transaction, as well as mandated by the California Office of Statewide Health Planning and Development (OSHPD).

f. Medical Equipment.

104. The Verity system requires over \$100 million in medical equipment expenditures over a period of several years.

C. Working Capital Shortages.

105. The Debtors, like other hospitals serving similar communities, rely on HQAF, DSH and other government support to help bridge the gap between what they get reimbursed by Medicare and Medi-Cal and their cost of providing care. The Hospital Quality Assurance Fee (HQAF), established in 2010, provides funding for supplemental payments to California hospitals that serve Medi-Cal and uninsured patients. The program has been very successful, providing billions of dollars in supplemental payments to California hospitals. The Medicare and Medi-cal programs also provide funding to hospitals that treat indigent patients through the Disproportionate Share Hospital (DSH) programs, under which facilities are able to receive at least partial compensation. Under the Patient Protection and Affordable Care Act of 2010 (ACA, P.L. 111-148, as amended), Congress would have reduced federal DSH allotments beginning in 2014, to account for the decrease in uncompensated care anticipated under health insurance coverage expansion. However, several pieces of legislation have been enacted since 2010 have since delayed the ACA's Medicaid DSH reduction schedule. Unfortunately, both HQAF and DSH have proven difficult to rely on, as payments are reduced and delayed.

106. Relying on the HQAF payments has led to working capital shortages due to delays

1 in approval and receiving less than expected amounts. For example:

- 2 • *14-Month Delay*: QAF 5 FFS (service period 1/1/17 –6/30/19) was not approved until
3 Dec. 2017 and the Debtors did not start receiving payments until the end of Feb. 2018 (14-
month delay);
- 4 • *Potential 24 Month Delay*: QAF 5 HMO is likely not going to be approved until the end
5 of 2018 (potentially a 24-month delay on receiving funds);
- 6 • *Receiving less than Expected*: through the first 4 cycles of QAF 5 FFS, the Debtors have
7 received anywhere from 69.2-93.9% of expected payments.

7 **D. Attorney General Requirements.**

8 107. As set forth above, as part of approving the Restructuring Agreement, the AG
9 placed certain operational restrictions on VHS and each of the Hospitals, which include certain
10 minimum annual requirements for charity care, community benefits, and capital expenditures
11 among other mandates. Taken separately, most of these conditions would not have contributed to
12 the Debtors' failure to thrive. However, the cumulative effect of the conditions was to lock the
13 Debtors into a failing business model, dictating both minute details of business operations, as well
14 as denying the Debtors the ability to repurpose facilities. For example, SMC could better serve
15 the community by operating as a much-needed long-term post-acute care facility, rather than as
16 one of the many acute care hospitals in a saturated service area.

17 108. The AG's conditions also compelled the expenditure of millions of dollars to
18 provide charity care even though the number of uninsured people in California has steadily
19 decreased since passage of the Affordable Care Act. Also, as a result of a shortfall in the fiscal
20 year 2017 charity care requirement for certain hospitals, VHS was required to make an additional
21 contribution to the Retirement Plans of \$7,619,000 in October 2017.

22 109. The AG's conditions denied the Debtor the benefits of the marketplace. For
23 example, the conditions required Verity to enter into contracts with certain entities. Because
24 those entities were well aware of the AG's requirement that Verity contract with them or be in
25 default, Verity had no bargaining power with those entities or payors.

26 **E. Increased Cap Volumes.**

27 110. The Debtors have capitation contracts with health plans. Capitation is a flat
28 periodic payment per enrollee paid to a healthcare provider; it is the sole reimbursement for

1 providing services to a defined population. Under capitation, fixed payments are made to
2 providers regardless of the volume of services rendered, so providers like the Debtors bear the
3 risk that the costs of providing service, including opportunity costs (profits), might exceed the
4 capitation payment. Capitation completely reverses the actions that providers must take to ensure
5 financial success; under capitation, the keys to profitability are to work more efficiently and
6 decrease volume. The Debtors have seen a significant increase in volume from capitated
7 populations and therefore are bearing the loss from that increased volume.

8 **IV. Corporate And Capital Structure**

9 **A. Corporate Structure.**

10 111. As set forth above, VHS is a California nonprofit public benefit corporation and
11 the sole member of O'Connor Hospital, St. Francis Medical Center, St. Vincent Medical Center,
12 Seton Medical Center, Verity Business Services, Verity Medical Foundation, Verity Holdings,
13 LLC, and DePaul Ventures, LLC.

14 112. As set forth above, each Debtor Hospital is the sole member of the Debtor
15 nonprofit public benefit corporation that handles its fundraising and grant-making programs: St.
16 Francis Medical Center Foundation, St. Vincent Foundation, Seton Medical Center Foundation,
17 Saint Louise Regional Hospital Foundation, and O'Connor Hospital Foundation (collectively, the
18 "Philanthropic Foundations").

19 113. St. Vincent Medical Center is the sole Member of St. Vincent Dialysis Center, Inc.

20 114. VHS is the sole member of DePaul Ventures, LLC. DePaul Ventures, LLC, is the
21 sole Member of DePaul Ventures-San Jose ASC, LLC, and of DePaul Ventures-San Jose
22 Dialysis, LLC.

23 ///

24 ///

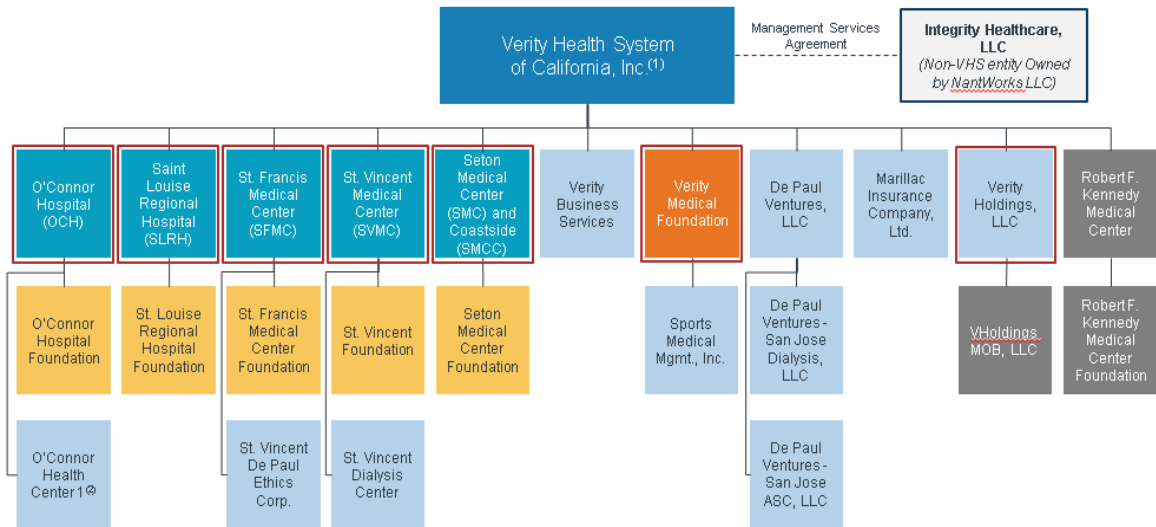
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115. The following graphic depicts Verity's prepetition organizational structure:



116. Each Debtor entity has its own management and governance structure. Under the leadership of the Daughters of Charity, each Hospital operated independently except that all employees were under the same pension plans. After the transition of operations and leadership to VHS, there has been a systemizing of operations, so that functions that were being performed at each of the Debtors are being transitioned and performed by VHS and being standardized, such as pharmacy operations, credentialing, IT, case management, etc.

117. As set forth above, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by Verity hospitals. The following graphic depicts VMF's structure that is comprised of, among other things, professional service agreements with seven medical groups that provide physicians to VMF's clinics:

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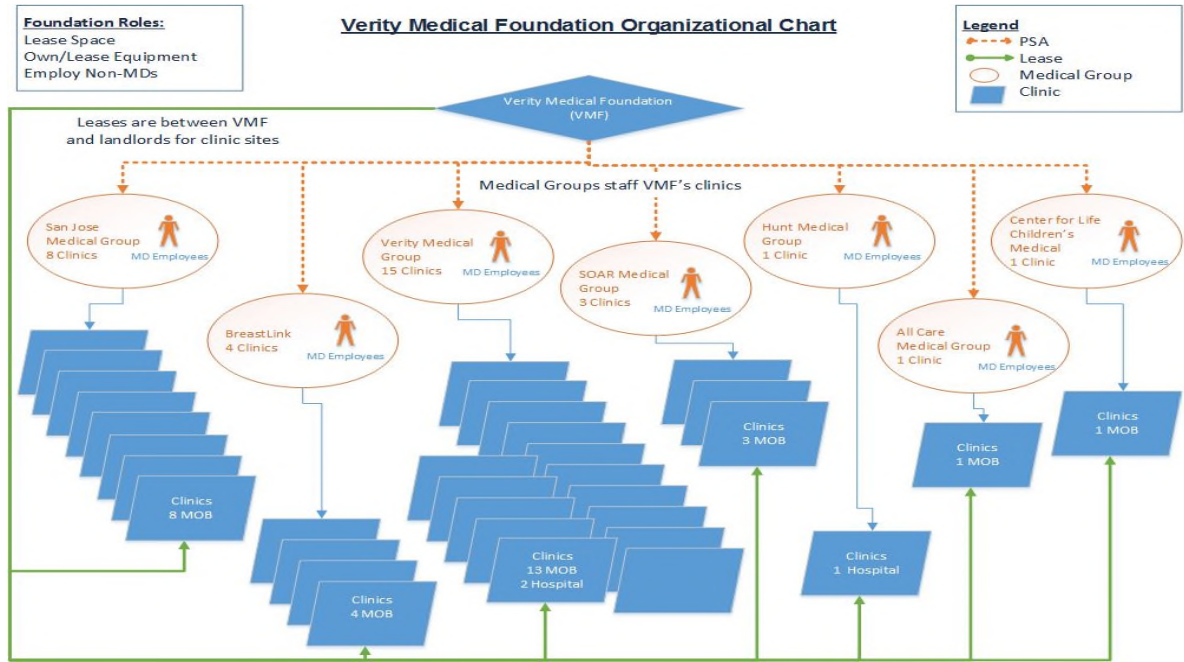
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118. As stated above, I am the CEO. The remainder of the senior management follows:

Name	Position
Chief Financial Officer	Anita Chou
Chief Operating Officer	Anthony Armada
Chief Medical Officer	Tirso del Junco, Jr. M.D.

119. VHS is governed by a 7-member Board (the "VHS Board of Directors"), the membership of which follows:

Name	Position
Dr. Ernest Agatstein	Director
James Barber	Director
Terry Belmont	Secretary
Jack Krouskup	Chairman
Charles B. Patton	Director
Christobel Selecky	Director
Andrew Pines	Vice Chair

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1 120. Verity Holdings, LLC, De Paul Ventures, LLC, and De Paul - San Jose Dialysis,
2 LLC, are all limited liability companies that do not have Boards of Directors. The sole Member
3 of Verity Holdings, LLC, and De Paul Ventures, LLC, is VHS. The sole member of De Paul
4 Ventures - San Jose Dialysis, LLC, is De Paul Ventures, LLC. I am the President and Eleanor
5 Ramirez and Art Huber were appointed Vice Presidents of Verity Holdings, LLC, on
6 November 17, 2017. I am the managing member for De Paul Ventures, LLC. Dr. Tirso del
7 Junco, Jr., is the managing member for De Paul Ventures - San Jose Dialysis, LLC.

8 **B. Capital Structure.**

9 121. As more fully set forth in the declaration of Anita Chou in support of the Debtors'
10 *Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To*
11 *Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C)*
12 *Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105,*
13 *363, 364, 1107 And 1108*, VHS, Verity Business Services ("VBS"), the Hospitals, and one
14 operating division are jointly obligated parties on approximately \$461.4 million of outstanding
15 secured debt consisting of: (a) \$259.4 million outstanding tax exempt revenue bonds, Series 2005
16 A, G and H issued by the California Statewide Communities Development Authority (the "2005
17 Bonds"), which loaned the bond proceeds to VHS to provide funds for capital improvements and
18 to refinance certain tax exempt bonds previously issued in 2001 by the DCHS, a religious not-for-
19 profit enterprise and VHS's reorganization predecessor; and (b) \$202 million outstanding tax
20 exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California
21 Public Finance Authority, which loaned the proceeds to VHS to provide working capital (the
22 "Working Capital Notes"). Wells Fargo Bank, N.A. ("Wells Fargo") is the Bond Trustee and
23 UMB Bank National Association ("UMB Bank") is the successor Master Trustee and for the
24 prepetition secured 2005 Bonds. U.S. Bank, National Association ("U.S. Bank") is the Note
25 Trustee and also the Collateral Agent for the Working Capital Notes.

26 122. Except for the taxable Series 2015C Working Capital Notes, the 2005 Bonds and
27 the Working Capital notes are all tax exempt, meaning interest on the bonds is not taxable to the
28 holders so long as the issuer maintains its qualified tax exempt status and the proceeds of the

bonds were used for the tax exempt purposes for which they were originally intended. The Series 2005 A Bonds are comprised four term bonds maturing on July 1, 2024, 2030 and 2035 bearing interest at 5.75% (Series 2005A-2024), (Series 2005A-2030), (Series 2005A-2035) and one maturing July 1, 2039 bearing interest at 5.50% (Series 2005A-2039). The Series 2005G term bond matures on July 1, 2022 and bears interest at 5.50%. The Series 2005H- term bond matures on July 1, 2025 and bears interest at 5.75%. The Working Capital Notes mature on June 10, 2019 (Series 2015A, Series 2015B, Series 2015C and Series 2015D) and on December 10, 2020 (Series 2017A, 2017B). Series 2015A and B and Series 2017 and 2017B bear interest at 7.25%, while the Series 2015D carries an 8.75% interest rate and Series 2015C accrues interest at 9.5%.

123. As set forth above, Holdings, a direct subsidiary of its sole member Verity, was created in 2016 to hold and finance Verity's interests in six medical office buildings whose tenants are primarily physician and other practicing medical groups and certain of the Verity Hospitals. Holdings is the borrower on approximately of \$66 million on two series of non-recourse financing secured by separate deeds of trust, revenue and accounts pledges, including lease rents on each medical buildings (collectively "MOB Financing"). The MOB Financings bear interest at a variable interest rate based on equal to One Month LIBOR plus a spread of 5.0% with a floor of 6.23%. The secured lenders for the MOB Financings are affiliates of NantWorks, LLC, which is an affiliate of Integrity.

124. During May 2017, the California Statewide Communities Development Authority issued \$20 million of limited obligation tax exempt bonds, pursuant to the CaliforniaFIRST Clean Fund Program in five series all with the same maturity date of September 2, 2047 (the "Clean Fund Bonds") as the conduit issuer for the benefit and obligation of Verity. The purpose of the bond funding was to assist with clean energy construction efforts of the Seaton Medical Center and are secured by Seton Medical Center's voluntary agreement to special tax assessments by Daley City. No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National Association ("WTNA") is the Trustee holding the construction funds, and a pre funded capitalized interest fund and is the collateral agent for collection of the special tax assessments for use in paying interest and principal on the Clean Fund Bonds. Interest on the Clean Fund Bonds

1 accrues at 6.4%. The special assessment runs for a period which is the shorter of 30 years or the
2 early full defeasement of the Clean Fund Bonds.

3 125. Also in September 2017, the California Statewide Communities Development
4 Authority issued a single series \$20 million of limited obligation tax exempt bonds pursuant to
5 the CaliforniaFIRST Program for the purpose of assisting with clean energy and seismic
6 improvement construction at Seton Medical Center (“NR2 Petros Bonds”). The NR2 Petros
7 Bonds also mature on September 2, 2047, but carry an interest rate of 6.45%. The NR2 Petros
8 Bonds are also California tax exempt and are secured by a special Daly City tax assessment on
9 Seton Medical Center property. No other Debtor is liable for repayment of the NR2 Petros
10 Bonds. The special assessment runs for a period which is the shorter of 30 years or the early full
11 defeasement of the NR2 Petros Bonds. WTNA is the Trustee holding the seismic improvement
12 funds, as well as a pre-funded interest payment fund.

13 126. NantCapital also provided \$40 million of unsecured debt financing for Verity as
14 reflected in two \$20 million unsecured notes (the “Unsecured Notes”). The Unsecured Notes are
15 balloon notes with interest and principal payable at maturity in 2020 and carry annual
16 compounded interest rates of 7.25%.

17 **C. Unsecured Debt.**

18 127. The Debtors have approximately \$500 million in total unsecured debt, including
19 disputed, unliquidated or contingent claims, which are comprised of claims made by vendors of
20 goods and services, cost report payables, pension obligations, management fees, and incurred but
21 not reported third party claims.

22 **V. Sale Efforts**

23 128. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
24 sell their assets. In June 2018, the Debtor engaged Cain Brothers, a division of KeyBanc Capital
25 Markets (“Cain”), to identify potential buyers of some or all of the Verity hospitals and related
26 assets and commenced discussions with those potential buyer.

27 129. Cain prepared a Confidential Investment Memorandum (the “CIM”) and organized
28 an online data site to share information with potentially buyers and contacted over 110 strategic

1 and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction
2 regarding the Debtors and has advanced significantly towards achieving sales.

3 130. In August 2018, as a result of its ongoing and broad marketing process, Cain has
4 received 11 Indications of Interest (“IOI”) to date, and expects to receive additional proposals on
5 or near the end of August. Shortly after the Petition Date, the Debtors, in consultation with Cain
6 and its other advisors, anticipate selecting an offer from one or more stalking horse bidder(s) to
7 acquire some or substantially all of the Debtors’ assets through a sale under § 363 of the
8 Bankruptcy Code.

9 **V. First-Day Pleadings**

10 131. The Debtors request that the relief described below in the First-Day Motions be
11 granted, as each request constitutes a critical element in achieving the successful restructuring of
12 the Debtors for the benefit of its patients, creditors and the communities they serve.

13 **A. Administrative Motions.**

14 132. In the *Motion of Debtors for Entry of an Order Directing the Joint Administration*
15 *of their Related Chapter 11 Cases* (the “Joint Administration Motion”), the Debtors request entry
16 of an order directing joint administration of these chapter 11 cases for procedural purposes
17 pursuant to Bankruptcy Rule 1015(b) and that the Court maintain one file and one docket for all
18 of the chapter 11 cases under the lead case, Verity Health System of California, Inc.

19 133. Joint administration of the chapter 11 cases will provide significant administrative
20 efficiencies without harming the substantive rights of any party in interest. Many of the motions,
21 hearings and orders that will be filed in the chapter 11 cases almost certainly will affect each of
22 the Debtors. The entry of an order directing joint administration of the chapter 11 cases will
23 reduce fees and costs by avoiding duplicative filings, objections, notices, and hearings, and will
24 allow all parties in interest to monitor the chapter 11 cases with greater ease and efficiency. The
25 relief requested in the Joint Administration Motion is in the best interests of the Debtors’ estates,
26 their creditors, and all other parties in interest and will enable the Debtors to continue to operate
27 their businesses in chapter 11 with the least disruption.
28

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1 134. In the *Ex Parte Motion For Entry Of Order Extending Time To File Schedules Of*
2 *Assets And Liabilities, Schedules Of Executory Contracts And Unexpired Leases, And Statements*
3 *Of Financial Affairs* (the “Schedules and SOFA Motion”), as set forth in the declaration of Anita
4 M. Chou, the Debtors request entry of an order granting additional time to file their schedules of
5 assets and liabilities, schedules of executory contracts and unexpired leases, and statements of
6 financial affairs. As a consequence of the size and complexity of the Debtors’ business
7 operations, the number of creditors likely to be involved in these chapter 11 cases, the numerous
8 critical operational matters that the Debtors’ management and employees must address, a 30-day
9 extension (without prejudice to further extensions) is necessary and appropriate.

10 135. In the *Debtors’ Emergency Motion (A) Approving the Debtors Filing a*
11 *Consolidated List of Fifty Largest General Unsecured Creditors For All Cases; (B) Approving*
12 *The Debtors Filing A Consolidated Master Mailing Matrix For All Cases; and (C) Permitting the*
13 *Debtors’ Claims And Noticing Agent To Maintain The Master Mailing Matrix*, the Debtors seek
14 entry of an order approving each Debtor having filed in its respective case: a consolidated list of
15 the fifty largest general unsecured creditors for all eighteen Debtors and a consolidated Master
16 Mailing Matrix for all 17 Debtors; and permitting the Debtor’s claims and Noticing Agent
17 (Kurtzman Carson Consultants) to maintain and update the Master Mailing Matrix. There are 17
18 entities that are Debtors in these chapter 11 cases. As of the Petition Date, the Debtors estimate
19 that they have over \$1 billion in liabilities and they have over 20,000-40,000 potential creditors
20 and parties in interest (on a consolidated basis) in these chapter 11 cases. Many of the Debtors’
21 creditors overlap. As such, requiring the Debtors to prepare individual Top 20 Lists of Creditors
22 and individual Mailing Matrixes for each Debtor would be an exceptionally burdensome task and
23 would greatly increase the risk and recurrence of error of information already on computer
24 systems maintained by the Debtors or their agents.

25 **B. Operational Motions Requesting Immediate Relief.**

26 136. The Debtors intend to ask for immediate relief with respect to the following First
27 Day Pleadings and, therefore, will present these motions at the First Day Hearing.
28

a. Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108 (the “Cash Collateral/DIP Motion”).

137. By way of the Cash Collateral/DIP Motion, and as set forth in the Declaration of Anita M. Chou (the “Chou Declaration”), Chief Financial Officer of VHS (“Chou Decl.”), in support of the Cash Collateral/DIP Motion, the Debtors move, on an emergency basis, for entry of an interim order (substantially in the form attached as Exhibit “A” to the Chou Declaration, the “Interim Order”) and a final order (the “Final Order” and together with the Interim Order, the “DIP Orders”) (i) (a) authorizing the Debtors to enter into a senior secured, superpriority debtor in possession financing facility with Ally Bank, a subsidiary of Ally Financial, Inc., (the “DIP Lender”), in an (a) interim amount not to exceed \$30,000,000 and only as needed to avoid immediate and irreparable harm, and (b) after a final hearing, amount up to \$185,000,000 (as amended, modified or otherwise in effect from time to time, the “DIP Facility”), substantially on the terms set forth in the Chou Declaration and the Debtors In Possession Facility Agreement, attached as Exhibit “1” to the proposed Interim Order (as amended, supplemented, or otherwise modified and in effect from time to time, the “DIP Facility Agreement,” and together with all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to or in favor of the DIP Lender, (the “DIP Financing Agreements”), and (b) granting the DIP Liens and the DIP Superpriority Claims (in each case, as defined below); (ii) authorizing the interim use of Cash Collateral (as defined below) on the terms set forth in the Interim Order; (iii) granting “adequate protection” to UMB Bank, N.A., as successor Master Trustee for the Prepetition Secured Revenue Bonds, Series 2005 A, G and H (“2005 Bonds”), U.S. Bank National Association (“U.S. Bank”), as the Collateral Agent and Note Trustee for the Series 2015 A, B, C, and D and the Series 2017 A and B Revenue Notes (collectively, the “Working Capital Notes”) and MOB Financing LLC and MOB Financing II LLC as holders of security interests in Verity Holdings prepetition accounts, including rents arising from the prepetition MOB Financing (described below) in the form of Adequate Protection Payments and Replacement Liens, each as defined in the Chou Decl.; (iv) modifying the automatic stay as imposed by section 362 of the

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1 Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP
2 Facility and the DIP Orders; and (v) scheduling an interim hearing to approve the proposed
3 Interim Order and a final hearing with respect to the relief requested herein (the “Final Hearing”).

4 138. Each Debtor has all requisite corporate power and authority to execute and deliver
5 the DIP Financing Agreements to which it is a party and to perform its obligations thereunder.

6 139. Absent granting emergency access to the Debtors’ cash collateral, the Debtors will
7 not be able to make payroll or meet other obligations critical to the maintenance of safe facilities
8 and the delivery of effective acute care services for its patients and staff during the week ending
9 September 7, 2018. Absent emergency access to postpetition financing, the Debtors will lose
10 vendor support for critical postpetition deliveries of goods and services further burdening the
11 Debtors use of cash. Absent entry of an interim order granting the requested relief, the very
12 existence of the Hospitals will be threatened and the ability of the Hospitals to survive as long
13 term going concerns, whether or not owned by the Debtors, will be irreparably harmed.

14 ***b. Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors***
15 ***To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee***
16 ***Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The***
17 ***Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors***
Relating To The Foregoing; Memorandum Of Points And Authorities In Support Thereof (the
“Wage Motion”).

18 140. By the Wage Motion, the Debtors move the Court for entry of an order
19 (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages and salaries,
20 and (b) pay and honor employee benefits and other workforce obligations (including remitting
21 withholding obligations, maintaining workers’ compensation and benefits programs, paying
22 related administration obligations, making contributions to retirement plans, and paying
23 reimbursable employee expenses) (collectively, the “Employee Obligations”); and (ii) authorizing
24 and directing the applicable bank to pay all checks and electronic payment requests made by the
25 Debtors relating to the foregoing.

26 141. Wages. The Employees are paid their wages and salaries (the “Wages”)
27 bi-weekly, in arrears, either five or six days after the end of every 14-day pay period, through
28 direct deposit or by check. The Debtors’ average bi-weekly gross payroll is approximately

1 \$25,394,994, which includes approximately \$463,907 for executive payroll, \$3,726,816 for
2 withholding obligations (relating to various taxes, claims and other obligations) and \$208,476 for
3 retirement plan contribution matching. Under a bifurcated, constant pay cycle, Employees were
4 last paid on August 24 and 30, 2018. The next routine payroll dates covering all Employees'
5 accrued and unpaid prepetition Wages are scheduled for September 7, 13 and 14, 2018, and
6 expected to include approximately \$15,353,375 that is attributable to prepetition Wages (the
7 "Requested Prepetition Payroll"), which the Debtors seek authority to pay by the Wage Motion.
8 The Debtors do not believe payments of Wages to any individual Employee will exceed the
9 \$12,850 cap under § 507(a).

10 142. Withholding and Union Obligations. In the ordinary course of their business, the
11 Debtors routinely withhold from the Wages certain amounts that the Debtors are required to
12 transmit to third parties for purposes such as Social Security and Medicare, federal and state or
13 local income taxes, contributions to the Debtors' benefit plans, savings and retirement plan
14 contributions, union claims, garnishment, child support or other similar obligations pursuant to
15 court order or law (collectively, the "Withholding Obligations"). The Debtors owe approximately
16 \$3,726,816 for Withholding Obligations in connection with the Requested Prepetition Payroll,
17 which the Debtors seek authority to pay by the Wage Motion. The Debtors are also required to
18 make certain Union-specific contributions, which are currently accrued and unpaid in the amount
19 of \$85,089 on account of prepetition Wages, which the Debtors seek authority to pay by the Wage
20 Motion.

21 143. Bonuses. Certain Employees are eligible to receive sign-on, retention and
22 incentive bonuses. Payout opportunity is based on Employee position, title and location (i.e.,
23 Hospital or Systems Office). The Debtors do not, by the Wage Motion, seek permission to pay
24 any bonuses to continuing Employees but do seek the authority, in the Debtors' discretion, to pay
25 the Employees for contractually agreed bonuses that accrued within the 180 days prior to the
26 Petition Date when their services with the Debtors are terminated so long as the total of the
27 payments already then made for prepetition Employee Obligations and the bonuses does not
28 exceed the statutory limit for priority claims of \$12,850.

1 144. Reimbursement Obligations. The Debtors customarily reimburse Employees who
2 incur business expenses in the ordinary course of performing their duties on behalf of the
3 Debtors. Such expenses typically include, but are not limited to, business-related travel expenses
4 (including mileage), business meals, relocation allowances, tuition reimbursement, and other
5 items specified in the CBAs. Based on historical experience, the Debtors anticipate that, as of the
6 Petition Date, the Debtors owe an estimated \$30,200 in Reimbursement Obligations to their
7 Employees, which they seek authority to pay by the Wage Motion. The Debtors further seek to
8 continue to pay Reimbursement Obligations incurred postpetition in the ordinary course of the
9 Debtors' business.

10 145. Paid Time Off and Extended Sick Leave. Full-time and part-time Employees
11 become eligible to receive employment benefits beginning the first of the month following 30
12 days of employment (when they become "Eligible Employees"). *Per diem* Employees are not
13 Eligible Employees. The Debtors provide Eligible Employees with Paid Time Off ("PTO") and
14 Extended Sick Leave ("ESL"), which are accrued annually and in increasing rates over successive
15 years. PTO is time off due to vacation, holiday, personal or incidental sick time. ESL kicks in (a)
16 immediately where the Eligible Employee is admitted for surgery, (b) after a 3-day waiting period
17 for a workers' compensation injury, and (c) after a 7-day waiting period if workers'
18 compensation is not implicated. As of the Petition Date, the Debtors are carrying approximately
19 \$36.6 million on their books for 789,942 hours of accrued and unused PTO. Eligible Employees
20 are permitted to cash out their unused PTO on one or two occasions during the year depending on
21 the relevant Hospital or CBA. As of the Petition Date, the Debtors are carrying approximately
22 \$17.5 million on their books for 372,000 hours of accrued and unused ESL. Some CBAs permit
23 Eligible Employees to cash out a portion of their unused ESL at retirement. By the Wage Motion,
24 the Debtors seek authority to honor their existing PTO and ESL policies to the extent it would
25 permit continuing Employees to use their prepetition accrued leave in the ordinary course of
26 business, and going forward. The Debtors are not, by the Wage Motion, seeking permission to
27 cash out any accrued and unused PTO or ESL of continuing Employees but do seek the authority,
28 in the Debtors' discretion, to pay the Employees for unused PTO and/or ESL, as permitted per

1 Hospital policy and relevant CBA terms, that accrued within the 180 days prior to the Petition
2 Date so long as the total of the payments for prepetition Employee Obligations does not exceed
3 the statutory limit for priority claims of \$12,850.

4 146. Health Benefits. The Debtors offer Eligible Employees the opportunity to
5 participate in a number of insurance and benefit programs, including, among other things, medical,
6 dental and vision plans, life insurance, short-term and long-term disability insurance, workers'
7 compensation, retirement plans and other insurance plans and benefits. As of the Petition Date,
8 the Debtors owed (a) approximately \$3,162,816 to Healthnow as third-party administrator on
9 account of accrued and unpaid prepetition claims against the self-insured medical plans; (b)
10 approximately \$48,060 to Cigna and Delta Dental for accrued and unpaid prepetition claims
11 against the self-insured dental plans; (c) approximately \$60,150 to VSP for accrued and unpaid
12 prepetition claims on account of the self-insured vision plans. By the Wage Motion, the Debtors
13 seek authority to pay these prepetition claims. The Debtors believe that they are current on the
14 administration fees and premiums related to the health plans to pay their portion of any premiums
15 or administration fees for the health plans that accrued and remain unpaid as of the Petition Date,
16 and to turn over to Blue Shield of California any amounts sufficient to satisfy the portion of the
17 accrued and unpaid prepetition premiums to be paid by the Employees in connection with the
18 payment of the Wages and Withholding Obligations. By the Wage Motion, the Debtors also seek
19 authority to continue to pay, in their discretion and in the ordinary course of their business, the
20 administration fees, premiums for and claims under the health plans incurred postpetition. The
21 Debtors further seek, by the Wage Motion, to continue to perform any obligations under
22 Continuation Health Coverage (COBRA) in respect to former employees.

23 147. Life, Disability and Workers' Compensation. The Debtors offer Eligible
24 Employees premium-based group life insurance and accidental death and dismemberment
25 insurance ("AD&D") through UNUM; premium based short term ("STD") and long term
26 disability coverage ("LTD") through Cigna; workers' compensation insurance through Old
27 Republic Insurance; and an employee assistance program through Optum. The Debtors are also
28 are obligated to Cigna on account of claims under the Federal Medical Leave Act (FMLA) and

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1 California Family Rights Act (CFRA). The Debtors believe that they are current on all the above
2 mentioned insurance policies and claims obligations. To the extent they are not, however, the
3 Debtors seek authority, by the Wage Motion, in their discretion, to pay any accrued and unpaid
4 prepetition premiums and related charges and to continue these benefits postpetition and to
5 deliver the Employees' portion of any accrued and unpaid prepetition premiums to the
6 corresponding administrators.

7 148. Retirement Plans. As described in further detail above, the Debtors offer eligible
8 Employees the opportunity to participate in various retirement plans, including defined benefit
9 plans and defined contribution plans. By the Wage Motion, the Debtors seek authority to pay
10 their matching contributions that accrued and remain unpaid as of the Petition Date for the
11 retirement plans and to deliver the Employee contributions in connection with the payment of
12 Wages and Withholding Obligations described above. The Debtors also seek authority, by the
13 Wage Motion, to continue to pay, in their discretion and in the ordinary course of their business,
14 matching contributions for the retirement plans incurred postpetition.

15 149. Miscellaneous Plans. The Debtors also offer their eligible Employees the
16 opportunity to participate in a "Cafeteria Plan" through Alliant Choice Plus, which includes
17 voluntary critical care insurance, pet insurance, auto and home insurance. The healthcare
18 reimbursement account and dependent care reimbursement account are administered through
19 Healthnow, and long-term care is administered through UNUM. All of these programs are 100%
20 funded by the Employees and are paid for through payroll deductions. By the Wage Motion, the
21 Debtors request authority to continue to honor these programs, in their discretion, and to continue
22 distributing to third-parties the payments for these programs in connection with the payment of
23 Wages and Withholding Obligations as described above, including the distributions of payments
24 that are for prepetition amounts due.

25 150. The Debtors believe that substantially all of its Employees rely exclusively on
26 their compensation to pay their daily living expenses. Also, the Employee Benefit Programs are a
27 critical component of the Employees' total compensation package. It is imperative to the
28 accomplishment of the Debtors' goals in this case that the Debtors minimize any adverse impact

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1 of the chapter 11 filing on the Debtors' workforce, patients, operations, and orderly
2 administration of these Cases. Any disruption to payment of the payroll in the ordinary course, or
3 to the continued implementation of employee programs in the Debtors' discretion, would
4 adversely affect the Debtors' goals in this case because such events are likely to cause some
5 employees to terminate their employment with the Debtors, will cause employees to be distracted
6 from their duties to care for the patients, and will hurt employee morale at a particularly sensitive
7 time for all employees. Failure to honor the Employee Obligations could have severe
8 repercussions on the Debtors' ability to preserve its assets and administer its estate, to the
9 detriment of all constituencies. Accordingly, as set forth in the Wage Motion, the Debtors request
10 authority to continue paying the Employees and administering the Employee Benefit Programs
11 and any obligations related to the foregoing (subject to the Budget and any applicable payment
12 caps) in the ordinary course of business.

13 ***c. Emergency Motion Of Debtors For Authority To: (1) Continue Using Existing***
14 ***Cash Management System, Bank Accounts And Business Forms; (2) Implement Changes To***
15 ***The Cash Management System In The Ordinary Course Of Business; (3) Continue***
16 ***Intercompany Transactions; (4) Provide Administrative Expense Priority For Postpetition***
Intercompany Claims; And (5) Obtain Related Relief; Memorandum Of Points And Authorities
In Support Thereof (the "Cash Management Motion").

17 151. By the Cash Management Motion, the Debtors move the Court for the entry of an
18 order authorizing them, subject to the terms of the DIP Orders and DIP Financing Agreements to:
19 (1) continue to use their cash management system, including the continued maintenance of their
20 existing bank accounts (three of which include passive investing) and business forms; (2)
21 implement changes to their cash management system in the ordinary course of business, including
22 opening new or closing existing bank accounts; (3) continue to perform under and honor
23 intercompany transactions in the ordinary course of business, in their business judgment and at
24 their sole discretion; (4) provide administrative expense priority for postpetition intercompany
25 claims, all as set forth in more detail below; and (5) obtain related relief.

26 152. The Debtors further request, by the Cash Management Motion, that the Court
27 authorize the financial institutions at which the Debtors maintain various bank accounts to (a)
28 continue to maintain, service and administer the Debtors' bank accounts, and (b) debit the bank

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1 accounts in the ordinary course of business on account of (i) wire transfers or checks drawn on
2 the bank accounts, or (ii) undisputed service charges owed to the banks for maintenance of the
3 Debtors' cash management system, if any.

4 153. The Debtors currently have 63 accounts (the "Accounts") with five commercial
5 banks and one investment bank (collectively the "Banks"). The Debtors request authority to
6 continue utilizing the Accounts, subject to the terms of the DIP Orders and DIP Financing
7 Agreements. Requiring the Debtors to close certain of the Accounts and open new ones will
8 disrupt the Debtors' cash flow – and, ultimately, impact patient care – because (i) the depositors
9 (some of which are governmental agencies) will not respond quickly to the change and will likely
10 continue to send deposits to the original deposit account, and (ii) the Debtors have certain
11 obligations (including for debt, pension and defined contribution) that they pay exclusively by
12 electronic funds transfer and changes to the payment accounts have the potential of slowing down
13 these crucial payments. Closing the Accounts will also increase the work of the Debtors'
14 accounting personnel, who are already dealing with the many and varied issues related to these
15 Cases. Closing the Accounts and opening new ones under the circumstances described in the
16 corresponding Memorandum of Points and Authorities would needlessly cost the Debtors time
17 and money at a time when they are trying to conserve both, and would result in no discernible
18 benefit to the Debtors' bankruptcy estates.

19 154. The Debtors also request in the Cash Management Motion authority to continue
20 using their business forms without the designation "Debtors in Possession" on them *for a limited*
21 *time*. The Debtors' forms are either electronically printed or can be electronically altered. The
22 Debtors seek the authority of this Court to utilize their electronically generated forms without the
23 "Debtors in Possession" designation until the adjustments to the software can be initiated and
24 existing stock is exhausted.

25 155. Subject to the DIP Orders and DIP Financing Agreements, by the Cash
26 Management Motion, the Debtors request that the Court authorize them to continue using their
27 cash management system in connection with the continued use of Accounts and continued use of
28

1 the Debtors' business forms; in furtherance thereof, the Debtors further request that the Court
2 authorize and direct the Banks to continue honoring the Debtors' transactions.

3 ***d. Emergency Motion Of Debtors For Order (A) Prohibiting Utilities From***
4 ***Altering, Refusing, Or Discontinuing Service And (B) Determining Adequate Assurance Of***
5 ***Payment For Future Utility Services (the "Utilities Motion").***

6 156. By the Utilities Motion, the Debtors move the Court for the entry of an order
7 authorizing them to (i) prohibiting utilities (collectively, the "Utility Companies" and
8 individually, a "Utility Company") from altering, refusing, or discontinuing service without
9 further order of the Court; and (ii) determining adequate assurance of payment for future utility
10 services. The Debtors receive essential utility services from several Utility Companies.
11 Furthermore, the Debtors seek a determination that: (i) a deposit made by the Debtors to each
12 Utility Company in an amount equal to the average monthly invoice for prepetition services
13 provided to the Debtors by such Utility Company (the "Deposit"); (ii) the ability of any Utility
14 Company to obtain an initial hearing on the adequacy of the Deposit; and (iii) the ability of any
15 Utility Company to obtain an expedited hearing regarding further adequate assurance if the
16 Debtors fail to cure a post-petition payment default within twenty (20) days after written notice of
17 such default, constitute adequate assurance of payment for future utility services.

18 157. As life-saving medical service providers, the Debtors are situated in a vulnerable
19 position—without the continual flow of vital services of Utility Companies, the mission of the
20 Debtors' business would unravel, irreparably harming the Debtors and their patients who seek
21 medical care in the hospitals, medical centers, and clinics operated by the Debtors. Thus, I believe
22 that in order to ensure the timely and proper care of the patients and maintain ongoing business
23 operations, it is imperative the Debtors are able to rely on a consistent supply of these services.

24 158. Specifically, uninterrupted electricity, gas, telephone, and similar services are
25 essential to the Debtors' provision of medical services to the Debtors' patients. Any interruption,
26 however brief, to utility services to the Debtors' business will result in a serious disruption of the
27 Debtors' business operations and dramatically affect patient care. Therefore, I believe that it is
28 critical that the Court prohibit the Utility Companies from altering, refusing or discontinuing
service to the Debtors without further order of this Court. The Deposit for each of the Utility

1 Companies, coupled with the streamlined mechanism for requesting further adequate assurance
2 will provide adequate assurance of payment to the Utility Companies as well as safeguard the
3 Debtors' continuing operations.

4 159. The Debtors are current on payment to the Utility Companies. Further, the Debtors
5 have sufficient cash to pay their postpetition utility bills as they come due and have specifically
6 budgeted for such payments in the Debtors' operating budget submitted in connection with the
7 Debtors' Cash Collateral Motion.

8 ***e. Debtors' Emergency Motion For Entry Of An Order Authorizing Debtors To***
9 ***Honor Prepetition Obligations To Critical Vendors (the "Critical Vendors Motion")***.

10 160. By the Critical Vendors Motion, the Debtors move the Court for the entry of an
11 order authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition
12 claims, up to \$20 million (the "Critical Vendor Cap"), with (i) an interim amount of up to \$5
13 Million, and (ii) an additional amount of up to \$15 Million, of their most critical vendors, in the
14 Debtors' discretion and in the ordinary course of the Debtors' business, pursuant to a carefully-
15 designed Protocol (defined below) overseen by a core, centralized team consisting of senior
16 members of Debtors' management and professional advisors, and subject to the terms and
17 conditions. The Debtors will suffer irreparable harm without the relief requested in Critical
18 Vendors Motion.

19 161. As life-saving medical service providers, the Debtors are situated in a vulnerable
20 position in that their entire mission would immediately unravel, irreparably harming the Debtors
21 and their patients without the continual flow of vital medical services, medical supplies, medical
22 equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians
23 such as, imaging technicians, surgical technicians, sterile processing technicians and interim
24 clinical/management staff, coders, admission department staff, as well as non-medical services,
25 information technology support, and/or benefits.

26 162. Additionally, local, state, and federal law places certain compliance requirements
27 on the Debtors. For example, as the operator of hospitals licensed under California state law and
28 certified to participate in the Medicare and Medicaid programs, the Debtors must comply with all

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1 hospital licensing and certification requirements, including those found in the Health and Safety
2 Code and in Title 22 of the California Code of Regulations, as well as the applicable Medicare
3 conditions of participation and corresponding Medicaid requirements. In addition to complying
4 with these overarching requirements, the Debtors must monitor and comply with all of the other
5 licensing and operational requirements that apply to the different service lines and programs
6 offered by the hospitals, including, for example, those applicable to the hospital pharmacies and
7 laboratories. These extensive, comprehensive requirements can only be fulfilled through
8 continued, uninterrupted access to various goods and services. Thus, in order to ensure the timely
9 and proper care of the patients and maintain ongoing business operations, it is imperative the
10 Debtors are able to rely on a consistent, quality supply of various physicians, nurses, nurse
11 practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical
12 technicians, sterile processing technicians and interim clinical/management staff, coders,
13 admission department staff, as well as certain medical supplies, medical equipment, and services
14 provided by vendors, suppliers and/or service-providers that are “critical” to the Debtors’
15 businesses (the “Critical Vendors”).

16 163. The Debtors’ Critical Vendors include the following categories of providers:
17 (i) uncompensated care contract physicians and on-call coverage physicians (collectively, the
18 “Uncompensated Care and On-Call Coverage Physicians”); (ii) medical directors (the “Medical
19 Directors”); (iii) medical staff officers and leadership positions (“Medical Leadership”);
20 (iv) physicians providing teaching services (“Physician Educators”); (v) medical services
21 providers (the “Medical Services Providers”); (vi) medical supplies and medical equipment
22 providers (collectively, the “Medical Supplies and Equipment Providers”); (vii) medical staffing
23 agencies and hospital-based services providers (collectively, the “Clinical Staffing”); (viii) non-
24 medical services providers (the “Non-Medical Services Providers”); (ix) information technology
25 services providers (the “IT Services Providers”); and (x) various employee benefits providers (the
26 “Benefits Providers”).

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1 164. The Debtors require the use of various physicians, the Uncompensated Care and
2 On-Call Coverage Physicians, who provide care to patients who lack the ability to compensate the
3 Debtors for their medical treatment (individually, “Uncompensated Care Contract Physicians”)
4 and the physicians who provide on-call services to cover the Debtors’ daily on-call needs
5 (individually, “On-Call Coverage Physicians”), all in order to ensure patient care. The
6 Uncompensated Care Contract Physicians routinely provide the following vital services: (i)
7 Emergency Room coverage; (ii) surgical procedures for any Patient who is uninsured or
8 underinsured; (iii) psychiatry; and (iv) cardiac services. The On-Call Coverage Physicians make
9 themselves available to the Debtors for certain periods of time to ensure that a specialist is
10 available at all times for emergency situations, including such emergent conditions as cardiac
11 arrest and immediate trauma. The On-Call Coverage Physicians routinely provide the following
12 areas of expertise: (i) urology; (ii) general surgery; (iii) orthopedics; (iv) cardiology; (v)
13 neurosurgery; (vi) thoracic surgery; (vii) cardiac surgery; (viii) radiation oncology; (ix)
14 neurology, (x) psychiatry; (xi) nephrology; (xii) gastroenterology; (xiii) pediatric surgery; and
15 (xiv) obstetrics.

16 165. Due to the strong economy and the tight labor market for professionals with
17 expertise, Uncompensated Care and On-Call Coverage Physicians have a vast array of working
18 opportunities available to them, and to the extent the Debtors are unable to ensure payment for
19 prepetition claims, these Uncompensated Care and On-Call Coverage Physicians will work at
20 other hospitals, resulting in a devastating impact on patient care and irreparable harm to the
21 smooth transition into chapter 11 and preservation and maximization of value for the benefit of
22 the Debtors’ creditors.

23 166. Further, the Debtors require the use of various physicians who serve as Medical
24 Directors. As Medical Directors, it is their responsibility to ensure the hospital runs smoothly and
25 efficiently and according to local, state, and federal mandates in order to ensure patient care.
26 These Medical Directors supervise and coordinate the On-Call Coverage Physicians, provide vital
27 operating and administrative services, such as (i) the Long Term & Sub-Acute Unit; (ii)
28 Advanced Wound Care; (iii) the Comprehensive Spine Care Program; (iv) the Stroke Program;

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(v) Cardiac & Pulmonary Rehabilitation; (vi) Oncology; (vii) Non-Invasive Cardiology; (viii) Radiation Therapy; (ix) the Intensive Care Unit and Neonatal Intensive Care Unit; (x) the Antimicrobial Stewardship Program; (xi) Interventional Neurology; (xii) the Bioethics Program; (xiii) the Catherization Laboratory; (xiv) the Skilled Nursing Facility, the Stroke Program; (xv) Thoracic Surgery; (xvi) the Dialysis Center; and (xvii) Nuclear Medicine and Vascular Laboratory. They also are vital for program quality, oversight, and risk management. There are approximately 60 physicians serving as Medical Directors. Similar to the Uncompensated Care and On-Call Coverage Physicians. I believe they also are vital for program quality, oversight, and risk management. There are approximately 68 physicians serving as Medical Directors.

167. Similar to the Uncompensated Care and On-Call Coverage Physicians, and due to the strong economy and the low labor market for professionals with expertise, Medical Directors are in demand and have a vast array of working opportunities available to them. To the extent the Debtors are unable to ensure payment for prepetition claims to Medical Directors, these Medical Directors will work at other hospitals, resulting in a devastating impact on patient care and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

168. Debtors require the use of various physicians who serve as medical staff officers and in other leadership positions, as required by each Hospital's accreditation with The Joint Commission (the "TJC"). Medical Leadership includes the Chiefs of Staff and all Department Chairs required by each of the Debtors' Medical Staff Bylaws, and by Title 22, including physician oversight for cardiology, pulmonary, laboratory, stroke, and ST-elevation myocardial infarction departments. The Chief Medical Officers are essential to ensure quality and risk oversight. Without these physicians, who I believe can easily find competitive opportunities elsewhere, the Debtors' day-to-day programs will cease to function, resulting in a significant impact on patient care and other irreparable harm to the Debtors' Chapter 11 Cases.

169. The Debtors require the use of various physicians, the Physician Educators, who provide teaching services in the Debtors' graduate medical education (the "GME") program, a legal requirement with which the Debtors must comply. The GME program simultaneously

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1 provides: (i) training for interns, residents, and fellows until they become independent and
2 licensed practitioners; and (ii) access to healthcare for elderly and impoverished patients.
3 Physician Educators are in high demand because the State of California mandates that every
4 teaching hospital support the efforts to provide access to high quality healthcare to its most
5 vulnerable population. To maintain Level 2 Trauma status, the Debtors must maintain the GME
6 program. Therefore, the Physician Educators are vital to maintaining the Debtors' teaching
7 hospital status and affording access to healthcare, both of which are key to the Debtors' Patient
8 care, ongoing operations, and/or potential sale of its assets for the benefit of its creditors and the
9 Estates.

10 170. Debtors require the use of various Medical Services Providers, including, but not
11 limited to, those who provide services such as surgical anesthesia coverage, organ harvesting and
12 organ matching services, medical equipment sanitization, diagnostic interventional cardiology
13 services, interventional neuroradiology, imaging services, advanced wound care, pathology and
14 laboratory services, dialysis services, lithotripsy services, sterile compounding services,
15 rehabilitation staffing and management services, subacute management services, psychiatric
16 management services, hospitalist services, intensivist program services, medical screening
17 services, and medical instrument repair services. These services are vital to the Debtors' day-to-
18 day operations, in particular with regard to Patient care, and the Debtor will suffer immediate
19 irreparable harm should the Court not grant the Debtors' request to include the Medical Services
20 Providers as Critical Vendors.

21 171. Debtors require the use of various medical supplies and medical equipment from
22 the Medical Supplies and Equipment Providers, including, but not limited to, blood and plasma,
23 heart valves, coronary intervention products, defibrillators, laparoscopic and minimally invasive
24 surgical supplies, neurosurgical supplies and neurology devices, other surgical medical products,
25 bone substitute biologics, regenerative vascular grafts, vaccinations and other pharmaceuticals,
26 nuclear medicines, medical gases, anesthesia medical equipment, laboratory medical supplies,
27 radiation equipment, gastrointestinal supplies, cochlear implants, orthopedic implants, spinal
28 implants, intraocular lenses and ophthalmology supplies, sterilization equipment and products,

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1 and fetal monitoring systems. Equipment includes medical equipment rentals, biomedical repair
2 tools and equipment, patient beds and stretchers, vital sign monitoring, infusion pumps,
3 medication supply stations, gastro-intestinal lab equipment, cardiac catheterization lab equipment,
4 operating room equipment, imaging equipment, laboratory equipment, pharmacy dispensing
5 equipment, and transplant program equipment. The medical supplies and medical equipment the
6 Debtors receive from the Medical Supplies and Equipment Providers are vital to the Debtors'
7 day-to-day operations, to maintain Patient care, and the Debtors will suffer immediate irreparable
8 harm should the Court not grant the Debtors' request to include the Medical Supplies and
9 Equipment Providers as Critical Vendors.

10 172. The Debtors also require the Clinical Staffing, which are various medical groups,
11 staffing agencies, and other hospital-based services providers, to meet critical thresholds of
12 physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as,
13 imaging technicians, surgical technicians, sterile processing technicians and interim
14 clinical/management staff, coders, and admission department staff servicing patients in
15 emergency and non-emergency room situations. The provision of physicians, nurses, professional
16 technicians such as, imaging technicians, surgical technicians, sterile processing technicians and
17 interim clinical/management staff, coders, and admission department staff is vital to service the
18 Debtors' six active emergency rooms, trauma center, and the multiple medical specialty units
19 providing tertiary and quaternary care.

20 173. Additionally, regarding the provision of nurses, the staffing supplementation is
21 essential because: (1) California has a mandatory statutory nurse to patient ratio, and so the
22 Debtors are required by law to meet certain ratios in order to operate on a daily basis; and (2) it is
23 difficult to recruit experienced staff—as opposed to recent graduates—for short-term
24 assignments. Indeed, these staffing agencies provide the requisite “registry” nurses who take short
25 single-day assignments and “traveler” nurses who take longer-term assignments to fill in during
26 busier seasons—*e.g.*, flu season—and understaffed periods—*e.g.*, during nurses strikes of
27 represented nurses—where the Debtors may not otherwise have sufficient numbers of nurses
28 between their core and per diem nurses.

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1 174. Moreover, many of the Clinical Staffing who provide physicians, nurses, nurse
2 practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical
3 technicians, sterile processing technicians and interim clinical/management staff, coders, and
4 admission department staff to the Debtors will not staff the Debtors' business if there is any
5 interruption or delay in the payment of the amounts due to them. Given the Debtors' reliance on
6 the medical services provided by the Clinical Staffing to provide Patient care and otherwise fulfill
7 the Debtors' daily medical services needs, and the fact that the Clinical Staffing can simply shift
8 their services to a medical services company, it is crucial that the Debtors be authorized to pay
9 any prepetition amounts due to the Clinical Staffing as Critical Vendors in the ordinary course of
10 business.

11 175. The Debtors require use of Non-Medical Services Providers, including, but not
12 limited to, those who provide services such as payroll tax services, financial audit services, billing
13 services, cost reporting services, revenue cycle management services, consulting and education
14 services for various required national, state, and local accreditations and mandates, environmental
15 services, record retention services, building maintenance services, medical equipment
16 maintenance services, management services, and other similar services, as well as to seismic
17 contractors. Seismic contractors are designers, engineers, suppliers and constructors who are
18 engaged in the statutory work of retrofitting hospital structures to meet the SB1953 and
19 subsequent amendments that are required to be completed by December 31, 2019. Delay of the
20 projects will cause the Debtors to miss the regulated deadlines, risking the Debtors' California
21 Department of Public Health license and suspension of such. These non-medical services are vital
22 to the Debtors' day-to-day operations, particular with regard to Patient care, and the Debtor's
23 ability to comply with regulatory requirements set by the State of California legislature, and the
24 Debtor will suffer immediate irreparable harm should the Court not grant the Debtors' request to
25 include the Non-Medical Services Providers as Critical Vendors.

26 176. The Debtors require use of various IT Services Providers who provide information
27 technology services, including, but not limited to, those who provide services such as diagnostic
28 technology, interoperability between devices, risk management and software services, revenue

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1 cycle management billing software and services, teleradiology services, customer relationship
2 management, networking solutions services, multi-function copiers, voice over internet protocol
3 system services, hosting services for applications, and point of care data management system
4 services. Critical patient care systems such as electronic health record systems and enterprise
5 resource planning systems must be maintained to ensure continuity and Patient care. I believe
6 these information technology services are vital to the Debtors' day-to-day operations, in particular
7 with regard to Patient care, and the Debtor will suffer immediate irreparable harm should the
8 Court not grant the Debtors' request to include the IT Services Providers as Critical Vendors.

9 177. The Debtors require certain Benefits Providers because the Debtors have
10 incentivized their employees to continue working through the continuation of company-
11 subsidized benefits, such as workers compensation, medical, dental, vision, short term and long
12 term care, leave of absence, and life insurance. If the Debtors are not permitted to pay any
13 prepetition premium amounts due to these Benefits Providers, the employees' insurance coverage
14 will be jeopardized and the employees will likely seek employment elsewhere. Specifically, I
15 believe any disruption to payment of the employee benefits in the ordinary course (and in the
16 Debtors' discretion), would adversely affect the Debtors' goals in this Case because such events
17 are likely to cause some employees to terminate their employment with the Debtors, will cause all
18 employees to be distracted from their duties to care for the patients and the operations of the
19 hospitals, and will inevitably hurt employee morale at a particularly sensitive time for all
20 employees, resulting in severe repercussions on the Debtors' ability to provide Patient care, and
21 to preserve their assets and administer the Estates, to the detriment of all constituencies. Since the
22 Debtors do not have the ability to quickly or cost-effectively replace their employees who provide
23 vital medical and non-medical services on a daily basis, it is critical that the Debtors be allowed
24 to continue these benefits in order to retain their employees and maintain their business
25 operations to preserve the full value of their assets for the benefit of their creditors. Therefore, the
26 Court should include Benefits Providers as Critical Vendors.

27 178. I, along with the Debtors, am mindful of the Debtors' fiduciary obligations to seek
28 to preserve and maximize the value of their Bankruptcy Estate. To that end, the Debtors and their

advisors have engaged in an intense process of reviewing and analyzing the Debtors' books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business relationships—which, if lost, could materially harm the Debtors' patients, the Debtors' businesses, reduce their enterprise value, and/or impair their restructuring process—all in an effort to identify only those most critical vendors using their business judgment (the "Protocol"). Such Protocol is on-going; however, the amounts proposed to be paid to the Critical Vendors are already provided for in the Debtors' operating budget submitted in connection with the Debtors' Cash Collateral Motion.

179. Indeed, during the Protocol process, the Debtors and I have deemed certain vendors as critical because each of these Critical Vendors meets the following criteria: (a) the vendor is essential to patient care, supports maintaining the Debtors' business in full compliance with California's Title XII requirements for operating general acute care hospitals in the state of California, and allows the Debtors to maintain their business postpetition until reorganization and/or sale of the Debtors' assets for the benefit of creditors; (b) the vendor is indispensable for providing vital goods or services, replacing said vendor would be prohibitively expensive, or said vendor is otherwise critical to prevent the diversion of management and key personnel to solicit other vendors to provide comparable goods or services and to prevent other unnecessary distraction during the extensive transitional period; (c) the vendor holds an unpaid prepetition claim for the provision of goods or services; (d) the vendor will refuse to deliver goods or provide services without payment of the prepetition claim and the automatic stay imposed by section 362(a) will be inadequate to address the issue; (e) cash on delivery is unlikely to provide the requisite incentive for the vendor to continue providing goods or services; (f) the Debtors lack a long-term contractual relationship with the vendor that would oblige the vendor to continue the prepetition relationship, and the Debtors are otherwise without adequate leverage to compel performance on commercially reasonable terms; and (g) the Debtors will suffer immediate and irreparable harm if the vendor is not specially incentivized to continue providing goods or services. The Debtors will use commercially reasonable efforts to require the vendor to sign a

1 postpetition agreement with normalized terms and conditions that contractually bind the vendor to
2 continue providing goods and services postpetition.

3 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
4 inquiry, the foregoing is true and correct.

5 Executed this 31st of August 2018, at Los Angeles, California.

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Richard G. Adcock

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EXHIBIT 6

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Proposed Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

☒ Affects All Debtors

☐ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

**EMERGENCY MOTION OF DEBTORS FOR
ENTRY OF ORDER: (I) AUTHORIZING THE
DEBTORS TO (A) PAY PREPETITION
EMPLOYEE WAGES AND SALARIES, AND (B)
PAY AND HONOR EMPLOYEE BENEFITS AND
OTHER WORKFORCE OBLIGATIONS; AND
(II) AUTHORIZING AND DIRECTING THE
APPLICABLE BANK TO PAY ALL CHECKS
AND ELECTRONIC PAYMENT REQUESTS
MADE BY THE DEBTORS RELATING TO THE
FOREGOING; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT THEREOF**

[Filed Pursuant to LBR 2081-1(a)(6) and 9075-1(a)]

[Declaration of Richard G. Adcock in Support of



1820151180831000000000043

☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

Debtors' First Day Motions filed concurrently
herewith]

EMERGENCY HEARING:

Date: September 5, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

U.S. Bankruptcy Court

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Los Angeles, CA 90012

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11 U.S.C.

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28 U.S.C.

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Secondary Sources

1	2 March, Ahart and Shapiro, <i>California Practice Guide: Bankruptcy</i> , ¶ 11:386	
2	(2014)	24

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EMERGENCY MOTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned Chapter 11 bankruptcy cases (collectively, the “Cases”), hereby move, on an emergency basis (the “Motion”), pursuant to §§ 105(a), 363(b), 507(a), 1107(a) and 1108 of title 11 of the United States Code (the “Bankruptcy Code”),¹ for the entry of an order: (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages and salaries, and (b) pay and honor employee benefits and other workforce obligations (including remitting withholding obligations, maintaining workers’ compensation and benefits programs, paying related administration obligations, making contributions to retirement plans, and paying reimbursable employee expenses); and (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing (collectively, the “Employee Obligations”). In support of the Motion, the Debtors have separately filed the Declaration of Richard G. Adcock in Support of Debtors’ First Day Motions (the “Adcock Declaration”).

SUMMARY OF REQUESTED RELIEF

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer irreparable harm without the relief requested in this Motion. The Debtors’ employees are vital to the operation of the Debtors’ hospitals and its medical clinics, and to the health, welfare, safety and security of the patients who seek medical care therein. Payment of, and otherwise honoring, the Employee Obligations are necessary to prevent employees from terminating their employment with the Debtors and to maintain the employees’ morale pending resolution of these Cases. Specifically, in satisfaction of Rule 2081-1(a)(6) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the “LBR”):

- (A) the employees regarding whom relief is requested are still employed by the Debtors;

¹ All references to “§” or “sections” herein are to sections of the Bankruptcy Code.

- 1 (B) the proposed payments to employees are absolutely necessary;
- 2 (C) these proposed payment procedures are beneficial to the Debtors' estates;
- 3 (D) with the requested first-day relief, the Debtors' prospect of reorganization is
- 4 heightened;
- 5 (E) the Debtors do not seek to pay any prepetition claims of any insiders at this time;
- 6 (F) the employees' claims are within the limits established by § 507; and
- 7 (G) the proposed payments will not render the Debtors' estates administratively
- 8 insolvent.

9 Therefore, pursuant to LBR 2081-1(a)(6), the Debtors request that this Motion be heard on an

10 emergency basis.²

11 **ADDITIONAL INFORMATION**

12 The Motion is based on the Notice of Emergency Motions that will be filed and served

13 after a hearing date for the Debtors' "First Day Motions" has been obtained, the attached

14 Memorandum of Points and Authorities, the Adcock Declaration, and the arguments of counsel

15 and other admissible evidence properly brought before the Court at or before the hearing

16 regarding the Motion. In addition, the Debtors request that the Court take judicial notice of all

17 documents filed with the Court in this case.

18 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and

19 Authorities, the Adcock Declaration and the Notice of First Day Motions on: (i) the Office of the

20 United States Trustee; (ii) any alleged secured creditors; (iii) the fifty largest general unsecured

21 creditors appearing on the list filed in accordance with Rule 1007(d) of the Federal Rules of

22 Bankruptcy Procedure (the "Bankruptcy Rules"); (iv) the United States of America, and the State

23 of California; and (v) parties that file with the Court and serve upon the Debtors requests for

24 notice of all matters in accordance with Bankruptcy Rule 2002(i). To the extent necessary, the

25 Debtors request that the Court waive compliance with LBR 9075-1(a)(6) and approve service (in

26 addition to the means of services set forth in such LBR) by overnight delivery. Among other

27

28 ² Pursuant to LBR 9075-1(a)(4), no separate motion for an expedited hearing is required.

1 things, the Notice of Emergency Motions will provide that any opposition or objection to the
2 Motion may be presented at any time before or at the hearing regarding the Motion, but that
3 failure to timely object may be deemed by the Court to constitute consent to the relief requested
4 herein.

5 In the event that the Court grants the relief requested by the Motion, the Debtors shall
6 provide notice of the entry of the order granting such relief upon each of the foregoing parties and
7 any other parties in interest as the Court directs. The Debtors submit that such notice is sufficient
8 and that no other or further notice be given.

9 **WHEREFORE**, for all the foregoing reasons and such additional reasons as may be
10 advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the
11 Court enter an order providing for the following relief: (i) authorizing the Debtors, in their
12 discretion, to (a) pay prepetition employee wages and salaries, and (b) pay and honor employee
13 benefits and other workforce obligations (including remitting withholding obligations,
14 maintaining workers' compensation and benefits programs, paying related administration
15 obligations, and paying reimbursable employee expenses); (ii) authorizing and directing the
16 applicable bank to pay all checks and electronic payment requests made by the Debtors relating to
17 the foregoing; and (iii) granting such other and further relief as is just and proper under the
18 circumstances.

19
20 Dated: August 31, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

21
22 By /s/Tania M. Moyron
23 Tania M. Moyron

24
25 Proposed Attorneys for the Chapter 11 Debtors
26 and Debtors In Possession
27
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Debtors request, pursuant to LBR 2081-1(a)(6) and 9075-1(a) and §§³ 105(a), 363(b), 507(a), 1107(a) and 1108 of the Bankruptcy Code, entry of an order on an emergency basis in these cases: (i) authorizing, but not directing, the Debtors, in their discretion, to (a) pay or honor prepetition wages, salaries, employee benefits, and other compensation, (b) remit withholding obligations, (c) maintain workers' compensation and benefits programs, (d) pay related administration obligations, and (e) pay reimbursable employee expenses (collectively, the "Employee Obligations"); and (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing.

The Debtors' goals in these Cases are to facilitate an orderly administration of their Cases and to maintain efficient and seamless operations for the benefit of the patients (the "Patients") who seek medical care in the Hospitals (defined below) and medical clinics operated by the Debtors in order to maximize the value of their assets for the benefit of all stakeholders. Accordingly, it is imperative to the accomplishment of the Debtors' goals in these Cases that the Debtors minimize any adverse impact of the chapter 11 filing on the Debtors' workforce, on the Patients, on the operations of the Hospitals and medical clinics, and on the orderly administration of these Cases. Any disruption to payment of the payroll in the ordinary course, or to the continued implementation of employee programs in the Debtors' discretion, would adversely affect the Debtors' goals in this case because such events could cause some employees to terminate their employment with the Debtors, could cause employees to be distracted from their duties to care for the Patients and the operations of the Hospitals and medical clinics, and could hurt employee morale at a particularly sensitive time for all employees. Failure to honor payroll and employee benefits obligations could have severe repercussions on the Debtors' ability to

³ All references to "§" or "section" herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended

1 preserve their assets and administer their estates, to the detriment of all constituencies.
2 Accordingly, the Debtors respectfully request that the Court grant the Motion.

3 **II.**

4 **JURISDICTION**

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

8 **III.**

9 **STATEMENT OF FACTS**

10 **A. General Background**

11 1. On August 31, 2018 (“Petition Date”), Verity Health System of California, Inc.
12 (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession in the
13 above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), each filed a voluntary
14 petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy
15 Code”).⁴ Since the commencement of their cases, the Debtors have been operating their
16 businesses as debtors in possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

17 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole
18 corporate member of the following five Debtor California nonprofit public benefit corporations
19 that operate six acute care hospitals: O’Connor Hospital, Saint Louise Regional Hospital, St.
20 Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical
21 Center Coastsides (collectively, the “Hospitals”) and other facilities in the state of California.
22 Seton Medical Center and Seton Medical Center Coastsides operate under one consolidated acute
23 care license.

24 3. VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health
25 System”) operate as a nonprofit health care system, with approximately 1,680 inpatient beds, six
26

27
28 ⁴ All references to “§” or “section” herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended.

active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care.

4. The VHS affiliated entities, including the Debtors and non-debtor entities, are as follows:

- O'Connor Hospital ("OCH")
- Saint Louise Regional Hospital ("SLRH")
- St. Francis Medical Center ("SFMC")
- St. Vincent Medical Center ("SVMC")
- Seton Medical Center ("SMC"), including Seton Medical Center Coastside campus ("SMCC")
- Verity Business Services ("VBS")
- Marillac Insurance Company, Ltd.
- O'Connor Hospital Foundation ("OCH-F")
- Saint Louise Regional Hospital Foundation ("SLRH-F")
- St. Francis Medical Center of Lynwood Foundation ("SFMC-F")
- St. Vincent Medical Center Foundation ("SVMC-F")
- Seton Medical Center Foundation ("SMC-F")
- St. Vincent de Paul Ethics Corporation
- St. Vincent Dialysis Center
- De Paul Ventures, LLC
- De Paul Ventures - San Jose Dialysis, LLC
- De Paul Ventures - San Jose ASC, LLC
- Verity Medical Foundation ("VMF")
- Verity Holdings, LLC ("Holdings")

5. VMF, incorporated in 2011, is a medical foundation, exempt from licensure under California Health & Safety Code § 1206(l). VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. With more than 100 primary care and specialty physicians, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Debtor Hospitals. VMF holds long-term professional services agreements with the following medical groups: (a) Verity Medical Group; (b) All Care Medical Group, Inc.; (c) CFL Children's Medical Associates, Inc.; (d) Hunt Spine Institute, Inc.; (e) San Jose Medical Clinic, Inc., D/B/A San Jose Medical Group; and (f) Sports, Orthopedic and Rehabilitation Associates.

6. Holdings is a direct subsidiary of its sole member VHS and was created in 2016 to hold and finance VHS' interests in four medical office buildings whose tenants are primarily

1 physicians, medical groups, healthcare providers, and certain of the VHS Hospitals. Holdings’
2 real estate portfolio includes more than 15 properties. Holdings is the borrower on approximately
3 \$66 million of non-recourse financing secured by separate deeds of trust and revenue and
4 accounts pledges, including the rents on each medical office building.

5 7. OCH-F, SLRH-F, SFMC-F, SVMC-F, and SMC-F handle fundraising and grant-
6 making programs for each of their respective Debtor Hospitals.

7 8. As of August 31, 2018, the Debtors have approximately 7,385 employees, of
8 whom 4,733 are full-time employees. Approximately 74% of these employees are represented by
9 collective bargaining units. A majority of the employees are represented by either the Service
10 Employees International Union (approximately 39% of employees) or California Nurses
11 Associations (approximately 22% of employees).

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

15 10. To date, no official committee or examiner has been appointed by the Office of the
16 United States Trustee in these chapter 11 Cases.

17 **B. Historical Challenges.**

18 11. The Hospitals and VMF were originally owned and operated by the Daughters of
19 Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”), to support the
20 mission of the Catholic Church through a commitment to the sick and poor. The Daughters of
21 Charity began their healthcare mission in California in 1858 and they ministered to ill, poverty-
22 stricken individuals for more than 150 years. In March 1995, the Daughters of Charity merged
23 with Catholic Healthcare West (“CHW”). In June 2001, Daughters of Charity Health System
24 (“DCHS”) was formed, and in October 2001, the Daughters of Charity withdrew from CHW. In
25 2002, DCHS commenced operations and was the sole corporate member of the Hospitals, which
26 at that time were California nonprofit religious corporations.

27 12. Between 1995 and 2015, the Daughters of Charity and DCHS struggled to find a
28 solution to continuing operating losses, either through a sale of some or all of the hospitals or a

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1 merger with a more financially sound partner. All these efforts failed. During these efforts,
2 however, the health system's losses continued to mount, and the system borrowed more than
3 \$500 million – including through a 2008 bond issuance (the “2008 Bonds”) – to fund operations,
4 acquire assets, fund needed capital improvements and/or refinance existing debt.

5 13. Despite continuous efforts to improve operations, operating losses continued to
6 plague the health system due to, among other things, mounting labor costs, low reimbursement
7 rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for
8 OCH, SLRH, SMC and SMCC. In 2013, to avoid failing debt covenants, the Daughters of
9 Charity Foundation, an organization separate and distinct from DCHS, donated \$130 million to
10 DCHS to allow it to retire the 2008 Bonds in the total amount of \$143.7 million.

11 14. In early 2014, DCHS announced that they were beginning a process to evaluate
12 strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their
13 health system and, in October of 2014, they entered into an agreement with Prime Healthcare
14 Services and Prime Healthcare Foundation (collectively, “Prime”) to sell the health
15 system. However, to keep the hospitals open, DCHS needed to borrow another \$125 million to
16 mitigate immediate cash needs during the sales process; in other words, to allow DCHS to
17 continue to operate until the sale could be consummated. In early 2015, the California Attorney
18 General consented to the sale to Prime, subject to conditions on that sale that were so onerous that
19 Prime terminated the transaction.

20 15. In 2015, DCHS again marketed their health system for sale, and, again, focused on
21 offers that maintained the health system as a whole, and assumed all the obligations. In July
22 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC
23 (“BlueMountain”), a private investment firm, to recapitalize its operations and transition
24 leadership of the health system to the new Verity Health System (the “BlueMountain
25 Transaction”).

26 16. In connection with the BlueMountain Transaction, BlueMountain agreed to make a
27 capital infusion of \$100 million to the hospital system, arrange loans for another \$160 million to
28 the health system, and manage operations of the health system, with an option to buy the health

1 system at a future time. In addition, the parties entered into a System Restructuring and Support
2 Agreement (the “Restructuring Agreement”), DCHS’s name was changed to Verity Health
3 System, and Integrity Healthcare, LLC (“Integrity”) was formed to carry out the management
4 services under a new management agreement.

5 17. On December 3, 2015, the California Attorney General approved the
6 BlueMountain Transaction, subject to conditions. Despite BlueMountain’s infusion of cash and
7 retention of various consultants and experts to assist in improving cash flow and operations, the
8 health system did not prosper.

9 18. In July 2017, NantWorks, LLC (“NantWorks”) acquired a controlling stake in
10 Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another \$148
11 million to the Debtors.

12 19. Despite the infusion of capital and new management, it became apparent that the
13 problems facing the Verity Health System were too large to solve without a formal court
14 supervised restructuring. Thus, despite VHS’ great efforts to revitalize its Hospitals and
15 improvements in performance and cash flow, the legacy burden of more than a billion dollars of
16 bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining
17 agreements or payor contracts, the continuing need for significant capital expenditures for seismic
18 obligations and aging infrastructure, and the general headwinds facing the hospital industry, make
19 success impossible. Losses continue to amount to approximately \$175 million annually on a cash
20 flow basis.

21 20. Additional background facts on the Debtors, including an overview of the Debtors’
22 business, information on the Debtors’ capital structure and additional events leading up to these
23 chapter 11 cases, are contained in the Adcock Declaration.

24 **C. Relevant Background to Motion**

25 1. The Debtors’ Employees

26 21. As set forth in the concurrently filed Adcock Declaration, altogether, the Debtors
27 employ approximately 7,385 employees – 6,907 excluding VMF and 478 under VMF. For W-2
28 tax and payroll purposes, the Debtors are divided into eight employers:

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(a) VHS, which covers the Systems Office and the Philanthropic Foundations, and as of the Petition Date employed approximately 294 employees (the “VHS Employees”), of which 289 are full-time, 3 are part-time and 2 are employed on a “*per diem*” basis;

(b) VBS, which as of the Petition Date employed approximately 307 employees (the “VBS Employees”), of which 285 are full-time, 11 are part-time and 11 are *per diem*;

(c) OCH, which as of the Petition Date employed approximately 1,370 employees (the “OCH Employees”), of which 586 are full-time, 441 are part-time and 343 are *per diem*;

(d) SLRH, which as of the Petition Date employed approximately 480 employees (the “SLRH Employees”), of which 153 are full-time, 159 are part-time and 168 are *per diem*;

(e) SFMC, which as of the Petition Date employed approximately 2,017 employees (the “SFMC Employees”), of which 1,583 are full-time, 136 are part-time and 298 are *per diem*;

(f) SVMC, which as of the Petition Date employed approximately 1,099 employees (the “SVMC Employees”), of which 897 are full-time, 42 are part-time and 160 are *per diem*;

(g) SMC, which includes SMCC, and as of the Petition Date employed approximately 1,340 employees (the “Seton Employees,” and together with the VHS Employees, VBS Employees, OCH Employees, SLRH Employees, SFMC Employees and SVMC Employees, the “Verity Employees”), of which 516 are full-time, 551 are part-time and 273 are *per diem*; and

(h) VMF, which as of the Petition Date employed approximately 478 employees (the “VMF Employees,” and together with the Verity Employees, the “Employees”), of which 424 are full-time, 15 are part-time and 39 are *per diem*.

22. Both full-time and part-time (“core”) employees are regularly scheduled to work every pay period whereas *per diem* employees are used on an as-needed basis. *Per diem* employees are called in whenever Hospitals would not otherwise meet their core staffing requirements – for example, when core employees are sick or on vacation, or there is a spike in patient census. Although not limited to nursing employees, notably California requires the Hospitals to maintain specific nurse-to-patient ratios,⁵ so the Debtors use *per diem* employees to ensure the Hospitals are in compliance with those requirements.

⁵ See Cal. Health & Safety Code § 1276.4; Cal. Code Regs. tit. 22, § 70217.

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2. Employee Unions

23. Almost three-quarters of the Debtors' Employees – approximately 5,488 Employees in total – are represented by unions (the "Represented Employees"). These Represented Employees are represented by the California Nurses Association ("CNA"); Engineers and Scientists of California IFPTE Local 20, SEIU-UHW United Healthcare Workers-West; California Licensed Vocational Nurses' Association; CLVNA United Nurses Associations of California, UNAC, National Union of Healthcare Workers, NUHW; and The International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO ("Local 39 Stationary Engineers," and collectively, the "Unions"). The Debtors' contractual arrangements with the Unions regarding the employment of the Represented Employees are reflected in multiple collective bargaining agreements (the "CBAs").

D. Prepetition Wages, Payroll and Associated Benefits

24. The Employees are paid their wages and salaries (the "Wages") bi-weekly, in arrears, either five or six days after the end of every 14-day pay period, through direct deposit or by check. The Debtors' average bi-weekly gross payroll is approximately \$25,394,994, which includes approximately \$463,907 for executive payroll, \$3,726,816 for withholding obligations (relating to various taxes, claims and other obligations) and \$208,476 for retirement plan contribution matching.

25. Pursuant to LBR 2014-1(a), the Debtors intend to serve Notices of Setting/Increasing Insider Compensation with respect to any of its executives who qualify as "insiders" (as defined in § 101(31)). As part of this Motion, the Debtors seek authority to pay these insider Employees the unpaid wage or salary obligations that have accrued on their behalf prior to the Petition Date, provided that no objections to the Notices are received within the 15-day time period provided by LBR 2014-1(a).

1. The Verity Debtors' Direct, Bifurcated, Payroll System

26. The Debtors are organized into eight employers. In addition, for payroll and cash management purposes, the Debtors are separated into VMF and the rest of the Debtors (the latter, the "Verity Debtors"). The Verity Debtors' payroll is further bifurcated, creating a constant pay

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1 cycle, with VBS, SFMC and Seton (collectively, “Verity Debtor Group A”) paying their
2 Employees on the odd weeks (e.g., 1, 3, . . . 49, 51), and VHS, OCH, SLRH and SVMC
3 (collectively, “Verity Debtor Group B”) paying their Employees on the even weeks (e.g., 2, 4, . . .
4 50, 52), in each case on a Friday – with the exception of SFMC whose payroll is processed on
5 Thursday – for the preceding 14-day pay period running from Sunday to Saturday. The Verity
6 Debtors process payroll directly, using a payroll platform licensed by Infinium. The Verity
7 Debtors normally transfer funds from their respective accounts payable bank accounts to their
8 respective payroll accounts two days prior to the pay date (i.e., Tuesdays for SFMC and
9 Wednesdays for the other Verity Debtors).⁶

10 27. The date on which the Employees of Debtor Group A and certain Employees of
11 Debtor Group B were last paid was August 30, 2018 for the two-week period ending August 25,
12 2018. The Employees of Debtor Group A represented by SEIU are entitled to identify and
13 resolve any errors in payroll within 24 hours (the “SEIU Lookback”). The Debtor Group A
14 Employees’ next routine payroll is scheduled for September 13 (for SFMC) and September 14,
15 2018 (the “September 13/14th Payroll”), and expected to include approximately \$24,287,614,
16 which covers Debtor Group A Wages earned from August 26, 2018 through September 8, 2018 –
17 approximately \$2,727,235 of which amount is attributable to prepetition Wages (the “Group A
18 Prepetition-Accrued Payroll”).

19 28. The date on which the remaining Employees of Debtor Group B were last paid
20 was August 24, 2018 for the two-week period ending August 18, 2018. These Employees’ next
21 routine payroll is scheduled for September 7, 2018 (the “September 7th Payroll”), and expected to
22 be approximately \$23,140,020, which covers Debtor Group B Wages earned from August 19,
23 2018 through September 1, 2018 – approximately \$11,560,517 of which amount is attributable to
24 prepetition payroll (together with the Group A Prepetition-Accrued Payroll, the “Verity Debtors
25 Prepetition-Accrued Payroll”).

26
27 ⁶ By separate and contemporaneous motion, the Debtors are requesting authority to continue operating their cash
28 management system in the ordinary course of business, which, among other things, would permit them to continue
transferring funds between bank accounts to fund payroll.

29. Accordingly, the Debtors seek authority to pay the Verity Debtors Prepetition-Accrued Payroll in the amount of \$14,287,752 on account of prepetition Wages, which they confirm does not exceed \$12,850 per Employee. The Debtors further seek to pay any additional amounts identified as of the Petition Date through the SEIU Lookback. The Debtors further seek to continue to pay Wages to the Employees of the Verity Debtors incurred postpetition in the ordinary course of the Debtors' business.

2. VMF's Third-Party-Processed Payroll System

30. VMF pays the VMF Employees on the even weeks, on Fridays for the preceding 14-day pay period running from Monday to Sunday. VMF's payroll is disbursed by ADP, a supplier of human resources and document services that provides VMF with payroll management and administration services. VMF normally funds its payroll to ADP on Tuesday prior to the pay date.

31. The date on which the VMF Employees were last paid was August 24, 2018 for the two-week period ending August 19, 2018. These Employees' next routine payroll is also scheduled for September 7, 2018 (the "September 7th ADP Payroll"), and expected to be approximately \$1,147,594, which covers VMF Wages earned from August 20 through September 2, 2018 – approximately \$1,065,623 of which amount is attributable to prepetition Wages (the "VMF Prepetition-Accrued Payroll," and together with the Verity Debtors Prepetition-Accrued Payroll, the "Prepetition-Accrued Payroll"), which they confirm does not exceed \$12,850 per Employee. VMF would need to fund the VMF Prepetition-Accrued Payroll to ADP by September 4, 2018.

32. As of the Petition Date, VMF will owe ADP approximately \$4,500 with respect to its processing of the VMF payroll and related payroll administration matters (the "Administration Fees"). The Debtors request authority to continue to pay ADP the prepetition amount of \$4,500 and to pay the postpetition ADP Administration Fees in the ordinary course of VMF's business.

33. Accordingly, the Debtors seek authority to pay the VMF Prepetition-Accrued Payroll in the amount of \$1,065,623 on account of prepetition Wages. The Debtors further seek

1 to continue to pay Wages to the VMF Employees incurred postpetition in the ordinary course of
2 the Debtors' business.

3 3. The Debtors' Withholding Obligations

4 34. In the ordinary course of their business, the Debtors routinely withhold from the
5 Wages certain amounts that the Debtors are required to transmit to the government and certain
6 third parties for purposes such as Social Security and Medicare withholdings, federal and state or
7 local income taxes, contributions to the Debtors' benefit plans, savings and retirement plan
8 contributions, union claims, garnishment, child support or other similar obligations pursuant to
9 court order or law (collectively, the "Withholding Obligations"). The Debtors owe approximately
10 \$3,726,816 for Withholding Obligations – including payments for tax obligations (the "Employer
11 Tax Obligations") such as FICA and Social Security – in connection with the Requested
12 Prepetition Payroll. Accordingly, the Debtors seek authority to pay the prepetition Withholding
13 Obligations in the amount of \$3,726,816 on account of prepetition Wages; and to continue to pay
14 Withholding Obligations incurred postpetition in the ordinary course of the Debtors' business.

15 4. The Debtors' Union Obligations

16 35. In addition to various benefits incorporated above, the Debtors are required to
17 make certain Union-specific contributions (the "Union Obligations"). Specifically, the Debtors
18 are required to contribute 0.022% of the wages of the Represented Employees with SEIU-UHW
19 to the SEIU Training and Upgrade Fund; this payment is made annually in February, and is not
20 currently owing. The Debtors are also required to make a monthly contribution of approximately
21 \$165,800 (on average, in Calendar Year 2018) to the Local 39 Pension Trust Fund on behalf of
22 Represented Employees with Local 39 Stationary Engineers. Accordingly, the Debtors seek
23 authority to pay the prepetition Union Obligations in the amount of \$176,524 on account of
24 prepetition Wages; and to continue to pay Union Obligations incurred postpetition in the ordinary
25 course of the Debtors' business.

26 **E. Business Expense Reimbursements**

27 36. The Debtors customarily reimburse Employees who incur business expenses in the
28 ordinary course of performing their duties on behalf of the Debtors. Such expenses typically

1 include, but are not limited to, business-related travel expenses (including mileage), business
2 meals, relocation allowances, tuition reimbursement, and other items specified in the CBAs (the
3 “Reimbursement Obligations”). Expense reports detailing the Reimbursement Obligations are
4 submitted for reimbursement by the Employees and generally must be supported by copies of
5 receipts.

6 37. It is difficult for the Debtors to determine the exact amount of Reimbursement
7 Obligations that is due and owing for any particular time period since the expenses incurred by
8 Employees on behalf of the Debtors throughout the year vary on a monthly basis and because
9 there may be some delay between when an Employee incurs an expense and submits the
10 corresponding expense report for processing. Based on historical experience, the Debtors
11 anticipate that, as of the Petition Date, the Debtors owe an estimated \$30,200 in Reimbursement
12 Obligations. Accordingly, the Debtors seek authority to pay \$30,200 in Reimbursement
13 Obligations to their Employees. The Debtors further seek to continue to pay Reimbursement
14 Obligations incurred postpetition in the ordinary course of the Debtors’ business.

15 **F. Bonuses**

16 38. Certain Employees are eligible to receive sign-on and retention bonuses (the
17 “Bonuses”). Sign-on bonuses are provided to candidates for employment in hard-to-fill or critical
18 vacancies, such as ICU or Surgery Registered Nurses. Sign-on and retention bonuses are
19 provided for management candidates as a recruiting incentive and to guarantee high-quality
20 management candidates remain with the organization for a specified period of time.

21 39. The Debtors are not, by this Motion, seeking permission to pay any Bonuses to
22 continuing Employees but do seek the authority, in the Debtors’ discretion, to pay the Employees
23 for contractually agreed bonuses that accrued within the 180 days prior to the Petition Date when
24 their services with the Debtors are terminated so long as the total of the payments already then
25 made for prepetition Employee Obligations and the Bonuses does not exceed the statutory limit
26 for priority claims of \$12,850.

G. Paid Time Off and Extended Sick Leave

40. Full-time and part-time Employees become eligible to receive employment benefits beginning the first of the month following 30 days of employment (when they become “Eligible Employees”). *Per diem* Employees are not Eligible Employees.

41. The Debtors provide Eligible Employees with Paid Time Off (“PTO”) and Extended Sick Leave (“ESL”). PTO is time off due to vacation, holiday, personal or incidental sick time. ESL kicks in (a) immediately where the Eligible Employee is admitted for surgery, (b) after a 3-day waiting period for a workers’ compensation injury, and (c) after a 7-day waiting period if workers’ compensation is not implicated.

42. Eligible Employees accrue PTO and ESL annually, and the number of hours they can accrue increases in successive years.⁷ When these various caps are reached, no further PTO or ESL, respectively, will accrue until the Employee uses some of the accrued Paid PTO or some of the accrued time is cashed out by the Employee (per the terms of the relevant CBA or Hospital or Systems Office policy). As of the Petition Date, the Debtors are carrying approximately \$36.6 million on their books for 789,942 hours of accrued and unused PTO. Eligible Employees are permitted to cash out their unused PTO on one or two occasions during the year depending on the relevant Hospital or CBA. As of the Petition Date, the Debtors are carrying approximately \$17.5 million on their books for 372,000 hours of accrued and unused ESL. Some CBAs permit Eligible Employees to cash out a portion of their unused ESL at retirement.

43. The Debtors seek authority to honor their existing PTO and ESL policies to the extent it would permit continuing Employees to use their prepetition accrued leave in the ordinary course of business, and going forward. The Debtors are not, by this Motion, seeking permission to cash out any accrued and unused PTO or ESL of continuing Employees but do seek the authority, in the Debtors’ discretion, to pay the Employees for unused PTO and/or ESL, as permitted per Hospital policy and relevant CBA terms, that accrued within the 180 days prior to

⁷ The specific hours vary depending on the relevant CBA governing the Represented Employee’s employment.

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the Petition Date so long as the total of the payments already then made for prepetition Employee Obligations and the PTO/ESL does not exceed the statutory limit for priority claims of \$12,850.

H. Employee Benefits

44. The Debtors offer Eligible Employees the opportunity to participate in a number of insurance and benefit programs, including, among other things, medical, dental and vision plans, life insurance, short-term and long-term disability insurance, workers' compensation, retirement plans and other insurance plans and benefits as described below (collectively, the "Employee Benefits").

1. Medical, Vision and Dental Insurance

45. The Debtors offer all Eligible Employees and their eligible dependents (collectively, the "Dependents") medical, dental and vision insurance, which are primarily self-insured by the Debtors with the exceptions set forth below.

46. For medical, the Debtors offer (a) a self-insured Exclusive Provider Organization ("EPO") plan; (b) a self-insured preferred provider organization ("PPO") plan (together with (a), the "Self-Insured Medical Plans"); (c) one PPO plan fully-insured by Blue Shield of California ("BlueShield") for the enrolled Represented Employees of SMC with CNA and their Dependents (together with the Self-Insured Medical Plans, the "Medical Plans"). Healthnow is the third-party administrator for all medical and prescription drug claims against the Self-Insured Medical Plans.

47. The Debtors bear between approximately 51% and 100% of the costs of the Medical Plans. Depending on (a) which Debtor Employer, (b) whether the Eligible Employee is a Represented Employee – and, if so, under which CBA, and (c) whether and how many Dependents are covered, the Debtors' and Employees' respective monthly costs for the Medical Plans fall within the following ranges:

Plan	Monthly Employer Cost	Monthly Employee Cost
EPO	\$539.19 - \$2,959.45	\$0 - \$214.65
PPO	\$403.32 - \$2,994.42	\$49.21 - \$1,136.83
BlueShield PPO	\$705.63 - \$2,187.46	\$326.56 - \$1,012.35

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48. The Self-Insured Medical Plans are on a self-bill model, whereby the Debtors pay (a) to Healthnow: (i) monthly administration fees (including pass-through stop-loss insurance fees to Voya) based on the number of insured Employees in the prior month and (ii) actual medical claims; and (b) to BlueShield: accrued and unpaid prepetition premiums on account of the BlueShield Plan. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to Healthnow, or prepetition premiums to BlueShield. As of the Petition Date, the Debtors owed approximately \$3,162,816 to Healthnow on account of accrued and unpaid prepetition claims against the Self-Insured Medical Plans.

49. For dental, the Debtors offer three self-insured Delta Dental plans and one Cigna plan (together, the “Dental Plans”). The Debtors bear between approximately 45% and 100% of the costs of the Dental Plans. Depending on the Employees’ Hospital and Union affiliation and Dependent status, the Debtors’ and Employees’ respective monthly costs for the Dental Plans fall within the following ranges:

Plan	Monthly Employer Cost	Monthly Employee Cost
Cigna DHMO	\$25.28 - \$69.90	\$0
DD 800	\$21.81 - \$95.52	\$0 - 47.67
DD 1200 with Ortho	\$43.64 - \$170.87	\$0 - \$93.99
DD 1500	\$30.41 - \$95.52	\$0 - \$101.68

50. As of the Petition Date, the Debtors owed approximately \$48,060 to Cigna and Delta Dental on account of accrued and unpaid prepetition claims against the Dental Plans. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to Cigna or Delta Dental.

51. For vision, the Debtors offer two self-insured VSP plans (the “Vision Plans,” and together with the Medical Plans and the Dental Plans, the “Health Plans”). The Debtors bear up to 100% of the costs of the Vision Plans. Depending on the Employees’ Hospital and Union affiliation and Dependent status, the Debtors’ and Employees’ respective monthly costs for the Vision Plans fall within the following ranges:

Plan	Monthly Employer Cost	Monthly Employee Cost
VSP Basic	\$4.27 - \$20.88	\$0 - \$10.44
VSP Buy-Up	\$0 - \$20.87	\$6.41 - \$36.53

52. As of the Petition Date, the Debtors owed approximately \$60,150 to VSP on account of accrued and unpaid prepetition claims against the Vision Plans. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to VSP.

53. The Debtors believe that they are current on the administration fees and premiums related to the Health Plans. To the extent they are not, however, the Debtors seek authority to pay their portion of any premiums or administration fees for the Health Plans that accrued and remain unpaid as of the Petition Date, and to turn over to BlueShield any amounts sufficient to satisfy the portion of the accrued and unpaid prepetition premiums to be paid by the Employees in connection with the payment of the Wages and Withholding Obligations. The Debtors also seek authority to continue to pay, in their discretion and in the ordinary course of their business, the administration fees, premiums for and claims under the Health Plans incurred postpetition.

54. Furthermore, and for similar reasons, the Debtors seek to continue to perform any obligations under § 4980B of the Internal Revenue Code to administer Continuation Health Coverage (“COBRA”) (*see* 26 U.S.C. § 4980B) in respect to former employees. The Debtors believe that any prepetition costs related to COBRA coverage benefits are *de minimis*, but nonetheless, to maintain Employee morale and ensure the orderly administration of the Estates, the Debtors request authority to pay in their discretion any such prepetition costs.

2. Employee Life, Disability and Workers’ Compensation

55. The Debtors offer Eligible Employees premium-based group life insurance (“Life Insurance”) and accidental death and dismemberment insurance (“AD&D”) through UNUM. The premiums and other related charges for life insurance are paid 100% by the Debtors up to 1x salary⁸ and total approximately \$193,647 monthly on account of approximately 5,900 Employees. The premiums and other related charges for AD&D coverage are paid 100% by the Debtors up to

⁸ Employees may elect to upgrade coverage to 5x annual salary and pay the additional amount themselves.

1 \$10,000⁹ and total approximately \$16,191 monthly on account of approximately 5,800
2 Employees.

3 56. The Debtors also offer Eligible Employees premium-based short term (“STD”) and long term disability coverage (“LTD”) through Cigna. Depending on CBA, the Debtor
4 employer pays 40-50% of premiums and other related charges for LTD,¹⁰ and total approximately
5 \$108,035 and \$110,643 monthly, respectively, on account of 5,800 Employees. STD premiums
6 are 100% employee-funded.
7

8 57. The Debtors also provide workers’ compensation insurance through Old Republic
9 Insurance (the “Workers’ Compensation Insurance”). Their broker of record is Lockton. The
10 amount of the annual premium is approximately 2,044,515 which is paid quarterly in the amount
11 of approximately \$511,128. The Debtors use Sedgwick as their third-party administrator, whom
12 the Debtors pay an estimated annual fee of \$702,000, which the Debtors pay in quarterly
13 installments, in advance of each quarter, of approximately \$175,000.

14 58. In addition, as of the Petition Date, the Debtors owe approximately \$10,293 to
15 Cigna on account of claims under the Federal Medical Leave Act (FMLA) and California Family
16 Rights Act (CFRA); and \$13,507 to Optum under an employee assistance program.

17 59. The Debtors believe that they are current on all the above-mentioned insurance
18 policies and claims obligations. To the extent they are not, however, the Debtors seek authority,
19 in their discretion, to pay any accrued and unpaid prepetition premiums and related charges and to
20 continue the above benefits postpetition and to deliver the Employees’ portion of any accrued and
21 unpaid prepetition premiums to the corresponding administrators in connection with the payment
22 of the Wages and Withholding Obligations.¹¹
23
24

25 ⁹ Employees may elect to upgrade coverage to 1x-4x annual salary and pay the additional amount themselves.

26 ¹⁰ Depending on CBA, some Employees may elect to upgrade coverage to 60%.

27 ¹¹ By separate and contemporaneous motion, the Debtors are requesting authority to maintain their insurance program
28 (including workers’ compensation policies) and pay insurance premiums, deductibles and administration fees in the
ordinary course of business (including any amounts accrued and unpaid as of the Petition Date). For the avoidance of
doubt, to the extent these two Motions overlap, the Debtors seek authority to pay any obligation only once.

3. Retirement Plans

60. The Verity Debtors also offer eligible Employees the opportunity to participate in various retirement plans, including three defined benefit plans (Verity Health System Retirement Plan A, Verity Health System Retirement Plan B, and the Retirement Plan for Hospital Employees), each funded according to IRS rules and actuarial determinations, two employer-funded defined contribution plans (Verity Health System Retirement Plan Account and Verity Health System Supplemental Retirement Match Plan 401(a)¹²), and two defined contribution plans funded by voluntary employee pre-tax payroll deferrals (Verity Health System Supplemental Retirement Plan TSA/403(b)¹³ and Verity 457(b) Plan¹⁴ (“457(b) Plan”).

61. VMF offers its Represented Employees and non-represented Employees the opportunity to participate in two defined contribution plans (Verity Medical Foundation 401(k) Plan and Verity Medical Foundation Management Bargaining Unit Employees 401(k) Plan) which allow for voluntary employee pre-tax deferrals, matching contributions and employer provided contributions (together with the defined benefit plans, defined contribution plans, and 457(b) Plan, the “Retirement Plans”).

62. Employees participating in these programs may contribute up to the federal statutory cap per year. The Debtors deduct the employee pre-tax deferrals from Employee paychecks. The Debtors provide a match benefit for certain Employees of 50% up to 6% of annual salary or 35% up to 5% of annual salary (under the Verity Health System plans) or 75% up to 4% of the annual salary for Employees (under the VMF plans), provide formula-based nondiscretionary defined contribution allocations, and contribute actuarially determined required cash contributions to the defined benefit plans; the Debtors do not contribute to any other Retirement Plans. Employee contributions are remitted immediately following each pay date.

¹² The name of these plans comes from § 401(a) of the Internal Revenue Code (“IRC”), which provides for money purchase type retirement plans for employees.

¹³ The name of these plans comes from § 403(b) of the IRC, which provides for tax-sheltered retirement plans for employees of certain 501(c)(3) tax-exempt organizations.

¹⁴ The name of these plans comes from IRC § 457(b), which provides for non-qualified, tax-advantaged deferred compensation retirement plans for employees of certain employers.

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1 Failure to timely forward the Employees' Retirement Plan deductions may be a violation of the
2 Employee Retirement Income Security Act of 1974, as amended ("ERISA"), resulting in potential
3 personal liability for the Debtors' officers for such deducted amounts. The Debtors believe that
4 maintaining the Retirement Plans is critical to maintaining Employee morale. Furthermore,
5 certain of these retirement benefits are required by CBAs.

6 63. The Debtors seek authority to pay their matching contributions that accrued and
7 remain unpaid as of the Petition Date for the Retirement Plans and to deliver the Employee
8 contributions in connection with the payment of Wages and Withholding Obligations described
9 above. Administration fees for the defined contribution plans are paid by the Employee
10 participants while administration for the defined benefit plans are paid by the Debtors. The
11 Debtors also seek authority to continue to pay, in their discretion and in the ordinary course of
12 their business, matching contributions for the Retirement Plans incurred postpetition. The
13 Debtors do not believe these additional payments will increase the total of the payments already
14 then made for prepetition Employee Obligations to exceed the statutory limit for priority claims
15 of \$12,850; however, if that is not the case, the Debtors believe that any prepetition costs related
16 to these retirement benefits are *de minimis*, and the Debtors request authority to pay in their
17 discretion any such prepetition costs to maintain Employee morale and ensure the orderly
18 administration of the Estates.

19 4. Miscellaneous Employee Benefit Plans

20 64. The Debtors also offer their eligible Employees the opportunity to participate in an
21 IRS Section 125¹⁵ Cafeteria Plan through Alliant Choice Plus, which includes voluntary critical
22 care insurance, pet insurance, auto and home insurance. The healthcare reimbursement account
23 and dependent care reimbursement account are administered through Healthnow, and long-term
24 care is administered through UNUM. All of these programs are 100% funded by the Employees
25 and are paid for through payroll deductions. The Debtors request authority to continue to honor
26 these programs, in their discretion, and to continue distributing to third-parties the payments for

27 _____
28 ¹⁵ The name of these plans comes from IRC § 125, which provides for participating employees to choose among two
or more qualified benefits (as defined in the IRC) that are excluded from income.

these programs in connection with the payment of Wages and Withholding Obligations as described above, including the distributions of payments that are for prepetition amounts due.

IV.

DISCUSSION

Sections 105(a) and 363(b)(1) and (c)(1) and the “necessity of payment” doctrine provide statutory support for the requested relief. Specifically, § 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing; and § 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to enter into transactions in the ordinary course of business without notice and a hearing. LBR 2081-1(a)(6) also expressly permits a debtor to seek to pay prepetition employee obligations.

Moreover, the Employee Obligations that the Debtors request authority to pay and/or honor are entitled to priority in payment under §§ 507(a)(4), (5) and (8)(D). If the aggregate prepetition Wages, Employee Benefits and PTO that accrued within the 180 days prior to the Petition Date exceed the sum of \$12,850 allowable as a priority claim under §§ 507(a)(4) and (5) for any individual Employee, the Debtors are not requesting, by this Motion, authority to pay any such excess amounts. Thus, the Debtors request authority to pay or honor all Wages, Employee Benefits and PTO in the ordinary course of business but only up to the \$12,850 priority cap for each Employee.

A. This Court Has Authority Pursuant to §§ 105(a) and 363(b)(1) and (c)(1) to Grant the Relief Requested

Pursuant to § 105(a), “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Essentially, § 105(a) provides a statutory counterpart to the bankruptcy court’s otherwise inherent and discretionary equitable powers. *See In re Sasson*, 424 F.3d 864, 874 (9th Cir. 2005); *In re Halvorson*, 581 B.R. 610, 636 n.91 (Bankr. C.D. Cal. 2018).

Utilizing § 105(a), bankruptcy judges in this district have recognized the existence of:

some case law and some authority in the court’s rules in Rule 2081-1(a)(6), which allows immediate payment of claims, often on first day

1 motions, based on the recognition of the critical need to pay prepetition
2 wage and commission claims to employees and specified independent
3 contractors so that they continue to work for the debtor and render services
to the debtor to help it continue operations as a going concern and to
reorganize in a Chapter 11 bankruptcy case.

4 *In re EcoSmart, Inc.*, Case No. 15-27139 (RK), 2015 WL 9274245, at *4 (Bankr. C.D. Cal. Dec.
5 18, 2015) (citing LBR 2081-1(a)(6) and 2 March, Ahart and Shapiro, *California Practice Guide:*
6 *Bankruptcy*, ¶ 11:386, at 11–45 (2014) (“Most courts allow payment of prepetition employee
7 wages up to the priority amount under the ‘*necessity of payment*’ doctrine, which permits
8 immediate payment of creditors who will not supply services or material essential to the conduct
9 of the business until their prereorganization claims are paid.”) (emphasis in original)).

10 Bankruptcy judges in this district routinely grant motions to pay prepetition wages that are
11 entitled to priority. *See, e.g., In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, Case No. 16-17463-
12 ER, Docket No. 68 (Bankr. C.D. Cal. June 10, 2016); *In re Gordian Med., Inc.*, Case No. 12-
13 12399-MW, Docket No. 57 (Bankr. C.D. Cal. March 5, 2012); *In re Victor Valley Cmty. Hosp.*,
14 Case No. 10-39537-CB, Docket No. 30 (Bankr. C.D. Cal. Sep. 17, 2010); *In re Downey Reg’l*
15 *Med. Ctr.-Hosp., Inc.*, Case No. 09-34714-BB, Docket No. 37 (Bankr. C.D. Cal. Sep. 17, 2009);
16 *In re Pleasant Care Corp.*, Case No. 07-12312-EC, Docket No. 47 (Bankr. C.D. Cal. Mar. 27,
17 2007). Courts either rely on the doctrine of necessity or a combination of § 507(a)(4) and LBR
18 2081-1(a)(6) to allow for the payment of prepetition employee wage claims up to the priority cap
19 set forth in § 507(a)(4). *EcoSmart*, 2015 WL 9274245, at *9. Thus, as long as the Debtors
20 “demonstrate . . . the priority status of wage, salary and commission claims of its employees and
21 independent contractors under 11 U.S.C. § 507(a)(4)(A) and (B),” such demonstration will
22 “warrant immediate payment in advance of general distribution on prepetition claims.” *Id.* That
23 is the extent of the relief the Debtors are requesting in this Motion.

24 The Debtors are mindful that in *In re B&W Enters.*, 713 F.2d 534 (9th Cir. 1983), the
25 Ninth Circuit refused to extend the “necessity of payment” doctrine beyond the railroad
26 reorganization case where the debtor made unauthorized postpetition payments to trade suppliers
27 on prepetition debts. In *B&W*, after conversion to chapter 7, the trustee sought to recover the
28 payments under § 549. That case is factually distinguishable from the instant one in that *B&W* (a)

1 involved ordinary trade suppliers for which the claims were not entitled to priority, (b) did not
2 seek prior court approval for the payments, and (c) was liquidating, thereby rendering the
3 “necessity” of such payments moot. Moreover, the U.S. Supreme Court, in *Czyzewski v. Jevic*
4 *Holding Corp.*, has recognized that courts “approve[] interim distributions that violate ordinary
5 priority rules,” generally when there are “significant Code-related objectives that the priority-
6 violating distributions serve,” including “payment of employees’ prepetition wages.” 137 S.Ct.
7 973, 985 (2017).

8 For a number of reasons, the Bankruptcy Code affords special treatment to certain
9 prepetition claims of employees. Compared to a typical claim in bankruptcy, wages represent a
10 large part of an employee’s wealth. In addition, unlike an ordinary trade creditor, the typical
11 employee does not have other sources of income and thus cannot diversify the risk of the
12 employer’s default.

13 Due to the timing of the commencement of these Cases, the Employees are owed accrued
14 prepetition Wages for which payment is due on September 7, 13 and 14, 2018. These Wages
15 cannot be paid without the approval of this Court. The failure of the Debtors to pay the Wages
16 timely in the ordinary course of their business would result in a blow to Employee morale that in
17 all likelihood would lead to employee turnover and other serious and irreparable disruptions of
18 the Debtors’ operations as well as possible harm to the Patients. Any significant number of
19 Employee departures or deterioration in morale, especially at this sensitive time, will substantially
20 and adversely impact the Debtors’ ability to operate the Hospitals and medical clinics and result
21 in immediate and irreparable harm to the Debtors’ estates.

22 The Debtors submit that the amounts to be paid pursuant to this Motion are comparatively
23 small in light of the importance and necessity of preserving the Employees’ services and morale
24 and the difficulties and losses the Debtors will suffer if Employee morale is low or if they leave in
25 significant numbers. The Debtors further submit that there is ample justification for their belief
26 that even the slightest delay in providing this relief to their Employees will hamper operations and
27 damage the Debtors’ estates. As a consequence, the Debtors are anxious to reassure their
28 Employees.

Many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation or reimbursement of their expenses in order to continue to pay their daily living expenses. These Employees may be exposed to significant financial and healthcare related problems if the Debtors is not permitted to pay and/or honor the Wages, PTO policy and Employee Benefits, and the expenses associated therewith in the ordinary course of the Debtors' business. It is critical, therefore, that the Debtors be permitted to pay outstanding, non-discretionary prepetition Wages that would otherwise constitute priority claims against the Debtors' estates, to honor their prepetition PTO policy regarding the use of accrued PTO and the payment for it upon termination, and to continue to fund their Employee Benefits. To fail to do so would be devastating to the Employees' morale and could lead to the loss of key Employees at this critical time, which could impact Patient care.

Additionally, the Withholding Obligations do not constitute property of the Debtors' Estates. They principally represent Employee earnings that governments (in the case of taxes), Employees (in the case of voluntary Withholding Obligations) and judicial authorities (in the case of involuntary Withholding Obligations), have designated for deduction from Employee paychecks. The failure to transfer these withheld funds could result in hardship to certain Employees and liability for the Debtors. The Debtors expects that if these Withholding Obligations are not paid, the Debtors will receive inquiries from garnishors regarding the Debtors' failure to submit, among other things, child support and alimony payments, which are not the Debtors' property but, rather, have been withheld from Employee paychecks. Moreover, if the Debtors cannot remit these amounts, the Debtors and their Employees may face legal action due to the Debtors' failure to remit these payments.

B. This Court Has Authority Pursuant to LBR 2081-1(a)(6) to Grant the Relief Requested

As discussed above, the LBR provide a roadmap toward the "immediate payment of claims, often on first day motions, based on the recognition of the critical need to pay prepetition wage and commission claims to employees . . . so that they continue to work for the debtor and render services to the debtor to help it continue operations as a going concern and to reorganize in

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1 a Chapter 11 bankruptcy case.” *EcoSmart*, 2015 WL 9274245, at *4; LBR 2081-1(a)(6). The
2 Debtors satisfy all the listed elements in these Cases:

3 The Employees are still employed by the Debtors. In satisfaction of LBR 2081-
4 1(a)(6)(A), the Wages the Debtors propose to pay are for Employees who are still employed by
5 the Debtors.

6 The proposed payments to Employees are absolutely necessary. In satisfaction of LBR
7 2081-1(a)(6)(B), albeit otherwise needless to say, it is essential for the Debtors to retain the
8 Employees to operate the Debtors’ business, particularly during this crucial beginning phase of
9 the Debtors’ Cases, where additional administration and other obligations are imposed upon the
10 Debtors. The Debtors are concerned that a failure to honor their payroll obligations will result in
11 Employees leaving their jobs, refusing to provide services to the Debtors – including essential
12 medical services to their Patients – and interfering with the administration of these Cases. As
13 opposed to the Debtors’ focusing their efforts on case administration, the Debtors would instead
14 be preoccupied with addressing dissatisfied Employee complaints. Without the Employees’
15 support, the Debtors’ business will be severely impaired, if not irreparably harmed.

16 These proposed payment procedures are beneficial to the Estates. The Debtors seek only
17 to honor the Employee Obligations which would constitute priority claims pursuant to § 507.
18 Such claims would otherwise be required to be paid prior to general unsecured claims in any
19 subsequent distribution of assets. However, if the Debtors do not honor such Employee
20 Obligations now, the Debtors run a serious risk of losing Employees, and the loss of Employees
21 would be severely detrimental to the Debtors’ business, which translates to a risk to the well-
22 being of the Patients, to any prospect of reorganization and to the Debtors’ goal of maximizing a
23 recovery for unsecured creditors. Accordingly, LBR 2081-1(a)(6)(C) is satisfied.

24 With the requested first-day relief, the Debtors’ prospect of reorganization is heightened.
25 With regard to LBR 2081-1(a)(6)(D), the Debtors’ prospect of reorganization is certainly higher
26 with the relief requested herein than without it.

27 The Debtors do not seek to pay any prepetition claims of any insiders at this time. In
28 satisfaction of LBR 2081-1(a)(6)(E), the Employees referenced herein are not insiders of the

1 Debtors. The Debtors are not requesting to pay anyone classified as an insider pursuant to this
2 Motion.

3 The Employees' claims are within the limits established by § 507 of the Bankruptcy Code.
4 In satisfaction of LBR 2081-1(a)(6)(F), the Debtors only seek authority to: (i) pay and/or honor
5 all prepetition Wages of the Employees; and (ii) honor accrued PTO and other Employee Benefits
6 in the ordinary course of business, provided that no Employee shall receive more than \$12,850 in
7 value on account of prepetition claims for Employee Obligations.

8 The proposed payments will not render the Estates administratively insolvent. Finally, in
9 satisfaction of LBR 2081-1(a)(6)(G), the source of the funds to be used to pay and/or honor the
10 prepetition Employee Obligations will be the Debtors' cash. The Debtors believe that their cash
11 is sufficient to pay the Wages without rendering their Estates administratively insolvent.

12 **C. The Prepetition Wages and Prepetition Employee Benefits Are**
13 **Priority Claims Under Bankruptcy Code §§ 507(a)(4) and (5)**

14 Pursuant to § 507(a)(4)(A), claims of Employees of the Debtors for "wages, salaries, or
15 commissions, including vacation, severance, and sick leave pay" earned within 180 days before
16 the Petition Date are afforded priority unsecured status to the extent of \$12,850 per Employee.
17 Similarly, § 507(a)(5) provides that Employees' claims for contributions to certain employee
18 benefit plans are also afforded priority unsecured status to the extent of \$12,850 per Employee
19 covered by such plan, less any amount paid pursuant to § 507(a)(4). The Debtors believes that
20 the Wages, PTO policy and Employee Benefits relating to the 180-day period prior to the Petition
21 Date constitute priority claims under §§ 507(a)(4) and (5). As priority claims, they must be paid
22 in full before any general unsecured obligations of the Debtors may be satisfied. Accordingly, the
23 relief requested may affect only the timing of the payment of these priority obligations and will
24 not prejudice the rights of general unsecured creditors or other parties in interest.

25 With respect to prepetition Wages, PTO policy and Employee Benefits, no Employees
26 will be paid on account of claims above the \$12,850 amount stated in §§ 507(a)(4) and (5) of the
27 Bankruptcy Code.
28

D. Maintaining the Employee Benefits Is Within the Debtors' Business Judgment

The Debtors' relationships with the Employees, including the terms and conditions of their employment, are matters subject to the Debtors' business judgment and may be managed by the Debtors in the "ordinary course of business." See *In re All Seasons Indus.*, 121 B.R. 822, 825-26 (Bankr. N.D. Ind. 1990); *In re Pac. Forest Indus., Inc.*, 95 B.R. 740, 743 (Bank. C.D. Cal. 1989) ("Employees do not need court permissions to be paid and are usually paid as a part of the ongoing operation of the business."). This doctrine also applies to accrued employee benefits such as paid time off and leave policies. See *In re Canton Castings, Inc.*, 103 B.R. 874, 876 (Bankr. N.D. Ohio 1989). The maintenance of the Debtors' benefit programs is an important part of the Debtors' relationships with their employees that is within the Debtors' business judgment.

Finally, the Withholding Obligations represent funds that the Debtors are not entitled to hold for any protracted period, since the Debtors effectively holds these amounts in trust and the Employees themselves hold a direct claim against such funds.

E. Honoring of Checks and Transfers Related to Employee Obligations and Maintenance of Payroll Accounts

The Debtors further request that their bank be authorized and directed to receive, process, honor and pay all checks presented for payment and to honor all transfer requests made by the Debtors related to Employee Obligations, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date (including checks that have been presented and dishonored), to the extent that the relevant accounts contain sufficient funds. The Debtors will identify to the banks the checks that are to be honored pursuant to an order approving this Motion. Accordingly, checks other than those for Employee Obligations should not be honored inadvertently. Moreover, the Debtors expect to have sufficient funds to pay all Employee Obligations, to the extent described herein, on an ongoing basis and in the ordinary course of business.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, the Debtors respectfully requests that this

1 Court enter an order: (i) authorizing the Debtors, in their discretion, to (a) pay or honor
2 prepetition wages, salaries, employee benefits, and other compensation, (b) remit withholding
3 obligations, (c) maintain workers' compensation and benefits programs, (d) pay related
4 administration obligations, and (e) pay reimbursable employee expenses; (ii) authorizing and
5 directing the applicable bank to pay all checks and electronic payment requests made by the
6 Debtors relating to the foregoing; and (iii) granting such other and further relief as is just and
7 proper under the circumstances.

8 Dated: August 31, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

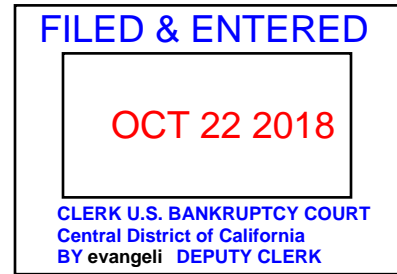
By /s/Tania M. Moyron
Tania M. Moyron

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and Debtors In Possession

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EXHIBIT 7

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Proposed Attorneys for the Chapter 11 Debtors and
Debtors In Possession

CHANGES MADE BY COURT
UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

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

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Chapter 11

Debtors and Debtors In Possession.

**FINAL ORDER GRANTING EMERGENCY
MOTION OF DEBTORS FOR ENTRY OF
ORDER: (I) AUTHORIZING THE DEBTORS TO
(A) PAY PREPETITION EMPLOYEE WAGES
AND SALARIES, AND (B) PAY AND HONOR
EMPLOYEE BENEFITS AND OTHER
WORKFORCE OBLIGATIONS; AND
(II) AUTHORIZING AND DIRECTING THE
APPLICABLE BANK TO PAY ALL CHECKS
AND ELECTRONIC PAYMENT REQUESTS
MADE BY THE DEBTORS RELATING TO THE
FOREGOING**

Emergency Hearing:

Date: October 3, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

U.S. Bankruptcy Court

255 East Temple Street

Los Angeles, CA 90012

Judge: Hon. Ernest M. Robles

☒ Affects All Debtors

☐ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

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1 The *Emergency Motion of Debtors for Entry of Order: (I) Authorizing the Debtors to*
2 *(A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits*
3 *and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay*
4 *All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing (the*
5 *“Emergency Motion”)*¹ [Dkt. 22] came on for hearing before the Honorable Ernest M. Robles,
6 United States Bankruptcy Judge, in Courtroom 1568, United States Bankruptcy Court, 255 East
7 Temple Street, Los Angeles, California 90012. The appearances at the hearing are as set forth on
8 the record of the proceeding.

9 Having considered the Emergency Motion, the accompanying Memorandum of Points and
10 Authorities in support of the Emergency Motion, and the Declaration of Richard G. Adcock in
11 support of the Emergency Motion [Dkt. 8], the arguments of counsel at the hearing on September
12 5, 2018.

13 Having also considered *SEIU-UHW'S Objection to Emergency Motion for Order:*
14 *(I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries and (B) Pay and*
15 *Honor Employee Benefits and Other Workforce Obligations* [Dkt. 213], along with the
16 *Declaration of Caitlin Gray* [Dkt. 214] and *Declaration of David Miller* [Dkt. 215] filed in
17 support (collectively the “SEIU-UHW Objection”), the *Limited Objection of Retirement Plan for*
18 *Hospital Employees to Emergency Motion of Debtors for Order (A) Authorizing the Debtors to*
19 *Pay Prepetition Employee Wages and Benefits, Etc.* [Dkt. 229] (the “RPHE Wage Objection”)
20 which in turn incorporates *Objection of Retirement Plan for Hospital Employees to Motion of*
21 *Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc.*
22 [Dkt. 218] (the “RPHE DIP Objection,” and collectively referred to along with the RPHE Wage
23 Objection as the “RPHE Objection”), the *Objection by Creditor California Nurses Association to*
24 *Motion for Entry of Final Order (I) Authorizing Debtors to (A) Pay Prepetition Employee Wages*
25 *and Salaries and (B) Pay and Honor Employee Benefits and Other Workforce Obligations and*
26 *(II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment*
27

28 ¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Emergency Motion.

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1 *Requests Made by the Debtors Relating to the Foregoing* [Dkt. 223] (the “CNA Objection”), the
2 *Limited Objection of UNAC to Debtors’ Motion for Entry of Final Order to Pay Prepetition*
3 *Employee Wages, Etc.* [Dkt. 296] (the “UNAC Objection,” and referred to along with the SEIU-
4 UHW Objection, RPHE Objection and CNA Objection as the “Pension Related Objections”), the
5 *Official Committee of Unsecured Creditors Response to the Employee Wage Motion* [Dkt. 315]
6 (the “UCC Wage Response,” and referred to along with the Pension Related Objections as the
7 “Objections” and individually, an “Objection”), the *Debtors’ Omnibus Response to [the Pension*
8 *Related] Objections* [Dkt. 310] (the “Pension Related Response”) and the *Debtors’ Reply to the*
9 *Official Committee of Unsecured Creditors’ Response to the Employee Wage Motion* [Dkt. 351]
10 (the “Reply to the UCC Response,” and referred to collectively with the Pension Related
11 Response as the “Replies,”) along with all papers and exhibits filed therewith;

12 Having further considered the arguments of counsel, and finding that the Emergency
13 Motion and the relief it seeks is in compliance with the Bankruptcy Code, Bankruptcy Rules, and
14 Local Bankruptcy Rules;

15 IT IS HEREBY ORDERED that the Objections, to the extent not expressly resolved under
16 the terms of this Order, are OVERRULED.

17 IT IS FURTHER ORDERED that the Emergency Motion is GRANTED on a FINAL
18 BASIS as set forth in the Court’s record and the *concurrently-issued Memorandum of Decision*
19 *(1) Overruling Objections to the (A) Prepetition Wages Motion and (B) Financing Motions and*
20 *(2) Denying Motion for Reconsideration of the Final Financing Order* ~~tentative ruling as set forth~~
21 ~~herein.~~

22 IT IS FURTHER ORDERED that the Debtors are authorized, in their sole discretion, to
23 do the following:

24 1. To honor and pay all Wages for Employees of Verity Health Systems of
25 California, Inc., O’Connor Hospital, Saint Louise Regional Hospital, and St. Vincent Medical
26 Center that have been accruing commencing August 19, 2018, to the date of the Petition, payable
27 September 7, 2018, totaling approximately \$11,560,517;
28

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2. To honor and pay all Wages for Employees of Verity Medical Foundation that have been accruing commencing August 20, 2018, to the date of the Petition, payable September 7, 2018, totaling approximately \$1,065,623;

3. To honor and pay all Wages for Employees of St. Francis Medical Center, Seton Medical Center and Seton Medical Center Coastsides, and Verity Business Services that have been accruing commencing August 26, 2018, to the date of the Petition, payable September 13 and 14, 2018, totaling approximately \$2,727,235;

4. To honor the collective bargaining agreements (“CBA”) with SEIU, and remedy, through payment, any error identified by any Employee represented by SEIU regarding payroll made on August 30, 2018 on account of prepetition Wages; provided, however, that the Employee shall identify such errors within 24 hours of payroll in accordance with the terms of the CBA. For the avoidance of doubt, a Debtor will honor all valid CBAs to which it is a party and in accordance with law, and non-SEIU represented employees retain all rights to challenge payroll errors made regarding such prepetition Wages;

5. To pay to ADP, postpetition, the fees due ADP that arose prepetition, not to exceed \$4,500;

6. To honor and pay all accrued and unpaid prepetition Withholding Obligations (whenever payable) totaling approximately \$3,726,816;

7. To honor and pay accrued and unpaid prepetition Union Obligations (as that term is defined in the Motion) that arose within 180 days that totals approximately \$176,526. To the extent there are other unpaid prepetition Union Obligations that constitute a priority claim under bankruptcy section §§ 507(a)(4) or (a)(5), they may be paid subject to availability under the priority cap of section §§ 507(a)(4) and (a)(5);

8. To honor and pay all unpaid prepetition Reimbursement Obligations to Employees totaling approximately \$30,200;

9. To honor and pay any contractually agreed bonuses that accrued within 180 days prepetition when their services with the Debtors are terminated so long as the total of payments

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1 already then made for prepetition Employee Obligations and bonuses does not exceed \$12,850
2 per Employee;

3 10. For the avoidance of doubt, the Debtors are authorized to continue to pay
4 severance obligations to employees as they arise, consistent with the priority scheme set forth
5 under the Bankruptcy Code and the relevant severance policies, including (i) priority treatment
6 under section 507(a)(4) with respect to amounts that accrue prepetition (including rejection claim
7 damages that are deemed to have accrued immediately prior to the filing of bankruptcy); and
8 (ii) administrative expense treatment with respect to severance payments earned in their entirety
9 subsequent to the Petition Date. This provision does not obviate the limitations and requirements
10 of section 503(c) concerning severance payments to insiders, or the one year limitation on
11 employee wage claims contained under section 502(b)(7).

12 11. To honor and pay the Paid Time Off (“PTO”) and Extended Sick Leave (“ESL”) obligations
13 that accrued prepetition, allowing Employees to utilize postpetition all prepetition
14 PTO and ESL in the ordinary course of the Debtors’ business;

15 12. To pay, in the Debtors’ sole discretion, Employees for unused PTO and/or ESL, as
16 permitted per Hospital policy and relevant CBA terms, that accrued within 180 days prepetition
17 so long as the total of payments already then made for prepetition Employee Obligations and
18 PTO/ESL does not exceed \$12,850 per Employee;

19 13. To pay accrued and unpaid prepetition amounts relating to employee health
20 insurance as follows: (a) approximately \$3,162,816 to Healthnow for claims against the self-
21 insured medical plans; (b) approximately \$48,060 to Cigna and Delta Dental for claims against
22 the self-insured dental plans; (c) approximately \$60,150 to VSP for claims against the self-
23 insured vision plans; and (d) any administration fees and premiums, and to deliver the
24 Employees’ portion of any accrued and unpaid prepetition premiums to the corresponding
25 administrators in connection with the payment of the Wages and Withholding Obligations;

26 14. To maintain the Debtors’ self-insured and fully-insured medical, dental and vision
27 insurance plans, including to continue to pay, in their discretion and in the ordinary course of
28 their business, the administrative fees, medical, dental, and vision claims and premiums for all

1 health plans incurred postpetition; and to deliver the Employees' portion of any premiums to the
2 corresponding administrators in connection with the payment of the Wages and Withholding
3 Obligations; and to continue making contributions into the Local 39 Stationary Engineers' Health
4 and Welfare Plan;

5 15. To pay postpetition (when payable) any amounts that accrued prepetition for
6 Continuation Health Coverage ("COBRA"), and to continue to perform any obligations related
7 thereto in the ordinary course of business;

8 16. To pay UNUM (when payable) the amount of approximately \$209,838, including
9 \$34,983 held in trust from Employee contributions for Employee premium-based group life
10 insurance and accidental death and disability ("AD&D") insurance; and Employee supplemental
11 life and AD&D and voluntary programs;

12 17. To pay Cigna (when payable) approximately \$108,035 for short term disability
13 coverage premiums and \$110,643 for long term disability premiums;

14 18. To continue to honor their workers' compensation insurance obligations, including
15 paying Lockton and Sedwick in the ordinary course of their business;

16 19. To pay Cigna (when payable) approximately \$10,293 on account of prepetition
17 claims under the Federal Medical Leave Act and California Family Rights Act;

18 20. To pay Optum (when payable) approximately \$13,507 on account of prepetition
19 obligations accrued under an employee assistance program;

20 21. To pay matching contributions of approximately \$296,384 that accrued and remain
21 unpaid as of the Petition Date for the Retirement Plans and to deliver the Employee contributions
22 and administration fees held by the Debtors in trust;

23 22. To the extent not expressly identified above, prepetition wages and benefits,
24 including contributions that may be due or arise on all defined contribution plans and defined
25 benefit plans, may be paid as a priority claim to the extent there is availability under the priority
26 cap of §§ 507(a)(4) and (a)(5);

27 23. To continue to honor, in their discretion and in the ordinary course of their
28 business, miscellaneous employee benefit programs that are Employee-funded (e.g., cafeteria

1 plan, critical care insurance, pet insurance, auto and home insurance), and to distribute to third-
2 parties the payments for these programs in connection with the payment of Wages and
3 Withholding Obligations; and

4 24. To continue to pay, in the ordinary course of their business, Employee-related
5 expenses and obligations that accrue postpetition in the ordinary course of the Debtors' business.
6 For the avoidance of doubt, this includes: postpetition contributions for active Employees into the
7 Local 39 Stationary Engineers' defined benefit pension plan and trust; contributions for active
8 California Nurses Association (CNA) represented Employees accruing new benefits into the
9 Retirement Plan for Hospital Employees and Verity Health System Retirement Plan A in the
10 amounts and on the dates set forth on the schedules attached to Declaration of Carlos De La Para
11 (Exhibit 1 to Dkt. 310); and wages and accruing benefits earned for postpetition work for active
12 Employees, including those represented by UNAC, CNA, Local 39 and SEIU-UHW.

13 IT IS FURTHER ORDERED that all the Debtors' banks – including Bank of America and
14 Wells Fargo – are authorized *and directed* to immediately do the following:

15 1. To immediately unfreeze the Debtors' accounts, including their payroll and other
16 Employee-related disbursement accounts;

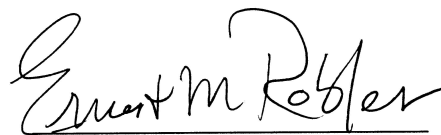
17 2. With regard to the foregoing obligations, to debit the Debtor's accounts in the
18 ordinary course of business without need for further order of this Court for: (i) all checks, items,
19 and other payment orders drawn on the Debtor's accounts which are cashed at such Bank's
20 counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of
21 notice of filing of the Petition; (ii) all checks, automated clearing house entries, and other items
22 deposited or credited to one of Debtor's accounts with such bank prior to filing of the Petition
23 which have been dishonored, reversed, or returned unpaid for any reason, together with any fees
24 and costs in connection therewith, to the same extent the Debtor was responsible for such items
25 prior to filing of the Petition; and (iii) all undisputed prepetition amounts outstanding as of the
26 date hereof, if any, owed to any Bank as service charges for the maintenance of the Debtors' cash
27 management system;
28

3. For the avoidance of doubt, to honor all items presented against the Bank Accounts, whether originated prepetition or postpetition and whether or not authorized by other orders; and

4. To rely on the representations of the Debtor with respect to whether any check, item, or other payment order drawn or issued by the Debtor prior to filing of the Petition should be honored pursuant to this or any other order of this Court and the DIP Documents, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

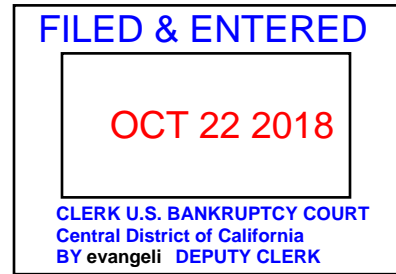
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Date: October 22, 2018



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 8



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,

Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

**MEMORANDUM OF DECISION (1) OVERRULING
OBJECTIONS TO THE (A) PREPETITION WAGES
MOTION AND (B) FINANCING MOTION AND (2)
DENYING MOTION FOR RECONSIDERATION OF
THE FINAL FINANCING ORDER**

Jointly Administered With:

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

Chapter 11 Cases.

Date: October 3, 2018

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



1820151181022000000000058

Before the Court are objections asserted by the Retirement Plan for Hospital Employees (“RPHE”), the Service Employees International Union, United Healthcare Workers-West (“SEIU-UHW”), the United Nurses Associations of California/Union of Health Care Professionals (“UNAC”), and the California Nurses Association (“CNA”) (collectively, the “Objectors”) to the Debtors’ proposed treatment of certain defined benefit pension obligations. For the reasons set forth below, the Court finds that the Objectors’ request for a determination that certain pension underfunding obligations constitute an administrative expense is not properly before the Court. Therefore, the Objectors’ request that the pension underfunding obligations be accorded administrative claims treatment is denied without prejudice to the Objectors’ ability to raise the issue by way of motion.

I. Background

On August 31, 2018 (the “Petition Date”), Verity Health Systems of California, Inc. (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.¹ On August 31, 2018, the Court entered an order

¹ The Court has reviewed the following papers in adjudicating this matter:

- 1) Emergency Motion of Debtors for Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing [Doc. No. 22] (the “Prepetition Wages Motion”)
 - a) Declaration of Richard Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - d) Declaration of Service by Kurtzman Carson Consultants, LLC re Emergency First-Day Motions, Exhibit B [Doc. No. 50]
 - e) Order Granting Emergency Motion of Debtors for Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing [Doc. No. 75]
- 2) Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 31] (the “Financing Motion”)
- 3) Papers Filed in Opposition:
 - a) SEIU-UHW’s Objection to [Prepetition Wages Motion and Financing Motion] [Doc. No. 213]
 - i) Declaration of Caitlin Gray in Support of SEIU-UHW’s Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 214]
 - ii) Declaration of David Miller in Support of SEIU-UHW’s Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 215]
 - b) Limited Objection of Retirement Plan for Hospital Employees to [Prepetition Wages Motion] [Doc. No. 229]
 - i) Objection of Retirement Plan for Hospital Employees to [Financing Motion] [Doc. No. 218]
 - c) Objection by Creditor California Nurses Association to [Prepetition Wages Motion] [Doc. No. 223]
 - d) Limited Objection of UNAC to Debtors’ Motion for Entry of Final Order to Pay Prepetition Employee Wages, Etc. [Doc. No. 296]
 - e) Limited Objection of UNAC to Debtors’ Motion for Entry of Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, Etc. [Doc. No. 297]
- 4) Omnibus Response to Objections to [Prepetition Wages Motion] [Doc. No. 310]
- 5) Retirement Plan for Hospital Employees’ Notice of Motion and Motion to Alter or Amend Final Order (I) Authorizing Post Petition Financing, Etc. [Doc. No. 559]

granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On September 5, 2018, the Court entered an *Order Granting Emergency Motion of Debtors for Entry of Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay all Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing* [Doc. No. 75] (the "Prepetition Wages Order"). The Prepetition Wages Order authorized the Debtors to pay wages and employee benefits that had been accrued pre-petition, up to the priority amounts set forth in §507(a)(4) and (5).

The Prepetition Wages Order further authorized the Debtors to continue to pay, in the ordinary course of business, certain post-petition pension obligations. *See Prepetition Wages Order* at ¶23.

At the interim hearing on the Prepetition Wages Motion, the Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW") requested that the Prepetition Wage Order be entered on an interim, rather than final, basis. SEIU-UHW requested that a final hearing be held so that it could have the opportunity to object to the Debtors' position regarding the payment of various pension obligations. The Debtors did not oppose entry of the Prepetition Wage Order on an interim basis. The Court set this final hearing on the Prepetition Wages Motion to allow the parties an opportunity to object to the Debtors' proposal with respect to the ongoing payment of defined benefit pension obligations. No parties object to the Debtors' payment to employees of prepetition wages and benefits; at issue is the Debtors' ongoing obligation to make postpetition payments in connection with various defined benefit pension obligations.

A. Background Information on Defined Benefit Pension Plans

Defined benefit pension plans are employer-funded retirement plans created for the benefit of both active and inactive participating employees. Under a defined benefit pension plan, a pension fund is obligated to pay a specified benefit to employees covered by the plan upon their retirement and in accordance with the terms of the plan document. Thus, as employees earn their retirement benefits over time, the pension fund is accumulating fixed liabilities that will become due as employees retire and begin collecting their pensions. All defined benefit plans are funded through contributions made by employers that have employees participating in the plan.

Defined benefit pension plans apply the employers' contributions to satisfy three separate categories of costs. First, the contributions are used to pay for the expenses of administering the plan, including, for example, investment advisor and legal fees. Second, the contributions are used to pay for the value of the new benefits that accrue for participants each year. Although there can be some variation in how the value of those benefits is determined, actuaries refer to that value as the "normal cost" of the plan. If, after satisfying both administrative costs and the normal cost, there are any funds remaining from the contribution made by employer(s), those funds are used to satisfy underfunding or to create or increase a surplus.

Thus, at any given point in time, a defined benefit pension plan uses contributions made by an employer to satisfy one of three categories of costs: costs of administering the fund, the "normal cost," and the costs of underfunding. The percentage of contributions allocated to each category of costs varies by plan and depends on a variety of factors, including a plan's funding levels.

B. Characteristics of the Debtors' Defined Benefit Pension Plans

Debtor VHS maintains two single employer defined benefit pension plans—Verity Plan A and Verity Plan B. VHS participates in two multi-employer defined benefit pension plans—the Retirement Plan for Hospital Employees (“RPHE”) and the Local 39 Stationary Engineers’ Plan (the “Local 39 Plan”). Debtors VHS and Verity Medical Foundation (“VMF”) also maintain several defined contribution retirement plans for employees, which are not at issue.

In 2012, the RPHE was amended to freeze all future benefit accruals, except that the freeze does not apply to members of the California Nurses Association (“CNA”) employed at O’Connor Hospital, Saint Louise Regional Medical Center, or Seton Medical Center. Employee benefits under the RPHE are calculated under a formula that considers the employee’s years of service and compensation. VHS contributions to the RPHE are based on actuarially determined amounts established by the RPHE Board of Trustees.

Verity Plan A has been frozen as to all future benefit accruals, except that CNA members may continue to accrue new benefits. Verity Plan B has been completely frozen, such that no employees are eligible to accrue ongoing benefits.

Verity Plan A and the RPHE are both underfunded, according to documents filed with the Department of Labor in 2016. Verity Plan A holds current assets worth approximately \$259 million, but has current liabilities of approximately \$423 million.² RPHE holds current assets worth approximately \$1.06 billion, but has current liabilities of approximately \$2.07 billion.³

A substantial percentage of VHS’ liability under both Verity Plan A and the RPHE is attributable to underfunding costs. For the reasons more fully explained below, at this juncture it would be premature for the Court to make any findings regarding the exact amount of VHS’ underfunding liabilities. However, to provide context, the Court notes that according to RPHE, VHS’ underfunding liability in connection its pension plan is \$2,494,941 for the period from September 1 through December 31, 2018; VHS’ liability for the plan’s normal costs and costs of administration for the same period is \$1,756,757.

C. The Debtors' Collective Bargaining Agreements

Certain of the Debtors are parties to collective bargaining agreements (“CBAs”) with SEIU-UHW, CNA, and UNAC. The Debtors have not sought authorization to reject any of the CBAs pursuant to §1113. The terms of the CBAs require the Debtors to continue to make contributions to Verity Plan A and the RPHE.

D. The Postpetition Financing Order

On October 4, 2018, the Court entered a *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 409] (the “Final Financing Order”). Among other things, the Final Financing Order authorized the Debtors to obtain postpetition financing from Ally Financial, Inc. (the “DIP Lender”) and to spend the proceeds of such financing in accordance with the *Debtor in Possession Budget* (the “DIP Budget”). Under the DIP Budget,

² See Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information, at lines 2(a) and 3(d) [Doc. No. 214, Ex. A].

³ See Schedule MB (Form 5500), Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information, at lines 2(a) and 2(b)(4) [Doc. No. 214, Ex. B].

the Debtors' payments to Verity Plan A and the RPHE do not include liabilities arising on account of underfunding.

E. Objections to the Prepetition Wages and Financing Motions Asserted by RPHE, SEIU-UHW, CNA, and UNAC

RPHE, SEIU-UHW, CNA, and UNAC (the "Objectors") object to the exclusion of the Debtors' pension underfunding obligations from the DIP Budget and from the proposed postpetition wage payments. According to the Objectors, pension underfunding obligations constitute an administrative expense that must be provided for in the DIP Budget and that must be paid simultaneously with the Debtors' payment of wages and other operational costs. RPHE contends that if pension underfunding obligations are not paid on a weekly basis, the Debtors' employees will unfairly be forced to bear the risk that the Debtors will not have sufficient funds on hand to pay the obligations at plan confirmation. RPHE asserts that the Debtors' plan to quickly sell the Debtors' two most valuable hospitals heightens this risk. On October 17, 2018, RPHE filed a motion for reconsideration of the Final Financing Order (the "Motion to Reconsider"). The Motion to Reconsider reiterates and expands upon the arguments presented by RPHE in opposition to the Prepetition Wages and Financing Motions, but does not present new arguments or new evidence.

SEIU-UHW, CNA, and UNAC assert an additional, albeit related, objection. According to this subset of the Objectors, the Debtors are required to continue paying pension underfunding obligations unless and until the Court approves the rejection of the Debtors' CBAs pursuant to §1113(f). The Objector's theory is that the Debtors' non-payment of the pension funding obligations constitutes an impermissible breach of the unrejected CBAs.

II. Findings and Conclusions

A. The Objectors' Request for a Determination that the Debtors' Underfunding Obligations Constitute an Administrative Expense is Not Properly Before the Court

Section 503(a) provides that an "entity may timely file a request for payment of an administrative expense, or may tardily file such a request if permitted by the court for cause." Section 503(b) provides for the allowance of administrative expenses after notice and a hearing. Section 1129(a)(9) conditions confirmation of a plan upon payment, in cash, of all administrative expenses as of the effective date of the plan.

According to the leading treatise:

[The Bankruptcy Code] neither expressly prohibits nor expressly authorizes paying administrative expenses earlier than upon the effective date of a plan Generally, courts have held that the timing for payment of administrative claims is a matter to be determined within the discretion of the bankruptcy court. Factors influencing the exercise of this discretion may include the status of the case, the ability of the debtor to pay present claims, the particular needs of administrative claimants and the possibility that future administrative claims may not be paid in full.

4 COLLIER ON BANKRUPTCY ¶ 503.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

In *Spartan Plastics v. Verco Indus. (In re Verco Indus.)*, 20 B.R. 664, 664–65 (B.A.P. 9th Cir. 1982), the court rejected a creditor's contention that it was entitled to immediate payment of an administrative claim, explaining that the "determination of when an administrative expense is to be paid is within the discretion of the trial court." *Verco Industry's* holding has been widely

adopted. *See, e.g., In re LTV Steel Co.*, 288 B.R. 775, 779 (Bankr.N.D.Ohio 2002) (denying immediate payment of administrative expenses because the Bankruptcy Code does not require it and instead requires parity amongst administrative claims); *In re Chi-Chi's, Inc.*, 305 B.R. 396, 401 (Bankr. D. Del. 2004) (stating that “distributions prior to confirmation of a plan are usually disallowed when the estate may not be able to pay all administrative expenses in full”); *Varsity Carpet Serv., Inc. v. Richardson (In re Colortex Indus., Inc.)*, 19 F.3d 1371, 1384 (11th Cir.1994) (holding that due to the existence of higher priority claims, it was within the discretion of the court to delay payment of administrative expenses).

The objections filed to the Prepetition Wages and Financing Motion seek the following relief: first, a determination that the Debtors’ pension underfunding obligations are an administrative expense; and second, a determination that the Debtors are required to immediately pay this alleged administrative expense. The Court declines to grant either form of relief at this time.

With respect to the first form of relief sought, the request for a determination that the pension funding obligations are an administrative expense is not properly before the Court. Instead of filing noticed motions seeking a determination as to the administrative expense status of the pension underfunding obligations, the Objectors requested the relief in objections to the Debtors’ Prepetition Wages and Financing Motions, and in a motion for reconsideration of the Final Financing Order. As a result of the manner in which the Objectors presented their arguments, the issue has not been fully briefed and the record remains incomplete.

For an issue of this importance and complexity, a complete record is essential. To determine whether the pension underfunding obligations qualify as administrative expenses, the Court must determine whether such obligations qualify as an “actual” and “necessary” cost of preserving the estate. §507(b)(1)(A). Here the determination is both factually and legally intensive, and will most likely require the Court to (1) apply the Employee Retirement Income Security Act (“ERISA”), (2) examine and make findings regarding the actuarial assumptions applied by trustees of the pension plans, and (3) determine what effect, if any, such actuarial assumptions have upon the characterization of the underfunding obligations as a pre-petition or post-petition liability. Because the Objectors did not file separately-noticed motions seeking administrative treatment of the underfunding obligations, the record contains neither sufficient evidence or legal argument to enable the Court to properly decide the issue. Therefore Objectors’ request that the pension underfunding obligations be accorded administrative claims treatment is denied without prejudice to the Objectors’ ability to raise the issue by way of separately noticed motions.

With respect to the second form of relief sought, as discussed above, it is well established that the Court has broad discretion in determining when the Debtors are required to pay an administrative claim. Even if the Debtors’ underfunding obligations do constitute an administrative claim (a finding the Court does not make), nothing in the Bankruptcy Code requires that the claim be immediately paid. Consequently, it is appropriate to require the Objectors to present their arguments regarding this issue by way of motion as contemplated by §503, so that this important issue can be decided based upon a complete record.

B. Section 1113 Does Not Require the Debtors to Immediately Pay the Underfunding Obligations

Certain of the Objectors assert that the Debtors are required to immediately make payments on account of the pension underfunding obligations because the Debtors have not obtained rejection of the CBAs which mandate such payments. In support of this contention, SEIU-UHW

cites *Adventure Resources, Inc. v. Holland (In re Adventure Resources)*, 137 F.3d 786 (4th Cir. 1998), in which the court held that where the debtor had not rejected a collective bargaining agreement under § 1113 forty-three months after seeking bankruptcy protection, the debtor had assumed the collective bargaining agreement through inaction. The *Adventure Resources* court ruled that the debtor was required to make postpetition payments due under the collective bargaining agreement.

Adventure Resources is readily distinguishable. This case is approximately six weeks old. There is no indication that the Debtors are engaged in the type of unreasonable delay with respect to CBAs that was at issue in *Adventure Resources*.

SEIU-UHW's reliance upon *Teamsters Indus. Sec. Fund v. World Sales (In re World Sales, Inc.)*, 183 B.R. 872, 878 (B.A.P. 9th Cir. 1995) is likewise misplaced. *World Sales* held that claims based on the debtor's unperformed post-petition obligations under an unrejected CBA "must be given administrative status, even where the CBA is subsequently modified or rejected pursuant to § 1113." *World Sales*, 183 B.R. 878.

World Sales' holding has been rejected by *In re Certified Air Techs., Inc.*, 300 B.R. 355, 369 (Bankr. C.D. Cal. 2003), which the Court finds to be the better-reasoned opinion. *Certified Air* provides in relevant part:

Section 1113 was enacted to protect the existence of collective bargaining agreements in chapter 11 cases, not to re-order the priority scheme set by Congress in § 507. Had Congress intended for § 1113 to create a super-priority for pre-petition wage and benefit claims arising under a collective bargaining agreement, it would have either included language in § 1113 similar to that incorporated into § 1114 or amended § 507 to reflect the change it intended. Because Congress neither included explicit language in § 1113 to supersede § 507 nor amended § 507 to specifically create a super-priority status for such claims, the court concludes that pre-petition claims for wages and benefits due under a collective bargaining agreement are not entitled to treatment as administrative expenses but are to be accorded priority consistent with § 507.

Certified Air, 300 B.R. at 369.

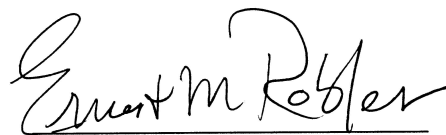
The Court follows *Certified Air*, and finds that claims arising under an unrejected CBA are not entitled to administrative status solely on the grounds that the CBA has not been rejected. This finding does not rule out the possibility that such claims may be entitled to administrative status for other reasons. However, as discussed above, the Court declines to determine at this point whether the Debtors' pension underfunding obligations are entitled to administrative status.

III. Conclusion

Based upon the foregoing, the objections of RPHE, SEIU-UHW, CNA, and UNAC to the Prepetition Wages and Financing Motions are **OVERRULED**. RPHE's motion seeking reconsideration of the Final Financing Order is **DENIED**.

###

Date: October 22, 2018

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The middle initial "M" is smaller and positioned between the first and last names.

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 9

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Ernest M. Robles

Chapter 11 Cases

**DECLARATION OF JAMES M. MOLONEY IN SUPPORT
OF THE DEBTORS' MEMORANDUM. IN SUPPORT OF
ENTRY OF AN ORDER: (A) AUTHORIZING THE SALE
OF PROPERTY FREE AND CLEAR OF ALL CLAIMS,
LIENS AND ENCUMBRANCES; (B) AUTHORIZING THE
ASSUMPTION AND ASSIGNMENT OF DESIGNATED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES;
AND (C) GRANTING RELATED RELIEF**

[RELATES TO DOCKET NO. 2115]

Hearing:

Date: April 17, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

☒ Affects All Debtors

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

Debtors and Debtors In Possession.



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DECLARATION OF JAMES M. MOLONEY

1
2 1. I am a managing director of Cain Brothers (“Cain”), which is a division of
3 KeyBanc Capital Markets Inc., a wholly-owned broker/dealer subsidiary of KeyCorp and an
4 affiliate of KeyBank National Association. My office is in Cain’s San Francisco office which is
5 located at One California Street, Suite 2400, San Francisco, California. Mr. Carsten Beith and I
6 are the co-heads of Cain’s Health Systems Mergers & Acquisition group. I am over the age of
7 18 and competent to testify as to the facts set forth herein and will do so if called upon.

8 2. Except as otherwise stated, all facts contained within this Declaration are based
9 upon my personal knowledge, from information gathered from other employees within the
10 Debtors’ organization, my review of relevant documents, or my opinion based upon my
11 experience concerning the operations of the Debtors.

12 3. I submit this Declaration in support of the *Debtors’ Memorandum in Support of*
13 *Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and*
14 *Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory*
15 *Contracts and Unexpired Leases; and (C) Granting Related Relief* (the “Memorandum”) [Docket
16 No. 2115]. All capitalized terms not defined herein have the meaning ascribed to them in the
17 Memorandum.

18 4. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
19 solicit interest in their assets, including St. Louise Regional Hospital, O’Connor Hospital, St.
20 Vincent Medical Center, St. Francis Medical Center, Seton Medical Center, Seton Coastside
21 Hospital and related assets (collectively, the “Assets”). In June 2018, the Debtors engaged Cain
22 to assist in identifying potential buyers of some or all of the Assets and commenced discussions
23 with those potential buyers. Cain prepared a Confidential Investment Memorandum and
24 organized an online data site to share information with potential buyers and contacted strategic
25 and financial buyers beginning in July 2018. In this initial marketing process, Cain contacted
26 more than 100 potential partners to evaluate their interest in exploring a transaction involving
27 some or all of the Debtors’ assets. By August 2018, as a result of its ongoing and broad
28

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1 marketing process, Cain had received 11 “Indications of Interest” from potential buyers of some
2 or all of the Debtors’ assets.

3 5. Postpetition, Cain continued to work with potential buyers for some or all of the
4 Assets. Based on these discussions, the Debtors determined that seeking a buyer for the Debtors’
5 Assets in Santa Clara (the “Santa Clara Assets”) and a separate buyer for the Debtors other Assets
6 would most likely yield higher net proceeds for the Debtors’ estate. After evaluating the
7 Indications of Interest for the Debtors’ Santa Clara Assets, the Debtors, in consultation with Cain
8 and its advisors, (i) began to negotiate a stalking horse bid with potential buyers, and (ii)
9 ultimately selected Santa Clara County (the “County”) to be the stalking horse bidder to acquire
10 the Santa Clara Assets through a sale under § 363 of the Bankruptcy Code. After the selection of
11 Santa Clara County as the stalking horse bidder, the Debtors did not receive any bids and Santa
12 Clara County was determined to be the winning bidder of the Santa Clara Assets. The sale of the
13 Santa Clara Assets to the County was approved by the Court on December 27, 2018 [Docket No.
14 1153].

15 6. Thereafter, Cain focused on marketing of the Debtors’ remaining Assets, including
16 St. Francis Medical Center, St. Vincent’s Medical Center, Seton Medical Center and Seton
17 Coastsides. Mr. Beith and I led the marketing and sale efforts on behalf of the Debtors. As a part
18 of this process, Cain contacted more 189 potential parties to evaluate potential stalking horse
19 bidders for some or all of the Debtors remaining Assets of which 92 had executed a NDA and 18
20 submitted written proposals. Some of the written proposals were preliminary indications of
21 interest and some were more detailed proposals such as the Qualified Bids and Stalking Horse
22 Bids. During these marketing effort, Cain provided access to the virtual data room to those
23 parties that executed NDAs, arranged conference calls to answer questions about the process and
24 the diligence materials, arranged for site visits for potential buyers that requested to visit the
25 hospitals and arranged calls with the Debtors and their advisors to address other questions by
26 potential buyers. During this process, many of the potential purchasers indicated that they were
27 not interested in being the stalking horse bidder. Over the course of those discussions, the
28 Debtors negotiations focused on potential buyers that expressed the most interest in the Debtors’

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1 Assets and were actively engaged in the due diligence process. More specifically, during
2 November and December 2018, the Debtors and their advisors had substantial discussions with
3 potential buyers during which Prime Healthcare and Strategic Global Management, Inc. (“SGM”)
4 emerged as the leading potential candidates to be selected as the stalking horse bidder for the
5 Debtors’ remaining assets.

6 7. After extensive negotiations with both parties and careful review of the proposed
7 transactions by the Debtor and its advisors, the Debtors selected SGM as the stalking horse bidder
8 (the “Stalking Horse Bidder”) for the Debtors’ remaining Assets. On January 17, 2019, the
9 Debtors filed their *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase*
10 *Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving*
11 *Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving*
12 *Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To*
13 *Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To*
14 *The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A)*
15 *Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the
16 “Motion”), which sought approval of, among other things, the asset purchase agreement between
17 the Debtors and SGM, as the Stalking Horse Bidder [Docket No. 1279]. On February 19, 2019,
18 the Court entered an order approving the Motion [Docket No. 1572].

19 8. After SGM was approved as the Stalking Horse Bidder and the bidding procedures
20 were approved, Cain sent the Bidding Procedures to the 90 parties with whom the Debtor had
21 previously executed NDAs and included the timetable for the sale of the Debtors’ remaining
22 Assets. Cain also requested that each party confirm that each party continued access to the data
23 room and were interested in continuing to evaluate the purchase of some or all of the Debtors’
24 remaining assets. Nineteen of those parties confirmed that were still evaluating the transaction
25 and requested continued access to the data room.

26 9. Cain facilitated due diligence by potential buyers, including arranging site visits,
27 organizing calls with the Debtors’ leadership team and facilitated follow-up from the Debtors and
28 their advisors to address diligence requests. Of these nineteen interested parties, certain parties

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1 evaluated acquiring all the Debtors' remaining Assets, others evaluated acquiring individual
2 hospitals, and others were real estate companies that evaluated purchasing either St. Vincent
3 Medical Center or Seton Medical Center to convert those campuses to non-hospital uses.

4 10. At the end of the marketing period, two parties submitted Qualified Bids, one for
5 St. Vincent Medical Center and one for St. Francis Medical Center, one party submitted a non-
6 Qualified Bid for St. Francis Medical Center and one party submitted a non-Qualified Bid for all
7 of the assets.

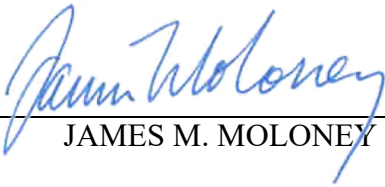
8 11. Consequently, on April 4, 2019, as set forth in the *Notice That No Auction Shall*
9 *Be Held* [Docket No. 2053], the Debtors, after consultation with the Consultation Parties,
10 determined not to hold a Partial Bid Auction because there were not multiple Partial Qualified
11 Bids for any of the Debtors' assets. Additionally, the Debtors, in consultation with their advisors
12 and the Consultation Parties, determined not to hold a Full Bid Auction because (i) there were no
13 Qualified Full Bids, and (ii) the Partial Qualified Bids were only for two assets and when
14 aggregated together were substantially less than the Stalking Horse Bid. As a result, the Stalking
15 Horse Bidder was named the Successful Bidder in accordance with the Bidding Procedures
16 Order.

17 12. On April 15, 2019, an interested party called me to inform me they had earlier
18 attempted to submit a bid for Seton Medical Center. Unbeknown to Cain, this party had sent Cain
19 a "non-binding letter of intent" (the "Letter") to purchase Seton Medical Center, by email on
20 April 4, 2019 (the "April 4 Email"), which was after the Partial Bid Dateline. After learning this
21 information and then investigating the same, Cain learned that the April 4 Email had not passed
22 Cain's firewall. Thus, the party re-sent the Letter that day on April 15, 2019. Even if the
23 aforementioned bid would have been sent prior to the Partial Bid Deadline, it would not have
24 qualified as a Partial Qualified Bid since, among other things, it was subject to significant
25 additional due diligence and was not accompanied by a deposit. This party did not execute an
26 NDA, nor were they granted access to the data room from Cain to perform formal due diligence
27 with respect to the Assets.
28

1 13. I am not aware of any collusion or improper dealings that have taken place
2 between Cain, the Debtors, SGM, any potential bidders or interested parties, or any other person
3 in connection with the sale. Cain, moreover, is receiving no consideration or fee from or on
4 behalf of SGM. I am also not aware of any fact or circumstance indicating that SGM has not
5 acted in good faith in pursuing the Sale.

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

8 Executed this 16th day of April, 2019 in San Francisco, California.

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12 JAMES M. MOLONEY
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EXHIBIT 10

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

FILED & ENTERED

DEC 27 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO SANTA CLARA COUNTY FREE
AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS;
(B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

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

Debtors and Debtors In Possession.

Hearing:

Date: December 19, 2018

Time: 10:00 am

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 365], filed by Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

At the previous hearing on the Motion on October 31, 2018 (the “Bidding Procedures Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) the Federal Communications Commission (“FCC”) [Docket No. 437]; (ii) the United States Department of Health and Human Services (“HHS”) [Docket No. 447, 562, and 613]; (iii) the California Attorney General (“CAG”) [Docket No. 463, 599, 605, 608, and 619]; (iv) entities who are parties to or benefit from various collective bargaining agreements with the Debtors [Docket No. 450, 458, 460, 465, and 597]; (v) the Pension Benefit Guaranty Corporation (“PBGC”) [Docket No. 439]; (vi) the Retirement Plan for Hospital Employees [Docket No. 460]; (vii) OCH Forest 1 [Docket Nos. 452 and 561]; (viii) Premier and Infor [Doc. Nos. 444, 561, and 592]; and (ix) the MOB Financing Entities [Docket No. 500]. The Debtors filed an omnibus reply to the majority of the objections [Docket No. 561], and separate replies to the HHS [Docket No. 562], and the CAG [Docket No. 560] objections. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the

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

1 “Bidding Procedures Order”) [Docket No. 724]. Any additional objections that were filed and
2 overruled at the Bidding Procedures Hearing are not listed herein.

3 The Court, having reviewed the Memorandum [Docket No. 1041] and the notice of errata
4 related thereto [Docket No. 1050], the Declarations of Richard Adcock [Docket Nos. 8 and 393],
5 James Moloney [Docket Nos. 394 and 1041] and Jeffrey Smith [Docket No. 1044] in support of
6 the Motion, the *Notice to Counterparties to Executory Contracts and Unexpired Leases of the*
7 *Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to*
8 *Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be*
9 *Assumed and Assigned* [Docket No. 998], the *Notice That No Auction Shall Be Held* [Docket No.
10 1005], the response by the CAG [Docket No. 1066], the *Amended Notice of Contracts Designated*
11 *by Santa Clara County for Assumption and Assignment* [Docket No. 1110], the objections filed
12 by various counter-parties to certain contracts and leases [Docket Nos. 882, 889, 904-05, 913-14,
13 919, 920-21, 923, 928-29, 931, 933, 946, 970, 986, 1016, 1018, 1043, 1046, 1057-59, 1062,
14 1068-69, 1070-71, 1080, 1085, 1088-89, 1091-96, 1120-21], as set forth on **Exhibit “A”** attached
15 to the *Notice Of Filing Listing Objections To Proposed Cure Amounts And Assumption And*
16 *Assignment Of Certain Unexpired Executory Contracts And Unexpired Leases* (the “Cure
17 Objections”) [Docket No. 1145], the California Department of Health Care Services (“DHCS”)
18 [Docket No. 906], and the California Nurses Association and Stationary Engineers Local 39
19 [Docket Nos. 1057-1062, 1067-1071], the Premature Objections and any withdrawals thereof
20 [Docket Nos. 1090 and 1100], the statements, arguments and representations of the parties made
21 at the Sale Hearing; and the entire record of these cases; and the Court, having determined that
22 the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors
23 and their shareholders, and that the legal and factual bases set forth in the Motion and presented at
24 the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in
25 the *Memorandum of Decision Overruling Objections of the California Attorney General to the*
26 *Debtor’s Sale Motion* [Docket No. 1146]; ~~Court’s tentative ruling [Docket No. ____], the Order~~
27 ~~Providing Notice Of The Court’s Intent To Authorize The Debtors To Sell Hospitals Free And~~
28

~~Clear Of The 2015 Conditions Asserted By The California Attorney General [Docket No. 1125],~~
~~and the responses thereto [Docket Nos. 1136-37, 1139-41];~~ and all objections to the Motion, if
any, having been withdrawn or overruled; and after due deliberation and sufficient good cause
appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the
Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the
Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)
(2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court
pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the
Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1)
and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and
(iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court,
the Debtors have provided proper, timely, adequate and sufficient notice with respect to the
following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and
the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase
Agreement, dated October 1, 2018, a copy of which is attached as Exhibit "A" to Docket No. 365
(the "APA"); (ii) the Sale Hearing; (iii) the *Notice That No Auction Shall Be Held*; and (iv) the
assumption and assignment of the executory contracts and unexpired leases and proposed cure
amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and
no further notice of the Motion, the relief requested therein or the Sale Hearing is required. The
Debtors have also complied with all obligations to provide notice of the Auction, the Sale

² The findings and conclusions set forth herein constitute the Court's findings of fact and
conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule
9014. To the extent that any of the following findings of fact constitute conclusions of law, they
are adopted as such. To the extent that any of the following conclusions of law constitute
findings of fact, they are adopted as such.

Hearing, the proposed sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. Arm's Length Transaction. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtors and the County of Santa Clara, a political subdivision of the State of California ("SCC"), as Purchaser under the APA without collusion, in good faith and through an arm's length bargaining process. Neither SCC nor any of its affiliates or representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the Debtors, SCC, or their respective representatives engaged in any conduct that would cause or permit the APA, any of the other Transaction Documents or the Transaction to be avoided under § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the APA and the other Transaction Documents, including, without limitation, the consideration provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be assessed against SCC or any other party, as set forth in § 363(n). The consideration provided by SCC is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws of the United States, including the State of California.

E. Good Faith Purchaser. SCC has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) SCC, in proposing and proceeding with the Transaction in accordance with the APA, recognized that the Debtors were free to deal with other interested parties; (ii) SCC agreed to provisions in the APA that would enable the Debtors to accept a higher and better offer; (iii) SCC complied with all of the provisions in the Bidding Procedures Order applicable to SCC; (iv) all payments to be made by SCC and other agreements entered into or to be entered into between SCC and the Debtors in connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA and related Transaction Documents were conducted in good faith and constituted an arm's length transaction;

(vi) SCC did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SCC is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction or SCC's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents will be a legal, valid, and effective transfer and sale of the Purchased Assets and will vest in SCC, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections

1 of § 363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by
2 having their respective Encumbrances attach to the Debtors' interests in the proceeds of the sale
3 of the Purchased Assets under the APA (subject to any Challenge within the meaning of the Final
4 DIP Order that has been, or may be, timely filed), and any related documents or instruments
5 delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the
6 extent and manner herein provided.

7 H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause
8 to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in
9 consummating the Transaction, and it is in the best interests of the Debtors and their estates to
10 consummate the Transaction within the timeline set forth in the Motion and the APA. The Court
11 finds that there is no just reason for delay in the implementation of this Order, and expressly
12 directs entry of judgment as set forth in this Order.

13 I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have
14 demonstrated that it is an exercise of their sound business judgment to assume and assign to SCC
15 the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below)
16 and to the extent subsequently identified by SCC pursuant to paragraph 16 below, the
17 Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently
18 Identified Designated Contracts and the Subsequently Identified Contracts are collectively
19 referred to herein as the "Designated Contracts") in connection with the consummation of the
20 Transaction, and the assumption and assignment of the Designated Contracts is in the best
21 interests of the Debtors and their estates.

22 J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the
23 APA, the Debtors (i.e., O'Connor Hospital ("OCH") and Saint Louise Regional Hospital
24 ("SLRH")) will have cured, unless otherwise ordered, any and all defaults existing on or prior to
25 the Closing under any of the Designated Contracts, within the meaning of § 365(b)(1)(A), by
26 payment of the amounts and in the manner set forth below. SCC has provided or will provide
27 adequate assurance of future performance of and under the Designated Contracts within the
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1 meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide
2 assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the
3 Designated Contracts to be assumed by the Debtors and assigned to SCC under the APA shall be
4 assigned and transferred to, and remain in full force and effect for the benefit of, SCC
5 notwithstanding any provision in such Designated Contracts prohibiting their assignment or
6 transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts
7 has incurred any actual pecuniary loss resulting from a default on or prior to the Closing under
8 any of the Designated Contracts within the meaning of § 365(b)(1)(B). Pursuant to § 365(f), the
9 Designated Contracts to be assumed by the Debtors and assigned to SCC at the Closing shall be
10 assigned and transferred to, and remain in full force and effect for the benefit of, SCC
11 notwithstanding any provision in such contracts or other restrictions prohibiting their assignment
12 or transfer.

13 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors have
14 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
15 OCH and SLRH to reject all of their executory contracts and unexpired leases, excluding (i)
16 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
17 addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or
18 health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is
19 a party or sponsor, which matters shall be scheduled for determination as provided in paragraph
20 33 below. Each such executory contract rejection is subject only to the conditions set forth in
21 paragraphs 18, 31, and 32. The Debtors shall file an appropriate motion to reject such contracts,
22 covered by this paragraph K, prior to Closing and shall request therein that the rejection be
23 effective as of the Closing or as otherwise appropriate.

24 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
25 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
26 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
27 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
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1 better offer to purchase the Purchased Assets. No other Qualified Bid (as defined in the Bidding
2 Procedures Order) was received by the Partial Bid Deadline or the Bid Deadline (as defined in the
3 Bidding Procedures Order). Accordingly, on December 7, 2018, the Debtors filed the *Notice*
4 *That No Auction Shall Be Held*. The transfer and sale of the Purchased Assets to SCC on the
5 terms set forth in the APA constitutes the highest or otherwise best offer for the Purchased Assets
6 and will provide a greater recovery for the Debtors' estates than would be provided by any other
7 available alternative. The Debtors' determination, in consultation with the Official Committee of
8 Unsecured Creditors (the "Committee") and the Prepetition Secured Creditors (as defined in the
9 Final DIP Order defined below), that the APA constitutes the highest or best offer for the
10 Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

11 M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased
12 Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it
13 does not propose to (i) impair or restructure existing debt of, or equity or membership interests in,
14 the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the
15 Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or
16 (iv) classify claims or equity or membership interests.

17 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at
18 the Sale Hearing establish just cause for the relief granted herein.

19 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

20 1. The relief requested in the Motion is GRANTED and APPROVED in all respects
21 to the extent provided herein.

22 2. All objections with regard to the relief sought in the Motion that have not been
23 withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including
24 any reservation of rights included in such objections, are overruled on the merits with prejudice.
25 To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the
26 terms of this Sale Order shall prevail.
27
28

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3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to SCC on the terms set forth in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in Section 1.1 of the APA) upon the terms set forth in the APA, including, without limitation, assuming and assigning to SCC the Designated Contracts. The Debtors and SCC shall have the right to make any mutually agreeable, non-material changes to the APA, which shall be in writing signed by both parties, without further order of the Court provided, that after reasonable notice, the Committee, the DIP Agent (as defined in the Final DIP Order defined below), and the Prepetition Secured Creditors, do not object to such changes. Any timely objection by the aforementioned parties to any agreed non-material changes to the APA may be resolved by the Court on shortened notice.

4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid, enforceable and effective transfer and sale of the Purchased Assets to SCC free and clear of all Encumbrances, as further set forth in the APA and this Sale Order; and (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the Purchased Assets, all counterparties to the Designated Contracts and all other persons and entities.

5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,

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effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force, extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition Secured Creditors, as applicable, pursuant to that certain *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the “Final DIP Order”); and (ii) be subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors’ rights, title and interest in and to the Purchased Assets to SCC. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of

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1 such Purchased Assets either to (a) the Debtors before the Closing or (b) to SCC or its designee
2 upon the Closing.

3 8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall
4 be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and
5 upon consummation of the Transaction, including, without limitation, payment of the Purchase
6 Price to the Debtors, vest SCC with all right, title, and interest in the Purchased Assets, free and
7 clear of all Encumbrances. Upon closing of the Transaction, SCC shall take title to and
8 possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the
9 APA. The transfer of the Purchased Assets from the Debtors to SCC constitutes a transfer for
10 reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the
11 State of California.

12 9. Following the Closing, no holder of any Encumbrance against the Debtors or upon
13 the Purchased Assets shall interfere with SCC's respective rights in, title to or use and enjoyment
14 of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from
15 taking any action that would adversely affect or interfere with the ability of the Debtors to sell
16 and transfer the Purchased Assets to SCC, including the assumption and assignment of the
17 Designated Contracts.

18 10. SCC shall not be deemed, as a result of any action taken in connection with, or as a
19 result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a
20 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their
21 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,
22 doctrine or theory of successor liability, or any theory or basis of liability regardless of source of
23 origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere
24 continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed
25 Liabilities, SCC is not assuming any of the Debtors' debts.

26 11. This Sale Order (i) shall be effective as a determination that, on Closing, all
27 Encumbrances existing against the Purchased Assets before the Closing have been
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1 unconditionally released, discharged and terminated, and that the transfers and conveyances
2 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all
3 persons and entities. If, following a reasonable written request made by the Debtors, any person
4 or entity that has filed financing statements or other documents or agreements evidencing any
5 Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or
6 in connection with Closing, in proper form for filing and executed by the appropriate parties,
7 termination statements, instruments of satisfaction, releases of all Encumbrances which the
8 person or entity has with respect to the Purchased Assets, then SCC and/or the Debtors are hereby
9 authorized to execute and file such statements, instruments, releases and other documents on
10 behalf of the person or entity with respect to such Purchased Assets. For the avoidance of doubt,
11 such statements, instruments, releases and other documents shall not impair Encumbrances that
12 attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may
13 be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
14 paragraphs 5 and 13 hereof.

15 12. In accordance with the APA, concurrently with the Closing, SCC shall pay that
16 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
17 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in
18 Section 1.1.1 of the APA. Any direct expenses of the Sale shall be disclosed by Debtors to the
19 DIP Agent, the Prepetition Secured Creditors, and the Committee in advance of the Closing.

20 13. The terms and conditions of the Final DIP Order shall apply with respect to the
21 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
22 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

23 (a) the Debtors shall direct SCC and any post-closing escrow agent appointed pursuant to
24 the terms of the APA to remit all Sale Proceeds to be received by the Debtors at Closing or
25 thereafter in cash, to deposit such Sale Proceeds in separate accounts labeled "Santa Clara Sale
26 Proceeds Account," in the name of each Debtor that is a Seller within the meaning of the APA
27 (each such hereafter referred to as "Escrow Deposit Account");
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(b) in giving direction to SCC pursuant to sub-paragraph (a), above, the Debtors shall exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of rights in paragraph 4 of the Final DIP Order and footnote 5 of Exhibit 1 of the Bidding Procedures Order); provided further that nothing in this paragraph shall waive or limit any rights the Committee may have in connection with the confirmation of a proposed chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee;

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon.

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1 14. Concurrently with the Closing or as soon thereafter as is possible, and in
2 accordance with the APA, the Debtors (i.e., the Hospital Debtors defined in the APA) shall pay
3 out of the Sale Proceeds to the counter-parties to the Designated Contracts the cure amounts set
4 forth in the *Debtors' Notice to Counterparties to Executory Contracts and Unexpired Leases of*
5 *the Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to*
6 *Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be*
7 *Assumed and Assigned* [Docket No. 998], the *Amended Notice of Contracts Designated by Santa*
8 *Clara County for Assumption and Assignment* [Docket No. 1110] (collectively, the "Cure
9 Notices"), or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties
10 thereto or ordered by this Court after a continued hearing on the Cure Objections (the
11 "Designated Cure Amounts").

12 15. To the extent that any of the contracts and/or leases, which give rise to the
13 Designated Cure Amounts and are set forth in the *Amended Notice of Contracts Designated by*
14 *Santa Clara County for Assumption and Assignment* [Docket No. 1110] (the "Currently Identified
15 Designated Contracts") are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SCC, and SCC shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. In the event that the Court ultimately determines that any
21 such counter-parties to the Currently Identified Designated Contracts (the "Currently Identified
22 Designated Contract Counter-Parties") have an allowed claim against the Debtors which exceeds
23 the Designated Cure Amounts, the difference will be paid by the Debtors out of the Sale Proceeds
24 and shall not be the responsibility of SCC. The Court shall resolve any and all disputes which
25 may arise between the Debtors, SCC and any of the Currently Identified Designated Contract
26 Counter-Parties over whether the Currently Identified Designated Contracts are executory
27 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
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Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the Designated Cure Amounts.

16. All of the Currently Identified Designated Contracts, to the extent they are executory contracts or unexpired leases, shall be part of the Designated Contracts that will be assumed by the Debtors and assigned to SCC at the Closing. In the event that SCC elects to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated Contracts (the "Subsequently Identified Designated Contracts"), the Debtors shall (i) file a notice with the Court, by January 23, 2019, identifying all such Subsequently Identified Designated Contracts and their respective cure amounts, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and assigned to SCC at the Closing, with the Debtors to be obligated to pay all cure amounts owing to such Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties thereto, or ordered by the Court in accordance with paragraph 36 below (the "Additional Cure Amounts").

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SCC, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (all counterparties to the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts collectively, the "Contract Counter-Parties"). At the Closing, the Debtors shall pay out of the Sale Proceeds (i) to the Designated Cure Amounts identified in paragraph 14 above, and (ii) the Additional Cure Amounts. Payment by the Debtors of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to "cure" all "defaults" with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The payment by the Debtors shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual

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pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SCC, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SCC shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts by the Debtors, neither the Debtors nor SCC shall have any further liabilities to any Contract Counter-Parties, other than SCC's obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SCC with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, the Debtors shall be liable for the payment of all cure costs with respect to the Designated Contracts as may be required under § 365(b)(1). SCC shall not be liable for the payment of any cure costs with respect to the Designated Contracts as may be required under § 365(b)(1) or for the payment of any liabilities or obligations arising from or related to (a) such Designated Contracts on or prior to the Closing of the Transaction, (b) any executory contracts which the Debtors intend to reject by appropriate motion at a later date and which are not being assumed and assigned to SCC as part of the Transaction, (c) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, or (d) any collective bargaining agreement, pension plan, or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor.

18. The Debtors intend to reject, pursuant to § 365(a), all executory contracts to which OCH and SLRH are a party, excluding (i) Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor. The Debtors shall file an appropriate motion to reject such contracts prior to Closing. Notwithstanding the prior statement, Closing is conditioned upon the rejection, termination and/or modification of all applicable CBAs

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1 related to OCH and SLRH, pursuant to § 1113 or as otherwise agreed to between the Debtors, the
2 respective unions, and as approved by the Court.

3 19. All of the Contract Counter-Parties are forever barred, estopped, and permanently
4 enjoined from (i) raising or asserting against the Debtors or SCC, or any of their property, any
5 assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment,
6 arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of
7 the consummation of the Transaction contemplated by the APA, including, without limitation, the
8 Transaction and the assumption and assignment of the Designated Contracts, including any asserted
9 breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or
10 any purported written or oral modification to the Designated Contracts and (ii) asserting against SCC
11 any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of
12 the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed
13 Obligations.

14 20. Any provisions in any Designated Contracts that prohibit or condition the assignment
15 of such Designated Contract or allow the counterparty to such Designated Contract to terminate,
16 recapture, impose any penalty, condition on renewal or extension or modify any term or condition
17 upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions
18 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
19 Designated Contract to SCC in accordance with the APA, pursuant to § 363(f). **Notwithstanding the**
20 **foregoing, the rights of Contract Counter-Parties to assert that a Designated Contract may not be**
21 **assumed and assigned absent consent, on the ground that such Designated Contract pertains to the**
22 **licensing of intellectual property, are preserved, and any such objections may be asserted in accordance**
23 **with the procedures set forth in paragraphs 34, 35, and 36; provided, however, that any Contract**
24 **Counter-Party that has failed to object within the deadlines set forth in the applicable Cure Notice is**
25 **now forever barred from asserting its objection.**

26 21. The terms and provisions of this Sale Order, as well as the rights granted under the
27 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
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reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding any such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern. The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the cases and the entry of any other order that may be entered in the cases, including any order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

22. The Transaction contemplated by the APA and other Transaction Documents are undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy Code. SCC is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased Assets to SCC. The APA and the Transactions contemplated thereby cannot be avoided under § 363(n).

23. The failure to specifically include any particular provision of the APA or the other Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective

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1 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
2 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

3 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
4 Debtors to the extent necessary, without further order of this Court, to (i) allow SCC to deliver any
5 notice provided for in the APA and Transaction Documents and (ii) allow SCC to take any and all
6 actions permitted under the APA and Transaction Documents in accordance with the terms and
7 conditions thereof.

8 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
9 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
10 shall govern.

11 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
12 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
13 (i) hear and determine all disputes between the Debtors and/or SCC, as the case may be, and any other
14 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
15 assignment thereof by the Debtors to SCC and any dispute between SCC and the Debtors as to their
16 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
17 delivery of the Purchased Assets to SCC free and clear of Encumbrances; (iii) compel the delivery of
18 the Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement,
19 and enforce the provisions of this Sale Order; and (v) protect SCC against (A) claims made related to
20 any of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious
21 liability (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or
22 (C) any Encumbrances asserted on or against SCC or the Purchased Assets.

23 28. Following the date of entry of this Sale Order, the Debtors and SCC are authorized to
24 make changes to the APA without the need for any further order of the Court provided that all such
25 changes have been approved in writing by the Debtors, SCC, the Committee, the DIP Agent, and
26 Prepetition Secured Creditors. Any other changes to the APA or this Sale Order require a further order
27 of the Court, after reasonable notice under the circumstances and a hearing.
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1 29. Notwithstanding any other provision of this Sale Order or any other Order of this
2 Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal
3 license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory
4 approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as
5 amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take
6 any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory
7 conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are
8 fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or
9 authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

10 30. To the extent the Purchased Assets contain records of the Verity Health System
11 Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension Plans") or
12 employment records of participants of the Pension Plans, the SCC shall store, and preserve any such
13 records until the PBGC has completed its investigation regarding the Pension Plans and shall make
14 such documents available to the PBGC for inspection and copying. Such records include, but are not
15 limited to, any Pension Plan governing documents, actuarial documents, and employment records
16 (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension
17 Plan Documents that are not Purchased Assets for not less than twelve (12) months after Closing and
18 shall make such documents available to the PBGC for inspection and copying.

19 31. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of
20 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-
21 Cal Provider Agreements or (b) DHCS will file a supplemental objection to the proposed transfer of
22 the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental
23 objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the
24 issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the
25 Medi-Cal Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties'
26 rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to
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1 Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between
2 the Debtors and the DHCS or a Court order resolving the DHCS's objections.

3 32. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of
4 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
5 Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer
6 of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental
7 objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the
8 issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the
9 Medicare Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties'
10 rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to
11 Medicare Provider Agreements until and unless there is a Court order approving a settlement between
12 the Debtors and the HHS or a Court order resolving the HHS's objections.

13 33. The Debtors must have resolution of the collective bargaining agreements (the
14 "CBAs") that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to SCC
15 closing on the proposed Sale pursuant to the APA. The hearing on the Debtors' motion(s) with respect
16 to the rejection and/or modification of such CBAs (the "**CBA Motions**") will occur on January 30,
17 2019, at 10:00 a.m. (Pacific Time). **Debtors shall file the CBA Motions by no later than January 2,**
18 **2019.** Any objection to the **CBA Motions** shall be filed on January 16, 2019, and any reply shall be
19 filed on January 23, 2019.

20 34. A continued hearing on the Cure Objections shall be held on January 30, 2019, **at 10:00**
21 **a.m. (Pacific Time).** As to the Currently Identified Designated Contracts, by no later than Friday,
22 January 18, 2019, the Debtors shall file a notice containing a list of (a) the Cure Objections that have
23 been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure
24 Objections for which Court intervention is required, the following briefing schedule shall apply: ~~(2)~~
25 **(1)** the Debtors' opposition to each outstanding Cure Objection shall be submitted by no later than
26 Friday, January 18, 2019; and ~~(3)~~ **(2)** the counterparties' reply in support of its Cure Objections shall be
27 submitted by no later than Friday, January 25, 2019. Nothing in this Sale Order constitutes a finding or
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determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtors and the contract counterparty or further order of the Court.

35. As to any executory contracts or unexpired leases that were listed on the Initial Designated Contract List, but not listed on any prior Cure Notices, any counterparty thereto may file an objection to the cure amount or assumption thereof by January 11, 2019, and all other provisions in paragraph 34 shall apply to resolution thereof.

36. As to Subsequently Identified Designated Contracts, (i) the Debtors shall file a notice with the Court, by January 23, 2019, identifying all Subsequently Identified Designated Contracts and provide service thereof in accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated Contracts were not listed on any of the prior Cure Notices, counterparties subject to contracts who object to assumption and/or the proposed cure amounts must file an objection no later than January 30, 2019, and any reply shall be filed on February 6, 2019. **The request by Medical Office Building of California LLC for an extension of the January 30, 2019 objection deadline in the event that its lease is designated as a Subsequently Identified Designated Contract is overruled.** To the extent that a negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently Identified Designated Contracts shall be adjudicated on February 13, 2018, **at 10:00 a.m. (Pacific Time)**, where the Court shall resolve any and all disputed issues related to the objection.

37. The Committee's and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31-36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31-36 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

1 **IT IS SO ORDERED.**

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Date: December 27, 2018

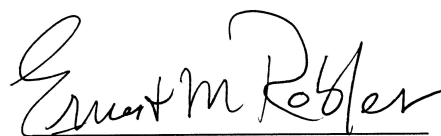
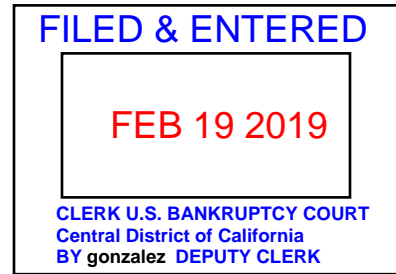

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 11

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 Debtors In Possession



**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

CHANGES MADE BY COURT

In re
 VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,
 Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Ernest M. Robles

ORDER (I) APPROVING FORM OF ASSET PURCHASE AGREEMENT FOR STALKING HORSE BIDDER AND FOR PROSPECTIVE OVERBIDDERS, (2) APPROVING AUCTION SALE FORMAT, BIDDING PROCEDURES AND STALKING HORSE BID PROTECTIONS, (3) APPROVING FORM OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES, (4) SCHEDULING A COURT HEARING TO CONSIDER APPROVAL OF THE SALE TO THE HIGHEST BIDDER AND (5) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND ENCUMBRANCES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing:

Date: February 6, 2019

Time: 10:00 am

Location: Courtroom 1568, 255 E. Temple St., Los Angeles, CA

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

Debtors and Debtors In Possession.

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This matter coming before the Court on the motion (the “Motion”)¹ of the above-captioned debtors and debtors in possession (the “Debtors”) for the entry of an Order, as applicable, pursuant to Sections 105(a), 363, and 365 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and Rule 6004-1 and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”) (i)(a) approving form of asset purchase agreement for the Stalking Horse Purchaser and for prospective Overbidders (the “Stalking Horse APA”); (b) approving auction sale format, bidding procedures (the “Bidding Procedures”) and stalking horse bid protections; (c) approving the form of notice to be provided to interested parties; (d) scheduling the Auction and a court hearing to consider approval of the sale to the highest bidder; and (e) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases to the Successful Bidder; (ii) authorizing the sale of property free and clear of all claims, liens and encumbrances; and (iii) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances and properly given, and it appearing that no other or further notice need be provided; and a hearing on the proposed bid and sale procedures as detailed in the Motion having been held; and after due deliberation the Court having determined that the relief requested in the Motion with respect to proposed bid and sale procedures is in the best interests of the Debtors, their estates, and their creditors; ~~and for the reasons set forth in the Court’s tentative~~

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 ~~ruling (the “Tentative Ruling”) [Doc. No. 1488], which the Court adopts as its final ruling and~~
2 ~~which is incorporated herein by reference,~~² and good and sufficient cause having been shown;

3 **AND IT IS FURTHER FOUND AND DETERMINED THAT:**³

4 A. The statutory and legal predicates for the relief requested in the Motion and
5 provided for herein are Sections 105(a), 363, and 365 of Title 11 of the Bankruptcy Code,
6 Bankruptcy Rules 2002, 6004, 6006, 9007, 9013 and 9014, and Local Bankruptcy Rules 6004-1,
7 and 9013-1.

8 B. In the Motion and at the hearing on the Motion, the Debtors demonstrated that
9 good and sufficient notice of the relief granted by this Order has been given and no further notice
10 is required. A reasonable opportunity to object or be heard regarding the relief granted by this
11 Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and
12 all other interested parties.

13 C. The Debtors’ proposed notice of the Bidding Procedures, the Auction and the
14 hearing to approve the sale (the “Sale”) of the Assets (the “Sale Hearing”) is appropriate and
15 reasonably calculated to provide all interested parties with timely and proper notice, and no other
16 or further notice is required.

17 D. The Bidding Procedures substantially in the form attached hereto as Exhibit 1 are
18 fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the
19 Assets.

20 E. The Break-Up Fee, in the amount set forth below, (i) is reasonable and appropriate
21 given, among other things, the size and nature of the Sale and the efforts that will have been
22

23
24
25 ² Because material changes were made to the Court’s Tentative Ruling on the record at the hearing, the
26 Court has not posted the Tentative Ruling to the CM/ECF docket.

27 ³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of
28 law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy
Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they
are adopted as such. To the extent that any of the following conclusions of law constitute findings of
fact, they are adopted as such.

1 expended, and will continue to be expended, by the Stalking Horse Purchaser, and (ii) is a
2 material inducement for, and a condition of, the Stalking Horse Purchaser's entry into the
3 Stalking Horse APA.

4 F. The form of the Stalking Horse APA is fair and reasonable and provides flexibility
5 in the process to sell the Assets in a manner designed to maximize the value of the Assets.

6 G. The assumption and assignment procedures described in the Motion and provided
7 for herein (the "Assumption and Assignment Procedures") and the Cure Notice are reasonable
8 and appropriate and consistent with the provisions of Section 365 of the Bankruptcy Code and
9 Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Cure Notice have
10 been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the
11 Assumed Executory Contracts to assert an Assumption Objection.

12 H. Entry of this Order is in the best interests of the Debtors, their estates and
13 creditors, and all other parties in interest.

14 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

15 1. The Motion is **GRANTED** as set forth herein.

16 2. To the extent that the International Union of Operating Engineers, Stationary
17 Engineers Local 39 [Doc. No. 1355], the Service Employees International Union, United
18 Healthcare Workers West [Doc. No. 1354], the California Nurses Association [Doc. No. 1359],
19 and the United Nurses Association of California/Union of Health Care Professionals (collectively,
20 the "Unions") assert that the Debtors are required to reject the Collective Bargaining Agreements
21 prior to entering into the Stalking Horse APA, the Unions' objections are overruled.
22 Additionally, the Union's objection that the Bidding Procedures do not sufficiently incentivize
23 prospective purchasers to assume Collective Bargaining Agreements (the "CBAs") to which the
24 Unions are parties is overruled. The Court finds that requiring the Debtors to provide a precise
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1 quantification of the value to be accorded to the assumption of liabilities arising under the CBAs
2 would unduly impair the Debtors' flexibility in the conduct of the auction of the Debtors' assets,
3 and would likely yield suboptimal results for all stakeholders. The Debtors must be allowed to
4 conduct the auction in accordance with their business judgment, especially given the complexity
5 of an auction of this type. Precise quantification of the valuation to be afforded to assumption of
6 the CBAs would not be of material assistance to the sophisticated participants in this auction, who
7 will be assisted by professional advisors using their own detailed financial models and
8 projections. ~~to the Bidding Procedures are overruled as set forth in the Tentative Ruling, at~~
9 ~~Section 11 ¶ C.~~ This Order does not prevent the Unions from raising objections under § 1113 at
10 the Sale Hearing. However, the Unions' contention that the Stalking Horse APA and the
11 associated bidding procedures cannot be approved prior to the adjudication of § 1113 issues is
12 without merit.
13
14

15 3. The objection filed by St. Vincent IPA Medical Corporation and Angeles IPA
16 [Doc. No. 1388] is premature and may be raised at the Sale Hearing. With respect to the objection
17 filed by Hooper Healthcare Consulting LLC ("Hooper") [Doc. No. 1397], to the extent that
18 Hooper asserts that it is entitled to receive notification of the treatment of its Net Benefit
19 Compensation (as that term is defined in Doc. No. 1397) prior to selection of the Successful
20 Bidder, its objection is overruled. Hooper may raise any objections regarding its Net Benefit
21 Compensation or the assumption and assignment of its executory contract at the Sale Hearing.
22 Hooper's objection to the timeline proposed by the Debtors with respect to the assumption and
23 assignment of executory contracts is overruled. ~~To the extent that Hooper The objections filed by~~
24 ~~(i) St. Vincent IPA Medical Corporation and Angeles IPA [Doc. No. 1388], and (ii) Hooper~~
25 ~~Healthcare Consulting LLC [Doc. No. 1397] are overruled for the reasons set forth in the~~
26 ~~Tentative Ruling, Section II ¶ G & J.~~
27
28

1 4. The objection filed by the Official Committee of Unsecured **Creditors (the**
2 **"Committee"**) [Docket Nos. 1399, 1401, 1402] and the *Joint Supplement to Objection and*
3 *Response to Debtors' Sale Motion* [Docket No. 1279] filed by the Committee, UMB Bank, N.A.,
4 and Wells Fargo Bank, National Association, is overruled in part and sustained in part with
5 respect to the revised Section 8.6 of the Stalking Horse APA and the Break-Up Fee, as set forth
6 below.

7
8 5. As to the objection filed by the County of San Mateo and the Health Plan of San
9 Mateo [Doc. No. 1361], the restrictions and limitations set forth in § 5.1(b) of the Stalking Horse
10 APA on communications between SGM and governmental authorities shall apply only to
11 communications regarding licensing or regulation of the Hospitals with the relevant licensing or
12 regulatory authorities. Such restrictions shall not apply to communications involving SGM (or
13 any other prospective buyers) and any governmental authority on subjects unrelated to licensing
14 or regulation by that authority.

15
16 6. The Court does not rule on the objections filed by MGH Painting Inc. [Doc. No.
17 1358], Belfor USA Group, Inc. [Doc. No. 1364], **and the** California Attorney General [Doc. No.
18 1352], ~~Centers for Medicare and Medicaid Services~~; all such objections are premature and are
19 preserved for the Sale Hearing and may be raised at that time. All objections to the relief
20 requested in the Motion that have not been withdrawn, waived or settled are overruled.

21
22 7. The objection of Cigna Healthcare of California, Inc. ("Cigna") [Doc. Nos. 1349
23 and 1459] is sustained. The Debtors shall, no later than the earlier of (i) 48 hours after the
24 conclusion of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with
25 written notice of its irrevocable decision as to whether or not the Debtors propose to assume and
26 assign any or all of the Cigna Provider Agreements as part of the Sale; provided, however, that
27 such notice shall be irrevocable only to the extent that the Successful Bidder's transaction is
28

1 approved by this Court and an order thereon becomes final and non-appealable. The Debtors shall
2 provide the same notice to UnitedHealthcare Insurance Company.

3 8. The objections filed by the U.S. Department of Health and Human Services and
4 Centers for Medicare and Medicaid Services [Doc. No. 1346] and the California Department of
5 Health Care Services [Doc. No. 1353] are continued, as resolved by stipulations [Docket Nos.
6 1458 and 1473, respectively], approved by orders entered on [Docket Nos. 1465 and 1483,
7 respectively].

8
9 9. The Bidding Procedures attached hereto as Exhibit 1 are **APPROVED**.⁴

10 10. Strategic Global Management, Inc. or an affiliate to be designated (the “Stalking
11 Horse Purchaser”) is hereby **APPROVED** to be and designated as the Stalking Horse Purchaser
12 as to the Assets, and the form of the Stalking Horse APA is hereby **APPROVED**.

13
14 11. Subject to the Bidding Procedures and approval of the Sale at the Sale Hearing, the
15 Debtors’ entry into the Stalking Horse APA (including any amendments thereto) is hereby
16 **APPROVED** subject to the following modifications:

17 (i) the following language is added to Section 6.1(b)(2): “In the event that Purchaser
18 terminates this Agreement in accordance with Section 8.6 hereof, expenses of Purchaser incurred
19 in satisfaction of Section 8.6 shall be reimbursed up to \$500,000”;

20
21 (ii) Section 8.6 shall be replaced by the following revised Section 8.6:

22 8.6 **Attorney General Provisions**. Purchaser recognizes that the
23 transactions contemplated by this Agreement may be subject to review
24 and approval of the CA AG. Purchaser agrees to close the transactions
25 contemplated by this Agreement so long as any conditions imposed by
26 the CA AG are substantially consistent with the conditions set forth, as
27 Purchaser Approved Conditions, in Schedule 8.6. In the event the CA
AG imposes conditions on the transactions contemplated by this
Agreement, or on Purchaser in connection therewith, which are
materially different than the Purchaser Approved Conditions set forth

28 ⁴ For the convenience of parties in interest, a chart listing important dates set forth in this Order is
attached hereto as Exhibit 2.

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on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to be “materially different.” If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General’s imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the

Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

(iii) in Section II, H(a), in Schedule 6.1(b)(3), annexed to the Stalking Horse APA [Docket No. 1279, at 111], the reference to Section 6.26(b)(2) is hereby corrected to Section 6.1(b)(2); and

(iv) other clarifications to the Bidding Procedures set forth in the attached Exhibit "1" are hereby deemed incorporated into Schedule 6.1(b)(3), annexed to the Stalking Horse APA [Docket No. 1279, at 111].

12. The Break-Up Fee, as modified, is **APPROVED** for the reasons stated on the record. If the Stalking Horse Purchaser is not the Successful Bidder and is not then in breach, and the Stalking Horse APA has not otherwise been terminated, the Stalking Horse Purchaser shall be paid at the closing of the Sale of the Purchased Assets (i) three and one-quarter percent (3.25%) of the Cash Consideration (\$19,825,000.00), plus (ii) reimbursement of reasonably documented reasonable costs and expenses in an amount not to exceed \$2,000,000.00. Notwithstanding anything to the contrary contained herein, upon payment of the Break-Up Fee to the Stalking Horse Purchaser, the Debtors and their representatives and affiliates, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, will be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse APA, and neither the Debtors and their representatives and

1 affiliates, on the one hand, and the Stalking Horse Purchaser and its respective representatives
2 and affiliates, on the other hand, nor any other Person, will have any other remedy or cause of
3 action under or relating to the Stalking Horse APA, including for reimbursement of any additional
4 expenses incurred by the Stalking Horse Purchaser in connection with the negotiation and
5 documentation of the Stalking Horse APA and all proceedings held in connection therewith. Any
6 Break-Up Fee shall be payable without any further order of the Bankruptcy Court.

8 13. The Partial Bid Deadline **shall be March 28, 2019 at 4:00 p.m. (prevailing**
9 **Pacific Time)** and the Bid Deadline shall be **April 3, 2019 at 4:00 p.m. (prevailing Pacific**
10 **Time).**

11 14. The Debtors, after consultation with the Consultation Parties (as defined in the
12 Bidding Procedures), shall have the exclusive right to determine whether a bid is a Qualified Bid
13 and shall notify Qualified Bidders whether their bids have been recognized as such as promptly as
14 practicable after a Qualified Bidder delivers all of the materials required by the Bidding
15 Procedures.

16 15. The Partial Bid Auction, if necessary, shall be held on **April 8, 2019 at 10:00 a.m.**
17 **(prevailing Pacific Time)** at the offices of Dentons US LLP, 601 South Figueroa Street, Suite
18 2500, Los Angeles, CA 90017, or at such other location as shall be identified in a notice filed
19 with the Bankruptcy Court at least 24 hours before the Partial Bid Auction. The Full Bid
20 Auction, if necessary, shall be held on **April 9, 2019 at 10:00 a.m. (prevailing Pacific Time)** at
21 the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017,
22 or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least
23 24 hours before the Full Bid Auction.

24 16. At each of the Partial Bid Auction and the Full Bid Auction, each Qualified Bidder
25 shall be required to confirm that it has not engaged in any collusion with respect to the bidding or
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the sale, and the Auction shall be conducted openly and transcribed. Within twenty-four (24) hours following the conclusion of the Full Bid Auction, the Debtors shall file a notice identifying the Successful Bidder with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

17. The Debtors, after consultation with the Consultation Parties, shall determine which offer is the highest and otherwise best offer for the Assets, giving effect to the Break-Up Fee payable to the Stalking Horse Purchaser as well as any additional liabilities or Cure Amounts to be assumed by the Stalking Horse Purchaser or another Qualified Bidder and any additional costs which may be imposed on the Debtors.

18. The Sale Hearing shall be held on **April 17, 2019 at 10:00 a.m. (prevailing Pacific Time)** before this Court, the U.S. Bankruptcy Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012. Any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 255 E. Temple St., Los Angeles, California 90012, together with proof of service, **on or before 4:00 p.m. (prevailing Pacific Time) on April 12, 2019** (the “Sale Objection Deadline”) and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon: (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the

1 Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
2 P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
3 (dsbleck@mintz.com, pricotta@mintz.com)); and (v) counsel to the Series 2015 and Series 2017
4 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis,
5 MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the “Notice
6 Parties”). If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the
7
8 objecting party may be barred from objecting to the Sale and may not be heard at the Sale
9 Hearing, and this Court may enter the Sale Order without further notice to such party.

10 19. The Sale Hearing may be adjourned from time to time without further notice to
11 creditors or parties in interest other than by announcement of the adjournment in open court on
12 the date scheduled for the Sale Hearing, and the Debtors shall have the exclusive right, in the
13 exercise of its fiduciary obligations and business judgment, and after consultation with the
14 Consultation Parties, to cancel the Sale at any time subject to the terms of this Order, in
15 accordance with the terms of this Order and the Stalking Horse APA.
16

17 20. The following forms of notice are approved: (a) the Procedures Notice, in the form
18 substantially similar to that attached hereto as Exhibit 3 and (b) the Cure Notice, in the form
19 substantially similar to that attached hereto as Exhibit 4.
20

21 20. The Debtors shall, within one (1) business day after the entry of this Order, file
22 with the Court and serve a copy of this Order and the Procedures Notice by first class mail,
23 postage prepaid, on the Notice Parties and all parties which the Debtor are require to serve
24 pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order*
25 *Limiting Scope of Notice* [Dkt. No. 132].

26 21. The Debtors shall file with the Court and serve the Cure Notice (along with a copy
27 of this Motion) upon each counterparty to the Assumed Executory Contracts by no later than
28

1 **March 5, 2019**. The Cure Notice shall state the date, time and place of the Sale Hearing as well
2 as the date by which any Assumption Objection must be filed and served. The Cure Notice also
3 will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an
4 Assumed Executory Contract in order to cure any defaults that exist under such contract (the
5 “Cure Amounts”).
6

7 22. To the extent there is a contract added to the list of contracts to be assumed by the
8 Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the
9 Auction, the Motion constitutes a separate motion to assume and assign that contract to the
10 Successful Bidder pursuant to Section 365 of the Bankruptcy Code; each such contract will be
11 listed on an exhibit to the Successful Bidder’s Purchase Agreement, and shall be given a separate
12 Cure Notice filed and served by overnight delivery by the Debtors within 5 business days of the
13 conclusion of the Auction and announcement of the Successful Bidder(s).
14

15 23. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not
16 constitute or be deemed a determination or admission by the Debtors and their estates or any
17 other party in interest that such contract, lease, or other agreement is, in fact, an executory
18 contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights
19 with respect thereto shall be reserved.
20

21 24. If any counterparty to an Assumed Executory Contract wishes to file an
22 Assumption Objection, such counterparty must file and serve it so as to be actually received by
23 the Notice Parties by no later than: (i) **4:00 p.m. (prevailing Pacific Time) on March 22, 2019**,
24 (ii) such later date otherwise specified in the Cure Notice, or (iii) solely with respect to those
25 counterparties to Assumed Executory Contracts who are not served with a Cure Notice until a
26 date after March 22, 2019, seven (7) days after service by overnight mail of such Cure Notice (the
27 “Assumption Objection Deadline”), provided, however, that if any Successful Bidder is not the
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1 Stalking Horse Purchaser, any counterparty may raise at the Sale Hearing (or any time before the
2 Sale Hearing) an objection to the assumption and assignment of the Assumed Executory Contract
3 solely with respect to such Successful Bidder's ability to provide adequate assurance of future
4 performance under the Assumed Executory Contract. The Court will make any and all
5 determinations concerning adequate assurance of future performance under the Assumed
6 Executory Contracts pursuant to Sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale
7 Hearing.

8
9 25. To the extent the Assumed Executory Contract counterparty wishes to object to the
10 Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with
11 specificity each and every asserted default in any executory contract or unexpired lease and the
12 monetary cure amount asserted by such counterparty to the extent it differs from the amount, if
13 any, specified by the Debtors in the Cure Notice.

14
15 26. Any counterparty to an Assumed Executory Contract that fails to timely file and
16 serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure
17 Amount is owed in an amount in excess of that set forth in the Cure Notice.

18
19 27. If a Contract or Lease is assumed and assigned pursuant to Court order, the
20 Assumed Executory Contract counterparty shall receive no later than three (3) business days
21 following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice. All
22 Cure Amounts will be funded in accordance with the terms and conditions of the Stalking Horse
23 APA and/or the Purchase Agreement(s), as applicable.

24
25 28. Assumption Objections (including those related to adequate assurance of future
26 performance) will be resolved by the Court at the Sale Hearing. Notwithstanding, in the event
27 that the Debtors and the counterparty cannot resolve the Cure Amount, such dispute may be
28

1 resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the
2 Court.

3 29. The Successful Bidder(s) shall be responsible for satisfying any requirements
4 regarding adequate assurance of future performance that may be imposed under section 365(b) of
5 the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory
6 Contract, and the failure to provide adequate assurance of future performance to any counterparty
7 to any Assumed Executory Contract shall not excuse the Successful Bidder(s) from performance
8 of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement.

9
10 30. Except to the extent otherwise provided in a Successful Bidder's Purchase
11 Agreement, the Debtors and their estates shall be relieved of all liability accruing or arising after
12 the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of
13 the Bankruptcy Code.

14
15 31. All proceeds of the Sale shall be paid by the Successful Bidder(s) to the Debtors
16 and such proceeds shall be deposited in accordance with paragraph 4 of the Final DIP Order, and
17 all liens, claims, interests and encumbrances on the Assets sold pursuant to the Sale shall attach to
18 the proceeds of Sale with the same force, effect, validity and priority as such liens, claims,
19 interests and encumbrances had on such Assets prior to the Closing, subject to the liens and
20 security interests of the DIP Lender and the Prepetition Secured Creditors under the relevant
21 intercreditor agreements, applicable law and the Final DIP Order, as applicable.

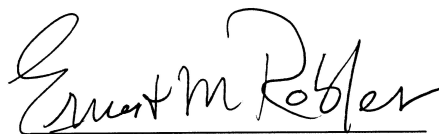
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23 32. To the extent the provisions of this Order are inconsistent with the provisions of
24 any Exhibit referenced herein or with the Motion, the provisions of this Order shall control.

25 33. The Court shall retain jurisdiction over all matters arising from or related to the
26 interpretation and implementation of this Order.

1 34. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062,
2 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and
3 enforceable.
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24 Date: February 19, 2019
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Ernest M. Robles
United States Bankruptcy Judge

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit 1

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the sale of all assets of (i) the assets (the “Purchased Assets”) enumerated in the Stalking Horse APA (as defined below), including but not limited to, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center and Seton Medical Center Coastside (collectively, the “APA Facilities”); and (ii) assets not otherwise enumerated in the APA, but associated with the ownership or operation of the APA Facilities and available for purchase (the “Other Assets”), in connection with the chapter 11 cases pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), jointly administered as case number 2:18-bk-20151-ER, in the form to be approved by the Bankruptcy Court, by Order dated [____], 2019 (the “Bidding Procedures Order”).

The Debtors entered into that certain Asset Purchase Agreement, dated January 8, 2019 between the Debtors, on the one hand, and Strategic Global Management, Inc. (the “Stalking Horse Purchaser”), on the other hand, pursuant to which the Stalking Horse Purchaser shall acquire the Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse APA”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the *Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279] (the “Sale Motion”).

I. ASSETS TO BE SOLD

The Debtors seek to complete a sale of substantially all assets of the APA Facilities, including both the Purchased Assets and the Other Assets (the “Sale”). The Stalking Horse APA will serve as the “stalking-horse” bid for the Purchased Assets.

II. THE BID PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets and/or the Other Assets, they intend to hold a sale process for the Purchased Assets and/or the Other Assets pursuant to the procedures and on the timeline proposed herein.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to

participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following Debtors:

- (a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets and/or the Other Assets or otherwise participating in connection with such bid; and
- (b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Purchased Assets and/or Other Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors, and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

B. Due Diligence

The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtor, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid”, and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with all of the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;⁵

⁵ For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

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- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-up Bidder, the date that is thirty (30) business days after entry of the Sale Order;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$19,825,000.00); (ii) the amount of the expense reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee, the "Minimum Qualified Bid");
- j) if the bid is a partial bid (the "Partial Bid"),⁶ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a "Partial Bid Auction Qualified Bid"). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers' responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and (ii) in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii)

⁶ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

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Purchased Assets and/or Other Assets, subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;

- l) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- m) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets and/or Other Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets and/or Other Assets or the completeness of any information provided in connection therewith or with the relevant Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to: (a) 20% of purchase price for bids under \$5 million; (b) for bids greater than \$5 million and less than \$100 million, the greater of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the "Good Faith Deposit"), which Good Faith Deposit shall, be forfeited if such bidder is the Successful Bidder and breaches its obligation to close; and (ii) if the Qualified Bid is a bid made by a secured creditor of the Debtors (a "Credit Bid Bidder") who intends to make a credit bid (each, a "Credit Bid Bidder"), evidence of (a) the basis for and property covered by such Credit Bid Bidder's secured claim, (b) the amount of such Credit Bid Bidder's claim that is secured by the property in question, (c) whether it is the senior secured claim on the property (x) prepetition and (y) as of the date of the request to be a Qualified Bidder, as well as (d) evidence of the resolution of any Challenge to such Credit Bid Bidder's secured claim within the meaning of the Final DIP Order;
- p) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
- r) it identifies the person(s) and their title(s) who will attend the relevant Auction, and confirms that such person(s) have authority to make binding Overbids (defined below) at such Auction;
- s) it contains such other information reasonably requested by the Debtors; and
- t) it is received prior to the Bid Deadline.

1 The Debtors, in consultation with the Consultation Parties (who shall receive copies of the
2 Purchase Agreement relating to any bids cast pursuant to these Bidding Procedures as soon as
3 reasonably practicable), may qualify any bid that meets the foregoing requirements as a Qualified
4 Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder
and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in connection with the
Bidding Process, the Auction, and the Sale.

5 The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser and all Qualified
6 Bidders and the Notice Parties in writing as to whether or not any bids constitute Qualified Bids
7 (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified
8 Bidder's bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating
9 any such Qualified Bid to the Consultation Parties, the Stalking Horse Purchaser and
such Qualified Bidders and the Notice Parties on the earlier of: (1) the date that any bid other than
the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days prior to the
Partial Bid Auction.

10 **D. Bid Deadline**

11 A Qualified Bidder that desires to make a bid or a Partial Bid will deliver written copies of its bid
12 or Partial Bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the
13 Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn:
14 Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors' Investment Banker: Cain
15 Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco,
16 CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official
17 Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los
18 Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master
19 Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One
20 Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
(dsbleck@mintz.com, pricotta@mintz.com)); and (v) counsel to the Series 2015 and Series 2017
Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis,
MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)), so as to be received by the
Notice Parties not later than **March 28, 2019, at 4:00 p.m.** (prevailing Pacific Time), for partial
bids (the "Partial Bid Deadline") or **April 3, 2019, at 4:00 p.m.** (prevailing Pacific Time), for full
bids (the "Full Bid Deadline").

21 A list of all Qualified Bids, as well as all adequate assurance information included in such bids as
22 required by paragraph C(l) above, will be provided to Cigna and United (through their counsel)
23 no later than April 4, 2018, at 4:00 p.m. (prevailing Pacific Time) to allow those parties to
24 evaluate Qualified Bidders related to adequate assurance of future performance of the Cigna and
United provider agreements.

25 **E. Credit Bidding**

26 Any party with a valid, properly perfected security interest in any of the Assets may credit bid for
the Assets in connection with the Sale pursuant to § 363(k) of the Bankruptcy Code.

27 Any credit bids made by secured creditors shall not impair or otherwise affect the Stalking Horse
28 Purchaser's entitlement to the Bidding Procedures and related protections granted under the
Bidding Procedures Order.

1 **F. Evaluation of Competing Bids**

2 A Qualified Bid will be valued based upon several factors including, without limitation: (i) the
3 amount of such bid; (ii) the risks and timing associated with consummating such bid; (iii) any
4 proposed revisions to the form of Stalking Horse APA; and (iv) any other factors deemed relevant
5 by the Debtors in its reasonable discretion, in consultation with the Consultation Parties,
6 including the amount of cash included in the bid.

7 **G. No Qualified Bids**

8 If the Debtors do not receive any Qualified Bids other than the Stalking Horse APA, the Debtors
9 will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder
10 for the Assets. If the Debtors receive one or more qualified Partial Bid Auction Qualified Bids
11 and, after the Partial Bid Auction, the Debtors will determine, in consultation with the
12 Consultation Parties, if there are any Partial Bidders that will not be qualified to participate at the
13 Full Bid Auction.

14 **H. Auction Process**

15 If the Debtors receive one or more Partial Bid Auction Qualified Bids, the Debtors will conduct
16 separate auctions of each asset or combinations thereof (each, a "Partial Bid Auction"). Any
17 Partial Bidder holding a Partial Bid Auction Qualified Bid shall be entitled to bid on any assets in
18 any Partial Bid Auction(s). The procedures below shall apply to the Partial Bid Auction, except
19 as where otherwise indicated. The Debtors will conduct the Partial Bid Auction(s), which shall
20 be transcribed on **April 8, 2019, at 10:00 a.m. (prevailing Pacific Time)** (the "Partial Bid
21 Auction Date"), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los
22 Angeles, California 90017, or such other location as shall be timely communicated to all entities
23 entitled to attend the Auction.

24 The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation with the
25 Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to participate
26 at the Full Bid Auction, including (without limitation) the highest and best bids for each asset (the
27 "Winning Partial Bids") shall be permitted to participate in the Full Bid Auction (as defined
28 below) of the Purchased Assets and/or the Other Assets, except that:

- 29 (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four
30 APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking
31 Horse APA, there will be a Full Bid Auction (as defined below) and (1) the
32 Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities,
33 or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities
34 and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the
35 Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA
36 at 6.1(b)(2);
- 37 (b) If the Partial Bids do not include all four APA Facilities, and if there are no other
38 Qualified Full Bids, then Seller, in its discretion, after consultation with the
39 Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1)
40 to have no Full Bid Auction and the Stalking Horse Purchaser will purchase the
41 four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and

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1 Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be
 2 sufficient to warrant leaving one or more APA Facilities behind (the “Remaining
 3 Facility”), the Stalking Horse Purchaser shall have the option of (i) acquiring the
 4 Remaining Facility at the allocated price in the Stalking Horse APA, (ii)
 5 overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse
 6 APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-
 7 Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

8 If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids
 9 (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on an
 10 aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other
 11 Assets), the Debtor will conduct a full bid auction of the Purchased Assets and/or the Other
 12 Assets (the “Full Bid Auction”), which shall be transcribed, on **April 9, 2019, at 10:00 a.m.**
 13 **(prevailing Pacific Time)** (the “Full Bid Auction Date”), at the offices of Dentons US LLP, 601
 14 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or such other location as shall
 15 be timely communicated to all entities entitled to attend the Auction. The Partial Bid Auction and
 16 the Full Bid Auction shall run in accordance with the following procedures:

- 17 a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have
 18 timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties,
 19 and their respective advisors, and other parties who request and receive authority
 20 to attend the auction in advance from the Debtors may attend the Auction;
- 21 b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely
 22 submitted Qualified Bids will be entitled to make any subsequent bids at the
 23 Auction;
- 24 c) each Qualified Bidder shall be required to confirm that it has not engaged in any
 25 collusion with respect to the bidding or the sale;
- 26 d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to
 27 be present for all Subsequent Bids (defined herein) at the relevant Auction and the
 28 actual identity of each Qualified Bidder will be disclosed on the record at the
 relevant Auction; provided that all Qualified Bidders wishing to attend the relevant
 Auction must have at least one individual representative with authority to bind
 such Qualified Bidder attending the relevant Auction in person;
- e) the Debtors, after consultation with the Consultation Parties, the Stalking Horse
 Purchaser, and any other Qualified Bidders may employ and announce at the
 relevant Auction additional procedural rules that are (i) reasonable under the
 circumstances for conducting the relevant Auction, (ii) in the best interest of the
 Debtors’ estates; provided, however, that rules (i) are disclosed to the Stalking
 Horse Purchaser and each Qualified Bidder participating in the Auction, and (ii)
 are not inconsistent with the Bidding Procedures, the Stalking Horse APA, the
 Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) bidding at the relevant Auction will begin with a bid determined by the Debtors
 after consulting with the Consultation Parties as being the then highest and best bid
 which will be announced by the Debtors prior to the commencement of the
 Auction (the “Baseline Bid”). The Auction will continue in bidding increments to
 be determined in the discretion of the Debtors, in consultation with the
 Consultation Parties (each a “Overbid”), and all material terms of each Overbid
 shall be fully disclosed to all other Qualified Bidders who submitted Qualified

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Bids and are in attendance at the Auction (including, without limitation, Winning Partial Bids), as well as to the Notice Parties;

g) the initial Overbid, if any, shall provide for total consideration to Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount. Additional consideration in excess of the amount set forth in the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder (including, without limitation, with respect to any Winning Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not subject to a Challenge within the meaning the Final DIP Order) on any of the Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other restrictions set forth herein; and

h) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms and conditions set forth herein, elect to bid for the Purchased Assets as described in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s), in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

I. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid, collectively, the "Successful Bidder"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The Successful Bid may consist of a single Qualified Bid or multiple bids.

1 The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be
2 subject to approval by the Court.

3 If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the
4 Back-Up Bidder, then such party or parties, prior to the Full Bid Auction, shall increase its Good
5 Faith Deposit in the amount set forth in above in paragraph 30, subsection (o), or as determined
6 by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties
7 are bidding on all four APA Facilities, the deposit will be no less than \$30,000,000. If selected as
8 the Successful Bidder or the Back-Up Bidder at the conclusion of the Full Bid Auction, each of
9 the Successful Bidder and the Back-Up Bidder shall, within forty-eight (48) hours, increase its
10 Good Faith Deposit to the sum of five percent (5%) of the Successful Bid or Back-Up Bid, as
11 applicable. If the Successful Bidder fails to increase the Good Faith Deposit within forty-eight
12 (48) hours of the Auction conclusion date (the "Final Deposit"), then (1) the Successful Bidder
13 forfeits its Good Faith Deposit, and (2) the Successful Bid is nullified (i.e., the Back-Up Bidder
14 becomes the Successful Bidder in the amount of its last bid).

15 Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) business
16 days after the conclusion of the Auction, the Successful Bidder shall complete and execute all
17 agreements, contracts, instruments, and other documents evidencing and containing the terms and
18 conditions upon which the Successful Bid was made. Within twenty-four (24) hours following
19 the conclusion of the Full Bid Auction, and within forty-eight (48) hours following the conclusion
20 of the Partial Bid Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and
21 Back-Up Bidders with the Court and shall serve such notice by fax, email, or if neither is
22 available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

23 The Debtors will sell the Purchased Assets and (to the extent included in an Overbid) the Other
24 Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of
25 such Successful Bid by the Court at the Sale Hearing and satisfaction of any other closing
26 conditions set forth in the Successful Bidder's Purchase Agreement.

27 **J. Return of Deposits**

28 All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder
or the Back-Up Bidder no later than five (5) business days following the conclusion of the
Auction.

K. Back-Up Bidder

If an Auction is conducted (whether it be a Full Bid Auction or a Partial Bid Auction), the
Qualified Bidder or Qualified Bidders (including the Stalking Horse Purchaser, subject to Section
II H.(b) hereof) with the next highest or otherwise best Qualified Bid, as determined by the
Debtors in the exercise of their business judgment, at the Auction shall be required to serve as a
back-up bidder (the "Back-Up Bidder") and keep such bid open (whether it be a Partial Bid or
Full Bid) and irrevocable for thirty (30) business days after the entry of the Sale Order (the
"Thirty Day Period"). If during the Thirty-Day Period, the Successful Bidder fails to
consummate the approved sale because of a breach or failure to perform on the part of such
Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the
Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder
without further order of the Court provided that the Back-Up Bidder shall thereafter keep such bid

open and irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further, however, that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be authorized and required to consummate the sale to the Stalking Horse Purchaser in accordance with the terms of the Stalking Horse APA, as such terms may (at the discretion of the Stalking Horse Purchaser) have been modified as a result of the Full Bid Auction or the Partial Bid Auction.

If, after the Thirty-Day Period, the Successful Bidder has failed to consummate the approved sale, the Back-Up Bidder (including the Stalking Horse Purchaser if it has been designated the Back-Up Bidder) may elect, in its discretion, to remain as the Back-Up Bidder until (a) the sale closes, (b) the Successful Bidder defaults, or (c) the Back-Up Bidder elects to terminate its participation as Back-Up Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the Back-Up Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder APA and the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will be no reopening of the auction.

L. Break-Up Fee

In recognition of this expenditure of time, energy, and resources, the Debtors have agreed that if the Stalking Horse Purchaser is not the Successful Bidder as to the Assets, the Debtors will pay the Stalking Horse Purchaser at closing of the sale of the Assets an amount in cash equal to three percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably documented reasonable costs and expenses in an amount not to exceed \$2,000,000.00. The Break-Up Fee shall be payable at closing of the sale from the sale proceeds.

If the Stalking Horse APA is terminated because the Stalking Horse Purchaser is not selected as the Successful Bidder or the Back-Up Bidder at Auction (or the Stalking Horse Purchaser is selected as the Back-Up Bidder but the sale of the Assets is consummated and closed with another entity), the Debtors shall pay to the Stalking Horse Purchaser the Break-Up Fee by wire transfer of immediately available funds immediately, and contemporaneous with, the closing of the sale of the Assets from the first cash proceeds thereof. The Break-Up Fee shall constitute an administrative expense claim with priority under Section 507(a) of the Bankruptcy Code in favor of the Stalking Horse Purchaser.

III. Sale Hearing

The Debtors will seek entry of the Sale Order from the Court at the Sale Hearing to begin at **10:00 a.m. Pacific Time on April 17, 2019** (or at another date and time convenient to the Court) to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in accordance with the Bidding Procedures.

At the Sale Hearing, the Debtors will seek Court approval of the Sale to the Successful Bidder, (or, in the event the Successful Bidder fails to close, the Back-Up Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to § 363 of the Bankruptcy Code, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets (and to the extent included in the Successful Bid, the Other Assets prior to the Sale), including the assumption by

1 the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and
2 Leases pursuant to Section 365 of the Bankruptcy Code. The Debtors will submit and present
3 additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair,
4 reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies
5 the standards necessary to approve a sale of the Purchased Assets and/or the Other Assets.

6 **IV. Reservation**

7 The Debtors reserve the right, as they may determine in their discretion and in accordance with
8 their business judgment to be in the best interest of their estates, in consultation with their
9 professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue
10 incremental bidding and then require that any and all bidders or potential purchasers must submit
11 their sealed, highest and best offer for the Purchased Assets and/or Other Assets; (ii) determine
12 which Qualified Bid is the highest or otherwise best bid and which is the next highest or
13 otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential
14 Bidders; (iv) impose additional terms and conditions with respect to all Potential Bidders; (v)
15 extend the deadlines set forth herein; (vi) continue or cancel the Auction and/or Sale Hearing in
16 open court without further notice; and (vii) implement additional procedural rules that the Debtors
17 determine, in their reasonable business judgment and in consultation with the Consultation Parties
18 will better promote the goals of the bidding process; provided that such modifications are
19 disclosed to each Qualified Bidder participating in the Auction; provided, however, and
20 notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter,
21 extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth
22 herein or in the Stalking Horse APA.
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DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 (213) 623-9300

Exhibit 2

(Significant Dates)

• Service of Notice of Sale Hearing:	March 1, 2019
• Service of Assumption/Cure Notice:	March 5, 2019
• Assumption/Cure Objection Deadline:	March 22, 2019 at 4:00 p.m. (Pacific Time)
• Partial Bid Deadline:	March 28, 2019 at 4:00 p.m. (Pacific Time)
• Full Bid Deadline:	April 3, 2019 at 4:00 p.m. (Pacific Time)
• Partial Bid Auction:	April 8, 2019 at 10:00 a.m. (Pacific Time)
• Full Bid Auction:	April 9, 2019 at 10:00 a.m. (Pacific Time)
• Notice of Results of Auction & Memorandum	April 10, 2019 at 10:00 a.m. (Pacific Time)
• Service of Notice of Contracts/Leases to be Assumed and Assigned:	April 11, 2019 at 10:00 a.m. (Pacific Time)
• Sale Objection Deadline:	April 12, 2019 at 4:00 p.m. (Pacific Time)
• Assumption and Assignment Objection Deadline:	April 12, 2019 at 4:00 p.m. (Pacific Time)
• Reply Deadline:	April 15, 2019 at 4:00 p.m. (Pacific Time)
• Sale Hearing:	April 17, 2019 at 10:00 a.m. (Pacific Time)

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 (213) 623-9300

Exhibit 3

(Procedures Notice)

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

**NOTICE OF SALE PROCEDURES,
 AUCTION DATE, AND SALE HEARING**

PLEASE TAKE NOTICE that on January 17, 2019, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free*

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(213) 623-9300

1 and Clear of All Claims, Liens and Encumbrances (the “Motion”).⁷ The Debtors seek, among
2 other things, to sell all assets of St. Francis Medical Center, St. Vincent Medical Center, St.
3 Vincent Dialysis Center, Inc., Seton Medical Center and Seton Medical Center Coastsides (the
4 “Assets”) to the successful bidder(s) (the “Successful Bidder”), at an auction free and clear of all
liens, claims, encumbrances and other interests pursuant to Sections 363 and 365 of the
Bankruptcy Code.

5 **PLEASE TAKE FURTHER NOTICE** that, on [DATE], the Bankruptcy Court entered
6 an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the
7 “Bidding Procedures”), which set the key dates and times related to the Sale of the Assets. All
8 interested bidders should carefully read the Bidding Procedures Order and the Bidding
9 Procedures. To the extent that there are any inconsistencies between the Bidding Procedures
Order (including the Bidding Procedures) and the summary description of its terms and
conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

10 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding
11 Procedures, a partial bid auction (the “Partial Bid Auction”) to sell the Assets will be conducted
12 on **April 8, 2019, at 10:00 a.m. (prevailing Pacific Time)** at the offices of Dentons US LLP, 601
13 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or at such other location as
shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Partial
Bid Auction. Within forty-eight (48) hours of the conclusion of the Partial Bid Auction, the
Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding
15 Procedures, a full bid auction (the “Full Bid Auction”) to sell the Assets will be conducted on
16 **April 9, 2019 at 10:00 a.m. (prevailing Pacific Time)** at the offices of Dentons US LLP, 601
17 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or at such other location as
shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Full Bid
Auction. Within twenty-four (24) hours of the conclusion of the Full Bid Auction, the Debtors
shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

18 **PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale of
19 the Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Ernest Robles,
20 United States Bankruptcy Judge, United States Bankruptcy Court for the Central District of
21 California, 255 E. Temple St., Los Angeles, California 90012, Courtroom 1568, on **April 17,**
22 **2019 at 10:00 a.m. (prevailing Pacific Time)**, or at such time thereafter as counsel may be heard
or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be
23 adjourned from time to time without further notice to creditors or parties in interest other than by
announcement of the adjournment in open court on the date scheduled for the Sale Hearing.
24 Objections to the Sale shall be filed with the Bankruptcy Court and served **so as to be received**
no later than 4:00 p.m. (prevailing Pacific Time) on April 12, 2019 by: (i) counsel to the
25 Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn:
Tania M. Moyron (taniamoyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain
26 Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco,
CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official
27 Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los

28 ⁷ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
Motion.

Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the “Notice Parties”); (vi) counsel to the Stalking Horse Purchaser: Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067 (Attn: Gary E. Klausner, Esq. (GEK@lnbyb.com)); and (vii) the Office of the United States Trustee (the “U.S. Trustee”): 915 Wilshire Blvd., Suite 1850, Los Angeles, California 90017 (Attn: Hatty Yip (Hatty.Yip@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion, the Bidding Procedures Order (including all exhibits thereto), the Bidding Procedures, and the Stalking Horse APA, may make such a request in writing to Dentons US LLP, Attn: Samuel R. Maizel, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017 or by emailing samuel.maizel@dentons.com or by calling (213) 892-2910.

Dated: _ __, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By: _____

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 (213) 623-9300

Exhibit 4

(Cure Notice)

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
 Case No. 2:18-bk-20163-ER
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 Case No. 2:18-bk-20180-ER
 Case No. 2:18-bk-20181-ER

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS
 AND UNEXPIRED LEASES OF THE DEBTORS
THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on January 17, 2019, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (1) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory*

1 *Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free*
2 *and Clear of All Claims, Liens and Encumbrances (the “Motion”).*⁸

3 **PLEASE TAKE FURTHER NOTICE** that, on [DATE], the Court entered an Order (the
4 “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in
5 the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of
6 certain assets (the “Assets”) of the Debtors and (ii) procedures for the assumption and assignment
7 of certain of the Debtors’ executory contracts and unexpired leases.

8 **PLEASE TAKE FURTHER NOTICE** that the Motion also seeks Court approval of the
9 sale (the “Sale”) of the Assets to the Successful Bidder(s), free and clear of all liens, claims,
10 interests and encumbrances pursuant to Section 363 of the Bankruptcy Code, including the
11 assumption by the Debtors and assignment to the buyer(s) of certain executory contracts and
12 unexpired leases pursuant to Section 365 of the Bankruptcy Code (the “Executory Contracts
13 Subject to Assumption”), with such liens, claims, interests and encumbrances to attach to the
14 proceeds of the Sale with the same priority, validity and enforceability as they had prior to such
15 Sale. Within forty eight (48) hours following the conclusion of the Auction, the Debtors shall file
16 a notice identifying the Successful Bidder(s) with the Bankruptcy Court and serve such notice by
17 fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.
18 Any counterparty to an Executory Contracts Subject to Assumption that wishes to receive such
19 notice by email or fax, must provide their email address or fax number to Dentons US LLP, Attn:
20 Samuel R. Maizel by emailing samuel.maizel@dentons.com or calling (213) 892-2910 before the
21 Auction.

22 **PLEASE TAKE FURTHER NOTICE** that an evidentiary hearing (the “Sale Hearing”) to
23 approve the Sale and authorize the assumption and assignment of the Assumed Executory
24 Contracts will be held on **April 17, 2019 at 10:00 a.m. (prevailing Pacific Time)**, before the
25 United States Bankruptcy Court for the Central District of California, 255 E. Temple St., Los
26 Angeles, California 90012, Courtroom 1568. The Sale Hearing may be adjourned from time to
27 time without further notice to creditors or parties in interest other than by announcement of the
28 adjournment in open court on the date scheduled for the Sale Hearing.

29 **PLEASE TAKE FURTHER NOTICE** that, consistent with the Bidding Procedures
30 Order, the Debtors may seek to assume an executory contract or unexpired lease to which you
31 may be a party. The Executory Contracts Subject to Assumption are described on Exhibit A
32 attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the
33 amount, if any, which the Debtors assert is owed to cure any defaults existing under the Assumed
34 Executory Contract.

35 **PLEASE TAKE FURTHER NOTICE** that if you disagree with the Cure Amount
36 shown for the Executory Contract(s) Subject to Assumption on Exhibit A to which you are a
37 party, you must file in writing with the United States Bankruptcy Court for the Central District of
38 California, 255 E. Temple St., Los Angeles, California 90012, an objection on or before **March**
39 **22, 2019 at 4:00 p.m. (prevailing Pacific Time)**. Any objection must set forth the specific
40 default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease
41 is assumed and assigned pursuant to a Court order approving same, then unless you properly file

42 ⁸ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
43 Motion.

1 and serve an objection to the Cure Amount contained in this Notice, you will receive at the time
2 of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set
3 forth herein, if any. Any counterparty to an Executory Contract Subject to Assumption that fails
4 to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting
that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached
Exhibit A.

5 **PLEASE TAKE FURTHER NOTICE** that if you have any other objection to the
6 Debtors' assumption and assignment of the Executory Contract Subject to Assumption (including
7 an objection based on adequate assurance of future performance by the Stalking Horse Purchaser⁹
8 under the Assumed Executory Contract) to which you may be a party, you also must file that
9 objection in writing no later than **4:00 p.m. (prevailing Pacific Time) on April 12, 2019**
10 provided, however, that if any Successful Bidder is not the Stalking Horse Purchaser, any
counterparty to an Executory Contract Subject to Assumption may raise an objection to the
assumption and assignment of the Executory Contracts Subject to Assumption solely with respect
to such Successful Bidder's ability to provide adequate assurance of future performance under the
Assumed Executory Contract at the Sale Hearing, or any time before the Sale Hearing.

11 **PLEASE TAKE FURTHER NOTICE** that any objection you may file must be served
12 so as to be received by the following parties by the applicable objection deadline date and time:
13 (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA
14 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors' Investment
15 Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400,
16 San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to
17 the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd
18 Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the
19 Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
20 P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
(dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017
21 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis,
MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the "Notice
Parties"); (vi) counsel to the Stalking Horse Purchaser: Levene, Neale, Bender, Yoo & Brill
L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067 (Attn: Gary E. Klausner,
Esq. (GEK@lnbyb.com); and (vii) the Office of the United States Trustee (the "U.S. Trustee"): 915
Wilshire Blvd., Suite 1850, Los Angeles, California 90017 (Attn: Hatty Yip
(Hatty.Yip@usdoj.gov)).

22 **PLEASE TAKE FURTHER NOTICE** that the Successful Bidder shall be responsible
23 for satisfying any requirements regarding adequate assurance of future performance that may be
24 imposed under §§ 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in connection
25 with the proposed assignment of any Assumed Executory Contract. The Court shall make its
determinations concerning adequate assurance of future performance under the Assumed
Executory Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

26 **PLEASE TAKE FURTHER NOTICE** that Assumption Objections may be resolved by
27 the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

28
⁹ The Stalking Horse Purchaser is Strategic Global Management, Inc.

1 **PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in
2 the Purchase Agreement with the Successful Bidder(s), pursuant to § 365(k) of the Bankruptcy
3 Code, the Debtors and their estates shall be relieved of all liability accruing or arising after the
effective date of assumption and assignment of the Assumed Executory Contracts.

4 **PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the
5 Debtors to assume any Assumed Executory Contracts or to pay any Cure Amount.¹⁰

6 **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE**
7 **AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE**
8 **RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.**

9 **ANY COUNTERPARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO**
10 **DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH**
11 **ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO**
12 **SUCH CURE AMOUNT.**

13 Dated: ___, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By: _____

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

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27 ¹⁰ “Executory Contracts Subject to Assumption” are those Contracts and Leases that the Debtors believe
28 may be assumed and assigned as part of the orderly transfer of the Assets; however, the Successful
Bidder may choose to exclude certain of the Debtors’ Contracts or Leases from the list of Assumed
Executory Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be
assumed by the Debtors.

Exhibit A

(Assumed Executory Contracts)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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EXHIBIT 12

EXHIBIT 1

PART 1

EXHIBIT 1

PART 1

ASSET PURCHASE AGREEMENT

By and Among

Verity Health System of California, Inc., Verity Holdings, LLC,

**St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc.,
Seton Medical Center**

and

Strategic Global Management, Inc.

Dated January 8, 2019

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E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastside Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of **Exhibit 1.4.2** attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of **Exhibit 1.4.2** attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

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Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the “**Excluded Liabilities**”), and each Seller shall remain fully and solely responsible for all of such Seller’s debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively “**Evaluated Contracts**”). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the “**Rejected Contracts**”); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller's Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers' representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on **Schedule 5.3**; or (iii) employed by an affiliate of any Seller and are listed on **Schedule 5.3**. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on **Schedule 5.3**. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser's human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller's and such Seller's affiliates' post-Closing administration of such Seller's and such Seller's affiliates' pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

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Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the “**Sales Procedures Motion**”), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement (“**Overbid**”) to another purchaser (“**Overbidder**”) unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the “**Alternate Transaction**”) and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the “**Break-Up Fee**”); provided, however, that in the event that

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a “Sale Order” approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller’s assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term “**Sale Order**” shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

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CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser

shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a

Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to

POST-CLOSING MATTERS

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the “**Document Retention Period**”), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers’ estate representative or any liquidating trustee of the Sellers’ bankruptcy estate (“**Seller Parties**”), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records with respect to time periods prior to the Effective Time (including, without limitation, access to

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

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order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

12.10 Gender and Number; Construction, Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word “including” followed by a listing does not limit the preceding words or terms and shall mean “including, without limitation.” Any reference in this Agreement to an “affiliate” shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A “Person” shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

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Debtors In Possession

FILED & ENTERED

MAY 02 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO STRATEGIC GLOBAL
MANAGEMENT, INC. FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: April 17, 2019

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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

Debtors and Debtors In Possession.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 1279], filed by Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

At the previous hearing on the Motion on February 19, 2019 (the “Bidding Procedures Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) St Vincent IPA Medical Corporation and Angeles IPA [Docket No. 1397]; (ii) the California Attorney General [Docket No. 1352]; (iii) MGH Painting Inc. [Docket No. 1358]; and (iv) Belfor USA Group, Inc. [Docket No. 1364]. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the “Bidding Procedures Order”) [Docket No. 1572]. The Bidding Procedures Order also stated that objections filed by the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services [Doc. No. 1346] and the California Department of Health Care Services [Doc. No. 1353] (the “Continued Objections”) were continued, as resolved by stipulations [Docket Nos. 1458 and 1473, respectively], approved by this Court’s orders [Docket Nos. 1465 and 1483, respectively].

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

Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 2115], the Declarations of Richard Adcock [Docket Nos. 8 and 1469] and James Moloney [Docket No. 2220] in support thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtors That May Be Assumed And Assigned* [Docket No. 1704], the *Supplemental Notice To Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be Assumed and Assigned* [Docket No. 1836], the *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 2065] (together Docket Nos. 1704, 1836 and 2065 are the “Cure Notice”), the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. For Assumption and Assignment* [Docket No. 2131] (the “Designation Notice”), the *Notice That No Auction Shall Be Held Re Debtors’ Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 2053] (the “No-Auction Notice”), the objections filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos. 1788; 1804; 1819; 1830; 1849; 1850; 1852; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-1877 1881; 1882; 1885; 1890-1892; 1904; 1926; 1930; 1933; 1940; 1946; 1948; 1949; 1953; 1954; 1965; 2058; 2066; 2108; 2113; 2144; 2146; 2148, 2150, 2157, 2161, 2162] (the “Cure Objections”), the objection by the California Department of Health Care Services (the “DHCS”) [Docket No. 1879], the *Stipulation Continuing Hearing Regarding Creditors U.S. Department of Health and Human Services and California Department of Health Care Services* [Docket No.

2125], the *Limited Opposition of Belfor USA Group, Inc. to Debtors' Motion for an Order Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket No. 2130], the *Objection of United Healthcare Insurance Company to Debtors' Motion for Order Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, Etc.* [Docket No. 2145] filed United Healthcare Insurance Company, *SEIU-UHW's Objection and Reservation of Rights to Debtors' Sale Motion* filed by the Service Employees International Union, United Healthcare Workers-West [Docket No. 2147], the *Limited Objection and Reservation of Rights of United Nurses Associations of California to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets to the Highest Bidder]* [Docket No. 2155] filed by the United Nurses Association of California, the *Reservation of Rights of U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee and as Series 2017 Note Trustee, with Respect to Debtors' Motion for Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and For Stalking Horse Bidder and for Prospective Overbidders (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 2156] filed by U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee, the *Official Committee of Unsecured Creditors Response to the Debtors' SGM Sale Motion* [Docket No. 2164], the *Reservation of Rights of California Statewide Communities Development Authority to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets] to the Highest Bidder* [Docket No. 2168] filed by the California Statewide Communities Development Authority, the Premature Objections, the Continued Objections, and any withdrawals thereof, the statements, arguments and representations of the parties made at the Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and that

the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 2221]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; **and for the reasons set forth in the Court's tentative ruling [Docket No. 2221], which the Court adopts as its final ruling and which is incorporated herein by reference;** and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated January 8, 2019, a copy of which is attached as Exhibit "A" to Docket No. 1279 (the "APA"); (ii) the Sale Hearing; (iii) the No-Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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1 of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also
2 complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed
3 sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to
4 object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

5 D. Arm's Length Transaction. The APA and other documents and instruments (the
6 "Transaction Documents") related to and connected with this transaction (the "Transaction") and
7 the consummation thereof were negotiated and entered into by the Debtors and Strategic Global
8 Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith and
9 through an arm's length bargaining process. Neither SGM nor any of its affiliates or
10 representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the
11 Debtors, SGM, or their respective representatives engaged in any conduct that would cause or
12 permit the APA, any of the other Transaction Documents or the Transaction to be avoided under
13 § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the
14 APA and the other Transaction Documents, including, without limitation, the consideration
15 provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be
16 avoided, and no damages may be assessed against SGM or any other party, as set forth in §
17 363(n). The consideration provided by SGM is fair, adequate and constitutes reasonably
18 equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws
19 of the United States or any of its jurisdictions or subdivisions, including the State of California.

20 E. Good Faith Purchaser. SGM has proceeded in good faith and without collusion in
21 all respects in connection with the sale process, in that: (i) SGM, in proposing and proceeding
22 with the Transaction in accordance with the APA, recognized that the Debtors were free to deal
23 with other interested parties; (ii) SGM agreed to provisions in the APA that would enable the
24 Debtors to accept a higher and better offer; (iii) SGM complied with all of the provisions in the
25 Bidding Procedures Order applicable to SGM; (iv) all payments to be made by SGM and other
26 agreements entered into or to be entered into between SGM and the Debtors in connection with
27 the Transaction have been disclosed; (v) the negotiation and execution of the APA and related
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Transaction Documents were conducted in good faith and constituted an arm's length transaction; (vi) SGM did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SGM is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or SGM's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and, except with respect to the liens arising from the Special Assessments and the PACE Obligations (each as defined in §1.1(a)(iii) of the APA) assumed by SGM, shall vest in SGM, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or

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1 more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of
2 Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are
3 deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did
4 object fall within one or more of the other subsections of § 363(f). All holders of the
5 Encumbrances in the Purchased Assets are adequately protected by having their respective
6 Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets
7 under the APA (subject to any Challenge within the meaning of that certain *Final Order (I)*
8 *Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens*
9 *and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection,*
10 *(V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final
11 DIP Order") that has been, or may be, timely filed³), and any related documents or instruments
12 delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the
13 extent and manner herein provided.

14 H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause
15 to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in
16 consummating the Transaction, and it is in the best interests of the Debtors and their estates to
17 consummate the Transaction within the timeline set forth in the Motion and the APA. The Court
18 finds that there is no just reason for delay in the implementation of this Order, and expressly
19 directs entry of judgment as set forth in this Order.

21 ³ The Final DIP Order granted to the Committee standing to file the requisite pleading to
22 challenge the validity, enforceability and amount of the Prepetition Liens (each such proceeding
23 or appropriate pleading commencing a proceeding or other contested matter, a "Challenge")
24 within ninety (90) days from the formation of the Committee (the "Challenge Deadline"). See
25 Final DIP Order ¶ 5(e). The Committee's investigation as to the Prepetition Liens remains
26 ongoing. The Committee and the Prepetition Secured Creditors have entered into a number of
27 stipulations (the "Challenge Stipulations") by which the Committee has acknowledged and
28 stipulated to the validity, enforceability and perfection of the Prepetition Liens in certain
collateral identified in the Challenge Stipulations, and by which the Challenge Deadline has been
extended a number of times with respect to the validity, enforceability and perfection of the
Prepetition Liens in any other collateral. The Challenge Deadline with respect to any Prepetition
Liens for which the Committee has not stipulated pursuant to the Challenge Stipulations as to the
validity, enforceability and perfection thereof is now May 13, 2019.

I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign to SGM the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below) and to the extent subsequently identified by SGM pursuant to paragraph 16 below, the Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently Identified Designated Contracts and the Subsequently Identified Contracts are collectively referred to herein as the “Designated Contracts”) in connection with the consummation of the Transaction, and the assumption and assignment of the Designated Contracts is in the best interests of the Debtors and their estates.

J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Designated Contracts will have been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts and in the manner set forth below, unless otherwise agreed by SGM and the counterparty. SGM has provided or will provide adequate assurance of future performance of and under the Designated Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors (i.e., St. Francis Medical Center, a California nonprofit public benefit corporation (“St. Francis Medical Center”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“St. Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“St. Vincent Dialysis Center”), and Seton Medical Center, a California nonprofit public benefit corporation (“Seton Medical Center”) (collectively, the “Hospitals”), VHS, and Verity Holdings LLC, a California limited liability company (“Holdings”)), and assigned to SGM under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, SGM, notwithstanding any provision in such Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss

1 resulting from a default on or prior to the Closing under any of the Designated Contracts within
2 the meaning of § 365(b)(1)(B).

3 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors will have
4 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
5 the Hospitals to reject all of their executory contracts and unexpired leases, excluding (i)
6 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
7 addition to the Hospitals, (iii) any prepetition contract that is the subject of a Rule 9019 settlement
8 motion prior to Closing, and (vi) any collective bargaining agreement, pension plan or health and
9 welfare plan providing collectively bargained benefits to which a Hospital is a party or sponsor,
10 which matters shall be scheduled for determination as provided in paragraph 33 below. Each
11 such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31,
12 and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this
13 paragraph K, prior to Closing and shall request therein that the rejection be effective as of the
14 Closing or as otherwise appropriate.

15 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
16 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
17 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
18 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
19 better offer to purchase the Purchased Assets. Other than SGM's Stalking Horse Bid, the Debtors
20 received two Qualified Partial Bids by the Partial Bid Deadline and did not receive a Qualified
21 Full Bid (as such terms are defined by the Bidding Procedures Order). The Debtors properly
22 consulted with the Consultation Parties in selecting the SGM Stalking Horse Bid as the highest
23 and best bid and in determining that no auction should be held (as such terms are defined in the
24 Bidding Procedures Order), as set forth in their No-Auction Notice. The transfer and sale of the
25 Purchased Assets to SGM on the terms set forth in the APA constitutes the highest or otherwise
26 best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates
27 than would be provided by any other available alternative. The Debtors' determination, in
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1 consultation with the Consultation Parties (as defined in the Bidding Procedure Order), that the
2 APA constitutes the highest or best offer for the Purchased Assets and to not conduct an auction
3 constitutes a valid and sound exercise of the Debtors' business judgment.

4 M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased
5 Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it
6 does not propose to (i) impair or restructure existing debt of, or equity or membership interests in,
7 the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the
8 Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or
9 (iv) classify claims or equity or membership interests.

10 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at
11 the Sale Hearing establish just cause for the relief granted herein.

12 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

13 1. The relief requested in the Motion is GRANTED and APPROVED in all respects
14 to the extent provided herein.

15 2. All objections with regard to the relief sought in the Motion that have not been
16 withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including
17 any reservation of rights included in such objections, are overruled on the merits with prejudice.
18 To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the
19 terms of this Sale Order shall prevail.

20 3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the
21 transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA, is approved
22 in all respects, and the Debtors are authorized and directed to consummate the Transaction in
23 accordance with the APA, including, without limitation, by executing all of the Transaction
24 Documents (and any ancillary documents or instruments that may be reasonably necessary or
25 desirable to implement the APA or the Transaction) and taking all actions necessary and
26 appropriate to effectuate and consummate the Transaction (including the transfer and sale of the
27 Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon
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1 the terms set forth in the APA, including, without limitation, assuming and assigning to SGM the
2 Designated Contracts. The Debtors and SGM shall have the right to make any mutually
3 agreeable, non-material changes to the APA, which shall be in writing signed by both parties,
4 without further order of the Court provided, that after reasonable notice, the Official Committee
5 of Unsecured Creditors (the "Committee"), the DIP Agent (as defined in the Final DIP Order
6 defined below), and the Prepetition Secured Creditors (as defined in the Final DIP Order) do not
7 object to such changes. Any timely objection by the aforementioned parties to any agreed non-
8 material changes to the APA may be resolved by the Court on shortened notice.

9 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal,
10 valid, enforceable and effective transfer and sale of the Purchased Assets to SGM free and clear
11 of all Encumbrances, except with respect to the liens arising from the Special Assessments and
12 the PACE Obligations assumed by SGM, as further set forth in the APA and this Sale Order; and
13 (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable
14 against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor
15 thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the
16 Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the
17 Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the
18 Purchased Assets, all counterparties to the Designated Contracts and all other persons and
19 entities.

20 5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge
21 within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale
22 Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,
23 effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the
24 Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force,
25 extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any
26 Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and
27 authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition
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Secured Creditors, as applicable, pursuant to the Final DIP Order, to the extent that (i) the rights granted to the Prepetition Secured Creditors with respect to §§506(c) and 552(b) by the Final DIP Order are not limited or modified as a result of the appeal from the Final DIP Order filed by the Committee on November 29, 2019; and/or (ii) any replacement liens or security interest granted to the Prepetition Secured Creditors by the Final DIP Order are not invalidated as a result of any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors' rights, title and interest in and to the Purchased Assets to SGM. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased Assets either to (a) the Debtors before the Closing or (b) to SGM or its designee upon the Closing, and to cooperate with the Debtors and SGM in the Debtors' and SGM's fulfillment of their obligations hereunder and pursuant to the APA.

8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without limitation, payment of the Purchase

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1 Price to the Debtors, vest SGM with all right, title, and interest in the Purchased Assets, free and
2 clear of all Encumbrances. Upon closing of the Transaction, SGM shall take title to and
3 possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the
4 APA. The transfer of the Purchased Assets from the Debtors to SGM constitutes a transfer for
5 reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the
6 State of California.

7 9. Following the Closing, no holder of any Encumbrance against the Debtors or upon
8 the Purchased Assets shall interfere with SGM's respective rights in, title to or use and enjoyment
9 of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from
10 taking any action that would adversely affect or interfere with the ability of the Debtors to sell
11 and transfer the Purchased Assets to SGM, including the assumption and assignment of the
12 Designated Contracts.

13 10. SGM shall not be deemed, as a result of any action taken in connection with, or as
14 a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a
15 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their
16 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,
17 doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of
18 origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere
19 continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed
20 Liabilities, SGM is not assuming any of the Debtors' debts.

21 11. This Sale Order (i) shall be effective as a determination that, on Closing, all
22 Encumbrances existing against the Purchased Assets before the Closing have been
23 unconditionally released, discharged and terminated, and that the transfers and conveyances
24 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all
25 persons and entities. If, following a reasonable written request made by the Debtors, any person
26 or entity that has filed financing statements or other documents or agreements evidencing any
27 Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or
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1 in connection with Closing, in proper form for filing and executed by the appropriate parties,
2 termination statements, instruments of satisfaction, releases of all Encumbrances which the
3 person or entity has with respect to the Purchased Assets, then SGM and/or the Debtors are
4 hereby authorized to execute and file such statements, instruments, releases and other documents
5 on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of
6 doubt, such statements, instruments, releases and other documents shall not impair Encumbrances
7 that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or
8 may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
9 paragraphs 5 and 13 hereof.

10 12. In accordance with the APA, concurrently with the Closing, SGM shall pay that
11 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
12 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in the
13 APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the
14 Prepetition Secured Creditors, and the Committee in advance of the Closing.

15 13. The terms and conditions of the Final DIP Order shall apply with respect to the
16 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
17 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

18 (a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale
19 Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each
20 such hereafter referred to as "Escrow Deposit Account");

21 (b) in giving direction to SGM pursuant to sub-paragraph (a), above, the Debtors shall
22 exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among
23 the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of
24 the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of
25 rights in paragraph 4 of the Final DIP Order and paragraph 31 of the Bidding Procedures Order;
26 provided further that nothing in this paragraph shall waive or limit any rights the Committee or
27 the Prepetition Secured Creditors may have in connection with the confirmation of a proposed
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chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values and the Sale Proceeds);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee; and

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon; and

(e) for the avoidance of doubt, the rights of the Debtors, the Committee, and the Prepetition Secured Creditors as to the Sale Proceeds and any funds held in a Deposit Escrow shall be, except as set forth herein, as contemplated by Paragraph 4 of the Final DIP Order, and nothing in this Order shall be construed as altering, amending, waiving, or affecting in any way such rights. Concurrently with the Closing or as soon thereafter as is possible, and in accordance with the APA, SGM shall pay to the counter-parties to the Designated Contracts the cure amounts

1 set forth in the Cure Notice, or as otherwise agreed to by the Debtors, SGM and the applicable
2 counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections
3 (the “Designated Cure Amounts”). SGM has the right under the APA to remove any Contracts
4 from the list of Designated Contracts up to seven (7) days prior to Closing, as also set forth in the
5 *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of*
6 *Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2)*
7 *Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections*
8 [Docket No. 1865].

9 14. To the extent that any of the contracts and/or leases, which give rise to the
10 Designated Cure Amounts and are set forth in the Designation Notice and are not subsequently
11 and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding*
12 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
13 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
14 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865] (the “Currently Identified
15 Designated Contracts”) are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SGM, and SGM shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. The Court shall resolve any and all disputes which may
21 arise between the Debtors, SGM and any of the Currently Identified Designated Contract
22 Counter-Parties over whether the Currently Identified Designated Contracts are executory
23 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
24 Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the
25 Designated Cure Amounts (the “Assumption Dispute”).

26 15. In the event that the Court determines that any such counter-parties to the
27 Currently Identified Designated Contracts (the “Currently Identified Designated Contract
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1 Counter-Parties” and, individually, a “Currently Identified Designated Contract Counter-Party”)
2 have an allowed cure claim against the Debtors which exceeds the Designated Cure Amounts (the
3 “Excess Cure Amount”), the difference will be paid by SGM and shall not be the responsibility of
4 the Debtors as more specifically set forth below; provided, however, that unless the Court makes
5 such a determination on or before fifteen (15) days prior to Closing, and unless the Debtor, SGM
6 and the Currently Identified Designated Contract Counter-Party agree otherwise, the Currently
7 Identified Designated Contract which is the subject of such Assumption Dispute, shall be deemed
8 a rejected contract within the meaning of § 1.11(a) of the APA as of ten (10) days prior to
9 Closing, and SGM, except as provided below, shall have no obligation to assume such Currently
10 Identified Designated Contract or to pay any Cure Amount or Excess Cure Amount in connection
11 with such Currently Identified Designated Contract. To the extent an Assumption Dispute relates
12 solely to the Cure Amount, the Debtors may, with SGM’s consent, assume and assign the
13 applicable executory contract or unexpired lease at Closing and prior to the resolution of the
14 Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has
15 estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and SGM has remitted
16 such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the
17 relevant Debtor(s), or (b) SGM provides to the relevant Debtor(s) and non-Debtor counterparty a
18 separate reasonably acceptable undertaking that SGM will promptly pay the maximum disputed
19 cure amount in accordance with 11 U.S.C. § 365 (b)(1)(A) and (B) (or such smaller amount as
20 may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor
21 party and SGM). The Debtors shall pay and hereby are authorized to pay disputed cure amounts
22 from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent
23 SGM remitted to Sellers the amount required by item (a) of this paragraph of the Order.

24 16. All of the Currently Identified Designated Contracts, to the extent they are
25 executory contracts or unexpired leases and are not subsequently and timely removed by SGM
26 under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order*
27 *(1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*
28

1 *Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking*
2 *Horse Bid Protections* [Docket No. 1865], or deemed a rejected contract within the meaning of §
3 1.11(a) of the APA pursuant to paragraph 15 above, shall be part of the Designated Contracts that
4 will be assumed by the Debtors and assigned to SGM at the Closing. In the event that SGM elects
5 to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated
6 Contracts (the "Subsequently Identified Designated Contracts" and, individually, a "Subsequently
7 Identified Designated Contract") under the APA and the *Order Approving Stipulation Regarding*
8 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
9 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
10 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865], SGM shall notify the Debtors
11 of any such Subsequently Identified Designated Contracts on or before thirty days before Closing,
12 and the Debtors shall (i) file a notice with the Court identifying all such Subsequently Identified
13 Designated Contracts and their respective cure amounts as agreed upon between the Debtors and
14 SGM, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently
15 Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-
16 Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and
17 assigned to SGM at the Closing, with SGM to be obligated to pay all cure amounts owing to such
18 Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as
19 set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SGM and the applicable
20 counter-parties thereto, or ordered by the Court in accordance with paragraphs 34 and 36 below
21 (the "Additional Cure Amounts"), so long as such amount as ordered by the Court is no greater
22 than the amount agreed upon by SGM; and in the event the Additional Cure Amount is greater
23 than the amount agreed upon by SGM, and SGM is not willing to pay the Additional Cure
24 Amount, the Debtors shall not be required to pay the Additional Cure Amount(s) and the
25 Subsequently Identified Designated Contract(s) shall be deemed a rejected contract within the
26 meaning of § 1.11(a) of the APA pursuant to paragraph 15 above; provided, and for the avoidance
27 of doubt, no collective bargaining agreement, pension plan or health and welfare plan providing
28

collectively bargained benefits to which a Hospital is a party or sponsor constitutes a Currently Identified Designated Contract or a Subsequently Identified Designated Contract for which SGM or the Debtors may be obligated to pay any cure amount.

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SGM, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (collectively, the “Contract Counter-Parties”). At the Closing, SGM shall pay the (i) Sale Proceeds, (ii) the Designated Cure Amounts identified in paragraph 13 above, (iii) the Excess Cure Amounts identified in paragraph 15 above, and (iv) the Additional Cure Amounts, subject to paragraph 15 above. Payment by SGM of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to “cure” all “defaults” with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SGM, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SGM shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts, neither the Debtors nor SGM shall have any further liabilities to any Contract Counter-Parties, other than SGM’s obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SGM with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, SGM shall not be liable for the payment of any liabilities or obligations arising from or related to (a) any executory contracts that the Debtors intend to reject by appropriate motion and which are not being assumed and assigned to SGM, (b) any multiparty contract affecting more than one Debtor in addition to one of the hospitals subject to the

Transaction, or (c) any collective bargaining agreement (“CBA”), pension plan, or health and welfare plan providing for collectively bargained for benefits to which a Hospital is a party or a sponsor, unless expressly assumed and assigned with SGM’s consent.

18. The Debtors intend, and are hereby authorized, to (A) reject, pursuant to § 365(a), all executory contracts to which one or more of the Hospitals are a party, excluding (i) Designated Contracts, and (ii) any prepetition multiparty contract affecting more than one Debtor in addition to one of the Hospitals, and, (B) reject and terminate, to the extent separately authorized by this Court, pursuant to §§ 1113, 1114, and any other applicable provision of the Bankruptcy Code, any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which one of the Hospitals is a party or sponsor and that SGM does not assume.

19. All of the Contract Counter-Parties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtors or SGM, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Designated Contracts, including any asserted breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or any purported written or oral modification to the Designated Contracts and (ii) asserting against SGM any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed Obligations.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contract or allow the counterparty to such Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions

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1 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
2 Designated Contract to SGM in accordance with the APA, pursuant to § 363(f).

3 21. The terms and provisions of this Sale Order, as well as the rights granted under the
4 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
5 reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding **entry**
6 **of any order of conversion or dismissal any such conversion, dismissal or order entry**. Nothing
7 contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a
8 plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict
9 with or derogate from the provisions of the APA, any documents or instruments executed in
10 connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict
11 between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern.
12 The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or
13 dismissal of the cases and the entry of any other order that may be entered in the cases, including any
14 order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7;
15 (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

16 22. The Transaction contemplated by the APA and other Transaction Documents are
17 undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy
18 Code. SGM is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the
19 full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization
20 provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the
21 sale of the Purchased Assets to SGM. The APA and the Transactions contemplated thereby cannot be
22 avoided under § 363(n).

23 23. The failure to specifically include any particular provision of the APA or the other
24 Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such
25 provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other
26 Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of
27 this Sale Order are non-severable and mutually dependent.
28

1 24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. §
2 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or
3 otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective
4 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
5 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

6 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
7 Debtors to the extent necessary, without further order of this Court, to (i) allow SGM to deliver any
8 notice provided for in the APA and Transaction Documents and (ii) allow SGM to take any and all
9 actions permitted under the APA and Transaction Documents in accordance with the terms and
10 conditions thereof.

11 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
12 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
13 shall govern.

14 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
15 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
16 (i) hear and determine all disputes between the Debtors and/or SGM, as the case may be, and any other
17 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
18 assignment thereof by the Debtors to SGM and any dispute between SGM and the Debtors as to their
19 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
20 delivery of the Purchased Assets to SGM free and clear of Encumbrances, except with respect to the
21 liens arising from the Special Assessments and the PACE Obligations; (iii) compel the delivery of the
22 Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and
23 enforce the provisions of this Sale Order; and (v) protect SGM against (A) claims made related to any
24 of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability
25 (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any
26 Encumbrances asserted on or against SGM or the Purchased Assets.

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1 28. Following the date of entry of this Sale Order, the Debtors and SGM are authorized to
2 make changes to the APA and/or execute supplemental agreements implementing the transactions
3 contemplated by the APA without the need for any further order of the Court provided that all such
4 changes have been approved in writing by the Debtors, SGM, the Committee, the DIP Agent, and
5 Prepetition Secured Creditors. Any other proposed changes to the APA or this Sale Order shall require
6 a further order of the Court, after reasonable notice under the circumstances and a hearing.

7 29. Notwithstanding any other provision of this Sale Order or any other Order of this
8 Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal
9 license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory
10 approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as
11 amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take
12 any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory
13 conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are
14 fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or
15 authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

16 30. To the extent the Purchased Assets contain records of the Verity Health System
17 Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension
18 Plans") or employment records of participants of the Pension Plans, SGM shall store, and
19 preserve any such records until the Pension Benefit Guaranty Corporation ("PBGC") has
20 completed its investigation regarding the Pension Plans and shall make such documents available
21 to PBGC for inspection and copying. Such records include, but are not limited to, any Pension
22 Plan governing documents, actuarial documents, and employment records (collectively, the
23 "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan
24 Documents that are not Purchased Assets no earlier than February 28, 2020, and shall make such
25 documents available to the PBGC for inspection and copying.

26 31. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of
27 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
28

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Hospitals' Medi-Cal Provider Agreements or (ii) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the DHCS or a Court order resolving the DHCS's objections.

32. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Hospitals' Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the HHS or a Court order resolving the HHS's objections.

33. In accordance with the terms of §§ 4.7 and 5.11 of the APA, the Debtors and SGM will negotiate regarding modification of applicable CBAs. To the extent the Debtors seek modification, rejection and/or termination of CBAs, they will comply with the requirements of § 1113, as applicable, and may do so before or after Closing under their discretion.

34. A continued hearing on the Cure Objections shall be held on June 5, 2019, at 10:00 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than May 22, 2019, at 4:00 p.m. (Pacific Time), the Debtors shall file a notice containing a list of (a) the Cure Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure Objections for which Court intervention is required, *pursuant to the Order*

1 *Approving Omnibus Stipulation Continuing Hearing on Certain Objections to Notice and*
2 *Supplemental Notice of Contracts Designated for Assumption and Assignment [Docket No. 2183], the*
3 *deadline for the Debtors to reply to the Cure Objections shall be May 29, 2019, at 4:00 p.m. (Pacific*
4 *Time). ~~the following briefing schedule shall apply: (1) the Debtors' opposition to each outstanding~~*
5 *~~Cure Objection shall be submitted by no later than May 22, 2019; and (2) the counterparties' reply in~~*
6 *~~support of its Cure Objections shall be submitted by no later than May 29, 2019.~~* Nothing in this Sale
7 Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved
8 until resolved either by agreement between the Debtors and the contract counterparty or further order
9 of the Court.

10 35. As to any executory contracts or unexpired leases that were listed on the Initial
11 Designated Contract List, but not listed on any prior Cure Notice, any counterparty thereto may file an
12 objection to the cure amount or assumption thereof by May 22, 2019, and all other provisions in
13 paragraph 34 shall apply to resolution thereof.

14 36. As to Subsequently Identified Designated Contracts, (i) promptly upon SGM's
15 identifying such contract(s), the Debtors shall file a notice with the Court identifying all Subsequently
16 Identified Designated Contracts no later than 30 days prior to Closing and provide service thereof in
17 accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated
18 Contracts were not listed on a Cure Notice, counterparties subject to contracts who object to
19 assumption and/or the proposed cure amounts must file an objection no later than 14 days prior to
20 Closing, and any reply shall be filed no later than 7 days prior to Closing. To the extent that a
21 negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently
22 Identified Designated Contracts shall be adjudicated by the Court, which shall resolve any and all
23 disputed issues related to the objection(s).

24 37. The California Attorney General, the Debtors, the Consultation Parties (as defined in
25 the Bid Procedures Order) and SGM, reserve all rights, arguments and defenses concerning the
26 California Attorney General's authority, if any, to review the sale under California Corporations Code
27 §§ 5914–5924 and California Code of Regulations on Nonprofit Hospital Transactions—Title 11,
28

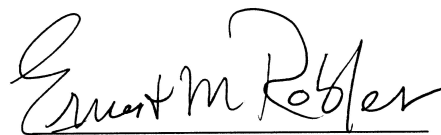
Chapter 15, § 999.5, and any conditions issued thereto. Nothing in this Sale Order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

38. The Committee and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31 to 36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31 to 37 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

IT IS SO ORDERED.

###

Date: May 2, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 14

EXHIBIT 14
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7 Attorneys for the Chapter 11 Debtors and
 Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

9 In re
 10 VERITY HEALTH SYSTEM OF
 11 CALIFORNIA, INC., *et al.*,
 12 Debtors and Debtors In Possession.

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

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

- 13 ☒ Affects All Debtors
 14 ☐ Affects O'Connor Hospital
 15 ☐ Affects Saint Louise Regional Hospital
 16 ☐ Affects St. Francis Medical Center
 17 ☐ Affects St. Vincent Medical Center
 18 ☐ Affects Seton Medical Center
 19 ☐ Affects O'Connor Hospital Foundation
 20 ☐ Affects Saint Louise Regional Hospital
 Foundation
 21 ☐ Affects St. Francis Medical Center of Lynwood
 Foundation
 22 ☐ Affects St. Vincent Foundation
 23 ☐ Affects St. Vincent Dialysis Center, Inc.
 24 ☐ Affects Seton Medical Center Foundation
 25 ☐ Affects Verity Business Services
 26 ☐ Affects Verity Medical Foundation
 27 ☐ Affects Verity Holdings, LLC
 28 ☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis,
 LLC

Chapter 11 Cases
 Hon. Judge Ernest M. Robles

**DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN
 ORDER: (I) ENFORCING THE ORDER AUTHORIZING THE
 SALE TO STRATEGIC GLOBAL MANAGEMENT, INC;
 (II) FINDING THAT THE SALE IS FREE AND CLEAR OF
 CONDITIONS MATERIALLY DIFFERENT THAN THOSE
 APPROVED BY THE COURT; (III) FINDING THAT THE
 ATTORNEY GENERAL ABUSED HIS DISCRETION IN
 IMPOSING CONDITIONS ON THAT SALE; AND (IV)
 GRANTING RELATED RELIEF; MEMORANDUM OF POINTS
 AND AUTHORITIES AND DECLARATIONS IN SUPPORT
 THEREOF**

Hearing Date and Time:

Date: TBD

Time: TBD

Place: Courtroom 1568,
 255 E. Temple Street
 Los



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16	209 F.3d 252 (3d Cir. 2000)	19, 20
17	<i>Friends of the Old Trees v. Dep’t of Forestry & Fire Prot.</i> ,	
18	61 Cal. Rptr. 2d 297 (Cal. Ct. App. 1997)	37, 39, 40
19	<i>Fukuda v. City of Angels</i> ,	
20	977 P.2d 693 (Cal. 1999)	38, 43
21	<i>In re Gardens Reg’l Hosp. & Med. Ctr., Inc.</i> ,	
22	567 B.R. 820 (Bankr. C.D. Cal. 2017)	23, 24
23	<i>Goat Hill Tavern v. City of Costa Mesa</i> ,	
24	8 Cal. Rptr. 2d 385 (Cal. Ct. App. 1992)	42
25	<i>In re Grumman Olson Indus., Inc.</i> ,	
26	467 B.R. 694 (S.D.N.Y. 2012)	20, 30
27	<i>In re HHH Choices Health Plan, LLC</i> ,	
28	554 B.R. 697 (Bankr. S.D.N.Y. 2016)	13, 37
	<i>Hillis Motors v Hawai’i Auto Dealers Assn.</i> ,	
	997 F.2d 581, 592 (9th Cir 1993)	34
	<i>Honchariw v. City of Stanislaus</i>	
	218 Cal. App. 4th 1019 (2013).....	39
	<i>Hong Kong and Shanghai Banking Corp. v. Simon (In re Simon)</i> ,	
	153 F.3d 991 (9th Cir. 1998).....	33

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1	<i>Indiana State Police Pension Trust v. Chrysler LLC (In re Chrysler LLC),</i>	
2	576 F.3d 108 (2d Cir. 2009)	20, 22, 30
3	<i>Interstate Brands v. Unemployment Ins. Appeals Bd.,</i>	
4	608 P.2d 707 (Cal. 1980)	41
5	<i>John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank,</i>	
6	510 U.S. 86 (1993)	31
7	<i>Keene Corp. v. United States,</i>	
8	508 U.S. 200 (1993)	32
9	<i>In re L.L. Murphrey Co.,</i>	
10	No. 12-03837-8-JRL, 2013 WL 2451368 (Bankr. E.D.N.C. June 6, 2013)	27
11	<i>In re La Paloma Generating, Co.,</i>	
12	No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017)	20, 26, 29, 33
13	<i>Lamb v. Webb</i>	
14	(1907) 151 Cal. 451	37
15	<i>Law v. Seigel,</i>	
16	571 U.S. 415 (2014)	31
17	<i>In re Leckie Smokeless Coal Co.,</i>	
18	99 F.3d 573 (4th Cir. 1996)	<i>passim</i>
19	<i>Mann v. Dep't of Motor Vehicles,</i>	
20	90 Cal. Rptr. 2d 277 (Cal. Ct. App. 1999)	41
21	<i>Mass. Dept. of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC,</i>	
22	<i>Inc.),</i>	
23	484 B.R. 860 (B.A.P. 1st Cir. 2013)	21, 22, 24, 30
24	<i>Mass. v. Morash,</i>	
25	490 U.S. 107 (1989)	31
26	<i>In re Millenium Seacarriers, Inc.,</i>	
27	419 F.3d 83 (2d Cir. 2005)	4
28	<i>Morton v. Mancari,</i>	
	417 U.S. 535 (1974)	31, 32
	<i>Motor Vehicle Mfrs. Assn. of the U.S. v. State Farm Mut. Auto Ins. Co.,</i>	
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1	<i>In re Old Carco, LLC,</i>	
2	538 B.R. 674 (Bankr. S.D.N.Y. 2015)	21, 22, 23
3	<i>Outfitter Properties, LLC v. Wildlife Conservation Bd.,</i>	
4	143 Cal. Rptr. 3d 312 (Cal. Ct. App. 2012)	43
5	<i>Oxford Preparatory Acad. v. Chino Valley Unified Sch. Dist.,</i>	
6	249 Cal. Rptr. 3d 726 (Cal. Ct. App. 2019)	41
7	<i>Paulsen v. Golden Gate Univ.,</i>	
8	25 Cal. 3d 803 (1979).....	46
9	<i>Pavelic & Leflore v. Marvel Entm’t Grp.,</i>	
10	493 U.S. 120 (1989)	31
11	<i>Precision Indus., Inc. v. Qualitech Steel SBQ, LLC,</i>	
12	327 F.3d 537 (7th Cir. 2003).....	19, 20
13	<i>Prime Healthcare Services, Inc. v. Harris,</i>	
14	216 F. Supp. 3d 1096 (S.D. Cal. 2016)	4, 6
15	<i>In re PW, LLC,</i>	
16	391 B.R. 25 (B.A.P. 9th Cir. 2008).....	28
17	<i>Quackenbush v. Mission Ins. Co.,</i>	
18	46 Cal. App. 4th 458 (Cal. Ct. App. 1996)	46
19	<i>Ray v. Alad Corp.,</i>	
20	19 Cal. 3d 22 (1977).....	26
21	<i>Saleeby v. State Bar,</i>	
22	39 Cal. 3d 547 (1985).....	46
23	<i>Scenic Community v. County of Los Angeles,</i>	
24	11 Cal.3d 506 (1974).....	39
25	<i>Schwartz v. Poizner,</i>	
26	113 Cal. Rptr. 3d 610 (Cal. Ct. App. 2010)	40
27	<i>Sierra Club v. State Bd. of Forestry,</i>	
28	7 Cal. 4th 1215 (1994).....	40
	<i>SP Star Enters., Inc. v. City of Los Angeles,</i>	
	93 Cal. Rptr. 3d 152 (Cal. Ct. App. 2009)	42
	<i>In re Spanish Peaks Hldgs. II, LLC,</i>	
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	<i>In re Taylor,</i>	
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1	<i>The Termo Co. v. Luther</i> ,	
2	86 Cal. Rptr. 3d 687 (Cal. Ct. App. 2008)	41
3	<i>Tiholiz v. Northridge Hosp. Found.</i> ,	
4	199 Cal. Rptr. 338 (Cal. Ct. App. 1984)	43
5	<i>In re Tougher Indus., Inc.</i> ,	
6	No. 06-12960, 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013)	21
7	<i>In re Trans World Airlines, Inc.</i> ,	
8	322 F.3d 283 (3d Cir. 2003)	20, 22, 28, 30
9	<i>Travelers Indem. Co. v. Bailey</i> ,	
10	557 U.S. 137 (2009)	4
11	<i>U.S. v. Novak</i> ,	
12	476 F.3d 1041 (9th Cir. 2007)	31
13	<i>United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.</i> ,	
14	551 B.R. 631 (N.D. Ala. 2016)	20
15	<i>United Sav. Ass’n v. Timbers of Inwood Forest Assocs.</i> ,	
16	484 U.S. 365 (1988)	31
17	<i>In re USA United Fleet, Inc.</i> ,	
18	496 B.R. 79 (Bankr. E.D.N.Y. 2013)	21, 23
19	<i>In re Verity Health Sys. of Cal., Inc.</i> ,	
20	598 B.R. 283 (Bankr. C.D. Cal. 2018) (Robles, J.)	23, 25
21	<i>Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.</i> ,	
22	429 U.S. 252 (1977)	4
23	<i>In re Vista Marketing Group Ltd.</i> ,	
24	557 B.R. 630 (Bankr. N.D. Ill. 2016)	20, 28
25	<i>WBQ P’ship v. Va. Dep’t of Med. Assistance Servs. (In re WBQ P’ship)</i> ,	
26	189 B.R. 97 (Bankr. E.D. Va. 1995)	20, 28
27	<i>Wollmer v. City of Berkeley</i>	
28	(2011), 193 Cal. App. 4th 1329	38
	Federal Statutes and Rules	
	11 U.S.C. 362	34
	11 U.S.C. § 363(b)(1)	18
	11 U.S.C. § 363(d)(1)	32

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1	11 U.S.C. § 363(f)	<i>passim</i>
2	11 U.S.C. § 363(f)(1)	25, 26
3	11 U.S.C. § 363(f)(4)	27, 28
4	11 U.S.C. § 525(a).....	3, 34, 35, 36
5	28 U.S.C. § 157	4
6	28 U.S.C. § 157(a).....	33
7	28 U.S.C. § 157(b)(2).....	4
8	28 U.S.C. § 959(b)	34
9	28 U.S.C. § 1334	<i>passim</i>
10	28 U.S.C. § 1408	4
11	28 U.S.C. § 1409	4
12	FED. R. BANKR. P. 6004.....	1, 4
14	State Statutes	
15	CAL. CIV. PROC. CODE § 187.....	37
16	CAL. CORP. CODE § 5914	4, 23, 24, 29, 46
17	CAL. CORP. CODE § 5914(a)(1)	24, 25
18	CAL. CORP. CODE § 5914(a)(1)(A).....	23
19	CAL. CORP. CODE § 5916	40
20	CAL. CORP. CODE § 5917	23, 25, 40, 44, 45
21	CAL. CORP. CODE § 5919	40
22	CAL. GOV'T CODE § 12598.....	44
23	CAL. GOV'T CODE § 12598(a)	44, 45
24	CAL. HEALTH & SAFETY CODE § 1250(a)	17, 24
25	CAL. REGS. CODE, tit. 11, § 999.5.....	4, 14
26		
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EMERGENCY MOTION

Pursuant to Rule 9075-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the “LBR”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), §§ 105, 362, 363, 525 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”),¹ and 28 U.S.C. § 1334(e), Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”), for the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] authorizing the sale (“SGM Sale”) of the Debtors’ assets to Strategic Global Management, Inc. (“SGM”); and (ii) finding that the SGM Sale is free and clear of the conditions imposed by the California Attorney General (the “Attorney General”) that are materially different (the “Additional Conditions”) than the conditions in the asset purchase agreement (the “SGM APA”) [Docket No. 2305-1]; or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Court deems just and proper. The sale order approving the SGM Sale (the “Sale Order”), the conditions issued by the Attorney General (the “2019 Conditions”), the Additional Conditions, in redline format, and the SGM APA, are attached to the annexed Memorandum of Points and Authorities (the “Memorandum”) as Exhibits “A,” “B,” “C,” and “D,” respectively. Certain correspondence between the Debtors, SGM, and the Attorney General is attached to the Memorandum as Exhibit “E.”

The Debtors request that the relief sought be granted on an emergency basis because the Debtors will suffer immediate and irreparable harm without the relief requested in this Motion. Indeed, absent relief, the Debtors’ sale to SGM of its four remaining hospitals (collectively, the “Hospitals”) will collapse, which would result in the loss of access to critical healthcare in

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underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors. Simply put, the Additional Conditions would unwind the heroic efforts of constituents who have diligently worked to maintain the Hospitals throughout these cases and spent countless hours and funds working with SGM to close the SGM Sale. Even a delay in the closing will significantly impact these Cases because the Debtors (i) are operating at a loss of approximately \$450,000 per day, imposing significant costs upon the estates and upon creditors, (ii) seek to confirm their plan of liquidation by the end of the year, and (iii) are required to meet the milestone under the cash collateral agreement that the Plan go effective in 2019 and have no alternative financing source.

The Additional Conditions threaten the SGM sale. The Additional Conditions trigger SGM's termination rights under the APA unless the Debtors obtain a supplemental order from this Court finding that the Additional Conditions are an "interest in property" for purposes of § 363(f), and that the Hospitals can be sold free and clear of the Additional Conditions without the imposition of any other conditions. *See* Exhibit "D," SGM APA, Section 8.6. SGM has repeatedly informed the Debtors and the Attorney General that the Additional Conditions are "deal killers." *See* Exhibit "E." To illustrate the magnitude of the economic impact of the Additional Conditions, two of the Additional Conditions alone would have the economic impact of increasing the effective purchase price by over 50 percent to nearly a billion dollars. The economic impact of compliance with the other Additional Conditions are in the tens of millions of dollars. In essence, the Additional Conditions would render the SGM APA and this Court's Sale Order meaningless. Such result is inconsistent with § 363, this Court's exclusive jurisdiction over property of the Debtors' estates, and fundamental purposes of the Bankruptcy Code.

The SGM APA specifically contemplates the Debtors will challenge promptly any conditions materially different from those to which SGM agreed. *See* Exhibit D, SGM APA §§

{continued from previous page}

¹ All references to "§" are to sections of the Bankruptcy Code; all references to "LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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1 8.6, 9.3. Failure to challenge timely the imposition of Additional Conditions may result in
2 termination of the SGM Sale. *Id.* The Debtors and SGM met with representatives of the Attorney
3 General regularly to encourage imposition of conditions consistent with Schedule 8.6. *See* Adcock
4 Dec. and Levy-Biehl Dec. Further, the Debtors negotiated vigorously with additional
5 constituencies (including the Official Committee of Unsecured Creditors, the Pension Benefit
6 Guaranty Corporation, and labor unions) to secure their support of the SGM Sale, which were
7 provided to the Attorney General before the 2019 Conditions were issued. Nevertheless, the
8 Attorney General has imposed conditions on the SGM Sale inconsistent with Schedule 8.6 after
9 taking the maximum amount of time provided by statute to review the transaction and constituent
10 input. *See* Exhibit “B.” Given the Attorney General’s long delay in reviewing the SGM Sale, the
11 Debtors must challenge the Additional Conditions on an expedited basis to ensure that the SGM
12 Sale closes, the Hospitals stay open to provide essential patient care, thousands of jobs are not lost
13 and assets of the estates are preserved.

14 The Attorney General will not suffer prejudice if the Court grants this Motion for expedited
15 relief. As noted above, the Attorney General considered the 2019 Conditions for 135 days prior to
16 their issuance on September 25, 2019. During that time, the Debtors and SGM have made
17 abundantly clear that any departure from the conditions in Schedule 8.6 to the SGM APA would
18 threaten the SGM Sale. *See, e.g.,* Exhibit “E.” Further, the Attorney General is amply familiar
19 with the issues raised herein, having briefed the same in several bankruptcy cases in this District,
20 including in the Debtors’ Cases. *See* Docket No. 463; *In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*,
21 No. 2:16-bk-17463-ER, Doc. No. 752 (Bankr. C.D. Cal. Apr. 24, 2017); *In re Victor Valley Cmty.*
22 *Hosp.*, No. 8:12-bk-12896-CB, Doc. No. 1804 (Bankr. C.D. Cal. Sept. 27, 2011). Accordingly, the
23 Debtors respectfully request that the Court grant the Motion for an emergency hearing because the
24 proposed expedited hearing will not prejudice the Attorney General and is in the best interests of
25 the Debtors’ estates and creditors.

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I.

SUMMARY OF REQUESTED RELIEF

Concurrently herewith, the Debtors have filed a motion seeking the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] authorizing the SGM Sale; and (ii) finding that the SGM Sale is free and clear of the Additional Conditions, pursuant to §§ 105, 362, 363, and 525, and 28 U.S.C. § 1334(e); or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the 2019 Conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Court deems just and proper.

The Motion is based upon §§ 105, 362, 363, and 525, 28 U.S.C. § 1334, Bankruptcy Rule 6004, LBR 9075-1(a), California Corporations Code §§ 5914 *et seq.*, and the California Code of Regulations, title 11, § 999.5, the attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the Declarations of Richard G. Adcock (the “Adcock Decl.”), Peter Baronoff (the “Baronoff Decl.”), Peter C. Chadwick (the “Chadwick Decl.”), and Hope R. Levy-Biehl (the “Levy-Biehl Decl.”) filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, and any other admissible evidence properly brought before the Court. The Debtors request that the Court take judicial notice of all documents filed with the Court in these Cases that relate to the SGM Sale and the prior sale of the hospitals to Santa Clara County, as appropriate, in support of the Motion.

II.

RESPONSES

Any party opposing or responding to the Motion may present such response (the “Response”) at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the Motion or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to be consent to the relief requested herein.

1 III.

2 **SERVICE OF MOTION**

3 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
4 Authorities, the Adcock Decl., the Baronoff Decl., the Chadwick Decl., Levy-Biehl Decl., and any
5 notice required by the Court on: (i) the California Attorney General; (ii) the Official Committee of
6 Unsecured Creditors; (iii) the Debtors' prepetition secured creditors; (iv) SGM; (iv) the Office of
7 the United States Trustee; and (v) any other parties on the Limited Service List set forth in the
8 *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No.
9 132]. To the extent necessary, the Debtors request that the Court waive compliance with LBR
10 9075-1(a)(6) and approve service (in addition to the means of services set forth in such LBR) by
11 overnight delivery.

12 IV.

13 **RESERVATION OF RIGHTS**

14 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
15 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in
16 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
17 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
18 holder.

19 V.

20 **PRAYER**

21 WHEREFORE, for all the foregoing reasons and such additional reasons as may be
22 advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the
23 Court hold a hearing on an emergency basis to consider the Debtors request for an order (i) finding
24 that (a) the SGM Sale is free and clear of the Additional Conditions imposed by the Attorney
25 General, or alternatively, (b) the Attorney General has abused his discretion in imposing the
26 Additional Conditions, and (ii) granting such other and further relief as the Court deems just and
27 proper.
28

1 Dated: September 30, 2019

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7 California, Inc., *et al.*

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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move (the “Motion”) for the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] (the “Sale Order”) authorizing the sale (“SGM Sale”) of the Debtors’ assets to Strategic Global Management, Inc. (“SGM”); and (ii) finding that the SGM Sale is free and clear of the conditions (the “2019 Conditions”) imposed by the California Attorney General (the “Attorney General”) that are materially different (the “Additional Conditions”) than the conditions in the asset purchase agreement (the “SGM APA”) [Docket No. 2305-1], pursuant to §§ 105, 362, 363, and 525 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and 28 U.S.C. § 1334(e);¹ or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the 2019 Conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Bankruptcy Court deems just and proper.

The Motion is based on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”), the Declarations of Richard G. Adcock (the “Adcock Decl.”), Peter Baronoff (the “Baronoff Decl.”), Peter C. Chadwick (the “Chadwick Decl.”), and Hope R. Levy-Biehl (the “Levy-Biehl Decl.”) filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, the record in the Debtors’ Cases and any other judicially noticeable facts, and other admissible evidence properly brought before the Court. The Sale Order, the 2019 Conditions, the Additional Conditions, in redline format, and the SGM APA, are attached hereto as Exhibits “A,” “B,” “C,” and “D,” respectively. Certain correspondence between the Debtors, SGM, and the Attorney General is attached hereto as Exhibit “E.”

In further support of the Motion, the Debtors respectfully state as follows:

¹ All references to “§” are to sections of the Bankruptcy Code; all references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Practice; all references to “LBR” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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I.

INTRODUCTION

Nearly five months after this Court entered the Sale Order authorizing the Debtors to sell their four remaining general acute care hospitals (the “Hospitals”) to SGM, the Attorney General issued the 2019 Conditions that effectively increase the purchase price in the SGM APA by over \$300 million. The imposition of the Additional Conditions in the 2019 Conditions would destroy the sale of the Hospitals to the only buyer willing to buy them, SGM, and would result in the loss of access to critical healthcare in underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors. The Debtors’ estates and their constituents have already borne operating losses of approximately \$450,000, per day, waiting for the Attorney General to issue his decision. Moreover, the Debtors, SGM and third parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken a significant amount of time and resources and simply cannot be undone.

The Debtors are mindful that the Hospitals have struggled for decades and that the 2015 conditions imposed by the Attorney General (the “2015 Conditions”) locked the Hospitals into financial and operational obligations that made success impossible (the Debtors lost hundreds of millions of dollars since the 2015 Conditions were imposed). Chapter 11 presented the last and only viable option to save the Hospitals. The Attorney General cannot strip the Debtors of the protections afforded by the Bankruptcy Code, which is, in essence, the impact of the 2019 Conditions if they are enforced.

In addition to the fact that the imposition of the Additional Conditions would be devastating to patients, the communities the Hospitals serve, thousands of employees and stakeholders in these cases, the Additional Conditions cannot be upheld because they contravene the Bankruptcy Code, the Court’s jurisdiction, and fundamental purposes of the Bankruptcy Code.

Specifically, the Court should enforce the Sale Order and find that that the Debtors are authorized to the sell the Hospitals without imposition of the Additional Conditions because:

- *Section 363(f) authorizes the Court to sell the Debtors’ assets free and clear of the Additional Conditions which are an “interest in property;”*

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- *The Additional Conditions are an inappropriate attempt to impose successor liability on SGM because the Sale Order authorizes the assets to pass to SGM free and clear of successor liability;*
- *Section 363(d)(1) must be harmonized with § 363(f), which authorizes the Court to sell the assets free and clear of the Additional Conditions;*
- *The Attorney General's broad attempt to exercise control over the Debtors' assets contravenes the Court's exclusive jurisdiction over the Debtors' assets, pursuant to 28 U.S.C. § 1334(e);*
- *Imposition of the Additional Conditions constitutes impermissible discrimination against the Debtors and SGM under § 525(a) because the Additional Conditions are premised on the continuance of the Debtors' obligations; and*
- *The Attorney General is exceeding his authority by attempting to regulate a for profit entity.*

Additionally, and as significantly, under state law, the imposition of the Additional Conditions are a breach of the Attorney General's fiduciary obligations and an abuse of his discretion.

Based upon all of the foregoing, and for the reasons set forth in greater detail below, the Debtors urge the Court to enter an order enforcing the Sale Order and finding that sale was "free and clear" of the Additional Conditions.

II.

JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Motion seeks, in part, an order of the Court enforcing the terms of its final order approving the SGM Sale [Docket No. 2306]. The statutory predicates for this relief are §§ 363 and 105, and Bankruptcy Rule 6004. This Court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *see also In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and enforce its own orders [.]") (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002)).

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1 The Debtors further request that the Court find that the Attorney General abused his
2 discretion in imposing the 2019 Conditions without an evidentiary basis. The statutory predicates
3 for such a finding are set forth in the California Corporations Code, §§ 5914 *et seq.*, and the
4 California Code of Regulations, title 11, § 999.5. The Debtors have standing to challenge the 2019
5 Conditions because the Debtors’ allegations of lost business opportunity and corresponding
6 economic harm related to the SGM Sale constitute an injury in fact. *See Prime Healthcare*
7 *Services, Inc. v. Harris*, 216 F. Supp. 3d 1096, (S.D. Cal. 2016) (citing *Wedges/Ledges of Cal., Inc.*
8 *v. City of Phoenix, Ariz.*, 24 F.3d 56, 60 (9th Cir. 1994)) (finding standing where plaintiff alleged
9 that “the financially unviable conditions [the attorney general] imposed on the [Daughters of
10 Charity Health System] transaction forced it to abandon its \$843 million bid to acquire” the
11 hospital); *see also Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261-63
12 (1977) (concluding that a nonprofit developer had standing to challenge the denial of its petition for
13 rezoning and seek injunctive and declaratory relief, despite the fact that its land-purchase contract
14 was contingent upon securing rezoning).

15 III.

16 FACTUAL BACKGROUND

17 A. General Background

18 1. On August 31, 2018 (the “Petition Date”), the Debtors each filed a voluntary
19 petition for relief under chapter 11 of the Bankruptcy Code. Since the commencement of their
20 Cases, the Debtors have been operating their businesses as debtors in possession pursuant to
21 §§ 1107 and 1108.

22 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate
23 member of five Debtor California nonprofit public benefit corporations that operated O’Connor
24 Hospital (“OCH”) and Saint Louise Regional Hospital (“SLRH”), and currently operates St.
25 Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), and Seton Medical
26 Center, including Seton Medical Center Coastside Campus (collectively, “Seton” and, together
27 with OCH, SLRH, SFMC, and SVMC, the “Verity Hospitals”).
28

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

4. Additional background facts on the Debtors, including an overview of the Debtors’ business, information on the Debtors’ capital structure and additional events leading up to these chapter 11 Cases, are set forth in the First-Day Declaration.

5. On September 14, 2018, the Office of the United States Trustee appointed the Committee [Docket No. 197].

B. The Daughters of Charity and the 2015 Conditions

6. The Verity Hospitals were originally owned and operated by the Daughters of Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”), to support the mission of the Catholic Church through a commitment to the sick and poor. The Daughters of Charity began their healthcare mission in California in 1858 with the opening of Los Angeles Infirmary, now known as SVMC. The Daughters of Charity expanded its hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to ill, poverty-stricken individuals for more than 150 years.

7. In June 2001, the Daughters of Charity Health System (“DCHS”) was formed. In 2002, DCHS commenced operations and was the sole corporate member of the Verity Hospitals, which at that time were California nonprofit religious corporations.

8. Between 1995 and 2015, the Verity Hospitals incurred substantial operating losses. During that time period, Daughters of Charity and DCHS attempted to find a solution which would resolve the operating losses, either through a sale of some or all of the Verity Hospitals, or a merger with a more financially sound partner. In 2013, DCHS unsuccessfully solicited purchase offers for OCH, SLRH, and Seton.

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1 9. Throughout 2014, DCHS explored offers to sell the system and, in October of 2014,
2 entered into an agreement with Prime Healthcare Services and Prime Healthcare Foundation
3 (collectively, “Prime”) to sell the health system. A condition of such sale was approval by the
4 Attorney General.

5 10. In early 2015, the Attorney General consented to the sale to Prime, but subject to
6 certain conditions, which, in Prime’s view, were so onerous that it could not proceed with the
7 transaction. Accordingly, Prime terminated the transaction. The history of this failed transaction
8 and the process for Attorney General review is more fully set forth in *Prime Healthcare Services,*
9 *Inc., et al. v. Harris*, 216 F. Supp. 3d 1096, 1101-06 (S.D. Cal. 2016).

10 11. In 2015, DCHS again marketed the health system for sale, and, again, focused on
11 offers that maintained the system as a whole, including the assumption of all existing obligations.
12 In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC
13 (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership
14 of the health system to the new Verity Health System (the “BlueMountain Transaction”).

15 12. In connection with the BlueMountain Transaction, the DCHS and its sole member,
16 Daughters of Charity Ministry Services Corporation, certain funds managed by BlueMountain and
17 Integrity Healthcare, LLC (a management company was formed to manage VHS for BlueMountain
18 under a new management agreement) entered into a System Restructuring and Support Agreement
19 (the “Restructuring Agreement”). Under the Restructuring Agreement, VHS and the Verity
20 Hospitals were converted from religious corporations to public benefit corporations. BlueMountain
21 agreed to make a capital infusion of \$100 million, arrange loans for another \$160 million to the
22 system, and manage operations, with an option to buy the health system at a future time. DCHS’
23 name was changed to Verity Health System.

24 13. On December 3, 2015, the Attorney General approved the BlueMountain
25 Transaction, subject to the 2015 Conditions. The 2015 Conditions were imposed for periods
26 ranging from 5 to 15 years. Generally, the terms of the 2015 Conditions included (i) transfers of
27 control, (ii) maintenance of health services, (iii) required participation in Medicare and Medi-Cal
28 programs, (iv) community benefit programs, (v) charity care levels, (vi) county contracts, (vii) local

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1 governing boards, (viii) medical staff compliance, (ix) assumption of hundreds of millions of
2 dollars of pension obligations, and (x) annual attestation of compliance.

3 14. In the 2015 Conditions, VHS was expressly required to make capital expenditures of
4 at least \$180 million over 5 years, and to meet accelerated time lines for making the Verity
5 Hospitals seismic compliant. Each hospital had specific requirements as to services that had to be
6 maintained or even expanded. For example, SVMC was required to maintain an emergency room
7 with eight stations, including six fast track stations, 19 acute rehab beds, and 30 ICU beds, among
8 other things. It was also required to provide \$400,000 of charity care annually and provide
9 community benefit programs of at least \$1 million annually. SVMC was required to maintain
10 Medi-Cal contracts with LA Care Health Plan and various commercial plan contracts. All of the
11 Verity Hospitals had similar obligations imposed.

12 15. Despite BlueMountain's infusion of cash and retention of various consultants and
13 experts to assist in improving cash flow and operations, the health system continued to incur losses.
14 It soon became apparent that the problems facing the Verity Health System were too large to solve
15 without a formal court supervised restructuring.

16 **C. The Bankruptcy Cases**

17 16. The Debtors commenced these Cases to protect the original legacy of the Daughters
18 of Charity to the maximum extent possible by retiring debt incurred over the past 18 years and
19 selling the hospital facilities to enable the continued operation of the Verity Hospitals under new
20 ownership and leadership free from the historical losses and operational uncertainties. The
21 Debtors' strategy contemplated a Court-supervised sale of some or all of the Verity Hospitals, and
22 related facilities, and a comprehensive resolution of the Debtors' financial obligations through a
23 court approved plan of reorganization.

24 17. In June 2018, the Debtors engaged Cain Brothers, a division of KeyBanc Capital
25 Markets ("Cain"), to identify potential buyers of some or all of the Verity Hospitals and related
26 assets and commenced discussions with those potential buyers. Cain prepared a Confidential
27 Investment Memorandum, organized an online data site to share information with potential buyers
28 and contacted over 181 strategic and financial buyers beginning in July 2018 to solicit their interest

1 in exploring a transaction regarding the Verity Hospitals. As a result of its broad marketing
2 process, Cain received sixteen indications of interest, or other proposals, and continued to develop
3 potential sales of some or all of the Verity Hospitals.

4 18. At the commencement of the cases, the Debtors obtained court approval for a debtor
5 in possession financing facility with up to \$185 million of availability from Ally Bank subject to a
6 borrowing base (the “DIP Facility”). The DIP Facility was secured by substantially all of the
7 Debtors’ assets and also provides for super priority administrative priority status for all obligations
8 under the facility. The DIP financing enabled Debtors to operate the Verity Hospitals while they
9 continued their efforts to find a purchaser for their assets and to reach agreements with key
10 constituents. As discussed below, the Debtors have repaid their DIP financing obligations and are
11 funding operations through the consensual use of cash collateral.

12 **D. The SCC Sale**

13 19. On December 27, 2018, the Bankruptcy Court entered the *Order (A) Authorizing the*
14 *Sale of Certain of the Debtors’ Assets to Santa Clara County Free and Clear of Liens, Claims,*
15 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
16 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving a
17 sale of OCH, SLRH, and related assets, to Santa Clara County (the “SCC Sale”).

18 20. The SCC Sale closed on February 28, 2019. After payment of certain cure costs,
19 closing costs and other items, the net remaining proceeds were approximately \$184.38 million,
20 which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the
21 “Post-Closing Escrow”) by First American Title Insurance Company, the escrow agent. The Post-
22 Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors’
23 post-closing obligations and expires in February 2020.

24 21. The Attorney General vigorously opposed the SCC Sale, insisting that either the
25 2015 Conditions applied to SCC or that the SCC Sale was subject to his review. This Court
26 rejected both arguments, and overruled his objections. *See* Docket Nos. 1146, 1153. The Attorney
27 General appealed, but voluntarily dismissed the appeal after the Debtors filed a motion to dismiss
28

as moot pursuant to § 363(m). See Case No. 2:19-cv-00133-DMG, Docket No. 40, 41 (C.D. Cal. Feb. 1, 2019).

E. The SGM Sale

22. On January 17, 2019, the Debtors filed the Debtors' *Notice Of Motion And Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and For Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the "Sale and Bidding Procedures Motion") [Docket No. 1279].

23. On February 19, 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered an order approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order") [Docket No. 1572]. SGM served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. The Bidding Procedures Order also approved the SGM APA as modified therein.

24. There were two "Qualified Bidders" (as defined in the Bidding Procedures Order) for partial bids for different Hospitals (one for SVMC and one for SFMC) and no Qualified Full Bid. After consultation with the Consultation Parties as defined in the Bidding Procedures Order, the Debtors determined to not conduct either a Partial Bid or Full Bid auction, as set forth in the *Notice That No Auction Shall Be Held Re Debtors' Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens*

1 and Encumbrances [Docket No. 2053] (the “No-Auction Notice”) filed by the Debtors on April 4,
2 2019.

3 25. Accordingly, under the terms of the SGM APA and the Bidding Procedures Order,
4 no auction was held and the Debtors declared SGM as the “winning bidder” of the Hospitals. No-
5 Auction Notice at 2.

6 26. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing The Sale*
7 *Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. free And Clear Of Liens,*
8 *Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of*
9 *An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306] (the
10 “Sale Order”), approving the SGM Sale. The closing of the SGM Sale is subject to review by the
11 Attorney General and satisfaction of certain other closing conditions. The Debtors expect the SGM
12 Sale to close in the fourth quarter of 2019.

13 27. SGM has agreed to continue to operate the Hospitals and abide by the vast majority
14 of the 2015 Conditions, as set forth in Schedule 8.6 to the SGM APA.

15 28. Section 8.6 of the SGM APA is titled: “Attorney General Provisions.” It provides
16 the following:

17 Purchaser recognizes that the transactions contemplated by this
18 Agreement may be subject to review and approval of the CA AG.
19 Purchaser agrees to close the transactions contemplated by this
20 Agreement so long as any conditions imposed by the CA AG are
21 substantially consistent with the conditions set forth, as Purchaser
22 Approved Conditions, in Schedule 8.6. In the event the CA AG
23 imposes conditions on the transactions contemplated by this
24 Agreement, or on Purchaser in connection therewith, which are
25 materially different than the Purchaser Approved Conditions set
26 forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall
27 have the opportunity to file a motion with the Bankruptcy Court
28 seeking the entry of an order (“Supplemental Sale Order”) finding
that the Additional Conditions are an “interest in property” for
purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free
and clear of the Additional Conditions without the imposition of any
other conditions, which would adversely affect the Purchaser. For
purposes of this Section 8.6, Additional Conditions which
individually or collectively impose a direct or indirect cost to
Purchaser of \$5 million, or more, shall be conclusively deemed to be
“materially different.” If Sellers determine not to seek such

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Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General's imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the "Evaluation Period") to determine, in the exercise of the Purchaser's reasonable business judgment and in consultation with Purchaser's financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller's failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the "Extended Evaluation Periods"). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser's business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, "a final, non-appealable order" shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver

1 of any party in interest's right to argue that any appeal from the Sale
2 Order should be dismissed on statutory, Constitutional or equitable
mootness grounds."

3 **F. The Debtors and SGM Have Expended Substantial Time and Resources to Close the**
4 **SGM Sale**

5 29. As discussed above, SGM and third parties have expended tremendous efforts to
6 prepare for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken
7 a significant amount of time and resources and simply cannot be undone. By way of example: (i)
8 the Debtors sent "WARN notices" to approximately 4,900 employees, pursuant to the federal
9 Worker Adjustment and Retraining Notification Act of 1988; (ii) thousands of counterparties to
10 executory contracts and unexpired leases, including physicians, have relied on the Sale Order and
11 continued to provide services in reliance on the finality of that Sale Order; (iii) the Debtors and
12 SGM have spent months facilitating an efficient close of the sale, with approximately 20 different
13 workstreams, meeting at least weekly to ensure a smooth transition of operations; (iv) government
14 agency personnel, including the California Department of Public Health and the Board of
15 Pharmacy, have been diligently processing SGM's change of ownership applications for licenses
16 and permits in reliance on the finality of the Sale Order; (v) the Debtors, SGM, and each of the
17 Debtors' six unions spent months successfully negotiating and finalizing modified collective
18 bargaining agreements; (vi) the medical groups affiliated with the Debtors have sent termination
19 notices to their remaining physicians; (vii) the Debtors and SGM have coordinated changes in
20 insurance coverages and insurance policies to ensure seamless coverage for employees and
21 patients, and (viii) the Debtors have created plans to shut off certain services after the close of the
22 SGM Sale. *See* Adcock Decl. ¶ 7.

23 **G. The Debtors' Cash Collateral Agreement**

24 30. On September 6, 2019, the Court entered the *Final Order (A) Authorizing Continued*
25 *Use of Cash Collateral, (B) Granting Adequate Protection, (C) Modifying Automatic Stay, and (D)*
26 *Granting Related Relief* [Docket No. 3022] (the "Supplemental Cash Collateral Order") granting
27 the Debtors motion for use of cash collateral [Docket No. 2962, 2968] (the "Supplemental Cash
28 Collateral Motion"). The Supplemental Cash Collateral Order authorized the Debtors' consensual

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1 use of cash collateral pursuant to an agreement with certain of its secured lenders (the “Cash
2 Collateral Agreement”). Pursuant to the Cash Collateral Agreement, the Debtors are obligated to
3 meet certain milestones, including plan confirmation by December 15, 2019 and a plan effective
4 date on or before December 31, 2019. *See* Supp. Cash Collateral Mot. at 24. Further, termination
5 of the SGM APA would result in an event of default under the Cash Collateral Agreement. *See id.*
6 In each case, the success of the SGM Sale bears directly on the Debtors’ ability to fund operations
7 and timely meet its plan confirmation milestones.

8 **H. The Debtors’ Plan and Confirmation Timeline**

9 31. On September 3, 2019, the Debtors filed the *Debtors’ Chapter 11 Plan of*
10 *Liquidation (Dated September 3, 2019* [Docket No. 2993] (the “Plan”) and their related disclosure
11 statement [Docket No. 2994] (the “Disclosure Statement”). As more fully described in the
12 Disclosure Statement and below, the Debtors’ Plan provides for deemed consolidation of the
13 Debtors for purposes of implementation of the Plan and the distribution of the proceeds of the two
14 sale transactions in accordance with the Bankruptcy Code’s distribution and classification
15 provisions. Such treatment is supported by the facts of these cases and applicable law.

16 **I. The Attorney General Review Process**

17 32. For years, the Debtors engaged in dialogue with the Attorney General about the
18 Debtors’ financial challenges and the future of the Hospitals, including, for example, a July 2018
19 meeting in anticipation of the Debtors’ bankruptcy filings conducted by the Debtors’
20 representatives and Deputy Attorney General Wendi Horwitz. *See* Levy-Biehl Decl. ¶ 3.

21 33. On February 15, 2019, the Debtors’ representatives met with Attorney General
22 Xavier Becerra and Melanie Fontes Rainer, Special Assistant Attorney General, in Sacramento to
23 discuss the pending SCC Sale and the forthcoming auction and sale of the Hospitals. *See* Levy-
24 Biehl Decl. ¶ 5.

25 34. Beginning in early April 2019, the Debtors’ special healthcare regulatory counsel,
26 Nelson Hardiman LLP, engaged with Deputy Attorney General Scott Chan in anticipation of
27 submitting a notice and requesting approval of the SGM Sale. These discussions and exchanges
28 were regular and ongoing, and addressed, among other things, the substantive and procedural

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1 requirements for the submission and review as well as the review timeline. At all times, the
2 Debtors consistently requested an expedited review of the submission in light of their significant
3 operating losses and cash flow challenges. *See* Levy-Biehl Decl. ¶ 7.

4 35. By letter dated May 7, 2019, the Debtors provided notice to, and requested written
5 consent from, the Attorney General for the proposed SGM Sale pursuant to California Corporations
6 Code § 5914 and title 11 of the California Code of Regulations, § 999.5. *See* Levy-Biehl Decl. ¶¶
7 7, 8. On May 13, 2019, the Debtors supplemented their submission to the Attorney General, by
8 including the filing made to the Federal Trade Commission pursuant to the Hart-Scott-Rodino
9 Antitrust Improvements Act of 1976, as amended. *See* Levy-Biehl Decl. ¶ 9.

10 36. As outlined in the submission to the Attorney General—and discussed a number of
11 times in writing, in person, and by email with various representatives of the Attorney General—the
12 SGM Sale is critical. *Id.* at 8. The Debtors explained to the Attorney General that the SGM Sale is
13 the only option to ensure that the Hospitals will survive their current financial challenges and be
14 preserved as providers of essential health care services to their communities. *Id.*; *see also* *Notice of*
15 *Submission of Debtors' Response to the Health Care Impact Statements and Conditions Proposed*
16 *by JD Healthcare, Inc.* [Docket No. 2946].

17 37. The Debtors also explained to the Attorney General that (i) the 2015 Conditions
18 accelerated the demise of the Verity Hospitals to the point that that only a Court supervised
19 restructuring could save them, and (ii) conditions materially different than those in Schedule 8.6
20 would ensure closure of the Hospitals. *See* Adcock Decl. ¶ 15; *see also* *Notice of Submission of*
21 *Debtors' Response to the Health Care Impact Statements and Conditions Proposed by JD*
22 *Healthcare, Inc.* [Docket No. 2946].

23 38. Throughout the process, the Debtors' representatives engaged in ongoing
24 discussions with the Attorney General's office, and requested, among other things, an in-person
25 meeting to review the submission, the transaction, and the expedited processing of the submission.
26 *See* Levy-Biehl Decl. ¶ 10. The Attorney General denied these requests. *Id.*

27 39. The Attorney General's expert, JD Healthcare, conducted interviews with the
28 Debtors' corporate and hospital personnel and other stakeholders in July 2019. *See* Levy-Biehl

Decl. ¶ 11. On August 16, 2019, following these interviews and public hearings, JD Healthcare released its Health Care Impact Statements on the proposed sale of SFMC and SVMC. *Id.* On August 19, 2019, JD Healthcare released its Health Care Impact Statement for Seton. *Id.* The Health Care Impact Statements set forth the expert's proposed conditions on the SGM Sale.

40. On August 16, 2019, the Attorney General requested that the Debtors and SGM submit responses to the proposed conditions detailing the conditions that were "deal breakers" to the SGM Sale. On August 21, 2019, SGM submitted its response to the Health Care Impact Statements. On August 23, 2019, the Debtors submitted their response. *See* correspondence attached hereto as Exhibit "E."

41. During the week of August 26, 2019, Deputy Attorney General Scott Chan held public hearings at each of the Hospitals to solicit comments regarding the SGM Sale. *See* Adcock Decl. ¶ 12. At each public meeting, representatives of SGM and the Debtors made public statements detailing the economic impact of the conditions proposed by JD Healthcare and the economic situation confronting each Hospital; urging the Attorney General to consider economic factors when issuing his conditions; and reiterating that any conditions exceeding those in Schedule 8.6 of the SGM APA could result in the termination of the SGM Sale and the closure of the Hospitals. *Id.*; *see also* Levy-Biehl Decl. ¶ 13.

42. On September 6, 2019, the Attorney General's office met with SGM representatives to discuss the proposed SGM Sale and the proposed conditions. *See* Levy-Biehl Decl. ¶ 14. On September 19, 2019, the Attorney General's office met with representatives of SGM and the Debtors for the same purpose. *Id.* On September 23, 2019, the Attorney General conducted another telephonic meeting with SGM and the Debtors. During each meeting, SGM consistently informed the Attorney General's office that SGM would not proceed with the transaction if the Attorney General imposed conditions beyond those SGM agreed to accept in Schedule 8.6. *Id.*

J. The 2019 Attorney General Conditions

43. On September 25, 2019, the Attorney General conditionally consented to the SGM Sale. The Attorney General's conditional consent is subject to the 2019 Conditions. *See* Exhibit "B." The 2019 Conditions include numerous Additional Conditions that are materially different

1 than those SGM contractually agreed to in Schedule 8.6. *See* Exhibit “C,” which is a redline
2 reflecting the deletion of the conditions in the 2019 Conditions that are materially different than the
3 conditions in Schedule 8.6; *see also* Baronoff, Decl. ¶ 7.

4 44. The 2019 Conditions require, among other things, that SGM continue to operate the
5 Hospitals and maintain various services, clinics and contractual arrangements for a period of time
6 greater than the period of time that Debtors would have been obligated under the 2015 Conditions
7 if the Debtors had the ability to continue to operate the Hospitals. *See* Adcock, Decl. ¶ 9. The
8 2019 Conditions are also materially different than those to which SGM agreed in Schedule 8.6
9 because the Additional Conditions impose, among other things, greater requirements for charity
10 care expenditures, community benefit expenditures, capital expenditures, and do not account for the
11 substantial shift in charity care needs following the implementation of the Affordable Care Act.
12 *Id.*; *see also* Exhibit “C.”

13 45. Importantly, SGM only agreed to close the SGM Sale if the conditions imposed by
14 the Attorney General’s office were not “materially different” than the conditions SGM agreed to in
15 Section 8.6. *See* APA, Section 8.6, at 32, 33, Docket No. 2305-1; *see also* *See* Baronoff, Decl. ¶ 5.
16 Additionally, SGM has repeatedly told the Debtors that multiple lenders have informed SGM that
17 they would not agree to finance the SGM Sale if the conditions were not consistent with Schedule
18 8.6, which makes the SGM Sale nearly impossible to close. *See* Adcock, Decl. ¶ 16.

19 46. To avoid the impact of the Additional Conditions on the SGM Sale, the Debtors
20 must seek an order enforcing the Sale Order, finding that the SGM Sale is free and clear of the
21 2019 Conditions, and limiting the SGM Sale to only those conditions to which SGM contractually
22 agreed to assumed in Schedule 8.6 of the SGM APA.

23 **K. The Economic Impact of the Additional Conditions**

24 47. The Additional Conditions have a significant impact on the economic viability of
25 the Hospitals and effectively increase, by more than 50%, the purchase price in the SGM APA. By
26 way of example only, the 2019 Conditions would require SVMC to remain operated and
27 maintained as a licensed general acute care hospital (as defined in California Health and Safety
28 Code Section 1250) through December 2024, whereas Schedule 8.6 provides that SVMC will do so

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1 through December 2020. The reported Financial Statements of SVMC reflect that, in fiscal year
 2 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which was an 18% and 103%
 3 increase over the fiscal years 2018 and 2017, respectively. *See* Chadwick Decl., at ¶ 6. Assuming
 4 operating losses at SVMC can be maintained at fiscal 2019 levels (a highly optimistic assumption),
 5 SGM would likely incur additional estimated losses totaling \$260 million through December 2024
 6 because of the Additional Conditions. *Id.* Moreover, the \$260 million loss would likely need to be
 7 financed. *Id.* Using an average interest rate of 5% for four years of debt service would result in
 8 estimated incremental financing charges totaling approximately \$25 million. *Id.* Accordingly, this
 9 2019 Condition alone would place a potential burden on the buyer of at least \$285 million beyond
 10 that contemplated in Section 8.6.

11 48. The Charity Care requirement presents another example of the significant economic
 12 impact of the 2019 Conditions when compared with Schedule 8.6. The 2019 Conditions require
 13 that SGM to provide an annual amount of Charity Care at St. Francis equal to or greater than
 14 \$12,793,435 for a period of six fiscal years, which is at least \$4,793,435, per year more than SGM
 15 has agreed to provide, pursuant to Section 8.6 for a period of seven years.² *See* Chadwick Decl. ¶
 16 7; *see also* 2019 Conditions, Exhibit “B.” After adjusting for the one-year shorter required duration
 17 of this 2019 Condition, the estimated incremental cost to the buyer would be nearly \$20 million in
 18 total over the six years. *See* Chadwick Decl. ¶ 7. The 2019 Conditions provide for additional
 19 increases in Charity Care amounts for St. Vincent and Seton, as well as increases across all four
 20 Hospitals in Community Benefit Service amounts. *Id.*

21 49. In summary, the total financial impact of just the these two examples of 2019
 22 Conditions would require SGM to incur additional losses of approximately \$305 million beyond
 23 those contemplated by Schedule 8.6. *See* Chadwick Decl. ¶¶ 8, 9. When compared to the SGM
 24 APA purchase price of \$610 million, these represent a 50% increase in the price for the sale of
 25

26
 27 ² The Charity Care Condition imposed by the Attorney General is also \$6.4 million dollars *more*
 28 than SFMC provided in Fiscal Year 2019. Thus, the Attorney General is actually requiring an
 increase in charity care being provided by SFMC.

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1 these distressed assets. *Id.* The magnitude of these losses calls into question the viability of the
2 acquisition.

3 50. The imposition of the Additional Conditions would result in the termination of the
4 SGM Sale, unless the Debtors obtain the supplemental order required in Section 8.6 of the APA.
5 *See* Baronoff, Decl. ¶ 7. If the SGM Sale does not close, the most likely outcome is that at least
6 three of the Hospitals will have to close. *See* Adcock, Decl. ¶ 9. Altogether, between July 1, 2018
7 and June 30, 2019, the Hospitals had more than 34,000 inpatient admissions and 312,000 outpatient
8 visits. *Id.* If the Hospitals are closed, all of those patients would be forced to find alternative
9 providers for treatment, perhaps at greater distances than they are now required to travel for
10 treatment at the Hospitals. For example, Seton Coastsides is the only emergency room facility on
11 the Pacific Coast between Daly City and Santa Cruz. *Id.* Additionally, Seton Coastsides has 116
12 skilled nursing facility (“SNF”) beds and, if Seton Coastsides were closed, those residents would be
13 forced to be relocated significant distances to find alternative facilities. *Id.* The risk of negative
14 outcomes for emergency room patients increases as the distance, and therefore the time, required to
15 obtain treatment, increases. In addition to the difficulty in finding alternative facilities for the SNF
16 patients, the impact of transfer trauma on this population could be significant. *Id.*

17 IV.

18 ARGUMENT

19 A. THE SALE ORDER EFFECTUATED A SALE OF THE DEBTORS’ ASSETS FREE 20 AND CLEAR OF THE ADDITIONAL CONDITIONS

21 1. Section 363 Authorizes the Court to Sell the Debtors’ Assets Free and Clear of 22 Interests

23 The Court authorized the Debtors to sell assets to SGM pursuant to §§ 363(b) and (f).
24 Section 363(b)(1) provides that the Debtors “may use, sell, or lease, other than in the ordinary
25 course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Bankruptcy Code provides
26 that a sale pursuant to § 363(b)(1) must satisfy one of five alternative tests to be “free and clear of
any interest in such property of an entity other than the estate”:

- 27 (1) applicable nonbankruptcy law permits sale of such property free
and clear of such interest;
- 28 (2) such entity consents;

- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, the Sale Order expressly provides that the SGM Sale was approved “free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights and any successor or successor-in-interest liability theories” pursuant to §§ 363(b) and (f). *See* Sale Order, ¶ G at 7. On this basis, and as set forth more fully below, the Sale Order effectuated the SGM Sale free and clear of the Additional Conditions.

2. The Additional Conditions Constitute an Interest in Property Subject to the “Free and Clear” Language in Section 363

a. Case Law Makes Clear That The Debtors Can Sell Their Hospitals Free And Clear Of “Interest In Property.”

The Bankruptcy Code does not define “interest in property” as that term is used in § 363(f). *See, e.g., Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (“The Bankruptcy Code does not define ‘any interest,’ and in the course of applying section 363(f) to a wide variety of rights and obligations related to estate property, courts have been unable to formulate a precise definition.”). The majority of courts interpret the phrase “interest in property” broadly to include both *in rem* interests in property as well as “other obligations that may flow from ownership of the property.” *Folger Adam Sec., Inc. v. DeMatteis v. MacGregor JV*, 209 F.3d 252, 258 (3d Cir. 2000); *see also In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 582 (4th Cir. 1996) (“Congress did not expressly indicate that . . . it intended to limit the scope of section 363(f) to *in rem* interests, strictly defined, and we decline to adopt such a restricted reading of the statute here.”).

The majority of courts have coalesced around a single approach: interests in property are obligations connected to or arising from the property being sold. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003) (finding that “interests in property [are] within the

1 meaning of section 363(f) in the sense that they *arise from the property being sold*”) (emphasis
2 added); *Leckie Smokeless Coal Co.*, 99 F.3d at 582 (finding that certain claims constituted
3 “interests in . . . assets within the meaning of section 363(f)” where there was “a relationship
4 between (1) the Fund’s and Plan’s rights to demand premium payments from Appellees and (2) the
5 *use to which Appellees put their assets*”) (emphasis added); *Folger Adam Sec., Inc.*, 209 F.3d at
6 259 (“‘[A]ny interest’ is intended to refer to *obligations that are connected to, or arise from, the*
7 *property being sold.*”) (emphasis added); *Indiana State Police Pension Trust v. Chrysler LLC (In re*
8 *Chrysler LLC)*, 576 F.3d 108, 124 (2d Cir. 2009), *granting cert. and vacating as moot*, 558 U.S.
9 1087 (2009) (“We agree with *TWA* and *Leckie* that the term any interest in property encompasses
10 those *claims that arise from the property being sold.*”) (emphasis added) (quotations omitted);
11 *Precision Indus., Inc.*, 327 F.3d at 545 (“the term ‘any interest’ as used in section 363(f) is
12 sufficiently broad to include Precision’s possessory interest as a lessee”); *Myers v. U.S.*, 297 B.R.
13 774, 781 (S.D. Cal. 2003) (“The court finds that Plaintiff’s claim for personal injury does *arise*
14 *from the property being sold*, i.e. the contracts to transport toxic materials.”) (emphasis added); *In*
15 *re Grumman Olson Indus., Inc.*, 467 B.R. 694, 702 (S.D.N.Y. 2012) (“[I]t is now generally
16 agreed—including in this Circuit—that this provision may more broadly extinguish claims that
17 ‘arise from the property being sold.’”).³

18 The Fourth Circuit decision in *Leckie Smokeless Coal Co.* is instructive. In *Leckie*, the
19 debtors—coal mine operators—were obligated to contribute to retiree benefit plans pursuant to the

21 ³ The breadth of case law supporting this construction cannot be understated. *See also In re La*
22 *Paloma Generating, Co.*, No. 16-12700, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017)
23 (holding that emission surrender obligations under California law are an interest in property); *In*
24 *re Vista Marketing Group Ltd.*, 557 B.R. 630 (Bankr. N.D. Ill. 2016) (fee surcharge assessed
25 against purchaser but calculated entirely on debtor’s use of sewer facilities was an interest in
26 property); *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551
27 B.R. 631, 641 (N.D. Ala. 2016) (Coal Act obligations imposed on buyer were interests in
28 property); *In re Christ Hospital*, 502 B.R. 158 (Bankr. D.N.J. 2013) (tort claims asserted
against purchaser of nonprofit hospital were interests in property); *WBQ P’ship v. Va. Dep’t of*
Med. Assistance Servs. (In re WBQ P’ship), 189 B.R. 97, 104–05 (Bankr. E.D. Va. 1995)
(state’s right to recapture depreciation is an “interest” as used in § 363(f)); *In re Aurora Gas,*
LLC, No. A16–00130, 2017 WL 4325560 (Bankr. D. Alaska Sep. 26, 2017).

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1 Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722 (the “Coal Act”). *See*
2 *Leckie Smokeless Coal Co.*, 99 F.3d at 575-76. Under the Coal Act, the successor to an operator
3 was jointly and severally liable with the operator for payment of premiums. *See id.* at 576-77.
4 Following the debtors’ bankruptcy filing, the benefit plans opposed a proposed asset sale free and
5 clear of successor liability for Coal Act premium payment obligations. *See id.* at 577. The
6 bankruptcy court approved the sale free and clear, and, on appeal, the Fourth Circuit affirmed,
7 concluding that the right to collect future premiums constituted interests in the assets transferred by
8 the sale. *See id.* at 582. The Fourth Circuit explained that the benefit plans’ right to collect
9 premiums under the Coal Act

10 are grounded, at least in part, in the fact that those very assets have
11 been employed for coal-mining purposes: if Appellees had never
12 elected to put their assets to use in the coal-mining industry, and had
13 taken up business in an altogether different area, the Plan and Fund
14 would have no right to seek premium payments from them. Because
15 there is therefore a relationship between (1) the Fund’s and Plan’s
rights to demand premium payments from Appellees and (2) the use
to which Appellees put their assets, we find that the Fund and Plan
have interests in those assets within the meaning of section 363(f).

16 *Id.* The relationship drawn by the Fourth Circuit between the prepetition obligation and the
17 purchaser’s use of assets for the same purposes as the debtor is cited repeatedly in cases finding
18 that regulatory obligations are interests subject to § 363(f).

19 Similarly, a debtor’s experience rating—the historic metric by which state regulators
20 determine tax or insurance rates—may not be imputed to a purchaser of the debtor’s assets. *See,*
21 *e.g., In re Old Carco, LLC*, 538 B.R. 674 (Bankr. S.D.N.Y. 2015).⁴ In *Old Carco, LLC*, the
22 purchaser of substantially all of the debtor’s assets sought an order finding that the sale order
23 prohibited Indiana and Illinois from using the debtor’s experience rating to calculate the

24 _____
25 ⁴ A long line of experience rating cases reach the same conclusion as *Old Carco, LLC* along
26 similar analytical lines. *Mass. Dept. of Unemployment Assistance v. OPK Biotech, LLC (In re*
27 *PBBPC, Inc.)*, 484 B.R. 860 (B.A.P. 1st Cir. 2013); *In re Tougher Indus., Inc.*, No. 06-12960,
2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013); *In re USA United Fleet, Inc.*, 496 B.R. 79
28 (Bankr. E.D.N.Y. 2013); *In re ARSN Liquidating Corp. Inc.*, No. 14-11527, 2017 WL 279472
(Bankr. D.N.H. Jan. 20, 2017).

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1 purchaser's unemployment insurance tax rate. *See* 538 B.R. at 677. The state statutes in issue
2 authorized regulators to compute tax rates "based, in part, on the employer's historical claims
3 paying experience, generally reaching back three years." *Id.* at 679. Thus, the purchaser's tax rate
4 was subject to increase based on the amount of benefits paid to workers discharged during the
5 debtor's operations. *See id.* at 679-80. The bankruptcy court concluded that the experience rating
6 constituted an interest in the assets sold because

7 [t]he States' rights to use Old Chrysler's Experience Rating arises
8 from New Chrysler's acquisition of its assets and the continuation of
9 its business. Had New Chrysler started the same business from
10 scratch with new assets, the States could not use Old Chrysler's
11 Experience Rating to compute its tax rate. Furthermore, New
Chrysler's increased liability is directly related to Old Chrysler's
discharge of persons it employed in its business; these discharged
employees never worked for New Chrysler.

12 *Id.* at 684-85. Significantly, this "continuation of business" test is repeated throughout cases
13 addressing interests in property. *See, e.g., Trans World Airlines, Inc.*, 322 F.3d at 290 ("Had TWA
14 not invested in airline assets, which required the employment of the EEOC claimants, those
15 successor liability claims would not have arisen."); *PBBPC, Inc.*, 484 B.R. at 869 ("the record
16 reflects that the transfer of an employer's contribution rate to a successor asset purchaser is really
17 an attempt to recover the money that the predecessor employer would have paid if it had continued
18 in business"); *Leckie Smokeless Coal Co.*, 99 F.3d at 582 (finding no liability would arise "if
19 [purchasers] had never elected to put their assets to use in the coal-mining industry, and had taken
20 up business in an altogether different area"); *accord Chrysler LLC*, 576 F.3d at 126.

21 **b. The Additional Conditions Are An Interest In Property For At Least**
22 **Three Reasons.**

23 Applying the same analysis, it is clear that the 2019 Conditions are interests in property
24 within the meaning of § 363(f) for at least three reasons. Before discussing these reasons, the
25 Debtors reiterate that their argument only focuses on the Additional Conditions since SGM
26 contractually agreed to be bound by the conditions in Schedule 8.6.

27 **First**, as this Court has recognized, the Additional Conditions the Attorney General seeks to
28 impose on SGM are premised on the Debtors' operations. Specifically,

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[t]he Conditions provide that any owner of the Hospital must furnish specified levels of emergency services, intensive care services, cardiac services, and various other services. The required service levels were derived ***based upon the historical experience of the prior operator.***

In re Verity Health Sys. of Cal., Inc., 598 B.R. 283, 293 (Bankr. C.D. Cal. 2018) (Robles, J.) (emphasis added). Thus, for example, the Additional Conditions’ purported imposition of “charitable care obligations are connected to and arise from the Assets being sold . . . [because] [h]ad the Assets not originally been earmarked for charitable purposes, the Attorney General could not seek to impose continuing charitable care obligation.” *In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 826 (Bankr. C.D. Cal. 2017) (Robles, J.), *appeal dismissed*, No. 17-03708, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018). The Additional Conditions constitute an interest in property to the extent they are premised or calculated based on the historical operations of the Debtors.

Second, the Attorney General’s statutory authority to impose the Additional Conditions arises from the Debtors’ operation of its assets as nonprofit acute care hospitals. The California statutory scheme grants the Attorney General authority to consent to the sale of a nonprofit health facility to a for-profit corporation. *See* CAL. CORP. CODE § 5914(a)(1)(A) (providing that a nonprofit corporation operating or controlling a health facility must obtain the consent of the Attorney General before entering into a transaction to “[s]ell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation”); *see also id.* § 5917 (authorizing the Attorney General to condition any transaction described in CAL. CORP. CODE § 5914). The California statute ***does not*** allow the Attorney General to impose similar conditions on SGM—a for-profit entity—had it “started the same business from scratch with new assets.” *Old Carco*, 538 B.R. at 684. As with the experience rating cases, it is the Debtors’ “prior ownership and use” of the assets transferred by the SGM Sale that gives the Attorney General “a contingent right” to impose conditions on the Debtors under California law. *USA United Fleet, Inc.*, 496 B.R. at 87. Accordingly, the Additional Conditions constitute interests in property because they arise from the Debtors’ prior ownership and use of the assets as nonprofit acute care hospitals.

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1 *Third*, the Attorney General’s authority to review the transaction arises from SGM’s
2 continuation of the Debtors’ business as a health facility. *See* CAL. CORP. CODE § 5914(a)(1)
3 (applying only to a sale of the assets of a nonprofit corporation that “operates or controls a health
4 facility”). Under California law, the Debtors’ assets subject to the SGM Sale qualify as health
5 facilities to the extent they are operating general acute care hospitals. *See* CAL. HEALTH & SAFETY
6 CODE § 1250(a). By way of example, in *Gardens Regional Hospital and Medical Center, Inc.*, this
7 Court found that a sale of closed general acute care hospitals did not fall within the ambit of the
8 Attorney General’s regulatory authority because “the Assets being sold do not include an operating
9 hospital.” *See* 567 B.R. at 827. Here, however, SGM intends to purchase the Debtors’ assets as
10 operating acute care hospitals and continue their operations post-closing. As this Court has
11 observed, the Attorney General’s authority to impose the Additional Conditions on SGM under
12 California Corporations Code, §§ 5914 *et seq.*, is “grounded, at least in part, in the fact that those
13 very assets have been employed for” acute care hospital purposes. *Leckie Smokeless Coal Co.*, 99
14 F.3d at 582; *see also Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 567 B.R. at 826 (“The Attorney
15 General’s claim to regulatory authority is similar to the regulatory interests asserted in *PBBPC* and
16 *Leckie Smokeless Coal*, and therefore constitutes an ‘interest in . . . property’ for purposes of
17 § 363(f).”). Accordingly, the Additional Conditions constitute interests in property because the
18 Attorney General’s authority to impose the Additional Conditions is conditioned on their operation
19 as health facilities upon the closing of the SGM Sale.

20 **3. The SGM Sale Should Be Authorized Free and Clear of the Additional**
21 **Conditions Pursuant to Section 363(f)**

22 The Debtors are authorized to consummate the SGM Sale free and clear of the 2019
23 Conditions because the SGM Sale satisfies the disjunctive sub-factors of § 363(f). *See* 11 U.S.C.
24 363(f); *see also Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions (In re Spanish Peaks Hldgs.*
25 *II, LLC)*, 872 F.3d 892, 897 (9th Cir. 2017). For practical purposes, the analysis below references
26 the Additional Conditions, given that SGM contractually agreed to be bound by the conditions in
27 Schedule 8.6.
28

1 a. **California Law Allows the Sale of Nonprofit Health Facilities Without**
2 **the Imposition of Additional Conditions (§ 363(f)(1))**

3 The Bankruptcy Code permits the sale of property free and clear of interests if “such a sale
4 would be **legally permissible**.” *In re Spanish Peaks Hldgs. II, LLC*, 872 F.3d at 900 (emphasis
5 added); *see also* 11 U.S.C. § 363(f)(1) (permitting sales free and clear of interests if “applicable
6 nonbankruptcy law permits the sale of such property free and clear of such interest”). Thus, absent
7 a specific statutory requirement, the purchaser of an asset assumes no associated liabilities of the
8 seller, including successor liability. *See Myers v. U.S.*, 297 B.R. at 784 (“As a general rule, under
9 California law a purchaser does not assume the seller’s liability.”). Under § 363(f)(1), the Debtors
10 can sell the Hospitals free and clear of the Additional Conditions because **neither** the Attorney
11 General’s statutory basis for imposing the Additional Conditions **nor** California common law
12 impose successor liability. *See In re Verity Health Sys. Of Cal., Inc.*, 598 B.R. at 296 (Bankr. C.D.
13 Cal. 2018) (Robles, J.) (“Provisions within the Conditions are enforceable only to the extent they
14 are supported by California law.”)

15 The California Corporations Code does not authorize the Attorney General to impose
16 successor liability on the assets of a health facility. California law imposes upon the seller the
17 obligation to notify the Attorney General of a sale and to obtain his consent to such sale. *See CAL.*
18 *CORP. CODE* § 5914(a)(1) (“Any nonprofit corporation that . . . operates a health facility . . . shall be
19 required to providing written notice to, and obtain the written consent of, the Attorney General”
20 prior to entering into a sale transaction.); *see id.* § 5917 (granting the Attorney General discretion to
21 “consent to, give conditional consent to, or not consent to any agreement or transaction). But, the
22 statute **does not** grant the Attorney General authority to impose conditions on the assets subject to
23 the transaction. Indeed, the Attorney General was previously unable to identify any provision of
24 applicable “California law entitling him to enforce successorship liability under the circumstances
25 of this case.” *In re Verity Health Sys. of Cal., Inc.*, 598 B.R. at 296 (finding that “[t]he Attorney
26 General’s reliance upon provisions purporting to make the Conditions binding upon all successors,
27 regardless of the circumstances under which such successors acquiring the Hospitals, is an
28 impermissible attempt to expand his regulatory authority over the Hospitals”).

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1 In *La Paloma Generating, Co.*, a bankruptcy court granted a sale pursuant to § 363(f)(1)
2 after finding that the applicable California regulatory scheme governing the transfer of cap and
3 trade liabilities in the sale of electrical generation facilities did not impose successor liability. *See*
4 No. 16-12700, 2017 WL 5197116 (Bankr D. Del. Nov. 9, 2017). The court concluded that, as here,
5 the regulatory scheme did not impose successor liability because it imposed liabilities on entities
6 rather than the assets subject to the transaction. *See id.* at *7 (“[T]he Regulation does not dictate . .
7 . substitution and assumption of liability. In no way does Section 95835(b)(8) impugn liability on
8 the purchase of the Covered Entity’s assets.”). Here, similarly, the California Corporations Code
9 does not impose any statutory successor liability because the obligations are limited to the seller
10 rather than the assets transferred pursuant to a sale.

11 Further, the SGM Sale does not implicate any of the four grounds to impose successor
12 liability under California law. Under California law,

13 the purchaser does not assume the seller’s liabilities unless (1) there
14 is an express or implied agreement of assumption, (2) the transaction
15 amounts to a consolidation or merger of the two corporations, (3) the
16 purchasing corporation is a mere continuation of the seller, or (4) the
transfer of assets to the purchaser is for the fraudulent purpose of
escaping liability for the seller’s debts.

17 *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (1977); *see also City of San Diego v. Nat’l Steel &*
18 *Shipbuilding Co.*, No. 09-2275, 2011 WL 5104624, at *4 (S.D. Cal. Oct. 27, 2011). None of the
19 four grounds is present here. SGM has not expressly or impliedly agreed to assume the Debtors’
20 obligations under the 2015 Conditions (except to the extent contracted in the SGM APA). The
21 Court specifically found that the transfer was at arm’s length and in good faith rather than for any
22 fraudulent purpose. *See* Sale Order, ¶¶ D-E at 6-7 (“[T]he Transaction being consummated
23 pursuant to and in accordance with the APA is not being consummated, for the purpose of
24 hindering, delaying or defrauding creditors of the Debtors.”). Finally, the transaction is not a
25 consolidation, merger, or mere continuation because SGM has provided non-stock consideration
26 and SGM and the Debtors have different officers, directors, or stockholders. *See, e.g., Alad Corp.*,
27 19 Cal. 3d at 28-29 (citing *Econ. Refining & Serv. Co. v. Royal Nat. Bank of N.Y.*, 20 Cal. App. 3d
28 434 (Cal. Ct. App. 1971); *Malone v. Red Top Cab Co.* 16 Cal. App. 2d 268, 272-274 (1936);

1 *Shannon v. Samuel Langston Co.* 379 F. Supp. 797, 801 (W.D. Mich. 1974)). Accordingly, the
2 Debtors may sell the Hospitals free and clear of the Additional Conditions because nonbankruptcy
3 law does not impose successor liability notwithstanding the contrary provisions in the Additional
4 Conditions.

5 **b. The Additional Conditions Are Subject to A Bona Fide Dispute (§**
6 **363(f)(4))**

7 The Debtors may sell the Hospital free and clear of the Additional Conditions because the
8 Attorney General's authority to impose the Additional Conditions is in bona fide dispute. *See* 11
9 U.S.C. § 363(f)(4). The phrase "bona fide dispute" is not defined by the Bankruptcy Code. *See*
10 *Atlas Mach. & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F.2d 709, 715 (4th Cir. 1993)
11 ("Although courts have not agreed on a precise definition of 'bona fide dispute,' it entails some sort
12 of meritorious, existing conflict.") (citations omitted). Courts find a "bona fide dispute" when
13 "there is an objective basis for either a factual or legal dispute as to the validity of the asserted
14 interest." *In re Taylor*, 198 B.R. 142, 147 (Bankr. D.S.C. 1996). An objective legal basis for
15 dispute may arise under bankruptcy or nonbankruptcy law. *See In re L.L. Murphrey Co.*, No. 12-
16 03837-8-JRL, 2013 WL 2451368 (Bankr. E.D.N.C. June 6, 2013) (finding bona fide dispute as to
17 validity of a creditor's lien subject to avoidance under § 544(a)(3)). Importantly, it is not necessary
18 that the court resolve the dispute or its merits. *See id.* ("This standard does not require that the
19 Court resolve the underlying dispute or determine the probable outcome of the dispute, but merely
20 whether one exists.").

21 Here, the Additional Conditions are subject to bona fide dispute under bankruptcy and
22 nonbankruptcy law. As set forth in this Motion, the Debtors dispute the Attorney General's
23 authority to issue conditions impose successor liability contrary to the provisions of California law,
24 the Bankruptcy Code, and the Sale Order. Further, as discussed more fully below, the Debtors
25 dispute whether the Attorney General abused his discretion in imposing the Additional Conditions
26 without adequate support. In each instance, the Court need not determine the relative merits of the
27 disputes, and, instead, need only find that the disputes raised by the Debtors are bona fide. In each
28

1 case, the Debtors' disputes as to the Additional Conditions support a sale free and clear of the
2 Additional Conditions under § 363(f)(4).

3 **c. The Attorney General Can Be Compelled to Accept A Money**
4 **Satisfaction in the Event of Noncompliance with the Additional**
5 **Conditions (§ 363(f)(5))**

6 Section 363(f)(5) permits a sale free and clear if (i) the nondebtor could be compelled to
7 accept a money satisfaction of the interest in property (ii) in a proceeding that could be brought.
8 *See In re PW, LLC*, 391 B.R. 25, 41 (B.A.P. 9th Cir. 2008). An interest in property is subject to
9 satisfaction for purposes of § 363(f)(5) if it imposes a calculable monetary obligation. *See In re*
10 *Vista Marketing Grp. Ltd.*, 557 B.R. at 635 ("[O]ne would be hard-pressed to present a clearer
11 example of a situation where the interest-holder could be compelled to accept a money satisfaction
12 of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the
13 District in its surcharge bill and disconnection notice."); *see also In re Trans World Airlines, Inc.*,
14 322 F.3d 283, 290 (3d Cir. 2003) (interests in property such as travel vouchers and EEOC claims
15 may be reduced to a specific monetary value for purposes of § 365(f)(5)).

16 Here, many of the Additional Conditions are subject to satisfaction by the payment of
17 money. For example, certain Additional Conditions require charity care of a specific monetary
18 value. *See* Exhibit "C." The Attorney General has historically (including in the Debtors' own
19 experience) allowed health facilities to satisfy any charity care deficiency by paying funds to
20 satisfy shortfalls to other purposes or entities. *See, e.g.,* First-Day Decl., ¶ 108 at 28 ("[A]s a result
21 of a shortfall in the fiscal year 2017 charity care requirement for certain hospitals, VHS was
22 required to make an additional contribution to the Retirement Plans of \$7,619,000 in October
23 2017."); *see also In re WBQ P'ship*, 189 B.R. at 107 (finding § 363(f)(5) satisfied where state's
24 right of recapture upon sale of nursing home could constitute a claim against the debtors subject to
25 hypothetical cramdown).

26 Indeed, there is no dispute that the Attorney General allows unsatisfied charity care
27 contributions to be satisfied by the payment of money. In the 2015 Conditions, the Attorney
28 General expressly allowed the Debtors to satisfy any shortfall by paying an amount equal to the
charity care shortfall to some other purpose. For example, with regard to St. Francis, the 2015

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1 Conditions expressly allowed satisfaction of the Charity Care Condition by payment of 50% of the
2 shortfall to employee pension plans and 50% of the shortfall to capital expenditures for
3 maintenance of the facilities. *See* Docket No.256-1, Exhibit A, at 9. Allowing payment of monies
4 to other entities to satisfy a shortfall in providing charity care is not unique to these hospitals. A
5 review of the Attorney General’s website describing nonprofit hospital transactions is replete with
6 such examples. *See* <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofitosp/>. For
7 example, in a decision on January 9, 2019, regarding Parkview Hospital, the Attorney General
8 approved the proposed transaction with the condition that if there was a shortfall in the charity care
9 required, that shortfall could be satisfied by the payment of “an amount equal to the deficiency to
10 one or more tax-exempt entities that provide direct health care services to residents in the
11 Hospital’s service area.”

12 Further, the 2019 Conditions make clear that the Attorney General can enforce satisfaction
13 of these monetary obligations in a hypothetical legal proceeding. *See In re WBQ P’ship*, 189 B.R.
14 at 107 (holding that nursing home sale was free and clear of state department’s right to recover
15 depreciation overpayments and emphasizing “‘hypothetical’ satisfaction, since §
16 363(f)(5) authorizes a sale if the interest holder ‘*could be* compelled, in a legal or equitable
17 proceeding, to accept a money satisfaction of such interest’”) (emphasis in original). The Attorney
18 General specifically reserves his right to enforce the 2019 Conditions “to the fullest extent provided
19 by law” and that, “[i]n addition to any legal remedies the Attorney General may have, the Attorney
20 General shall be entitled to specific performance, injunctive relief, and such other equitable
21 remedies a court may deem appropriate for breach of any of these Conditions.” *See* Exhibit “B.”
22 As with the Debtors’ prior satisfaction of the Charity Care Condition, payment of money was
23 sufficient to “extinguish” entirely the Debtors’ obligation to comply with the Charity Care
24 Condition. *See, e.g., In re Hassen Imports P’ship*, 502 B.R. 851, 861 (C.D. Cal. 2013) (finding that
25 § 363(f)(5) “only authorizes sale free and clear when money payment is given in exchange for the
26 extinguished interest”). Accordingly, as noted by the Attorney General, monetary conditions may
27 be satisfied in a hypothetical legal proceeding.

1 Accordingly, the Attorney General can be compelled to accept monetary satisfaction of the
2 Additional Conditions that impose calculable monetary obligations sufficient to sell the Hospitals
3 free and clear of the Additional Conditions. For the foregoing reasons, the Sale Order effectuated a
4 sale free and clear of the 2019 Conditions except for those SGM agreed to assume by contract as
5 set forth in Schedule 8.6.

6 **d. The Additional Conditions Contravene The Purposes of § 363(f) to the**
7 **Extent They Purport to Impose Successor Liability on SGM.**

8 California law does not authorize the Attorney General to impose successor liability on the
9 purchaser of a health care facility because the statute only makes reference to the obligations of the
10 seller rather than the assets sold. *See* discussion, *supra*; *see also In re La Paloma Generating, Co.*,
11 No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017); CAL. CORP. CODE § 5914.
12 Further, the Debtors may sell the Hospitals free and clear of any successor liability assuming,
13 *arguendo*, that the Conditions impose successor liability on SGM.

14 Courts favor a broader reading of § 363 in two instances where imposition of successor
15 liability would compromise the fundamental purposes of bankruptcy sales. **First**, “allowing sales
16 of debtor assets free and clear of liabilities of the debtor induces a higher sale price for the assets,
17 thereby maximizing the value of the estate and maximizing potential recovery to creditors.”
18 *Grumman Olson Indus. Inc.*, 467 B.R. at 703; *see also Douglas v. Stamco*, 363 Fed. Appx. 101,
19 102-03 (2d Cir. 2010) (“to the extent that the ‘free and clear’ nature of the sale . . . was a crucial
20 inducement in the sale’s successful transaction . . . the potential chilling effect of allowing a tort
21 claim subsequent to the sale would run counter to a core aim of the Bankruptcy Code”); *Indiana*
22 *State Police Pension Trust*, 576 F.3d at 126 (“The possibility of transferring assets free and clear of
23 existing tort liability was a critical inducement to the Sale.”); *In re PBBPC, Inc.*, 484 B.R. at 870
24 (rejecting imposition of experience rating where “the possibility of transferring assets free and clear
25 of successor liability was a critical inducement to the sale”) (quotations omitted); *Myers v. U.S.*,
26 297 B.R. at 781 (finding sale order sold assets free and clear of successor liability and positing
27 “who would ever purchase assets at a bankruptcy proceeding if the successor liability were not
28 limited, despite the plain wording of the bankruptcy court order?”). As discussed in detail, above,

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1 imposition of the Additional Conditions have serious financial consequences for the SGM Sale that
2 undercut the free and clear nature of the SGM Sale and served as a critical inducement for the only
3 bidder on the Debtors' Hospital assets. Accordingly, the Debtors may sell the Hospitals free and
4 clear of any successor liability imposed by the Additional Conditions under § 363.

5 **Second**, allowing a claimant to pursue an asset purchaser in bankruptcy "would subvert the
6 Bankruptcy Code's priority scheme, by allowing a low-priority, unsecured claim to leapfrog over
7 other creditors in the bankruptcy." *See, e.g., In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 703
8 (S.D.N.Y. 2012); *see also In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003) ("Even
9 were we to conclude that the claims at issue are not interests in property, the priority scheme of the
10 Bankruptcy Code supports the transfer of TWA's assets free and clear of the claims."); *Myers*, 297
11 B.R. at 781 (finding a sale order that *excluded* "successor liability" from the interests stripped
12 under § 363(f) nevertheless effectuated a sale of the assets free and clear of successor liability
13 because, to hold otherwise, "would allow unsecured creditors to receive greater protection and
14 more priority than secured claims"). The Additional Conditions allow the Attorney General to
15 impose monetary obligations on SGM to continue providing services such as charity care that were
16 financially infeasible for the Debtors.

17 **B. COMPLIANCE WITH § 363(d)(1) DOES NOT LIMIT THE DEBTORS' RIGHT TO**
18 **SELL ITS ASSETS FREE AND CLEAR UNDER § 363(f).**

19 Section 363(d)(1) provides that the Debtors must sell the Hospitals in accordance with
20 nonbankruptcy law applicable to nonprofit transactions, and § 363(f) authorizes the Debtors to sell
21 the Hospitals free and clear of interests in property. These two sections are easily construed under
22 several applicable principles of statutory construction.

23 First, each statutory provision should be read by reference to the whole act. *See John*
24 *Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 114 S. Ct. 517, 523 (1993); *Pavelic &*
25 *Leflore v. Marvel Entm't Grp.*, 493 U.S. 120, 123-24 (1989); *Mass. v. Morash*, 490 U.S. 107, 114-
26 15 (1989). Second, the Court should avoid interpreting a provision of the Bankruptcy Code in a
27 way inconsistent with the policy of another provision of the Bankruptcy Code. *See United Sav.*
28 *Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). Finally, specific provisions

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1 targeting a particular issue apply instead of provisions more generally covering the issue. *See*
2 *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (a general statute will not be held to have
3 repealed by implication a more specific one unless there is “clear intention otherwise”); *U.S. v.*
4 *Novak*, 476 F.3d 1041, 1054 (9th Cir. 2007) (recognizing “the elementary tenet of statutory
5 construction that a general statute will not alter a more specific one”) (quotations omitted). This
6 tenet applies with equal force to interpretation of competing provisions of the Bankruptcy Code.
7 *See Law v. Seigel*, 571 U.S. 415, 421 (2014) (resolving conflict between §§ 105(a) and 522 by
8 “application of the axiom that a statute’s general permission to take actions of a certain type must
9 yield to a specific prohibition found elsewhere”).

10 Applying these principles, the requirement to act in accordance with nonbankruptcy law
11 does not abrogate the Debtors’ authority to sell free and clear of the Additional Conditions under
12 the more specific provisions of § 363(f), particularly when the Additional Conditions would render
13 the terms of the SGM APA and the Sale Order meaningless.

14 Section 363(f) provides specific grounds to conduct sales free and clear of interests in
15 property that is not limited by a nonprofit debtor’s general obligation, under § 363(d)(1), to comply
16 with nonbankruptcy law. Section 363 provides that nonprofit debtors must generally comply with
17 applicable nonbankruptcy law in conducting sales under § 363(b). Section 363(d)(1) provides that
18 a nonprofit debtor may sell assets of the estate pursuant to § 363(b) “only in accordance with
19 nonbankruptcy law applicable to the transfer of property by” such nonprofit debtor. 11 U.S.C.
20 363(d)(1). This general requirement in § 363(d)(1) makes no reference to § 363(f), which sets forth
21 the specific bases by which a debtor may obtain approval of a sale under § 363(b) free and clear of
22 any interest in such property. Without a “clear intention otherwise,” the general requirement that a
23 nonprofit debtor comply with nonbankruptcy law does not repeal by implication the specifics of
24 free and clear sales under § 363(f), including the Debtors’ rights to sell assets free and clear of
25 successor liability. *See Morton*, 417 U.S. at 550-51. Simply put, § 363(d)(1) does not grant the
26 Attorney General the unfettered right to impose conditions without regard to this Court’s exclusive
27
28

jurisdiction over the Debtors' assets and any other provisions of the Bankruptcy Code. *See, e.g.*, §§ 363(f), 525, 541; *see also* 28 U.S.C. § 1334(e).⁵

Even if the provisions were in conflict, applicable law authorizing the Attorney General to review and condition sales of health facilities is not inconsistent with the successor liability limitations set forth in § 363(f). As discussed above, applicable California law does not impose successor liability on the SGM Sale because the obligations are imposed on the seller of a health facility rather than the assets themselves. *See, e.g., In re La Paloma Generating, Co.*, 2017 WL 5197116, at *7 (“[T]he Regulation does not dictate . . . substitution and assumption of liability. In no way does Section 95835(b)(8) impugn liability on the purchase of the Covered Entity’s assets.”).

Accordingly, the general requirements of § 363(d)(1) are not in conflict with the Debtors’ authority to sell assets free and clear of successor liability under § 363(f). The Debtors complied with the requirements of nonbankruptcy law and received the Attorney General’s conditional approval of the SGM Sale. Nonbankruptcy law does not impose successor liability on SGM, and,

⁵ The Attorney General has previously argued that he may enforce conditions on the sale of a nonprofit hospital, pursuant to police and regulatory powers designed to protect the health and safety of the community. *See* Docket No. 463, at 7 (the “Prior Response”). However, unlike § 362(b)(4), § 363 has no exception for governmental entities acting pursuant to police or regulatory powers. The Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“where Congress includes particular language in one section of a statute but omits it in another [...] it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Even if such an exception were to apply, as the Attorney General concedes in the Prior Response, preemption of state law is most likely where the state statute carves an exception out of the Bankruptcy Code, or where the state statute is concerned with economic regulation rather than protecting the public health and safety. Prior Response, at 7, lines 1-15 (citing *Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nevada*, 35 F.3d 1348, 1353 (9th Cir. 1994)). Both situations exist here. First, the interpretation suggested by the Attorney General carves a huge exception out of the Bankruptcy Code, basically allowing him to ignore both the plain language of the federal laws, and the practical implications of his interpretation. Second, although the state statute discusses that a sale to a for-profit “may affect the availability of community health care services,” Prior Response, at 7, lines 23-24 (citing CAL. CORP. CODE, Ch. 9, Note §1m Stats 1996, ch. 1105), the Attorney General has *no* general oversight over health facilities in California or over acute care hospitals in particular. Rather, his review is predicated on the regulation of a kind of business—nonprofits—and therefore falls neatly into economic regulations.

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1 to the extent the Additional Conditions impose successor liability, the Debtors may sell free and
2 clear under § 363(f) while still complying with their general obligations under § 363(d)(1).

3 **C. THE ATTORNEY GENERAL CANNOT INTERFERE WITH THE COURT’S**
4 **EXCLUSIVE JURISDICTION OVER PROPERTY OF THE ESTATES.**

5 Section 1334(e) of title 28 of the United States Code grants federal district courts—and, by
6 jurisdictional grant, pursuant to 28 U.S.C. § 157(a), bankruptcy courts within each district—
7 exclusive jurisdiction of all property of the debtor and its estate, “wherever located.” 28 U.S.C. §
8 1334(e); 11 U.S.C. § 157(a); *see also Hong Kong and Shanghai Banking Corp. v. Simon (In re*
9 *Simon)*, 153 F.3d 991 (9th Cir. 1998) (district court in which bankruptcy case is commenced has
10 exclusive *in rem* jurisdiction over all estate property); *see also Central Va. Cmty College v. Katz*,
11 546 U.S. 356, 126 S. Ct. 990 (2006) (A “critical feature of every bankruptcy proceeding [is] the
12 exercise of exclusive jurisdiction over all of the debtor’s property.”). Moreover, in the context of
13 adjudicating the rights of in a bankruptcy estate, even against the Attorney General, the power of
14 the bankruptcy court includes the “power to issue compulsory orders to facilitate the administration
15 and distribution of the res.” *Id.* The Supreme Court was clear in *Katz* that the Court’s power was
16 not limited to *in rem* beyond the “mere adjudication of rights in a res” and extended to proceedings
17 “necessary to effectuate the *in rem* jurisdiction of the bankruptcy courts.” *Id.* Therefore, under
18 *Katz*, the Court also has the power to issue orders necessary to effectuate the Sale Order, including
19 issuing orders that the SGM Sale is free and clear of the Additional Conditions.

20 Here, the Court has exclusive jurisdiction over the Hospitals because they are indisputably
21 “property of the estates” pursuant to § 541. *See* § 541. The Court’s exclusive jurisdiction limits
22 the Attorney General’s attempt to impose restrictions on the Hospitals. Moreover, the states’ right
23 to regulate an operating debtor in possession under 28 U.S.C. § 959(b) does not limit this Court’s
24 jurisdiction or give the state the right to interfere in the sale of the Debtors’ Hospitals. *See Hillis*
25 *Motors v Hawai’i Auto Dealers Assn.*, 997 F.2d 581, 592 (9th Cir 1993) (holding that state action
26 to involuntarily dissolve a corporation for non-payment of franchise fees and filings violated the
27 automatic stay as an act to control property of the estate under § 362(a)(3) and was not excepted by
28 §362 (b)(4) or (5) or 28 U.S.C. § 959(b)).

D. THE ADDITIONAL CONDITIONS VIOLATE § 525 BECAUSE THEIR EXPRESS PURPOSE IS TO REQUIRE SGM TO UNDERTAKE THE SAME OBLIGATIONS THE DEBTORS CAN NO LONGER ACCOMPLISH.

Imposition of the Additional Conditions constitutes impermissible discrimination against the Debtors and SGM, as a debtor-associate, pursuant to § 525. Section 525(a) grants the Debtors protection against discriminatory treatment by governmental unit on account of the Debtors' insolvency. *See* 11 U.S.C. § 525(a).

One of the leading case interpreting § 525 is the United States Supreme Court's decision in *Federal Communications Commission v. NextWave Communications, Inc.* 537 U.S. 293 (2003) ("NextWave"). In *NextWave*, the Federal Communications Commission (the "FCC") cancelled certain licenses owned by the debtor, but denied that the proximate cause for its cancellation of the licenses was the failure to make payments due to the FCC. Instead, the FCC contended that § 525 did not apply because it had a valid regulatory motive for the cancellation. The Supreme Court held that the FCC's motive was "irrelevant" because "[s]ection 525 means nothing more or less than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be." *NextWave*, 537 U.S. at 301-02. The FCC contended that NextWave's license obligations to the commission were not "debt[s] that [are] dischargeable" in bankruptcy. *Id.* at 302. The FCC argued that regulatory requirements, such as a full and timely payment condition, are not properly classified as "debts" under the Bankruptcy Code. The Supreme Court dismissed this argument, finding that "a debt is a debt even when the obligation to pay it is a regulatory condition." *Id.* at 303. The FCC also argued that NextWave's obligations were not "dischargeable" in bankruptcy because bankruptcy courts did not have the jurisdictional authority to alter regulatory obligations. *Id.* Noting that dischargeability is not tied to the existence of such authority, the Supreme Court found that a preconfirmation debt is dischargeable unless it falls within an express exception to discharge. *Id.*

In *In re Aurora Gas, LLC*, the bankruptcy court addressed whether the State of Alaska violated § 525(a) by effectively conditioning the sale of gas leases on the purchaser's assumption of unpurchased liabilities. *See* No. 16-00130, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017).

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1 The debtor formerly operated nine oil and gas wells leased from the state. *See id.* at *1. During the
2 course of the bankruptcy case, the debtor determined that it would not be able to sell three of the
3 wells leased on state lands and could not afford to completely plug and abandon the wells. *See id.*
4 The debtor, thus, began the process of temporarily plugging the wells and obtained approval to
5 reject the leases. *See id.* The debtor secured an offer to purchase five of the remaining oil and gas
6 leases for \$100,000, subject, however, to review and approval by the state. *See id.* The bankruptcy
7 court entered an order granting authority to assume and assign the leases and sell related assets free
8 and clear of claims and interests. *See id.* at *2. Subsequently, the state imposed conditions on the
9 sale that required the purchaser either agree to (i) a bond in the amount of \$200,000 and an
10 agreement to plug and abandon the three unpurchased wells, or (ii) a bond in the amount of \$6
11 million. *See id.*

12 The bankruptcy court held that the imposition of the conditions violated § 525(a). The
13 bankruptcy court noted that “the State does not deny that the Decision was an attempt to collect
14 [the debtor’s] debt for the [nonoperating] leases. Rather, it defends its action as necessary to
15 provide for the plugging and abandonment of the wells which the debtor will not be able to
16 accomplish.” *Id.* at *4. The court concluded that the state “effectively denied the debtor’s transfer
17 of five of its . . . leases because it insists on recovering the debtor’s . . . plug and abandonment
18 liability.” *Id.* at *5. Indeed, the \$6 million bonding requirement made clear that the state’s intent
19 was to recover on the debtor’s potentially dischargeable liabilities rather than the “proper exercise
20 of the agency’s discretion in discharge of its statutory duties.” *See id.* (“There is nothing in the
21 Decision to support the [state’s] conclusion that it will cost \$1,000,000 to plug and abandon each
22 well.”).

23 The Additional Conditions are no different than those addressed by the bankruptcy court in
24 *Aurora Gas* because they impose upon SGM the very same levels of services, charity care, and
25 other obligations imposed on the Debtors by the 2015 Conditions. The Additional Conditions
26 repeatedly obligate SGM to maintain licensure and services “at no less than current” levels that
27 correspond directly to the Debtors’ postpetition services. *See* Exhibit “B” (“The term ‘current’ or
28 ‘currently’ throughout this document means as of January 1, 2019.”) (2019 Conditions, at 2, n.2).

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As discussed above, § 363(f) allows the Debtors to sell their assets free and clear of the Attorney General’s interests in imposing Additional Conditions. These interests are dischargeable within the meaning of § 525(a) even if the Debtors will not receive a discharge under their Plan. *See Aurora Gas, LLC*, 2017 WL 4325560, at *6 (“The State has not identified any exception within § 523(a) for the debtor’s prepetition liability for plugging and abandoning the [nonoperating] wells. Nothing within § 525(a) requires that the debtor actually obtain a discharge, only that the debt be dischargeable.”); *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. at 303 (“A preconfirmation debt is dischargeable unless it falls within an express exception to discharge.”). Further, as with *Aurora Gas*, the Additional Conditions will “effectively den[y] the [Debtors’] transfer of” their hospital assets because the Attorney General “insists on recovering” from SGM the same obligations imposed on the Debtors under the 2015 Conditions. The Additional Conditions must be denied as violative of § 525(a) because the Debtors’ inability to continue the same services following the conclusion of these Cases are “the proximate cause” of the Attorney General’s Additional Conditions. *See NextWave Pers. Commc’ns Inc.*, 537 U.S. at 301-02.

E. THE ATTORNEY GENERAL ABUSED HIS DISCRETION IN IMPOSING THE ADDITIONAL CONDITIONS.

1. The Court Has Authority to Review Whether the Attorney General Abused His Discretion in Imposing the Additional Conditions.

If the Court does not find the Additional Conditions are cut off by § 363, the Debtors ask that the Court review the Attorney General’s decision under applicable nonbankruptcy law. Section 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1221(e) (2005), makes clear that the applicable nonbankruptcy law should be interpreted by this Court and should not be referred to a state court. *In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700-01 (Bankr. S.D.N.Y. 2016) (“While a transfer [of nonprofit assets] must comply with the substantive requirements of state law. . . . any determination that would be made by a state court, . . . in the absence of a bankruptcy case, is now a determination to be made by [the bankruptcy court], and not by the state court.”).

The Attorney General has discretion under applicable state law to deny, consent to, or conditionally approve a transaction. However, that discretion is limited and subject to judicial

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1 review. Under state law, the Court has the power to overrule the Attorney General’s decision
2 imposing conditions inconsistent with Section 8.6 of the SGM APA. *Del Riccio v. Superior Court*,
3 115 Cal. App. 2d 29, 31 (1952) (“In the exercise of equitable jurisdiction the court undoubtedly has
4 broad discretionary powers to take whatever action is necessary in the interests of justice in order
5 that its decrees will not fail to accomplish their purpose.”); *see also* Cal. Code Civ. Proc., § 187.
6 That power extends even to reviewing discretionary decisions for abuse of discretion. *Lamb v.*
7 *Webb* (1907) 151 Cal. 451, 454 (the trial court has the power to compel the Attorney General to act
8 where the Attorney General abused its discretion); accord *City of Campbell v. Mosk*, 197 Cal. App.
9 2d 640, 645 (1961).

10 Judicial review of most public agency decisions is obtained either by: (1) a writ of
11 ordinary/traditional mandamus, pursuant to C.C.P. § 1085; or (2) a writ of administrative
12 mandamus, pursuant to C.C.P. § 1094.5. *See Friends of the Old Trees v. Dep’t of Forestry & Fire*
13 *Prot.*, 61 Cal. Rptr. 2d 297, 303 (Cal. Ct. App. 1997). Ordinary mandate under C.C.P. § 1085 is a
14 traditional remedy by which a court compels an inferior tribunal to perform a legally required duty.
15 Administrative mandate under C.C.P. § 1094.5 is a statutory remedy which enables a petitioner to
16 challenge an administrative decision after an adjudicatory hearing in which the agency performs a
17 fact finding function. Parties are entitled to seek both in the same action. *See Conlan v. Bonta*, 102
18 Cal. App. 4th 745, 751-52 (2002). Moreover, C.C.P. §§ 1085 and 1094.5, subd. (f) are identical in
19 authorizing courts to issue a writ of mandate to compel the performance of an act “which the law
20 specially enjoins.”

21 Under C.C.P. § 1094.5, the Court “begin[s] its review with a presumption of the correctness
22 of administrative findings, and then, after affording the respect due to these findings, exercise[s]
23 independent judgment in making its own findings.” *Fukuda v. City of Angels*, 977 P.2d 693, 701
24 (Cal. 1999); *see Benetatos v. City of Los Angeles*, 186 Cal. Rptr. 3d 46, 56 (Cal. Ct. App. 2015)
25 (“the independent judgment test is applied to review administrative decisions that will drive an
26 owner out of business or significantly injure the business’s ability to function”).

27 Alternatively, for traditional mandamus under C.C.P. § 1085, the Court reviews the
28 administrative action to determine whether it “was arbitrary, capricious, or entirely lacking in

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1 evidentiary support, contrary to established public policy, unlawful or procedurally unfair.” *Id.*
2 (quotations omitted). “Although mandate will not lie to control a public agency’s discretion, that is
3 to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of
4 discretion.” *Id.* (quotations omitted). “Abuse of discretion is established if the ... order or decision
5 is not supported by the findings, or the findings are not supported by the evidence.” *Wollmer v.*
6 *City of Berkeley*, 193 Cal. App. 4th 1329, 1338 (2011) (citing Cal. Code Civ. Proc., § 1094.5, subd.
7 (b).) Moreover, the Court should not give deference to the Attorney General’s interpretation of
8 State law. *County of San Diego v. State of Cal.* 15 Cal. 4th 68, 109 (1997). Because public
9 agencies and officials “have a duty to comply with applicable state statutes and local ordinances,”
10 failure to do so is an abuse of discretion that is “arbitrary, capricious, or lacking in evidentiary
11 support *Bright Dev. v. City of Tracy* 20 Cal. App. 4th 783 (1993).

12 Regardless of which standard applies here, the Attorney General’s conduct does not pass
13 muster under either statute. The Attorney General’s decision to impose many, if not all, of the
14 Additional Conditions, is not supported by findings or evidence. *See Topanga Assn. for a Scenic*
15 *Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974) (“[I]mplicit in section 1094.5 is a
16 requirement that the agency which renders the challenged decision must set forth findings to bridge
17 the analytic gap between the raw evidence and ultimate decision or order.”). The Attorney General
18 has given no consideration whatsoever to the economic impact of the 2019 Conditions on the
19 continued existence of the Hospitals. Although Attorney General’s review of the SGM Sale was
20 undertaken pursuant to a statute that purports to seek to preserve healthcare for the community, it is
21 undisputed that the 2019 Conditions imposed by the Attorney General will have the singular result
22 of destroying the SGM Sale and closing hospitals. There could not be a clearer example of an
23 abuse of discretion. *Honchariw v. City of Stanislaus* 218 Cal. App. 4th 1019, 1027 (2013); *see*
24 *also Bob Jones Univ. v. United States* 461 U.S. 574, 586 (1983) (a well-established canon of
25 statutory construction provides that literal language should not defeat the plain purpose of the
26 statute).

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1 **2. The Scope of the Court’s Review on Writ of Mandamus**

2 Judicial review of most public agency decisions is obtained by a writ of: (1) ordinary or
3 traditional mandamus, per C.C.P. § 1085; or (2) administrative mandamus, per C.C.P. § 1094.5.
4 *See Friends of the Old Trees v. Dep’t of Forestry & Fire Prot.*, 61 Cal. Rptr. 2d 297, 303 (Cal. Ct.
5 App. 1997).

6 The applicable type of mandate is determined by the nature of the administrative action or
7 decision, in that quasi-legislative or ministerial acts are reviewed by ordinary mandate, while quasi-
8 judicial acts are reviewed by administrative mandate. *Id.* “Generally speaking, a legislative action
9 is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the
10 actual application of such a rule to a specific set of existing facts.” *Id.* (quotation omitted). More
11 specifically, traditional mandate is used to review agency action when the agency was not required
12 to hold a hearing, whereas administrative mandamus reviews final administrative orders from a
13 proceeding “in which by law a hearing is required to be given, evidence is required to be taken, and
14 discretion in the determination of facts is vested in the inferior tribunal[.]” *Id.* (quoting C.C.P.
15 § 1094.5(a)).

16 Here, when evaluating the proposed transaction, the Attorney General was required to hold
17 a hearing, take evidence, and utilize discretion in his determination of existing facts. Indeed,
18 California Corporations Code § 5916 explicitly requires that “[p]rior to issuing any written decision
19 referred to in Section 5915 . . . the Attorney General shall conduct one or more public meetings,
20 one of which shall be in the county in which the facility is located, to hear comments from
21 interested parties.” *See Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1235 (1994) (section
22 1095.4 hearing requirement satisfied where the Board of Forestry is required to hold a public
23 hearing to review timber harvesting plan and determine if it conforms to the rules and regulations
24 of the board and the Forest Practice Act).

25 In addition to being required to receive public input, the Attorney General’s conditional
26 consent must also only have been determined after considering “relevant factors,” such as the ten
27 enumerated ones set forth in California Corporations Code § 5917. These factors include the
28 Attorney General’s receipt and review of evidence supporting whether the transaction is “fair and

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1 reasonable to the nonprofit corporation,” at “fair market value,” and “in the public interest.” CAL.
2 CORP. CODE § 5917. As part of this evidentiary review, the Attorney General is authorized to
3 contract with experts and consultants (and has done so here). *See* CAL. CORP. CODE § 5919. As a
4 result, the Attorney General’s conditional consent is an adjudicatory administrative decision, and
5 the standard of review in this proceeding must be administrative mandamus.⁶ *See Friends of the*
6 *Old Trees*, 61 Cal. Rptr. 2d at 304–05 (Section 1094.5 review required where the statutes governing
7 the Department of Forestry & Fire Protection’s approval of a timber harvest plan provides
8 numerous opportunities for public and agency input, even though the “Department is not required
9 to hold a trial-type hearing.”); *see also Ebbetts Pass Forest Watch v. Dep’t of Forestry & Fire*
10 *Prot.*, 20 Cal. Rptr. 3d 808, 814 (Cal. Ct. App. 2004) (public meetings to review timber harvest
11 plan satisfy section 1094.5 standard).

12 Not only does the § 1094.5 framework apply, the scope of the Court’s judicial review is
13 necessarily the “independent judgment rule,” because the Attorney General’s conditional consent
14 “substantially affects” Verity’s “fundamental vested right.” *See, e.g., Mann v. Dep’t of Motor*
15 *Vehicles*, 90 Cal. Rptr. 2d 277, 283 (Cal. Ct. App. 1999). Due to the separation of powers doctrine,
16 deprivation of an entity’s or individual’s fundamental rights by an agency cannot evade judicial
17 protection. *See Bixby v. Pierno*, 481 P.2d 242 (Cal. 1971) (“By carefully scrutinizing
18 administrative decisions which substantially affect vested, fundamental rights, the courts of
19 California have undertaken to protect such rights, and particularly the right to practice one’s trade
20 or profession, from untoward intrusions by the massive apparatus of government.”). Thus, “[i]f the
21 decision of an administrative agency will substantially affect such a right, the trial court not only
22 examines the administrative record for errors of law but also exercises its independent judgment
23 upon the evidence disclosed” in a *de novo* review. *Id.*

24 _____
25 ⁶ This is in sharp contrast to the inapplicable §1085 standard involving only ministerial acts: “[a]
26 ministerial act is an act that a public officer is required to perform in a prescribed manner in
27 obedience to the mandate of legal authority and without regard to his own judgment or opinion
concerning such act’s propriety or impropriety, when a given state of facts exists.” *Schwartz v.*
Poizner, 113 Cal. Rptr. 3d 610, 614 (Cal. Ct. App. 2010) (quotations omitted).

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Whether an administrative decision substantially affects fundamental vested rights is determined on a case-by-case basis, in which this Court must consider “whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking *judicial* power.” *Interstate Brands v. Unemployment Ins. Appeals Bd.*, 608 P.2d 707, 713 n.5 (Cal. 1980) (emphasis in original). In this case, the Attorney General’s conditional consent has the practical effect of closing at least three of the Hospitals, forever. In that sense, it is indistinguishable from administrative decisions involving the revocation of a professional license or business permit, which, for decades, courts have consistently held to affect a fundamental right. *See, e.g., Oxford Preparatory Acad. v. Chino Valley Unified Sch. Dist.*, 249 Cal. Rptr. 3d 726, 730–31 (Cal. Ct. App. 2019), *reh’g denied* (July 29, 2019), *review filed* (Aug. 20, 2019) (charter school “has a fundamental vested right to continue operating”); *Coe v. City of San Diego*, 208 Cal. Rptr. 3d 73, 81 (Cal. Ct. App. 2016) (“a decision to revoke a nude entertainment business permit involves a fundamental vested right.”); *The Termo Co. v. Luther*, 86 Cal. Rptr. 3d 687, 697 (Cal. Ct. App. 2008) (“The implementation of the Order and Decision would have the effect not only of shutting down a business that has been in existence for 20 years or more, but also of terminating the right to produce oil—an extraordinarily valuable resource, especially in the current economic era. . . . Certainly, a fundamental vested right is at issue.”); *Bauer v. City of San Diego*, 89 Cal. Rptr. 2d 795, 804 n.14 (Cal. Ct. App. 1999); *Goat Hill Tavern v. City of Costa Mesa*, 8 Cal. Rptr. 2d 385, 391 (Cal. Ct. App. 1992) (“the right to continue operating an established business in which [the owner] has made a substantial investment” is a “fundamental vested right.”). Indisputably, the Debtors’ rights to preserve its Hospitals—such that they can continue providing healthcare and lifesaving procedures to the community they serve—are fundamental, vested, and abridged substantially by the Attorney General’s 2019 Conditions.

The Attorney General may attempt to cast the Debtors’ rights in a purely economic light, incorrectly arguing that the Debtors merely assert the right to sell its businesses. *Cf. SP Star Enterprises, Inc. v. City of Los Angeles*, 93 Cal. Rptr. 3d 152, 162 (Cal. Ct. App. 2009). But, the rights threatened by the Attorney General’s decision are the survival of three Hospitals upon which the public undisputedly depends. *Benetatos v. City of Los Angeles*, 186 Cal. Rptr. 3d 46, 56 (Cal.

1 Ct. App. 2015) (“The substantial evidence test has been applied to review administrative decisions
2 that restrict a property owner’s return on his property, or which increase the cost of doing business,
3 or reduce profits, because such decisions impact mere economic interests rather than fundamental
4 vested rights. In contrast, the independent judgment test is applied to review administrative
5 decisions *that will drive an owner out of business or significantly injure the business’s ability to*
6 *function.*”) (emphasis added).

7 As a result, in this proceeding, this Court “begin[s] its review with a presumption of the
8 correctness of administrative findings, and then, after affording the respect due to these findings,
9 exercise[s] independent judgment in making its own findings.” *Fukuda v. City of Angels*, 977 P.2d
10 693, 701 (Cal. 1999).

11 In addition, “[w]here the court finds that there is relevant evidence that, in the exercise of
12 reasonable diligence, could not have been produced or that was improperly excluded at the hearing
13 before respondent . . . the court may admit the evidence at the hearing on the writ without
14 remanding the case.” C.C.P. § 1094.5(e); *see also Tiholiz v. Northridge Hosp. Found.*, 199 Cal.
15 Rptr. 338, 343 (Cal. Ct. App. 1984) (permitting admission of newly discovered evidence in the
16 form of declarations, finding that “a litigant has a fundamental interest at stake in procedural
17 fairness, including but not limited to an interest in the compilation of an accurate hearing record”).

18 Even if traditional mandamus applies, the Attorney General’s conditional consent
19 constitutes an abuse of his discretion. The Debtors are “beneficially interested” to seek a writ of
20 mandate, in that its particular right to sustain the Hospitals is direct and substantial, especially
21 given the undisputed public need for these hospitals. *Citizens for Amending Proposition L v. City*
22 *of Pomona*, 239 Cal. Rptr. 3d 750, 763–64 (Cal. Ct. App. 2018), *reh’g denied* (Nov. 28, 2018).
23 Under § 1085, the trial court reviews an administrative action to determine whether an agency’s
24 action “was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established
25 public policy, unlawful or procedurally unfair.” *Id.* (quotations omitted). “Although mandate will
26 not lie to control a public agency’s discretion, that is to say, force the exercise of discretion in a
27 particular manner, it will lie to correct abuses of discretion.” *Id.* (quotations omitted).

1 Because public agencies and officials “have a duty to comply with applicable state statutes
2 and local ordinances,” failure to do so is an abuse of discretion that is “arbitrary, capricious, or
3 lacking in evidentiary support.” *Id.* at 774.

4 There are also exceptions to the general rule precluding the consideration of extra-record
5 evidence in traditional mandamus actions, where such evidence provides background information
6 regarding the quasi-legislative agency decision, to establish whether the agency fulfilled its duties
7 in making the decision, or to assist the trial court in understanding the agency’s decision. *Outfitter*
8 *Properties, LLC v. Wildlife Conservation Bd.*, 143 Cal. Rptr. 3d 312, 322 (Cal. Ct. App. 2012).

9 **3. The Attorney General Failed to Assure Preservation of the Hospitals for Their**
10 **Communities**

11 As set forth above, the Attorney General’s discretion to issue conditions of approval of a
12 sale of a nonprofit hospital to a for profit entity is circumscribed by (i) California Corporations
13 Code § 5917, and (ii) the Attorney General’s general statutory and common law obligations to
14 preserve and/or redirect the charitable assets for public benefit. *See, e.g.*, CAL. GOV’T CODE §
15 12598. Although the Attorney General is not a technical fiduciary to such assets, *see Restatement*
16 *of the Law of Charitable Nonprofit Organizations Principles of the Law of Nonprofit Organizations*
17 § 5.01 TD (2017), and although the Attorney General, in the normal course, is not empowered to
18 substitute its judgment for that of the trustees of the charitable assets, the Attorney General’s role in
19 overseeing a nonprofit hospital sale becomes virtually that of a fiduciary to such assets during the
20 sale process. This virtual status results from the multiple layers of statutory and common law
21 requirements imposed on the Attorney General’s decision making, and the Attorney General’s
22 arrogation of the right to impose contractual post-sale restrictions on then for-profit assets (which
23 in fact imposes the Attorney General’s judgment over that of the successor hospital administrator).

24 Here, the Attorney General, in conditionally approving the SGM Sale, has accepted that the
25 Hospitals are no longer sustainable as part of a nonprofit enterprise. There were no nonprofit
26 bidders for the Hospitals. Once the Attorney General has determined that the Hospitals cannot be
27 maintained as nonprofit, the Attorney General’s duties are to (i) ensure that the facility is
28 monetized at a fair market value to the nonprofit seller of the facility, *see* CAL. CORP. CODE §

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1 5917(c), and (ii) ensure that the monies received from the sale of the facility are preserved for
2 charitable use by redirecting them under appropriate *cy pres* guidelines, *see* CAL. GOV'T CODE §
3 12598(a).

4 The Hospitals, once sold, are no longer charitable assets, so the Attorney General's power
5 and his right of oversight of these Hospitals ceases. The 2019 Conditions represent the Attorney
6 General's attempt to subvert California Corporations Code § 5917 and extend his continuing
7 control over non-charitable health care assets. The Attorney General cannot commit such an end-
8 run around the statutory limitations to his decision making discretion. Importantly, any continuing
9 control over the Hospitals is a result solely of a contract entered into between the Attorney General
10 and SGM.

11 One of the paramount obligations of the Attorney General is to preserve charitable assets.
12 This obligation is embodied in California Government Code § 12598(a), which provides that "[t]he
13 primary responsibility for supervising charitable trusts in California, . . . *for protection of assets*
14 *held by charitable trusts* and public benefit corporations, resides in the Attorney General."
15 (emphasis added). It is also one of the factors set forth by the Legislature in California
16 Corporations Code § 5917(h). *See* CAL. CORP. CODE § 5917(h) ("The agreement or transaction
17 may create a significant effect on the availability or accessibility of health care services to the
18 affected community.").

19 The Attorney General is duty-bound to ensure that the Hospitals survive, and, thus, cannot
20 impair availability or access of the community to health care facilities. The Attorney General
21 breached his obligation to act in a manner to preserve the charitable assets by imposing the
22 Additional Conditions with full knowledge that such conditions would result in the closure of at
23 least 3 Hospitals. *See* Exhibit "E;" *see also* Baronoff Decl. ¶ 7. The Attorney General's actions
24 will have destroyed, not preserved, the charitable assets. Such action clearly controverts the
25 Attorney General's discretion. Agency decisions, such as those of the Attorney General here, are
26 subject to judicial review and can be reversed if the court finds that the agency's discretionary
27 choice is an abuse of discretion. *See Motor Vehicle Mfrs. Assn. of the U.S. v. State Farm Mut. Auto*
28 *Ins. Co.*, 463 U.S. 29 (1983); *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216, 271

(1994); *Coachella Valley Unified School Dist. v. State of Cal.*, 176 Cal. App. 4th 93, 113-118 (Cal. Ct. App. 2009); *Paulsen v. Golden Gate University*, 25 Cal. 3d 803, 808 (1979); *Saleeby v. State Bar*, 39 Cal. 3d 547, 563 (1985); *Quackenbush v. Mission Ins. Co.*, 46 Cal. App. 4th 458, 465 (Cal. Ct. App. 1996).

Based upon the foregoing, the Attorney General has abused his discretion and breached his most basic duty to preserve charitable assets and to ensure access and availability of health care facilities for the community.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court enter an order (i) finding that the SGM Sale is free and clear of the Additional Conditions, or alternatively, (b) the Attorney General has abused his discretion in imposing the Additional Conditions, and (iii) granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: September 30, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

Attorneys for Verity Health Systems of
California, Inc., *et al.*

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas dedicated to health and healing. In this role, I was responsible for leading Sanford Health’s growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan; Sanford Foundation (a philanthropic fundraising foundation); Sanford Frontiers (a commercial and real estate company); Profile by Sanford (a scientific weight loss program); and Sanford World Clinic (which operates clinics in multiple countries).

4. From 2012 to 2017, I served as the President of Sanford Frontiers and had the responsibility of starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for leading strategic, operational and financial aspects within Sanford

1 Clinic. From 2004 to 2006, I served as Director of Clinical Operations at Sanford Children's
2 Specialty Clinic and led the Pediatric Subspecialty Physician program and the clinical practice
3 through all facets of the operation.

4 5. Prior to Sanford Health, I served as the Director of Engineering and Six Sigma
5 Master Black Belt at GE Medical Systems, and before that served as the Vice President of Research
6 and Development and the Co-Owner/Founder of Micro Medical Systems. I have a bachelor of
7 science in business administration and a masters of business administration in healthcare
8 management.

9 6. On May 2, 2019, the Court entered an order (the "Sale Order") approving the sale of
10 substantially all assets of Debtors'⁷ remaining hospitals (St. Francis Medical Center ("SFMC"), St.
11 Vincent Medical Center ("SVMC") including the St. Vincent Dialysis Center ("SVDC"), and Seton
12 Medical Center ("SMC"), including Seton Medical Center Coastside Campus ("SMCC")
13 (collectively the "Hospitals"), to Strategic Global Management, Inc. ("SGM") for \$610 million (the
14 "SGM Sale"), subject to certain adjustments, plus the payment of cure costs and assumption of
15 certain liabilities, as more fully set forth in that certain asset purchase agreement (the "APA")
16 [Docket No. 2306].

17 7. The Debtors, SGM and third parties have expended tremendous efforts to prepare
18 for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken a
19 significant amount of time and resources and simply cannot be undone. By way of example: (i) the
20 Debtors sent "WARN notices" to approximately 4,900 employees, pursuant to the federal Worker
21 Adjustment and Retraining Notification Act of 1988; (ii) thousands of counterparties to executory
22 contracts and unexpired leases, including physicians, have relied on the Sale Order and continued
23 to provide services in reliance on the finality of that Sale Order; (iii) the Debtors and SGM have
24 spent months facilitating an efficient close of the sale, with approximately 20 different
25 workstreams, meeting at least weekly to ensure a smooth transition of operations; (iv) government
26 agency personnel, including the California Department of Public Health and the Board of

27 _____
28 ⁷ "Debtors" collectively refers to VHS and its affiliated debtors in this proceeding.

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1 Pharmacy, have been diligently processing SGM's change of ownership applications for licenses
2 and permits in reliance on the finality of the Sale Order; (v) the Debtors, SGM, and each of the
3 Debtors' six unions spent months successfully negotiating and finalizing modified collective
4 bargaining agreements; (vi) the medical groups affiliated with the Debtors have sent termination
5 notices to their remaining physicians; (vii) the Debtors and SGM have coordinated changes in
6 insurance coverages and insurance policies to ensure seamless coverage for employees and
7 patients, and (viii) the Debtors have created plans to shut off certain services after the close of the
8 SGM Sale. In addition, the Debtors have no further financing source.

9 8. Attached hereto as Exhibit "1" is a true and correct copy of a September 18, 2019
10 letter from Chokri BenSaid, Director of the Hospital Division of the United Healthcare Workers
11 West Service Employees International Union, Inc., to Deputy Attorney General Scott Chan,
12 expressing support for the SGM Sale. Attached hereto as Exhibit "2" is a true and correct copy of a
13 letter from Jennifer Lemmon, Collective Bargaining Director of the California Nurses Association,
14 to Attorney General Becerra, to the same effect. Attached hereto as Exhibit "3" is a true and
15 correct copy of a September 24, 2019 letter from Mark Shinderman, counsel for the official
16 committee of unsecured creditors, to Attorney General Becerra, also expressing support for the
17 SGM Sale.

18 9. I have reviewed the conditions (the "2019 Conditions") set forth in the September
19 25, 2019 report issued by the California Attorney General (the "Attorney General") regarding the
20 SGM Sale. The 2019 Conditions require, among other things, that SGM continue to operate the
21 Hospitals and maintain various services, clinics and contractual arrangements for a period of time
22 greater than the period of time that Debtors would have been obligated under the 2015 Conditions
23 (defined below) if the Debtors had the ability to continue to operate the Hospitals. The 2019
24 Conditions are also materially different than those to which SGM agreed in Schedule 8.6 because
25 they impose additional conditions including, among other things, greater requirements for charity
26 care expenditures, community benefit expenditures, capital expenditures, and do not account for the
27 substantial shift in charity care needs following the implementation of the Affordable Care Act.

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1 10. The 2019 Conditions are in large part the same as the proposed conditions
2 (“Proposed Conditions”) set forth in the Initial Health Care Impact Statements prepared by JD
3 Healthcare. Annexed hereto as Exhibit “E” is a true and correct copy of a letter from SGM’s
4 counsel, Todd Swanson of Hooper, Lundy & Bookman, P.C., to Deputy Attorney General Scott
5 Chan, explaining that SGM would not accept the Proposed Conditions to the extent they materially
6 differ from Schedule 8.6 to the APA.

7 11. I previously urged the Attorney General not impose conditions that would threaten
8 to close the Hospitals or otherwise unwind stakeholders’ heroic efforts to save these Hospitals.
9 This was detailed in my *Declaration filed in support of the Notice of Submission of Debtors’*
10 *Response to the Health Care Impact Statements and Conditions Imposed By JD Healthcare, Inc.*
11 [Docket No. 2946], a true and correct copy of which is annexed hereto as Exhibit “E”. It was also
12 detailed in my August 23, 2019 letter to Deputy Attorney General Scott Chan, as true and correct
13 copy of which is annexed hereto as Exhibit “E”.

14 12. Further, during the week of August 26, 2019, Deputy Attorney General Scott Chan
15 held public hearings at each of the Hospitals to solicit comments regarding the SGM Sale. I
16 attended each of the public meetings in person. At each public meeting, representatives of SGM
17 and the Debtors made public statements detailing the economic impact of the conditions proposed
18 by the Attorney General’s expert, JD Healthcare, and the economic situation confronting each
19 Hospital; urging the Attorney General to consider economic factors when issuing his conditions;
20 and reiterating that any conditions exceeding those in Schedule 8.6 of the SGM APA could result in
21 the termination of the SGM Sale and the closure of the Hospitals.

22 13. As was the case with the Proposed Conditions, many of the 2019 Conditions are
23 materially inconsistent with those to which SGM has agreed in Schedule 8.6, and do not take into
24 consideration the negative economic impact of the 2019 Conditions and the conditions imposed on
25 the Hospitals in 2015 (the “2015 Conditions”).

26 14. Without regard to the economic and community realities, certain of the 2019
27 Conditions force the Hospitals to maintain programs that not only suffer significant losses an
28

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1 annual basis, but are unnecessary because the same services (and in some instances, more
2 comprehensive services) are already provided at other hospitals in the area.

3 15. The economic impact of the 2019 Conditions cannot be understated. As a hospital
4 operator, I know from first-hand experience operating and overseeing the Hospitals that (i) the
5 2015 Conditions were too burdensome, (ii) hampered the Hospitals ability to prosper, as discussed
6 above, and (iii) accelerated the demise of these Hospitals. Verity, its employees, tens of thousands
7 of vendors and other parties have made tireless efforts during the sale process to ensure high
8 quality continued patient care and to take the necessary steps that would allow the Hospitals to be
9 sold to a new operator that could successfully operate the Hospitals. The Bankruptcy Court has
10 now approved the sale to SGM, which paves the way for these Hospitals and the communities they
11 serve to continue the Hospitals' mission of quality patient care.

12 16. The Debtors did not receive any other qualified bid to purchase the Hospitals. Thus,
13 there is no back-up bidder to purchase the Hospitals if the SGM Sale does not close. Additionally,
14 SGM representatives have repeatedly told the Debtors that multiple lenders have informed SGM
15 that they would not agree to finance the SGM Sale if the conditions were not consistent with
16 Schedule 8.6, which makes the SGM Sale nearly impossible to close. Consequently, if the
17 Additional Conditions were imposed, they would create an environment where it is likely no lender
18 would be willing to finance the sale of the Hospitals to SGM, ensuring closure of at least three of
19 the Hospitals.

20 17. Due to the Debtors' liquidity issues, unsustainable operating losses, and the absence
21 of an interested viable purchaser, SVMC, Seton Medical Center, and Seton Coastsides would need
22 to be closed if the SGM Sale does not close. The closures of SVMC, Seton Medical Center, and
23 Seton Coastsides would result in the loss of approximately 2,900 jobs.

24 18. As to SFMC, the Debtors would likely attempt a private sale in the bankruptcy
25 cases. I, however, foresee significant challenges to SFMC's sustainability and sale. Specifically,
26 any new sale of SFMC would require additional time, which would result in an exorbitant amount
27 of administrative and other expenses in these cases. By way of an example, the Debtors would
28 need to find a new buyer after a marketing process, seek approval from the Court, and then await

1 yet another review by the Attorney General. To even accomplish the foregoing, it is likely that the
2 Debtors would need to obtain debtor in possession financing to help fund operations, which would
3 carry another layer of expense.

4 19. Consequently, even if the Debtors were able to sell SFMC in the event the SGM
5 Sale failed, recoveries to creditors would be significantly reduced by hundreds of millions of
6 dollars since (i) there would not be any proceeds from the sale of SVMC, Seton, and Seton
7 Coastside, and (ii) the delay associated with the second sale of SFMC.

8 20. The Hospitals provide access to essential healthcare services in their communities.
9 Faced with the possibility of losing the Hospitals in their entirety, rote application of the 2015
10 Conditions should yield to the pragmatics of economics and demonstrable patient care and
11 community need.

12 21. If the SGM transaction does not close, the Debtors, employees, pension holders,
13 other stakeholders, and community members, would be exposed to significant and unrecoverable
14 health care and economic loss.

15 22. If the SGM Sale fails, the most likely outcome is that at least three of the Hospitals
16 will have to close. Altogether, between July 1, 2018 and June 30, 2019, the Hospitals had more
17 than 34,000 inpatient admissions and 312,000 outpatient visits. If the Hospitals are closed, all of
18 those patients would be forced to find alternative providers for treatment, perhaps at greater
19 distances than they are now required to travel for treatment at the Hospitals. For example, Seton
20 Coastside is the only emergency room facility on the Pacific Coast between Daly City and Santa
21 Cruz. Additionally, Seton Coastside has 116 skilled nursing facility (“SNF”) beds and, if Seton
22 Coastside were closed, those residents would be forced to be relocated significant distances to find
23 alternative facilities. In my experience, the risk of negative outcomes for emergency room patients
24 increases as the distance, and therefore the time, required to obtain treatment, increases.
25 Additionally, in addition to the difficulty in finding alternative facilities for the SNF patients, the
26 impact of transfer trauma on this population could be significant.

27 23. Further, among the other stakeholders which will be harmed by a failed SGM Sale
28 are the vendors that have supported the Hospitals by providing credit terms throughout these cases.

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1 Under the SGM Sale, these creditors will receive payment for their support of the Hospitals during
2 the sale process. A failed sale to SGM would put that at risk. In addition, there are thousands of
3 vendors whose contracts will likely be assumed by SGM in the sale. Consequently, these vendors
4 will be paid for their prepetition claims, an estimated total recovery for these vendors of \$50
5 million. Even those vendors whose contracts are not assumed by SGM are still expected to receive
6 millions of dollars of recoveries. In total, the failed sale to SGM would cost these vendors tens of
7 millions of dollars in recoveries. Further, there would be a loss of future income for services
8 provided to the operating Hospitals on a go-forward basis.

9 24. The Hospitals have approximately 4,900 employees. SGM has committed to retain
10 “substantially all” employees of the Debtors, as set forth in the APA.

11 25. In the past week, the Debtors have finalized settlement agreements (the “Settlement
12 Agreements”) with each and every union that is party to collective bargaining agreements (the
13 “CBAs”) related to the Hospitals being sold to SGM. The Settlement Agreements provide, *inter*
14 *alia*, for modification and assignment of the CBAs to SGM (along with waiver of any cure
15 obligations of the Debtors), the treatment and allowance of certain claims, including severance for
16 employees who are not offered employment, paid time off, and retiree health (for the few retirees
17 who utilize the program) and the waiver of other claims. The Settlement Agreements are
18 conditioned on Bankruptcy Court approval and on other important events, including Plan
19 confirmation and closing of the sale to SGM for a purchase price that is not materially different
20 from the amount contained in the SGM APA. The Debtors are in the process of finalizing pleading
21 papers that will request Court approval of the Settlement Agreements and related relief, which it
22 expects to file for expedited consideration presently.

23 26. The SGM Sale presents the Debtors’ stakeholders with the best possible alternative,
24 and the failure of the SGM transaction will likely result in a loss of healthcare access for vulnerable
25 populations, as well as jobs of thousands of employees.

26 ///

27 ///

28

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

3 Executed this 30th day of September, 2019, in Los Angeles, California.

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6 Richard G. Adcock
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Exhibit 1

Adcock Declaration



UNITED HEALTHCARE
WORKERS WEST
SERVICE EMPLOYEES
INTERNATIONAL
UNION, CLC

Via U.S. Mail

September 18, 2019

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 94814-2919

Scott Chan, Deputy Attorney General
State of California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

RE: Verity Health Systems, Inc. and Strategic Global Management, Inc.

Dear Mr. Becerra and Mr. Chan,

The Service Employees International Union United Healthcare Workers West (SEIU-UHW), represents approximately 1,400 workers at St. Francis Medical Center and St. Vincent Medical Center. SEIU-UHW is writing in support of the sale transaction between Verity Health Systems, Inc. and Strategic Global Management, Inc. Given that Verity Health Systems has been in bankruptcy proceedings for over a year and Strategic Global Management was the only entity to submit a qualified bid for St. Francis Medical Center and St. Vincent Medical Center we believe this transaction is the best way to preserve jobs and patient care. Therefore, we urge a prompt closing of this sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Chokri BenSaid", is located below the "Sincerely," text.

Chokri BenSaid
Director, Hospital Division
SEIU – UHW

Dave Regan - President
Stan Lyles - Vice President

560 Thomas L. Berkley Way
Oakland, CA 94612
510-251-1250
FAX 510-763-2680

5480 Ferguson Drive
Los Angeles, CA 90022
323-734-8399
FAX 323-721-3538

Exhibit 2

Adcock Declaration



**California
Nurses
Association**



**National
Nurses
United**

A Voice for Nurses. A Vision for Healthcare.

OAKLAND
155 Grand Avenue
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

Via U.S. Mail

September 17, 2019

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 94814-2919

Scott Chan, Deputy Attorney General
State of California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

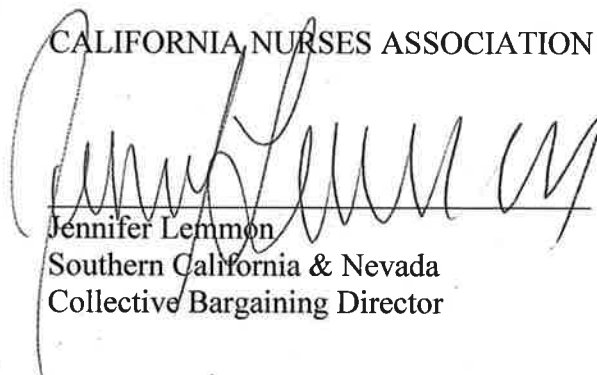
RE: Verity Health Systems, Inc. and Strategic Global Management, Inc.

Dear Mr. Becerra and Mr. Chan:

The California Nurses Association represents approximately 468 registered nurses at St. Vincent Medical Center and approximately 396 registered nurses at Seton Medical Center. CNA is writing in support of the sale transaction between Verity Health Systems, Inc. and Strategic Global Management, Inc. Given that Verity Health Systems has been in bankruptcy proceedings for over a year and Strategic Global Management was the only entity to submit a qualified bid for St. Vincent Medical Center and Seton Medical Center, we believe this transaction is the best way to preserve jobs and patient care. Therefore, we urge a prompt closing of this sale.

Sincerely,

CALIFORNIA NURSES ASSOCIATION



Jennifer Lemmon
Southern California & Nevada
Collective Bargaining Director

Exhibit 3

Adcock Declaration

Milbank

MARK SHINDERMAN

Partner

2029 Century Park East, 33rd Floor | Los Angeles, CA 90067-3019

T: 424.386.4411

MShinderman@milbank.com | milbank.com

September 24, 2019

VIA EMAIL

The Honorable Xavier Becerra
Attorney General, State of California
1300 I Street
Sacramento, CA 95814

Dear Attorney General Becerra:

The official committee of unsecured creditors (the “Committee”) of debtor Verity Health System (“Verity”), a statewide healthcare provider, represents the interests of Verity’s creditor constituency, including labor unions, retirees, and tort claimants, among others. The Committee is charged with the obligation to help maximize the recoveries of all unsecured creditor constituents.

Verity is rapidly depleting cash reserves such that prolonging the proceedings could result in the shuttering of healthcare facilities in underserved communities. Verity’s proposed sale of assets to Strategic Global Management, Inc., an affiliate of KPC, presents an opportunity to offer continued access to health care services for those communities served by Verity, while also providing an opportunity for unsecured creditors to obtain some recovery, albeit small (absent successful litigation with the secured creditors and others). The Committee is not aware of any alternative at this point that would accomplish these goals.

Time is of the essence and any delay in closing would be very costly. Verity estimates, and the Committee believes, that the cost of delay is almost \$5 million per week. Consequently, any further delay could eliminate unsecured creditor recoveries entirely.

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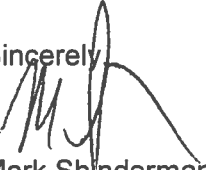
MILBANK LLP

NEW YORK | LOS ANGELES | WASHINGTON, D.C. | SÃO PAULO | FRANKFURT
LONDON | MUNICH | BEIJING | HONG KONG | SEOUL | SINGAPORE | TOKYO
145535\1047143

September 24, 2019

Page | 2

Thank you for your consideration of the Committee's views and we look forward to further discussing this matter with you should you have any questions.

Sincerely,

Mark Shinderman
Milbank

#4810-3748-0337v2

145535\1047143

DECLARATION OF PETER BARONOFF

Peter Baronoff declares as follows:

1. I am currently the Chief Executive Officer of KPC Healthcare, Inc., which owns four hospitals in Orange County: The Orange County Global Medical Center, Southcoast Global Medical Center, Anaheim Global Medical Center, and Chapman Global Medical Center. I am also the Chief Executive Officer of Physicians for Healthy Hospitals, Inc., which owns Hemet Global Medical Center and Mennefee Global Medical Center. I am the Chief Executive Officer of Victor Valley Hospital Acquisition, Inc., which owns the Victor Valley Global Medical Center. All of the afore-said hospitals are acute care hospitals, and collectively referred to as “KPC”.

2. Following the commencement of the Chapter 11 cases for Verity Health Systems of California, Inc., et al (collectively “Verity”), I began discussions with Verity’s representatives regarding the possible acquisition by Strategic Global Management, Inc. (“SGM”), one of KPC’s affiliates, of one or more of the Verity hospitals. Over the course of the months beginning November 2018 and continuing into February 2019, I was directly involved in the negotiations on behalf of SGM in connection with SGM’s prospective acquisition of St. Vincent Medical Center, St. Vincent Dialysis Center, St. Francis Medical Center, and Seton Medical Center (including its Seton Medical Center Coastsides campus) (“the SGM Hospitals”). These negotiations eventually led to the execution of an Asset Purchase Agreement between SGM and Verity for the SGM Hospitals (“APA”).

3. During the course of SGM’s negotiations with Verity, there were innumerable issues that the parties confronted, discussed, negotiated and ultimately resolved when the parties reached a final agreement on the terms of the APA. One of the most intensely negotiated subjects had to do with the prospective conditions that might be imposed by the California Attorney General (“Attorney General”) in connection with the proposed transfer of the SGM Hospitals to SGM. Based upon my prior experience with hospital acquisitions, both in connection with my employment at KPC and also in connection with my prior employment as an

executive of Promise Healthcare (“Promise”), I was well aware of the Attorney General’s approval process in connection with the sale of not for profit hospitals and with the precedent for the Attorney General to impose conditions on such sales. Indeed, I was personally involved, on behalf of Promise, in the Gardens Regional Hospital Chapter 11 case. Promise was a DIP lender and stalking horse bidder for Gardens Regional Hospital, but was ultimately outbid by SGM at the auction. When SGM terminated its purchase agreement, as a result of the imposition by the Attorney General of condition, which were deemed burdensome by SGM, that sale transaction was terminated and Gardens Regional Hospital was eventually closed.

4. Knowing that, in our case, SGM’s acquisition of the SGM Hospitals would undergo an approval process by the Attorney General, and knowing that the Attorney General might impose conditions that would not be acceptable to SGM, SGM recognized the importance of negotiating a provision in its Asset Purchase Agreement which would protect it from the possibility that the Attorney General would impose conditions on the transfer of the hospitals to SGM which would be burdensome from a financial standpoint and otherwise. Accordingly, SGM and Verity spent an enormous amount of time negotiating the provisions of what became Section 8.6 (and Schedule 8.6 referenced therein) of the APA. Without question, the negotiation of Section 8.6 was the most intensely negotiated provision of the APA. In fact, it was not until the morning of the hearing to approve SGM as the stalking horse purchaser, which took place on February 6, 2019, that the parties, with input from the Official Creditors Committee and other stakeholders, were able to agree on the final wording of Section 8.6.

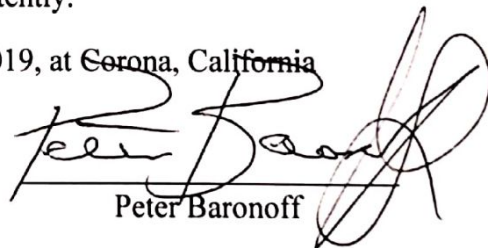
5. In essence, the parties agreed that if the Attorney General imposed “Additional Conditions” (as used in Section 8.6), SGM would not be obligated to close the sale unless Verity was able to procure from the Bankruptcy Court or another court, a supplemental sale order finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions. Section 8.6 also discusses certain time limits and finality requirements, as more specifically set forth therein.

6. The Additional Conditions referred to in Section 8.6 were those conditions which are materially different than the conditions approved by SGM in Schedule 8.6. Additional Conditions which individually or collectively impose a direct or indirect cost to SGM of \$5 million, or more, shall be conclusively deemed to be “materially different.”

7. On September 25, 2019, the Attorney General issued his decision with respect to the proposed transfer of the SGM Hospitals to SGM (“Decision”). We have carefully reviewed the Decision. The Attorney General’s Decision imposes numerous conditions on the transfer of the SGM Hospitals to SGM. Many of these conditions are “Additional Conditions” as that term is used in Section 8.6 of the APA. SGM has evaluated the Additional Conditions and has advised Verity that, based upon these Additional Conditions, SGM is invoking its rights under Section 8.6 of the APA. Accordingly, SGM has advised Verity that SGM will not close the purchase of the SGM Hospitals unless Verity is able to obtain the requisite court order within the time period provided for in Section 8.6.

8. I declare under penalty of perjury, of the laws of the United States of America, that all of the foregoing facts are true and correct and if sworn to testify concerning the contents of this Declaration I could and would do so competently.

Executed this 30th day of September, 2019, at Corona, California


Peter Baronoff

PETER C. CHADWICK

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

1. I am a Managing Director of Berkeley Research Group, LLC (“BRG”) and am duly authorized to make this declaration (the “Declaration”) on behalf of BRG. I obtained a BA from Pennsylvania State University, and an MBA in Finance from Babson College, Olin School of Business. Before joining BRG, I was an Executive Director at Capstone Advisory Group, LLC. Prior to that, I was a Senior Managing Director at FTI Consulting. For more than twenty years, I have served as a chief restructuring officer, chief executive officer, chief operating officer, chief financial officer and as a financial advisor and trustee in complex restructuring matters. Among other things, I have significant experience in the healthcare arena and effectuating sale transactions.

2. On November 7, 2018, the Court entered an order employing BRG [Docket No. 785] as the financial advisors to Verity Health System of California, Inc. and the above-referenced debtors and debtors in possession (collectively, the “Debtors”), the above captioned chapter 11 cases (the “Cases”). I have diligently worked with the Debtors on every aspect of their Cases. In addition, I have been serving as Chief Financial Officer of Seton Medical Center since September 1, 2019.

3. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents or information provided to me by employees of BRG and the Debtors. In preparing this Declaration, I have relied on my experience as described above. I am also assisted by others at BRG who work at my direction in the preparation of the analysis and other information included herein. In addition, I reviewed the Debtors’ schedules and legal papers. In preparing this Declaration, I worked with persons at the Debtors’ facilities with factual knowledge of information upon which I have relied. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

4. This Declaration is in support of the *Debtors’ Emergency Motion for the Entry of an Order (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved*

1 *by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing*
2 *Conditions on That Sale; and (IV) Granting Related Relief* (the “Motion”), and for all other
3 purposes permitted by law. All capitalized terms not otherwise defined herein shall have the same
4 meaning as in the Motion.

5 5. I have reviewed the conditions (the “2019 Conditions”) set forth in the September
6 25, 2019 report (the “Report”) issued by the California Attorney General (the “Attorney General”)
7 regarding the proposed sale of St. Francis Medical Center (“SFMC”), St. Vincent Medical Center
8 (“SVMC”), and Seton Medical Center, including its Daly City and Coastside Campuses (“Seton”)
9 (collectively, the “Hospitals”), to Strategic Global Management, Inc. (“SGM”) and its affiliated
10 entities, as reflected in that certain Asset Purchase Agreement (the “APA”). I have also compared
11 the 2019 Conditions to Schedule 8.6 to the APA.

12 6. Several of the 2019 Conditions differ materially from Schedule 8.6 attached to the
13 APA (the “Additional Conditions”). The Additional Conditions would have a significant impact
14 on the economic viability of the Hospitals and increase the purchase price in the APA to nearly a
15 billion dollars. By way of example only, the 2019 Conditions would require SVMC to remain
16 operated and maintained as a licensed general acute care hospital (as defined in California Health
17 and Safety Code Section 1250) through December 2024, whereas Schedule 8.6 provides that
18 SVMC must be operated through December 2020. The reported Financial Statements of SVMC
19 reflect that, in fiscal 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which
20 was an 18% and 103% increase over the fiscal years 2018 and 2017, respectively. Attached
21 hereto as Exhibit “1” is a true and correct copy of excerpts from SVMC’s Financial Statements,
22 which reflect this information. Assuming operating losses at SVMC can be maintained at fiscal
23 2019 levels (a highly optimistic assumption), the buyer of the Hospitals would likely incur
24 additional estimated losses totaling \$260 million. Moreover, the \$260 million loss would likely
25 need to be financed. Using an average interest rate of 5% for four years of debt service would
26 result in estimated incremental financing charges totaling approximately \$25 million.
27 Accordingly, this 2019 Condition alone would place a potential burden on the buyer of at least
28 \$285 million beyond that contemplated in Schedule 8.6.

7. The Additional Conditions also impose certain charity care (“Charity Care”) requirements on SGM. The Charity Care requirement presents another example of the significant economic impact of the 2019 Conditions when compared with Schedule 8.6. The 2019 Conditions require SGM to provide an annual amount of Charity Care at SFMC equal to or greater than \$12,793,435 for a period of six fiscal years, which is at least \$4,793,435, per year more than SGM has agreed to provide pursuant to Schedule 8.6 for a period of seven years. After adjusting for the one-year shorter required duration of this 2019 Condition, the estimated incremental cost to the buyer would be nearly \$20 million in total over the six years. The 2019 Conditions provide for additional increases in Charity Care amounts for SVMC and Seton, as well as increases across all three Hospitals in Community Benefit Service amounts. Moreover, these Charity Care conditions would actually require the Hospitals to increase the Charity Care they provide above current levels.

8. In summary, the total financial impact of just these two examples of 2019 Conditions would require SGM to incur additional losses of approximately \$305 million beyond those contemplated by Schedule 8.6. Attached hereto as Exhibit “2” is a chart reflecting the economic analysis set forth above. When compared to the buyer’s APA purchase price of \$610 million, these represent a 50% increase in the price for the sale of these distressed assets. The magnitude of these losses calls into question the viability of the acquisition.

9. The two examples of 2019 Conditions addressed above were selected to illustrate the impact on the viability of the system and impact on sale. In fact, many of the other 2019 Conditions materially diverge from Schedule 8.6, including those addressing cancer services and select uneconomic payor agreements. In addition, some of the 2019 Conditions diverge from the conditions under which VHS is currently required to operate (the “2015 Conditions”), including those addressing continuing liver transplant services and acting as a ST-Elevation Myocardial Infarction receiving center. The 2015 Conditions locked the Hospitals into financial obligations and operational obligations that made financial success impossible (the Debtors have lost hundreds of millions of dollars as a result of the implementation of the 2015 Conditions). The Hospitals’ adherence to the Additional Conditions (aside from the two specific examples

1 discussed in paragraphs 6-8 above) would add an additional burden of tens of millions of dollars
2 in losses, further undermining the viability of the Hospitals.

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

5 Executed this 30th day of September, 2019, in Los Angeles, California.

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8 PETER C. CHADWICK
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit 1

Chadwick Declaration

**Summary Income Statement
 FY2017-FY2019**

	FY2017	FY2018	FY2019
REVENUE			
Patient Revenue			
Inpatient Services	\$1,031,722,636	\$1,120,000,426	\$979,692,248
Outpatient Services	383,037,203	411,103,372	402,645,143
Gross Patient Revenue	\$ 1,414,759,839	\$ 1,531,103,798	\$ 1,382,337,391
Deductions from Revenue			
Contractual Adjustments	1,174,183,134	1,293,377,840	1,178,503,798
Charity	7,976,081	5,548,555	3,991,237
Other	17,232,577	15,584,788	17,122,307
Total Deductions	\$ 1,199,391,792	\$ 1,314,511,183	\$ 1,199,617,341
Pat. Rev, Net of Contractuals Allowances and Other Ded.	215,368,047	216,592,615	182,720,050
Provision for Doubtful Accounts	7,104,285	12,283,488	3,003,719
Net patient revenue	\$ 208,263,762	\$ 204,309,127	\$ 179,716,331
Other Revenue	1,963,454	1,213,265	1,671,292
Total Net Revenue	\$ 210,227,216	\$ 205,522,392	\$ 181,387,623
Premium Revenue	18,312,060	31,090,903	19,728,154
Contributions	1,217,644	1,021,479	939,167
Total Revenues	\$ 229,756,920	\$ 237,634,774	\$ 202,054,945
EXPENSES			
Operating and Administrative			
Salaries and Wages	76,453,029	86,207,418	84,278,891
Registry Nursing	5,471,579	7,041,543	5,707,894
Other Contract	1,482,844	563,584	1,055,157
Employee Benefits	22,346,934	20,619,577	23,178,513
Total Labor	\$ 105,754,386	\$ 114,432,122	\$ 114,220,456
Medical Fees	4,936,536	5,585,232	5,346,478
Supplies	48,264,174	52,175,517	41,735,262
Purchased Services	58,529,533	77,992,667	59,339,626
Insurance	2,217,126	2,408,853	2,362,620
Utilities	4,239,356	4,268,399	4,892,640
Depreciation	6,036,514	5,800,329	5,956,136
Interest	3,074,678	2,750,781	2,677,934
Total Expenses	\$ 233,052,303	\$ 265,413,900	\$ 236,531,152
Operating Income Excl Corp Allocation/Management Fees	\$ (3,295,383)	\$ (27,779,126)	\$ (34,476,207)
Corp Allocation	28,553,827	27,063,467	30,319,534
Operating Income Incl Corp Allocation	\$ (31,849,210)	\$ (54,842,593)	\$ (64,795,741)

Source: Internal financial statements

Exhibit 2

Chadwick Declaration

50%

DECLARATION OF HOPE R. LEVY-BIEHL

I, Hope R. Levy-Biehl, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am an attorney at law licensed to practice before all courts in the State of California. I am a partner in the law firm of Nelson Hardiman LLP, attorneys for Verity Health System of California, Inc. (“VHS”).

2. This Declaration is in support of the *Debtors’ Emergency Motion for the Entry of an Order (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief* (the “Motion”), and for all other purposes permitted by law. All capitalized terms not otherwise defined herein shall have the same meaning as in the Motion.

3. Upon information and belief, I understand VHS has had an ongoing dialogue for several years with the California Attorney General about the financial challenges facing VHS and the future of the O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), and Seton Medical Center, including its Daly City and Coastsides Campuses (“Seton”). For example, I understand that in anticipation of filing for bankruptcy, VHS representatives met with Deputy Attorney General Wendi Horwitz in July of 2018.

4. On December 27, 2018, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving a sale of OCH and SLRH, and related assets, to Santa Clara County (the “SCC Sale”).

5. Upon information and belief, I understand VHS representatives subsequently met with Attorney General Xavier Becerra and Senior Advisor Becerra Melanie Fontes Rainer in

1 Sacramento in February of 2019, to discuss the pending SCC Sale and the forthcoming auction and
2 sale of SFMC, SVMC and Seton (collectively, the “Hospitals”).

3 6. On May 2, 2019, the Court entered the order (the “Sale Order”) approving the sale
4 of substantially all assets of Debtors’ Hospitals, to Strategic Global Management, Inc. (“SGM”)
5 for \$610 million (the “SGM Sale”), plus the payment of cure costs and assumption of certain
6 liabilities, as more fully set forth in that certain asset purchase agreement (the “APA”) [Docket No.
7 2306].

8 7. In anticipation of submitting a notice and request for approval of the SGM Sale to
9 the Attorney General’s office, VHS representatives from Nelson Hardiman (including myself)
10 engaged with Deputy Attorney General Scott Chan beginning in early April 2019. These
11 discussions and exchanges were regular and ongoing, and addressed, among other things, the
12 substantive and procedural requirements for the submission and review and the related timeline. At
13 all times, VHS consistently requested an expedited review of the submission in light of its
14 significant operating losses and cash flow challenges.

15 8. By letter dated May 7, 2019, VHS provided notice to, and requested written consent
16 from, the Attorney General for the SGM Sale pursuant to California Corporations Code Section
17 5914 and Title 11 of the California Code of Regulations, Section 999.5. *See* Docket No. 2379. As
18 outlined in the submission and discussed a number of times in writing, in person and by email with
19 various representatives of the Attorney General, the SGM Sale was critical and truly the only
20 option to help ensure that the Hospitals would survive the current financial challenges facing them
21 and be preserved as providers of essential health care services to the communities they serve.

22 9. The submission to the Attorney General, on May 7, 2019, was supplemented and
23 completed on May 13, 2019, with the filing made to the Federal Trade Commission pursuant to the
24 Hart-Scott-Rodino Antitrust Improvements Act 1976, as amended.

25 10. VHS representatives thereafter engaged in ongoing discussions with the Attorney
26 General’s office, requesting, among other things, an in-person meeting to review the submission
27 and transaction prior to the completion of its expert’s Health Care Impact Statements and the
28 expedited processing of the submission. The Attorney General denied both requests.

11. The Attorney General retained JD Healthcare to prepare Health Care Impact Statements regarding the proposed sale of the Hospitals. After conducting interviews of certain corporate and hospital personnel of VHS and other stakeholders in July 2019, and in advance of the public hearings held by the Attorney General, JD Healthcare released its Health Care Impact Statements concerning the proposed sale of the Hospitals on August 16, 2019 and August 19, 2019.

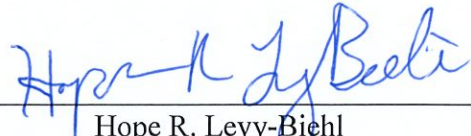
12. By letter, dated August 21, 2019, SGM submitted its response to the Health Care Impact Statements and the embedded recommended conditions. By letter dated August 23, 2019, VHS submitted its response to these statements and conditions, which was also filed with the Bankruptcy Court. True and correct copies of these letters are annexed as Exhibit “E” to the Motion.

13. In late August 2019, Deputy Attorney General Scott Chan, on behalf of the Attorney General, held public meetings relating to each affected hospital. I attended the public hearings regarding the sale of SFMC and SVMC. At each of the public meetings I attended, Rich Adcock of VHS, Peter Baronoff of SGM, and Sam Maizel of Dentons US LLP, each spoke directly and on the record about the economic issues raised by the potential conditions for each hospital, and urged the Attorney General to consider the economic implications of the conditions he would impose. Mr. Adcock and Mr. Baronoff made clear that the proposed transaction would be at risk, and therefore the continued operations of the Hospitals would be at risk, if the Attorney General imposed conditions which exceeded the conditions agreed to in Schedule 8.6. I understand Rich Adcock, Peter Baronoff and Sam Maizel made similar statements at the Seton public hearings.

14. Following its receipt of the “deal breaker” letters and the public hearings, the Attorney General’s office met first with representatives from SGM on September 6, 2019, and subsequently with representatives of both SGM and VHS on September 19, 2019. Upon information and belief, I understand that at the meeting on September 19, 2019, SGM informed the Attorney General’s office that it would not proceed with the transaction if the Attorney General imposed conditions beyond those it agreed to accept in Schedule 8.6 to the APA.

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

Executed this 30th day of September, 2019, in Los Angeles, California.



Hope R. Levy-Biehl

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibits to Memorandum of Points and Authorities

Exhibit A

Sale Order

Case 2:18-bk-20151-ER Doc 2306 Filed 05/02/19 Entered 05/02/19 17:02:03 Desc
Main Document Page 1 of 27 Docket #2306 Date Filed: 5/2/2019

1 SAMUEL R. MAIZEL (Bar No. 189301)
2 samuel.maizel@dentons.com
3 TANIA M. MOYRON (Bar No. 235736)
4 tania.moyron@dentons.com
5 DENTONS US LLP
6 601 South Figueroa Street, Suite 2500
7 Los Angeles, California 90017-5704
8 Tel: (213) 623-9300 / Fax: (213) 623-9924
9 Attorneys for the Chapter 11 Debtors and
10 Debtors In Possession

FILED & ENTERED

MAY 02 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO STRATEGIC GLOBAL
MANAGEMENT, INC. FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: April 17, 2019

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

Debtors and Debtors In Possession.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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Case 2:18-bk-20151-ER Doc 2306 Filed 05/02/19 Entered 05/02/19 17:02:03 Desc Main Document Page 2 of 27

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 This matter came before the Court on the *Motion For The Entry Of (I) An Order (1)*
2 *Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective*
3 *Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking*
4 *Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4)*
5 *Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5)*
6 *Approving Procedures Related To The Assumption Of Certain Executory Contracts And*
7 *Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of*
8 *All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 1279], filed by Verity Health
9 System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in
10 possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of
11 an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the
12 “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

13 At the previous hearing on the Motion on February 19, 2019 (the “Bidding Procedures
14 Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) St
15 Vincent IPA Medical Corporation and Angeles IPA [Docket No. 1397]; (ii) the California
16 Attorney General [Docket No. 1352]; (iii) MGH Painting Inc. [Docket No. 1358]; and (iv) Belfor
17 USA Group, Inc. [Docket No. 1364]. The Court ruled that the Premature Objections were
18 premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the
19 “Bidding Procedures Order”) [Docket No. 1572]. The Bidding Procedures Order also stated that
20 objections filed by the U.S. Department of Health and Human Services and Centers for Medicare
21 and Medicaid Services [Doc. No. 1346] and the California Department of Health Care Services
22 [Doc. No. 1353] (the “Continued Objections”) were continued, as resolved by stipulations
23 [Docket Nos. 1458 and 1473, respectively], approved by this Court’s orders [Docket Nos. 1465
24 and 1483, respectively].

25
26
27 ¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
28 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and
all “LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court
for the Central District of California.

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1 Any additional objections that were filed and overruled at the Bidding Procedures
2 Hearing are not listed herein.

3 The Court, having reviewed the Memorandum [Docket No. 2115], the Declarations of
4 Richard Adcock [Docket Nos. 8 and 1469] and James Moloney [Docket No. 2220] in support
5 thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The*
6 *Debtors That May Be Assumed And Assigned* [Docket No. 1704], the *Supplemental Notice To*
7 *Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be*
8 *Assumed and Assigned* [Docket No. 1836], the *Second Supplemental Notice Re Notice to*
9 *Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be*
10 *Assumed and Assigned* [Docket No. 2065] (together Docket Nos. 1704, 1836 and 2065 are the
11 “Cure Notice”), the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic*
12 *Global Management, Inc. For Assumption and Assignment* [Docket No. 2131] (the “Designation
13 Notice”), the *Notice That No Auction Shall Be Held Re Debtors’ Motion and Motion for the Entry*
14 *of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and*
15 *for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and*
16 *Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested*
17 *Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder;*
18 *and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and*
19 *Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All*
20 *Claims, Liens and Encumbrances* [Docket No. 2053] (the “No-Auction Notice”), the objections
21 filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos.
22 1788; 1804; 1819; 1830; 1849; 1850; 1852; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-
23 1877 1881; 1882; 1885; 1890-1892; 1904; 1926; 1930; 1933; 1940; 1946; 1948; 1949; 1953;
24 1954; 1965; 2058; 2066; 2108; 2113; 2144; 2146; 2148, 2150, 2157, 2161, 2162] (the “Cure
25 Objections”), the objection by the California Department of Health Care Services (the “DHCS”)
26 [Docket No. 1879], the *Stipulation Continuing Hearing Regarding Creditors U.S. Department of*
27 *Health and Human Services and California Department of Health Care Services* [Docket No.

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DENTONS US LLP
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1 2125], the *Limited Opposition of Belfor USA Group, Inc. to Debtors' Motion for an Order*
2 *Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket
3 No. 2130], the *Objection of United Healthcare Insurance Company to Debtors' Motion for Order*
4 *Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, Etc.* [Docket No. 2145]
5 filed United Healthcare Insurance Company, *SEIU-UHW's Objection and Reservation of Rights*
6 *to Debtors' Sale Motion* filed by the Service Employees International Union, United Healthcare
7 Workers-West [Docket No. 2147], the *Limited Objection and Reservation of Rights of United*
8 *Nurses Associations of California to Motion of Debtors for Approval of Sale [of Remaining*
9 *Hospital Assets to the Highest Bidder* [Docket No. 2155] filed by the United Nurses Association
10 of California, the *Reservation of Rights of U.S. Bank National Association, As Series 2015 Note*
11 *Trustee and as Series 2017 Note Trustee and as Series 2017 Note Trustee, with Respect to*
12 *Debtors' Motion for Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for*
13 *Stalking Horse Bidder and For Stalking Horse Bidder and for Prospective Overbidders (2)*
14 *Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3)*
15 *Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing*
16 *to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to*
17 *the Assumption of Certain Executory Contracts and Unexpired Leases and (II) an Order (A)*
18 *Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket
19 No. 2156] filed by U.S. Bank National Association, As Series 2015 Note Trustee and as Series
20 2017 Note Trustee, the *Official Committee of Unsecured Creditors Response to the Debtors'*
21 *SGM Sale Motion* [Docket No. 2164], the *Reservation of Rights of California Statewide*
22 *Communities Development Authority to Motion of Debtors for Approval of Sale [of Remaining*
23 *Hospital Assets] to the Highest Bidder* [Docket No. 2168] filed by the California Statewide
24 Communities Development Authority, the Premature Objections, the Continued Objections, and
25 any withdrawals thereof, the statements, arguments and representations of the parties made at the
26 Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief
27 sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and that
28

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the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 2221]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; and for the reasons set forth in the Court's tentative ruling [Docket No. 2221], which the Court adopts as its final ruling and which is incorporated herein by reference; and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated January 8, 2019, a copy of which is attached as Exhibit "A" to Docket No. 1279 (the "APA"); (ii) the Sale Hearing; (iii) the No-Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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1 of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also
2 complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed
3 sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to
4 object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

5 D. Arm's Length Transaction. The APA and other documents and instruments (the
6 "Transaction Documents") related to and connected with this transaction (the "Transaction") and
7 the consummation thereof were negotiated and entered into by the Debtors and Strategic Global
8 Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith and
9 through an arm's length bargaining process. Neither SGM nor any of its affiliates or
10 representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the
11 Debtors, SGM, or their respective representatives engaged in any conduct that would cause or
12 permit the APA, any of the other Transaction Documents or the Transaction to be avoided under
13 § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the
14 APA and the other Transaction Documents, including, without limitation, the consideration
15 provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be
16 avoided, and no damages may be assessed against SGM or any other party, as set forth in §
17 363(n). The consideration provided by SGM is fair, adequate and constitutes reasonably
18 equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws
19 of the United States or any of its jurisdictions or subdivisions, including the State of California.

20 E. Good Faith Purchaser. SGM has proceeded in good faith and without collusion in
21 all respects in connection with the sale process, in that: (i) SGM, in proposing and proceeding
22 with the Transaction in accordance with the APA, recognized that the Debtors were free to deal
23 with other interested parties; (ii) SGM agreed to provisions in the APA that would enable the
24 Debtors to accept a higher and better offer; (iii) SGM complied with all of the provisions in the
25 Bidding Procedures Order applicable to SGM; (iv) all payments to be made by SGM and other
26 agreements entered into or to be entered into between SGM and the Debtors in connection with
27 the Transaction have been disclosed; (v) the negotiation and execution of the APA and related
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1 Transaction Documents were conducted in good faith and constituted an arm's length transaction;
2 (vi) SGM did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not
3 entered into, and the Transaction being consummated pursuant to and in accordance with the
4 APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of
5 the Debtors. SGM is therefore entitled to all of the benefits and protections provided to a good-
6 faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the
7 authorization provided herein to consummate the Transaction shall not affect the validity of the
8 Transaction, any terms or conditions of the Transaction or SGM's status as a "good faith"
9 purchaser.

10 F. Justification for Relief. Good and sufficient reasons for approval of the APA and
11 the other Transaction Documents and the Transaction have been articulated to this Court in the
12 Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale
13 Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have
14 demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good,
15 sufficient and sound business purpose and justification and (ii) compelling circumstances for the
16 transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of
17 business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business
18 judgment and in the best interests of the Debtors, their estates, and their creditors.

19 G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the
20 Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer
21 and sale of the Purchased Assets and, except with respect to the liens arising from the Special
22 Assessments and the PACE Obligations (each as defined in §1.1(a)(iii) of the APA) assumed by
23 SGM, shall vest in SGM, through the consummation of the Transaction, all of the Debtors' right,
24 title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights
25 of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other
26 similar contractual property, legal or equitable rights, and any successor or successor-in-interest
27 liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or
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1 more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of
2 Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are
3 deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did
4 object fall within one or more of the other subsections of § 363(f). All holders of the
5 Encumbrances in the Purchased Assets are adequately protected by having their respective
6 Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets
7 under the APA (subject to any Challenge within the meaning of that certain *Final Order (I)*
8 *Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens*
9 *and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection,*
10 *(V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final
11 DIP Order") that has been, or may be, timely filed³), and any related documents or instruments
12 delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the
13 extent and manner herein provided.

14 H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause
15 to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in
16 consummating the Transaction, and it is in the best interests of the Debtors and their estates to
17 consummate the Transaction within the timeline set forth in the Motion and the APA. The Court
18 finds that there is no just reason for delay in the implementation of this Order, and expressly
19 directs entry of judgment as set forth in this Order.

20
21 ³ The Final DIP Order granted to the Committee standing to file the requisite pleading to
22 challenge the validity, enforceability and amount of the Prepetition Liens (each such proceeding
23 or appropriate pleading commencing a proceeding or other contested matter, a "Challenge")
24 within ninety (90) days from the formation of the Committee (the "Challenge Deadline"). See
25 Final DIP Order ¶ 5(e). The Committee's investigation as to the Prepetition Liens remains
26 ongoing. The Committee and the Prepetition Secured Creditors have entered into a number of
27 stipulations (the "Challenge Stipulations") by which the Committee has acknowledged and
28 stipulated to the validity, enforceability and perfection of the Prepetition Liens in certain
collateral identified in the Challenge Stipulations, and by which the Challenge Deadline has been
extended a number of times with respect to the validity, enforceability and perfection of the
Prepetition Liens in any other collateral. The Challenge Deadline with respect to any Prepetition
Liens for which the Committee has not stipulated pursuant to the Challenge Stipulations as to the
validity, enforceability and perfection thereof is now May 13, 2019.

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1 I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have
2 demonstrated that it is an exercise of their sound business judgment to assume and assign to SGM
3 the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below)
4 and to the extent subsequently identified by SGM pursuant to paragraph 16 below, the
5 Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently
6 Identified Designated Contracts and the Subsequently Identified Contracts are collectively
7 referred to herein as the “Designated Contracts”) in connection with the consummation of the
8 Transaction, and the assumption and assignment of the Designated Contracts is in the best
9 interests of the Debtors and their estates.

10 J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the
11 APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any
12 of the Designated Contracts will have been cured, within the meaning of § 365(b)(1)(A), by
13 payment of the amounts and in the manner set forth below, unless otherwise agreed by SGM and
14 the counterparty. SGM has provided or will provide adequate assurance of future performance of
15 and under the Designated Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and
16 shall have no further obligation to provide assurance of performance to any counterparty to a
17 Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the
18 Debtors (i.e., St. Francis Medical Center, a California nonprofit public benefit corporation (“St.
19 Francis Medical Center”), St. Vincent Medical Center, a California nonprofit public benefit
20 corporation (“St. Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California
21 nonprofit public benefit corporation (“St. Vincent Dialysis Center”), and Seton Medical Center, a
22 California nonprofit public benefit corporation (“Seton Medical Center”) (collectively, the
23 “Hospitals”), VHS, and Verity Holdings LLC, a California limited liability company
24 (“Holdings”)), and assigned to SGM under the APA shall be assigned and transferred to, and
25 remain in full force and effect for the benefit of, SGM, notwithstanding any provision in such
26 Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated
27 that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss
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1 resulting from a default on or prior to the Closing under any of the Designated Contracts within
2 the meaning of § 365(b)(1)(B).

3 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors will have
4 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
5 the Hospitals to reject all of their executory contracts and unexpired leases, excluding (i)
6 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
7 addition to the Hospitals, (iii) any prepetition contract that is the subject of a Rule 9019 settlement
8 motion prior to Closing, and (vi) any collective bargaining agreement, pension plan or health and
9 welfare plan providing collectively bargained benefits to which a Hospital is a party or sponsor,
10 which matters shall be scheduled for determination as provided in paragraph 33 below. Each
11 such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31,
12 and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this
13 paragraph K, prior to Closing and shall request therein that the rejection be effective as of the
14 Closing or as otherwise appropriate.

15 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
16 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
17 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
18 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
19 better offer to purchase the Purchased Assets. Other than SGM's Stalking Horse Bid, the Debtors
20 received two Qualified Partial Bids by the Partial Bid Deadline and did not receive a Qualified
21 Full Bid (as such terms are defined by the Bidding Procedures Order). The Debtors properly
22 consulted with the Consultation Parties in selecting the SGM Stalking Horse Bid as the highest
23 and best bid and in determining that no auction should be held (as such terms are defined in the
24 Bidding Procedures Order), as set forth in their No-Auction Notice. The transfer and sale of the
25 Purchased Assets to SGM on the terms set forth in the APA constitutes the highest or otherwise
26 best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates
27 than would be provided by any other available alternative. The Debtors' determination, in
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1 consultation with the Consultation Parties (as defined in the Bidding Procedure Order), that the
2 APA constitutes the highest or best offer for the Purchased Assets and to not conduct an auction
3 constitutes a valid and sound exercise of the Debtors' business judgment.

4 M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased
5 Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it
6 does not propose to (i) impair or restructure existing debt of, or equity or membership interests in,
7 the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the
8 Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or
9 (iv) classify claims or equity or membership interests.

10 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at
11 the Sale Hearing establish just cause for the relief granted herein.

12 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

13 1. The relief requested in the Motion is GRANTED and APPROVED in all respects
14 to the extent provided herein.

15 2. All objections with regard to the relief sought in the Motion that have not been
16 withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including
17 any reservation of rights included in such objections, are overruled on the merits with prejudice.
18 To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the
19 terms of this Sale Order shall prevail.

20 3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the
21 transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA, is approved
22 in all respects, and the Debtors are authorized and directed to consummate the Transaction in
23 accordance with the APA, including, without limitation, by executing all of the Transaction
24 Documents (and any ancillary documents or instruments that may be reasonably necessary or
25 desirable to implement the APA or the Transaction) and taking all actions necessary and
26 appropriate to effectuate and consummate the Transaction (including the transfer and sale of the
27 Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon
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1 the terms set forth in the APA, including, without limitation, assuming and assigning to SGM the
2 Designated Contracts. The Debtors and SGM shall have the right to make any mutually
3 agreeable, non-material changes to the APA, which shall be in writing signed by both parties,
4 without further order of the Court provided, that after reasonable notice, the Official Committee
5 of Unsecured Creditors (the "Committee"), the DIP Agent (as defined in the Final DIP Order
6 defined below), and the Prepetition Secured Creditors (as defined in the Final DIP Order) do not
7 object to such changes. Any timely objection by the aforementioned parties to any agreed non-
8 material changes to the APA may be resolved by the Court on shortened notice.

9 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal,
10 valid, enforceable and effective transfer and sale of the Purchased Assets to SGM free and clear
11 of all Encumbrances, except with respect to the liens arising from the Special Assessments and
12 the PACE Obligations assumed by SGM, as further set forth in the APA and this Sale Order; and
13 (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable
14 against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor
15 thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the
16 Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the
17 Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the
18 Purchased Assets, all counterparties to the Designated Contracts and all other persons and
19 entities.

20 5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge
21 within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale
22 Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,
23 effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the
24 Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force,
25 extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any
26 Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and
27 authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition
28

1 Secured Creditors, as applicable, pursuant to the Final DIP Order, to the extent that (i) the rights
2 granted to the Prepetition Secured Creditors with respect to §§506(c) and 552(b) by the Final DIP
3 Order are not limited or modified as a result of the appeal from the Final DIP Order filed by the
4 Committee on November 29, 2019; and/or (ii) any replacement liens or security interest granted
5 to the Prepetition Secured Creditors by the Final DIP Order are not invalidated as a result of any
6 Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In
7 addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect
8 to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to
9 the extent of and in accordance with its terms with all parties reserving all rights thereunder.

10 6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order
11 shall, as of the Closing, be considered and constitute for all purposes a full and complete general
12 assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all
13 of the Debtors' rights, title and interest in and to the Purchased Assets to SGM. Consistent with,
14 but not in limitation of the foregoing, each and every federal, state, and local governmental
15 agency or department, except as stated herein, is hereby authorized and directed to accept all
16 documents and instruments necessary and appropriate to consummate the transactions
17 contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be
18 filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any
19 Encumbrances of record.

20 7. Any person or entity that is currently, or on the Closing Date may be, in
21 possession of some or all of the Purchased Assets is hereby directed to surrender possession of
22 such Purchased Assets either to (a) the Debtors before the Closing or (b) to SGM or its designee
23 upon the Closing, and to cooperate with the Debtors and SGM in the Debtors' and SGM's
24 fulfillment of their obligations hereunder and pursuant to the APA.

25 8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall
26 be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and
27 upon consummation of the Transaction, including, without limitation, payment of the Purchase
28

1 Price to the Debtors, vest SGM with all right, title, and interest in the Purchased Assets, free and
2 clear of all Encumbrances. Upon closing of the Transaction, SGM shall take title to and
3 possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the
4 APA. The transfer of the Purchased Assets from the Debtors to SGM constitutes a transfer for
5 reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the
6 State of California.

7 9. Following the Closing, no holder of any Encumbrance against the Debtors or upon
8 the Purchased Assets shall interfere with SGM's respective rights in, title to or use and enjoyment
9 of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from
10 taking any action that would adversely affect or interfere with the ability of the Debtors to sell
11 and transfer the Purchased Assets to SGM, including the assumption and assignment of the
12 Designated Contracts.

13 10. SGM shall not be deemed, as a result of any action taken in connection with, or as
14 a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a
15 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their
16 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,
17 doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of
18 origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere
19 continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed
20 Liabilities, SGM is not assuming any of the Debtors' debts.

21 11. This Sale Order (i) shall be effective as a determination that, on Closing, all
22 Encumbrances existing against the Purchased Assets before the Closing have been
23 unconditionally released, discharged and terminated, and that the transfers and conveyances
24 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all
25 persons and entities. If, following a reasonable written request made by the Debtors, any person
26 or entity that has filed financing statements or other documents or agreements evidencing any
27 Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or
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1 in connection with Closing, in proper form for filing and executed by the appropriate parties,
2 termination statements, instruments of satisfaction, releases of all Encumbrances which the
3 person or entity has with respect to the Purchased Assets, then SGM and/or the Debtors are
4 hereby authorized to execute and file such statements, instruments, releases and other documents
5 on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of
6 doubt, such statements, instruments, releases and other documents shall not impair Encumbrances
7 that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or
8 may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
9 paragraphs 5 and 13 hereof.

10 12. In accordance with the APA, concurrently with the Closing, SGM shall pay that
11 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
12 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in the
13 APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the
14 Prepetition Secured Creditors, and the Committee in advance of the Closing.

15 13. The terms and conditions of the Final DIP Order shall apply with respect to the
16 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
17 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

18 (a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale
19 Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each
20 such hereafter referred to as "Escrow Deposit Account");

21 (b) in giving direction to SGM pursuant to sub-paragraph (a), above, the Debtors shall
22 exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among
23 the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of
24 the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of
25 rights in paragraph 4 of the Final DIP Order and paragraph 31 of the Bidding Procedures Order;
26 provided further that nothing in this paragraph shall waive or limit any rights the Committee or
27 the Prepetition Secured Creditors may have in connection with the confirmation of a proposed
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1 chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate
2 values and the Sale Proceeds);

3 (c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP
4 Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account
5 shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors
6 or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit
7 Agreements or the Final DIP Order without further order of this Court, after reasonable notice
8 under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee;
9 and

10 (d) each Escrow Deposit Account shall be subject to a deposit account control agreement
11 in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the
12 DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with
13 respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation,
14 following the occurrence of an Event of Default or the Revolving Loan Termination Date (as
15 defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in
16 any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17
17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first
18 obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or
19 obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the
20 circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the
21 Committee and, if necessary, a hearing thereon; and

22 (e) for the avoidance of doubt, the rights of the Debtors, the Committee, and the
23 Prepetition Secured Creditors as to the Sale Proceeds and any funds held in a Deposit Escrow
24 shall be, except as set forth herein, as contemplated by Paragraph 4 of the Final DIP Order, and
25 nothing in this Order shall be construed as altering, amending, waiving, or affecting in any way
26 such rights. Concurrently with the Closing or as soon thereafter as is possible, and in accordance
27 with the APA, SGM shall pay to the counter-parties to the Designated Contracts the cure amounts
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1 set forth in the Cure Notice, or as otherwise agreed to by the Debtors, SGM and the applicable
2 counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections
3 (the “Designated Cure Amounts”). SGM has the right under the APA to remove any Contracts
4 from the list of Designated Contracts up to seven (7) days prior to Closing, as also set forth in the
5 *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of*
6 *Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2)*
7 *Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections*
8 [Docket No. 1865].

9 14. To the extent that any of the contracts and/or leases, which give rise to the
10 Designated Cure Amounts and are set forth in the Designation Notice and are not subsequently
11 and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding*
12 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
13 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
14 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865] (the “Currently Identified
15 Designated Contracts”) are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SGM, and SGM shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. The Court shall resolve any and all disputes which may
21 arise between the Debtors, SGM and any of the Currently Identified Designated Contract
22 Counter-Parties over whether the Currently Identified Designated Contracts are executory
23 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
24 Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the
25 Designated Cure Amounts (the “Assumption Dispute”).

26 15. In the event that the Court determines that any such counter-parties to the
27 Currently Identified Designated Contracts (the “Currently Identified Designated Contract”
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1 Counter-Parties” and, individually, a “Currently Identified Designated Contract Counter-Party”)
2 have an allowed cure claim against the Debtors which exceeds the Designated Cure Amounts (the
3 “Excess Cure Amount”), the difference will be paid by SGM and shall not be the responsibility of
4 the Debtors as more specifically set forth below; provided, however, that unless the Court makes
5 such a determination on or before fifteen (15) days prior to Closing, and unless the Debtor, SGM
6 and the Currently Identified Designated Contract Counter-Party agree otherwise, the Currently
7 Identified Designated Contract which is the subject of such Assumption Dispute, shall be deemed
8 a rejected contract within the meaning of § 1.11(a) of the APA as of ten (10) days prior to
9 Closing, and SGM, except as provided below, shall have no obligation to assume such Currently
10 Identified Designated Contract or to pay any Cure Amount or Excess Cure Amount in connection
11 with such Currently Identified Designated Contract. To the extent an Assumption Dispute relates
12 solely to the Cure Amount, the Debtors may, with SGM’s consent, assume and assign the
13 applicable executory contract or unexpired lease at Closing and prior to the resolution of the
14 Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has
15 estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and SGM has remitted
16 such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the
17 relevant Debtor(s), or (b) SGM provides to the relevant Debtor(s) and non-Debtor counterparty a
18 separate reasonably acceptable undertaking that SGM will promptly pay the maximum disputed
19 cure amount in accordance with 11 U.S.C. § 365 (b)(1)(A) and (B) (or such smaller amount as
20 may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor
21 party and SGM). The Debtors shall pay and hereby are authorized to pay disputed cure amounts
22 from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent
23 SGM remitted to Sellers the amount required by item (a) of this paragraph of the Order.

24 16. All of the Currently Identified Designated Contracts, to the extent they are
25 executory contracts or unexpired leases and are not subsequently and timely removed by SGM
26 under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order*
27 *(1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*
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1 *Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking*
2 *Horse Bid Protections* [Docket No. 1865], or deemed a rejected contract within the meaning of §
3 1.11(a) of the APA pursuant to paragraph 15 above, shall be part of the Designated Contracts that
4 will be assumed by the Debtors and assigned to SGM at the Closing. In the event that SGM elects
5 to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated
6 Contracts (the "Subsequently Identified Designated Contracts" and, individually, a "Subsequently
7 Identified Designated Contract") under the APA and the *Order Approving Stipulation Regarding*
8 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
9 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
10 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865], SGM shall notify the Debtors
11 of any such Subsequently Identified Designated Contracts on or before thirty days before Closing,
12 and the Debtors shall (i) file a notice with the Court identifying all such Subsequently Identified
13 Designated Contracts and their respective cure amounts as agreed upon between the Debtors and
14 SGM, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently
15 Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-
16 Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and
17 assigned to SGM at the Closing, with SGM to be obligated to pay all cure amounts owing to such
18 Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as
19 set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SGM and the applicable
20 counter-parties thereto, or ordered by the Court in accordance with paragraphs 34 and 36 below
21 (the "Additional Cure Amounts"), so long as such amount as ordered by the Court is no greater
22 than the amount agreed upon by SGM; and in the event the Additional Cure Amount is greater
23 than the amount agreed upon by SGM, and SGM is not willing to pay the Additional Cure
24 Amount, the Debtors shall not be required to pay the Additional Cure Amount(s) and the
25 Subsequently Identified Designated Contract(s) shall be deemed a rejected contract within the
26 meaning of § 1.11(a) of the APA pursuant to paragraph 15 above; provided, and for the avoidance
27 of doubt, no collective bargaining agreement, pension plan or health and welfare plan providing
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1 collectively bargained benefits to which a Hospital is a party or sponsor constitutes a Currently
2 Identified Designated Contract or a Subsequently Identified Designated Contract for which SGM
3 or the Debtors may be obligated to pay any cure amount.

4 17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or
5 transfer each of the Designated Contracts to SGM, including the Currently Identified Designated
6 Contracts and any Subsequently Identified Designated Contracts (collectively, the “Contract Counter-
7 Parties”). At the Closing, SGM shall pay the (i) Sale Proceeds, (ii) the Designated Cure Amounts
8 identified in paragraph 13 above, (iii) the Excess Cure Amounts identified in paragraph 15 above, and
9 (iv) the Additional Cure Amounts, subject to paragraph 15 above. Payment by SGM of such
10 Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient
11 amounts to “cure” all “defaults” with respect to all such Currently Identified Designated Contracts and
12 Subsequently Identified Designated Contracts under § 365(b). The foregoing payment shall (i) effect a
13 cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii)
14 compensate all such Contract Counter-Parties for any actual pecuniary loss resulting from any such
15 default. The Debtors shall then have assumed and assigned to SGM, effective as of the Closing, all of
16 the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all
17 Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the
18 Debtors of all such Designated Contracts to SGM shall not be a default thereunder. After the payment
19 of the Designated Cure Amounts and the Additional Cure Amounts, neither the Debtors nor SGM shall
20 have any further liabilities to any Contract Counter-Parties, other than SGM’s obligations under the
21 Designated Contracts that accrue and become due and payable after the Closing Date. In addition,
22 adequate assurance of future performance has been demonstrated by or on behalf of SGM with respect
23 to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent
24 applicable) and 365(f)(2)(B). For the avoidance of doubt, SGM shall not be liable for the payment of
25 any liabilities or obligations arising from or related to (a) any executory contracts that the Debtors
26 intend to reject by appropriate motion and which are not being assumed and assigned to SGM, (b) any
27 multiparty contract affecting more than one Debtor in addition to one of the hospitals subject to the
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1 Transaction, or (c) any collective bargaining agreement (“CBA”), pension plan, or health and welfare
2 plan providing for collectively bargained for benefits to which a Hospital is a party or a sponsor, unless
3 expressly assumed and assigned with SGM’s consent.

4 18. The Debtors intend, and are hereby authorized, to (A) reject, pursuant to § 365(a), all
5 executory contracts to which one or more of the Hospitals are a party, excluding (i) Designated
6 Contracts, and (ii) any prepetition multiparty contract affecting more than one Debtor in addition
7 to one of the Hospitals, and, (B) reject and terminate, to the extent separately authorized by this
8 Court, pursuant to §§ 1113, 1114, and any other applicable provision of the Bankruptcy Code,
9 any collective bargaining agreement, pension plan or health and welfare plan providing
10 collectively bargained benefits to which one of the Hospitals is a party or sponsor and that SGM
11 does not assume.

12 19. All of the Contract Counter-Parties are forever barred, estopped, and permanently
13 enjoined from (i) raising or asserting against the Debtors or SGM, or any of their property, any
14 assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment,
15 arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of
16 the consummation of the Transaction contemplated by the APA, including, without limitation, the
17 Transaction and the assumption and assignment of the Designated Contracts, including any asserted
18 breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or
19 any purported written or oral modification to the Designated Contracts and (ii) asserting against SGM
20 any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of
21 the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed
22 Obligations.

23 20. Any provisions in any Designated Contracts that prohibit or condition the assignment
24 of such Designated Contract or allow the counterparty to such Designated Contract to terminate,
25 recapture, impose any penalty, condition on renewal or extension or modify any term or condition
26 upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions

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1 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
2 Designated Contract to SGM in accordance with the APA, pursuant to § 363(f).

3 21. The terms and provisions of this Sale Order, as well as the rights granted under the
4 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
5 reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding entry
6 of any order of conversion or dismissal any such conversion, dismissal or order entry. Nothing
7 contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a
8 plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict
9 with or derogate from the provisions of the APA, any documents or instruments executed in
10 connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict
11 between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern.
12 The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or
13 dismissal of the cases and the entry of any other order that may be entered in the cases, including any
14 order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7;
15 (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

16 22. The Transaction contemplated by the APA and other Transaction Documents are
17 undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy
18 Code. SGM is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the
19 full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization
20 provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the
21 sale of the Purchased Assets to SGM. The APA and the Transactions contemplated thereby cannot be
22 avoided under § 363(n).

23 23. The failure to specifically include any particular provision of the APA or the other
24 Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such
25 provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other
26 Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of
27 this Sale Order are non-severable and mutually dependent.

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1 24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. §
2 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or
3 otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective
4 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
5 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

6 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
7 Debtors to the extent necessary, without further order of this Court, to (i) allow SGM to deliver any
8 notice provided for in the APA and Transaction Documents and (ii) allow SGM to take any and all
9 actions permitted under the APA and Transaction Documents in accordance with the terms and
10 conditions thereof.

11 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
12 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
13 shall govern.

14 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
15 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
16 (i) hear and determine all disputes between the Debtors and/or SGM, as the case may be, and any other
17 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
18 assignment thereof by the Debtors to SGM and any dispute between SGM and the Debtors as to their
19 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
20 delivery of the Purchased Assets to SGM free and clear of Encumbrances, except with respect to the
21 liens arising from the Special Assessments and the PACE Obligations; (iii) compel the delivery of the
22 Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and
23 enforce the provisions of this Sale Order; and (v) protect SGM against (A) claims made related to any
24 of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability
25 (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any
26 Encumbrances asserted on or against SGM or the Purchased Assets.

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1 28. Following the date of entry of this Sale Order, the Debtors and SGM are authorized to
2 make changes to the APA and/or execute supplemental agreements implementing the transactions
3 contemplated by the APA without the need for any further order of the Court provided that all such
4 changes have been approved in writing by the Debtors, SGM, the Committee, the DIP Agent, and
5 Prepetition Secured Creditors. Any other proposed changes to the APA or this Sale Order shall require
6 a further order of the Court, after reasonable notice under the circumstances and a hearing.

7 29. Notwithstanding any other provision of this Sale Order or any other Order of this
8 Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal
9 license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory
10 approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as
11 amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take
12 any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory
13 conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are
14 fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or
15 authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

16 30. To the extent the Purchased Assets contain records of the Verity Health System
17 Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension
18 Plans") or employment records of participants of the Pension Plans, SGM shall store, and
19 preserve any such records until the Pension Benefit Guaranty Corporation ("PBGC") has
20 completed its investigation regarding the Pension Plans and shall make such documents available
21 to PBGC for inspection and copying. Such records include, but are not limited to, any Pension
22 Plan governing documents, actuarial documents, and employment records (collectively, the
23 "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan
24 Documents that are not Purchased Assets no earlier than February 28, 2020, and shall make such
25 documents available to the PBGC for inspection and copying.

26 31. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of
27 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
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1 Hospitals' Medi-Cal Provider Agreements or (ii) DHCS will file a supplemental objection to the
2 proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply
3 to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing
4 will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or
5 rejection of the Medi-Cal Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all
6 parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall
7 apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement
8 between the Debtors and the DHCS or a Court order resolving the DHCS's objections.

9 32. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of
10 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
11 Hospitals' Medicare Provider Agreements or (b) HHS will file a supplemental objection to the
12 proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to
13 the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will
14 be held on the issues raised regarding the transfer and/or proposed assumption and assignment or
15 rejection of the Medicare Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all
16 parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall
17 apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement
18 between the Debtors and the HHS or a Court order resolving the HHS's objections.

19 33. In accordance with the terms of §§ 4.7 and 5.11 of the APA, the Debtors and SGM will
20 negotiate regarding modification of applicable CBAs. To the extent the Debtors seek modification,
21 rejection and/or termination of CBAs, they will comply with the requirements of § 1113, as applicable,
22 and may do so before or after Closing under their discretion.

23 34. A continued hearing on the Cure Objections shall be held on June 5, 2019, at 10:00
24 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than May 22,
25 2019, at 4:00 p.m. (Pacific Time), the Debtors shall file a notice containing a list of (a) the Cure
26 Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is
27 required. As to the Cure Objections for which Court intervention is required, pursuant to the Order
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1 *Approving Omnibus Stipulation Continuing Hearing on Certain Objections to Notice and*
2 *Supplemental Notice of Contracts Designated for Assumption and Assignment [Docket No. 2183], the*
3 *deadline for the Debtors to reply to the Cure Objections shall be May 29, 2019, at 4:00 p.m. (Pacific*
4 *Time). ~~the following briefing schedule shall apply: (1) the Debtors' opposition to each outstanding~~*
5 *~~Cure Objection shall be submitted by no later than May 22, 2019; and (2) the counterparties' reply in~~*
6 *~~support of its Cure Objections shall be submitted by no later than May 29, 2019.~~ Nothing in this Sale*
7 *Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved*
8 *until resolved either by agreement between the Debtors and the contract counterparty or further order*
9 *of the Court.*

10 35. As to any executory contracts or unexpired leases that were listed on the Initial
11 Designated Contract List, but not listed on any prior Cure Notice, any counterparty thereto may file an
12 objection to the cure amount or assumption thereof by May 22, 2019, and all other provisions in
13 paragraph 34 shall apply to resolution thereof.

14 36. As to Subsequently Identified Designated Contracts, (i) promptly upon SGM's
15 identifying such contract(s), the Debtors shall file a notice with the Court identifying all Subsequently
16 Identified Designated Contracts no later than 30 days prior to Closing and provide service thereof in
17 accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated
18 Contracts were not listed on a Cure Notice, counterparties subject to contracts who object to
19 assumption and/or the proposed cure amounts must file an objection no later than 14 days prior to
20 Closing, and any reply shall be filed no later than 7 days prior to Closing. To the extent that a
21 negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently
22 Identified Designated Contracts shall be adjudicated by the Court, which shall resolve any and all
23 disputed issues related to the objection(s).

24 37. The California Attorney General, the Debtors, the Consultation Parties (as defined in
25 the Bid Procedures Order) and SGM, reserve all rights, arguments and defenses concerning the
26 California Attorney General's authority, if any, to review the sale under California Corporations Code
27 §§ 5914-5924 and California Code of Regulations on Nonprofit Hospital Transactions—Title 11,
28

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Chapter 15, § 999.5, and any conditions issued thereto. Nothing in this Sale Order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

38. The Committee and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31 to 36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31 to 37 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

IT IS SO ORDERED.

###

Date: May 2, 2019



Ernest M. Robles
United States Bankruptcy Judge

Exhibit B

2019 Conditions



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

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September 25, 2019

VIA EMAIL AND US MAIL

Hope R. Levy-Biehl
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024

hlevybiehl@nelsonhardiman.com

RE: Verity Health System of California, Inc. Notice of Proposed Transfer
St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
Center

Dear Ms. Levy-Biehl:

Under Corporations Code section 5914 et seq., and California Code of Regulations, title 11, section 999.5, the Attorney General has considered the proposed transaction submitted by Verity Health System of California, Inc. In coming to the decisions, described below, we have carefully considered the factors set forth in Corporations Code section 5917 and the applicable regulations, including whether the transaction is in the public interest and whether the transaction effects the availability or accessibility of health care services to the affected community. Our decision is based on the material contained in the notice, the information and documents subsequently submitted by the applicants, comments made by members of the public, discussions with the applicants, and the results of our investigation.

The Attorney General hereby conditionally consents to Verity Health System of California, Inc.'s proposed sale of the assets of St. Francis Medical Center, St. Vincent Medical Center, including its St. Vincent Dialysis Center, and Seton Medical Center to Strategic Global Management, Inc. and/or one or more of its affiliates. The Attorney General's conditional approval of the sale is subject to the attached conditions that are incorporated by reference herein.

Verity Health System of California, Inc. also requested, under Title 11 of the California Code of Regulations, Sec. 999.5(h), a modification of the Attorney General Conditions issued on December 3, 2015. Verity Health System of California, Inc. requested that the Attorney General modify and update the Attorney General's Conditions issued on December 3, 2015 as follows: (1) modify and update the volume of charity care and community benefits provided by the St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center; (2) modify and update capital expenditures to credit Strategic Global Management for the expenditures Verity

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Health System of California, Inc. has invested in the health system; (3) modify and eliminate the requirement that Strategic Global Management maintain cancer care at St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center; and (4) modify and update the Conditions to conform to the present transaction and specific parties involved.

The Attorney General hereby denies, in part, and conditionally consents to Verity Health System of California, Inc.'s request for modification as reflected in the attached conditions that are incorporated by reference herein. The attached conditions serve as conditions for both the request for modification and the sale of the assets of St. Francis Medical Center, St. Vincent Medical Center, including its St. Vincent Dialysis Center, and Seton Medical Center as described in the second paragraph of this letter.

Sincerely,

[original signed]

SCOTT CHAN
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Kathryn F. Edgerton (Russo)
kedgerton@nelsonhardiman.com

Conditions to the Sale of St. Francis Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Francis Medical Center” shall mean the general acute care hospital located at 3630 East Imperial Highway, Lynwood, CA 90262, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Francis Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For ten years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Francis Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Francis Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Francis Medical Center. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Francis Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide 24-hour emergency and trauma medical services at no less than current² licensure and designation with the same types and/or levels of services, including the following:

- a. 46 emergency treatment stations at a minimum;
- b. Designation as a Level II Trauma Center;

² The term "current" or "currently" throughout this document means as of January 1, 2019.

- c. Designation as a 5150 Receiving Facility, as defined by the Welfare and Institutions Code, section 5150, for behavioral health patients under involuntary evaluation;
- d. Psychiatric evaluation team;
- e. Designation as an Emergency Department Approved for Pediatrics (EDAP);
- f. Designation as a Paramedic Base Station; and
- g. Certification as a Primary Stroke Center.

Strategic Global Management, Inc. must give one-year advance written notice to the Los Angeles County Emergency Medical Services Agency and the California Department of Public Health if St. Francis Medical Center seeks to reduce trauma or trauma-related care services or stop operating the Level II Trauma Center after ten years from the closing date of the Asset Purchase Agreement.

V.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical shall maintain Center on-call coverage contracts and/or comparable coverage arrangements with physicians at fair market value that are necessary to retain its qualification as a Level II trauma center. Trauma II designation requires 24-hour immediate coverage by general surgeons, as well as coverage by the specialties of orthopedic surgery, neurosurgery, anesthesiology, emergency medicine, radiology and critical care. Requirements for on-call and promptly available specialties include the following:

- a. Neurology;
- b. Obstetrics/gynecology;
- c. Ophthalmology;
- d. Oral or maxillofacial or head and neck;
- e. Plastic surgery;
- f. Reimplantation/microsurgery capability (this surgical service may be provided through a written transfer agreement); and
- g. Urology.

VI.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Cardiac services, including three cardiac catheterization labs and the designation as a STEMI Receiving Center;
- b. Critical care services, including a minimum of 36 intensive care unit beds or 24 intensive care beds and 12 definitive observation beds;
- c. Neonatal intensive care services, including a minimum of 29 neonatal intensive care beds, and at minimum, maintaining a Level II NICU;
- d. Women's health services, including women's imaging services;
- e. Cancer services, including radiation oncology;

- f. Pediatric services, including a designated area with at least five general acute care beds for pediatric services;
- g. Orthopedic and rehabilitation services;
- h. Wound care services;
- i. Behavioral health services, including a minimum of 40 distinct part inpatient acute psychiatric beds; and
- j. Perinatal services, including a minimum of 50 perinatal beds.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall maintain the same types and/or levels of women's healthcare services currently provided at the location below or a location within three miles of St. Francis Medical Center:

- a. Family Life Center at St. Francis Medical Center, located at 3630 E Imperial Highway, Lynwood, California.

VIII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Francis Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Pediatric services at Children's Counseling Center, 4390 Tweedy Ave, South Gate, California;
- b. The multi-specialty services, including wound care at Wound Care Center, 3628 E. Imperial Highway, Suite 103, Lynwood, California; and
- c. Orthopedic services at 3628 E. Imperial Highway, Suite 300, Lynwood, California.

IX.

For ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St. Francis Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
 - i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Francis Medical Center equal to or greater than \$12,793,435 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Francis Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.³

³ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Francis Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Francis Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Francis Medical Center's website.
- c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
- d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Francis Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.
- e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Francis Medical Center.
- f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Francis Medical Center.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Francis Medical Center equal to or greater than \$1,139,301 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Southern California Crossroads Program;
- b. Health Benefit Resource Center;
- c. Welcome Baby Program;
- d. Healthy Community Initiatives;
- e. American Career College access for onsite training;
- f. Paramedic Training and Education; and
- g. Patient Transportation support.

The planning of, and any subsequent changes to, the community benefit services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Francis Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Francis Medical Center's service area (31 ZIP codes), as defined on as described on page 54 in the Healthcare Impact

Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For at least ten years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County;
- b. Department of Mental Health Legal Entity Contract between the Hospital and Los Angeles County;
- c. Paramedic Base Hospital Services between the Hospital and Los Angeles County;
- d. Radiation Therapy Services between the Hospital and Los Angeles County;
- e. Designation Agreement between the County of Los Angeles Department of Mental Health (LAC-DMH) and the Hospital and approved as a 72-hour Evaluation and Intensive Treatment facility;
- f. Affiliation Agreement for physicians in post graduate training;
- g. Trauma Center Service Agreement between the Hospital and Los Angeles County; and
- h. Paramedic Training Institute Students between the Hospital and Los Angeles County.

For at least ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Francis Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XIII.

For ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall have at St. Francis Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Francis Medical Center. The members of the Local Governing Board shall include physicians from St. Francis Medical Center's medical staff, St. Francis Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Francis Medical Center's primary service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report

authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIV.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XV.

Strategic Global Management, Inc. shall commit the necessary investments required to maintain OSHPD seismic compliance requirements at the Hospital through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Safety. Code, § 129675-130070).

XVI.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Francis Medical Center.

XVII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Francis Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management, Inc.'s written policies, adhered to, and strictly enforced.

XVIII.

Within 15 days of the closing of date of the Asset Purchase Agreement, St. Francis Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from St. Francis Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited

into the California Community Foundation's St. Francis Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.

- b) If there are funds from St. Francis Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XIX.

For eleven fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXI.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 31 ZIP Codes from which 75% of the Hospital's inpatient discharges came from. Approximately 51% of the Hospital's discharges originated from the top eight ZIP Codes, located in Lynwood, South Gate, Los Angeles, Bell, Compton, Bell Gardens, and Huntington Park. In CY 2017, the Hospital's market share in the service area was approximately 11% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Code	Community	Discharges	Percentage of Discharges	Cumulative Percentage	Market Share	Total Discharges
90262	Lynwood	2,490	11.1%	11.1%	38.1%	6,538
90280	South Gate	2,187	9.8%	20.9%	29.0%	7,554
90221	Compton	1,400	6.3%	27.2%	24.1%	5,812
90201	Bell	1,359	6.1%	33.3%	16.3%	8,363
90002	Los Angeles	1,066	4.8%	38.0%	18.4%	5,797
90255	Huntington Park	956	4.3%	42.3%	15.5%	6,172
90059	Los Angeles	948	4.2%	46.6%	17.2%	5,527
90001	Los Angeles	922	4.1%	50.7%	15.6%	5,901
90220	Compton	708	3.2%	53.9%	12.7%	5,554
90222	Compton	700	3.1%	57.0%	18.1%	3,868
90003	Los Angeles	625	2.8%	59.8%	7.6%	8,209
90044	Los Angeles	542	2.4%	62.2%	4.5%	11,994
90723	Paramount	525	2.3%	64.6%	11.7%	4,483
90061	Los Angeles	358	1.6%	66.2%	9.5%	3,764
90650	Norwalk	344	1.5%	67.7%	3.3%	10,373
90270	Maywood	282	1.3%	69.0%	12.2%	2,309
90805	Long Beach	267	1.2%	70.2%	2.7%	9,940
90706	Bellflower	263	1.2%	71.3%	3.6%	7,223
90242	Downey	252	1.1%	72.5%	6.2%	4,038
90241	Downey	224	1.0%	73.5%	6.0%	3,726
90660	Pico Rivera	91	0.4%	73.9%	1.4%	6,608
90240	Downey	69	0.3%	74.2%	3.3%	2,073
90670	Santa Fe Springs	46	0.2%	74.4%	2.7%	1,703
90605	Whittier	44	0.2%	74.6%	1.1%	4,082
90606	Whittier	44	0.2%	74.8%	1.4%	3,244
90703	Cerritos	37	0.2%	74.9%	0.9%	4,026
90604	Whittier	32	0.1%	75.1%	0.9%	3,698
90701	Artesia	31	0.1%	75.2%	1.7%	1,813
90638	La Mirada	30	0.1%	75.4%	0.7%	4,274
90603	Whittier	3	0.0%	75.4%	0.1%	2,152
90639	La Mirada	0	0.0%	75.4%	0.0%	10
Sub-Total		16,845	75.4%	75.4%	10.5%	160,828
All Other		5,504	24.6%	100%		
Grand Total		22,349	100%			

Source: OSHPD Discharge Database, CY 2017

Conditions to the Sale of St. Vincent Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Vincent Medical Center, or the real property on which St. Vincent Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Vincent Medical Center, and any and all current and future lessees and owners of the real property on which St. Vincent Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Vincent Medical Center” shall mean the general acute care hospital located at 2131 West Third Street, Los Angeles, CA 90057, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Vincent Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For five years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Vincent Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Vincent Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Vincent Medical Center. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Vincent Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For five years from the closing date of the Asset Purchase Agreement unless otherwise stated, St. Vincent Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250). If, on Strategic Global Management, Inc.'s further evaluation, the cost to seismically retrofit the St. Vincent Medical Center becomes less feasible than building a new replacement hospital, services may need to be temporarily closed or relocated due to construction. A detailed program and services plan, architectural drawings, and financing plan shall be presented to the California Attorney General for approval before ceasing to operate any services.

V.

For five years from the closing date of the Asset Purchase Agreement, St. Vincent Medical Center shall maintain and provide 24-hour emergency services at no less than its current licensure² of 8 treatment stations, and designation and the following health care services at current licensure types, and/or levels of services:

- a. Designation as a STEMI Receiving center; and
- b. Maintaining the requirements set by the County of Los Angeles Emergency Medical Services for 911 Receiving Hospitals.

VI.

For at least five years from the closing date of the Asset Purchase Agreement, St. Vincent Medical Center shall maintain and provide the following services at current licensure, types, and/or levels of services:

- a. Acute rehabilitation services, including a minimum of 19 licensed rehabilitation beds;
- b. Intensive care services, including a minimum of 30 intensive care beds;
- c. Cardiac services, including cardiac surgery and a minimum of two cardiac catheterization labs;
- d. Cancer services, including radiation oncology. Radiation oncology services may be relocated and patients transitioned to another site that has capacity within a three-mile radius after the first year after the closing of the Asset Purchase Agreement;
- e. Gastroenterology services;
- f. Imaging and laboratory services;
- g. Nephrology services, including end stage renal disease program, acute inpatient dialysis, and hemodialysis treatments;
- h. Neurology and neurotology services, including neurosurgery;
- i. Orthopedics, joint replacement, and spine care services;
- j. Transplant services, including kidney and multi-organ transplant procedures for kidney/pancreas double transplants. Transplant services do not include the liver transplant program. These services may be relocated to another hospital in the primary service area based upon a submission of a detailed plan to be approved by the California Attorney General; and
- k. Outpatient dialysis services. The outpatient dialysis services shall be within 5 miles of St. Vincent Medical Center by either (1) operating St. Vincent Dialysis Center, or (2) transferring St. Vincent Dialysis Center to a separate entity and requiring that entity to operate it for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the Conditions herein, or (3) ensuring that a third party is operating an outpatient dialysis center(s) at current levels for 5 years from the closing date of the Asset Purchase Agreement and that such center(s) participate in the Medi-Cal and Medicare programs as required in Conditions herein.

² The term “current” or “currently” throughout this document means as of January 1, 2019.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Vincent Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Cardiac Care Institute, located at 201 S. Alvarado Street, Suite 321, Los Angeles, California;
- b. Transplant Medical Office, located at 8501 Camino Media, Suite 100, Bakersfield, California;
- c. Cancer Treatment Center, located at 201 S. Alvarado Street, Suite A, Los Angeles, California;
- d. Multi-Organ Transplant services, located at 2200 W. Third Street, 5th Floor, Los Angeles, California;
- e. Radiology services, located at 201 S. Alvarado Street, Suite 311, Los Angeles, California;
- f. Orthopedic Services, located at 2200 W. Third Street, 4th Floor, Los Angeles, California; and
- g. Multispecialty Clinic located at 2200 W. Third Street, Suite 120, Los Angeles, California.

VIII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St Vincent Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as

other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:

- i) Local Initiative: L.A. Care Health Plan or its successor; and
- ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

IX.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Vincent Medical Center equal to or greater than \$696,643 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Vincent Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.³

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Vincent Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Vincent Medical Center in a prominent

³ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

- location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Vincent Medical Center's website.
 - c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
 - d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Vincent Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.
 - e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Vincent Medical Center.
 - f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Vincent Medical Center.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated

August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Vincent Medical Center equal to or greater than \$1,065,604 (the “Minimum Community Benefit Services Amount”) exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. Asian Pacific Liver Center.

The planning of, and any subsequent changes to, the community benefit services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.’s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.’s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Vincent Medical Center’s service area (48 ZIP codes), as defined on as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For at least five years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County; and

b. Radiation Therapy Services between the Hospital and Los Angeles County.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Vincent Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XII.

For five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall have at St. Vincent Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Vincent Medical Center. The members of the Local Governing Board shall include physicians from St. Vincent Medical Center's medical staff, St. Vincent Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Vincent Medical Center's primary service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIII.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XIV.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at St. Vincent Medical Center through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070).

Verity Health System of California, Inc. shall commit the necessary capital investment required to refurbish St. Vincent Medical Center's elevators in order to meet the City of Los Angeles' Elevator Code.

XV.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Vincent Medical Center.

XVI.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Vincent Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Vincent Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XVII.

Within 15 days of the closing of date of the Asset Purchase Agreement, St. Vincent Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from St. Vincent Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Vincent Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.
- b) If there are funds from St. Vincent Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XVIII.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XIX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XX.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 48 ZIP Codes from which 71% of the Hospital's inpatient discharges came from. Approximately 38% of the Hospital's discharges originated from the top eight ZIP Codes, located in Los Angeles. In CY 2017, the Hospital's market share in the primary and secondary service area was approximately 4% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
90057	Los Angeles	1,106	10.0%	10.0%	5,955	18.6%
90006	Los Angeles	726	6.5%	16.5%	5,472	13.3%
90026	Los Angeles	579	5.2%	21.7%	5,034	11.5%
90004	Los Angeles	491	4.4%	26.1%	4,691	10.5%
90005	Los Angeles	486	4.4%	30.5%	2,843	17.1%
90020	Los Angeles	297	2.7%	33.2%	2,600	11.4%
90019	Los Angeles	286	2.6%	35.8%	5,893	4.9%
90018	Los Angeles	263	2.4%	38.1%	5,975	4.4%
90029	Los Angeles	238	2.1%	40.3%	4,114	5.8%
90017	Los Angeles	235	2.1%	42.4%	2,308	10.2%
90037	Los Angeles	226	2.0%	44.4%	7,439	3.0%
90011	Los Angeles	212	1.9%	46.3%	10,436	2.0%
90012	Los Angeles	198	1.8%	48.1%	4,017	4.9%
90007	Los Angeles	195	1.8%	49.9%	3,129	6.2%
90013	Los Angeles	115	1.0%	50.9%	2,655	4.3%
90015	Los Angeles	112	1.0%	51.9%	1,918	5.8%
90014	Los Angeles	99	0.9%	52.8%	1,287	7.7%
90010	Los Angeles	50	0.5%	53.3%	311	16.1%
90009	Los Angeles	12	0.1%	53.4%	113	10.6%
PSA Sub-Total		5,926	53.4%	53.4%	76,190	7.8%
90044	Los Angeles	152	1.4%	54.7%	11,994	1.3%
90027	Los Angeles	150	1.4%	56.1%	4,273	3.5%
90016	Los Angeles	130	1.2%	57.3%	5,656	2.3%
90008	Los Angeles	127	1.1%	58.4%	4,258	3.0%
90003	Los Angeles	106	1.0%	59.4%	8,209	1.3%
90062	Los Angeles	96	0.9%	60.2%	4,018	2.4%
90028	Los Angeles	95	0.9%	61.1%	2,820	3.4%
90047	Los Angeles	87	0.8%	61.9%	7,164	1.2%
90043	Los Angeles	86	0.8%	62.6%	6,137	1.4%
90038	Los Angeles	82	0.7%	63.4%	2,349	3.5%
90033	Los Angeles	77	0.7%	64.1%	5,255	1.5%
90042	Los Angeles	68	0.6%	64.7%	5,173	1.3%
90039	Los Angeles	67	0.6%	65.3%	2,365	2.8%
90031	Los Angeles	62	0.6%	65.8%	3,161	2.0%
90065	Los Angeles	62	0.6%	66.4%	4,202	1.5%
90046	Los Angeles	61	0.5%	66.9%	4,210	1.4%
90036	Los Angeles	56	0.5%	67.5%	3,313	1.7%
90063	Los Angeles	55	0.5%	67.9%	5,008	1.1%
90001	Los Angeles	51	0.5%	68.4%	5,901	0.9%
90002	Los Angeles	46	0.4%	68.8%	5,797	0.8%
90032	Los Angeles	41	0.4%	69.2%	4,442	0.9%
90255	Huntington Park	40	0.4%	69.6%	6,172	0.6%
90023	Los Angeles	36	0.3%	69.9%	4,965	0.7%
91205	Glendale	28	0.3%	70.1%	4,781	0.6%
90041	Los Angeles	22	0.2%	70.3%	2,587	0.9%
90048	Los Angeles	20	0.2%	70.5%	2,470	0.8%
91204	Glendale	14	0.1%	70.6%	2,260	0.6%
90270	Maywood	13	0.1%	70.7%	2,309	0.6%
90069	West Hollywood	10	0.1%	70.8%	1,850	0.5%
PSA + SSA Sub-Total		7,866	70.8%	70.8%	209,289	3.8%
Other ZIPs		3,238	29.2%	100%		
Total		11,104	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Conditions to the Sale of Seton Medical Center¹ and Seton Coastsides² and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of Seton Medical Center and Seton Coastsides, or the real property on which Seton and Seton Coastsides are located, any and all current and future owners, lessees, licensees, or operators of Seton Medical Center and Seton Coastsides, and any and all current and future lessees and owners of the real property on which Seton Medical Center and Seton Coastsides are located.

II.

¹ Throughout this document, the term “Seton Medical Center” shall mean the general acute care hospital located at 1900 Sullivan Ave., Daly City, CA 94015, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

² Throughout this document, the term “Seton Coastsides” shall mean the skilled nursing facility with 5 general acute care beds located at 600 Marine Boulevard, Moss Beach, CA 94038-9641, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For approximately 6 years (until December 13, 2025) from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of Seton Medical Center and Seton Coastside shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of Seton Medical Center or Seton Coastside;
- (b) Transfer control, responsibility, management, or governance of Seton Medical Center or Seton Coastside. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of Seton Medical Center or Seton Coastside, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For the remainder of the term³ (until December 13, 2025), Seton Medical Center (including Seton Coastside because both facilities are on the same license) shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250).

V.

For the remainder of the term (until December 13, 2025), the Seton Medical Center shall maintain 24-hour emergency medical services at a minimum of 18 treatment stations with the same types and/or levels of services, including:

- a. Designation as a STEMI Receiving Center; and
- b. Advanced certification as a Primary Stroke Center;

VI.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current⁴ licensure, types, and/or levels of services, including:

- a. Cardiac services, including the 2 cardiac catheterization labs;
- b. Critical care services, including a minimum of 20 intensive care/coronary care beds;
- c. Psychiatric services, including a minimum of 22 distinct part beds with at least 20 beds available for the geriatric psychiatric unit;
- d. Women's health services, including the Seton Breast Health Center and women's imaging and mammography services; and
- e. Sub-acute services, including a minimum of 44 sub-acute beds and Medi-Cal Certification as a sub-acute unit.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

³ The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of Seton Medical Center and Seton Coastside and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015.

⁴ The term "current" or "currently" throughout this document means as of January 1, 2019.

For at least five years from the closing date of the Asset Purchase Agreement, Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Gastroenterology services, including enteroscopy, endoscopy, and colonoscopy services;
- b. Cancer services, including inpatient oncology services, interventional radiology, radiation therapy, and for those patients that may be in need of infusion therapy treatment, a referral process to other nearby hospitals or clinics, including Stanford Cancer Center, UCSF Helen Diller Comprehensive Cancer Clinic, St. Mary's Cancer Center, or other health facility that provides infusion therapy services. The referral process shall be memorialized in the policies and procedures at Seton Medical Center and should include procedures on how to assist patients with accessing infusion therapy at the nearby hospitals or clinics, and the transferring of patient medical records;
- c. 's written policies or procedures that refers patients that require medical infusion to be referred to another nearby hospital or entity that provides medial infusion services;
- d. Orthopedics and rehabilitation services, including spine care services;
- e. Diabetes services, including Northern California Diabetes Institute;
- f. Wound care services, including Seton Center for Advanced Wound Care; and
- g. Nephrology services.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VIII.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services at Seton Coastside including:

- a. 24-hour "standby" Emergency Department, with a minimum of 7 treatment stations; and
- b. Skilled nursing services, including a minimum of 116 licensed skilled nursing beds.

IX.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be

moved to a different location within a three-mile radius of each clinic's current location, and Seton Medical and Seton Coastside can utilize an alternative structure in providing such services.

The following clinics are subject to this condition shall maintain the same types and/or levels of services provided, including women's healthcare services, and mammography services:

- a. Women's Health Services, located at 1850 Sullivan Avenue, Suite 190, Daly City California.
- b. Imaging Services located at 1850 Sullivan Avenue, Suite 100, Daly City California; and
- c. Wound Care Services, located at 1850 Sullivan Avenue, Suite 115, Daly City California.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at Seton Medical Center and Seton Coastside equal to or greater than \$1,055,863 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at Seton Medical Center and Seton Coastside. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁵

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at Seton Medical Center and Seton Coastside. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at Seton Medical Center and Seton Coastside in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on each Seton Medical Center's and Seton Coastside's website(s).

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

- c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
- d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at Seton Medical Center and Seton Coastsides in a newspaper of general circulation in the communities served by the hospitals, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospitals.
- e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at Seton Medical Center and Seton Coastsides.
- f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at Seton Medical Center and Seton Coastsides.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at Seton Medical Center and Seton Coastsides shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of charity care provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the Seton Medical Center service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at Seton Medical Center and Seton Coastsides equal to or greater than \$685,870 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years,

the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. RotaCare Clinic.

The planning of, and any subsequent changes to, the community benefit services provided at Seton Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of community benefit services provided at Seton Medical Center and Seton Coastside for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in Seton Medical Center's service area (14 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at Seton Medical Center and Seton Coastside;
- b) Maintain and have a Medi-Cal Managed Care contract with San Mateo Health Commission dba Health Plan of San Mateo or its successor to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastside to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastside to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

XIII.

For at least five years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the County of San Mateo, unless otherwise terminated by the County of San Mateo, for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital (jointly with Seton Coastside) and San Mateo County;
- b. STEMI Receiving Center Designation between the Hospital and San Mateo County;
- c. Financial Support for Seismic Upgrades between the Hospital and San Mateo County;
- d. Information Sharing and Data Use Agreement between the Hospital and the County of San Mateo Health System;
- e. Fee for Service Hospital Services Agreement between the Hospital (jointly with Seton Coastside) and San Francisco Health Plan;
- f. Memorandum of Understanding between the Hospital and San Mateo County Behavioral Health and Recovery Services Division;
- g. Affiliation Agreement for the Radiology Technology Program between the Hospital and San Mateo College District;
- h. Affiliation Agreement for the Registered Nursing Program between the Hospital (jointly with Seton Coastside) and San Mateo College District;
- i. Patient Transfer Agreement between the Hospital and San Mateo County Medical Center;
- j. Rail Shuttle Bus Service Administration for Seton Shuttle Agreement between the Hospital and San Mateo County Transit District;
- k. Medical Services Agreement between the Hospital and San Mateo Health Community Health Authority- Access and Care for Everyone (ACE) Program;
- l. Hospital Medi-Cal Hospital Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo;
- m. Memorandum of Understanding for Long Term Care Partnership Program between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo; and
- n. Care Advantage Hospital Service Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo.

XIV.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall have at Seton Medical Center and Seton Coastside Local Governing Board(s) of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board(s) of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, making changes to the charity care and collection policies, and making changes to charity care services provided at Seton Medical Center and Seton Coastside. The members of the Local Governing Board(s) shall include physicians from Seton Medical Center's and Seton Coastside's medical staff, Seton Medical Center's and Seton Coastside's Chief(s) of Staff, one member designated by the San Mateo County Board of Supervisors, and community representatives from Seton Medical Center's and Seton Coastside's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019, attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board(s)'s approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XV.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XVI.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at Seton Medical Center and Seton Coastside.

XVII.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at Seton Medical Center and Seton Coastside through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). Strategic Global Management, Inc. shall meet construction benchmarks which include the starting of construction on the 1963 Tower, and as detailed on the attached Exhibit 2.

XVIII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at Seton Medical Center and Seton Coastside, and no restriction or limitation on providing or making reproductive health services available at Seton Medical Center and Seton Coastside, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XIX.

Within 15 days of the Attorney General's approval, Seton Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from Seton Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's Seton Medical Foundation, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of Seton Medical Foundation's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.
- b) If there are funds from Seton Medical Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XX.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XXI.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties

referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXII.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

The Hospital's service area is comprised of 14 ZIP Codes, from which approximately 82% of its discharges originated in CY 2017. Approximately 55% of the Hospital's discharges came from the top three ZIP Codes, located in Daly City, and South San Francisco. In CY 2017, the Hospital's market share in the service area was 12.6% based on inpatient discharges.

		PATIENT ORIGIN, CY 2017			Total Area Discharges	Market Share
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges		
94015	Daly City	1,347	25.5%	25.5%	4,640	29.0%
94014	Daly City	798	15.1%	40.6%	3,337	23.9%
94080	South San Francisco	732	13.8%	54.4%	5,074	14.4%
94044	Pacifica	533	10.1%	64.5%	2,972	17.9%
94112	San Francisco	263	5.0%	69.5%	6,620	4.0%
94066	San Bruno	216	4.1%	73.5%	3,515	6.1%
94134	San Francisco	130	2.5%	76.0%	3,795	3.4%
94132	San Francisco	114	2.2%	78.2%	1,908	6.0%
94019	Half Moon Bay	74	1.4%	79.6%	1,194	6.2%
94038	Moss Beach	46	0.9%	80.4%	249	18.5%
94005	Brisbane	21	0.4%	80.8%	369	5.7%
94037	Montara	14	0.3%	81.1%	183	7.7%
94018	El Granada	12	0.2%	81.3%	257	4.7%
94017	Daly City	11	0.2%	81.5%	33	33.3%
Subtotal		4,311	81.5%	81.5%	34,146	12.6%
Other ZIPs		977	18.5%	100%		
Total		5,288	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

5

Report Year and Quarter
All

AB 2190 Quarterly Reports for 10801 Seton Medical Center

OSHPD Building Nbr	Bldg Name	Report Year and Quarter	Construction Project Nbr	Milestone Date	Milestone Description	Milestone Comments	Milestone Quarterly Update
BLD-00846	1963 Tower	2019 - Q2	I180019-41-00; I180019-41-01; I180019-41-02; I180019-41-03	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule
BLD-00847	Front Wing	2019 - Q2	I160020-41-00; I160020-41-01	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule

Exhibit C

The Additional Conditions

Conditions to the Sale of St. Francis Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillae Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures — San Jose ASC, LLC, a California limited liability company, DePaul Ventures — San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Francis Medical Center” shall mean the general acute care hospital located at 3630 East Imperial Highway, Lynwood, CA 90262, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Francis Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For ten years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Francis Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Francis Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Francis Medical Center. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Francis Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ~~ten years from the closing date~~ remainder of the ~~Asset Purchase Agreement~~, term² (until December 13, 2025), St. Francis Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide 24-hour emergency and trauma medical services at no less than

² The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of St. Francis Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015 ("2015 Conditions")

current³ licensure and designation with the same types and/or levels of services, including the following:

- a. 46 emergency treatment stations at a minimum;
- b. Designation as a Level II Trauma Center;
- c. Designation as a 5150 Receiving Facility, as defined by the Welfare and Institutions Code, section 5150, for behavioral health patients under involuntary evaluation;
- d. Psychiatric evaluation team;
- e. Designation as an Emergency Department Approved for Pediatrics (EDAP);
- f. Designation as a Paramedic Base Station; and
- g. Certification as a Primary Stroke Center.

Strategic Global Management, Inc. must give one-year advance written notice to the Los Angeles County Emergency Medical Services Agency and the California Department of Public Health if St. Francis Medical Center seeks to reduce trauma or trauma-related care services or stop operating the Level II Trauma Center after ten years from the closing date of the Asset Purchase Agreement.

V.

For ~~at least ten years from the closing date~~remainder of the Asset Purchase Agreement, term (until December 13, 2025), St. Francis Medical Center shall maintain ~~Center~~ on-call coverage contracts and/or comparable coverage arrangements with physicians at fair market value that are necessary to retain its qualification as a Level II trauma center. ~~Trauma II designation requires 24-hour immediate coverage by general surgeons, as well as coverage by the specialties of orthopedic surgery, neurosurgery, anesthesiology, emergency medicine, radiology and critical care. Requirements for on-call and promptly available specialties include the following:~~The following on-call coverage contracts and/or comparable coverage arrangements are required to retain St. Francis Medical Center's status as a Level II trauma center:

- a. Neurology;
- b. Obstetrics/gynecology;
- c. Ophthalmology;
- d. Oral or maxillofacial or head and neck;
- e. Orthopaedic;
- ~~e.f.~~ f. Plastic surgery;
- ~~f.g.~~ g. Reimplantation/microsurgery capability (this surgical service may be provided through a written transfer agreement); and
- ~~g.h.~~ h. Urology.⁴

VI.

³ The term "current" or "currently" throughout this document means as of January 1, 2019.

⁴ 22 CCR 100259(a)(8)(B).

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), St. Francis Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Cardiac services, including three cardiac catheterization labs and the designation as a STEMI Receiving Center;
- b. Critical care services, including a minimum of 36 intensive care unit beds or 24 intensive care beds and 12 definitive observation beds;
- c. Neonatal intensive care services, including a minimum of 29 neonatal intensive care beds, and at minimum, maintaining a Level II NICU;
- d. Women's health services, including women's imaging services;
- ~~e. Cancer services, including radiation oncology;~~
- ~~f.e.~~ f. Pediatric services, including a designated area with at least five general acute care beds for pediatric services;
- ~~g.f.~~ g. Orthopedic and rehabilitation services;
- ~~h.g.~~ h. Wound care services;
- ~~i.h.~~ i. Behavioral health services, including a minimum of 40 distinct part inpatient acute psychiatric beds; and
- ~~j.i.~~ j. Perinatal services, including a minimum of 50 perinatal beds.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), St. Francis Medical Center shall maintain the same types and/or levels of women's healthcare services currently provided ~~at the location below or a location within three miles of St. Francis Medical Center:~~

- ~~a. Family Life Center at St. Francis Medical Center, located at 3630 E Imperial Highway, Lynwood, California.~~

VIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for ~~5 years from the closing~~

~~date~~remainder of the ~~Asset Purchase Agreement~~term (December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Francis Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- ~~a. Pediatric services at Children's Counseling Center, 4390 Tweedy Ave, South Gate, California;~~
- ~~b. The multi-specialty services, including wound care at Wound Care Center, 3628 E. Imperial Highway, Suite 103, Lynwood, California; and~~
- ~~e.~~a. Orthopedic services at 3628 E. Imperial Highway, Suite 300, Lynwood, California.

IX.

For ~~ten years from~~ the ~~closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St. Francis Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
 - i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

X.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2026), Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Francis Medical Center equal to or greater than ~~\$12,793,435~~\$8,000,000 (the Minimum Charity Care Amount). For purposes hereof, the term “charity care” shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Francis Medical Center. The definition and methodology for calculating “charity care” and the methodology for calculating “costs” shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁵

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.’s current charity care policy (Verity’s Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Francis Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Francis Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~
- ~~b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Francis Medical Center’s website.~~
- ~~c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~
- ~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Francis Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.~~
- ~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Francis Medical Center.~~
- ~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of~~

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, “the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient’s accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account.”

~~and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Francis Medical Center.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.~~

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Francis Medical Center equal to or greater than \$1,139,301 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

~~Southern California Crossroads Program;~~

- a. Health Benefit Resource Center;
- b. Welcome Baby Program;
- c. Healthy Community Initiatives;
- d. American Career College access for onsite training;
- e. Paramedic Training and Education; and
- f. Patient Transportation support.

The planning of, and any subsequent changes to, the community benefit services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Francis Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Francis Medical Center's service area (31 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1). Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For ~~at least ten years from the remainder of the closing date of the Asset Purchase Agreement unless otherwise indicated, term (until December 13, 2025)~~, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County;
- b. Department of Mental Health Legal Entity Contract between the Hospital and Los Angeles County;
- c. Paramedic Base Hospital Services between the Hospital and Los Angeles County;
- d. Radiation Therapy Services between the Hospital and Los Angeles County;
- e. Designation Agreement between the County of Los Angeles Department of Mental Health (LAC-DMH) and the Hospital and approved as a 72-hour Evaluation and Intensive Treatment facility;
- ~~f. Affiliation Agreement for physicians in post graduate training;~~
- ~~g.~~ f. Trauma Center Service Agreement between the Hospital and Los Angeles County; and
- ~~h.~~ g. Paramedic Training Institute Students between the Hospital and Los Angeles County.

For ~~at least ten years from the closing date remainder of the Asset Purchase Agreement, term (until December 13, 2025)~~, Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Francis Medical Center. The goal is to ensure that

Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XIII.

For ~~ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), Strategic Global Management, Inc. shall have at St. Francis Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Francis Medical Center. The members of the Local Governing Board shall include physicians from St. Francis Medical Center's medical staff, St. Francis Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Francis Medical Center's primary service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIV.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the ~~Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XV.

Strategic Global Management, Inc. shall commit the necessary investments required to maintain OSHPD seismic compliance requirements at the Hospital through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Safety. Code, § 129675-130070).

XVI.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Francis Medical Center.~~

[REMOVED]

XVII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Francis Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management, Inc.'s written policies, adhered to, and strictly enforced.

XVIII.

~~Within 15 days of the closing of date of the Asset Purchase Agreement, St. Francis Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from St. Francis Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Francis Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~
- ~~b) If there are funds from St. Francis Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~

[REMOVED]

XIX.

For ~~eleven~~seven fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXI.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

EXHIBIT 2 - Part 2

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 31 ZIP Codes from which 75% of the Hospital's inpatient discharges came from. Approximately 51% of the Hospital's discharges originated from the top eight ZIP Codes, located in Lynwood, South Gate, Los Angeles, Bell, Compton, Bell Gardens, and Huntington Park. In CY 2017, the Hospital's market share in the service area was approximately 11% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Code	Community	Discharges	Percentage of Discharges	Cumulative Percentage	Market Share	Total Discharges
90262	Lynwood	2,490	11.1%	11.1%	38.1%	6,538
90280	South Gate	2,187	9.8%	20.9%	29.0%	7,554
90221	Compton	1,400	6.3%	27.2%	24.1%	5,812
90201	Bell	1,359	6.1%	33.3%	16.3%	8,363
90002	Los Angeles	1,066	4.8%	38.0%	18.4%	5,797
90255	Huntington Park	956	4.3%	42.3%	15.5%	6,172
90059	Los Angeles	948	4.2%	46.6%	17.2%	5,527
90001	Los Angeles	922	4.1%	50.7%	15.6%	5,901
90220	Compton	708	3.2%	53.9%	12.7%	5,554
90222	Compton	700	3.1%	57.0%	18.1%	3,868
90003	Los Angeles	625	2.8%	59.8%	7.6%	8,209
90044	Los Angeles	542	2.4%	62.2%	4.5%	11,994
90723	Paramount	525	2.3%	64.6%	11.7%	4,483
90061	Los Angeles	358	1.6%	66.2%	9.5%	3,764
90650	Norwalk	344	1.5%	67.7%	3.3%	10,373
90270	Maywood	282	1.3%	69.0%	12.2%	2,309
90805	Long Beach	267	1.2%	70.2%	2.7%	9,940
90706	Bellflower	263	1.2%	71.3%	3.6%	7,223
90242	Downey	252	1.1%	72.5%	6.2%	4,038
90241	Downey	224	1.0%	73.5%	6.0%	3,726
90660	Pico Rivera	91	0.4%	73.9%	1.4%	6,608
90240	Downey	69	0.3%	74.2%	3.3%	2,073
90670	Santa Fe Springs	46	0.2%	74.4%	2.7%	1,703
90605	Whittier	44	0.2%	74.6%	1.1%	4,082
90606	Whittier	44	0.2%	74.8%	1.4%	3,244
90703	Cerritos	37	0.2%	74.9%	0.9%	4,026
90604	Whittier	32	0.1%	75.1%	0.9%	3,698
90701	Artesia	31	0.1%	75.2%	1.7%	1,813
90638	La Mirada	30	0.1%	75.4%	0.7%	4,274
90603	Whittier	3	0.0%	75.4%	0.1%	2,152
90639	La Mirada	0	0.0%	75.4%	0.0%	10
Sub-Total		16,845	75.4%	75.4%	10.5%	160,828
All Other		5,504	24.6%	100%		
Grand Total		22,349	100%			

Source: OSHPD Discharge Database, CY 2017

Conditions to the Sale of St. Vincent Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures — San Jose ASC, LLC, a California limited liability company, DePaul Ventures — San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Vincent Medical Center, or the real property on which St. Vincent Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Vincent Medical Center, and any and all current and future lessees and owners of the real property on which St. Vincent Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical

¹ Throughout this document, the term “St. Vincent Medical Center” shall mean the general acute care hospital located at 2131 West Third Street, Los Angeles, CA 90057, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Vincent Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a

California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For five years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Vincent Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Vincent Medical Center;

(b) Transfer control, responsibility, management, or governance of St. Vincent Medical Center. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Vincent Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise stated, term~~² (until December 13, 2020), St. Vincent Medical Center shall be operated

² The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of St. Vincent Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital

and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250). If, on Strategic Global Management, Inc.'s further evaluation, the cost to seismically retrofit the St. Vincent Medical Center becomes less feasible than building a new replacement hospital, services may need to be temporarily closed or relocated due to construction. A detailed program and services plan, architectural drawings, and financing plan shall be presented to the California Attorney General for approval before ceasing to operate any services.

V.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), St. Vincent Medical Center shall maintain and provide 24-hour emergency services at no less than its current licensure³ of 8 treatment stations, and designation and the following health care services at current licensure types, and/or levels of services:

~~Designation as a STEMI Receiving center; and~~

- a. Maintaining the requirements set by the County of Los Angeles Emergency Medical Services for 911 Receiving Hospitals.

VI.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), St. Vincent Medical Center shall maintain and provide the following services at current licensure, types, and/or levels of services:

- a. Acute rehabilitation services, including a minimum of 19 licensed rehabilitation beds;
- b. Intensive care services, including a minimum of 30 intensive care beds;
- c. Cardiac services, including cardiac surgery and a minimum of two cardiac catheterization labs;
- ~~d. Cancer services, including radiation oncology. Radiation oncology services may be relocated and patients transitioned to another site that has capacity within a three-mile radius after the first year after the closing of the Asset Purchase Agreement;~~
- ~~e.~~d. Gastroenterology services;
- ~~f.~~e. Imaging and laboratory services;
- ~~g.~~f. Nephrology services, including end stage renal disease program, acute inpatient dialysis, and hemodialysis treatments;
- ~~h.~~g. Neurology and neurotology services, including neurosurgery;
- ~~i.~~h. Orthopedics, joint replacement, and spine care services;
- ~~j.~~i. Transplant services, including kidney and multi-organ transplant procedures for kidney/pancreas double transplants. Transplant services do not include the liver transplant program. These services may be relocated to another hospital in the primary

Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015 ("2015 Conditions").

³ The term "current" or "currently" throughout this document means as of January 1, 2019.

service area based upon a submission of a detailed plan to be approved by the California Attorney General; and

~~k.j.~~ Outpatient dialysis services. The outpatient dialysis services shall be within 5 miles of St. Vincent Medical Center by either (1) operating St. Vincent Dialysis Center, or (2) transferring St. Vincent Dialysis Center to a separate entity and requiring that entity to operate it for ~~5 years from the~~ closing date ~~remainder~~ of the ~~Asset Purchase Agreement~~ term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the Conditions herein, or (3) ensuring that a third party is operating an outpatient dialysis center(s) at current levels for ~~5 years from the~~ closing date ~~remainder~~ of the ~~Asset Purchase Agreement~~ term (until December 13, 2020), and that such center(s) participate in the Medi-Cal and Medicare programs as required in Conditions herein.

For the remainder of the term (until December 13, 2020), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For ~~at least five years from the~~ closing date ~~remainder~~ of the ~~Asset Purchase Agreement~~ term (until December 13, 2020), Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for ~~5 years from the~~ closing date ~~remainder~~ of the ~~Asset Purchase Agreement~~ term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for ~~5 years from the~~ closing date ~~remainder~~ of the ~~Asset Purchase Agreement~~ term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Vincent Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Cardiac Care Institute, located at 201 S. Alvarado Street, Suite 321, Los Angeles, California;
- ~~b. Transplant Medical Office, located at 8501 Camino Media, Suite 100, Bakersfield, California;~~
- ~~e.b.~~ Cancer Treatment Center, located at 201 S. Alvarado Street, Suite A, Los Angeles, California;
- ~~d.c.~~ Multi-Organ Transplant services, located at 2200 W. Third Street, 5th Floor, Los Angeles, California;
- ~~e. Radiology services, located at 201 S. Alvarado Street, Suite 311, Los Angeles, California;~~

- ~~f.d.~~ Orthopedic Services, located at 2200 W. Third Street, 4th Floor, Los Angeles, California; and
~~g. Multispecialty Clinic located at 2200 W. Third Street, Suite 120, Los Angeles, California.~~

VIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2020)~~, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St Vincent Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
- i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

IX.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2021)~~, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Vincent Medical Center equal to or greater than ~~\$696,643~~430,384 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Vincent Medical Center. The definition and methodology for calculating "charity care" and the

methodology for calculating “costs” shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁴

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.’s current charity care policy (Verity’s Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Vincent Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Vincent Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~
- ~~b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Vincent Medical Center’s website.~~
- ~~c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~
- ~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Vincent Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.~~
- ~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Vincent Medical Center.~~
- ~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.’s Financial Assistance Policy at St. Vincent Medical Center.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.~~

⁴ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, “the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient’s accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account.”

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

X.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Vincent Medical Center equal to or greater than \$1,~~065,604~~076,459 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. ~~For six fiscal years,~~For the remainder of the term (until December 13, 2021), the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. Asian Pacific Liver Center.

The planning of, and any subsequent changes to, the community benefit services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach Anaheim Average Base Period: 1982=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Vincent Medical Center's service area (48 ZIP codes), as defined on as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise indicated,~~term (until December 13, 2020), Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County; and
- b. Radiation Therapy Services between the Hospital and Los Angeles County.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement,~~term (until December 13, 2020), Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Vincent Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XII.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement,~~term (until December 13, 2020), Strategic Global Management, Inc. shall have at St. Vincent Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Vincent Medical Center. The members of the Local Governing Board shall include physicians from St. Vincent Medical Center's medical staff, St. Vincent Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Vincent Medical Center's primary service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an

emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIII.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~ for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~ the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of ~~the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~ 2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XIV.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at St. Vincent Medical Center through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). Verity Health System of California, Inc. shall commit the necessary capital investment required to refurbish St. Vincent Medical Center's elevators in order to meet the City of Los Angeles' Elevator Code.

XV.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Vincent Medical Center.~~

[REMOVE]

XVI.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Vincent Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Vincent Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XVII.

~~Within 15 days of the closing of date of the Asset Purchase Agreement, St. Vincent Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from St. Vincent Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Vincent Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~
- ~~b) If there are funds from St. Vincent Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~

[\[REMOVE\]](#)

XVIII.

For ~~six~~two fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XIX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is

reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XX.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 48 ZIP Codes from which 71% of the Hospital's inpatient discharges came from. Approximately 38% of the Hospital's discharges originated from the top eight ZIP Codes, located in Los Angeles. In CY 2017, the Hospital's market share in the primary and secondary service area was approximately 4% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
90057	Los Angeles	1,106	10.0%	10.0%	5,955	18.6%
90006	Los Angeles	726	6.5%	16.5%	5,472	13.3%
90026	Los Angeles	579	5.2%	21.7%	5,034	11.5%
90004	Los Angeles	491	4.4%	26.1%	4,691	10.5%
90005	Los Angeles	486	4.4%	30.5%	2,843	17.1%
90020	Los Angeles	297	2.7%	33.2%	2,600	11.4%
90019	Los Angeles	286	2.6%	35.8%	5,893	4.9%
90018	Los Angeles	263	2.4%	38.1%	5,975	4.4%
90029	Los Angeles	238	2.1%	40.3%	4,114	5.8%
90017	Los Angeles	235	2.1%	42.4%	2,308	10.2%
90037	Los Angeles	226	2.0%	44.4%	7,439	3.0%
90011	Los Angeles	212	1.9%	46.3%	10,436	2.0%
90012	Los Angeles	198	1.8%	48.1%	4,017	4.9%
90007	Los Angeles	195	1.8%	49.9%	3,129	6.2%
90013	Los Angeles	115	1.0%	50.9%	2,655	4.3%
90015	Los Angeles	112	1.0%	51.9%	1,918	5.8%
90014	Los Angeles	99	0.9%	52.8%	1,287	7.7%
90010	Los Angeles	50	0.5%	53.3%	311	16.1%
90009	Los Angeles	12	0.1%	53.4%	113	10.6%
PSA Sub-Total		5,926	53.4%	53.4%	76,190	7.8%
90044	Los Angeles	152	1.4%	54.7%	11,994	1.3%
90027	Los Angeles	150	1.4%	56.1%	4,273	3.5%
90016	Los Angeles	130	1.2%	57.3%	5,656	2.3%
90008	Los Angeles	127	1.1%	58.4%	4,258	3.0%
90003	Los Angeles	106	1.0%	59.4%	8,209	1.3%
90062	Los Angeles	96	0.9%	60.2%	4,018	2.4%
90028	Los Angeles	95	0.9%	61.1%	2,820	3.4%
90047	Los Angeles	87	0.8%	61.9%	7,164	1.2%
90043	Los Angeles	86	0.8%	62.6%	6,137	1.4%
90038	Los Angeles	82	0.7%	63.4%	2,349	3.5%
90033	Los Angeles	77	0.7%	64.1%	5,255	1.5%
90042	Los Angeles	68	0.6%	64.7%	5,173	1.3%
90039	Los Angeles	67	0.6%	65.3%	2,365	2.8%
90031	Los Angeles	62	0.6%	65.8%	3,161	2.0%
90065	Los Angeles	62	0.6%	66.4%	4,202	1.5%
90046	Los Angeles	61	0.5%	66.9%	4,210	1.4%
90036	Los Angeles	56	0.5%	67.5%	3,313	1.7%
90063	Los Angeles	55	0.5%	67.9%	5,008	1.1%
90001	Los Angeles	51	0.5%	68.4%	5,901	0.9%
90002	Los Angeles	46	0.4%	68.8%	5,797	0.8%
90032	Los Angeles	41	0.4%	69.2%	4,442	0.9%
90255	Huntington Park	40	0.4%	69.6%	6,172	0.6%
90023	Los Angeles	36	0.3%	69.9%	4,965	0.7%
91205	Glendale	28	0.3%	70.1%	4,781	0.6%
90041	Los Angeles	22	0.2%	70.3%	2,587	0.9%
90048	Los Angeles	20	0.2%	70.5%	2,470	0.8%
91204	Glendale	14	0.1%	70.6%	2,260	0.6%
90270	Maywood	13	0.1%	70.7%	2,309	0.6%
90069	West Hollywood	10	0.1%	70.8%	1,850	0.5%
PSA + SSA Sub-Total		7,866	70.8%	70.8%	209,289	3.8%
Other ZIPs		3,238	29.2%	100%		
Total		11,104	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Conditions to the Sale of Seton Medical Center¹ and Seton Coastsides² and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillae Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures—San Jose ASC, LLC, a California limited liability company, DePaul Ventures—San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of Seton Medical Center and Seton Coastsides, or the real property on which Seton and Seton Coastsides are located, any and all current and future owners, lessees, licensees, or operators of Seton Medical Center and Seton Coastsides, and any and all current and future lessees and owners of the real property on which Seton Medical Center and Seton Coastsides are located.

II.

¹ Throughout this document, the term “Seton Medical Center” shall mean the general acute care hospital located at 1900 Sullivan Ave., Daly City, CA 94015, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

² Throughout this document, the term “Seton Coastsides” shall mean the skilled nursing facility with 5 general acute care beds located at 600 Marine Boulevard, Moss Beach, CA 94038-9641, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For approximately 6 years (until December 13, 2025) from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of Seton Medical Center and Seton Coastside shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of Seton Medical Center or Seton Coastside;

(b) Transfer control, responsibility, management, or governance of Seton Medical Center or Seton Coastside. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of Seton Medical Center or Seton Coastside, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For the remainder of the term³ (until December 13, 2025), Seton Medical Center (including Seton Coastside because both facilities are on the same license) shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250).

V.

For the remainder of the term (until December 13, 2025), the Seton Medical Center shall maintain 24-hour emergency medical services at a minimum of 18 treatment stations with the same types and/or levels of services, including:

- a. Designation as a STEMI Receiving Center; and
- b. Advanced certification as a Primary Stroke Center;

VI.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current⁴ licensure, types, and/or levels of services, including:

- a. Cardiac services, including the 2 cardiac catheterization labs;
- b. Critical care services, including a minimum of 20 intensive care/coronary care beds;
- ~~c. Psychiatric services, including a minimum of 22 distinct part beds with at least 20 beds available for the geriatric psychiatric unit;~~
- ~~d.~~ c. Women's health services, including the Seton Breast Health Center and women's imaging and mammography services; and
- ~~e.~~ d. Sub-acute services, including a minimum of 44 sub-acute beds and Medi-Cal Certification as a sub-acute unit.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

³ The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of Seton Medical Center and Seton Coastside and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015. ("2015 Conditions").

⁴ The term "current" or "currently" throughout this document means as of January 1, 2019.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Gastroenterology services, including enteroscopy, endoscopy, and colonoscopy services;
- ~~b. Cancer services, including inpatient oncology services, interventional radiology, radiation therapy, and for those patients that may be in need of infusion therapy treatment, a referral process to other nearby hospitals or clinics, including Stanford Cancer Center, UCSF Helen Diller Comprehensive Care Cancer Clinic, St. Mary's Cancer Center, or other health facility that provides infusion therapy services. The referral process shall be memorialized in the policies and procedures at Seton Medical Center and should include procedures on how to assist patients with accessing infusion therapy at the nearby hospitals or clinics, and the transferring of patient medical records;~~
- ~~c. 's written policies or procedures that refers patients that require medical infusion to be referred to another nearby hospital or entity that provides medial infusion services;~~
- ~~d.~~b. Orthopedics and rehabilitation services, including spine care services;
- ~~e.~~c. Diabetes services, including Northern California Diabetes Institute;
- ~~f.~~d. Wound care services, including Seton Center for Advanced Wound Care; and
- ~~g.~~e. Nephrology services.

For the remainder of the term (until December 13, 2020), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VIII.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services at Seton Coastsides including:

- a. 24-hour "standby" Emergency Department, with a minimum of 7 treatment stations; and
- b. Skilled nursing services, including a minimum of 116 licensed skilled nursing beds.

IX.

~~For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and~~

~~Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and Seton Medical and Seton Coastside can utilize an alternative structure in providing such services.~~

~~The following clinics are subject to this condition shall maintain the same types and/or levels of services provided, including women's healthcare services, and mammography services:~~

- ~~a. Women's Health Services, located at 1850 Sullivan Avenue, Suite 190, Daly City California;~~
- ~~b. Imaging Services located at 1850 Sullivan Avenue, Suite 100, Daly City California; and~~
- ~~c. Wound Care Services, located at 1850 Sullivan Avenue, Suite 115, Daly City California;~~

[REMOVE]

X.

~~For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc.~~ For the remainder of the term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at Seton Medical Center and Seton Coastside equal to or greater than ~~\$1,055,863~~ 935,405 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at Seton Medical Center and Seton Coastside. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHDP) for annual hospital reporting purposes.⁵

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at Seton Medical Center and Seton Coastside. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at Seton Medical Center and Seton Coastside~~

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

~~in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~

~~e. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on each Seton Medical Center's and Seton Coastsides website(s). If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~

~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at Seton Medical Center and Seton Coastsides in a newspaper of general circulation in the communities served by the hospitals, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospitals.~~

~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at Seton Medical Center and Seton Coastsides.~~

~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at Seton Medical Center and Seton Coastsides.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at Seton Medical Center and Seton Coastsides shall be decided after consultation with the Local Governing Board of Directors.~~

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of charity care provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the Seton Medical Center service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at Seton Medical Center and Seton Coastsides equal to or greater than ~~\$685,870,848,434~~ (the “Minimum Community Benefit Services Amount”) exclusive of any funds from grants. ~~For six fiscal years,~~For the remainder of the term (until December 13, 2021), the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. RotaCare Clinic.

The planning of, and any subsequent changes to, the community benefit services provided at Seton Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.’s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.’s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in Seton Medical Center’s service area (14 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1-~~2~~3). Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at Seton Medical Center and Seton Coastsides;

b) Maintain and have a Medi-Cal Managed Care contract with San Mateo Health Commission dba Health Plan of San Mateo or its successor to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastsides to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastsides to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

XIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise indicated; term (until December 13, 2020)~~, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the County of San Mateo, unless otherwise terminated by the County of San Mateo, for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital (jointly with Seton Coastsides) and San Mateo County;
- ~~b. STEMI Receiving Center Designation between the Hospital and San Mateo County;~~
- ~~c. Financial Support for Seismic Upgrades between the Hospital and San Mateo County;~~
- ~~d. b. Information Sharing and Data Use Agreement between the Hospital and the County of San Mateo Health System;~~
- ~~e. Fee for Service Hospital Services Agreement between the Hospital (jointly with Seton Coastsides) and San Francisco Health Plan;~~
- ~~f. Memorandum of Understanding between the Hospital and San Mateo County Behavioral Health and Recovery Services Division;~~
- ~~g. Affiliation Agreement for the Radiology Technology Program between the Hospital and San Mateo College District;~~
- ~~h. Affiliation Agreement for the Registered Nursing Program between the Hospital (jointly with Seton Coastsides) and San Mateo College District;~~
- ~~i. c. Patient Transfer Agreement between the Hospital and San Mateo County Medical Center;~~
- ~~j. Rail Shuttle Bus Service Administration for Seton Shuttle Agreement between the Hospital and San Mateo County Transit District;~~

- k.d. Medical Services Agreement between the Hospital and San Mateo Health Community Health Authority- Access and Care for Everyone (ACE) Program;
- ~~l. Hospital Medi-Cal Hospital Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo;~~
- ~~m. Memorandum of Understanding for Long Term Care Partnership Program between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo; and~~
- ~~n. Care Advantage Hospital Service Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo.~~

XIV.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall have at Seton Medical Center and Seton Coastside Local Governing Board(s) of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board(s) of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, making changes to the charity care and collection policies, and making changes to charity care services provided at Seton Medical Center and Seton Coastside. The members of the Local Governing Board(s) shall include physicians from Seton Medical Center's and Seton Coastside's medical staff, Seton Medical Center's and Seton Coastside's Chief(s) of Staff, one member designated by the San Mateo County Board of Supervisors, and community representatives from Seton Medical Center's and Seton Coastside's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019, attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board(s)'s approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XV.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~ for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~ the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the ~~Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~ 2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XVI.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at Seton Medical Center and Seton Coastside.~~

[REMOVE]

XVII.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at Seton Medical Center and Seton Coastside through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). ~~Strategic Global Management, Inc. shall meet construction benchmarks which include the starting of construction on the 1963 Tower, and as detailed on the attached Exhibit 2,~~ to the extent Strategic Global Management, Inc. obtains necessary waivers or other authority from OSHPD and the State of California to permit the continued operation of Seton Medical Center through the five (5) years following closing date of the Asset Purchase Agreement, pending replacement or retrofit of the current patient tower at Seton Medical Center, and Strategic Global Management, Inc. receives PACE funding at currently accrued levels (i.e. approximately Forty Million Dollars (\$40,000,000)).

XVIII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at Seton Medical Center and Seton Coastside, and no restriction or limitation on providing or making reproductive health services available at Seton Medical Center and Seton Coastside, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XIX.

~~Within 15 days of the Attorney General's approval, Seton Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from Seton Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's Seton Medical Foundation, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of Seton Medical Foundation's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~

~~If there are funds from Seton Medical Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~ [\[REMOVE\]](#)

XX.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XXI.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXII.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

Analysis of the Hospital's Service Area

Service Area Definition

The Hospital's service area is comprised of 14 ZIP Codes, from which approximately 82% of its discharges originated in CY 2017. Approximately 55% of the Hospital's discharges came from the top three ZIP Codes, located in Daly City, and South San Francisco. In CY 2017, the Hospital's market share in the service area was 12.6% based on inpatient discharges.

		PATIENT ORIGIN, CY 2017			Total Area Discharges	Market Share
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges		
94015	Daly City	1,347	25.5%	25.5%	4,640	29.0%
94014	Daly City	798	15.1%	40.6%	3,337	23.9%
94080	South San Francisco	732	13.8%	54.4%	5,074	14.4%
94044	Pacifica	533	10.1%	64.5%	2,972	17.9%
94112	San Francisco	263	5.0%	69.5%	6,620	4.0%
94066	San Bruno	216	4.1%	73.5%	3,515	6.1%
94134	San Francisco	130	2.5%	76.0%	3,795	3.4%
94132	San Francisco	114	2.2%	78.2%	1,908	6.0%
94019	Half Moon Bay	74	1.4%	79.6%	1,194	6.2%
94038	Moss Beach	46	0.9%	80.4%	249	18.5%
94005	Brisbane	21	0.4%	80.8%	369	5.7%
94037	Montara	14	0.3%	81.1%	183	7.7%
94018	El Granada	12	0.2%	81.3%	257	4.7%
94017	Daly City	11	0.2%	81.5%	33	33.3%
Subtotal		4,311	81.5%	81.5%	34,146	12.6%
Other ZIPs		977	18.5%	100%		
Total		5,288	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Report Year and Quarter
All

AB 2190 Quarterly Reports for 10801 Seton Medical Center

OSHPD Building Nbr	Bldg Name	Report Year and Quarter	Construction Project Nbr	Milestone Date	Milestone Description	Milestone Comments	Milestone Quarterly Update
BLD-00846	1963 Tower	2019 - Q2	I180019-41-00; I180019-41-01; I180019-41-02; I180019-41-03	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule
BLD-00847	Front Wing	2019 - Q2	I180020-41-00; I180020-41-01	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule

Exhibit D

SGM APA

ASSET PURCHASE AGREEMENT

By and Among

Verity Health System of California, Inc., Verity Holdings, LLC,

**St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc.,
Seton Medical Center**

and

Strategic Global Management, Inc.

Dated January 8, 2019

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the 8th day of January, 2019 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), St. Francis Medical Center, a California nonprofit public benefit corporation (“**St. Francis**”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“**St. Vincent**”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“**St. Vincent Dialysis**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” and together with St. Francis Medical Center, St. Vincent Medical Center and St. Vincent Dialysis, collectively, the “**Hospital Sellers**”) (Verity, Verity Holdings, St. Francis, St. Vincent, St. Vincent Dialysis and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and Strategic Global Management, Inc., a California corporation (“**Purchaser**”).

RECITALS:

A. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis (collectively, the “**St. Francis Hospital**”).

B. St. Vincent engages in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent (collectively, the “**St. Vincent Hospital**”).

C. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Hospital**”) and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Coastside Hospital**”) and together with the St. Francis Medical Center Hospital, the St. Vincent Medical Center Hospital and the Seton Hospital, the “**Hospitals**”; the business of the operation of the Hospitals is referred to herein as the “**Businesses**”).

D. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Sellers and used with respect to the Businesses, for the consideration and upon the terms and conditions contained in this Agreement.

E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastside Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

be credited against the Purchase Price. Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally-insured financial institution mutually acceptable to Purchaser and Sellers. In addition, on the Signing Date, Purchaser shall deliver to Sellers executed letters from its financing sources, in form and substance satisfactory to Sellers in their discretion.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) promptly but no later than ten (10) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by each Seller, with respect to the Assets;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3, together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.5 favorable original certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below);

1.4.8 a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Businesses, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

1.4.9 acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date, and

1.4.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing. At or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 favorable original certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.7 the Assumption Agreement, duly executed by Purchaser;

1.5.8 the License Agreement referenced in Section 1.7(q);

1.5.9 the Transition Services Agreement; and

1.5.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments, other than the PACE Special Assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by any Seller, pay to such Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Sellers shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but uncollected as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

to the operation of the Hospital of such Hospital Seller that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

(e) other than the Excluded Settlements and Actions (defined below), all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by such Seller or such Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases and other items described in Section 1.8(h);

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Hospital of such Seller or (ii) used in the operation of the Hospital of such Seller (the “**Inventory**”) except as set forth in Section 1.8(e);

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and prepaid taxes) and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Hospital of such Hospital Seller (the “**Prepays**”);

(h) to the extent assignable or transferrable, all of the following that are not proprietary to such Seller and/or owned by or proprietary to such Hospital Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Hospital of such Hospital Seller, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by such Hospital Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Sellers and used by Sellers with respect to the operations of the Hospitals;

(j) all Measure B trauma funding received after the Signing Date to be paid related to service periods ending on or after the Signing Date (pro rated between Purchaser and Sellers for any such payments covering service periods which include days both before and after the Signing Date based upon the number of days in the relevant payment period before the Signing Date (for the account of Sellers) and after the Signing Date (for the account of Purchaser));

(k) Except for as stated in Section 1.7(j), all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation,

accounts, notes or other amounts receivable, disproportionate share payments and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(l) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the Accounts Receivable acquired by Purchaser at the Closing;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

(r) the right to use the names “St. Francis Medical Center”, “St. Vincent Medical Center”, “Seton Medical Center” and “Seton Medical Center Coastside”, including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Sellers and the names of the Hospitals, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Businesses, the completion of the

Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

(b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;

(c) all contracts that are not Assumed Contracts;

(d) all leases that are not Assumed Leases;

(e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;

(f) assets owned and provided by vendors of services or goods to the Hospital of such Hospital Seller;

(g) all of such Seller's organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;

(h) all claims, counterclaims and causes of action of such Seller or such Seller's bankruptcy estate (including parties acting for or on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of such Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;

(i) other than casualty insurance proceeds described in Section 1.7(m), all insurance policies and contracts and coverages obtained by such Seller or listing such Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;

(j) all deposits made with any entity that provides utilities to the Hospital (the **"Utility Deposits"**);

(k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

(l) all non-transferrable unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(m) all other bank accounts of such Sellers not listed on **Schedule 1.7(u)**;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services);

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(h) or 1.8(y) (together with the items identified in Section 1.8(h) and 1.8(y), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Signing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties; and

(cc) any assets identified in Schedule 1.8(cc).

1.9 Assumed Obligations. On the Closing Date, each Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of such Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of such Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of such Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time;

(d) all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii);

(e) all liabilities and obligations of such Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of such Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) all liabilities or obligations provided for in Section 5.3;

(j) any obligations or liabilities Purchaser may desire or need to assume in order to have the Certifications/Licenses/Permits identified on Schedule 1.7(b) reissued to Purchaser, as well as any liabilities or obligations associated with Sellers' Medicare and Medi-Cal provider agreements, but only to the extent assumed by Purchaser, and any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

(k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the "**Excluded Liabilities**"), and each Seller shall remain fully and solely responsible for all of such Seller's debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively "**Evaluated Contracts**"). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "**Rejected Contracts**"); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date and as of the last day of the Final Diligence Period, except as would not have a material adverse effect upon the Hospitals, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title) and 2.14 (Legal Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by such Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of such Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

2.3 Organization and Good Standing; No Violation.

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller’s articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in material breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2018; (ii) unaudited income statements of the Sellers for the twelve-month periods ended June 30, 2018; (iii) the audited consolidated income statements of Sellers for the years ended 2016 and 2017; and (iv) the unaudited consolidated balance sheet of Sellers as of June 30, 2018.

(b) the income statements contained in the Historical Financial Statements present, fairly in all material respects the results of the operations of the Sellers as of and for the periods covered therein and, except as set forth on Schedule 2.13(b), the balance sheets contained in the Historical Financial Statements (i) are true, complete and correct in all material respects; (ii) present, fairly in all material respects the financial condition of the Sellers as of the dates indicated thereon; and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

2.14 Legal Proceedings. Except as set forth on Schedule 2.14, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers' claims and noticing agent's website at <http://www.kccclcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospitals or the Hospitals by Sellers before any governmental authority. Except as set forth on Schedule 2.14, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospitals or the other Assets or the Hospitals and are in substantial compliance with respect to each such government order.

2.15 Employee Benefits. Schedule 2.15(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee pension benefit plan" as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Seller with respect to the operation of the Hospital, in which any employee of Seller participates in his capacity as such (collectively, the "**Seller Plans**").

2.16 Personnel. Schedule 2.16 sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and scheduled bonus, and the accrued paid time off pay of all employees of Sellers (including employees of the Hospitals and employees of Verity and Verity Holdings) immediately prior to December 21, 2018, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Sellers's policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "**Hospital Employees**") and indicating whether the Hospital Employee is full- time or part-time. Sellers shall have the right to update to Schedule 2.16(a) to reflect changes in employment status or new hires and terminations occurring after December 21, 2018 by providing a revised schedule to Purchase no later than five (5) Business Days before the date scheduled for the Closing.Insurance. Schedule 2.17 contains a list of all material insurance maintained by Sellers with respect to the Assets and the Businesses, as of the Signing Date.

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an “AS IS, WHERE IS” basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser’s ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller’s Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser’s attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers’ representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

to Sellers, with a concurrent management agreement entered into at that time upon terms mutually agreeable to the parties in their reasonable business judgment. The Sale Leaseback Agreement and Interim Management Agreement will terminate at the Closing when the Purchaser is issued the Licenses necessary to operate the Hospitals directly (namely, the Hospital Licenses and pharmacy permits).

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller’s and such Seller’s affiliates’ post-Closing administration of such Seller’s and such Seller’s affiliates’ pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets. As soon as practicable after the Closing Date, Purchaser shall deliver to each Seller or such Seller’s designee any Excluded Assets of such Seller found at the

Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the "**Sales Procedures Motion**"), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement ("**Overbid**") to another purchaser ("**Overbidder**") unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the "**Alternate Transaction**") and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the "**Break-Up Fee**"); provided, however, that in the event that

the Purchaser is successful as to some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets not actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i), as compared to the Assets which were the subject of this Agreement; in the event that Purchaser terminates this Agreement in accordance with Section 8.6 hereof, expenses of Purchaser incurred in satisfaction of Section 8.6 shall be reimbursed up to \$500,000; and

(3) The Break-Up Fee shall be deemed to be an allowed expense of the kind specified in Section 503(b) of the Bankruptcy Code to be paid solely from the proceeds of the Alternate Transaction, pursuant to the Sale Order. The Break-Up Fee shall not be paid if the Alternate Transaction was pursued due to a material breach by the Purchaser or the Purchaser's failure or refusal to consummate the transaction after the satisfaction or waiver of all closing conditions.

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

If Sellers fails to obtain Bankruptcy Court approval for the Sales Procedures Motion by no later than four weeks after the end of the Final Diligence Period, Purchaser shall have the right to terminate this Agreement, without recourse or liability, and Seller shall immediately thereafter return to Purchaser the Deposit and any interest earned thereon.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "**Sale Order**" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(d) Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to

participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before 45 days from the date of the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations. Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser

agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth, as Purchaser Approved Conditions, in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to be “materially different.” If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General’s imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein,

shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a

Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to

Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

10.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "**Document Retention Period**"), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**"), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records with respect to time periods prior to the Effective Time (including, without limitation, access to

records of patients treated at the Hospital prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospital, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Hospital in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Sellers. Such documents and other materials shall be, at Sellers' option, either (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Hospital on and after the Effective Time.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Sellers or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Sellers after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Closing of Financials. Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the "**Post-Effective Time CFO**") to cooperate with Sellers' representatives in

order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers' estate.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**STRATEGIC GLOBAL
MANAGEMENT, INC.,**
a California corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SELLERS:

ST. FRANCIS MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

ST. VINCENT MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

**ST. VINCENT DIALYSIS CENTER,
INC.**

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

SETON MEDICAL CENTER,

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

VERITY HOLDINGS, LLC,

a California limited liability company

Signature By:_____

Print Name:_____

Title:_____

Date:_____

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC.,**

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

Exhibit E

Deal Breakers Correspondence



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3430
Facsimile: (415) 703-5480
E-Mail: Scott.Chan@doj.ca.gov

August 16, 2019

VIA EMAIL AND US MAIL

Hope R. Levy-Biehl
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024

RE: Verity Health System of California, Inc. Notice of Proposed Transfer
St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
Center

Dear Ms. Levy-Biehl:

The Health Care Impact Statements for the proposed sale of the Verity hospitals for St. Vincent and St. Francis were posted today on the Attorney General's web site at <http://oag.ca.gov/charities/nonprofithosp>. Please have your clients review the proposed conditions in the Health Care Impact Statements, and let me know in writing whether any of the conditions are a "deal breaker." If there is such a condition, please provide an explanation why your client considers it a "deal breaker" and provide any supporting documents and information. Please provide your client's response on or before August 23, 2019. If I receive no response, I will assume your client has no such concerns. In addition, California Code of Regulations, Title 11, section 999.5(e)(3)(D) states in pertinent part:

The applicant shall prominently post a copy of the independent health care impact statement on its website available to the public and any applicant's website available to its employees within 24 hours of receipt. If the report is posted on the Attorney General's website, the applicant may provide a prominent link to the report in lieu of posting on its website.

Please have your client post on any and all hospitals' websites available to the public and websites available to its employees or post a link to the Attorney General's website.

Sincerely,

Scott Chan

SCOTT CHAN

Deputy Attorney General

For **XAVIER BECERRA**
Attorney General

HOOPER, LUNDY & BOOKMAN, P.C.

WRITER'S DIRECT DIAL NUMBER:
(310) 551-8195

WRITER'S E-MAIL ADDRESS:
TSWANSON@HEALTH-LAW.COM

FILE NO. 81318.909

HEALTH CARE LAWYERS & ADVISORS
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TELEPHONE (310) 551-8111
FACSIMILE (310) 551-8181
WEB SITE: WWW.HEALTH-LAW.COM

OFFICES ALSO LOCATED IN
SAN DIEGO
SAN FRANCISCO
WASHINGTON, D.C.
BOSTON

August 20, 2019

VIA EMAIL AND OVERNIGHT DELIVERY

Scott Chan
Deputy Attorney General
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Verity Health System of California, Inc. Notice of Proposed Transfer of St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center.

Dear Mr. Chan:

As you know, our firm is healthcare counsel to Strategic Global Management, Inc. ("SGM"), the purchaser of four of the Verity Hospitals pursuant to the Asset Purchase Agreement between the Verity Chapter 11 Debtors ("Verity") and SGM, as approved by the Bankruptcy Court ("APA").

We have reviewed your letters of August 16, 2019 and August 19, 2019, to Hope R. Levy-Biehl, outside counsel for the Verity, as well as the Initial Health Care Impact Statements ("Impact Statements"), related to St. Vincent Medical Center, St. Francis Medical Center and Seton Medical Center ("Hospitals"), which are referenced in the letters.

In your letters to Ms. Levy-Biehl, you have requested from her the identification of any conditions set forth in the Impact Statements which are considered "deal breakers," and you further requested an explanation as to why Verity would consider any of the conditions deal breakers. Although the letters were not sent to SGM, we do want to communicate to you SGM's position on the proposed conditions set forth in the Impact Statements.

Our client very much appreciates the ongoing efforts of the Attorney General to review our client's proposed acquisition of the Hospitals and related assets, and we look forward to the opportunity of continuing a dialogue with the Attorney General regarding the acquisition of these Hospitals and any conditions that may be attached to the Attorney General's approval of their transfer to SGM.

HOOPER, LUNDY & BOOKMAN, P.C.
HEALTH CARE LAWYERS & ADVISORS

Scott Chan
August 20, 2019
Page 2

However, the conditions recommended in the Impact Statements are materially inconsistent with the conditions which our client had thoughtfully developed and agreed to accept, as set forth in Schedule 8.6 to the APA. SGM continues to investigate and analyze the Hospitals' assets and operations, but SGM still believes that the conditions agreed to in Schedule 8.6 reflect the appropriate and needed approach in support of efforts to address the significant, long standing operational, economic and physical plant challenges facing these Hospitals, many of which were noted in the Impact Statements.

Accordingly, at this juncture, SGM would not accept the conditions proposed in the Impact Statements to the extent they materially differ from the conditions accepted by SGM in Schedule 8.6 to the APA. SGM reserves all of its rights in connection with the APA and, specifically, all of SGM's rights set forth in Section 8.6 thereof.

Nonetheless, as noted above, SGM is continuing its investigation and remains open to discussions with the Attorney General regarding these matters, including face-to-face meetings as appropriate.

Very truly yours,



Todd E. Swanson

TES/sdh

cc: William Thomas, Esq.
Hope Levy-Biehl, Esq.



2040 E. Mariposa Avenue
El Segundo, CA 90245

August 23, 2019

VIA EMAIL AND FEDEX

Scott Chan, Deputy Attorney General
California State Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Response to August 16 and August 19, 2019 Correspondence
Summary of “Deal Breakers”

Dear Mr. Chan,

Please consider this letter the response of Verity Health System of California, Inc. and its affiliates (“Verity” or “Debtors”) to your letters regarding the conditions proposed (the “Recommended Conditions”) by JD Healthcare, Inc. (“JD Healthcare” or “Expert”) in its Health Care Impact Statements (“Impact Statements”), analyzing the proposed sale of St. Francis Medical Center (“St. Francis”), St. Vincent Medical Center (St. Vincent), and Seton Medical Center, including its Daly City and Coastsides Campuses (“Seton”) (collectively, the “Hospitals”) to Strategic Global Management, Inc. and/or one of its affiliated entities (“SGM” or “Buyer”) (the “Transaction”) pursuant to the Asset Purchase Agreement (the “APA”), entered into by and between the parties and approved by the Bankruptcy Court [Docket No. 2305]. We appreciate the opportunity to provide this response.

For the reasons outlined below, if the Attorney General (“AG”) adopts the Recommended Conditions, SGM will not proceed with acquiring the Hospitals. SGM confirmed this in its letter to you dated August 21, 2019, when it stated that “the conditions recommended in the Impact Statements are materially inconsistent with the conditions . . . agreed to in Schedule 8.6.” Importantly, any condition that the AG adopts that is not consistent with Schedule 8.6 is, in our view, a “deal breaker.” Further, if the AG adopts the Proposed Conditions and if the Debtors are unsuccessful in their efforts to cut off the conditions under Section 363 of the Bankruptcy Code¹

¹ Verity reserves the right to challenge the AG’s ability to impose conditions such as the Recommended Conditions in the context of a sale in bankruptcy pursuant to section 363 of the Bankruptcy Code. In this case and *In re Gardens Regional Hospital and Medical Center, Inc.*, 567 B.R. 820 (Bankr. C.D. Cal. 2017), the Bankruptcy Court expressly held, for example, that conditions imposed on a buyer by the Attorney General, as part of the Attorney General’s review of the sale of a non-for-profit hospital, is an “interest in property” that can be stripped off the assets through a sale under section 363 of the Bankruptcy Code. *See also In re Verity Health Sys. of Cal., Inc.*, 598 B.R. 283, 293 (Bankr. C.D. 2018) (holding that the “Conditions are an “interest in property” within the meaning of §363(f). These ruling are consistent with rulings by the Second, Third, Fourth and Seventh Circuits, and many lower courts, which have interpreted “any interest” expansively to include not only in rem interests in property, but also



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and the sale to SGM does not proceed, the likely outcome is the closure of St. Vincent, Seton, and perhaps St. Francis. This would be an unnecessary and avoidable tragedy and would have a dire impact on countless patients, employees, vendors, and stakeholders. This is especially true here when SGM has agreed to continue to operate the Hospitals and to abide by the vast majority of the conditions imposed by the AG in its approval of the BlueMountain Transaction (the “2015 Conditions”)² for the remaining term that the conditions apply to Verity, as set forth in Schedule 8.6 to the APA.

Consequently, we strongly request that your office not accept the Expert’s Recommended Conditions, which are essentially a roll-forward of the 2015 Conditions based on the historic operations and not current patient care needs or market conditions. Instead, we encourage the AG to tailor the conditions to match those outlined in Schedule 8.6 providing SGM with the flexibility necessary to turn the Hospitals around financially, so they can continue to provide critical healthcare access to the communities they serve and thousands of jobs for the foreseeable future.

We further urge the Attorney General to exercise his discretion in a manner that considers the economic impact of the Recommended Conditions on the Hospitals. While the Impact Statements provide a significant amount of information related to the Hospitals background and the Transaction, the reports lack (i) any analysis of the economic impact that the 2015 Conditions have had on the Hospitals, and (ii) any cost-benefit analysis of the Recommended Conditions. Alarming, without regard to the economic and community realities, certain Recommended Conditions, if adopted, would force the Hospitals to maintain programs that not only lose significant amounts of money on an annual basis, but are unnecessary since the same services (and in some instances, more comprehensive or robust services) are already being provided at other hospitals in the area. To aid the Attorney General, we have provided evidence that considers the economic impact of the Recommended Conditions on the Hospitals both in this letter and in the enclosed, supporting declarations. We are happy to provide additional evidence and to discuss this further.

The Attorney General’s consideration of the economic impact of the prospective conditions is critical. We, as operators of the Hospitals, know the 2015 Conditions were overly burdensome and hampered the Hospitals’ ability to break even, let alone prosper. Indeed, the

other obligations that are “connected to or arise from the property being sold” or that could “potentially travel with the property being sold.” See, e.g., *In re La Paloma Generating, Co.*, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017); *PBBPC, Inc. v. OPK Biotech, LLC* (In re PBBPC, Inc.), 484 B.R. 860 (1st Cir. B.A.P. 2013); *In re Vista Marketing Group Ltd.*, 557 B.R. 630 (Bankr. N.D. Ill. 2016); *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016); *In re Tougher Indus.*, 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013).

² These 2015 Conditions are contained in the AG’s “Conditions to Change in Control and Governance of St. Francis Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, L.L.C., and Integrity Health, L.L.C.” dated December 3, 2015.



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Hospitals filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on August 31, 2018 to stop hemorrhaging precious cash resources. Verity, its employees, its 10,000 vendors, and other parties have made tireless efforts during the tenure of the Chapter 11 cases to ensure continued patient care and to take the necessary steps to allow the Hospitals to be sold to a new operator that could successfully operate the Hospitals.

The Bankruptcy Court has now approved the Transaction, which paves the way for a better chapter for these Hospitals and the communities they serve. The Attorney General should carefully consider the foregoing and not impose any conditions, based largely on historic operations, that would unravel operational improvements resulting from the heroic efforts of Verity's employees and management to save these Hospitals and inexorably lead to their closure.

We also request the opportunity to meet with you and other key decisions makers before any conditions are finalized in this Transaction, given their importance and the fact that the Recommended Conditions would destroy the Transaction and have a negative impact on tens of thousands of patients, employees, vendors, and stakeholders.

I. The 2015 Conditions and the Chapter 11 Cases

Before discussing the Recommended Conditions, I would like you to have the benefit of my experience overseeing the operations and financial performance of the Hospitals. *See* Enclosed Declaration of Richard G. Adcock, Verity Health System of California, Inc. Chief Executive Officer. Upon my appointment of CEO as the Hospitals, two competing issues were immediately apparent: the Hospitals are (i) critically important to the communities they serve, but (ii) are damaged financially as a result of cumulative decisions made in the last two decades.

While my extensive experience in healthcare has assisted me in understanding and navigating the complex problems threatening the Hospitals, one thing has crystalized for me: *the Hospitals require operational flexibility to adjust to market needs and demands and to effectuate a financial turn-around.* The 2015 Conditions do not allow for that type of flexibility and therefore hamper the Hospitals' ability to succeed. Thus, it is imperative that the Attorney General consider the pragmatic realities of the Hospitals' operations when imposing conditions on the Hospitals. We strongly request that the AG tailor the conditions imposed on this Transaction to align with the Purchaser Approved Conditions in Schedule 8.6, providing SGM with the flexibility to close on the Transaction and turn the Hospitals around so they can continue to provide meaningful health care services, community benefits, and jobs to the communities they serve.

II. SGM Was the Only Qualified Bidder for St. Francis, St. Vincent, and Seton.

Verity conducted a robust process to market and solicit potential buyers. In June 2018, it engaged Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), to identify potential



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buyers of some or all of the Verity hospitals and related assets and commenced discussions with those potential buyers. Cain prepared a Confidential Investment Memorandum and organized an online data site to share information with potential buyers, contacting over 181 prospective strategic and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction regarding the Verity hospitals. As a result of its far-reaching marketing process, Cain received sixteen indications of interest or other proposals and continued to develop potential sales.

Verity, in consultation with Cain and its other advisors, selected SGM's offer to serve as the stalking-horse bid to acquire the assets of St. Francis, St. Vincent, St. Vincent Dialysis Center, Seton, and related assets (the "Assets") through a sale under section 363 of chapter 11 of title 11 of the United State Code (the "Bankruptcy Code"). Following extensive negotiations, SGM and St. Francis, St. Vincent, St. Vincent Dialysis Center, and Seton entered into the APA, which provides for the purchase of the Assets for \$610 million, plus payments of cure costs, as set forth therein.

Thereafter, in accordance with the bidding procedures, Cain continued to actively market the Assets. Cain notified 90 parties of the sale process, directly sent the parties the bidding procedures approved by the bankruptcy court, and represented Cain's availability to assist in the bidding process. Thereafter, sixteen of those parties signaled ongoing interest by their requests for continued access to the data room containing information about the Assets.

Notwithstanding the time, energy, and resources dedicated to this process, SGM submitted the only qualified bid for St. Francis, St. Vincent, and Seton. *Again, and importantly, SGM has agreed to accept, in full or in large part, the majority of the 2015 Conditions imposed by the AG in its approval of the BlueMountain Transaction for the remainder of the term applicable to Verity.* SGM has not agreed to accept those 2015 Conditions in their entirety due to its need for flexibility to turn the Hospitals around financially and to modify or eliminate services that are not financially feasible to retain and/or not necessary to serve the community. The Bankruptcy Court entered orders (i) approving the APA, schedules and exhibits thereto, and (ii) authorizing the sale to SGM under section 363 of the Bankruptcy Code.

III. If the Attorney General's Office Adopts the Conditions Proposed by JD Healthcare, SGM Will Not Acquire the Hospitals.

Verity and SGM engaged in extensive discussions and negotiations about the 2015 Conditions, with Schedule 8.6 developed as a result of compromises and concessions made by the parties regarding what conditions SGM committed to accept, while ensuring it had the flexibility and opportunity to turn the failing healthcare system around. Pursuant to Section 8.6 of the APA, SGM negotiated the requirement to close on the Transaction only if the conditions imposed by the AG are "substantially consistent" with the conditions set forth in Schedule 8.6. As outlined in greater detail below, the Recommended Conditions are not substantially



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consistent with the conditions enumerated in Schedule 8.6 in a number of significant ways and, if adopted by the AG, will result in this Transaction failing. For the avoidance of any doubt, if the AG adopts and imposes any condition on this Transaction that is not consistent with Schedule 8.6, any such condition should be considered by the AG's office as a "deal breaker."

We highlight below some of the material ways in which the conditions proposed by the Expert diverge from Schedule 8.6.

A. The "term" of the Condition

In Schedule 8.6, there are a number of conditions that SGM accepted "for a term which coincides with the remaining term applicable to [the] condition" for the specific Hospital, as set forth in the 2015 Conditions. While SGM agreed to essentially stand in Verity's shoes and to honor the remaining term of the Prior Conditions, it was unwilling to commit to these 2015 Conditions for a more extended period, as these conditions were a key factor contributing to the financial demise of the Hospitals and any requirement to honor these commitments for longer would inhibit SGM's ability to make operational changes necessary to turn the Hospitals around. SGM makes its point in its letter to you when it stated "the conditions agreed to in Schedule 8.6 reflect the appropriate and needed approach in support of efforts to address the significant, long standing operational, economic and physical plant challenges facing these Hospitals, many of which were noted in the Impact Statements."

It is worth noting that in at least some cases (and specifically for Seton), JD Healthcare has recommended that certain conditions be applied to SGM "for the remainder of the term" or in some cases for a period of time that is even shorter than the term remaining on the 2015 Conditions. The AG should apply this same standard to all of the conditions required of SGM (*i.e.*, not longer than the remaining term).

As outlined in greater detail below, if the AG does not allow SGM to honor its conditions for a term that runs concurrent with the term that currently applies to Verity, there is a significant risk that the Hospitals will close. This will result in the loss of critical community-based health care services, jobs, recoveries for creditors, and the loss of over \$9 million annually in charity care and over \$3,300,000 annually in community benefits currently provided by these Hospitals.

The closure of the Hospitals would be a tremendous and completely avoidable loss. By imposing conditions for a period of time that runs concurrent with the 2015 Conditions, the AG would help to ensure that the Transaction closes and the Hospitals remain open, potentially for much longer, once under new ownership, shed from burdensome historic liabilities and challenges and on more solid financial grounds. This will give SGM the time it needs to further evaluate the opportunities and challenges for these Hospitals and to determine what changes are appropriate to ensure their long-term viability and the best and most productive services for the Hospitals going forward. SGM can, at its election, and if financially prudent, continue to honor



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the 2015 Conditions and maintain the beds, services, and offerings beyond this term, but requiring it to do so will terminate this Transaction and result in the loss of all services before the 2015 Conditions have even lapsed.

B. Cancer Care

In its Recommended Conditions, JD Healthcare suggests that the AG require SGM to maintain cancer care at the Hospitals, including radiation therapy at St. Francis and St. Vincent, and inpatient oncology, interventional radiology, radiation therapy, and infusion service at Seton. This condition is a clear deal breaker for SGM.

As a threshold matter, it is important to note that none of the Hospitals offer a comprehensive oncology service today. *See* Enclosed Declaration of Tirso del Junco, Jr. M.D., Verity Health System of California, Inc. Chief Medical Officer. St. Francis, St. Vincent and Seton do not currently provide surgical oncology services. While Seton historically had a more robust oncology service line, two of the medical oncologists previously practicing at the Hospital retired and have not been replaced, which has resulted in a further decline in oncology services, including a significant decline in infusion services.

Importantly, demand for oncology services has been steadily on the decline at each Hospital. The reasons for this decline are a function of changing market conditions and are not a mystery. By its own account, the Expert found that St. Francis' cancer care volume decreased from fiscal year 2017 through fiscal year 2019. There are at least three other community hospitals offering cancer care to the same community of patients served by St. Francis. There has also been a decrease in oncology volume at St. Vincent over the last three years, with at least four other community hospitals and/or academic medical centers providing cancer care services to the same community of patients served by St. Vincent. JD Healthcare notes that cancer is the leading cause of death in Los Angeles. While this is very unfortunate and may well be true, the Expert has not suggested that this is the result of a lack of sufficient providers of oncology services or that the provision of cancer care services at St. Vincent and St. Francis is important in fighting this epidemic.

We cannot look at the provision of oncology services in a vacuum. Oncology is a very expensive service line. *See* Enclosed Declaration of Anita Chou, Verity Health System of California, Inc. Chief Financial Officer In FY 2018, St. Vincent provided 9,435 cancer treatments for a loss of \$995,000. We would anticipate SGM losing an additional \$547,000 as a result of its inability to access drug pricing under the federal 340B Drug Discount Program ("340B pricing"),³ which would result in a projected net loss of approximately \$1.5 million annual in the oncology service line. In FY 2018, Seton provided 8,429 in oncology treatments

³ The 340B Drug Discount Program is a US federal government program created in 1992 that requires drug manufacturers to provide outpatient drugs to non-profit health care organizations at significantly reduced prices. As a for-profit enterprise, SGM is not eligible for 340B pricing.



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for a net loss of \$3.8 million. SGM would have lost an additional \$3 million as a result of its inability to access 340B pricing, with approximately \$2.6 million attributable to higher oncology drug costs. It is not financially feasible to expect Seton, once owned by SGM, to operate an oncology program with diminishing volume and need at a loss of nearly \$7 million per year, especially when the Hospital is already operating at an annual loss of \$60 million. In FY 2018, St. Francis provided 15,556 oncology treatments for a total operating cost of \$11.6 million. This service line generated a net income of \$1.8 million. St. Francis will incur a loss of \$262,000 under SGM ownership in light of its inability to access 340B drugs. Some portion of this would translate into additional costs for the St. Francis oncology program.

St. Vincent and Seton already sustain overwhelming losses each year. While St. Francis is operating at a modest profit, it has significant cash flow challenges and may not be financially successful if it had to stand on its own without the support of the system. Given these challenges, every dollar committed and lost impacts the ongoing operations and viability of the Hospitals. SGM recognized from the inception that maintaining oncology services without access to 340B pricing would negatively impact its ability to operate the Hospitals. While access to cancer care is critical, the Expert found sufficient alternative providers. Despite there being available cancer care providers in each of the Hospitals' communities, the Expert recommended requiring the Hospitals' admittedly partial cancer programs continue. The AG should not adopt these Recommended Conditions, which would require SGM to maintain an expensive, diminishing service line when there are alternative service providers in the Hospital communities.

C. Charity Care

SGM has committed to provide annual charity care funds equal to or greater than \$430,384 for patients at St. Vincent, \$8,000,000 for patients at St. Francis, and \$935,405 for patients at Seton, for a term that coincides with the remaining term of the 2015 Conditions. This translates to a commitment of approximately \$9,400,000 annually to support necessary medical services for patients in need of care. Any additional charity care requirements above these amounts are a deal breaker for SGM, as it would hinder the long term sustainability of the Hospitals' services.

We appreciate JD Healthcare's recognition that health reform and the Affordable Care Act ("ACA") have changed the need for charity care. We agree with JD Healthcare's suggestion that the AG should adjust the required commitment to charity care based on available data from time periods after the implementation of the ACA. However, a three-year lookback period is too long in light of the significant year-over-year changes in the need for charity care. Instead, the AG should look at the actual charity care provided in the past year by St. Francis, St. Vincent and Seton as a more appropriate barometer for the level of charity care that should be offered by the Hospitals prospectively. SGM has committed to a significant minimum amount of charity care in Schedule 8.6 and the AG should accept this commitment.



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SGM has agreed to administer the charity care funds under its existing financial assistance policy applicable across SGM's hospital system. In order to operate an efficient system, SGM will need to have one set of policies, procedures, and patient financial assistance applications. The Expert has recommended that SGM be required to operate under Verity's policy. SGM should be permitted to organize its administration of the charity care funds, consistent with its other hospitals, and in compliance with applicable state and federal law, without being required to continue Verity's specific policy.

D. Community Benefit

SGM has committed to provide annual community benefit services equal to or greater than \$1,076,459 for the communities served by St. Vincent, \$1,439,854 for the communities served by St. Francis, and \$848,434 for the communities served by Seton, for a term that coincides with the remaining term of the Prior Conditions. Any additional community benefit program requirements above these amounts are a deal breaker for SGM, as it would hinder the long-term sustainability of the Hospitals' services. Further, SGM must be afforded the flexibility to determine how best to serve the community and which programs to provide on behalf of each Hospital.⁴

E. Capital Commitment

As of June 30, 2019, Verity expended approximately \$172 million of the \$180 million in capital commitments required as part of the 2015 Conditions applicable to Verity's six hospitals, leaving approximately \$8 million unexpended by Verity. SGM has agreed to pay the previously required, but unexpended Verity capital commitment applicable to the three Hospitals it is acquiring. In order to determine SGM's share of the unexpended \$8 million, we considered the Santa Clara County and SGM asset purchase agreements to arrive at the proxy value of the Verity hospitals of \$845,000,000, comprised of \$235,000,000 for O'Connor Hospital and Saint Louise Regional Hospital, and \$610,000,000 for St. Francis, St. Vincent, and Seton. Based on these figures, SGM is acquiring approximately 72% of the Verity hospital assets. As such, SGM's portion of the outstanding capital commitment as of June 30, 2019, is approximately \$5.8 million.

Provided that Verity does not expend any additional capital expenditures through the closing of the pending APA, then SGM would honor and commit to expend \$5.8 million in capital commitments among St. Francis, St. Vincent, and Seton. If the remaining amount of the original capital commitment pursuant to the 2015 Conditions left unexpended through the closing of the APA is less than the above number, SGM would honor and commit to spend seventy-two percent (72%) of such lesser amount in capital commitments. We understand SGM

⁴ Please note that although St. Francis Career College was referenced in the Expert's recommendations, American Career College bought St. Francis Career College in 2013 and has since closed the Lynwood Campus in 2019.



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would want to maintain the flexibility to determine how best to apportion these required expenditures among the Hospitals based on their individual needs and their operational priorities and to have the opportunity to expend such amounts over five (5) years following the closing pursuant to the APA.

F. Economic Impact of the Expert Proposed Conditions Generally

While the Impact Statements provide a significant amount of information about the Transaction, the Hospital operations and challenges, and the communities they serve, it lacks (i) any of the economic impact the 2015 Conditions have had on the Hospitals or that the Recommended Conditions would have on SGM, and (ii) any cost-benefit analysis of the conditions recommended by the Expert. Verity and SGM agree that many of the services provided by the Hospitals are essential to the communities they serve and that is why SGM has agreed to adopt many of the 2015 Conditions. The Impact Statements fail to consider and discuss the extent to which the economic impact of the proposed conditions guarantees a failed SGM transaction. In its letter to you, SGM states: “the conditions recommended in the Impact Statements are materially inconsistent with the conditions [...] set forth in Schedule 8.6 to the APA.” It goes on to say that “SGM would not accept the conditions proposed in the Impact Statements.”

If the AG adopts the Recommended Conditions, based on the historical conditions, operations and needs and not the present reality, this will result in requirements for the Hospitals to maintain programs that not only lose a significant amount of money on an annual basis but that are also unnecessarily duplicative of other services (sometimes more comprehensive) already offered at other hospitals in the area. This will also result in SGM walking away from this Transaction.

As further discussed below, a failed SGM Transaction would mean closure for all the Hospitals resulting in the loss of access to medical care for hundreds of thousands of community members and patients, put thousands of employees out of work, and deny any financial recovery for former employees with pension rights, as well as other stakeholders.

By way of example, the Recommended Conditions require that SGM maintain transplant services at St. Vincent, including its newly developed liver transplant program, for at least five years from the Closing Date. St. Vincent established its liver transplant program earlier in 2019, performing a total of 10 liver transplants to date. At present, this program is not receiving any reimbursement as it is still going through the initial certification process. The liver transplant program places a significant financial burden on the Hospital. A third-party liver program expert consulting company has produced feasibility and performance projections for the St. Vincent program and anticipates that it will lose \$21 million over 5 years, or somewhere in excess of 15% of the total value of St. Vincent. Liver transplant services were not a required service under the 2015 Conditions and SGM should not be required to maintain liver transplant services at St. Vincent as part of this Transaction.



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Additionally, the Recommended Conditions require SGM to contract with LA Care for St. Francis, and St. Vincent. Verity is currently involved in litigation with LA Care to recover approximately \$15.2 million in underpaid and/or unpaid claims.⁵ See St. Vincent Medical Center v. Local Initiative Health Authority for Los Angeles County dba L.A. Care Health Plan, Case No. 19-01002 at kccllc.net/verity. Requiring SGM to contract with LA Care is unreasonable in light of LA Care's inability to adequately ensure timely and full payment at market rates for services. When both parties can freely negotiate a new contract with needed assurances of payment at market rates, the community benefits. This is not possible if SGM is mandated to contract with LA Care regardless of the contract terms offered by LA Care or LA Care's performance or non-performance under the contract.

These are just a few examples of how the Recommended Conditions fail to take in to account the economic consequences of the suggestions and the impact these would have on hospital viability and prudent operations.

IV. If the AG Imposes the Conditions Recommended by its Expert, and the Debtors are Unsuccessful in their Efforts to Cut Off the Conditions under Section 363 of the Bankruptcy Code, the SGM Sale Will Terminate and St. Vincent and Seton Will Close.

A. The Debtors and Their Stakeholders Will Suffer Immediate Irreparable Harm if the SGM Sale Does Not Close.

The aftermath of a failed SGM sale is the prompt closure of St. Vincent and Seton in light of their unsustainable operational losses, the absence of an interested viable purchaser that would continue operations as acute care hospitals, and the almost certain lack of financing to continue their operations. While St. Francis would attempt a private sale in the bankruptcy case, the Debtors foresee significant challenges notwithstanding the fact that its financial performance may be stronger during parts of the year than the other Hospitals. Indeed, excluding QAF, since it is often difficult to rely on from a working capital perspective due to its sporadic payment pattern, St. Francis would need to borrow greater than \$35 million from the Verity Hospital System throughout the year to manage large working capital fluctuations. The administrative expenses and risks associated with continuing the bankruptcy cases to attempt to identify a new buyer other than SGM, further threaten the Debtors' ability to finance and sell the Hospitals as going concerns and related recoveries to constituents. These threats are borne directly by the communities served by the Hospitals, their patients, employees, and other critical stakeholders, and are material considerations with which to assess the proposed SGM sale.

⁵ To add specific examples, one large category of claims at issue involves services that were authorized by LA Care through delegated vendors but that LA Care denied payment because it had no way to track the delegated vendors' authorization numbers. As a result, LA Care required timely filed electronic claims to be resubmitted in paper. Another example is that LA Care has improperly administered payments under "stop loss" provisions – denying payment to St. Francis, in particular, for services to some of the most needy patients.



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1. St. Vincent and Seton Will Likely Close.

St. Vincent and Seton are likely to close promptly after the SGM transaction fails for two significant reasons tied to their ongoing financial underperformance: (i) the Debtors cannot sustain the operational losses incurred by St. Vincent and Seton without the prospect of a potential purchaser, and (ii) the Debtors must conserve resources to underwrite a sale of St. Francis. St. Vincent and Seton (including both the Daly City and Coastsides campuses) have combined operating losses greater than \$105 million in the 10 months since filing bankruptcy.

The Expert acknowledges that “no other offers were received by the Bankruptcy Court to purchase and operate” St. Vincent and Seton. *See* St. Vincent Report at 86; Seton Report at 87. This finding is consistent with the results of the Debtors’ extensive marketing efforts. As outlined in greater detail above, beginning in July 2018, the Debtors engaged Cain to identify potential buyers of some or all of the Debtors’ Hospitals. Cain contacted over 181 strategic and financial buyers and received 11 indications of interest. None of these indications proposed purchasing and operating St. Vincent or Seton individually. The Debtors cannot sustain incurring ongoing operational losses to maintain the going-concern value of St. Vincent and Seton without the realistic prospect of a purchaser.

These closures would begin almost immediately. Because the failure of the SGM sale puts the recovery of secured creditors at risk, it is almost certain that the secured creditors would object to continued use of their cash collateral to subsidize the losses at St. Vincent and Seton. While the Debtors may be able to obtain an order authorizing the use of cash collateral over their objection, that use would be limited to the amount necessary to avoid harm to patients. Based on the experience of Debtors’ counsel, St. Vincent and Seton would first seek court approval to close their emergency departments and close the Hospitals to new patients. Given the average length of stay for hospital inpatients, we would expect all acute care patients to be discharged within a week. We would expect St. Vincent to be closed in less than one month.

Closure of Seton would be much slower than St. Vincent, given the more involved process of the skilled nursing and sub-acute resident populations at both the Daly City and Coastsides campuses, and would cost tens of millions of dollars to effectuate. We would immediately seek the assistance of the California Department of Public Health, the Center for Medicare and Medicaid Services, the Department of Health Care Services, Santa Clara and San Mateo Counties and other key governmental and non-governmental stake holders to find appropriate placements for the approximately 180 long term and subacute residents at Seton. However, the post-acute care delivery system in Northern California does not have the excess capacity to accept these residents. *See* Enclosed Declaration of Maya Altman, CEO for the Health Plan of San Mateo. We would anticipate many of these residents being displaced across the state and outside of the state in order to find appropriate and available beds and resources. The transfer trauma risk attendant to the closure of Seton’s nursing facility would be significant with patients needing to be transferred, in many cases, hundreds of miles away from their communities, families and support networks.



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Thereafter, the Debtors would most likely attempt a private sale of St. Vincent and Seton after they are closed. After their extensive but ultimately unsuccessful marketing efforts, the Debtors believe that the most likely outcome is a sale to a real estate or similar purchaser without an interest in continuing or reopening the facilities as acute care hospitals, and without the need for Attorney General review. *See In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 826-829 (Bankr. C.D. Cal. 2017) (Robles, J.) (holding that sale of a closed not for profit hospital is not subject to Attorney General review).

2. St. Francis Will Attempt a Private Sale at a Depressed Value with Significant Financial Obstacles and Creditor Scrutiny.

In the event the SGM transaction fails due to the imposition of conditions making continued operations economically unfeasible, the Debtors will turn their efforts to fund a renewed sale process for St. Francis, their only potentially profitable going-concern asset. A St. Francis sale process would face stiff headwinds and present significant liquidity demands, which would be further exacerbated if the Debtors are continuing to incur operating losses associated with St. Vincent and Seton. The Expert cites interviewees who “expressed that if this [SGM] transaction was not finalized, the Hospital would likely be acquired by another organization due to its history of financial success.” *See* St. Francis Report at 85. However, this supposition does not account for the expenses and uncertainties associated with a single-facility sale.

St. Francis realizes substantial economic benefits from its integration in the Verity Health System that would be stripped in a single-facility sale. First, St. Francis cannot sustain itself solely on cash flow from operations. The primary receivables attributable to St. Francis operations—reimbursements and related supplemental payments on account of the Hospital Quality Assurance Fee program—are paid periodically during the year and substantially after the service period to which they relate. As stated previously, excluding QAF, St. Francis must borrow greater than \$35 million from the Verity Hospital System throughout the year in order to manage its large working capital fluctuations. Historically, St. Francis has leveraged financing arrangements entered into by the Verity Health System. The obligated parties under those financing arrangements historically included VHS, O'Connor Hospital, Saint Louise Regional Hospital, Seton, St. Vincent, and St. Francis. St. Francis cannot achieve stable financial operations without access to credit historically supplied on a joint and several basis to the Verity Health System.

St. Francis benefits from the consolidated administrative functions and unified technology of the Verity Health System, which St. Francis would need to arrange for and purchase individually in anticipation of a single-facility sale. The total burden of the cost of the underlying IT systems and licensing agreements for the system, at a cost of more than \$40 million per year, would likely be the burden of St. Francis alone. In addition, St. Francis would bear a significant portion of the current annual overhead costs of over \$100 million that no longer could be spread across the other Hospitals. These two factors will put significant strain



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on the cash flow of the remaining Debtors and would ultimately make completing an extremely quick private sale of St. Francis critical to maintaining any value for the estate.

A private sale is more expedient, but, in the absence of a renewed, robust sale process, the Debtors expect the sale would yield a purchase price hundreds of millions of dollars lower than the SGM Transaction and would receive objections from constituents who would request a new marketing process. Based on the Debtors' experience through the extensive pre-bankruptcy and post-filing marketing efforts, the Debtors are very aware of (i) the difficulty in identifying a purchaser that is both interested in, and capable of, closing on such a transaction, and (ii) the large amount of time and money it takes to sustain ongoing operating losses while working with a prospective buyer through the complex sale process. In these circumstances, the Expert's comment, without support, that there would be "other buyers" if the SGM Transaction failed is at best unsupported and a gross oversimplification of what would be an involved, complicated process. Even if a new deal process were successful and yielded a willing buyer capable of closing, it is highly uncertain whether the Debtors could fund the ongoing operating capital necessary to continue to operate St. Francis while the sale worked its way through the rigorous bankruptcy, AG, and regulatory approval process.

The Debtors' creditors are also likely to object to a fire sale of St. Francis given the already small recoveries available if the SGM sale is successful. A private sale is likely to leave only a partial recovery for secured creditors and, as discussed below, no recovery for other critical stakeholders. These secured creditors and stakeholders are likely to carefully scrutinize such a transaction and demand a longer auction process in lieu of a private sale. Each of these likely demands from secured creditors, other stakeholders, and the Attorney General would expose St. Francis to further financial deterioration arising from the increased administrative and professional costs associated with a lengthy sale process as well as further losses from operations.

It should be noted that even if there are good sales prospects, Verity will likely have no choice but to close St. Francis pending a sale, putting the hospital license in suspense and closing all beds and service lines. This would require a prompt shut-down of St. Francis, including the closure of its emergency room and trauma center as well as its psychiatric unit. While a buyer could apply to have the St. Francis hospital license resurrected and taken out of suspense, this is not without consequence. As a Hospital that relies heavily on government reimbursement and QAF to survive, in taking the license out of suspense, a St. Francis buyer would need to apply for new Medicare and Medi-Cal provider agreements, enduring a period during which the hospital is open but not yet certified. In addition, St. Francis would not be eligible for QAF during the period of time when it is closed, which would also impact its QAF fees and payments upon reopening. All of this would likely have a negative impact on the value of St. Francis as a freestanding hospital as well as its timeline for reopening its emergency department and certain non-essential services.



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B. A Renewed Sale Process Will Materially Delay the Bankruptcy Cases.

The Debtors have administered and financed their bankruptcy cases and plan of liquidation assuming that the cases would conclude shortly after the SGM sale. If SGM does not consummate the sale, then the Debtors will incur additional, unexpected administrative expenses associated with continued operations as they pursue new sales and closures. These expenses—unanticipated by the Debtors and their lenders—will increasingly burden the Debtors’ ability to fund their operations.

While difficult to predict, the Debtors anticipate that a single-facility private sale of St. Francis will take approximately five to six months to close. The bankruptcy court process, assuming that (a) a buyer could be located, and (b) the Debtors would seek a private sale, would last approximately six to eight weeks and involve soliciting potential purchasers, drafting and negotiating an asset purchase agreement and sale motion, and holding a sale hearing on three weeks’ notice to interested parties. The balance of time is allocated to the 90 to 135-day Attorney General review process. This assumes that the private sale of St. Francis would not require a more belabored auction process in bankruptcy court; however, as noted above, creditors disappointed with partial or no recovery on their claims may convince the court that an auction process will result in a higher sale price.

The Debtors anticipate that the private sales of St. Vincent and Seton would take substantially less time to close if the facilities are not operating as acute care hospitals. The Debtors estimate that sales of St. Vincent and Seton could close in no less than two months on the most favorable timeline and for substantially less consideration. This assumes an expedited disposition of the facilities’ patient populations, which we anticipate will be especially challenging for Seton’s long-term patient populations at both the Daly City and Coastsides campuses.

There is significant risk in the Debtors ability to fund an additional six-month sale process. These alternative sale timelines, through abbreviated, nevertheless require the Debtors to incur significant administrative expenses. As discussed, the Debtors incur cash flow losses of \$450,000 every day. The Debtors have obtained \$185 million of debtor in possession financing to cover these operational and administrative expenses during their bankruptcy cases because their stakeholders were satisfied that there was a high likelihood of consummating significant asset sales; this matures September 7, 2019. In fact, the financing terms are subject to strict case milestones and short-term budgets based upon consummating sales of the Hospitals by specific dates. *See* Docket No. 309-2 (DIP Credit Agreement, § 7.1 at 63) (the Debtors financial covenants include limits on budget variances during the bankruptcy cases); *see id.* (DIP Credit Agreement, § 9.1(q) at 72-76) (providing for defaults if Debtors fail to meet case deadlines including sale deadlines). Without the prospect of an imminent asset sale that would, at a minimum, cover the costs of financing, the Debtors’ ability to obtain financing is a significant risk. The Debtors’ access to cash collateral and proceeds of the O’Connor Hospital and Saint Louise Regional Hospital sale are likewise subject to the liens and limitations of the Debtors’



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secured creditors. The Debtors' ability to fund their operations becomes increasingly dubious as the bankruptcy cases continue without resolution.

C. Patients, Employees, Vendors, Community Members, and Other Essential Stakeholders Bear Directly the Ramifications of a Failed SGM Transaction.

The Attorney General should not ignore the significant economic ramifications of a failed SGM sale because of the negative healthcare impacts on patients and community members. If the SGM sale does not close, patients and community members will lose access to healthcare facilities. Extending the timeline to a sale by six months will also jeopardize the ability to finance the remaining hospital. Furthermore, the degradation in value realized from the asset sales will directly affect key stakeholder recoveries.

1. The Impact on Community Members and Patients

Failure to consummate the SGM sale likely results in the closure of St. Vincent and Seton and risks closure of St. Francis. The Expert recognizes the unique role the Hospitals play in their communities. Although the Debtors challenge the specifics of the proposed conditions, it is indisputable that these facilities provide access to essential healthcare services in their communities. Faced with the possibility of losing these facilities in their entirety, rote application of historical conditions must yield to the pragmatics of economics and demonstrable community need.

St. Francis is a critical safety-net provider of health care services, serving a large number of uninsured and underinsured patients. It is located in a medically underserved area and operates the only trauma center in the service area. It also provides critical acute inpatient psychiatric services as well as a mobile crisis evaluation team.

St. Vincent is the oldest hospital in Los Angeles, providing critical emergency room and other specialized services to the community it serves. In addition to serving almost 180 skilled nursing and subacute residents, Seton also operates a geriatric-psych service line and the only emergency department on the Peninsula in the 55-mile stretch between Santa Cruz and Daly City.

In addition to the possibility of losing these Hospitals, the communities would also lose the charity care and community benefits they offer. This would be a tragic and unnecessary loss.

2. The Impact on Vendors

It is the vendors that have supported the Hospitals during the pendency of the bankruptcy cases, allowing the Hospitals to stay open and to continue providing services in the ordinary course. Under the SGM purchase agreement, these vendors will receive payment in full for their



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support of Verity during its bankruptcy and a failed sale to SGM could put those payments at risk.

In addition, there are thousands of vendors whose contracts will be assumed by SGM pursuant to the sale. As a consequence, these vendors will be paid for their pre-petition claims an estimated total recovery of more than \$50 million. For those vendors whose contracts are not being assumed by SGM, the sale will still provide millions of dollars of recoveries. In total, the failed sale to SGM would cause these vendors to lose tens of millions of dollars in recoveries. Further, there would be a loss of future services by these vendors that would provide the go-forward services to the operating hospitals.

3. The Impact on Employees

St. Francis, St. Vincent, and Seton have approximately 4,950 employees. SGM has committed to retain “substantially all” employees of the Debtors, as set forth in the APA. *See* Docket No. 2305-1 (SGM APA, § 5.3(a) at 27). Similarly, SGM has committed to participate in good faith negotiations of new collective bargaining agreements with the unions. *See id.* (SGM APA, § 4.7 at 25). The SGM sale presents the Debtors’ stakeholders with the best possible alternative, and the failure of the SGM transaction will likely result in losing healthcare access for vulnerable populations as well as the loss of employment for thousands of employees.

V. Conclusion.

For all of the reasons outlined above, the AG should not adopt the Recommended Conditions. This would result in the certain failure of the SGM Transaction and the likely closure of St. Vincent, Seton, and perhaps St. Francis. This would be a devastating loss to the communities the Hospitals serve, to their patients, employees, vendors, creditors, and more. This would entail the unnecessary loss of historic, meaningful, community hospitals with robust histories, dedicated to providing charity care and community benefits, especially when as here, there is a ready buyer in SGM who has agreed to continue to operate the Hospitals and to abide by the vast majority of the 2015 Conditions for the period of time they apply to Verity. We urge you to tailor the conditions imposed on this Transaction to align with the Purchaser Approved Conditions in Schedule 8.6, providing SGM with the flexibility to close on the Transaction and turn the Hospitals around so they can continue to provide meaningful health care services, community benefits, and jobs to the communities they serve.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Adcock', written over a horizontal line.

Richard G. Adcock, CEO

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas dedicated to health and healing. In this role, I was responsible for leading Sanford Health’s growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan; Sanford Foundation (a philanthropic fundraising foundation); Sanford Frontiers (a commercial and real estate company); Profile by Sanford (a scientific weight loss program); and Sanford World Clinic (which operates clinics in multiple countries).

4. From 2012 to 2017, I served as the President of Sanford Frontiers and had the responsibility of starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From

1 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for
2 leading strategic, operational and financial aspects within Sanford Clinic. From 2004 to
3 2006, I served as Director of Clinical Operations at Sanford Children's Specialty Clinic
4 and led the Pediatric Subspecialty Physician program and the clinical practice through all
5 facets of the operation.

6 5. Prior to Sanford Health, I served as the Director of Engineering and Six
7 Sigma Master Black Belt at GE Medical Systems, and before that served as the Vice
8 President of Research and Development and the Co-Owner/Founder of Micro Medical
9 Systems. I have a bachelor of science in business administration and a masters of
10 business administration in healthcare management.

11 6. I have reviewed the conditions proposed (the "Recommended Conditions")
12 by JD Healthcare, Inc. ("JD Healthcare" or "Expert") to the California Attorney General
13 (the "Attorney General") in the Health Care Impact Statements (the "Reports"), analyzing
14 the proposed sale of St. Francis Medical Center ("St. Francis"), St. Vincent Medical
15 Center (St. Vincent"), and Seton Medical Center, including its Daly City and Coastsides
16 Campuses ("Seton") (collectively, the "Hospitals"), to Strategic Global Management, Inc.
17 and its affiliated entities ("SGM"), as reflected in that certain Asset Purchase Agreement
18 (the "APA").

19 7. Upon review of the Recommended Conditions, I urge the Attorney General
20 not to issue the Recommended Conditions, and, instead, to impose the conditions to which
21 SGM has agreed to in Schedule 8.6 to the APA.

22 8. As explained below in detail, the Attorney General should not impose the
23 Recommended Conditions because they do not take into consideration the negative
24 economic impact of the Recommended Conditions nor the negative economic impact of
25 the previously imposed conditions on the Hospitals (the "2015 Conditions").

26 9. The Attorney General should exercise his oversight responsibilities and
27 discretion to impose conditions that consider the economic impact to the Hospitals.

28 10. My extensive experience in healthcare has helped me understand and

1 navigate the complex problems threatening the Hospitals.

2 11. Two competing issues were immediately apparent upon my appointment as
3 CEO: the Hospitals are (i) critically important to the communities they serve, but (ii) are
4 damaged financially as a result of cumulative decisions made in the last two decades.

5 12. After overseeing the operations and financial performance of the Hospitals, I
6 concluded that the only feasible path to maintain Hospital operations was to initiate a
7 bankruptcy process that would allow the transfer of the Hospitals to more financially
8 stable operators, reduce existing liabilities, and commence a process in cooperation with
9 the Attorney General to ensure the continued viability of these important community
10 assets.

11 13. While SGM has the ability to keep these Hospitals open and help them to
12 prosper, the Attorney General's role in that process cannot be understated.

13 14. Specifically, to fix the problems that presently threaten the Hospitals
14 continued viability, the Attorney General must consider the pragmatic realities of the
15 Hospitals' operations.

16 15. The Hospitals require operational flexibility to address the fast-paced
17 changes in the healthcare market. I will use a specific example to illustrate my point.
18 One of the 2015 Conditions requires that St. Francis maintains a fixed number of beds for
19 pediatric patients. However, and by way of example, children in the St. Francis service
20 area often go to the nearby children's hospital for treatment (e.g., Miller Children's,
21 Children's Hospital of Los Angeles, and Women's Hospital). Consequently, St. Francis
22 does not utilize many of the beds it is required to maintain pursuant to the condition.
23 This results in unnecessary operating costs without attendant increases in revenue and,
24 more importantly, prevents St. Francis from instead applying its resources to address the
25 demonstrated needs of the community. In addition, these pediatric beds are needed as
26 general adult inpatient beds. Put simply, 2015 Conditions do not reflect the needs of the
27 market place. This is one of many examples that is repeated across service lines affected
28 by the 2015 Conditions.

1 16. The payor contracts present another example of the negative impact of the
2 2015 conditions on the Hospitals. In my experience, I have never seen a set of conditions
3 that obligate the Hospitals, as providers, to accept a particular payor's contract no matter
4 how disadvantageous the terms and conditions. The Attorney General's mandated
5 requirement to remain in an economically damaging relationship obliterates the Hospitals'
6 ability to negotiate appropriate terms, including reimbursement consistent with market
7 conditions. The Hospital payor contracts are below-market as a result of many years of
8 poor payor contract negotiations coupled with the 2015 Conditions. Stated differently,
9 through the imposition of the conditions, the Attorney General transfers negotiating
10 leverage to the payors and leaves the Hospitals severally disadvantaged. While the
11 Attorney General certainly may not have intended that result at the time the 2015
12 Conditions were imposed, the 2015 Conditions had that impact and accelerated and
13 contributed to the threats facing the Hospitals today.

14 17. While the impact reports provide a significant amount of information
15 related to the Hospital's background and the SGM transaction, the reports are lacking (i)
16 any analysis of the economic impact the 2015 Conditions have had on the Hospitals, and
17 (ii) any cost benefit analysis of the Recommended Conditions.

18 18. Without regard to the economic and community realities, certain
19 Recommended Conditions force the Hospitals to maintain programs that not only suffer
20 significant losses an annual basis, but are unnecessary because the same services (and in
21 some instances, more comprehensive services) are already provided at other Hospitals in
22 the area.

23 19. The Attorney General's consideration of the economic impact of the
24 Recommended Conditions is critical. As a Hospital operator, I know the 2015 Conditions
25 were too burdensome and hampered the Hospitals ability to prosper, as discussed above.
26 Verity, its employees, tens of thousands of vendors and other parties have made tireless
27 efforts during the sale process to ensure high quality continued patient care and to take the
28 necessary steps that would allow the Hospitals to be sold to a new operator that could

1 successfully operate the Hospitals. The Bankruptcy Court has now approved the sale to
2 SGM, which paves the way for these Hospitals and the communities they serve to
3 continue the Hospitals' mission of quality patient care.

4 20. The alternative to an SGM sale is, most likely, the closure of SVMC and
5 Seton in light of their unsustainable operating losses, the absence of an interested viable
6 purchaser that would continue operations as acute care hospitals, and the almost certain
7 lack of financing to sustain their operations.

8 21. While SFMC would most likely attempt a private sale in the bankruptcy
9 cases, I foresee significant challenges. SFMC's financial performance may be stronger
10 during parts of the year than the other Hospitals; however, SFMC relies significantly on
11 the Verity Hospital System to borrow an excess of \$35 million throughout the year to
12 achieve its financial success and has not demonstrated an ability to independently manage
13 large working capital fluctuations. The administrative expenses and risks associated with
14 continuing the cases to attempt to identify a new buyer other than SGM, further threaten
15 the Debtors' ability to finance and sell the Hospitals as going concerns and related
16 recoveries to constituents. These threats are borne directly by the communities served by
17 the Hospitals, their patients, employees, and other critical stakeholders, and are material
18 considerations with which to assess the proposed SGM sale.

19 22. The Reports recognize the unique role the Hospitals play in their
20 communities. Although I disagree with the specifics of the Recommended Conditions, I
21 believe it is indisputable that the Hospitals provide access to essential healthcare services
22 in their communities. Faced with the possibility of losing the Hospitals in their entirety,
23 rote application of the 2015 Conditions should yield to the pragmatics of economics and
24 demonstrable patient care and community need.

25 23. If the SGM transaction does not close, the Debtors, employees, pension
26 holders, other stakeholders, and community members, would be exposed to significant
27 and unrecoverable health care and economic loss.

28 24. Among the stakeholders which will be harmed by a failed SGM sale are the

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vendors that have supported the Hospitals by providing credit terms throughout these cases. Under the SGM sale, these creditors will receive payment for their support of the Hospitals during the sale process. A failed sale to SGM would put that at risk. In addition, there are thousands of vendors whose contracts will likely be assumed by SGM in the sale. Consequently, these vendors will be paid for their pre-petition claims, an estimated total recovery for these vendors of \$50 million. Even those vendors whose contracts are not assumed by SGM are still expected to receive millions of dollars of recoveries. In total, the failed sale to SGM would cost these vendors tens of millions of dollars in recoveries. Further, there would be a loss of future income for services provided to the operating Hospitals on a go-forward basis.

25. The Hospitals have approximately 4,900 employees. SGM has committed to retain “substantially all” employees of the Debtors, as set forth in the APA.

26. The SGM sale presents the Debtors’ stakeholders with the best possible alternative, and the failure of the SGM transaction will likely result in a loss of healthcare access for vulnerable populations, as well as jobs of thousands of employees.

27. Based on the foregoing, I request the Attorney General carefully consider the foregoing and not impose conditions that would threaten to close the Hospitals or otherwise unwind stakeholders’ heroic efforts to save these Hospitals.

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

Executed this 23rd day of August, 2019, in Santa Monica, California.



Richard G. Adcock

DECLARATION OF ANITA CHOU

I, Anita Chou, declare, that if called as a witness, I would and could testify as follows based on my own personal knowledge.

1. I am the Chief Financial Officer (“CFO”) of Verity Health System of California, Inc. (“VHS”). I became the Debtors’ acting CFO on August 20, 2018, and on August 29, 2018, the board of directors appointed me as the CFO. Prior to my appointment as acting CFO, I served as the VHS SVP Hospital Finance, with oversight responsibilities over all of Verity Health System hospitals’ CFOs from February 1, 2018 until August 19, 2018, and as the St. Vincent Medical Center CFO from March 2016 to February 2018. Prior to VHS, I spent three years at Prospect Medical Holdings from March 2013 to March 2016 in various senior level corporate finance positions including Hospital System CFO, ten years as the controller for three different hospital and hospital systems (*e.g.*, Saint John’s Health Center & Affiliates, Valley Presbyterian Hospital, and USC Kenneth Norris Jr. Cancer Hospital), and three years as a Financial Market Analyst for El Camino Hospital. I received my Masters in Health Administration from the University of Southern California in 2005, and my Bachelor of Science from University of California, San Diego in 1998.

2. Debtor VHS, a California non-profit public benefit corporation, is the sole corporate member of the five debtor California non-profit public benefit corporations that operated six acute care hospitals (the “Hospitals”), including St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center, which includes its Daly City and Coastsides Campuses (“Seton”). Seton operates under one consolidated general acute care hospital license. VHS, the Hospitals and their affiliated entities operated as a non-profit healthcare system in the State of California.

3. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CFO for VHS.

4. I have reviewed the Health Care Impact Statements (the “Reports”), analyzing the proposed sale of SFMC, SVMC and Seton to Strategic Global Management, Inc., and its affiliated entities (“SGM”), as reflected in that certain Asset Purchase Agreement (the “APA”).

1 5. The report on SFMC, at pages 92-96, the report on SVMC, at pages 87-90, and the
2 report on Seton, at pages 88-92, set forth JD's recommended conditions (the "Recommended
3 Conditions") for the transactions to the California Attorney General (the "Attorney General"). I
4 urge the Attorney General not to issue the proposed conditions and, instead, to impose the
5 conditions to which SGM has agreed in Schedule 8.6 to the APA.

6 6. The Recommended Conditions for SFMC, SVMC and Seton that deviate from
7 Schedule 8.6 attached to the APA are "deal breakers" and should not be imposed by the Attorney
8 General.

9 **A. St. Francis**

10 7. The Recommended Conditions for SFMC include a requirement that, for at least 10
11 years from the closing date, SFMC maintain cancer services. The current cost to maintain cancer
12 treatment at SFMC exceeds \$11 million annually, which includes the financial advantages that
13 permit SFMC, as a non-profit hospital, to use the 340B program. The 340B Drug Discount Program
14 is a U.S. federal government program that requires drug manufacturers to provide outpatient drugs
15 to eligible health care organizations and covered entities at significantly reduced prices. SGM will
16 operate SFMC as a for-profit enterprise, and, therefore, the 340B program will no longer be
17 available, increasing the cost of pharmaceuticals, and, therefore, the cancer program, by \$262,000
18 per year.

19 8. The Recommended Conditions include a requirement that, for at least 10 years from
20 the closing date, SFMC maintain Wound Care Services. The Wound Care Clinic operated at a
21 \$385,000 net loss in 2018 and is expected to continue to operate at a loss.

22 9. The Recommended Conditions include a requirement that, for at least 10 years from
23 the closing date, SFMC maintain its participation in the Medi-Cal Managed Care Program,
24 continuing its contracts with LA Care Health Plan and Health Net Community Solutions. With
25 Managed Medi-Cal rates that are significantly below market, such a restriction will continue to
26 impose a financial burden upon SFMC as well as hinder its ability to negotiate appropriate payor
27 rates. These contracts have not been renegotiated in the last 5 years in part due to the imposition of
28 the conditions.

B. St. Vincent

10. The Recommended Conditions for SVMC include a requirement that, for at least 5 years from the closing date, SVMC maintain cancer services. The cancer treatment program at SVMC operated at a net loss in 2018 of \$995,000. And, because SGM will operate SVMC as a for profit enterprise, SGM cannot utilize the benefit of the 340B program which will impose additional cost for pharmaceuticals by \$547,000 per year, exacerbating existing operating losses at the facility of over \$65 million annually. With the loss of the 340B program, cancer care at SVMC will operate at a projected increased net loss of approximately \$1.5 million per year.

11. The Recommended Conditions include a requirement that, for 5 years after the closing date, SVMC will continue to provide liver transplant service. The liver transplant program at SVMC started in calendar year 2019. In fact, performance projections prepared by a third-party expert consultant in transplant programs show a 5-year net loss of \$21 million for SVMC. Worse, currently SVMC is not receiving reimbursement for liver transplants because SVMC is still in process of being certified to perform these transplants. Finally, SGM will have to negotiate reimbursement rates with third party payors going forward which may not cover the cost of the surgeries.

12. The Recommended Conditions include a requirement that for 5 years from the closing date, SVMC shall maintain its participation in the Medi-Cal Managed Care program, including continuing contracts with LA Care Health Plan and Health Net Community Solutions, Inc. Just as in the case with SFMC, with Managed Medi-Cal rates that are significantly below market, such a restriction will continue to impose a financial burden upon SVMC as well as hinder its ability to negotiate appropriate payor rates. These contracts have not been renegotiated in more than 5 years in part due to the imposition of the conditions.

C. Seton and Seton Coastside

13. The Recommended Conditions include a requirement that for 6 years Seton continue to offer cancer services at its Daly City Campus. The cancer services at Seton operated at a net loss of \$3.8 million in 2018. The loss of the 340B program will increase costs by \$3 million, of which \$2.6 million is attributable to the loss of infusion therapy services. It is not financially

1 feasible to operate a cancer program at a continuing loss of nearly \$7 million per year for a facility
2 that is currently operating at a loss of \$60 million annually.

3 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
4 inquiry, the foregoing is true and correct.

5 Executed this 23rd day of August, 2019, in El Segundo, California.



Anita Chou
Chief Financial Officer

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DECLARATION OF TIRSO DEL JUNCO, JR., M.D.

I, Tirso del Junco, Jr., M.D., declare that if called as a witness, I would and could competently testify thereto, of my own personal knowledge as follows.

1. I am currently the Chief Medical Officer for Verity Health System of California, Inc. (“VHS”). I am licensed and authorized to practice medicine in the State of California. I have been with VHS since its beginning in December 2015. I have also served as VHS’s Associate Chief Medical Officer and as St. Vincent Medical Center’s Chief Medical Officer. Prior to joining VHS, I held several positions at Mission Community Hospital in Panorama City, including associate chief medical officer.

2. Debtor VHS, a California non-profit public benefit corporation, is the sole corporate member of the five debtor California non-profit public benefit corporations that operated six acute care hospitals (the “Hospitals”), including St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center, which includes its Daly City and Coastsides Campuses (“Seton”). Seton operates under one consolidated general acute care hospital license. VHS, the Hospitals and their affiliated entities operated as a non-profit health care system in the State of California.

3. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity the Chief Medical Officer for VHS.

4. I have read the Health Care Impact Statements (the “Reports”) prepared by JD Healthcare (“JD”) analyzing the proposed sale of SFMC, SVMC and Seton to Strategic Global Management, Inc., and its affiliated entities (“SGM”).

5. The report on SFMC, at pages 92-96, the report on SVMC, at pages 87-90, and the report on Seton and Seton Coastsides, at pages 88-92, set forth JD’s recommended conditions (the “Recommended Conditions”) for the transactions to the California Attorney General (the “Attorney General”).

6. The Recommended Conditions for SFMC, SVMC and Seton that deviate from Schedule 8.6 attached to the certain Asset Purchase Agreement are “deal breakers” and should not be adopted by the Attorney General.

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A. St. Francis Medical Center

7. The Recommended Conditions for SFMC include a requirement that, for at least 10 years from the closing date, SFMC maintain cancer services, including radiation oncology. First, SFMC currently does not have a full complement of cancer services to offer its patients. In fact, SFMC offers *only* radiation oncology, and does not provide infusion chemotherapy and does not have a formal surgical oncology program; SFMC patients who need these services go to other hospitals. All three of those cancer services are currently being provided to patients within the area by Long Beach Memorial, Downy PIH, Torrance Memorial Medical Center and Lakewood Community Hospital. In other words, other hospitals within the area offer a full array of cancer services that SFMC does not offer, and those hospitals can thoroughly meet the needs for such services in the area. SFMC, as a non-profit hospital, receives the benefit of the 340B program. The 340B Drug Discount Program is a U.S. federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. SGM will operate SFMC as a for-profit hospital, and, therefore, the 340B program will no longer be available, thereby increasing the cost of supplies.

8. The Recommended Conditions include a requirement that, for at least 10 years from the closing date, SFMC maintain wound care services. The report fails to note that the wound care clinic was re-licensed as a multi-specialty clinic in 2019 (for gastrointestinal services and general surgery, among other specialties); requiring SFMC to continue to provide wound care in the multi-specialty clinic would prevent SFMC from providing in the same clinic at the same time—multi-specialty services to meet community needs. In addition, the report fails to note that the hyperbaric chamber that was utilized in connection with such wound care services was removed by the vendor in 2018. Other hospitals in the area provide wound care services for patients, including Long Beach Memorial, Torrance Memorial and Downey PIH.

B. St. Vincent Medical Center

9. The Recommended Conditions include a requirement that, for at least 5 years from the closing date, SVMC maintain cancer services, including radiation oncology. As is the case with SFMC, SVMC does *not* have a full complement of cancer services to offer its patients; SVMC does

1 not provide infusion or infusion chemotherapy, and does not have a formal surgical oncology
2 program. SVMC patients who require those services are required to go to other hospitals. All four
3 of those services are currently being provided at California Hospital, Good Samaritan, White
4 Memorial, Hollywood Presbyterian and the Norris Cancer Center at USC Keck. In other words,
5 other hospitals within the area offer a full array of services that SVMC does not offer, thoroughly
6 meeting the need for such services in the area. As is the case with SFMC, the 340B program, which
7 permits SVMC as a non-profit hospital, to obtain cancer supplies, principally pharmaceuticals, from
8 vendors at discounted pricing, cannot continue at SVMC because SGM will operate SVMC as a
9 for-profit hospital. The inability to utilize the financial advantages of the 340B program will have
10 a material impact, increasing costs to provide cancer care.

11 10. As to both SFMC and SVMC, there are three facilities designated as National
12 Cancer Institutes within the Los Angeles area, including the Norris Cancer Center at Keck USC
13 Medical Center, City of Hope and UCLA Medical Center. Those facilities provide superior cancer
14 treatment to their patients. All three are within 25 miles of SFMC and SVMC.

15 11. The Recommended Conditions for SVMC include a requirement that, for 5 years
16 after the closing date, SVMC continue to provide liver transplants. The liver transplant program at
17 SVMC only started in 2019. The reality is that the community has 5 neighboring liver transplant
18 centers, which provide the same transplant services as SVMC. The cost to maintain the services is
19 high, best demonstrated by the fact that in regards to the 10 liver transplants surgeries performed
20 so far in 2019, patients have stayed an average of 35 days, which is 15 days over the geometric
21 mean length of stay ("GMLOS"), which is a benchmark to enable comparison of length of stay
22 versus severity of illness, set forth by Medicare. Worse, at the present time, SVMC is not receiving
23 reimbursements because it is awaiting Medicare review of the program for certification.

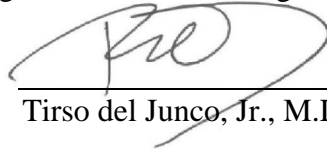
24 **C. Seton Medical Center and Seton Coastside**

25 12. The Recommended Conditions requiring Seton to provide cancer services at its Daly
26 City Campus should not be required as a condition for approval of the sale by the Attorney General.

27 13. More specifically, the Recommended Conditions include a requirement that for 6
28 years from the closing date, Seton shall maintain cancer services at its Daly City Campus, including

1 oncology services, radiation therapy and infusion services. Seton provides radiation oncology and
2 infusion therapy, but does not have a formal surgical oncology program. Accordingly, just as is
3 the case with SFMC and SVMC, Seton does not have the full complement of cancer services to
4 offer its patients. Seton patients who need the full array of services, that includes surgical oncology,
5 go to other hospitals. A full array of cancer services are currently being provided to patients within
6 the area, at UCSF and Stanford, and at Mills Peninsula which is located within ten miles of Seton.
7 Just as is the case with SFMC and SVMC, other hospitals within the area offer a full array of cancer
8 services, thoroughly meeting the community's needs for such services. Finally, just as is the case
9 with SFMC and SVMC, the 340B program cannot continue in a for-profit hospital as proposed by
10 SGM for Seton. Accordingly, the cost for Seton to provide cancer care without the 340B program
11 will dramatically increase.

12 I declare under penalty of perjury under the laws of the United State that the foregoing is
13 true and correct. Executed this 23rd day of August, 2019, in Los Angeles, California.

14 
15 Tirso del Junco, Jr., M.D.

DECLARATION OF MAYA ALTMAN

I, Maya Altman, declare that I have personal knowledge of the facts set forth in this declaration and I would competently testify to them under oath if called as a witness.

1. I am the CEO for the Health Plan of San Mateo. My office is located at 801 Gateway Blvd., South San Francisco, California.

2. The Health Plan of San Mateo (HPSM) is a County Organized Health System (COHS) that contracts with the State of California to operate the Medi-Cal program in San Mateo County. HPSM is the single Medi-Cal plan in this county. HPSM contracts with providers in San Mateo County as well as nearby counties to provide health services, including long term care and skilled nursing care, for its members. Seton Medical Center and Seton Coastsides both currently contract with HPSM. HPSM has approximately 140,000 members; nearly all of them are enrolled in Medi-Cal or dually eligible for both Medicare and Medi-Cal.

3. I have been the CEO of HPSM since 2005. Prior to this position, I was the Director of Finance and Administration for the San Mateo County Health Department. I started with San Mateo County Health in 1994 and worked in various capacities before assuming responsibility for finance and administration.

4. I received a Master's Degree in Public Policy from the University of California at Berkeley, and a Bachelor of Arts degree from Bryn Mawr College.

5. Seton Medical Center and Seton Coastsides offer services to HPSM members that are unavailable or minimally available from other providers. For example, Seton Medical Center operates the only subacute unit in San Mateo County, a 44 bed unit fully occupied with nearly all Medi-Cal beneficiaries. Were Seton Medical Center to close, these ventilator dependent patients would have to be moved to facilities at a great distance from their families.

6. Seton Medical Center and Seton Coastsides operate a combined total of 155 skilled nursing facility beds. HPSM is gravely concerned about the erosion of SNF resources in San Mateo County and the Bay Area for people who are publicly insured

1 through Medi-Cal and Medicare. This is a national trend but is especially problematic in
2 San Mateo County where the population is aging faster than the rest of California. The
3 county's population of residents over the age of 65 is projected to increase by 57% from
4 91,447 in 2015 to 160,366 in 2030. San Mateo County's In Home Support Services
5 (IHSS) Medi-Cal population is already 26% over the age of 85 compared to 15% in the
6 rest of California. San Mateo County has already lost 264 licensed SNF beds since 2009,
7 making it extremely difficult to place Medi-Cal enrollees who need this level of care in
8 nursing facilities.

9 7. Were Seton Medical Center and Seton Coastside to close, Medi-Cal
10 beneficiaries needing skilled nursing facilities would have to be placed in facilities far
11 away, most likely outside of the Bay Area and at a great distance from their families.

12
13 I declare under penalty of perjury under the laws of the United States that the
14 foregoing is true and correct.

15 Executed this 21st day of August, 2019, in South San Francisco, California.

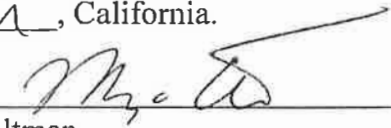
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18 Maya Altman
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EXHIBIT 15

1 UNITED STATES BANKRUPTCY COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 --oOo--

4 In Re:) Case No. 2:18-bk-20151-ER
5)
6 VERITY HEALTH SYSTEM OF) Chapter 11
7 CALIFORNIA, INC.,)
8) Los Angeles, California
9 Debtor.) Tuesday, October 15, 2019
10) 10:00 a.m.

11 HEARING RE: [3188] EMERGENCY
12 MOTION DEBTORS' EMERGENCY
13 MOTION FOR THE ENTRY OF AN
14 ORDER: (I) ENFORCING THE ORDER
15 AUTHORIZING THE SALE TO
16 STRATEGIC GLOBAL MANAGEMENT,
17 INC; (II) FINDING THAT THE
18 SALE IS FREE AND CLEAR OF
19 CONDITIONS MATERIALLY
20 DIFFERENT THAN THOSE APPROVED
21 BY THE COURT; (III) FINDING
22 THAT THE ATTORNEY GENERAL
23 ABUSED HIS DISCRETION IN
24 IMPOSING CONDITIONS ON THAT
25 SALE; AND (IV) GRANTING
RELATED RELIEF; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATIONS IN SUPPORT
THEREOF WARNING: SEE ENTRY
[3192] FOR CORRECTIVE ACTION.
ATTORNEY TO LODGE ORDER VIA
LOU. MODIFIED ON 10/1/2019
(LOMELI, LYDIA R.).

20 TRANSCRIPT OF PROCEEDINGS
21 BEFORE THE HONORABLE ERNEST ROBLES
22 UNITED STATES BANKRUPTCY JUDGE

23
24 Proceedings produced by electronic sound recording;
25 transcript produced by transcription service.

1 LOS ANGELES, CALIFORNIA TUESDAY, OCTOBER 15, 2019 10:00 AM

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: I will call the now 11:00 o'clock
5 matter, the Verity matters, in just a moment. I'll take
6 appearances first by telephone. We have a number of
7 individuals that are on listen-only mode, in which case I
8 will not be announcing your name, but, when I do announce
9 your name and you intend to make an appearance at the
10 hearing, please give us your appearance.

11 All right. Do we have Caitlin Gray on the line?

12 MS. GRAY: Yes, I'm here.

13 THE COURT: Your appearance, please.

14 MS. GRAY: Caitlin Gray, Weinberg, Roger and
15 Rosenfeld, for SEIU-UHW.

16 THE COURT: Thank you.

17 Debra Riley.

18 MS. RILEY: Yes, your Honor. Debra Riley with
19 Allen Matkins on behalf of California Statewide Community
20 Development Authority.

21 THE COURT: Thank you.

22 Kyrsten Skogstad.

23 MS. SKOGSTAD: Good morning, your Honor. Kyrsten
24 Skogstad, in-house counsel, on behalf of the California
25 Nurses Association.

1 THE COURT: Very well. Thank you.

2 The Court will make some opening comments, just to
3 place all of this into a context. First of all, my
4 apologies for issuing the tentative at the 11th hour. It's
5 not our usual tendency to do that, and, in fact, we weren't
6 going to issue any tentative at all, because I think we
7 had -- well, I know we had some computer issues, and then we
8 had an intervening holiday, and it made it difficult to get
9 this out any earlier than we did.

10 So I apologize for that, but I anticipate that
11 everybody is now familiar with the Court's tentative. If
12 not, it's been posted on the Court's web site. It's
13 available now for those of you on the telephone or in the
14 courtroom with computer availability.

15 This is the culmination of this case. We have at
16 some point a plan and disclosure statement hearing, but all
17 of that posits that we have a sale of the assets of this
18 case. If we don't, it makes no sense to have a plan and
19 disclosure statement. So this is the day and this is the
20 hour. The sale is the linchpin of the plan.

21 So, without a sale, there's no point to going
22 forward, and I reiterate that because I'm not sure if all of
23 the participants at this morning's hearing fully appreciate
24 what that means. If we don't have a plan and disclosure
25 statement that can be approved by the Court, then, on the

1 Court's own motion, or on a motion of an interested party,
2 the Court may dismiss the case, in which case I think that
3 that would spell a disaster for every party that is
4 represented here this morning.

5 In the alternative, the Court might appoint a
6 Trustee. That's no better, because a Trustee has no funds
7 with which to work. So it's not the case that a Trustee
8 would step in the shoes of the Debtor and keep the hospitals
9 open. He or she would not be in a position to do that. In
10 fact, it might be even worse, because that Trustee would
11 have to hire its own counsel, and then would have to make a
12 determination about how best to close the hospitals on an
13 efficient basis, and it may not have the knowledge to be
14 able to do that.

15 There are a number of alternatives that have been
16 proffered to the Court, and I've read the pleadings here.
17 One of them is that there are other and better offers that
18 are in the offing. I take Strategic at its word that, if we
19 don't approve a sale today that is not subject to conditions
20 imposed by the Attorney General, that it will walk away from
21 the deal. That's not something that the Court feels that
22 Strategic is simply trying to obtain a better negotiating
23 position.

24 I think that it's borne out by the financials of
25 these assets. Currently, the sole lending facility for the

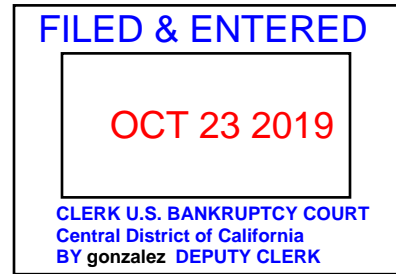
1 Debtor-In-Possession account is based upon loans by its
2 creditors. It is the creditors that are funding this
3 reorganization at this point. In the Court's view, that's
4 rock bottom. You can't get any lower, because nobody else
5 is willing to take a chance on providing any liquidity to
6 the Debtor. So I don't think that Strategic is issuing an
7 idle threat.

8 On the argument that there is another deal out
9 there, there is absolutely no evidence with respect to any
10 other deal. With respect to the argument that somehow the
11 Attorney General's Office and the Debtor and the interested
12 parties could mediate these differences, there's again no
13 evidence presented to the Court that would indicate that
14 that would be the case.

15 More importantly, throughout another set of
16 hearings with respect to a sale to some other entity, with
17 all of the time that would be occasioned by that, there is
18 no money to fund the continued operations of the Debtor,
19 which would inure to the detriment of thousands of patients,
20 thousands of employees, and not to mention the creditors in
21 the case.

22 So that's the context within which the Court
23 issues the tentative ruling, and it is not with the idea
24 that we should conclude that a sale ought to happen. Quite
25 the opposite. It's after having the analysis of the facts

EXHIBIT 16



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION GRANTING
DEBTORS' EMERGENCY MOTION TO ENFORCE
THE SALE ORDER [DOC. NO. 3188]**

Date: October 15, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



Before the Court is the Debtors' motion to sell four not-for-profit hospitals free and clear of regulatory conditions which the California Attorney General claims authority to impose under Cal. Corp. Code § 5914. For the reasons set forth below, the Court finds that § 363 of the Bankruptcy Code authorizes a sale free and clear of the conditions which the Attorney General contends he is authorized to impose.

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County (the "Santa Clara Sale").¹ The Santa Clara Sale closed on February 28, 2019.

On February 19, 2019, the Court entered an order establishing bidding procedures (the "Bidding Procedures Order") for the auction of the Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), Seton Medical Center ("Seton"), and Seton Medical Center Coastside ("Seton Coastside") (collectively, the "Hospitals"). Under the Bidding Procedures Order, Strategic Global Management ("SGM") was designated as the stalking horse bidder. SGM's bid for all four of the Hospitals was \$610 million.

The Hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain Brothers"). Cain Brothers notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the Hospitals.

Notwithstanding Cain Brothers' thorough marketing efforts, the Debtors did not receive any qualified bids for all of the Hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").

In 2015, prior to the commencement of these cases, the Debtors' predecessor sought authorization from the California Attorney General (the "Attorney General"), pursuant to Cal. Corp. Code § 5914, to implement a *System Restructuring and Support Agreement* (the "Restructuring Agreement"). The Attorney General approved the Restructuring Agreement, subject to various conditions (the "2015 Conditions"). Among other things, the 2015 Conditions required capital expenditures to make the Hospitals seismically compliant, and required the Hospitals to maintain specified levels of emergency services, intensive care services, cardiac services, and various other services.

Cal. Corp. Code § 5914 requires a non-profit entity operating a health facility to obtain approval from the Attorney General when selling a material amount of its assets to a for-profit entity. Pursuant to Cal. Corp. Code § 5914, the Debtors submitted the SGM Sale to the Attorney General for review.

¹ For a description of the Santa Clara Sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018) ("*Verity I*").

The Asset Purchase Agreement under which SGM agreed to purchase the Hospitals (the “APA”) provided that SGM would close the sale so long as any conditions imposed by the Attorney General under the review process set forth in Cal. Corp. Code § 5914 were substantially consistent with conditions that SGM had agreed to accept (the “Approved Conditions”).² In the event that the Attorney General sought to impose conditions materially different from the Approved Conditions (the “Additional Conditions”), the APA provided that the Debtors would have an opportunity to seek a determination from the Court that the Hospitals could be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy Code. Under the APA, Additional Conditions imposing upon SGM costs of \$5 million or more are conclusively deemed to be materially different from the Approved Conditions. Further, if the Debtors fail to obtain a final, non-appealable order authorizing the sale free and clear of the Additional Conditions, SGM is not obligated to close on the sale and is entitled to a refund of its good faith deposit.

On September 25, 2019, the Attorney General consented to the SGM Sale, subject to various conditions (the “2019 Conditions”). The 2019 Conditions are materially different from the Approved Conditions that SGM had agreed to accept. In particular, two of the 2019 Conditions impose an additional financial burden upon SGM of approximately \$305 million. First, the 2019 Conditions require that SGM continue to operate St. Vincent as a licensed general acute care hospital through December 2024. SGM had agreed to maintain St. Vincent’s general acute care license only through December 2020. SGM estimates that continuing to operate St. Vincent as a general acute care hospital for an additional four years would cost approximately \$285 million. Second, the 2019 Conditions require St. Francis to provide annual charity care in an amount of \$12,793,435 for six fiscal years. The required charity care amount is approximately \$6.4 million more than the charity care that St. Francis provided in fiscal year 2019. The charity care requirement imposes an additional incremental cost of approximately \$20 million.

SGM will not close the sale absent an order finding that the Hospitals can be sold free and clear of the Additional Conditions pursuant to § 363(f). If the SGM Sale does not close, the most likely outcome will be the closure of St. Vincent, Seton, and Seton Coastside. The Debtors would be required to close these three Hospitals to conserve resources to continue to operate St. Francis, the most solvent of the Hospitals, during the time it would take to obtain approval of a sale of St. Francis. The Debtors cannot continue to sustain operational losses of approximately \$450,000 per day without the prospect of a prompt sale. There is no back-up bidder to purchase the Hospitals if the SGM Sale does not close.

The Debtors are facing very significant liquidity constraints. Recently, the California Department of Health Care Services (the “DHCS”) began withholding certain Medi-Cal fee-for-service payments owed to the Debtors, for the purposing of recovering alleged Medi-Cal overpayments. As of the beginning of October 2019, DHCS had withheld approximately \$4.5 million. The Debtors do not have the ability to borrow under any debtor-in-possession financing facility. At this time, the Debtors’ cases are being financed by a consensual cash collateral stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”). Termination of the APA constitutes an event of default under the Cash Collateral Stipulation. It is unclear whether the Debtors would be able to obtain alternative financing. Further, the Debtors must begin the expensive process of closing the Hospitals while

² The Approved Conditions are set forth in Schedule 8.6 of the APA.

they still possess a significant cash buffer.³ In short, the Debtors' prediction that failure of the SGM Sale would necessitate the closure of St. Vincent, Seton, and Seton Coastside is not a bluff.

The Attorney General asserts that imposition of the 2019 Conditions will not result in the closure of St. Vincent, Seton, or Seton Coastside. The Attorney General points to a declaration from Kenneth Sim, M.D. (the "Sim Decl."), the Chairman of Allied Physicians of California, A Professional Medical Corporation ("Allied"). According to the Attorney General, the Sim Decl. shows that Allied is prepared to acquire Seton and Seton Coastside and operate both Hospitals in accordance with the 2019 Conditions.

Contrary to the Attorney General's characterization, the Sim Decl. provides no certainty that a sale of Seton and Seton Coastside will occur. The Sim Decl. states only that "Allied remains interested in purchasing Seton" Sim Decl. at ¶ 5. The Court further notes that Allied did not timely submit a qualified bid for Seton. At this late stage in the proceedings, Allied's vague statement that it is "interested" in purchasing Seton and Seton Coastside does nothing to dissuade the Court from its conclusion that absent consummation of the SGM Sale, Seton and Seton Coastside will most likely close.

The Attorney General also points to a bid for the Hospitals submitted by Prime Healthcare ("Prime"). The Attorney General overlooks the Prime did not submit a qualified bid. Among other things, Prime failed to submit the mandatory good faith deposit. In fact, Prime itself recognized that its "bid will not be formally considered at auction" and was submitted only "for reference."⁴ Further, Prime stated that it did not want to serve as a back-up bidder.⁵ In short, Prime's offer to purchase the Hospitals is just as illusory as Allied's.

Finally, the Attorney General points to an offer by AHMC Healthcare, Inc. ("AHMC Healthcare") to purchase St. Francis. The Attorney General is correct that AHMC submitted a qualified bid to purchase St. Francis. However, even assuming that AHMC would follow through on its prior bid to purchase St. Francis, that still would not prevent the closure of St. Vincent, Seton, and Seton Coastside. As discussed above, the Debtors lack sufficient cash to continue operating all four Hospitals during the time it would take for a sale of St. Francis to close. The Debtors would be required to close St. Vincent, Seton, and Seton Coastside to conserve the cash necessary to operate St. Francis during the sale process.

It is against this backdrop that the Debtors move for authorization to sell the Hospitals free and clear of the Additional Conditions, pursuant to § 363(f). The Debtors argue that the Additional Conditions constitute an "interest in property" within the meaning of § 363(f), and that a sale free and clear of the 2019 Conditions may be authorized under § 363(f)(1), (4), or (5), for the following reasons:

- Pursuant to § 363(f)(1), the Hospitals may be sold under applicable nonbankruptcy law, because under California law, the purchaser of assets does not assume successor liability.
- Pursuant to § 363(f)(4), the validity of the Additional Conditions is subject to a *bona fide* dispute, because the Attorney General abused his discretion in imposing the Additional Conditions.

³ For a description of the difficulties associated with closing a much smaller hospital, see *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 829 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

⁴ April 3, 2019 E-mail from Prime to the Debtors [Doc. No. 3333, Ex. 6].

⁵ *Id.*

- Pursuant to § 363(f)(5), the Attorney General could be compelled to accept a money satisfaction of certain of the Additional Conditions, such as the condition that SGM provide specified levels of charitable care.

The Debtors assert that imposition of the Additional Conditions violates § 525, which prohibits government entities from discriminating against debtors who have failed to pay dischargeable debts when issuing licenses. According to the Debtors, the Additional Conditions constitute an attempt by the Attorney General to collect a dischargeable debt. The Debtors' theory is that Attorney General's refusal to approve the SGM Sale absent imposition of the Additional Conditions amounts to the discriminatory denial of licensure in contravention of § 525.

Finally, the Debtors request that the Court issue a writ of mandate compelling the Attorney General to approve the SGM Sale without imposition of the Additional Conditions, pursuant to Cal. Civ. Proc. Code § 1085 or § 1094.5. The Debtors assert that a writ of mandate is justified because the Attorney General abused his discretion by imposing the Additional Conditions.

The Committee supports the Motion. The Committee argues that prompt closing of the SGM Sale is the best means of insuring a distribution to unsecured creditors.

The Attorney General opposes the Motion. He disputes the Debtors' contention that the Hospitals may be sold under applicable nonbankruptcy law, or that a bona fide dispute exists as to the Attorney General's authority to impose the Additional Conditions. The Attorney General denies that he abused his discretion in imposing the Additional Conditions. He notes that he considered an extensive record in arriving at the Additional Conditions, and states that the Debtors' dislike of the Additional Conditions does not mean that imposing the conditions was an abuse of discretion.

Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), which represents approximately 1,303 employees at St. Vincent and St. Francis, opposes the Motion. SEIU-UHW contends that the Additional Conditions are economically feasible for SGM.

The United Nurses Association of California/Union of Health Care Professional ("UNAC"), which represents approximately 900 registered nurses at St. Francis, urges SGM, the Attorney General, and the Debtors to explore prospects for a consensual resolution with respect to the Additional Conditions.

II. Discussion

Section 363(d)(1) authorizes non-profit entities, such as the Debtors, to sell estate assets only if the sale is "in accordance with nonbankruptcy law applicable to the transfer of property by" a non-profit entity. Section 541(f) similarly provides that property held by debtors that are § 501(c)(3) corporations under the Internal Revenue Code may be transferred, but "only under the same conditions as would apply if the debtor had not filed a case under this title." Section 363(b) authorizes the Debtors to sell estate property out of the ordinary course of business, subject to court approval. The Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Section 363(f) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate," provided that certain conditions are satisfied.

A. The Additional Conditions are an “Interest in Property” Within the Meaning of § 363(f)

As this Court has previously explained:

The Bankruptcy Code does not define the phrase “interest in ... property” for purposes of § 363(f). The Third Circuit has held that the phrase “interest in ... property” is “intended to refer to obligations that are connected to, or arise from, the property being sold.” *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw “in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property.” 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).

Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep’t of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment insurance statutes constituted an “interest in ... property.” The taxes were computed based on the Debtor’s “experience rating,” which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70. Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an “interest in ... property” within the meaning of § 363(f).

In re Gardens Reg’l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), appeal dismissed, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018) (“*Gardens P*”).

The Additional Conditions are an “interest in property” within the meaning of § 363(f). First, the Additional Conditions are monetary obligations arising from the ownership of property. Similar to the “experience rating” at issue in *PBBPC, Inc.*, the Additional Conditions were calculated based upon the Hospitals’ prior operating history. Among other things, the Additional Conditions require that SGM cause the Hospitals to provide specified levels of healthcare services. The required service levels have been set based upon the Hospitals’ historical operations. For example, the Additional Conditions require that St. Francis “maintain and provide 24-hour emergency and trauma medical services at no less than current licensure and designation with the same types and/or levels of services”⁶ St. Francis is required to maintain cardiac services, critical care services, neonatal intensive services, women’s health services, cancer services, pediatric services, orthopedic and rehabilitation services, wound care services, behavioral health services, and perinatal services, all at “current licensures, types, and/or levels

⁶ St. Francis Conditions at § IV [Doc. No. 3188, Ex. B].

of services.”⁷ St. Vincent, Seton, and Seton Coastside are also required to maintain various healthcare services at current levels.⁸

Second, the Attorney General’s statutory authority to impose the Additional Conditions arises from the Debtors’ operation of the Hospitals as non-profit entities. Had the Debtors not operated the Hospitals in this manner, there could be no contention that the SGM Sale is subject to the Attorney General’s review pursuant to Cal. Corp. Code § 5914. In this sense as well, the Additional Conditions “arise from the property being sold,” *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003), and therefore qualify as an “interest in ... property” within the meaning of § 363(f).

Third, the Attorney General is barred by the law of the case doctrine from asserting that the Additional Conditions are not an “interest in ... property.” “Under the ‘law of the case’ doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.” *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir.), *amended*, 860 F.2d 357 (9th Cir. 1988). “For the doctrine to apply, the issue in question must have been ‘decided explicitly or by necessary implication in [the] previous disposition.’” *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

In connection with the Santa Clara Sale, the Court addressed the exact issue presented here—whether conditions that the Attorney General sought to impose upon the sale constituted an “interest in ... property” for purposes of § 363(f).⁹ The Attorney General litigated the issue, and the Court overruled the Attorney General’s arguments.¹⁰ The Attorney General voluntarily dismissed his appeal of the order finding that the conditions he sought to impose were an “interest in ... property.” The law of the case doctrine bars relitigation of the issue.

The doctrine of issue preclusion is a further bar to any attempt by the Attorney General to contest the Additional Conditions’ status as an “interest in ... property.” As explained by the Supreme Court, issue preclusion forecloses “‘successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,’ even if the issue recurs in the context of a different claim.” *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008) (internal citations omitted). The doctrine protects “against ‘the expense and vexation attending multiple lawsuits, conserve[s] judicial resources, and foster[s] reliance on judicial action by minimizing the possibility of inconsistent decisions.’” *Id.* Issue preclusion applies if “(1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits.” *Howard v. City of Coos Bay*, 871 F.3d 1032, 1041 (9th Cir. 2017).

⁷ *Id.* at § VI.

⁸ *See* St. Vincent Conditions at § VI (setting forth a list of healthcare services that St. Vincent must maintain at current levels); *see also* Seton and Seton Coastside Conditions at § VI (same).

⁹ *See Verity I*, 598 B.R. at 293 (“The Conditions [imposed by the Attorney General] are an ‘interest in property’ within the meaning of § 363(f). The Conditions provide that any owner of the Hospitals must furnish specified levels of emergency services, intensive care services, cardiac services, and various other services. The required service levels were derived based upon the historical experience of the prior operator. As such, the Conditions are monetary obligations arising from the ownership of property.”).

¹⁰ *See generally Verity I*.

The Attorney General has litigated the issue presented here, both in connection with the Santa Clara Sale and in connection with a sale in *Gardens I* (the “Gardens Sale”). Just as he did in the Santa Clara Sale, the Attorney General claimed in the Gardens Sale the regulatory authority to impose conditions. The Court found that the Attorney General’s claim to regulatory authority was an “interest in ... property” for purposes of § 363(f). *Gardens I*, 567 B.R. at 826. The Attorney General is precluded from relitigating the issue of whether his claimed authority to impose conditions on the SGM Sale is an “interest in ... property.”

B. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(1)

Sale of the Hospitals may be free and clear of the Additional Conditions only upon satisfaction of one or more of the five disjunctive sub-factors set forth in § 363(f). Under § 363(f)(1), a sale free and clear may be approved if permitted by applicable nonbankruptcy law.

Applicable nonbankruptcy law permits a sale free and clear for two reasons. First, the Attorney General’s attempt to impose the Additional Conditions upon SGM is equivalent to an attempt to impose successor liability upon SGM. California law does not authorize the imposition of successor liability upon SGM. Second, even if the Attorney General were authorized to impose successor liability under California law, the Attorney General abused his discretion in imposing the Additional Conditions, meaning that the Additional Conditions must be set aside.

1. California Law Does Not Authorize the Attorney General to Impose Successor Liability Upon SGM

i. The Additional Conditions Qualify as Successor Liability

The Attorney General’s attempt to impose the Additional Conditions upon SGM qualifies as an attempt to impose successor liability upon SGM. The reason is that the Additional Conditions impose upon SGM many of the same obligations imposed upon the Debtors by the 2015 Conditions. By attempting to enforce the Additional Conditions, the Attorney General is attempting to enforce the obligations imposed by the 2015 Conditions against SGM.

It is true that the 2015 Conditions are not identical to the Additional Conditions. Some medical services required under the 2015 Conditions are no longer required under the Additional Conditions. And unlike the 2015 Conditions, the Additional Conditions do not impose obligations to fund pension plans. But for the most part the Additional Conditions reinstate obligations imposed by the 2015 Conditions. For example, both the 2015 Conditions and the Additional Conditions require that St. Francis maintain cardiac services, including designation as a STEMI Receiving Center; critical care services, including a minimum of 36 intensive care unit beds; neonatal intensive care services, including a minimum of 29 neonatal intensive care beds; women’s health services, including women’s imaging services; cancer services, including radiation oncology; orthopedic and rehabilitation services; and wound care services. The Additional Conditions do not reinstate St. Francis’ obligation to maintain advanced certification as a Primary Stroke Center, and the Additional Conditions reduce St. Francis’ pediatric services obligation from 14 beds to 5 beds.

The 2015 Conditions required St. Francis to maintain the specified healthcare services for ten years from the date of the closing of the Restructuring Agreement. The Additional Conditions

require that the specified services be maintained for ten years from the date of the closing of the APA. That is, the Additional Conditions extend the term of the 2015 Conditions by approximately six years.

Considered within the overall scope of the obligations imposed, the differences between the 2015 Conditions and the Additional Conditions are comparatively inconsequential. The Attorney General relies upon these minor differences in support of his argument that the Additional Conditions do not impose successor liability. Such reliance is misplaced. The Additional Conditions still qualify as successor liability even though they are not exactly identical to the 2015 Conditions. Nor does the extension in the term of the reinstituted obligations remove the Additional Conditions from the category of successor liability.

The Attorney General argues that the Additional Conditions do not impose successor liability because they are SGM's own obligations, going forward from the date of the sale. According to the Attorney General, the Additional Conditions are based upon healthcare impact reports prepared for each Hospital. The Attorney General asserts that it is not surprising that the Additional Conditions resemble the 2015 Conditions, which are only four years old and relate to the same Hospitals and communities. Citing *In re General Motors Corp.*, 407 B.R. 463, 508 (Bankr. S.D.N.Y. 2009), the Attorney General analogizes the Additional Conditions to the environmental remediation liabilities that would remain the obligation of a purchaser of contaminated real estate.

These arguments are not persuasive. In *General Motors*, the environmental remediation obligations were not successor liability because any entity purchasing contaminated property would have an obligation to comply with environmental law:

Under section 363(f), there could be no successor liability imposed on the purchaser for the [seller's] ... monetary obligations related to cleanup costs, or any other obligations that were obligations of the seller. But the purchaser would have to comply with its environmental responsibilities starting with the day it got the property, and if the property required remediation as of that time, any such remediation would be the buyer's responsibility Those same principles will be applied here. Any Old GM properties to be transferred will be transferred free and clear of successor liability, but New GM will be liable from the day it gets any such properties for its environmental responsibilities going forward.

In re Gen. Motors Corp., 407 B.R. 463, 508 (Bankr. S.D.N.Y. 2009).

There is a key difference between the contaminated property at issue in *General Motors* and the Hospitals at issue here. Any entity that purchased the contaminated property at issue in *General Motors* would have been required to comply with environmental regulations going forward. A purchaser's duty to comply with environmental regulations would not vary based upon the identity of the purchaser or the identity of the seller. Here, by contrast, whether a purchaser is obligated to comply with Attorney General conditions can vary, depending upon either the identity of the purchaser or the identity of the seller. There is no general obligation imposed upon an entity that purchases a hospital in the State of California to operate that hospital in accordance with conditions asserted by the Attorney General. The Attorney General's regulatory authority applies only to non-profit hospitals, and only to certain types of sale transactions. Had the Hospitals been sold to a public entity, such as the County of Los Angeles, the Attorney General could not have reviewed the sale. See *Verity I*, 598 B.R. at 294 (holding

that Cal. Corp. Code § 5914 did not apply where non-profit hospitals were sold to a public entity). Had the Hospitals been operated by a for-profit entity, the Attorney General could not have reviewed the sale. *See* Cal. Corp. Code § 5914(a) (requiring only nonprofit corporations to submit the sale of assets to Attorney General review).

Because the obligation to comply with the Additional Conditions is contingent upon the identity of the purchaser and the identity of the seller, the conditions cannot fairly be characterized as the purchaser's obligation to comply with applicable law on a going-forward basis. The Attorney General can claim authority to impose the Additional Conditions upon purchaser SGM only because the Debtors operated the Hospitals as non-profit entities. Since the Attorney General's alleged authority to impose the Additional Conditions derives from the manner in which the sellers operated the Hospitals, the Additional Conditions are appropriately characterized as successor liability.

ii. Successor Liability Cannot Be Imposed Under California Law

Under California law, the general rule is “that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does not assume the selling corporation's debts and liabilities.” *Fisher v. Allis-Chalmers Corp. Prod. Liab. Tr.*, 95 Cal. App. 4th 1182, 1188, 116 Cal. Rptr. 2d 310, 315 (2002). The general rule does not apply if “(1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts.” *Id.*

None of the exceptions to the general rule are present here. First, SGM has not agreed to assume the Additional Conditions, either expressly or by implication. Second, the SGM Sale is not a consolidation or merger of the Debtors and SGM. A sale transaction is a consolidation or merger of two corporations “where one corporation takes all of another's assets without providing any consideration that could be made available to meet claims of the other's creditors or where the consideration consists wholly of shares of the purchaser's stock which are promptly distributed to the seller's shareholders in conjunction with the seller's liquidation.” *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28, 560 P.2d 3 (1977) (internal citations omitted). Neither factor applies. SGM is paying for the Hospitals in cash (not stock),¹¹ and that cash will be distributed to the Debtors' creditors through a plan of liquidation. Third, SGM is not a mere continuation of the Debtors. A purchaser is a mere continuation of a seller if there is inadequate consideration for the purchaser or if one or more persons are officers, directors, or stockholders or both corporations. *Id.* Consideration for the SGM Sale is adequate and no officers or directors of the Debtors are officers or directors of SGM.¹² Fourth, the Debtors are not selling the Hospitals for the purpose of escaping liabilities for their debts. In fact, the opposite is true—the objective of the SGM Sale is to generate proceeds to pay the Debtors' debts, to the extent possible. In sum, successor liability cannot be imposed on SGM under California common law.

Successor liability cannot be imposed under Cal. Corp. Code §§ 5914–5919. Cal. Corp. Code § 5914 authorizes the Attorney General to review transactions in which a non-profit healthcare

¹¹ *See* APA at § 1.1(a)(i) [Doc. No. 2305, Part 1].

¹² As nonprofit public benefit corporations, the Debtors do not have stockholders.

facility seeks to transfer a material amount of its assets to a for-profit entity, and provides in relevant part:

Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

Cal. Corp. Code § 5914(a)(1) (West).

The “Attorney General shall have discretion to consent to, give conditional consent to, or not consent to” the transaction. Cal. Corp. Code § 5917.

Nothing within the statute authorizes the Attorney General to impose successor liability upon SGM, the for-profit entity that purchased the healthcare assets from the non-profit Debtors. Under the statute, the Attorney General is authorized to review transactions entered into by a “nonprofit corporation that ... operates or controls a health facility,” Cal. Corp. Code § 5914(a)(1), and to “consent to, give conditional consent to, or not consent to” any such transactions, Cal. Corp. Code § 5917. These provisions do not grant the Attorney General authority to impose going-forward obligations on the assets that are the subject of the transaction. That is, the statute does not provide that the healthcare assets themselves are subject to regulation by the Attorney General. Rather, it is the non-profit status of the entity operating the healthcare assets that triggers the Attorney General’s regulatory authority. Upon transfer of the healthcare assets from the non-profit entity to the for-profit entity, the Attorney General’s regulatory authority over the assets terminates.

The issue of the Attorney General’s authority to impose successor liability arose in the case of *La Paloma Generating Co.*, No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017). In *La Paloma*, the debtor operated a power plant subject to a cap-and-trade emissions regulation. The regulation required “Covered Entities”—defined as entities engaging in operations that generated emissions—to surrender “Compliance Instruments” equal to the amount of emissions generated at specified times. At issue was whether a power plant could be sold “free and clear of, and without the purchaser assuming, any obligation to surrender compliance instruments under the California Cap-and-Trade Program for emissions generated by the Debtors and/or their facility during the period before the transfer of the assets.” *Id.* at *2. The court found that “[u]nder the Regulation, only entities—and not assets—are Covered Entities” subject to the obligation to surrender Compliance Instruments. *Id.* at *5. As a result, the court found, the debtors could sell the power plant free and clear of the surrender obligations, pursuant to § 363(f)(1). *Id.* at *8. The court reasoned that the regulation did not impose successor liability on the purchaser, because it imposed liability only on “Covered Entities,” and the purchaser would not become a Covered Entity until after it acquired the power plant. *Id.* at *7–*8. The regulation, the court held, was limited to Covered Entities, and could not be used to “impugn liability on the purchaser of ... the Covered Entity’s assets.” *Id.* at *8.

With respect to the imposition of successor liability, the statute at issue here operates in the same manner as the regulation examined in *La Paloma*. Similar to the regulation in *La Paloma*, Cal. Corp. Code § 5914–5919 permits the imposition of liability upon the Hospitals only because they are operated by a non-profit corporation. That is, independent of the fact that they are operated by a non-profit entity, nothing within Cal. Corp. Code § 5914–5919 authorizes the Attorney General to impose liabilities upon the Hospitals. Further, the Attorney General’s regulatory authority under the statute does not extend to for-profit entities. As was the case in *La Paloma*, Cal. Corp. Code § 5914–5919 does not authorized the Attorney General to impose liability upon the for-profit purchaser of the Hospitals.

The Attorney General argues that the statute’s implementing regulations authorize the imposition of successor liability. Specifically, the Attorney General points to Cal. Code Regs. Tit. 11, § 999.5, which provides in relevant part:

It is the policy of the Attorney General, in consenting to an agreement or transaction involving a general acute care hospital, to require for a period of at least five years the continuation at the hospital of existing levels of essential healthcare services, including but not limited to emergency room services. The Attorney General shall retain complete discretion to determine whether this policy shall be applied in any specific transaction under review.

Cal. Code Regs. tit. 11, § 999.5.

Significantly, the statute’s implementing regulations do not differentiate between Cal. Corp. Code §§ 5914–5919, which codifies the Attorney General’s authority to review transfers between a non-profit and a for-profit entity, and Cal. Corp. Code §§ 5920–5925, which codifies the Attorney General’s authority to review transfers between a non-profit entity and a different non-profit entity. Where assets are transferred between two different non-profit entities, the structure of the statute clearly provides the Attorney General the authority to impose successor liability.

The Court construes Cal. Code Regs. Tit. 11, § 999.5 as implementing Cal. Corp. Code §§ 5920–5925, not as implementing Cal. Corp. Code §§ 5914–5919. Cal. Corp. Code §§ 5920–5925 does authorize the imposition of successor liability, whereas Cal. Corp. Code §§ 5914–5919 does not. This construction is appropriate because it harmonizes the language of the regulation with the language of the statute, while still giving full effect to every part of the regulation. *See Butts v. Bd. of Trustees of California State Univ.*, 225 Cal. App. 4th 825, 835, 170 Cal. Rptr. 3d 604, 612 (2014) (“The rules of statutory construction also govern our interpretation of regulations promulgated by administrative agencies. We give the regulatory language its plain, commonsense meaning. If possible, we must accord meaning to every word and phrase in the regulation, and we must read regulations as a whole so that all of the parts are given effect.”).

Because the Attorney General’s authority to review the sale arises under Cal. Corp. Code §§ 5914–5919, the Attorney General cannot rely upon Cal. Code Regs. tit. 11, § 999.5, which implements Cal. Corp. Code §§ 5920–5925, as the basis for imposing successor liability upon SGM.

2. Even if California Law Allowed the Attorney General to Impose Successor Liability Upon SGM, the Attorney General Abused his Discretion in Imposing the Additional Conditions

Pub. L. No. 109-8, § 1221(e) (2005).¹³ See also *In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016) (construing New York state law to determine the appropriate disposition of a non-profit debtor's assets).

i. The Attorney General's Imposition of the Additional Conditions is Subject to Judicial Review by Administrative Mandate

The Attorney General contends that administrative mandamus review is not available because the Additional Conditions were not issued subsequent to “a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal.” Cal. Civ. Proc. Code § 1094.5(a). The Attorney General acknowledges that he conducted “public meetings ... to hear comments from interested parties” as required by Cal. Corp. Code § 5922. However, the Attorney General asserts that such public meetings were not “hearings” within the meaning of Cal. Civ. Proc. Code § 1094.5(a), because public comments were not presented under oath and no effort was made to determine the accuracy of the information offered by members of the public. The Attorney General’s position is that the Debtors are entitled only to traditional mandamus review under Cal. Civ. Proc. Code § 1085.

¹³ This provision of BAPCPA does not appear in the Bankruptcy Code itself.

The Court is not persuaded by the Attorney General's contention that administrative mandamus review is unavailable to the Debtors. In reviewing the SGM Sale, the Attorney General hired JD Healthcare, Inc. to prepare expert reports containing information on how the SGM Sale would affect the availability of healthcare services in the regions served by the Hospitals. The JD Healthcare expert reports contained recommendations regarding the conditions that the Attorney General should impose on the SGM Sale. Upon receiving the expert reports, the Attorney General asked the Debtors to respond to the conditions recommended by JD Healthcare. The Attorney General conducted public meetings, all of which were transcribed, at which members of the public commented on the SGM Sale. "[P]urely documentary proceedings can satisfy the hearing requirement of Code of Civil Procedure § 1094.5, so long as the agency is required by law to accept and consider evidence from interested parties before making its decision." *Friends of the Old Trees*, 52 Cal. App. 4th at 1391–92. A "trial-type hearing" is not necessary. *Id.* at 1392.

The Attorney General's review involved "the actual application of ... a rule to a specific set of existing facts." *Friends*, 52 Cal. App. 4th at 1389. The Attorney General received evidence from JD Healthcare, heard comments from members of the public, and elected to impose the Additional Conditions after considering all the evidence collected during the review process. The Attorney General's review of the SGM Sale was a quasi-judicial act subject to review by administrative mandate.

The Attorney General next asserts that administrative mandamus review is unavailable because the Debtors have failed to produce the complete administrative record supporting the Attorney General's decision. This contention is without merit. For purposes of administrative mandamus review, a partial record is sufficient if it "accurately represent[s] the administrative proceedings, provide[s] the reviewing court with an understanding of what occurred below, and enable[s] that court to undertake an independent judicial review of the administrative decision." *Elizabeth D. v. Zolin*, 21 Cal. App. 4th 347, 349, 25 Cal. Rptr. 2d 852 (1993). The record before the Court consists of the expert reports prepared by JD Healthcare, partial transcripts of public meetings conducted by the Attorney General, and various letters submitted by stakeholders. The record on file provides the Court with an understanding of reasons for the Attorney General's decision.

There are two tests for judicial review by administrative mandate. "The 'independent judgment' rule applies when the decision of an administrative agency will substantially affect a fundamental vested right." *Mann v. Dep't of Motor Vehicles*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999). Under the "independent judgment" rule, the Court must "begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings." *Fukuda v. City of Angels*, 20 Cal. 4th 805, 819, 977 P.2d 693, 701 (1999). "[T]he presumption provides the trial court with a starting point for review but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." *Id.*

"The 'substantial evidence' rule applies when the administrative decision neither involves nor substantially affects a vested right. The trial court must then review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law" *Mann*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999).

ii. In Imposing the Additional Conditions, the Attorney General Abused His Discretion

Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.

It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

The Attorney General has “discretion to consent to, give conditional consent to, or not consent to” the sale of a healthcare facility. Cal. Corp. Code § 5917. In exercising that discretion, the Attorney General “shall consider any factors that the Attorney General deems relevant,” including but not limited to whether any of the following apply:

- a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
- b) The agreement or transaction will result in inurement to any private person or entity.

- c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, “fair market value” means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.
- d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
- e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.
- f) The agreement or transaction involves or constitutes any breach of trust.
- g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.
- h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- i) The proposed agreement or transaction is in the public interest.
- j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

Cal. Corp. Code § 5917 (West).

Nothing in the record indicates that SGM’s bid was other than for fair market value (factor (c)). The Hospitals were thoroughly marketed by Cain Brothers. SGM was the only bidder interested in purchasing the Hospitals. The Court must presume that a bid submitted after extensive marketing reflects the Hospital’s fair market value. *See Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 457, 119 S. Ct. 1411, 1423, 143 L. Ed. 2d 607 (1999) (stating that “the best way to determine value is exposure to a market”).

There is no indication that SGM, or any other party, took any actions to decrease the value of the Hospitals (factor (d)). In view of the extensive marketing, the terms of the sale are fair and reasonable to the Debtors (factor (a)). There is no evidence that any of the parties involved in the SGM sale have engaged in any conduct that would amount to a breach of trust (factor (f)), or that the SGM Sale will inure to the benefit of any private person or entity (factor (b)). Nor has there been any suggestion that the Debtors failed to provide the Attorney General with sufficient information to evaluate the SGM Sale (factor (g)). Factor (e) does not apply, because the proceeds of the SGM Sale are fully encumbered by the claims of creditors, leaving no remaining equity that could be devoted to charitable purposes.

The remaining factors are (1) the effect of the SGM Sale on the accessibility of healthcare services (factor (h)) and cultural interests (factor (j)) in the affected communities and (2) whether the SGM Sale is in the public interest (factor (i)). Applying the independent judgment standard of review, the Court finds that in electing to impose the Additional Conditions, the Attorney General abused his discretion with respect to these factors.

By letter dated August 23, 2019 (the “August Letter”), the Debtors advised the Attorney General that if the Additional Conditions were imposed, SGM would not complete the sale and the most likely outcome would be the closure of St. Vincent, Seton, and Seton Coastside. The August Letter advised the Attorney General that SGM had submitted the only offer for the Hospitals, and that the “Debtors cannot sustain incurring ongoing operational losses to maintain

the going-concern value of St. Vincent and Seton without the realistic prospect of a purchaser.”¹⁴ The Debtors stated that upon the failure of the SGM Sale, they would be required to begin the process of closing St. Vincent, Seton, and Seton Coastsides “almost immediately.”¹⁵

Having overseen the Debtors’ bankruptcy cases since their inception, the Court has become intimately familiar with the Debtors’ operational and cash flow situation. As discussed above, the Debtors’ statements regarding the necessity of closing certain of the Hospitals upon the failure of the SGM Sale are not an idle threat.

Imposition of the Additional Conditions will dramatically reduce the availability of healthcare services by causing the closure of three of the four Hospitals. In addition to the loss of healthcare services, closure of the Hospitals will destroy approximately 2900 jobs. Closure of the Hospitals will require the relocation of many patients suffering from critical conditions. None of this is in the public interest.¹⁶

The Court understands that the Additional Conditions were imposed with the laudable objective of increasing the amount of healthcare services provided by the Hospitals. The Court can only assume that the Attorney General does not believe the representation that imposition of the Additional Conditions will result in a collapse of the SGM Sale. Unfortunately, the dire economic circumstances in which the Debtors now find themselves leaves the Court with no doubt that if the SGM Sale is not completed, three of the Hospitals will almost certainly close.

Because the Additional Conditions will reduce health care services by resulting in the closure of three of the Hospitals, imposition of the Additional Conditions was an abuse of the Attorney General’s discretion.

Outside of bankruptcy, the finding that the Attorney General abused his discretion would result in the entry of a judgment commanding the issuance of a peremptory writ of mandate, followed by the issuance of the writ. The writ would command the Attorney General to set aside the 2019 Conditions, and would further command the Attorney General to exercise his discretion with respect to the review of the SGM Sale in a lawful manner. *See, e.g., California Hosp. Assn. v. Maxwell-Jolly*, 188 Cal. App. 4th 559, 570, 115 Cal. Rptr. 3d 572, 581 (2010), *as modified on denial of reh’g* (Sept. 16, 2010).

BAPCPA § 1221(e) compels a different result inside bankruptcy. Section 1221(e) provides that the Court is not required “to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.” In *In re HHH Choices Health Plan*, the Bankruptcy Court relied upon BAPCPA § 1221(e) to conclude that it had the authority to interpret a New York law governing the transfer of the assets of a non-profit entity. The court observed that “[i]n the case of an insolvent not-for-profit corporation, section 511 of the New York Not-For-Profit Corporation Law ordinarily, would require the approval of the New York State Supreme Court for a transfer of assets.” *HHH Choices Health Plan*, 554 B.R. at 700. The court rejected arguments advanced by certain of the parties “that the

¹⁴ August Letter at 14.

¹⁵ *Id.*

¹⁶ SEIU-UHW contends that it is economically feasible for SGM to operate the Hospitals while complying with the Additional Conditions. The record does not support SEIU-UHW’s contention. SGM was the only bidder willing to purchase the Hospitals and has stated unequivocally that it will not complete its purchase if the Additional Conditions are imposed. These facts show that the Additional Conditions render operation of the Hospitals economically infeasible.

ordinary state court procedures must still be followed” with respect to the transfer of the assets. *Id.* Instead, the court held that substantive state law requirements remained applicable, but that it was the Bankruptcy Court that had authority to apply those requirements. *Id.*

Pursuant to BAPCPA § 1221(e), and consistent with the ruling in *HHH Choices Health Plan*, the Court is not required to issue a judgment and writ commanding the Attorney General to set aside the 2019 Conditions, and is not required to remand these proceedings to allow the Attorney General to conduct a further review of the SGM Sale in light of the Court’s finding that the Attorney General abused his discretion. Instead, the Court is empowered to apply Cal. Corp. Code § 5914, and to determine the conditions under which the Debtors may sell the Hospitals to SGM.

Under the circumstances presented here, the only way that closure of three of the four Hospitals can be avoided is if a sale not subject to the Additional Conditions is approved. A decision by the Attorney General to not consent to the sale, or a decision to consent to the sale subject to conditions other than the Approved Conditions, would constitute an abuse of discretion. That is because SGM, the only entity willing to purchase and continue to operate the Hospitals, will do so only if it is permitted to operate the Hospitals in a manner consistent with the Approved Conditions.

In reaching this conclusion, the Court is not limiting or controlling the discretion vested in the Attorney General, in contravention of Cal. Code Civ. Proc. § 1094.5(f). The Hospitals have been financially distressed for years. A \$100 million capital infusion made in connection with the 2015 Restructuring Agreement failed to stabilize the Hospitals’ operations. A further capital infusion of \$148 million in 2017 failed to restore the Hospitals to financial health. This demonstrates that it was not possible to successfully operate the Hospitals subject to the 2015 Conditions. It should come as no surprise that no buyer exists that is willing to purchase and operate the Hospitals if operations are constrained by Additional Conditions that are substantially similar to the 2015 Conditions. The Attorney General’s continued attempts to impose conditions rendering sustainable operation of the Hospitals impossible amounts to an abuse of discretion.

The Attorney General contends that SGM, by refusing to purchase and operate the Hospitals subject to conditions other than the Approved Conditions, is attempting to divest the Attorney General of his regulatory authority by forcing him to accede to a transaction on SGM’s terms. This argument ignores the financial and operational realities facing the Hospitals. SGM’s refusal to accept the Additional Conditions is not an attempt to blackmail the Attorney General into approving the sale. Such refusal is instead dictated by economic reality.

iii. Even if the Attorney General’s Decision is Subject to Traditional Mandamus Review Under Cal. Civ. Proc. Code § 1085, Imposition of the Additional Conditions Was an Abuse of Discretion

Even if the Attorney General’s review of the sale transaction is a quasi-legislative decision, subject to traditional mandamus review under Cal. Civ. Proc. Code § 1085, the decision to impose the Additional Conditions was an abuse of discretion.

Under Cal. Civ. Proc. Code § 1085, a traditional mandate “may issue to correct the exercise of discretionary legislative power, *but only* if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law.” *Carrancho v. California Air Res. Bd.*, 111 Cal. App. 4th 1255, 1265, 4 Cal. Rptr. 3d 536, 545 (2003) (emphasis in original). In reviewing quasi-legislative decisions, the “authority of the court is limited to determining

In sum, regardless of whether the Debtors are entitled to review of the Attorney General's decision under traditional mandamus or administrative mandamus, the Attorney General's decision to impose the Additional Conditions was an abuse of discretion. In the unique circumstances of this case, the Attorney General was required to consent to the SGM Sale without imposing the Additional Conditions. As a result, sale of the Hospitals to SGM free and clear of the Additional Conditions is authorized under applicable nonbankruptcy law. The Court approves the SGM Sale, free and clear of the Additional Conditions, pursuant to § 363(f)(1).

Under § 363(f)(4), the Hospitals may be sold free and clear of the Additional Conditions provided the Additional Conditions are “in bona fide dispute ...” A bona fide dispute exists if “there is an objective basis for either a factual or legal dispute as to the validity” of the interest at

¹⁷ Specifically, counsel for the Attorney General explained that in imposing the conditions, the Attorney General “is weighing the impact on the affected community, and making a determination as to what would be the best outcome for this community in order to ensure that it is not being adversely impacted, and not inappropriately losing access to these nonprofit hospitals” Hearing Transcript [Doc. No. 3416] at 24. Counsel further stated that the Attorney General’s “obligation is ... to do what’s needed to preserve access to healthcare, in particular for disadvantaged populations, which is clearly what we’re dealing with here.” *Id.* at 12.

issue. *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). The court “court need not determine the probable outcome of the dispute, but merely whether one exists.” *Id.*

The Debtors dispute the Attorney General’s authority to impose the Additional Conditions, on the grounds that the (1) Additional Conditions attempt to impose successor liability in a manner not authorized under California law and that (2) the Attorney General abused his discretion in issuing the Additional Conditions. As discussed above, the Debtors have shown that the Attorney General cannot impose the Additional Conditions for both of these reasons. The Debtors have easily satisfied §363(f)(4), which does not require the Debtors to show that they will prevail upon the dispute—only that a dispute exists.

A bona fide dispute exists for yet another reason. The Debtors have shown that by imposing the Additional Conditions, the Attorney General violated § 525.

Section 525 provides in relevant part:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... or another person with whom such ... debtor has been associated, solely because such ... debtor is or has been a debtor under this title ... or has not paid a debt that is dischargeable in the case under this title

In *In re Aurora Gas, LLC*, the court held that the State of Alaska violated § 525 by refusing to approve the debtor’s sale of oil and gas leases unless the purchaser posted a bond of \$6 million to pay for the cost of plugging abandoned wells that the purchaser was not acquiring. *In re Aurora Gas, LLC*, No. A16-00130-GS, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017). The court held that by conditioning approval of the sale upon the posting of a bond, the State was attempting to collect upon the debtor’s obligation to pay for the costs of plugging the abandoned wells. Imposition of such a condition, the court found, constituted impermissible discrimination against the debtor and its affiliate, the purchaser of the gas leases, in violation of § 525.

The facts of this case are strikingly similar. Here, the Attorney General has conditioned approval of the SGM Sale upon SGM assuming the obligation to operate the Hospitals in accordance with conditions similar to the 2015 Conditions that are an obligation of the Debtors. As discussed, the Additional Conditions require that SGM maintain and operate the Hospitals at current licensure and service levels. The Additional Conditions amount to an attempt by the Attorney General to enforce the obligations imposed by the 2015 Conditions. The 2015 Conditions are liabilities that are dischargeable in bankruptcy. By conditioning the transfer of the Hospitals upon the assumption of the Additional Conditions, which impose obligations equal to or in excess of the 2015 Conditions, the Attorney General is impermissibly discriminating against the Debtors in violation of § 525.

The fact that the Additional Conditions can be characterized as a regulatory obligation does not change the analysis. Regulatory obligations such as the Additional Conditions qualify as a “debt” under the Bankruptcy Code’s broad definition of the term:

Under the Bankruptcy Code, “debt” means “liability on a claim,” 11 U.S.C. § 101(12), and “claim,” in turn, includes any “right to payment,” § 101(5)(A). We have said that “[c]laim” has “the broadest available definition,” *Johnson v. Home State Bank*, 501 U.S.

78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), and have held that the “plain meaning of a ‘right to payment’ is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation,” *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 559, 110 S.Ct. 2126 (1990). See also *Ohio v. Kovacs*, 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

F.C.C. v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 302–03, 123 S. Ct. 832, 839, 154 L. Ed. 2d 863 (2003).

D. The Debtors May Sell the Hospitals Free and Clear of Certain of the Additional Conditions Pursuant to § 363(f)(5)

Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest “could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

An interest “that can be reduced to a specific monetary value” falls within the scope of § 363(f)(5). *In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003); see also *In re Vista Marketing Grp. Ltd.*, 557 B.R. 630, 635 (Bankr. N.D. Ill. 2016) (“[O]ne would be hard-pressed to present a clearer example of a situation where the interest-holder could be compelled to accept a money satisfaction of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the District in its surcharge bill and disconnection notice.”).

Among the Additional Conditions are requirements that each of the Hospitals provide specified levels of charity care and community benefit services. The Additional Conditions allow any shortfalls in charity care or community benefit services to be satisfied through deficiency payments to tax-exempt entities within the Hospitals’ service area. The charity care and community benefit obligations can easily be reduced to a specific monetary value. The Debtors may sell the Hospitals free and clear of these obligations pursuant to § 363(f)(5).

E. Section 363(d)(1) Does Not Bar the Sale

As noted, § 363(d)(1) provides that non-profit entities, such as the Debtors, may sell estate assets only if the sale is “in accordance with nonbankruptcy law applicable to the transfer of property by” a non-profit entity.

For the reasons discussed in Section II.B., above, the Debtors are authorized to sell the Hospitals, free and clear of the Additional Conditions, under applicable nonbankruptcy law.

Even if the Debtors were not authorized to sell the Hospitals free and clear under applicable nonbankruptcy law, § 363(d)(1) does not limit the Debtors’ ability to sell the Hospitals free and clear of the Additional Conditions under § 363(f)(4) or (5).¹⁸ Basic principles of statutory construction dictate this result. “Statutory construction ... is a holistic endeavor.” *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 630, 98 L. Ed. 2d 740 (1988). The Court must look “to the provisions of the whole law, and to its object and policy.” *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 94–

¹⁸ Under § 363(f)(4), the Debtors are authorized to sell the Hospitals free and clear of all of the Additional Conditions. See Section II.C., above. Under § 363(f)(5), the Debtors are authorized to sell the Hospitals free and clear of the charity care and community benefit obligations. See Section II.D., above.

95, 114 S. Ct. 517, 523, 126 L. Ed. 2d 524 (1993). Absent a “clear intention otherwise,” specific provisions addressing an issue apply instead of more generalized provisions covering the same issue. *Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S. Ct. 2474, 2483, 41 L. Ed. 2d 290 (1974). This rule applies “regardless of the priority of enactment” of the provisions. *Id.*

Section 363(f) sets forth specific circumstances under which assets may be sold free and clear. Section 363(f) is not limited by a non-profit debtor’s general obligation under § 363(d)(1) to comply with nonbankruptcy law. The general requirement set forth in § 363(d)(1) makes no reference to § 363(f), which more specifically delineates the circumstances in which assets may be sold free and clear. Without a “clear intention otherwise,” *Morton*, 417 U.S. at 550–51, the general requirement of § 363(d)(1) does not repeal the specifics of free and clear sales under § 363(f), even though § 363(d)(1) was enacted subsequent to § 363(f).

F. Section 541(f) Does Not Bar the Sale

Section 541(f) provides:

Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

The Attorney General asserts that § 541(f)’s initial clause, “[n]otwithstanding any other provision of this title,” is broad enough to trump § 363(f). According to the Attorney General, § 541(f) requires that the SGM Sale comply with applicable California law. As a result, the Attorney General argues, the SGM Sale can occur only if SGM agrees to accept all of the 2019 Conditions, including the Additional Conditions.

The language of § 541(f) is similar, but not identical to, the language of § 363(d)(1). Section 363(d)(1) requires that non-profit entities transfer property “in accordance with nonbankruptcy law applicable to the transfer of property by” the non-profit entity; § 541(f) requires that such transfers occur “only under the same conditions as would apply if the debtor had not filed a case under this title.”

“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300, 78 L. Ed. 2d 17 (1983). Therefore, the Court cannot assume that § 541(f) has the same meaning as § 363(f). That is, § 541(f) cannot mean that the Debtors are required to transfer property “in accordance with nonbankruptcy law applicable to the transfer of [such] property,” since that is the language used in § 363(d)(1).

There is no legislative history to guide the Court in construing the phrase “under the same conditions” in § 541(f). Nor has the Court been able to locate any cases interpreting this section. In the absence of legislative history, phrases are construed in accordance with their “ordinary or natural meaning.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 114 S. Ct. 996, 1001, 127 L. Ed. 2d 308 (1994). According to *Roget’s 21st Century Thesaurus* (3d ed. 2013), a synonymous phrase for “under the same conditions” is “in these circumstances.”

Here, the Debtors have complied with § 541(f)’s mandate. That is, “[n]otwithstanding any other provisions” of the Bankruptcy Code, they have sought to transfer the Hospitals in the same

manner as the transfer would have occurred under applicable nonbankruptcy law. The Debtors submitted the transfer to the review of the Attorney General, paid for the expert healthcare impact statements required under the statute, and waited for 135 days for the Attorney General to review the transaction. The transfer has been subject to the same conditions that would have applied had the Debtors not sought bankruptcy protection.

Even if the Attorney General were correct that § 541(f) had the same meaning as § 363(d)(1), the Debtors would still be able to sell the Hospitals free and clear of the Additional Conditions, pursuant to § 363(f)(1), (4), and (5). Contrary to the Attorney General's contention, the "notwithstanding" clause does not mean that § 541(f) trumps § 363(f). The Ninth Circuit has held:

In examining specific statutes, we have not, however, always accorded universal effect to the "notwithstanding" language, standing alone. *See Or. Natural Res. Council v. Thomas*, 92 F.3d 792, 796 (9th Cir.1996) ("We have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally." (citing *E.P. Paup Co. v. Dir., Office of Workers Comp. Programs*, 999 F.2d 1341, 1348 (9th Cir.1993); *Kee Leasing Co. v. McGahan (In re The Glacier Bay)*, 944 F.2d 577, 582 (9th Cir.1991); *Golden Nugget, Inc. v. Am. Stock Exch., Inc.*, 828 F.2d 586, 588–89 (9th Cir.1987) (per curium))). Instead, we have determined the reach of each such "notwithstanding" clause by taking into account the whole of the statutory context in which it appears.

United States v. Novak, 476 F.3d 1041, 1046 (9th Cir. 2007).

Relying upon the "common-sense principle of statutory construction that sections of a statute generally should be read to give effect, if possible, to every clause," the Ninth Circuit has held that a "notwithstanding" provision should not be given its broadest possible interpretation if doing so would render other statutory provisions ineffectual. *Oregon Nat. Res. Council v. Thomas*, 92 F.3d 792, 797 (9th Cir. 1996).

According the "notwithstanding" clause the broad construction advocated by the Attorney General would render § 363(f) of the Bankruptcy Code ineffectual with respect to non-profit debtors. Section 541(f) was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1221(e) ("BAPCPA"). BAPCPA made no changes to § 363(f). The Court cannot find that Congress intended § 541(f) to trump § 363(f) with respect to non-profit debtors.

G. The Court Certifies a Direct Appeal of its Decision to the Ninth Circuit Court of Appeals

Title 28 U.S.C. § 158(d)(2) provides that the Bankruptcy Court, acting on its motion, may certify a direct appeal of an order to the Court of Appeals if the order "involves a matter of public importance" or if an immediate appeal of the order will "materially advance the progress of the case or proceeding."

Certification is warranted here. The interplay between the sale provisions of the Bankruptcy Code and the authority of the Attorney General to regulate the sale of assets subject to a charitable trust is a matter of public importance. The issue has previously arisen in *Gardens I* and *Verity I*, and will continue to arise in future cases.

A direct appeal will materially advance the progress of the case. Closing of the SGM Sale is the lynchpin of the Debtors' plan of reorganization. However, under the APA, SGM is not

obligated to close the sale unless the Debtors obtain a final, non-appealable order authorizing a sale free and clear. The Debtors are facing severe liquidity constraints and cannot afford to continue to operate the Hospitals for much longer. A direct appeal will facilitate resolution of this case by providing certainty regarding the permissibility of a sale free and clear far sooner than would otherwise be possible. If the Court's order is upheld, SGM can proceed to close the sale. If not, the Debtors can commence shutting down St. Vincent, Seton, and Seton Coastside.

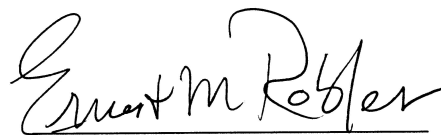
III. Conclusion

Based upon the foregoing, the Court finds that the Debtors may sell the Hospitals to SGM, free and clear of the Additional Conditions. The sale may proceed under applicable nonbankruptcy law pursuant to § 363(f)(1) because (1) the Additional Conditions qualify as successor liability that may not be imposed against SGM under California law and because (2) the Attorney General abused his discretion in attempting to impose the Additional Conditions, which therefore must be set aside. A bona dispute as to the Attorney General's authority to impose the Additional Conditions exists under § 363(f)(4), because the Debtors (1) have shown that the Additional Conditions are not authorized under California law and that (2) the attempted imposition of the Additional Conditions violates § 525. Pursuant to §363(f)(5), the sale is free and clear of the charity care and community benefit obligations, which can be reduced to a monetary valuation.

The Court will prepare and enter an order certifying this matter for a direct appeal to the Ninth Circuit. The Debtors shall submit an order granting the Motion within seven days of the issuance of this Memorandum of Decision.

###

Date: October 23, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 17

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**STIPULATION RESOLVING "DEBTORS"
EMERGENCY MOTION FOR THE ENTRY OF AN
ORDER: (I) ENFORCING THE ORDER
AUTHORIZING THE SALE TO STRATEGIC GLOBAL
MANAGEMENT, INC.; (II) FINDING THAT THE SALE
IS FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN THOSE
APPROVED BY THE COURT; (III) FINDING THAT
THE ATTORNEY GENERAL ABUSED HIS
DISCRETION IN IMPOSING CONDITIONS ON THAT
SALE; AND (IV) GRANTING RELATED RELIEF"
[DOCKET NO. 3188]**

Hearing Date and Time:

Date: October 15, 2019

Time: 10:00 a.m. (Pacific Time)

Place: 255 E. Temple St., Courtroom 1568
Los Angeles, CA 90012



DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 This stipulation is entered into by and between Verity Health System of California, Inc. and
2 the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11
3 bankruptcy cases (collectively, the “Debtors”) and the California Attorney General (the “Attorney
4 General” and, together with the Debtors, the “Parties”), with respect to the following:

5 A. On September 30, 2019, the Debtors filed the *Debtors’ Emergency Motion for the*
6 *Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management,*
7 *Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those*
8 *Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing*
9 *the Conditions on That Sale; and (IV) Granting Related Relief* [Docket No. 3188] (the “Motion”).¹

10 B. On October 9, 2019, the Attorney General filed the *Opposition of California*
11 *Attorney General to “Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the*
12 *Order Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale Is Free*
13 *and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding*
14 *That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV)*
15 *Granting Related Relief”* [Doc. 3188] [Docket No. 3333] (the “Attorney General Opposition”).

16 C. On October 10, 2019, Strategic Global Management, Inc. (“SGM”) filed the
17 *Statement of Strategic Global Management, Inc. in Support of “Debtors’ Emergency Motion for*
18 *the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global*
19 *Management, Inc; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different*
20 *Than Those Approved by the Court”* [Docket No. 3356] (the “SGM Statement”).

21 D. On October 14, 2019, the Debtors filed the *Debtors’ Reply to California Attorney*
22 *General’s Opposition to Debtors’ Motion for the Entry of an Order Enforcing the Order*
23 *Authorizing the Sale to Strategic Global Management, Inc.* [Docket No. 3382] (the “Reply”).

24 E. On October 15, 2019, at 10:00 a.m. (Pacific Time), the Court held a hearing on the
25 Motion (the “Hearing”). Appearances were as set forth on the record of the Hearing.

26 F. On October 23, 2019, the Court filed its *Memorandum of Decision Granting*
27

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

Debtors' Emergency Motion to Enforce Sale Order [Doc. No. 3188] [Docket No. 3446] (the
"Memorandum Decision").

STIPULATION

NOW, THEREFORE, all of the Parties to this Stipulation hereby conditionally stipulate and
agree as follows:

1. The Motion shall be granted by entry of the proposed order, attached hereto as
Exhibit "A", entitled *Order Granting "Debtors' Emergency Motion For The Entry Of An Order:
(I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding
That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The
Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On
That Sale; And (IV) Granting Related Relief"* [Docket No. 3188] (the "Order").

2. The Attorney General does not agree or concede that the Additional Conditions (as
defined in the Order) are an "interest in property" for purposes of 11 U.S.C. § 363(f), but
acknowledges that the Court so held in the Memorandum Decision (which is to be vacated and
withdrawn pursuant to the Order) and that, solely and exclusively for purposes of the APA (as
defined in the Order) and the Motion, the Order so states.

3. This Stipulation shall be binding and effective upon, but only upon, entry of the
Order in the proposed form attached hereto.

Dated: November 8, 2019

DENTONS US LLP

By: /s/ Tania M. Moyron

Tania M. Moyron

Counsel to the Debtors and Debtors in Possession

Dated: November 8, 2019

CALIFORNIA DEPARTMENT OF JUSTICE

By: _____

David K. Eldan

Counsel to Xavier Becerra, Attorney General of the
State of California

Exhibit A

Proposed Order

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 Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

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

Debtors and Debtors In
 Possession.

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

Jointly Administered With:

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 Case No. 2:18-bk-20171-ER
 Case No. 2:18-bk-20172-ER
 Case No. 2:18-bk-20173-ER
 Case No. 2:18-bk-20175-ER
 Case No. 2:18-bk-20176-ER
 Case No. 2:18-bk-20178-ER
 Case No. 2:18-bk-20179-ER
 Case No. 2:18-bk-20180-ER
 Case No. 2:18-bk-20181-ER

Chapter 11 Cases
 Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
 MOTION FOR THE ENTRY OF AN ORDER: (I)
 ENFORCING THE ORDER AUTHORIZING THE
 SALE TO STRATEGIC GLOBAL MANAGEMENT,
 INC.; (II) FINDING THAT THE SALE IS FREE
 AND CLEAR OF CONDITIONS MATERIALLY
 DIFFERENT THAN THOSE APPROVED BY THE
 COURT; (III) FINDING THAT THE ATTORNEY
 GENERAL ABUSED HIS DISCRETION IN
 IMPOSING CONDITIONS ON THAT SALE; AND
 (IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
 Time: 10:00 a.m. (Pacific Time)
 Location: Courtroom 1568
 255 E. Temple Street
 Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity
2 Health System of California, Inc. and the above-referenced affiliated debtors and debtors in
3 possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the
4 response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 ____] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
11 withdrawn.
- 12 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion,
13 the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement
14 [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f),
15 and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions
16 without the imposition of any other conditions which would adversely affect the Purchaser (as
17 defined in the APA).
- 18 4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
19 controversies regarding the interpretation or enforcement of this Order. Notwithstanding the
20 preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the
21 Attorney General to enforce, in the California state courts and pursuant to section 5926 of the
22 California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the
23 APA.

24 ///

25 ///

26 ///

27 ///

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

DENTONS US LLP
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT 18

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Samuel R. Maizel (SBN 189301) samuel.maizel@dentons.com Tania M. Moyron (SBN 235736) tania.moyron@dentons.com DENTONS US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017 Telephone: (213) 623-9300 Facsimile: (213) 623-9924 <input type="checkbox"/> Individual appearing without an attorney <input checked="" type="checkbox"/> Attorney for: Debtors and Debtors In Possession	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Debtors and Debtors In Possession. <input checked="" type="checkbox"/> Affects All Debtors <input type="checkbox"/> Affects Verity Health System of California, Inc. <input type="checkbox"/> Affects O'Connor Hospital <input type="checkbox"/> Affects Saint Louise Regional Hospital <input type="checkbox"/> Affects St. Francis Medical Center <input type="checkbox"/> Affects St. Vincent Medical Center <input type="checkbox"/> Affects Seton Medical Center <input type="checkbox"/> Affects O'Connor Hospital Foundation <input type="checkbox"/> Affects Saint Louise Regional Hospital Foundation <input type="checkbox"/> Affects St. Francis Medical Center of Lynwood Foundation <input type="checkbox"/> Affects St. Vincent Foundation <input type="checkbox"/> Affects St. Vincent Dialysis Center, Inc. <input type="checkbox"/> Affects Seton Medical Center Foundation <input type="checkbox"/> Affects Verity Business Services <input type="checkbox"/> Affects Verity Medical Foundation <input type="checkbox"/> Affects Verity Holdings, LLC <input type="checkbox"/> Affects De Paul Ventures, LLC <input type="checkbox"/> Affects De Paul Ventures - San Jose Dialysis, LLC Liquidation Corporation, a California corporation, Debtor(s)	CASE NO.: 2:18-bk-20151-ER; Jointly administered with: Case No. 2:18-bk-20162-ER Case No. 2:18-bk-20163-ER Case No. 2:18-bk-20164-ER Case No. 2:18-bk-20165-ER Case No. 2:18-bk-20167-ER Case No. 2:18-bk-20168-ER Case No. 2:18-bk-20169-ER Case No. 2:18-bk-20171-ER Case No. 2:18-bk-20172-ER Case No. 2:18-bk-20173-ER Case No. 2:18-bk-20175-ER Case No. 2:18-bk-20176-ER Case No. 2:18-bk-20178-ER Case No. 2:18-bk-20179-ER Case No. 2:18-bk-20180-ER Case No. 2:18-bk-20181-ER CHAPTER: 11 NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: (title of motion¹): <u>Enforcement Motion [Docket No. 3188]</u>

PLEASE TAKE NOTE that the order titled Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief" [Doc. 3188] was lodged on (date) 11/08/19 and is attached. This order relates to the motion which is docket number 3188.

¹ Please abbreviate if title cannot fit into text field.

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 Attorneys for the Chapter 11 Debtors and
 Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
 Possession.

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

Debtors and Debtors In
 Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
 Case No. 2:18-bk-20163-ER
 Case No. 2:18-bk-20164-ER
 Case No. 2:18-bk-20165-ER
 Case No. 2:18-bk-20167-ER
 Case No. 2:18-bk-20168-ER
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Chapter 11 Cases
 Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
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 (IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
 Time: 10:00 a.m. (Pacific Time)
 Location: Courtroom 1568
 255 E. Temple Street
 Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity
2 Health System of California, Inc. and the above-referenced affiliated debtors and debtors in
3 possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the
4 response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 3572] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
11 withdrawn.
- 12 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion,
13 the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement
14 [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f),
15 and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions
16 without the imposition of any other conditions which would adversely affect the Purchaser (as
17 defined in the APA).
- 18 4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
19 controversies regarding the interpretation or enforcement of this Order. Notwithstanding the
20 preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the
21 Attorney General to enforce, in the California state courts and pursuant to section 5926 of the
22 California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the
23 APA.

24 ///

25 ///

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28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

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EXHIBIT 19

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Attorneys for Strategic Global Management, Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF

CALIFORNIA, INC., *et al.*,

Debtors and Debtors in Possession.

- ☒ Affects All Debtors
☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
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☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose ASC, LLC

Debtors and Debtors in Possession.

LEAD CASE NO.: 2:18-bk-20151-ER

CHAPTER: 11
JOINTLY ADMINISTERED WITH:

CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
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CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

**OBJECTION TO ORDER GRANTING
“DEBTOR’S EMERGENCY MOTION
FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER
AUTHORIZING THE SALE TO
STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS
FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN
THOSE APPROVED BY THE COURT;
(III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION
IN IMPOSING CONDITIONS ON THAT
SALE; AND (IV) GRANTING RELATED
RELIEF” (DOC. 3188)**



Strategic Global Management, Inc. (“SGM”) submits the following Objection to the “Order Granting Debtor’s Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief” [Doc. 3574] submitted by Verity Health System of California, Inc. and related and affiliated Debtors.

I.

INTRODUCTION

An enormous amount of time and expense has been incurred in the efforts of the Debtors, SGM, and other parties in interest, to reach an agreement for SGM’s purchase of 4 hospitals for a price of over \$600 Million, which will pave the way for confirmation of the Debtors’ Plan of Reorganization, and the continued operation of the hospitals, employment of thousands of people, and support of the communities they serve. Fundamental to that process has been the need to resolve the issue of whether and to what extent SGM would be obligated to perform or abide by conditions which the California Attorney General (“AG”) might attempt to impose as part of his approval process. In recognition of the history in other cases of the AG’s imposition of conditions that have had the effect of causing transaction to fail and hospitals to close, SGM bargained for protection such that it would not have to close this transaction if the conditions imposed by the AG were materially different (“Additional Conditions”) from that which SGM had agreed to accept. The provisions of the APA addressing this subject matter are contained in section 8.6.

The AG issued his Decision on September 25, 2019, in which the AG imposed Additional Conditions for his approval of the sale to SGM. The Debtors, with SGM’s support, filed its “Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV)

1 Granting Related Relief” [Doc. 3188] requesting a determination, among other things, that the
2 sale to SGM was free and clear of such Additional Conditions. Following the conclusion of the
3 hearing on the Emergency Motion, this court filed its Memorandum Decision on October 23,
4 2019 [Doc. 3446] in which it granted the Emergency Motion and, recognizing the importance (if
5 not ground breaking nature) of its ruling, the Court certified its ruling for a direct appeal to the
6 U.S. Court of Appeals for the Ninth Circuit.

7 The AG has agreed to waive its right to appeal in exchange for the Court’s vacation of its
8 Memorandum Decision and entry of a form of order to which it consents. That proposed order
9 [Doc. 3574] attached as Exhibit A hereto (herein, the “AG Order”), is not acceptable to
10 SGM. While SGM remains fully committed to the transaction, fundamental to SGM’s rights as a
11 purchaser is the protection to which it is entitled under APA section 8.6 in the form of a clearly
12 and unambiguously written order which forecloses, to the extent possible, any disputes or
13 controversies as to SGM’s protection from such Additional Conditions, its right not to comply
14 with, perform or adhere to any of the Additional Conditions, and SGM’s ability to come to this
15 court if there are future disputes or controversies over the interpretation or enforcement of such
16 order. Rather than accomplish that end, the AG Order is muddled, obtuse, grammatically
17 ambiguous, and, if entered, will not provide SGM the clear and unequivocal protection to which it
18 is entitled and which SGM believes the court intended it to have. Fortunately, these deficiencies
19 can be corrected, with no prejudice to the AG or to the Debtors.

20 Under the unique circumstances of this case including: (1) the removal from the record of
21 the Court’s Memorandum Decision, which thoroughly and comprehensively set forth the bases
22 for the Court’s ruling in granting the Motion, and (2) the profoundly important consequence of
23 the Court’s order on SGM’s future relationship with the AG for many years, in a transaction in
24 which SGM will be paying over \$600 Million, SGM is entitled to have a clearly-written,
25 unequivocal and unambiguous order that addresses the following subject matters which were not
26 fully and clearly provided for in the AG Order: (1) a definition of “Additional Conditions,” (2) a
27 clear statement as to what the “free and clear” terminology means as to the “Additional
28 Conditions,” and (3) a clear and unambiguous statement regarding this Court’s jurisdiction to

1 resolve disputes or controversies over the Order.

2 All of SGM's concerns over the AG Order can be fixed very simply and effectively by the
3 alternative order forth on Exhibit B hereto (the "SGM Order"). The use of the SGM Order, in
4 lieu of the AG Order, while providing necessary protection to SGM, will have no prejudicial
5 impact whatsoever on the AG or the Debtors. While SGM recognizes that one of the AG's goals,
6 in waiving its appeal and having the Court vacate its Memorandum Decision, is to limit, as much
7 as possible, a public record regarding this Court's significant decision concerning the
8 unenforceability of the Additional Conditions, the AG's goal of limiting the "collateral damage"
9 from this Court's ruling must give way to SGM's entitlement to a clearly stated, unambiguous
10 order which will avoid, or limit to the maximum extent, confusion and controversy over exactly
11 what this Court has decided.

12 Unfortunately, the AG's effort to avoid the precedential effect of this Court's ruling has
13 created an unnecessarily ambiguous order which may actually result in litigation between the AG
14 and SGM. The AG's verbatim extraction of specific language from § 8.6, while superficially
15 appealing, is grammatically unartful. Whether by design to obscure the outcome of the Court's
16 ruling or simply poor draftsmanship, the end result is an order that does not do justice to, or fairly
17 reflects, this Court's ruling and leaves SGM open to litigation.

18 II.

19 **THE CHANGES NECESSARY TO PROTECT THE INTEREST OF SGM,** 20 **CAN BE MADE WITHOUT ANY PREJUDICE TO THE AG**

21 SGM's proposed alternative order, at Paragraph 2, which is the paragraph that addresses
22 the "free and clear" provision of the order, states as follows:

23 The Debtors' transfer to SGM of the Debtors' assets (the
24 "SGM Sale") pursuant to that certain Asset Purchase
25 Agreement [Docket No. 2305-1] (the "SGM APA") is free
26 and clear of, and shall not be subject to or conditioned upon
27 SGM's performance of, compliance with, or adherence to,
28 any and all Additional Conditions (as defined in the SGM
APA and in the Motion), pursuant to Bankruptcy Code §
363(b), (f1), and (f5) and otherwise is provided in the Sale
Order."

1 The foregoing language is entirely consistent with the Debtor’s Motion, this Court’s
2 Memorandum Decision and, most importantly, expressly states what “free and clear” means, i.e.
3 that SGM is not required to perform, comply with or adhere to the Additional Conditions.
4 Because the concept of a “free and clear” sale as applied to regulatory conditions is, to say the
5 least, unusual, SGM believes that it is critical that the Order contain language, which clarifies that
6 a sale free and clear of conditions means that SGM will not have to comply with them.
7 Otherwise, there could be some doubt, and later a dispute, about exactly what the term “free and
8 clear” means as applied to regulatory conditions. The whole purpose of the SGM’s negotiation of
9 its rights under § 8.6, and of the Debtor’s Emergency Motion to satisfy its obligation under § 8.6,
10 was to establish that SGM would not have to comply with the AG Conditions. There is no
11 legitimate reason why the AG should refuse to have such language included in the Order – unless
12 the AG desires to leave the Order ambiguous enough either to be able to “spin it” or to create a
13 basis for controversy.

14 The problem with the AG’s language, especially in comparison to that proposed by SGM,
15 are several fold. First, the prefatory words “Solely and exclusively for the purposes of the APA”
16 are unnecessary, not requested by the Debtor or SGM in the Motion, and are ambiguous. The
17 transfer of the Debtor’s assets free and clear of the Additional Conditions needs to be clearly and
18 unambiguously stated. What does “Solely and exclusively for purpose of the APA” mean? If the
19 AG wants language to the effect that this Order does not apply to some other transaction over
20 which the AG has approval authority, then the Order can provide such language.

21 The AG Order contains the additional verbiage addressing the critical issue of the sale
22 being free and clear of the Additional Conditions in an awkward and imprecise manner:

23 Solely and exclusively for purposes of the APA . . . the
24 Additional Conditions . . . are an “interest in property” for
25 purposes of 11 U.S.C. § 363(f) and the assets (as defined in
26 the APA) *can be* sold free and clear of the Additional
27 Conditions(Emphasis added.)

28 The use of the words “can be sold” does not expressively state that they “are being
transferred” free and clear. While the AG has adopted verbiage from § 8.6 of the APA, word for

word, those words do not translate clearly into a court order. There is no particular reason why the Order should use the phrase “can be sold” as opposed to “are being transferred” which is consistent with the Sale Order and is exactly what this Court decided when it granted the Emergency Motion.

Finally, this Court made no ruling as to the AG’s enforcement rights (and no such ruling was requested) and this Court should retain exclusive jurisdiction to resolve any disputes or controversies concerning its Order. The AG Order, after acknowledging the Bankruptcy Court’s exclusive jurisdiction, goes on to say:

“Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth in Schedule 8.6 to the SGM APA.”

First, there is no basis, either in the Emergency Motion, the AG’s Opposition or the Memorandum Decision, for this Court to be ruling on the AG’s enforcement right, one way or the other, except with respect to the Additional Conditions. Second, the words “Notwithstanding the preceding sentence” obviously are meant to supersede the prior sentence and, since the prior sentence provided for the Bankruptcy Court’s “exclusive jurisdiction” over disputes pertaining to the Order, the AG Order would effectively trump that provision which or, at least create a “forum war” over future disputes. In light of the fact that a dispute could involve whether the AG is improperly attempting to enforce an “Additional Condition”, there should be no question that any such dispute should be heard in this Court, since it is this Court that has created the barrier against such enforcement.

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1 Based on the foregoing, SGM respectfully requests that the Court enter the SGM Order.¹

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3 Dated: November 11, 2019

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

4
5 By: /s/ Gary E. Klausner
6 Gary E. Klausner
7 Counsel for Strategic Global Management, Inc.
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¹ SGM reserves all of its rights under the APA including, without limitation, as provided for in section 8.6

EXHIBIT “A”

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Samuel R. Maizel (SBN 189301) samuel.maizel@dentons.com Tania M. Moyron (SBN 235736) tania.moyron@dentons.com DENTONS US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017 Telephone: (213) 623-9300 Facsimile: (213) 623-9924 <input type="checkbox"/> Individual appearing without an attorney <input checked="" type="checkbox"/> Attorney for: Debtors and Debtors In Possession	FOR COURT USE ONLY
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
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PLEASE TAKE NOTE that the order titled Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief" [Doc. 3188] was lodged on (date) 11/08/19 and is attached. This order relates to the motion which is docket number 3188.

¹ Please abbreviate if title cannot fit into text field.

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.
2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.
3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f), and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).
4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

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EXHIBIT “B”

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
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☐ Affects St. Vincent Medical Center
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☐ Affects Verity Holdings, LLC
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☐ Affects De Paul Ventures - San Jose Dialysis,
LLC

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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Case No. 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**ORDER GRANTING DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL
MANAGEMENT, INC.; (II) FINDING THAT THE
SALE IS FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN THOSE
APPROVED BY THE COURT; (III) FINDING
THAT THE ATTORNEY GENERAL ABUSED
HIS DISCRETION IN IMPOSING CONDITIONS
ON THAT SALE; AND (IV) GRANTING
RELATED RELIEF" (DOC.3188)**

Hearing:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by
2 Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors
3 in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”),
4 the response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 3572] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Debtors’ transfer to SGM of the Debtors’ assets (the “SGM Sale”) pursuant to
11 that certain asset purchase agreement [Docket No. 2305-1] (the “SGM APA”) is free and clear of,
12 and shall not be subject to or conditioned upon SGM’s performance of, compliance with, or
13 adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion),
14 pursuant to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), and (f)(5) and otherwise as provided in the
15 Sale Order.
- 16 3. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
17 controversies regarding the interpretation or enforcement of this Order.
- 18 4. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
19 withdrawn.
- 20 5. The Attorney General waives any right to appeal this Order.

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22 **IT IS SO ORDERED.**

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **OBJECTION TO ORDER GRANTING "DEBTOR'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE ORDER AUTHORIZING THE SALE TO STRATEGIC GLOBAL MANAGEMENT, INC.; (II) FINDING THAT THE SALE IS FREE AND CLEAR OF CONDITION MATERIALLY DIFFERENT THAN THOSE APPROVED BY THE COURT; (III) FINDING THAT THE ATTORNEY GENERAL ABUSED HIS DISCRETION IN IMPOSING CONDITIONS ON THAT SALE; AND (IV) GRANTING RELATED RELIEF"** (DOC. 3188) will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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- 4 • Ralph J Swanson ralph.swanson@berliner.com, sabina.hall@berliner.com
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- 6 swillis@foxrothschild.com;pbasa@foxrothschild.com
- 7 • James Toma james.toma@doj.ca.gov, teresa.depaz@doj.ca.gov
- 8 • Gary F Torrell gtorrell@health-law.com
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- 23 • Andrew J Ziaja aziaja@leonardcarder.com,
- 24 sgroff@leonardcarder.com;msimons@leonardcarder.com;lbadar@leonardcarder.com
- 25 • Rose Zimmerman rzimmerman@dalycity.org

14 **2. SERVED BY UNITED STATES MAIL:** On **November 11, 2019**, I served the following persons and/or
15 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true
16 and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
17 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be
18 completed no later than 24 hours after the document is filed.

17 ☐ Service information continued on attached page

18 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**
19 **EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
20 on **November 11, 2019**, I served the following persons and/or entities by personal delivery, overnight
21 mail service, or (for those who consented in writing to such service method), by facsimile transmission
22 and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or
23 overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

21 **Served via Attorney Service**

22 The Honorable Ernest M. Robles
23 United States Bankruptcy Court
24 Edward R. Roybal Federal Building
25 255 E. Temple Street, Suite 1560
26 Los Angeles, CA 90012

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

26 November 11, 2019	Stephanie Reichert	/s/ Stephanie Reichert
27 Date	Type Name	Signature

28

EXHIBIT 20

SAMUEL R. MAIZEL (Bar No. 189301)
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DENTONS US LLP
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Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
Attorneys for the Chapter 11 Debtors and
Debtors In Possession

FILED & ENTERED

NOV 14 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



182015119111400000000009

The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.
2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.
3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).
4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 5. The Attorney General waives any right to appeal this Order.

2
3 **IT IS SO ORDERED.**

4 ###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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24 Date: November 14, 2019

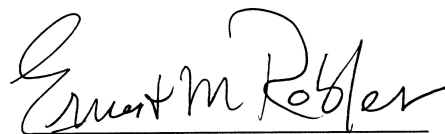

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 21

FILED & ENTERED

NOV 18 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

ORDER (1) FINDING THAT SGM IS OBLIGATED TO PROMPTLY CLOSE THE SGM SALE UNDER § 8.6 OF THE APA, PROVIDED THAT ALL OTHER CONDITIONS TO CLOSING HAVE BEEN SATISFIED AND (2) GRANTING DEBTORS' MOTION FOR A CONTINUANCE OF THE HEARING TO APPROVE THE DISCLOSURE STATEMENT

CONTINUED HEARING TO APPROVE DISCLOSURE STATEMENT:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



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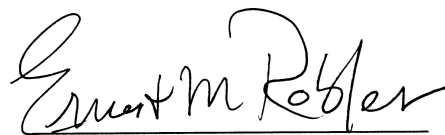
For the reasons set forth in the concurrently-issued *Memorandum of Decision (1) Finding that SGM is Obligated to Promptly Close the SGM Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement* (the "Memorandum of Decision"), the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

- 1) The Debtors have complied with their obligation under the APA¹ to obtain a final, non-appealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.
- 2) The hearing on the Disclosure Statement Motion is **CONTINUED** from November 20, 2019, at 10:00 a.m. to **November 26, 2019, at 10:00 a.m.** The Debtors' Reply in support of the Disclosure Statement Motion shall be filed by no later than **November 21, 2019.**

IT IS SO ORDERED.

###

Date: November 18, 2019



Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Memorandum of Decision.

EXHIBIT 22

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

FILED & ENTERED

NOV 18 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

☒ Affects All Debtors

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

Jointly Administered With:

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

Chapter 11 Cases.

MEMORANDUM OF DECISION (1) FINDING THAT SGM IS OBLIGATED TO PROMPTLY CLOSE THE SGM SALE UNDER § 8.6 OF THE APA, PROVIDED THAT ALL OTHER CONDITIONS TO CLOSING HAVE BEEN SATISFIED AND (2) GRANTING DEBTORS' MOTION FOR A CONTINUANCE OF THE HEARING TO APPROVE THE DISCLOSURE STATEMENT

CONTINUED HEARING TO APPROVE DISCLOSURE STATEMENT:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Debtors and Debtors in Possession.,



1820151191118000000000013

I. Introduction

The Debtors have filed a motion seeking (a) to continue the November 20, 2019 hearing on the Disclosure Statement and (b) to use the November 20 hearing as a Status Conference (the “Continuance Motion”).¹ The Debtors filed the Continuance Motion after being advised, on November 15, 2019, that Strategic Global Management, Inc. (“SGM”) would be sending the Debtors formal correspondence material to SGM’s agreement to purchase the Debtors’ four remaining hospitals (the “Hospitals,” and the sale transaction, the “SGM Sale”). As of the filing of the Continuance Motion, the Debtors had not received the SGM correspondence. The Continuance Motion did not specify the anticipated contents of the correspondence.

The Court will grant the Continuance Motion for the reasons set forth below. To facilitate an expeditious and successful resolution of these cases, the Court makes the findings and conclusions contained herein. The Court’s primary finding is that the Debtors have complied with their obligation under the APA² to obtain a final, non-appealable Supplemental Sale Order, and that accordingly SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.

II. Findings and Conclusions

A. SGM is Obligated to Promptly Close the Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied

Prompt closing of the SGM Sale is indispensable to the successful resolution of these bankruptcy cases. The Debtors are sustaining operational losses of approximately \$450,000 per day. Operation of the Hospitals is being financed by a consensual cash stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”), which expires on December 31, 2019. The Debtors do not have the ability to borrow under any debtor-in-possession financing facility, and it is unclear whether the Debtors will be able to obtain alternative financing once the Cash Collateral Stipulation expires. In addition, the Debtors are facing very significant liquidity constraints. In late September 2019, the California Department of Health Care Services (the “DHCS”) began withholding certain Medi-Cal fee-for-service payments owed to the Debtors, for the purposing of recovering alleged Medi-Cal overpayments. The DHCS withholdings have deprived the Debtors of a major source of funding that had previously been used to sustain operations.

On February 6, 2019, the Court conducted a hearing to determine whether to approve the Asset Purchase Agreement (the “APA”) entered into between the Debtors and SGM, under which SGM had agreed to serve as the stalking-horse bidder for the auction of the Hospitals. The Court found that the termination rights granted to SGM in the APA were unduly broad. In response to the Court’s concerns, the Debtors renegotiated the APA to limit SGM’s termination rights. On February 19, 2019, the Court approved the renegotiated APA.³

The renegotiated provisions pertain to SGM’s ability to terminate the transaction in the event that the California Attorney General (the “Attorney General”) sought to impose conditions on the sale that were not substantially consistent with those conditions that SGM had agreed to accept (the “Purchaser Approved Conditions”). In the event that the Attorney General sought to impose conditions materially different from the Purchaser Approved Conditions (the “Additional

¹ Doc. No. 3621.

² Capitalized terms not defined in this section are defined below.

³ Doc. No. 1572.

Conditions”), the APA provides the Debtors an opportunity to obtain a determination from the Court that the Hospitals can be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy Code (an order granting such relief, the “Supplemental Sale Order”).

The APA provides that once the Supplemental Sale Order becomes final and non-appealable, SGM “shall consummate the Sale provided that all other conditions to closing have been satisfied.” APA at ¶ 8.6. Because all parties with standing to appeal have waived their rights to do so, the Supplemental Sale Order is now final and non-appealable. Provided that all other conditions to closing have been satisfied, SGM is obligated to promptly close the sale.

SGM's argument that it is entitled to the Evaluation Period is not well taken. Under the plain language of the APA, SGM is entitled to the Evaluation Period only if the Supplemental Sale Order is the subject of a pending appeal:

⁴ Doc. No. 3611.

⁶ For a transcript of the hearing, see Doc. No. 3620.

the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. *If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied.*

APA at ¶ 8.6 (emphasis added).

At the February 6, 2019 hearing on approval of the APA, SGM made clear that the purpose of the Evaluation Period was to prevent it from being required to close the sale if there was a risk that the Supplemental Sale Order could be overturned on appeal. SGM further stated that it would be required to close the sale if the Supplemental Sale Order became final and non-appealable:

So, what we have done now is negotiate something less in our discretion. And the way this will work is the following. In the event that the AG comes out with what we call, “Additional Conditions,” meaning those that are not set forth on the schedule, and assuming that they are material, and we’ve defined what we mean by “material.”

The Debtor has an opportunity to come to court and attempt to get the Court to determine that those conditions don’t have to be satisfied because they’re “interests” and the sale can be free and clear.

If the Court—if the Debtor decides not to seek that relief, or if the [Debtor] seeks it and doesn’t get it, we have a right to terminate. We don’t have to, but we at least would have a right at that point to terminate based upon the imposition of these Additional Conditions.

If the Debtor is successful in obtaining that order, then we have to deal with the appeal risk, which is, again, very difficult to quantify. So what we’ve agreed on is that the Debtor is going to have a period of time to get us ... a final non-appealable order.

If the Debtor can get us a final, non-appealable order, meaning that if there’s an appeal, it gets resolved in the Debtor’s favor or maybe gets dismissed, at that point we will be obligated to close the transaction, as long as all the other conditions to closing have been satisfied.

Transcript of February 6, 2019 Hearing at 20:7–21:6 (emphasis added).⁷

SGM is judicially estopped from contending that it is entitled to the Evaluation Period and is not obligated to promptly close the sale.⁸ As the Supreme Court has held:

“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” This rule, known as judicial estoppel, “generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.”

⁷ Doc. No. 1570.

⁸ The Court’s discussion assumes that all other conditions to closing have been satisfied.

New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001) (internal citations omitted).

The Court declined to approve the original form of the APA because it found that SGM's termination rights were too expansive. The Court approved the APA only after the inclusion of the provision requiring SGM to close the sale if the Debtors obtained a final, non-appealable Supplemental Sale Order. SGM received a number of benefits under the APA, including a breakup fee and consultation rights in the event an auction was conducted. Having received benefits under the APA, SGM is judicially estopped from contradicting its prior representations regarding its obligation to close the sale.

B. The Continuance Motion is Granted

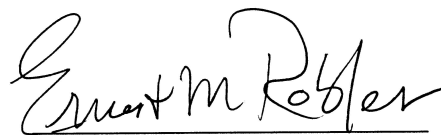
To the extent that the Continuance Motion was motivated by the dispute regarding SGM's obligations under § 8.6 of the APA, that dispute has been rendered moot by the findings set forth above. However, several objections to the Disclosure Statement Motion have been filed, and the Debtors have not yet had an opportunity to file a Reply to these objections. For that reason—and that reason alone—the Continuance Motion is granted.

The hearing on the Disclosure Statement Motion is **CONTINUED** from November 20, 2019, at 10:00 a.m. to **November 26, 2019, at 10:00 a.m.** The Debtors' Reply in support of the Disclosure Statement Motion shall be filed by no later than **November 21, 2019**.

The Court will enter an order consistent with this Memorandum of Decision.

###

Date: November 18, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 23

SAMUEL R. MAIZEL (Bar No. 189301)
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TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

FILED & ENTERED

NOV 22 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

Lead Case No. 18-bk-20151-ER

Jointly Administered With:

Case No. 2:18-bk-20162-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Ernest M. Robles

**ORDER APPROVING STIPULATION RE:
ASSUMPTION AND ASSIGNMENT OF
MEDICARE PROVIDER AGREEMENTS TO
STRATEGIC GLOBAL MANAGEMENT, INC.**

[RELATED DOCKET NOS. 2306; 3677]

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



The Court, having reviewed the *Stipulation Re: Assumption And Assignment Of Medicare Provider Agreements to Strategic Global Management, Inc.* (the “Stipulation”), filed as Docket No. 3677, entered between Verity Health System of California, Inc., St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, and Seton Medical Center, on the one hand, and the Secretary of the U.S. Department of Health and Human Services on behalf of the Centers for Medicare & Medicaid Services, on the other, and good cause appearing,

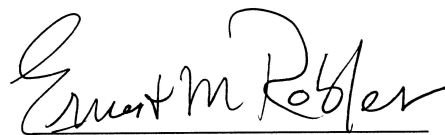
HEREBY ORDERS AS FOLLOWS:

- A. The Stipulation and the terms therein are approved.
- B. This Court shall retain jurisdiction to hear and resolve any disputes arising under the Stipulation.
- C. The hearing regarding transfer of the Debtors’ Medicare Provider Agreements, currently scheduled for November 25, 2019, at 10:00 a.m., is VACATED.

IT IS SO ORDERED.

###

Date: November 22, 2019

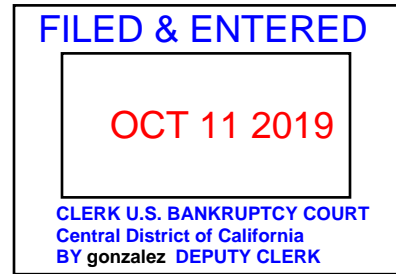


Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 24

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession



CHANGES MADE BY COURT

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., *et al.*,

Debtor and Debtor In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**ORDER AUTHORIZING DEBTORS TO
SELL MEDI-CAL PROVIDER
AGREEMENTS, FREE AND CLEAR OF
INTERESTS ASSERTED BY THE
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, PURSUANT
TO §§ 363(b) and (f)(5)**

Hearing:

Date: September 25, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

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On January 17, 2019, Verity Health System Of California, Inc. and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (i) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279] (the “Sale Motion”). In the Sale Motion, the Debtors sought an order granting, among other things, authority to sell certain property free and clear of claims, interests, and encumbrances, pursuant to §§ 363(b) and (f) of title 11 of the United States Code (the “Bankruptcy Code”),¹ to Strategic Global Management, Inc. (“SGM”).

On March 22, 2019, the California Department of Health Care Services (“DHCS”) filed *Creditor California Department of Health Care Services’s Objection to Notice of Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 1879] (the “Initial DHCS Objection”). In the Initial DHCS Objection, the DHCS argued that the California Medical Assistance Program (“Medi-Cal”) Provider Agreements between the Debtors and DHCS (the “Provider Agreements”) could not be sold to SGM free and clear of claims, interests, and encumbrances.

On April 10, 2019, the Debtors filed the *Debtors’ Memorandum in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Doc. No. 2115] (the “Sale Brief”) in support of the Sale Motion.

¹ Unless otherwise noted, all references to “§” and “section” herein are to sections of the Bankruptcy Code; all references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Practice; all references to “LBR” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

On April 17, 2019, the Court held a hearing on the Sale Motion. On May 2, 2019, the Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Asset Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (the "Sale Order"). Pursuant to the Sale Order, the Court granted the Sale Motion and continued the hearing the Initial DHCS Objection to determine whether the Sale Order effectuated a transfer of the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Sale Order, ¶ 31 at 24-25. Further, the Court provided that "[n]othing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and DHCS or a Court order resolving the DHCS's objections." *Id.* The Court set the continued hearing on June 5, 2019, at 4:10:00 a.m. (Pacific Time), which was ultimately continued to September 25, 2019, at 10:00 a.m. (Pacific Time) (the "Hearing"), by stipulation between the Debtors and DHCS. *See id.*; *see also* Docket Nos. 2278, 2377, 2606, 2686, 2856, 2928.

On September 11, 2019, the DHCS filed *Creditor California Department of Health Care Services's Supplemental Objection to (1) Debtors' Motion for Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving Form of Asset Purchase Agreement* [Docket No. 3043] (together with the Initial DHCS Objection, the "DHCS Objections").

On September 18, 2019, the Debtors filed the *Debtors' Reply to California Department of Health Care Services Objection to Debtors' Sale of Assets to Strategic Global Management* [Docket No. 3095] (the "Debtors' Reply"). On the same date, the Official Committee of Unsecured Creditors filed the *Official Committee of Unsecured Creditors' Reply to Creditor California Department of Health Care Services's Supplemental Objection to Sale* [Docket No. 3093] (the "Committee's Reply").

On September 25, 2019, at 10:00 a.m. (Pacific Time), the Court held the Hearing. Appearances were as set forth on the record of the Hearing.

On September 26, 2019, the Court filed its *Memorandum of Decision Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by the California Department of Health Care Services, Pursuant to § 363(f)(5)* [Docket No. 3146] (the “Memorandum Decision”), which is fully incorporated herein by this reference.

The Court, having considered the Sale Motion and the Sale Brief, the DHCS Objections, the Debtors’ Reply, the Committees’ Reply, **and the DHCS’ objection to the Debtors’ proposed form of order memorializing the relief granted in the Memorandum Decision [Docket No. 3330];** having considered the statements, arguments, and representations of counsel, as set forth on the record of the Hearing; incorporating herein by this reference the findings of fact and conclusions of law set forth in the Sale Order; and for the reasons set forth in the Memorandum Decision, which are fully incorporated herein by this reference,

HEREBY ORDERS AS FOLLOWS:

1. The Debtors are authorized to transfer the Provider Agreements to SGM, free and clear of claims, interests, and encumbrances pursuant to §§ 363(b) and (f)(5) and the Sale Order.
2. The DHCS Objections are overruled in their entirety.
3. The stay provided pursuant to Bankruptcy Rule 6004(h) is waived with respect to this Order and the Memorandum Decision.
4. DHCS shall not adjust, offset, **or lien or recoup** any payments owing to SGM and other SGM affiliates (collectively, “SGM Buyers”) which are assigned any rights in connection with the transfer of the Medi-Cal Provider Agreements for St. Francis Medical Center Provider Agreement No. 148769215; the St. Vincent Medical Center Provider Agreement No. 1124004304; the Seton Medical Center Provider Agreement No. 1154428688; and the St. Vincent Dialysis Center Provider Agreement No. CDC70030F, and all other Provider Agreements for any of the aforesaid Hospitals or Dialysis Center and the SGM acquisition of the Hospitals and St. Vincent Dialysis Center (collectively, the “Assets”) pursuant to the Sale Motion (“SGM Sale”) after the transfer of the Assets (the “Transfer Effective Date”), or make any claims against any of the SGM Buyers or any of their assets, including, without limitation, any assets acquired by any of the SGM Buyers pursuant to the SGM Sale, for any obligations, liabilities, claims or other interests against the

Debtors related to periods on or before the Transfer Effective Date (“Pre-Transfer Effective Date Liabilities”) including without limitation for Pre-Transfer Effective Date Liabilities under or related to (a) the Medi-Cal Program, and (b) without prejudice to the rights of the Debtors or the SGM Buyers as provided for in the Asset Purchase Agreement [Docket No. 2305-1] by and among the Debtors and SGM, the Hospital Quality Assurance Fees Program, California Welfare & Institutions Code, § 14169.52(a) et. seq. or similar or successor statutes (“HQAF Program”); **provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HQAF Program.²** None of the SGM Buyers shall be required to execute the Successor Liability Form, or otherwise assume or accept responsibility, for or with respect to any Pre-Transfer Effective Date Liabilities, in conjunction with the completion of the SGM Sale and to effectuate the assignment or other transfer of any Medi-Cal Provider Agreements to the SGM Buyers in connection with the SGM Sale, or otherwise as a condition or requirement for any of the SGM Buyers to participate in the Medi-Cal Program or the HQAF Program; **provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HQAF Program.³**

² The Memorandum Decision did not determine whether DHCS’ recoupment rights against SGM (if any) are extinguished by the transfer of the Provider Agreements free and clear of claims, interests, and encumbrances. *See* Memorandum Decision at 10 (“The Debtors request that the order on the Motion state that DHCS’ recoupment rights against SGM, if any, must be first exercised against payments due to the Debtors from Medi-Cal, then against funds held by the Debtors generated by past interim Medi-Cal payments, and then against any sale proceeds generated by the sale of the Provider Agreement. The issue of the applicability of recoupment subsequent to the sale of the Provider Agreements free and clear of claims and interests has not been sufficiently briefed. The Court declines to decide the issue at present, without prejudice to the ability of interested parties to raise the issue by way of motion.”).

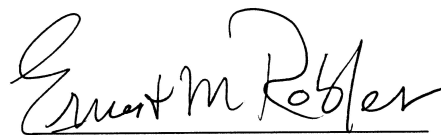
³ *See* footnote 2, above.

1 **IT IS SO ORDERED.**

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24 Date: October 11, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 25

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Attorneys the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., *et al.*,

Debtors and Debtors In Possession.

- ☐ Affects All Debtors
- ☒ Affects Verity Health System of California, Inc.
☒ Affects O'Connor Hospital
☒ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
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Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects DePaul Ventures, LLC
☐ Affects DePaul Ventures - San Jose Dialysis, LLC
- Debtors and Debtors In Possession.

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

Jointly Administered with:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
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Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases

Judge: Hon. Ernest M. Robles

**STIPULATION RE: ASSUMPTION AND
ASSIGNMENT OF MEDI-CAL PROVIDER
AGREEMENTS TO STRATEGIC GLOBAL
MANAGEMENT, INC.**

[RELATED TO DOCKET NO. 2306]



SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and among Verity Health System of California, Inc. (“Verity”), St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation (“SMC”, collectively with SFMC and SVMC, the “Hospital Debtors”, and the Hospital Debtors collectively with Verity, the “Debtors”), and the California Department of Health Care Services on its behalf and on behalf of the State of California (the “Department,” and collectively with the Debtors, the “Parties”).

RECITALS

Whereas, the Debtors own and operate those certain general acute care hospitals known as St. Francis Medical Center, St. Vincent Medical Center (including St. Vincent Dialysis Center) and Seton Medical Center (including its Seton Medical Center Coastside campus) (collectively, the “Hospitals”) and related assets.

Whereas, Medicaid is a cooperative federal-state program that authorizes the United States Government to provide funds to participating states to administer medical assistance to individuals whose income and resources are insufficient to meet the costs of necessary medical services. The program operates by authorizing the federal Centers for Medicare and Medicaid Services (“CMS”) to pay a percentage of the costs a state incurs for patient care. As a condition of receiving federal funds, the state complies with certain federal requirements. California participates in Medicaid through the California Medical Assistance Program (“Medi-Cal”), and has designated the Department as the agency responsible for its administration.

Whereas, the Hospitals have Medi-Cal provider agreements (“Medi-Cal Provider Agreements”) with the Department which enable them to receive Medi-Cal payments for services provided to Medi-Cal beneficiaries. The SFMC Provider Agreement is assigned no. 148769215;

1 the SVMC Provider Agreement is assigned no. 1124004304; and the SMC Provider Agreement is
2 assigned no. 1154428688.

3 Whereas, on August 31, 2018 (the “Petition Date”), the Debtors filed voluntary petitions
4 for relief, thereby commencing their bankruptcy cases (the “Bankruptcy Cases”), jointly
5 administered under Bankruptcy Case No. 2:18-bk-20151-ER, under chapter 11 of title 11 of the
6 United States Code (the “Bankruptcy Code”)¹ in the United States Bankruptcy Court for the
7 Central District of California, Los Angeles Division (the “Bankruptcy Court”).

8 Whereas, as described in the *Declaration of Richard Adcock in Support of Emergency*
9 *First-Day Motions* (the “Adcock Declaration”) [Docket No. 8], filed on August 31, 2018, the
10 Debtors have struggled financially to survive for decades, and currently sustain operational cash
11 flow losses of approximately \$175 million annually. The Debtors estimate that (a) secured claims
12 in these Bankruptcy Cases total more than \$602 million (including claims of various prepetition
13 secured creditors and monies owed for debtor-in-possession (“DIP”) financing obtained after the
14 Petition Date), and (b) the total of scheduled and filed unsecured claims, including pension
15 claims, may exceed \$1.500 billion.

16 Whereas, the Debtors have an signed and Bankruptcy Court approved Asset Purchase
17 Agreement and an order [Docket No. 2306] approving the sale of the Hospitals at a price of
18 approximately \$610 million, plus payment of “cure” costs associated with certain assumed leases
19 and/or assumed contracts, pursuant to § 363 (the “SGM Sale”) to Strategic Global Management,
20 Inc. and/or one or more of its affiliated entities, including the affiliates of SGM who will operate
21 the Hospitals (the “SGM Operating Affiliates”; with the Hospital Operating Affiliates, Strategic
22 Global Management, Inc. and other Strategic Global Management, Inc. affiliates which are
23 assigned any rights in connection with the SGM Sale being referred to herein collectively as
24 “SGM”).

25 Whereas, on February 19, 2019, the Bankruptcy Court entered its *Order (1) Approving*
26 *Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective*

27 _____
28 ¹ All references to “sections” or “§” herein are to sections of the Bankruptcy Code, unless
otherwise noted.

1 *Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid*
2 *Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling*
3 *A Court Hearing To Consider Approval Of The Sale To The Highest Bidder, And (5) Approving*
4 *Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases;*
5 *And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens*
6 *And Encumbrances* [Docket No. 1572] the (“Bidding Procedures Order”).

7 Whereas, on March 5, 2019, the Debtors filed a *Notice of Counterparties to Executory*
8 *Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No.
9 1704].

10 Whereas, on January 25, 2019, the Department filed its *Creditor California Department of*
11 *Health Care Services’s Objection To: (1) Debtors’ Motion for the Entry of an Order Authorizing*
12 *the Sale of Property Free and Clear of All Claims, Liens, and Encumbrances; (2) Approving*
13 *Form of Asset Purchase Agreement* [Docket No. 1353] which asserted that the Debtor had to
14 transfer the Medi-Cal Provider Agreements as executory contracts pursuant to § 365 (the
15 “DHCS Objection”). In the DHCS Objection, the Department asserted, among other things, that
16 it was owed the following amounts in connection with the Hospitals, as of January 23, 2019: (a)
17 St. Francis Medical Center - liability arising from the Hospital Quality Assurance Fees Program
18 (“HQA Fee”), California Welfare & Institutions Code, § 14169.52(a) et. seq., in the amount of
19 \$40,647,765.00; (b) St. Vincent Medical Center (including St. Vincent Dialysis Center) - HQAF
20 liability in the amount of \$27,164,168.86; and (c) Seton Medical Center (including its Seton
21 Medical Center Coastsides campus) – HQA Fee liabilities in the amount of \$31,967,260.98. In the
22 DHCS Objection, the Department did not reflect any obligations owed to it related to the Medi-
23 Cal fee-for-service payments in connection with the Hospitals.

24 Whereas, on March 22, 2019, the Department filed its *Creditor California Department of*
25 *Health Care Services’s Objection To Notice of Counterparties to Executory Contracts and*
26 *Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 1879] which,
27 among other things, asserted that the Debtor had to transfer the Medi-Cal Provider Agreements as
28

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1 executory contracts pursuant to § 365. In the DHCS March 22, 2019 Objection, the Department
2 asserted it was owed the following amounts in connection with the Hospitals, as of March 15,
3 2019: (a) St. Francis Medical Center – HQA Fee liability ee, and Medi-Cal Provider
4 Agreement sin the amount of \$30,381,769.53; (b) St. Vincent Medical Center (including St.
5 Vincent Dialysis Center) – HQA Fee liability in the amount of \$21,427,707.82; and (c) Seton
6 Medical Center (including its Seton Medical Center Coastside campus) – HQA Fee liabilities in
7 the amount of \$28,160,469.45. In the DHCS Objection, the Department did not reflect any
8 obligations owed to it related to the Medi-Cal fee-for-service payments in connection with the
9 Hospitals. However, the Department asserted in its Objection that the Debtors and/or the buyer
10 (through joint and several liability) must reimburse the Department for any Medi-Cal fee-for-
11 service overpayments and pay other debts owed to the Department.

12 Whereas, on March 29, 2019, the Department filed the following proofs of claim in the
13 Bankruptcy Cases: (a) against SVMC, assigned Claim No. 62-1, asserting that it is owed
14 \$5,287,280.73, based solely on the unpaid prepetition HQA Fees; (b) against SFMC, assigned
15 Claim No. 134-1, asserting that it is owed \$7,302,038.67, based solely on the unpaid prepetition
16 HQA Fees; and (c) against SMC, assigned Claim No. 66-1, asserting that it is owed \$
17 17,090,035.65, based solely on the unpaid prepetition HQA Fees.

18 Whereas, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing The*
19 *Sale Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. Free And Clear Of*
20 *Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And*
21 *Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket
22 No. 2306] (the “Sale Order”), approving a sale of the Debtors’ remaining Hospitals (St. Francis
23 Medical Center, St. Vincent Medical Center including the St. Vincent Dialysis Center, and Seton
24 Medical Center, including Seton Medical Center Coastside Campus) to Strategic Global
25 Management, Inc. (i.e. the SGM Sale). The Sale Order continued the hearing on the DHCS
26 Objection, and reserved judgment on issues related to the transfer of the Medi-Cal provider
27 agreements (i.e., whether the Medi-Cal provider agreement would be transferred as a statutory
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1 license or an executory contract) pending resolution of that issue. *Id.*

2 Whereas, on September 11, 2019, the Department filed its *Creditor California*
3 *Department of Health Care Services's Supplemental Objection To (1) Debtors' Motion for the*
4 *Entry of an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens, and*
5 *Encumbrances; (2) Approving Form of Asset Purchase Agreement* [Docket No. 3043] which,
6 among things, asserted that the Debtor had to transfer the Medi-Cal Provider Agreements as
7 executory contracts pursuant to § 365. In the DHCS September 11, 2019 Objection, the
8 Department asserted it was owed the following amounts in connection with the Hospitals, as of
9 September 6, 2019: (a) St. Francis Medical Center – HQA Fee liability arising from the HQA Fee
10 Program, California Welfare & Institutions Code, § 14169.52(a) et. seq., and Medi-Cal Provider
11 Agreements in the amount of \$3,835,489.67; (b) St. Vincent Medical Center (including St.
12 Vincent Dialysis Center) – HQA Fee liability in the amount of \$6,565,679.74; and (c) Seton
13 Medical Center (including its Seton Medical Center Coastside campus) – HQA Fee liabilities in
14 the amount of \$16,927,759.87. In addition, in the DHCS September 11, 2019 Objection, the
15 Department claimed the following fee-for-service overpayments: (a) \$24,254,503.36 in fee-for-
16 service overpayments to St. Francis Medical Center for fiscal year July 1, 2016, through June 30,
17 2017, (b) \$4,205.25 for fee-for-service overpayments to Seton Medical Center for fiscal year July
18 1, 2016 through June 30, 2017, and (c) \$662,327.67 in overpayments to St. Francis Medical
19 Center for supplemental reimbursements under the Supplemental Reimbursement for
20 Construction Renovation Reimbursement Program. The September 11, 2019 supplemental
21 objection asserted that (i) the Debtors had to transfer the Medi-Cal Provider Agreements as
22 executory contracts pursuant to § 365; (ii) the Debtors had to pay all outstanding HQA Fee; (iii)
23 the Debtors or SGM would have to reimburse DHCS for any outstanding obligations between the
24 Debtors and DHCS; and (iv) the Debtors would have to escrow \$70 million for 36 months for any
25 potential overpayment which DHCS might subsequently discover, and SGM would have to
26 assume liability for the excess amount if \$70 million proved insufficient.

27 Whereas, on September 26, 2019, the Court entered its Memorandum Opinion [Docket
28

No. 3146] (the “Memorandum Opinion”) which expressly held that the provider agreements are not contracts, and therefore section 365 does not apply, and that the “Provider Agreements may be sold free and clear of the liabilities which DHCS contends attach to the Provider Agreements. This includes the alleged liabilities for approximately \$30 million in unpaid HQA Fees and \$25 million in Medi-Cal overpayments.”

Whereas, on October 11, 2019 the Bankruptcy Court entered an order [Docket No. 3372] (the “Medi-Cal Transfer Order”), which provides “DHCS shall not adjust, offset, lien or recoup any payments owing to SGM and other SGM affiliates (collectively, “SGM Buyers”) which are assigned any rights in connection with the transfer of the Medi-Cal Provider Agreements ... and the SGM acquisition of the Hospitals and St. Vincent Dialysis Center (collectively, the “Assets”) pursuant to the Sale Motion (“SGM Sale”) after the transfer of the Assets (the “Transfer Effective Date”), or make any claims against any of the SGM Buyers or any of their assets, including, without limitation, any assets acquired by any of the SGM Buyers pursuant to the SGM Sale, for any obligations, liabilities, claims or other interests against the Debtors related to periods on or before the Transfer Effective Date (“Pre-Transfer Effective Date Liabilities”) including without limitation for Pre-Transfer Effective Date Liabilities under or related to (a) the Medi-Cal Program, and (b) without prejudice to the rights of the Debtors or the SGM Buyers as provided for in the Asset Purchase Agreement [Docket No. 2305-1] by and among the Debtors and SGM, the Hospital Quality Assurance Fees Program, California Welfare & Institutions Code, § 14169.52(a) et. seq. or similar or successor statutes (“HQA Fee Program”); provided however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal program and/or HQA Fee Program. None of the SGM Buyers shall be required to execute the Successor Liability Form, or otherwise assume or accept responsibility, for or with respect to any Pre-Transfer Effective Date Liabilities, in conjunction with the completion of the SGM Sale and to effectuate the assignment or other

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1 transfer of any Medi-Cal Provider Agreements to the SGM Buyers in connection with the SGM
2 Sale, or otherwise as a condition or requirement for any of the SGM Buyers to participate in the
3 Medi-Cal Program or the HQA Fee Program, provided, however, that nothing in this paragraph
4 shall be construed to limit whatever rights DHCS may or may not have to withhold, under
5 principles of equitable recoupment, payments owed by DHCS to the Debtors and/or the SGM
6 Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or
7 related to the Medi-Cal program and/or HQA Fee Program.”

8 Whereas, the Department asserts that, in the aggregate, it is owed \$23,290,200.27 by
9 Seton Medical Center and St. Vincent (as of September 24, 2019) and \$13,528,354.37 by St.
10 Francis (as of September 24, 2019), all solely related to unpaid HQA Fees. Whereas, the Debtors
11 assert that all HQA Fees have been paid or will be paid in the ordinary course of business during
12 the Bankruptcy Cases and no amounts are presently due and owing to the Department.

13 Whereas, according to the Debtors' calculations, they currently have no outstanding
14 financial obligations to the Department for fee-for-service or supplemental overpayments
15 pursuant to the Medi-Cal Provider Agreements. However, the Debtors are aware that the
16 Department alleges the following obligations: (a) alleged obligations related to recent audit of
17 fiscal year 2016-2017 fee-for-service payments related to SFMC, and (b) alleged overpayment
18 findings by the Department with respect to the Medi-Cal electronic health records (“EHR”)
19 incentive payments of \$209,373 to SFMC and \$18,107 to SMC. With regard to the former,
20 Verity received audit findings alleging overpayments of \$25,176,471 for SFMC for the fiscal
21 period ending June 30, 2017, but believes these amounts to be grossly overinflated and an
22 unlawful overreach by the Department’s auditors. With regard to the latter, these amounts are
23 purportedly associated with an audit of the Hospitals’ first year of participating in the Medi-Cal
24 EHR program (2011) and the Debtors strongly dispute these findings.

25 Whereas, any outstanding financial obligations of the Hospital Debtors to the Department
26 for unpaid quality assurance fees or other fees owing under HQA Fee program relating to the
27 Hospitals that existed prior to the Medi-Cal Transfer Effective Date are referred to herein as the
28

Whereas, consistent with CMS’ approval of the private hospital directed payment program and of Hospital pass-through payments pursuant to 42 C.F.R. §438.6(d), the Department has agreed that the applicable Medi-Cal managed care plans serving Los Angeles County and San Mateo County (collectively, the “Plans”) should make the federally approved Medi-Cal managed care supplemental payments associated with dates of service on or prior to the Medi-Cal Transfer

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1 Effective Date to the Hospital Debtors, which are eligible in connection with the Hospitals based
2 on their status as the private operators of the Hospitals for dates of service on or prior to the
3 Medi-Cal Transfer Effective Date.

4 Whereas, upon the SGM Sale of the Hospitals and effective as of Closing, the Hospital
5 Debtors and the SGM Operating Entities may enter into an Interim Management Agreement for
6 each of the Hospitals (collectively, the “IMAs”), if such SGM Operating Entities are unable to
7 obtain their own requisite general acute care hospital licenses issued by the California Department
8 of Public Health (“CDPH”) and pharmacy permits issued by the California State Board of
9 Pharmacy (“BOP”) (collectively the “New Licenses”) for the respective Hospital by Closing,
10 pursuant to which each SGM Operating Entity will manage the respective Hospital until it obtains
11 the New Licenses. The date by which all requisite New Licenses are issued for the Hospitals,
12 whether at Closing or thereafter, is referred to as the “Licensure Date.” For purposes of this
13 Stipulation, the Licensure Date shall also constitute the effective date of the transfer of the
14 Hospitals’ Medi-Cal Provider Agreements to the SGM Operating Entities (the “Medi-Cal
15 Transfer Effective Date”), even if the agreement concerning such assignment and assumption is
16 made as of the Closing.

17 Whereas, if the Hospital Debtors and the SGM Operating Entities enter into the IMAs, the
18 Hospital Debtors will maintain a possessory interest in the Hospitals and Hospitals’ premises
19 pursuant to a Leaseback Agreement effective as of Closing, and continuing until the Transfer
20 Effective Date.

21 Whereas, SGM Operating Entities will make offers of employment, effective as of
22 Closing, to substantially all of the Hospitals’ employees and, if the Hospital Debtors and the
23 SGM Operating Entities enter into IMAs, then the SGM Operating Entities may, for the term of
24 the IMAs, lease back to the Hospitals, as needed, any employees necessary to satisfy the
25 applicable regulatory requirements.

26 Whereas, if the Hospital Debtors and SGM Operating Entities enter into the Leaseback
27 Agreement and IMAs, the term of such agreements will run from the Closing until the date
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1 immediately preceding Licensure Date (the “IMA Term”), at which time the Pharmacy Assets
2 will transfer to the SGM Operating Entities and the SGM Operating Entities will operate the
3 Hospitals pursuant to the New Licenses.

4 Whereas, SGM is willing to have the SGM Operating Entities acquire the Medi-Cal
5 Provider Agreements as of the Licensure Date, but in doing so SGM is unwilling to incur any
6 exposure for liability under the Medi-Cal Provider Agreements, or otherwise for any Medi-Cal
7 Claims, HQA Fee Claims, or False Claims, for goods and services provided, and otherwise for
8 actions or related to periods, prior to the Medi-Cal Transfer Effective Date, or to otherwise
9 assume any obligations or liabilities of the Debtors other than those expressly provided for in the
10 Purchase Agreement related to the SGM Sale.

11 Whereas, the Debtors and SGM expected the SGM Sale of the Hospitals to close on or
12 about December 5, 2019 (the “Closing”).

13 Whereas, on November 22, 2019, the Debtors and the Department reached an agreement
14 in principle concerning the foregoing.

15 Whereas, this Agreement will go in to effect immediately after Closing, and will be
16 effective as of the effective date of the Closing (“Effective Date”).

17 **NOW, THEREFORE**, pursuant to the agreements reached in connection therewith, and
18 in consideration of the mutual covenants, agreements and promises set forth herein, and for other
19 good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged,
20 the Parties, intending to be legally bound as provided for herein, hereby agree as follows.

21 **1. Definitions.**

22 **1.1** “Hospital Quality Assurance Fee” or “HQA Fee” program shall mean the program
23 established by article 5.230 of chapter 7 of part 3 of division 9 of the Welfare and Institutions
24 Code.

25 **1.2** “Medi-Cal managed care supplemental payments” shall mean the payments made
26 by Medi-Cal managed care plans pursuant to their contracts with the Department and in
27
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1 accordance with Welfare and Institutions Code section 14169.57 that are either “Hospital directed
2 payments” or “Hospital pass-through payments.”

3 **1.3** “Hospital directed payments” means the Medi-Cal managed care supplemental
4 payments approved by CMS pursuant to Code of Federal Regulations, title 42, section 438.6(c).

5 **1.4** “Hospital pass-through payments” means the Medi-Cal managed care
6 supplemental payments approved by CMS pursuant to Code of Federal Regulations, title 42,
7 section 438.6(d).

8 **2. The Agreement.**

9
10 **2.1** The Debtors agree that the Debtors will (a) transfer the Medi-Cal Provider
11 Agreements to SGM pursuant to § 365, with the effective date of such transfer being on the Medi-
12 Cal Transfer Effective Date; (b) pay to the Department any unpaid HQA Fees, for Phases V and
13 VI of the HQA Fee Program that are due and owing as of the Medi-Cal Transfer Effective Date;
14 (c), as the “cure” required by § 365, allow the Department to recoup up to Ten Million Dollars
15 (\$10,000,000.00) (the “Allowed Offset Amount”) from payments otherwise owed to the Debtors
16 for fee-for-service medical care provided by the Debtors to Medi-Cal beneficiaries, provided,
17 however, that if the Department has offset more than the Allowed Offset Amount, any amounts in
18 excess will reduce, dollar for dollar, the Debtors’ obligation to pay, as set forth in subsection
19 2.1(d) below; and (d) allow the Department an allowed administrative expense claim pursuant to
20 § 503(b)(1)(A) in the amount of Thirty Million Dollars (\$30,000,000.00) (the “Medi-Cal
21 Settlement Amount”) payable pursuant to the following schedule: (i) Five Million Dollars
22 (\$5,000,000.00) upon Bankruptcy Court approval of this Settlement Agreement, but in no event
23 prior to the Effective Date; (ii) Fifteen Million Dollars (\$15,000,000.00) upon the Debtors receipt
24 of the funds currently escrowed pursuant to the sale of assets to Santa Clara County which is
25 expected to be released in or about March 2020; and (iii) Ten Million Dollars (\$10,000,000.00) to
26 be paid from funds paid to the Debtors pursuant to the Hospital Quality Assurance Fee program
27 and related to O’Connor Hospital and Saint Louise Regional Hospital which is expected to be
28 received by the Debtors on or before June 2021, to satisfy any and all Medi-Cal Claims, which

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1 payment will be the Department's sole remedy for all such Medi-Claims arising for the period
2 prior to the Medi-Cal Transfer Effective Date. For the avoidance of doubt, the Allowed Offset
3 Amount and the Medi-Cal Settlement Amount are the cure amounts to be paid pursuant to § 365
4 for Medi-Cal Claims and constitute the sole remedies available to the Department for the
5 recovery of Medi-Cal Claims. The Department cannot otherwise seek payment from or recourse
6 against SGM or against any asset of SGM, including without limitation, any assets acquired by
7 SGM from the Debtors, for Medi-Cal Claims or HQA Fee Claims and any other liabilities that
8 were due and owing before the Medi-Cal Transfer Effective Date.

9 **2.2** The Parties agree to jointly request that the Bankruptcy Court vacate the
10 Memorandum Opinion and the Medi-Cal Transfer Order.

11 **2.3** The covenants of the Parties herein, including without limitation the preceding
12 agreements by the Debtors and the Department related to the Medi-Cal Settlement Amount, shall
13 be effective as of the Effective Date, provided that the Bankruptcy Court has approved this
14 Agreement and the Closing has occurred.

15 **2.4** The Department agrees that it will provide the Debtors and SGM, not later than
16 five (5) business days prior to the Medi-Cal Transfer Effective Date, a closing Medi-Cal payment
17 demand ("Medi-Cal Payment Demand") which sets forth the amount, if any, of Phases V and VI
18 HQA Fees that are due and owing as of the Medi-Cal Transfer Effective Date by the Debtors
19 pursuant to subsection 2.1(b) above in this paragraph. The Debtors shall pay to the Department
20 the amount reflected in the Medi-Cal Payment Demand as applicable, on or before the Medi-Cal
21 Transfer Effective Date, and upon such payment all HQA Fees that were due and owing before
22 the Medi-Cal Transfer Effective Date shall be deemed to have been fully paid, in full satisfaction
23 of Debtors' payment obligations pursuant subsection 2.1(b) of this Agreement. For the avoidance
24 of any doubt, the Department shall look solely to Debtors for the payment of all outstanding
25 Phases V and VI HQA Fees that are due and owing as of the Medi-Cal Transfer Effective Date.

26 **2.5** The Department agrees that the Debtors' commitment to (a) allow the Allowed
27 Offset Amount, and (b) pay the HQA Fees and Medi-Cal Settlement Amount referenced above
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1 shall constitute a “cure” under § 365, and any otherwise applicable law, statute or regulation, of
2 all outstanding financial defaults arising under or in connection with the Medi-Cal Provider
3 Agreements and the services provided and requests for payment made thereunder through the
4 Medi-Cal Transfer Effective Date; provided, however, that SGM shall succeed to the quality
5 history associated with the relevant Provider Agreement assigned and shall be treated, for
6 purposes of survey and certification issues, as if it is the relevant owner and no change of
7 ownership occurred. For the avoidance of doubt, once the Medi-Cal Provider Agreements are
8 assigned to SGM (i.e. on the Medi-Cal Transfer Effective Date), the Department is authorized to
9 adjust all payments to SGM to account for the liabilities and any overpayments and
10 underpayments relating to services performed by SGM after the Medi-Cal Transfer Effective
11 Date and for HQA Fees that become due and owing after the Medi-Cal Transfer Effective Date.
12 Notwithstanding the foregoing or any other term in this Agreement, under no circumstances shall
13 the Department adjust, offset, or recoup any payments owing to SGM (including without
14 limitation the SGM Operating Entities) after the Medi-Cal Transfer Effective Date, or make any
15 claims against SGM (including without limitation the SGM Operating Entities) or any of their
16 assets, including, without limitation, any assets acquired by SGM from the Debtors, for any
17 Medi-Cal Claims and for any HQA Fee obligations that are due and owing before the Medi-Cal
18 Transfer Effective Date. SGM and its Operating Entities will not be liable for any Medi-Cal
19 Claims and for any HQA Fee obligations that are due and owing before the Medi-Cal Transfer
20 Effective Date. Provided the SGM Operating Entities file Provider Enrollment Applications
21 and/or the equivalent forms necessary to effectuate a facility change of ownership for Medi-Cal
22 purposes, the Department further agrees that SGM shall not be required to execute the Successor
23 Liability Form or Financial Responsibility Agreement for Medi-Cal Claims and HQA Fees that
24 were due and owing before the Medi-Cal Transfer Effective Date in conjunction with the
25 completion of the SGM Sale and to effectuate the assignment of the Medi-Cal Provider
26 Agreements to the SGM Operating Entities, and that the SGM Operating Entities shall
27 nonetheless be permitted to continue to bill for goods and services provided by the Hospitals
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1 covered by Medi-Cal Provider Agreements through the IMA Term, and thereafter until the SGM
2 Operating Entities' enrollment in the Medi-Cal program are confirmed.

3 **2.6** Prior to the Medi-Cal Transfer Effective Date, all fee-for-service supplemental
4 payments made under the HQA Fee Program will be paid by the Department to the Hospital
5 Debtors at a designated account when due, without regard to the status of its respective license at
6 the time of the payment. After the Effective Date, all fee-for- service supplemental payments
7 made under the HQA Fee program will be paid to the SGM Operating Entities at the accounts
8 designated by the SGM Operating Entities, as long as the SGM Operating Entities file Provider
9 Enrollment Applications with the Department and/or the equivalent forms necessary to effectuate
10 a facility change of ownership for Medi-Cal purposes. However, the supplemental payments will
11 be paid only after the Debtors paid any and all HQA Fees for Phases V & VI that were due and
12 owing before the Medi-Cal Transfer Effective Date. The supplemental payments to be paid to the
13 Debtors will be deducted dollar-for-dollar for any HQA Fee balance that was due and owing
14 before the Medi-Cal Transfer Effective Date, provided however that no such deductions may be
15 made against payments due and owing to SGM after the Medi-Cal Transfer Effective Date.

16 **2.7** The Department expects the applicable Medi-Cal managed care plans, including
17 those serving Los Angeles County and San Mateo County, to make applicable Medi-Cal managed
18 care supplemental payments, which may include hospital directed payments and hospital pass-
19 through payments, to the Hospital Debtors for dates of service from January 1, 2017 to the
20 Effective Date for which they are eligible in connection with the Hospitals. The Department
21 expects the applicable Medi-Cal managed care plans, including those serving Los Angeles County
22 and San Mateo County, to make authorized Medi-Cal managed care supplemental payments,
23 which may include Hospital directed payments and Hospital pass-through payments, to the SGM
24 Operating Entities (which will be on behalf of the Hospital Debtors during the IMA Term if
25 applicable) for dates of service on or after the Effective Date for which they are eligible in
26 connection with the Hospitals.

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2.8 The Department further agrees that the payments to be made pursuant to Section 2.1 above are in full satisfaction, discharge and release of any and all claims against the Debtors, and the Hospitals or SGM arising under or related to (a) the Medi-Cal Program, including without limitation all Medi-Cal Claims and the HQA Fee claims, and (b) the California False Claims Act, and related statutes, in each case for all for goods or services, and otherwise for actions or related to periods, on or before the Medi-Cal Transfer Effective Date , whether such claims are known or unknown, liquidated, or contingent (the “Settlement Release”). The Department further agrees that, in consideration for the commitment by Debtors to make the payments pursuant to Sections 2.1 and 2.4, and the Department’s resulting rights in relation thereto, the Settlement Release applies to, and is for the benefit of, SGM (including without limitation the SGM Operating Entities) without condition and whether or not the Debtors timely make such payments.

2.9 During the Bankruptcy Cases, and on and prior to the Medi-Cal Transfer Effective Date, the Department agrees to continue to pay the Hospital Debtors for Medi-Cal services by the Hospitals in accordance with federally approved State plan methodologies and customary trade terms, and the Hospital Debtors agree to continue to provide care to Medi-Cal beneficiaries at the Hospitals in accordance with the Medi-Cal Provider Agreements, and all applicable federal and state laws and regulations.

2.10 All avoidance actions and other causes of action arising under Chapter 5 of the Bankruptcy Code, including, but not limited to, claims or causes of action pursuant to §§ 547 and 548, that could be asserted by the Hospitals are waived by the Debtors, their bankruptcy estates, any and all successors, chapter 7 trustees, and any post-confirmation creditor litigation trust.

2.11 Debtors will waive and withdraw their appeal of the findings of the Department’s audit of SFMC’s cost report for fiscal year period July 1, 2016, through June 30, 2017. In addition, Debtors will waive any and all of its potential or existing rights to appeal the existing or potential audit findings and resulting Medi-Cal overpayment liabilities.

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1 **2.12** Notwithstanding anything to the contrary in this Agreement, if the Debtors or the
2 Department are in breach of this Agreement, the respective party's sole remedy shall be the right
3 to seek to specifically enforce this agreement, including without limitation the Department's right
4 to seek the payments required pursuant to Section 2. No breaches by any Party shall give rise to a
5 right to terminate this Agreement by the other Parties, which termination rights are hereby waived
6 by the Parties to the fullest extent legally permissible. Notwithstanding the preceding or any
7 other term herein to the contrary, the rights, benefits, waivers and releases in favor of, or for the
8 benefit of, SGM provided herein shall in any case remain in full force and effect notwithstanding
9 any breach by the Debtors.

10 **2.13** Nothing in this Agreement shall affect any obligations of the Department, or the
11 rights of the SGM Operating Entities, with respect to the processing of the assignment of the
12 Medi-Cal Provider Agreements and/or enrollment of the SGM Operating Entities in the Medi-Cal
13 Program for the Hospitals, and the Hospitals' continued participation in the HQA Fee Program.

14 **2.14** The Bankruptcy Court has jurisdiction over any dispute arising from or relating to
15 this Agreement.

16 **2.15** Nothing contained in this Agreement is intended or shall be deemed to release,
17 waive or otherwise impair any claims of the Department or its successors or assigns, against: (1)
18 any insurance carrier of the Debtors; and (2) any person or entity released by any of the Parties to
19 the extent they are acting in any capacity other than in connection to their business dealings with
20 the Debtors. In addition, and for avoidance of doubt, nothing in this Agreement releases any
21 person or entity not identified or described in this Agreement as being a person or entity receiving
22 a release. SGM and its affiliates are entitled to the full benefit of all of the releases and other
23 terms contained in this Agreement without restriction, condition or limitation.

24 ///

1 **3. Miscellaneous Provisions.**

2 **3.1** The Parties executing this Agreement do so without admitting any fault or liability
3 whatsoever. No term or condition of this Agreement is intended to be or shall be deemed or
4 construed as an expression of fault or liability.

5 **3.2** This Agreement contains the entirety of the agreement reached among the Parties
6 pertaining to the subject matter set forth herein. This Agreement supersedes all prior and
7 contemporaneous oral and written agreements and discussions between or among the Parties
8 except as set forth herein. This Agreement, or any provision hereof, may not be waived, amended
9 or revoked, or the ongoing obligations of any Party terminated, except by a further writing signed
10 by all such Parties and the County.

11 **3.3** This Agreement is the product of negotiation by and among the Parties, executed
12 voluntarily and without duress or undue influence on the part of or on behalf of any Party hereto.
13 Each of the Parties acknowledges that it has had the opportunity to be represented by its own
14 independent counsel in connection with this Agreement and the transactions contemplated by or
15 referred to in this Agreement. Hence, in any construction to be made of this thereof, the same
16 shall not be construed against any Party.

17 **3.4** This Agreement may be executed in any number of counterparts, a complete set of
18 which shall constitute a duly executed original, and fax or electronic signatures shall be treated as
19 originals for all purposes irrespective of any jurisdiction's best evidence rule.

20 **3.5** The failure or delay on the part of any Party to enforce or exercise at any time any
21 of the provisions, rights or remedies in this Agreement shall in no way be construed to be a
22 waiver thereof, nor in any way to affect the validity of this Agreement or any part hereof, or the
23 right of such Party to thereafter enforce each and every such provision, right or remedy. No
24 waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent
25 breach.

26 **3.6** Each Party shall pay its own attorneys' fees, costs and expenses in connection with
27 the preparation, negotiation and execution of this Agreement. However, in the event of any beach
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1 or default of any of the terms and provisions of this Agreement or any disputes regarding
2 interpretation or enforcement of this Agreement, the prevailing Party shall be entitled to recover
3 its reasonable attorneys' fees and costs, in addition to any other award.

4 **3.7** This Agreement shall be construed, performed, and enforced in accordance with,
5 and governed by, the laws of the State of California (without giving effect to the principles of
6 conflicts of laws thereof), except to the extent that the laws of such State are superseded by the
7 Bankruptcy Code or other applicable federal law.

8 **3.8** Subject to obtaining approval from the Bankruptcy Court as set forth below, each
9 Party hereto hereby represents and warrants to the other Parties that the undersigned
10 representative of such Party has authority to execute this Agreement and to bind such Party to the
11 terms hereof. Without limiting the preceding, the Department represents that the undersigned
12 representative of the Department is executing this Agreement for both the Department and the
13 State of California and has the authority to do so, and to bind both the Department and the State
14 of California to this Agreement. Each Party represents and warrants to the other Parties that this
15 Agreement is fully enforceable by the other Parties (including, as applicable, by SGM as an
16 express beneficiary of this Agreement) against such Party without the requirement of any consent,
17 agreement or other action of any other party, agency or entity.

18 **3.9** Each of the Parties hereto acknowledges that no other Party, nor any agent nor any
19 attorney of any other Party has made any promise, representation or warranty whatsoever, express
20 or implied, not contained herein or therein concerning the subject matter hereof to induce said
21 Party to execute or authorize the execution of this Agreement, and each of the Parties hereto
22 further acknowledges that said Party has not executed or authorized the execution of this
23 Agreement in reliance upon any such promise, representation or warranty not contained herein or
24 therein.

25 **3.10** The Department hereby represents that it is unaware of any pending litigation,
26 investigations or claims by any other parties against or related to the Hospital Debtors and
27 Hospitals under the federal False Claims Act, the California False Claims Act or similar statutes.
28

3.11 The Parties hereby agree to the following process regarding approval and consummation of this Agreement:

1 Date Signed: December __, 2019

Saint Vincent Medical Center

2
3 By: _____

Name:

4 Title:

5 Date Signed: December __, 2019

Seton Medical Center

6
7 By: _____

8 Name:

9 Title:

10 Date Signed: December 9, 2019

California Department of Health Care Services

11
12 By: Richard F. Frazier

Name:

13
14 Title: Acting Director, D4CS

15 ///

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1 APPROVED AS TO FORM AND CONTENT:

2 DENTONS US LLP
3 SAMUEL R. MAIZEL
4 JOHN A. MOE, II
5 TANIA MOYRON

6 By: 

7 Counsel for the Debtors

8 OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
9 KENNETH K. WANG

10 By: 

11 Counsel for the Department

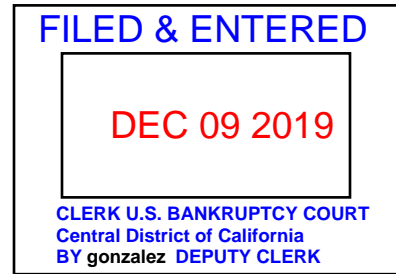
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EXHIBIT 26

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Attorneys for the Chapter 11 Debtors and
 Debtors In Possession



CHANGES MADE BY COURT

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
 Possession.

☒ Affects All Debtors

☐ Affects Verity Health System of
 California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
 Foundation

☐ Affects St. Francis Medical Center of
 Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
 ASC, LLC

Debtors and Debtors In
 Possession.

Lead Case No. 18-bk-20151-ER

Jointly Administered With:

Case No. 2:18-bk-20162-ER

Case No. 2:18-bk-20163-ER

Case No. 2:18-bk-20164-ER

Case No. 2:18-bk-20165-ER

Case No. 2:18-bk-20167-ER

Case No. 2:18-bk-20168-ER

Case No. 2:18-bk-20169-ER

Case No. 2:18-bk-20171-ER

Case No. 2:18-bk-20172-ER

Case No. 2:18-bk-20173-ER

Case No. 2:18-bk-20175-ER

Case No. 2:18-bk-20176-ER

Case No. 2:18-bk-20178-ER

Case No. 2:18-bk-20179-ER

Case No. 2:18-bk-20180-ER

Case No. 2:18-bk-20181-ER

Hon. Ernest M. Robles

**ORDER APPROVING STIPULATION RE:
 ASSUMPTION AND ASSIGNMENT OF MEDI-
 CAL PROVIDER AGREEMENTS TO
 STRATEGIC GLOBAL MANAGEMENT, INC.**

[RELATED DOCKET NOS. 2306, 3786]

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 (213) 623-9300



The Court, having reviewed the *Stipulation Re: Assumption And Assignment Of Medi-Cal Provider Agreements to Strategic Global Management, Inc.* (the “Stipulation”), filed as Docket No. 3786, entered into by and among Verity Health System of California, Inc., St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, a California nonprofit public benefit corporation, and Seton Medical Center, a California nonprofit public benefit corporation, on the one hand, and the California Department of Health Care Services on its behalf and on behalf of the State of California, on the other hand, and good cause appearing,

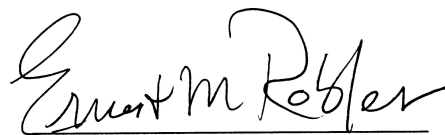
HEREBY ORDERS AS FOLLOWS:

- A. The Stipulation and the terms therein are approved.
- B. This Court shall retain jurisdiction to hear and resolve any disputes arising under the Stipulation.
- C. ~~This Court will vacate its~~ The Memorandum of Decision (Docket No. 3146) and *Order Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by the California Department of Health Care Services, Pursuant to 11 U.S.C. §§ 363(b) and (f)(5)* (Docket No. 3372) **are hereby VACATED.**

IT IS SO ORDERED.

###

Date: December 9, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 27

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
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CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

MOTION TO (A) CONTINUE HEARING ON MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN, AND (IV) GRANTING RELATED RELIEF; (B) CONTINUE THE REPLY DEADLINE WITH RESPECT TO DISCLOSURE STATEMENT OBJECTIONS, AND (C) USE THE NOVEMBER 26, 2019, 10:00 A.M. HEARING DATE FOR A STATUS CONFERENCE ON THIS MATTER; DECLARATION OF RICHARD G. ADCOCK IN SUPPORT THEREOF

[RELATES TO DOCKET NOS. 2994, 2995, 3120, 3193, 3260, 3389, 3594, 3632, 3633]

Proposed Status Conference Date and Time:

Date: November 26, 2019

Time: 10:00 a.m. (Pacific Time)

Place: 255 E. Temple St., Courtroom 1568
Los Angeles, CA 90012



Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request (the “Motion”) that the Court (A) approve a continuance of the hearing on the *Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors’ Plan; and (IV) Granting Related Relief* [Docket No. 2995] (the “Disclosure Statement Motion”) to a date to be set by the Court at the Status Conference (defined below), (B) reschedule the deadline to file replies to objections to the Disclosure Statement Motion at the Status Conference, and (C) to use November 26, 2019, 10:00 a.m., as a status conference (the “Status Conference”). In support of the Motion, the Debtors submit the attached *Declaration of Richard G. Adcock* (the “Adcock Declaration”) and, respectfully state as follows:

I.

INTRODUCTION

Yesterday, on November 18, 2019, the Court entered the memorandum decision [Docket No. 3632] and order [Docket No. 3633] (collectively, the “Orders”) “finding that SGM is obligated to promptly close the SGM Sale under § 8.6 of the APA, provided that all other conditions to closing have been satisfied.” Docket No. 3632. The Orders confirmed that the Debtors satisfied Section 8.6 of that certain asset purchase agreement (the “SGM APA”) [Docket No. 2305-1] and rendered moot any argument to the contrary. *Id.* at 5. The Order also provided that Strategic Global Management, Inc. (“SGM”) was obligated to promptly close the SGM sale (the “SGM Sale”), provided that all other conditions have been satisfied. Despite the foregoing, there remains a significant amount of uncertainty regarding the SGM sale transaction. As of the last motion [Docket No. 3621] to continue the hearing on the Disclosure Statement Motion, the Debtors anticipated receiving formal correspondence from SGM that would be material to the sale transaction. The Debtors have yet to receive the correspondence, but have been informed that it is forthcoming. Further, since the Orders, SGM orally communicated new information that undermines the Debtors’ confidence in a prompt closing of the sale. *See Adcock Declaration.*

The Debtors are conscious of the urgent need to advance the Disclosure Statement (as defined below) and plan process, but cannot in good faith move forward until there is more certainty that a successful closing can be reasonably anticipated. The Debtors' plan of liquidation is contingent on the sale closing, and, thus, any material doubt cast on the SGM sale hinders the Debtors ability to provide adequate information to creditors and the Court.

Consequently, the Debtors request that the Court enter an order granting the following relief (collectively, the "Proposed Relief"): (A) rescheduling the hearing on the Disclosure Statement, currently scheduled on November 26, 2019, to a date to be set by the Court at the Status Conference; (B) rescheduling the deadline set forth in the Order to file replies to objections to the Disclosure Statement Motion at the Status Conference; and (C) preserving the hearing on November 26, 2019, 10:00 a.m., as a status conference on this matter.

II.

JURISDICTION AND VENUE

This Court has jurisdiction over this Motion under 28 U.S.C. § 157(b)(2)(A) and (L). Venue of these proceedings and this Motion is proper pursuant to 28 U.S.C. § 1409. The statutory predicate for this Motion is 11 U.S.C. § 105¹ and LBR 9013-1(m).

III.

BACKGROUND FACTS

A. General Background

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

B. The Plan and Disclosure Statement

2. On September 3, 2019, the Debtors filed the *Debtors' Chapter 11 Plan of*

¹

1 *Liquidation (Dated September 3, 2019)* [Docket No. 2993] (the “Plan”) and related *Disclosure*
2 *Statement Describing Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)*
3 [Docket No. 2994] (the “Disclosure Statement”).

4 3. On September 4, 2019, the Debtors filed the Disclosure Statement Motion. In the
5 Disclosure Statement Motion, the Debtors seek approval of (i) the Disclosure Statement,
6 (ii) proposed solicitation and voting procedures, (iii) proposed notice and objection procedures for
7 confirmation of the Plan, and (iv) related relief. The Debtors also requested [Docket No. 2996]
8 an order setting a hearing and briefing schedule on shortened notice.

9 4. On September 4, 2019, the Court entered an *Order Setting Hearing On Motion for*
10 *Approval of Disclosure Statement for October 2, 2019, at 10:00 a.m.* [Docket No. 2998] (the
11 “Disclosure Statement Scheduling Order”). The Disclosure Statement Scheduling Order set a
12 hearing on the Disclosure Statement Motion for October 2, 2019 at 10:00 a.m., and provided that
13 any oppositions to the Disclosure Statement Motion must be filed not later than September 18,
14 2019. *See* Scheduling Order at 2.

15 5. On September 18, 2019, certain parties in interest filed responses and oppositions
16 to the Disclosure Statement Motion. *See* Docket Nos. 3079, 3084, 3086, 3087, 3089, 3090, 3092,
17 3094. Further, the Debtors have continued the opposition deadline by stipulation as they continue
18 negotiations with certain other parties with respect to the Disclosure Statement Motion and
19 Disclosure Statement. *See* Docket Nos. 3076, 3077, 3082, 3098, 3119, 3122, 3126, 3195.

20 **C. The Emergency Motion and SGM Sale**

21 6. On May 2, 2019, the Court entered an order [Docket No. 2306] (the “Sale Order”)
22 approving the SGM APA concerning the SGM Sale. On September 25, 2019, the Attorney
23 General conditionally approved the SGM Sale subject to certain conditions (the “2019
24 Conditions”). Certain of the 2019 Conditions (the “Additional Conditions”) were materially
25 different than those to which SGM agreed under the Schedule 8.6 to the SGM APA.

26 7. On September 30, 2019, the Debtors filed the motion [Docket No. 3188] (the
27 “Enforcement Motion”) for entry of an order finding (i) that the Debtors could sell their assets
28 pursuant to the SGM Sale free and clear of the Additional Conditions, or, alternatively, (ii) that

1 the Attorney General abused his discretion when imposing the Additional Conditions. As
2 discussed in greater detail in the Enforcement Motion, the Additional Conditions recently issued
3 by the Attorney General threatened the SGM Sale, and could have triggered SGM's termination
4 rights under the APA unless the Debtors obtained the relief requested by the Enforcement
5 Motion. *See* SGM APA, § 8.6.

6 8. On October 1, 2019, the Court entered the *Order Setting Hearing on Emergency*
7 *Motion for the Entry of an Order Enforcing the Order Authorizing the Sale to Strategic Global*
8 *Management for October 15, 2019, at 10:00 a.m.* [Docket No. 3193] (the "Scheduling Order"),
9 which scheduled a hearing on the Enforcement Motion on October 15, 2019, at 10:00 a.m.
10 (Pacific Time)—the same date and time as the hearing on the Disclosure Statement Motion. *See*
11 *Scheduling Order* at 2.

12 9. On October 23, 2019, the Court entered the *Memorandum of Decision Granting*
13 *Debtors' Emergency Motion to Enforce the Sale Order* [Doc. No. 3188] (the "Memorandum
14 Decision"). The Memorandum Decision granted the Enforcement Motion and further provided
15 that the Court will enter an order certifying the matter for direct appeal to the Ninth Circuit. *See*
16 *Mem. Dec.* at 24. The Court requested that the Debtors submit an order on the Enforcement
17 Motion consistent with the Memorandum Decision not later than October 30, 2019. *See id.* On
18 November 14, 2019, after holding an emergency hearing on the proposed form of order, the Court
19 entered the order granting the Enforcement Motion [Docket No. 3611] (the "Enforcement
20 Order").

21 **D. Continuance of Hearing on Disclosure Statement Motion**

22 10. The Debtors have filed six motions [Docket No. 3103, 3238, 3384, 3502, 3589,
23 3621] to continue the hearing on the Disclosure Statement Motion, which were granted by the
24 Court [Docket No. 3120, 3260, 3389, 3506, 3594, 3633]. The order on the Debtors' sixth
25 continuance motion set the Debtors' reply deadline as November 21, 2019 (the "Reply
26 Deadline"), and scheduled a continued hearing on the Motion for November 26, 2019, at 10:00
27 a.m. (Pacific Time) (the "Hearing").
28

E. Facts Relevant to the Motion

11. On October 10, 2019, SGM filed the *Statement of Strategic Global Management, Inc. in Support of “Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.’ (II) Finding that the Sale is Free and Clear of Conditions Materially Different Than Those Approved by the Court . . .”* [Docket No. 3356] (the “SGM Statement”). In the SGM Statement, SGM indicated that “it will not close the Sale unless the Debtors timely obtain a Free and Clear order from the Court.” SGM Statement at 4. The SGM APA further provides that such order must be final and non-appealable, that is, an order “which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court).” *See* SGM APA § 8.6. The Court entered the Enforcement Order on November 14, 2019. The two parties that objected to the Enforcement Motion have agreed not to appeal the Enforcement Order.

12. On the morning of November 15, 2019, the CEO of SGM informed the CEO of the Debtors of SGM’s intent to send the Debtors formal correspondence material to the SGM Sale. *See* Adcock Declaration, ¶ 4. As of the filing of this Motion, November 19, 2019, the Debtors have not received any such correspondence, but have been informed that it is forthcoming. *See id.* After the entry of the order by the Court on November 18, 2019, SGM orally communicated new information to the Debtors’ representatives that undermines the Debtors’ confidence in a prompt closing of the sale. *See id.*

IV.

ARGUMENT

LBR 9013-1(m)(1) governs motions for continuance and sets forth various general requirements. The Motion satisfies the requirements of the LBRs because it is filed more than three days prior to the Hearing, sets forth the reasons for the proposed continuance in detail, and is supported by the Adcock Declaration. *See* LBR 9013-1(m)(1).

The Debtors require a continuance of the Hearing on the Disclosure Statement Motion for the reasons discussed above. A continuance of the Hearing will serve the best interests of the

1 estates and creditors because it will ensure that the Debtors avoid the expense of unnecessary
2 amendments to their Plan and Disclosure Statement. In light of the benefit to the Debtors' Cases,
3 the Debtors respectfully request that the Court continue the Hearing on the Disclosure Statement
4 Motion from November 20, 2019, at 10:00 a.m., to a date to be set by the Court at the Status
5 Conference (the "Continued Hearing Date"). In accordance with the LBR 9013-1(m)(4), the
6 Continued Hearing Date will automatically extend the reply deadline unless otherwise ordered by
7 the Court at the Status Conference.

8 V.

9 CONCLUSION

10 In light of the foregoing, the Debtors respectfully request that this Court enter an Order
11 (i) granting this Motion, (ii) continuing the hearing on the Disclosure Statement Motion to a date
12 to be set by the Court at the Status Conference, (iii) rescheduling the deadline to file replies in
13 support of the Disclosure Statement Motion to a date set by the Court at the Status Conference;
14 (iv) preserving the November 26, 2019, 10:00 a.m. as a Status Conference on this matter, and
15 (v) granting such other relief as the Court deems just and proper under the circumstances.

16 Dated: November 19, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

17 By /s/ Tania M. Moyron
18 Tania M. Moyron
19 Attorneys for Verity Health Systems of
20 California, Inc., *et al.*
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28

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Motion to (A) Continue Hearing on Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections; and (C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter* (the "Motion"),¹ and hereby state as follows:

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, budgeting, disease management, and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. I have personal knowledge of the facts stated in this declaration, except as to those stated on information and believe, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

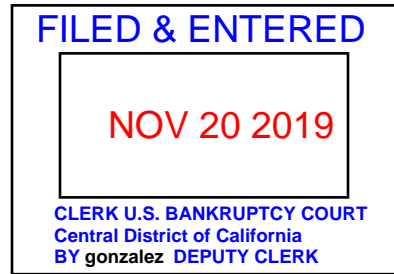
4. On the morning of November 15, 2019, the CEO of SGM informed me of SGM's intent to send the Debtors formal correspondence material to the SGM Sale. As of the filing of this Motion, November 19, 2019, the Debtors have not received any such correspondence, but have been informed that it is forthcoming. After the entry of the order by the Court on November 18, 2019, SGM orally communicated new information to the Debtors' representatives that undermines the Debtors' confidence in a prompt closing of the sale.

¹ Capitalized terms not otherwise defined in this Declaration have the definitions set forth in the Motion.

EXHIBIT 28

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession



UNITED STATES BANKRUPTCY COURT CHANGES MADE BY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

ORDER GRANTING MOTION TO (A) CONTINUE HEARING ON MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN, AND (IV) GRANTING RELATED RELIEF; (B) CONTINUE THE DEBTORS' REPLY DEADLINE WITH RESPECT TO DISCLOSURE STATEMENT OBJECTIONS, AND (C) USE THE NOVEMBER 26, 2019, 10:00 A.M. HEARING DATE FOR A STATUS CONFERENCE ON THIS MATTER; DECLARATION OF RICHARD G. ADCKOCK IN SUPPORT THEREOF [RELATES TO DOCKET NOS. 2994, 2995, 3120, 3193, 3260, 3389, 3594, 3621, 3623, 3633, 3644]

Proposed Status Conference:

Date: November 26, 2019
Time: 10:00 a.m. (Pacific Time)
Place: 255 East Temple St., Ctrm. 1568, Los Angeles, CA 90012

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

Debtors and Debtors In Possession.



DENTONS US LLP
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

The Court, having reviewed the *Motion to (A) Continue Hearing on Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections; and (C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter* [Docket No. 3644] (the "Motion")¹ and the *Declaration of Richard G. Adcock* filed concurrently therewith; it further appearing that the Motion complies with Local Bankruptcy Rule 9013-1(m); and good cause appearing therefor,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED in its entirety.
2. The Court shall hold a status conference in the above-captioned bankruptcy cases on November 26, 2019, at 10:00 a.m. (Pacific Time) (the "Status Conference").
3. The Hearing on the Disclosure Statement Motion shall be continued from November 26, 2019, at 10:00 a.m. (Pacific Time), to a date and time set by the Court on the record at the Status Conference.
4. The deadline to file any reply in support of the Disclosure Statement Motion shall be continued from November 21, 2019, to a date and time set by the Court on the record at the Status Conference.
5. By no later than **November 24, 2019**, the Debtors shall file a Status Report, which shall discuss (a) the status of the closing of the SGM Sale and (b) the Debtors' plan for expeditiously resolving these cases in the event that the SGM Sale does not close.

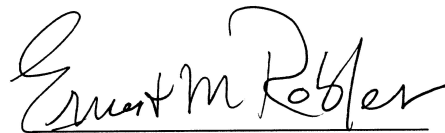
¹ Unless otherwise noted herein, all capitalized terms have the definitions set forth in the Motion.

1 **IT IS SO ORDERED.**

2 **###**

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

24 Date: November 20, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 29

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CALIFORNIA NURSES ASSOCIATION

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

In Re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et. al.*,

Debtors and Debtors in Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☒ Affects St. Vincent Medical Center
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- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures – San Jose ASC, LLC

Debtors and Debtors in Possession.

-) Lead Case No.: 2:18-bk-20151-ER
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-) Case No. 2:18-bk-20180-ER
-) Case No. 2:18-bk-20181-ER

**OPPOSITION BY CALIFORNIA NURSES
TO DEBTORS' EMERGENCY MOTION
FOR AUTHORIZATION TO CLOSE
ST. VINCENT MEDICAL CENTER**

[Dkt No. 3906]

Hearing Date: January 8, 2020
Time: 10:00 AM
Place: Courtroom 1568
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012
The Hon. Ernest M. Robles



I. INTRODUCTION

The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors” or “Verity”), submits this Opposition to Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center [Docket No. 3906] on the basis that it cannot be reconciled with the California Health and Safety Code notification requirements regarding health facility and emergency room closures and places human life at an unnecessary risk.

II. ARGUMENT

1. Debtors’ Timeline for Closing St. Vincent Medical Center Blatantly Violates Applicable California Notice Requirements Regarding Cessation of Medical Facilities and Emergency Departments.

California has strict laws regarding advance notifications that must be provided to both the public and state and local agencies prior to closure of a medical facility. First, California Health and Safety Code section 1255.1(a) requires that any hospital which provides emergency medical services must provide 90 days advance notice of the elimination of such services to “the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.” Additionally, section 1255.1(b) requires the hospital to provide 90 days advance notice to residents of the community.¹ Debtors’ plan to

¹ The complete text of Cal. Health & Safety Code section 1255.1 is provided below:

(a) Any hospital that provides emergency medical services under Section 1255 shall, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.

1 eliminate emergency services within three days of an order from this Court [Docket No. 3906,
2 p. 19] does not even operate within the realm of compliance.

3 Second, Cal. Health & Safety Code section 1255.25(a)(1) requires that the public
4 receive 30 days advance notice of the closure of any healthcare facility including “a notice
5 posted at the entrance to all affected facilities and a notice to the department and the board of
6 supervisors of the county in which the health facility is located.”² Additionally, section
7 1255.25(b)(2) requires hospitals to provide Medi-Cal and Medicare patients with advance
8 notice of the closure and information on the nearest available facilities which serve these types
9 of patients so that they may have time to transition to adequate substitute care.³ These
10 protections for indigent or elderly patients are especially important given Debtors’ commitment
11 to serving the sick and poor [Docket No. 3906, p. 12] and its charitable mission have caused it
12 to treat many patients receiving insurance through Medicare and Medi-Cal. [Docket No. 8, pp.

13
14 (b) In addition to the notice required by subdivision (a), the hospital shall, within
15 the time limits specified in subdivision (a), provide public notice of the intended
16 change in a manner that is likely to reach a significant number of residents of the
17 community serviced by that facility.

18 ² The complete text of Cal. Health & Safety Code section 1255.25(a)(1) is provided
19 below:

20 (a) (1) Not less than 30 days prior to closing a health facility, as defined in
21 subdivision (a) or (b) of Section 1250, or eliminating a supplemental service, as
22 defined in Section 70067 of Chapter 1 of Division 5 of Title 22 of the California
23 Code of Regulations, the facility shall provide public notice of the proposed
24 closure or elimination of the supplemental service, including a notice posted at the
25 entrance to all affected facilities and a notice to the department and the board of
26 supervisors of the county in which the health facility is located.

27 ³The complete text of Cal. Health & Safety Code section 1255.25(b)(2) is provided below:

28 (b) The notice required by paragraph (1) or (2) of subdivision (a) shall include all
of the following:

...

(2) A description of the three nearest available comparable services in the
community. If the health facility closing these services serves Medi-Cal or
Medicare patients, this health facility shall specify if the providers of the nearest
available comparable services serve these patients.

6, 24.] While it is difficult to discern from Debtors' pleading which Saint Vincent Medical Center ("SVMC") services will conclude when, it is apparent that several services will cease prior to the provision of thirty days notice [Docket No. 19, p. 19 (e.g., the dialysis unit will be closed within 21 days of an order from this Court).]

Debtors have shown no efforts to comply with either of these two obviously applicable provisions, nor did they even allude to them in the Emergency Motion. These notification requirements are not simply pro forma mandates, but serve a vital role in helping communities, especially underserved communities such as the one surrounding SVMC, prepare for the devastating loss of an essential service. [See Exhibit 1, Letter from California State Senator Maria Elena Durazo and Assemblymember Wendy Carillo who represent constituents in the area served by SVMC (observing that the loss of SVMC will be devastating for the district and that the required public notice is crucial because it will "give our constituents time to figure out where patients should be going to receive care in the area, ensure workers are not left unemployed, and perhaps find a way to retain some healthcare services.".)]⁴ Nor do these provisions make exceptions for hospitals in bankruptcy.

Furthermore, given that Debtors were aware on November 18, 2019, that Strategic Global Management ("SGM") lacked the financing to close its operations, its failure to begin the process of notifying the public and state and local authorities in a timely manner is inexcusable. [Docket No. 3901, ¶ 86]. Additionally, at least by the end of September 2019, Debtors represented to this Court that the likely outcome of SGM not closing the sale was that SVMC could not remain open. [Docket No. 3188, p. 33 ("If the SGM Sale does not close, the most likely outcome is that at least three of the Hospitals will have to close.")]. Thus, once Debtors knew that SGM lacked financing to close they should have begun the process of notifying the appropriate entities since closure was imminent.

⁴ A true and correct copy of the above-described letter dated January 7, 2020 signed by Maria Elena Durazo, California State Senator, District 24 and Wendy Carillo, California State Assemblymember, District 51 is attached as Exhibit 1. CNA personally received this letter from Ms. Durazo and Ms. Carillo on January 7, 2020.

Moreover, to the extent that Debtors' delayed notification to the public was due to concerns that SVMC's staff would quit en masse once they were aware of the impending closure of their worksite, this argument is without merit. The State Legislature has spoken in favor of advance notification for all concerned parties to protect patient safety and made no exception for staffing concerns. SVMC has a responsibility to staff its operations during this notice period and just as it was able to retain key employees during this bankruptcy through offering incentives via the Key Employee Retention Plan and Key Employee Incentive Plan, it also may offer incentives to encourage necessary staff to maintain employment with SVMC during the notification period. Additionally, just as hospitals staff their facilities with personnel from temporary companies (i.e. nursing registries) during a strike or other labor shortage so too could Debtors maintain their operations by short-term contracts with registry nurses during the notice period as necessary.

Finally, unlike in *Gardens Regional* in which this Court found that debtors would need to obtain additional DIP financing to continue to operate the hospital, there is no such assertion in the Chadwick Declaration or otherwise in the Emergency Motion that additional financing would be necessary to continue to main operations at the hospital during the required notice period. Case No. 2:16-bk-17463-ER, Docket No. 633 (Bankr. C.D. Cal. Jan. 20, 2017). Instead the Chadwick Declaration contains vague assertions that the "operating losses are significant and unsustainable." [Docket No. 3906, p. 33, ¶ 8]. This statement, however true, does not excuse Debtors from complying with state law especially given that they could have at least partially complied had they started providing notice when they were aware that SGM lacked the financing to close on November 18.

2. In Similar Circumstances Bankruptcy Courts Have Enjoined Hospitals From Closing Due to Failure to Comply With State Notification Requirements.

California is not unique in having common-sense statues which require advance notification to state agencies and the public prior to closing hospitals and this issue is not new to bankruptcy proceedings. In *Norris Square Civic Ass'n v. Saint Mary Hospital*, the Eastern

1 District of Pennsylvania Bankruptcy Court granted an injunction to prevent the closure of an
2 emergency department when the hospital failed to comply with the state's requirement that
3 hospitals provide 90 days notice prior to closing an emergency department. 86 B.R. 393, 400
4 (Bankr. E.D. Pa. 1988). This Pennsylvania requirement is nearly identical to Cal. Health &
5 Safety Code section 1255.1 discussed above. The court explicitly ordered the hospital at issue
6 to comply with the state regulation:

7
8 Given our doubt that the state regulation did not also prohibit any
9 curtailment of other services until 90 days after the dispatch of the notice
10 has passed, we believe that the most conservative relief which we can
11 provide is to prevent any further restrictions on admissions through the ER
12 and the obstetrics department of the hospital . . . *Id.*

13 Likewise, this Court should also deny the Emergency Motion because it contemplates
14 closing an emergency department within three days after this Court grants its motion which
15 would be 87 days short of compliance with state mandates (assuming Debtors provide proper
16 notice once a court order is issued). Furthermore, the court in *Norris Square Civic Ass'n*
17 specifically held that bankruptcy courts are empowered to enforce state law in their
18 proceedings and that especially with regard to health facility closures, hospitals must comply
19 with federal, state and local laws:

20 Moreover, the entire field of health care is one which has caused
21 bankruptcy courts to take otherwise most unusual acts in the public
22 interest, as in *In re An Unknown Group of Cases Seeking to be Filed*, 79
23 B.R. 651 (Bankr.E.D.Va.1987), where the court *sua sponte* refused to
24 accept for filing a group of Chapter 7 petitions emanating from health care
25 companies, on the ground that these filings would endanger continued
26 health care to certain nursing homes and hospital emergency rooms.

27 We therefore have no hesitancy in concluding that, in effecting its plan to
28 close its facility, the Debtor must comply with all applicable federal, state,
and local laws.

Id. at 398.

1 California bankruptcy courts have similarly held in analogous proceedings that the
2 bankruptcy code cannot shield a furniture retailer conducting a going-out-of-business sale in
3 violation of state consumer protection laws. *In re White Crane Trading Co.*, 170 B.R. 694, 702
4 (Bankr. Cal. E.D. 1994) (“The Congress has thus required that every debtor in possession and
5 bankruptcy trustee manage and operate the debtor's property and business in compliance with
6 state laws -- good, bad, and indifferent -- that apply outside of bankruptcy.”). The state interest
7 in protecting the public is much greater in the case of a hospital closure than a going-out-
8 business sale for a furniture store. It cannot be that consumers of a bankrupt furniture store
9 have more protections than patients in an emergency room.

10
11 Moreover, with the exception of *Gardens Regional Hospital* which is distinguishable
12 from the instant situation as noted above, the cases cited by Debtors in their Emergency Motion
13 for the permissibility of hospital closures were all shut down pursuant to “closure plans”
14 approved by and developed in consultation with the New York Department of Health pursuant
15 to applicable state law, not the independent judgement of the debtors at issue. [Docket No.
16 3906, p. 27.] *In re Saint Vincents Catholic Med. Ctrs. Of N.Y.*, 445 B.R. 264, 267 Case No. 10-
17 11963 (Bankr. S.D. N.Y. 2011) (“[T]he Debtors submitted a plan of closure . . . to the
18 Department of Health. Shortly thereafter, the Debtors began to shut down the Hospital under
19 the supervision of the Department of Health and other state regulatory authorities.”); *In re St.*
20 *Vincents Catholic Med. Ctrs.*, 2007 Bankr. Lexis 3006, *61, Case No. 05-14945 (Bankr.
21 S.D.N.Y. August 29, 2007) (“St. Clair and other SVC MC staff were responsible for obtaining
22 Department of Health and canonical authority to close the Hospital.”)

23
24 **2. Due to the High Volume of ER Visits that St. Vincent Medical Center**
25 **Receives and Its Longstanding Position in the Community,**
26 **More Transition Time is Required in Order to Safeguard Human Life.**

27 Based on SVC MC’s most recent filing with the California Office of Statewide Health
28 Planning and Development, SVC MC has over thirty thousand emergency department (ED) visits

1 a year (approximately 83 per day).⁵ (*See* Exhibit 2, p. 3.) Of those thirty thousand visits,
2 twelve thousand fell in the highest risk category of “severe with threat.” (*Id.*) Given that
3 SVMC has been a part of the community since 1856 [Docket No. 3906, p. 13] and receives a
4 high number of emergency visits, the public would be put at risk if the ED was closed down
5 before it received adequate advance notice.

6 Debtor’s plan to shut the ED down within three days after the entrance of an order
7 granting the Emergency Motion [Docket 3906, p. 19] leaves many questions and concerns
8 unanswered. First, even if ambulances are placed on diversion status as Debtors propose, many
9 residents of the community will still inevitably drive to SVMC emergency room for care
10 (especially if they lack the time to wait for an ambulance and it is unlikely that the community
11 will be aware of the closure within three days of the entrance of the order Debtors’ seek).
12 Therefore, it stands to reason that driving to a shuttered emergency room could have
13 detrimental consequences in an emergency. Moreover, Debtors presented no evidence that the
14 local Emergency Medical Services (“EMS”) department are aware of the closure and have had
15 time to plan for diverting patients on a permanent basis from SVMC to other hospitals. Indeed,
16 the Emergency Motion states that Debtors do not even plan to notify the local EMS that SVMC
17 is going on diversion status until one day after the requested order is entered. [Docket 3906, p.
18 19]. Nor is there any evidence that the other area hospitals are equipped to handle patients who
19 would otherwise be treated at SVMC on such short notice.

20 These unnecessary risks to human life of prematurely closing an emergency room are
21 the very hazards Cal. Health & Safety Code section 1255.1 is intended to protect against.
22 Debtors’ expedited plan to close SVMC, however well-intentioned, simply does not take into
23

24 ⁵ Attached to this pleading as Exhibit 2 is a true and correct copy of SVMC’s Annual Utilization
25 Report filed on February 13, 2018. The undersigned downloaded this report on January 6,
26 2020 from the following website:
27 https://alirts.oshpd.ca.gov/crudUtilReport.aspx?pMode=2&pSID=101365&pFID=201&pSYear=2017&pFType=hosp&pTypeID=87&pSName=2017_hosp
28

1 account the realities of closing an ED which has been a part of the community for close to two
2 centuries and the lead time local EMS and hospitals will need to accommodate such changes.

3
4 **4. Compliance with the State Mandated Notice Periods Also Provides a**
5 **Window for Potential Buyers to Come Forward.**

6 CNA is in agreement with Debtors that the closure of SVMC is a “last, tragic resort.”
7 [Docket No. 3906, p. 24]. Accordingly, compliance with Sections 1255.1 and 1255.25 serve
8 the dual purpose of allowing one last chance for any hospital operators to come forward to
9 acquire SVMC as either a package with other remaining hospitals or by itself now that the
10 public is aware that SGM is not going to close the sale and the likely outcome is that SVMC
11 will close. Given the harsh consequences of SVMC’s closure on the community this is not an
12 act which should be taken hastily. Indeed, it appears there is at least minimal renewed interest
13 in the SVMC as evidenced by the fact that Cain Brothers received a call from a potential buyer
14 on January 6, 2020, interested in purchasing SVMC as a going concern. [Docket No. 3906, p.
15 36.] On the other hand, once the Hospital is closed the likelihood that a buyer will come
16 forward to operate SVMC as a hospital diminishes further due to the costs associated with
17 reopening it. Thus, to preserve the possibility that another buyer may come forward following
18 the disappointing news that SGM cannot close the sale, CNA urges this Court to delay the
19 closure of SVMC until it provides the required state-mandated notices.

20 **III. CONCLUSION**

21 For all the reasons stated above, the Debtors request that the Court grant the requested
22 relief.

23
24 Dated: January 7, 2020

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

25
26 By 

Kyrsten B. Skogstad
Attorneys for Creditor
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
California Nurses Association, 155 Grand Avenue, Oakland CA 94612

A true and correct copy of the foregoing document entitled (*specify*): Opposition by California Nurses Association To Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/07/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Please see Attachment.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 01/07/2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles, U.S. Bankruptcy Court, Roybal Federal Building
255 E. Temple Street, Suite 1560/Courtroom 1568, Los Angeles CA 90012 (via Overnight Mail)

☒ Service information continued on attached page

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

01/07/2020
Date

Rob Craven
Printed Name

/s/ Rob Craven
Signature

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- Rose Zimmerman rzimmerman@dalcycity.org

Exhibit 1

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

California Legislature

January 7, 2020

The Honorable Ernest M. Robles
United States Bankruptcy Court, United States Bankruptcy Judge
Central District of California, Los Angeles Division
Roybal Federal Building, Courtroom 1568
255 East Temple Street
Los Angeles, CA 90012

Dear Honorable Robles:

We write regarding the proposed closure of St. Vincent Medical Center in Los Angeles, which is owned by Verity Health System.

As you may be aware, Section 1255.1 of the California Health and Safety Code requires any hospital that provides emergency medical services to notify the public as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services. Section 1255.25 of the California Health and Safety Code also requires public notice not less than 30 days prior to the proposed closure of a health facility or the elimination of a supplemental service.

As the elected representatives for State Senate District 24 and Assembly District 51 which represents St. Vincent and the surrounding community, we implore you to protect public notice of hospital closures under the law.

This tragic loss of crucial healthcare services is already devastating for our district. St. Vincent provides health care to a large number of Medi-Cal patients, the undocumented, and low income folks in Los Angeles who will struggle to access care without this facility. California's legally required public notice is crucial because it gives our constituents time to figure out where patients should be going to receive care in the area, ensure workers are not left unemployed, and perhaps find a way to retain some healthcare services.

Your courtroom should not become an avenue for this company to break the law. We urge the court to require Verity Health System to follow the Health and Safety Code and respect California's statutorily required public notice timelines.

Thank you for your consideration of our request.

The Honorable Wendy Carrillo
California State Assemblymember, District 51

Exhibit 2

Exhibit 2

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Annual Utilization Report of Hospitals

Facility Name: ST. VINCENT MEDICAL CENTER
OSHPD ID: 106190762 Report Status: Submitted
License Category: General Acute Care Hospital Report Year: 2017

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Click on any of the links listed below to view the corresponding section.

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[Section 3 - Inpatient Services](#)

[Section 4 - Emergency Department Services \(EDS\)](#)

[Section 5 - Surgery and Related Services](#)

[Section 6 - Major Capital Expenditures](#)

Section 1 - General Information

1. Facility Name: ST. VINCENT MEDICAL CENTER
2. OSHPD ID Number: 106190762
3. Street Address: 2131 WEST 3RD STREET

4. City: LOS ANGELES
5. Zip: 90057
6. Facility Phone No.: (213) 484 - 7111 ext.
7. Administrator Name: Margaret Pfeiffer
9. Was this hospital in operation at any time during the year? Yes
10. Operation Open From: 1/1/2017
11. Operation Open To: 12/31/2017
12. Name of Parent Corporation: Verity Health System
13. Corporate Business Address: 203 Redwood Shores Parkway, Suite 800

14. City: Redwood City
15. State: CA
16. Zip: 94065 -
17. Person Completing Report: Sumer Sharma
18. Report Preparer's Phone No.: 213-484-7054
19. Fax No.: 213-484-7678
30. Submitted by: ssharma
31. Submitted Date and Time: 2/13/2018 3:32:40 PM

Section 2 - Hospital Description

LICENSE CATEGORY (TYPE) (Completed by OSHPD.)

Line No.		(1)
1.	License Category:	General Acute Care Hospital

LICENSEE TYPE OF CONTROL

Line No.		(1)
5.	Select the category that best describes the licensee type of control of your hospital (the type of organization that owns the license) from the list below:	Non-profit Corporation (incl. Church-related)

PRINCIPAL SERVICE TYPE

Line No.		(1)
25.	Select the category that best describes the type of service provided to the majority of your patients. (The type or service is usually consistent with majority of, or mix of reported patient days.)	General Medical / Surgical

Section 3 - Inpatient Services

INPATIENT BED UTILIZATION - DO NOT INCLUDE NORMAL NEWBORNS IN BED UTILIZATION DATA

Line No.	Bed Classification and Bed Designation	(1) Licensed Beds as of 12/31	(2) Licensed Bed Days	(3) Hospital Discharges (including deaths)	(4) Intra-hospital Transfers	(5) Patient (Census) Days
	GAC Bed Designations					
1.	Medical / Surgical (include GYN)	253	92,345	9,943		50,345
2.	Perinatal (exclude Newborn / GYN)	0	0	0		0
3.	Pediatric	0	0	0		0
4.	Intensive Care	67	24,455	309	905	2,545
5.	Coronary Care	0	0	0	0	0

6.	Acute Respiratory Care					0
7.	Burn	0	0	0	0	0
8.	Intensive Care Newborn Nursery	0	0	0	0	0
9.	Rehabilitation Center	19	6,935	446		5,386
15.	Subtotal - GAC	339	123,735	10,698		58,276
16.	Chemical Dependency Recovery Hospital	0	0	0		0
17.	Acute Psychiatric	0	0	0		0
18.	Skilled Nursing	27	9,855	505	0	8,020
19.	Intermediate Care	0	0	0		0
20.	Intermediate Care / Developmentally Disabled	0	0	0		0
25.	Total (Sum of lines 15 thru 20)	366	133,590	11,203		66,296

Chemical Dependency Recovery Services In Licensed GAC and Acute Psychiatric Beds*

Line No.	Bed Classification	(1) Licensed Beds	(3) Hospital Discharges	(5) Patient (Census) Days
30.	GAC - Chemical Dep Recovery Services	0	0	0
31.	Acute Psych - Chemical Dep Recovery Svcs	0	0	0

* The licensed services data for these CDRS are to be included in lines 1 through 25 above.

Newborn Nursery Information

Line No.		(1) Nursery Bassinets	(3) *Nursery Infants	(5) Nursery Days
35.	Newborn Nursery	0	0	0

* Nursery Infants are the "normal" newborn nursery equivalent to discharges from licensed beds.

Skilled Nursing Swing Beds (Completed by OSHPD.)

Line No.		(1)
40.	Number of licensed General Acute Care beds approved for Skilled Nursing Care:	0

Complete lines 43 through 70 only if your hospital has licensed Acute Psychiatric or PHF beds. Include Chemical Dependency Recovery Services provided in licensed Acute Psychiatric beds.

Acute Psychiatric Patients By Unit on December 31

Line No.		(1) Number of Patients
43.	Locked	0
44.	Open	0
45.	Acute Psychiatric Total*	0

Acute Psychiatric Patients By Age Category on December 31

Line No.		(1) Number of Patients
46.	0 - 17 Years	0
47.	18 - 64 Years	0
49.	65 Years and Older	0
50.	Acute Psychiatric Total*	0

Acute Psychiatric Patients By Primary Payer on December 31

Line No.		(1) Number of Patients
51.	Medicare - Traditional	0
52.	Medicare - Managed Care	0
53.	Medi-Cal - Traditional	0
54.	Medi-Cal - Managed Care	0
55.	County Indigent Programs	0
56.	Other Third Parties - Traditional	0
57.	Other Third Parties - Managed Care	0
58.	Short-Doyle (includes Short-Doyle Medi-Cal)	0
59.	Other Indigent	0
64.	Other Payers	0
65.	Acute Psychiatric Total*	0

* Acute Psychiatric Total on lines 45, 50 and 65 must agree.

Short Doyle Contract Services

Line No.		(1)
70.	During the reporting period, did you provide any acute psychiatric care under a Short-Doyle contract?	No

Inpatient Hospice Program

Line No.		(1)
71.	Did your hospital offer an inpatient hospice program during the report period?	No

If 'yes' on line 71, what type of bed classification is used for this service? (Check all that apply.)

Line No.	Bed Classification	(1)
72.	General Acute Care	No
73.	Skilled Nursing (SN)	No
74.	Intermediate Care (IC)	No

PALLIATIVE CARE PROGRAM

Line No.	Description	Page of 257
80.	Did your hospital have an inpatient palliative care program during the report period?	No

PALLIATIVE CARE PROGRAM - An interdisciplinary team that sees patient, identifies needs, makes treatment recommendations, facilitates patient and/or family decision making, and/or directly provides palliative care for patients with serious illness and their families.

If 'yes' on line 80, Please answer the questions below.

Line No.		(1)
81.	How many Advanced Practice Nurses(APN)Registered Nurses(RN) are on the inpatient palliative care team?	0
82.	How many of these APN/RNs are board certified by the National Board for Certification for Hospice and Palliative Nursing?	0
83.	How many Physicians are on the inpatient palliative care team?	0
84.	How many of these Physicians are board certified by the American Board of Medical Specialties?	0
85.	How many Social Workers are on the inpatient palliative care team?	0
86.	How many of these Social Workers hold an Advanced Certified Hospice and Palliative Social Worker credential from the National Association of Social Worker?	0
87.	How many Chaplains are on the inpatient palliative care team?	0

*Staffing data should only reflect inpatient palliative care team.

Line No.		(1)
90.	Did your hospital have outpatient palliative care services during the report period?	No

Section 4 - Emergency Department Services (EDS)

EMSA Trauma Center Designation on December 31
(Completed by OSHPD from EMSA data.)

Line No.	(1) Designation	(2) Pediatric
1.		

Licensed Emergency Department Level
(Completed by OSHPD from DHS Data.)

Line No.	(1) January 1	(2) December 31
2.	Basic	Basic

Services Available on Premises
(Check all that apply.)

Line No.	Services Available	(1) 24 Hour	(2) On-Call
11.	Anesthesiologist	No	Yes
12.	Laboratory Services	Yes	No
13.	Operating Room	No	Yes
14.	Pharmacist	Yes	No
15.	Physician	Yes	No
16.	Psychiatric ER	No	Yes
17.	Radiology Services	Yes	No

Emergency Department Services

Line No.	EDS Visit Type	CPT Codes	(1) Visits not Resulting in Admission*	(2) Admitted from ED (Enter Total Only if Details not Available)	(3) Total ED Traffic (1) + (2)
21.	Minor	99281	374	0	
22.	Low/Moderate	99282	2,447	0	
23.	Moderate	99283	8,269	0	
24.	Severe without threat	99284	6,472	469	
25.	Severe with threat	99285	5,419	7,018	
30.	TOTAL		22,981	7,487	30,468

* DO NOT INCLUDE patients who register but left without being seen, employee physicals and scheduled Clinic-type visits.

Emergency Medical Treatment Stations on December 31

Line No.		(1)
35.	Enter the number of emergency medical treatment stations.	8

Treatment Station - A specific place within the emergency department adequate to treat one patient at a time. Do not count holding or observation beds.

Non-Emergency (Clinic) Visits Seen in Emergency Department

Line No.		(1)
40.	Enter the number of non-emergency (clinic) visits seen in ED.	0

Emergency Registrations, But Patient Leaves Without Being Seen*

Line No.		(1)
45.	Enter the number of EDS registrations that did NOT result in treatment.	164

* Include patients who arrived at ED, but did not register and left without being seen (if available)

Line No.		(1)
50.	Were there periods when the ED was unable to receive any and all ambulance patients during the year and as a result ambulances were diverted to other hospitals? If 'yes' fill out lines 51 through 62 below. Count only those hours in which the ED was unavailable to ALL PATIENTS (see instructions).	Yes

Line No.	Month	(1) Hours
51.	January	75
52.	February	3
53.	March	1
54.	April	11
55.	May	2
56.	June	13
57.	July	0
58.	August	1
59.	September	1
60.	October	1
61.	November	1
62.	December	34
65.	Total Hours	143

Surgical Services

Line No.	Surgical Services	(1) Surgical Operations	(2) Operating Room Minutes
1.	Inpatient	2,758	527,253
2.	Outpatient	3,460	363,678

Line No.	Operating Room Type	(1) Number
7.	Inpatient Only	0
8.	Outpatient Only	0
9.	Inpatient and Outpatient	18
10.	Total Operating Rooms	18

Line No.		(1)
15.	Did your hospital have an organized ambulatory surgical program?	No

Line No.	(1) Number
20. Total Live Births (Count multiple births separately)*	0
21. Live Births with Birth Weight Less Than 2500 grams (5 lbs. 8 oz.)	0
22. Live Births with Birth Weight Less Than 1500 grams (3 lbs. 5 oz)	0

* TOTAL LIVE BIRTHS on line 20 should approximate the number of Perinatal discharges shown in Section 3, line 2, column 3. Include LDR or LDRP births and C-Section deliveries.

Line No.		(1)
31.	Did your hospital have an approved alternate birthing (outpatient) program?	No
32.	Was your alternate setting was approved as LDR	No
33.	Was your alternate setting was approved as LDRP	No

Line No.		(1) Number
36.	How many of the live births reported on line 20 occurred in your alternative (outpatient) setting? Do not include C-Section deliveries.	0
37.	How many of the live births reported on line 20 were C-Section deliveries?	0

Line No.	(1) Licensure
41.	Cardiovascular Surgery Services

Note: Complete lines 42 to 85 if licensed for Cardiovascular Surgery Services.
Complete lines 55 to 85 if licensed for Cardiac Catheterization only.

Line No.		(1)
42.	Number of operating rooms licensed to perform cardiovascular surgery on December 31.	2

Line	(1)	(2)
------	-----	-----

No.		Bypass USED*	Bypass NOT USED
43.	Pediatric	0	0
44.	Adult	63	26
45.	Total Cardiovascular Surgical Operations	63	26

* Also referred to as Extracorporeal Bypass or "on-the-pump" (heart/lung machine).

Coronary Artery Bypass Graft (CABG) Surgeries*

Line No.		(1)
50.	Number of Coronary Artery Bypass Graft (CABG) surgeries performed.	68

* Subset of cardiovascular surgeries reported on line 45 above.

Cardiac Catheterization Lab Rooms

Line No.		(1)
55.	Number of rooms equipped to perform cardiac catheterizations on December 31.	4

Cardiac Catheterization Visits

Line No.		(1) Diagnostic	(2) Therapeutic
56.	Pediatric - Inpatient	0	0
57.	Pediatric - Outpatient	0	0
58.	Adult - Inpatient	181	361
59.	Adult - Outpatient	192	577
60.	Total Cardiac Catheterization Visits	373	938

Distribution of Procedures Performed in Catheterization Laboratory

Line No.		(1) Procedures
65.	Diagnostic Cardiac Catheterization Procedures (LHC, R & LHC)	746
66.	Myocardial Biopsy	0
71.	Permanent Pacemaker Implantation	95
711.	Other Permanent Pacemaker Procedures (Generator or Lead Replacement)	47
712.	Implantable Cardioverter Defibrillator (ICD) Implantation	61
713.	Other ICD Procedures (Generator or Lead Replacement)	20
72.	Percutaneous Coronary Intervention (PCI) - WITH Stent	306
73.	Percutaneous Coronary Intervention (PCI) - WITHOUT Stent	26
74.	Atherectomy (PTCRA - rotablator, DCA, laser, other ablation, etc.)	6
75.	Thrombolytic Agents (Intracoronary only)	0
76.	Percutaneous Transluminal Balloon Valvuloplasty (PTBV)	0
77.	Diagnostic Electrophysiology	83
78.	Catheter Ablation Procedures(SVT,VT,AF)	81
79.	Peripheral Vascular Angiography	13
80.	Peripheral Vascular Interventional Procedures	18
81.	Carotid Stenting Procedures	0
82.	Intra-Aortic Balloon Pump Insertion	14
83.	Catheter-based Ventricular Assist Device Insertion	0
84.	All other catheterization procedures performed in the lab	396
85.	Total Catheterization Procedures	1,912

Percutaneous Transluminal Balloon Valvuloplasty(PTBV) is very rarely done in these times. Those that are done are generally on pediatric patients.

AICD procedures are frequently done in the cath lab and are very similar to permanent pacemaker implants.

NOTE: Do Not Include Any Of The Following As A Cardiac Catheterization:

- Defibrillation
- Temporary Pacemaker Insertion
- Cardioversion
- Pericardiocentesis

Section 6 - Major Capital Expenditures

Section 127285(3) of the Health and Safety Code requires each hospital to report "acquisitions of diagnostic or therapeutic equipment during the reporting period with a value in excess of five hundred thousand dollars (\$500,000)."

Diagnostic and Therapeutic Equipment Acquired During The Report Period

Line No.		(1)
1.	Did your hospital acquire any diagnostic or therapeutic equipment that had a value in excess of \$500,000? (If 'Yes', fill out lines 2 through 11, as necessary, below.)	Yes

Diagnostic and Therapeutic Equipment Detail

Line No.	(1) Description of Equipment	(2) Value	(3) Date of Acquisition MM/DD/YYYY	(4) Means of Acquisition
2.	Stryker Endoscopy	\$692,000	2/1/2017	Lease
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				

Building Projects Commenced During Report Period Costing Over \$1,000,000

Section 127285(4) of the Health and Safety Code requires each hospital to report the "commencement of projects during the reporting period that require a capital expenditure for the facility or clinic in excess of one million dollars (\$1,000,000)."

Line No.	(1)
25.	Did your hospital commence any building projects during the report period which will require an aggregate capital expenditure exceeding \$1,000,000? (If 'Yes', fill out lines 26 through 30, as necessary, below.)
	No

Detail of Capital Expenditures

Line No.	(1) Description of Project	(2) Projected Total Capital Expenditure	(3) OSHDP Project No. (if applicable)
26.			
27.			
28.			
29.			
30.			

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EXHIBIT 30

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Attorneys for Strategic Global Management, Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

LEAD CASE NO.: 2:18-bk-20151-ER

CHAPTER: 11
JOINTLY ADMINISTERED WITH:

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

**STRATEGIC GLOBAL MANAGEMENT,
INC.'S RESERVATION OF RIGHTS IN
CONNECTION WITH DEBTOR'S
STATUS CONFERENCE REPORT**

[Dkt. No. 3692]



Strategic Global Management, Inc. (“SGM”) submits the following *Reservation of Rights in Connection with Debtor’s Status Conference Report* in response to the Status Report (the “Report”) [Doc. 3692], filed by Verity Health System of California, Inc. and related and affiliated debtors, the debtors and debtors in possession in the above-captioned, jointly-administered chapter 11 bankruptcy cases (“Verity” and/or the “Debtors”) on November 24, 2019 at approximately 8:00 p.m.¹

I.

INTRODUCTION AND STATEMENT OF FACTS

Verity is asking the court to make a ruling on one (of many possible) contractual issues in advance of any obligation for SGM or Verity to close the sale, and to bypass the very procedures (e.g., complaint, response, motions, discovery, pre-trial and trial) which would govern a breach of contract or declaratory relief lawsuit relating to the APA. If this were a Monopoly game, Verity would be attempting to “Pass GO” and collect \$600 Million. But, even Monopoly does not allow a player to collect \$600 Million without a trial, and all the other rights and protections that due process and the Bankruptcy Rules require.

SGM has devoted an enormous amount of time and resources, including hundreds of thousands of dollars of professional fees and consulting fees, in an effort to complete all of the work necessary to conclude the transaction of the scope and magnitude of the APA, and SGM continues to desire to close the transaction between SGM and Verity as described in the APA.

On November 22, 2019, SGM, through counsel, delivered two letters to Verity; one from Levene, Neale, Bender, Yoo & Brill L.L.P., bankruptcy counsel to SGM, and the other, from Hooper, Lundy & Bookman, P.C, healthcare counsel to SGM. (The Levene, Neale letter and the Hooper, Lundy letter will sometimes be referred to as the “SGM Letters”). In the SGM Letters,

¹ The pending proceeding is a Status Conference ordered by the Court for the Debtor’s pending Disclosure Statement in connection with its Plan of Reorganization. SGM is not currently a creditor of the Debtor and has not participated in the Plan or Disclosure Statement process. Accordingly, SGM does not waive any of its rights, claims or interests including, without limitation, its contention that a Status Conference pertaining to a Disclosure Statement is not the appropriate forum in which to consider procedures to be implemented in connection with a potential dispute regarding the APA.

1 SGM notified Verity that Verity had breached a number of material covenants, representations,
2 warranties and conditions, as a result of which there had occurred and would continue to occur
3 “Material Adverse Effects” as that term is used throughout the APA.

4 In Verity’s Status Report, filed on November 24, 2019, Verity stated that it will request, at
5 the Status Conference on November 26 at 10:00, that the Court set an accelerated briefing and
6 hearing schedule (briefs starting December 6, 2019, hearing on December 11, 2019) to adjudicate
7 whether any of the covenants, representations, warranties or conditions that were set forth in the
8 SGM Letters constitute Material Adverse Effects for purposes of the APA.

9 SGM will oppose any attempt by Verity to obtain from the Court, either at the Status
10 Conference, or at any other hearing, outside the context of an adversary proceeding conducted in
11 accordance with the adversary proceeding rules set forth in Part VII of the Bankruptcy Rules, any
12 ruling on the disputes and controversies between Verity and SGM pertaining to the APA.

13 To the extent that Verity requests, at the Status Conference, that this Court establish a
14 briefing and hearing process for the Material Adverse Effects issue consistent with its Status
15 Report, the Court should reject that request.

16 II.

17 ARGUMENT

18 IF VERITY REQUESTS AN EXPEDITED PROCESS FOR ADJUDICATING WHETHER 19 THERE HAVE BEEN MATERIAL ADVERSE EFFECTS, THAT REQUEST SHOULD 20 BE DENIED

21 A. As of the filing of this Motion, Verity has not filed any written motion, and the Local
22 Bankruptcy Rules require that motions be presented to the Court in writing and that
23 parties be given a reasonable opportunity to respond to the Motion and to be heard in
24 connection with the relief requested.

25 Unless the court orders otherwise, an oral motion is not permitted. LBR 9013-1(c)(1).
26 Indeed, motions must be made in writing, and with notice and opportunity to respond in writing.
27 LBR 9013-1(c)(2). Motions must be supported by a written statement and memorandum of
28 points and authorities of all reasons in support of the relief requested. LBR 9013-1(c)(3). Factual

1 contentions in a motion must be supported by declarations or other written evidence. LBR 9013-
2 1(i).

3 The Report provides nothing in the way of points, authorities, or evidence; rather, the
4 Report asserts that SGM is obligated to close the pending sale, which SGM strongly contests.
5 *See, e.g.*, Report p.1 ln.21 (“Debtors satisfied all conditions to closing”); p.1 ln.28 (“The
6 foregoing agreement satisfied the last of the Debtors’ outstanding conditions to closing...”).
7 Moreover, nothing in the Report contains the points and authorities to which SGM must be given
8 an opportunity to respond, or to support the highly unusual request for an expedited hearing
9 before a complaint has even been filed. Nothing in the Report – and nothing said by Debtors’
10 counsel by way of oral motion on November 26, 2019 – could constitute cause to deny SGM its
11 right to the due process protections in an adversary proceeding, much less impose upon it a paltry,
12 short-shrift briefing schedule for the Debtors’ requested declaratory relief and contract claims
13 surrounding the APA.

14 **B. The Debtors’ request that the Court create a separate and distinct process to**
15 **evaluate the Material Adverse Effects issue, based upon the fact that SGM has given notice**
16 **that Verity has failed to satisfy, as of November 20, 2019, certain conditions and covenants,**
17 **does not yet present a case or controversy that requires this Court to engage in any**
18 **adjudicatory function.**

19 The Debtors have said that they will request that the Court create a distinct and expedited
20 process to address the Material Adverse Effects issue, separate from the resolution of all disputes
21 and controversies that may exist between the Debtor and SGM pertaining to the APA. This
22 request, if made, is based on SGM’s notice to the Debtors that the Debtors were in breach of
23 certain conditions, covenants, representations and warranties as of November 20, 2019.

24 However, that notice, itself, does not present a case or controversy that requires this Court to
25 engage in any adjudicatory function; only if, and after, the Debtors or SGM fail to proceed to a
26 closing, would there be a case or controversy that would then implicate this Court’s adjudication
27 of disputes relating thereto. Thus, Verity’s request is premature.

28 ///

1 **C. There is no procedure available to Verity for the piecemeal adjudication of disputes**
2 **relating to the APA, such that Verity can pick and choose among a multitude of potential**
3 **disputes and disagreements relating to the APA and request that the Court litigate them**
4 **seriatim.**

5 Verity has cited no authority for proposition that Verity can hand pick issues, one at a
6 time, for resolution, among a multitude of potential disputes and disagreements relating to the
7 APA in a truncated and expedited process – especially, when there has been no closing date and
8 no failure by SGM to perform. To suggest that such a process will create a muddled record is an
9 understatement.

10 **D. The Bankruptcy rules require an adversary proceeding for the resolution of disputes**
11 **and controversies relating to the APA.**

12 The Bankruptcy Rules require an adversary proceeding for the resolution of disputes and
13 controversies relating to the APA if they involve a claim for money damages or declaratory relief
14 that would obligate a party for money damages. In relevant part, Federal Rule of Bankruptcy
15 Procedure 7001 provides that: “The following are adversary proceedings: (1) a proceeding to
16 recovery money or property . . . (7) a proceeding to obtain an injunction or other equitable relief .
17 . . (9) a proceeding to obtain a declaratory judgment a relating to any of the foregoing[.]” Fed. R.
18 Bankr. P. 7001. “

19 The Debtors’ request for a Court declaratory determination as to whether there have been
20 Material Adverse Effects under the terms of the APA requires the filing of an adversary
21 proceeding, and cannot be achieved by way of a motion or through the expedited briefing
22 schedule suggested by the Debtors. *See* Fed. R. Bankr. P. 7001(9); *In re Sun Belt Elec.*
23 *Constructors, Inc.*, 56 B.R. 686, 688 (Bankr. N.D. Ga. 1986) (“Before addressing the enumerated
24 issues, the Court notes a procedural deficiency in M&M’s motion to enforce the Flagler Contract.
25 M&M’s motion apparently requests injunctive or equitable relief or, at least, a declaratory
26 judgment. Under Rule 7001, such relief may only be obtained in an adversary proceeding. For
27 that reason, the Court will deny M&M’s motion without prejudice”). Specifically, the Debtors’
28 request for this Court to decide whether there have been any Material Adverse Effects under the

1 terms of the APA is related to: (1) a proceeding to “recover money,” as contemplated by FRBP
2 7001(1), and constitutes a *sub rosa* attempt to obtain this Court’s finding that SGM has breached
3 the APA, thus entitling the Debtors to money damages; and (2) a proceeding for declaratory relief
4 relating to a claim for money.

5 At minimum, there are genuine disputes of material fact as to the whether there have been
6 Material Adverse Effects under the terms under the APA, such that the Debtors’ request for the
7 summary, and truncated adjudication of these issues would be improper. *See e.g., Callie v. Near*,
8 829 F.2d 888, 890 (9th Cir. 1987) (“Where material facts concerning the *existence* or *terms* of an
9 agreement to settle are in dispute, the parties must be allowed an evidentiary hearing.”); *Autera v.*
10 *Robinson*, 419 F.2d 1197, 1200 (D.C. Cir. 1969) (“Yet it is apparent that the summary procedure
11 for enforcement of unperformed settlement contracts is not a panacea for the myriad types of
12 problems that may arise. The summary procedure is admirably suited to situations where, for
13 example, a binding settlement bargain is conceded or shown, and the excuse for nonperformance
14 is comparatively unsubstantial.”¹¹ *On the other hand, it is ill-suited to situations presenting*
15 *complex factual issues related either to the formation or the consummation of the contract, which*
16 *only testimonial exploration in a more plenary proceeding is apt to satisfactorily resolve. We*
17 commend the summary practice for use in connection with problems capable of precise resolution
18 without attendant hazard to the interests of the parties. At the same time, it is evident that beyond
19 that point the convenience of the summary procedure must yield to the exigencies of safeguarding
20 all legally protected rights that are involved.”) (emphasis added).

21 The Debtor’s request to conduct an accelerated and bifurcated process to consider only the
22 issue of Material Adverse Effect outside the context of an adversary proceeding would also be a
23 violation of SGM’s due process rights. In particular, in light of the amounts involved in this
24 transaction, SGM is entitled to all the rights that would be available to it if the procedures
25 provided for in Part VII of the Bankruptcy Rules are applied and only if SGM is given the
26 necessary time to develop its legal and factual positions, utilize discovery to obtain necessary
27 evidence and engage experts who would likely be needed to address issues involving health care
28 and regulatory law.

1 If the Court were to grant the relief requested by Verity, the Court would be creating a
2 procedural quagmire, which would delay, as opposed to expedite the resolution of disputes and
3 controversies between them relating to the SGM APA and inevitably result in appeals. Quite
4 simply, the Court may not adjudicate complex issues of law and fact in connection with a \$600
5 Million transaction by way of emergency motion or other expedited procedures that violate
6 SGM's due process rights and are incompatible with the Bankruptcy Code and Bankruptcy Rules.

7 If Verity makes the request stated in its Status report, the Court will be asked to order an
8 expedited process to resolve certain, but not all, issues relating to disputes between the parties
9 under the APA. Moreover, the Court will be setting a process without a full understanding of
10 what will need to be litigated and whether the hyper-speed requested by Verity makes any sense.
11 In particular, the Court will not know: (1) the number of disputes to be adjudicated, (2) the nature
12 of the disputes, (3) the body of law, *e.g.*, bankruptcy, healthcare, contract, accounting, that would
13 be involved in the resolution of the disputes, (4) the nature and extent of the evidence that would
14 relate to the adjudication of such disputes, (5) the need for discovery, (6) the use of expert
15 testimony, and (7) the amount of briefing time that would be needed and the amount of trial time.
16 In the usual case, where rules of procedure are adhered to, a complaint would be filed and the
17 issues would be narrowed by the pleadings and subsequent motion practice, and the parties would
18 enter into a pre-trial order, which would identify the factual and legal issues that remain to be
19 resolved.

20 The procedure that Verity intends to suggest, *i.e.* an abbreviated process for briefing and
21 hearing regarding whether the notice as stated in the SGM Letter of November 22, 2019
22 constitute Material Adverse Effects, assumes that the only issues and controversies pertaining to
23 the closing of the APA are those set forth in SGM's Letter. However, in that letter, SGM stated
24 that the issues that were being raised therein were not exclusive and SGM expressly reserved its
25 rights to assert additional claims. Thus, the parties have not yet identified all of the potential
26 issues that could affect the closing of the APA.

27 Accordingly, in addition to all of the other reasons why Verity's suggested expedited
28 process is unfair and improper, it would be grossly inefficient and wasteful of the parties' and this

1 Court's resources to attempt to adjudicate some of the disputes relating to the APA and then have
2 to create a new process and begin a new proceeding to resolve remaining issues.

3 **E. SGM did not agree to adjudicate any disputes in connection with the APA by**
4 **motion.**

5 Verity's contention that SGM has agreed to an expedited motion to resolve dispute under
6 the APA, and waived its right to an adversary proceeding or other due process protection by
7 virtue of the language set forth in Section 9.1(c) of the APA, is completely unavailing.

8 First, that section does not apply. The section states that unless and until the Purchaser "in
9 its sole and absolute discretion, . . . has notified Seller of its **election to terminate** the Agreement
10 under this Section 9.1(c)" (emphasis added). Thus, Section 9.1(c) does not apply unless and
11 until the Purchaser has given notice to the Seller of its election to terminate the APA. **No such**
12 **notice has been given.** On the contrary, in SGM's letter of November 22, 2019, SGM expressly
13 reserved its right to terminate, but did not give notice to Verity that it was exercising that right.
14 Accordingly, whatever the effect would be of the language quoted by Verity, which was taken
15 entirely out of context, has no application to whether this Court should order the bifurcated,
16 expedited, premature process, which Verity indicated it will request.

17 In addition, the mere fact that SGM agreed that disputes concerning Material Adverse
18 Effects, as used in Section 9.1(c) (which, as just described, is inapplicable) could be determined
19 by the Bankruptcy Court, in no way can be read as constituting a waiver of SGM's due process
20 rights and, in particular, its right to have disputes and controversies over the APA adjudicated in a
21 properly conducted adversary proceeding consistent with the Part VII Bankruptcy Rules.
22 Declaratory relief and other matters enumerated under FRBP 7001 cannot be decided by way of
23 motion absent a waiver by the interested party. *Dardashti v. Golden (In re Dardashti)*, 2007 WL
24 7535054, *4 (9th Cir. B.A.P. Oct. 31, 2007);² *Cogliano v. Anderson (In re Cogliano)*, 355 B.R.
25 792, 805 (9th Cir. B.A.P.2006) (bankruptcy court lacked authority to decide issue of property of
26 the estate on turnover motion because FRBP 7001(2) requires adversary proceeding); *Expeditors*

27
28 ² Unpublished opinion that may be cited for persuasive authority but without binding precedent.

Waiver is “when a party intentionally relinquishes a right, or when that party’s acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.” *Intel Corp. v. Harford Acc. & Indem. Co.*, 952 F.2d 1551, 1559 (9th Cir. 1991); *see also In re Washington Coast I, LLC*, 485 B.R. 393, n.12 (9th Cir. B.A.P. 2012). Here, SGM has not intentionally relinquished its right to have disputes in the nature of FRBP 7001 – including declaratory relief and ostensible breach of contract causes of action under the APA – determined by adversary proceeding; nor has SGM acted in a manner inconsistent with its right to have such matters determined by adversary proceeding. SGM opposes any request by the Debtors to obliterate SGM’s substantive and procedural due process rights in an adversary proceeding.

CONCLUSION

9

1 profoundly unfair process. Rather, it would be more productive for SGM to meet and confer with
2 Verity and the other stakeholders, including the secured lenders and the Unsecured Creditors
3 Committee, to see if the transaction can be salvaged and closed without the necessity of
4 litigation.³

5
6 Dated: November 25, 2019

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

7
8 By: /s/ Gary E. Klausner
9 Gary E. Klausner
10 Counsel for Strategic Global Management, Inc.

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28 ³ SGM reserves all of its rights under the APA including, without limitation, as provided for in section 8.6

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **STRATEGIC GLOBAL MANAGEMENT, INC.'S RESERVATION OF RIGHTS IN CONNECTION WITH DEBTOR'S STATUS CONFERENCE REPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 25, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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- Cecelia Valentine cecelia.valentine@nrlb.gov
- Jason Wallach jwallach@ghplaw.com, g33404@notify.cincompass.com

- Kenneth K Wang kenneth.wang@doj.ca.gov,
Jennifer.Kim@doj.ca.gov; Stacy.McKellar@doj.ca.gov; yesenia.carro@doj.ca.gov
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sgroff@leonardcarder.com; msimons@leonardcarder.com; lbadar@leonardcarder.com
- Rose Zimmerman rzimmerman@dalycity.org

2. SERVED BY UNITED STATES MAIL: On November 26, 2019 served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 25, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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

November 25, 2019	Jeffrey Kwong	/s/ Jeffrey Kwong
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

EXHIBIT 31

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DEBTORS' EX PARTE MOTION FOR AN
ORDER ALLOWING THE DEBTORS TO FILE
CORRESPONDENCE REGARDING THE SGM
SALE UNDER SEAL; DECLARATION OF
RICHARD G. ADCOCK IN SUPPORT
THEREOF**

[No Hearing Required Per Bankruptcy Rule 9018]



182015119112500000000015

EX PARTE MOTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned Chapter 11 bankruptcy cases (collectively, the “Debtors”), hereby submit this *ex parte* motion (the “Motion”) for the entry of an order allowing them to file, in connection with the Debtors’ status report [Docket No. 3692] (the “Status Report”), certain Correspondence (defined below) between the Debtors and Strategic Global Management, Inc. (“SGM”) under seal pursuant to §§ 105(a) and 107(b), (c), and (d),¹ Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.

I.

STATEMENT OF FACTS

1. On November 19, 2019, the Debtors filed their *Motion To (A) Continue Hearing On Motion Of The Debtors For An Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III) Notice And Objection Procedures For Confirmation Of Debtors’ Plan, And (IV) Granting Related Relief; (B) Continue The Debtors’ Reply Deadline With Respect To Disclosure Statement Objections, And (C) Use The November 26, 2019, 10:00 A.M. Hearing Date For A Status Conference On This Matter* [Docket No. 3644] (the “Continuance Motion”), which sought to continue the hearing set for approval of the *Disclosure Statement Describing Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)* [Docket No. 2994] (the “Disclosure Statement Hearing”) and requested that the Court hold a status conference (the “Status Conference”), in lieu of the Disclosure Statement Hearing, to discuss the pending sale (the “SGM Sale”) of certain of the Debtors’ hospitals to SGM pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “SGM APA”).

2. On November 20, 2019, the Court entered an order [Docket No. 3646] (the “Order”) (i) granting the Continuance Motion, (ii) continuing the Disclosure Statement Hearing,

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

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(iii) scheduling the Status Conference for November 26, 2019, at 10:00 a.m., and (iv) and requiring the Debtors to file the Status Report. *See* Order at 2. The Order provided that the Status Report must address (a) the status of the closing of the SGM Sale, and (b) the Debtors’ plan for expeditiously resolving these cases in the event that the SGM Sale does not close (“Plan B”). *Id.*

3. On November 22, 2019, the Debtors filed the *Debtors’ Ex Parte Motion Allowing The Debtors To File “Plan B” Of Their Status Report Under Seal* [Docket No. 3678] (the “Motion to Seal”). As set forth more fully in the Motion to Seal, the Debtors requested authority to file Plan B under seal. *See* Mot. to Seal at 4. On November 22, 2019, the Court entered an order [Docket No. 3679] granting the Motion to Seal.

4. On November 24, 2019, the Debtors filed the Status Report. In the Status Report, the Debtors generally address (i) the November 20, 2019 letter from the Debtors to SGM (the “Debtors’ Nov. 20 Letter”), and (ii) the November 22, 2019 response from SGM to the Debtors (the “SGM Letter”). *See* Status Report at 1-2. Generally, the (i) Debtors’ Nov. 20 Letter addresses the Debtors’ satisfaction of conditions to closing the SGM Sale, and (ii) the SGM Letter alleges, among other things, “Material Adverse Effects” under the terms of the SGM APA. *See id.*

5. The Debtors intend to send a letter today in response to the SGM Letter (collectively, with the Debtors’ Nov. 20 Letter and the SGM Letter, the “Correspondence”).

6. The Correspondence is relevant to the Court’s request that the Debtors provide “the status of the closing of the SGM Sale.” *See* Order at 2. The Debtors, however, believe that publicly filing the Correspondence may be prejudicial and harmful to the estates because the Correspondence contains sensitive and confidential commercial information. Public disclosure of the Correspondence may have an adverse impact on (i) closing the SGM Sale, (ii) any alternative sales under Plan B, and the Debtors’ ability to maximize value thereto, and (iii) the current operations of the Debtors, employee retention and morale, and vendor support. Consequently, the Debtors request authority to file the Correspondence under seal.

7. The Official Unsecured Creditors Committee (the “UCC”) and lenders support the relief sought in this Motion.

II.

REQUEST FOR SEALING

The Debtors request to file the Correspondence under seal pursuant to §§ 105(a) and 107(b), (c), and (d), Rule 9018, LBR 5003-2(c), and § 2.8(b) of the Court Manual.

The Court may issue orders that will protect entities from potential harm caused by disclosure of confidential information, including “confidential research, development, or commercial information.” 11 U.S.C. §§ 107(b), (c); *see also* Fed. R. Bankr. P. 9018. Section 107 codifies “the rule that the public’s right to access [information in a case is] far from absolute.” *In re JMS Auto. Rebuilders, Inc.*, No. 01-05600, 2002 WL 32817517, at *3 (C.D. Cal. Jan. 15, 2002). Because of the term “shall,” “§ 107(b) [makes] it mandatory for a [bankruptcy] court to protect documents falling into one of the enumerated exceptions.” *In re Khan*, No. 13-1297, 2013 WL 6645436, at *3 (B.A.P. 9th Cir. Dec. 17, 2013); *see also Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (“if the information fits any of the specified categories, the court is *required* to protect a requesting interested party and has no discretion to deny the application”) (emphasis in original).

Further, courts may seal confidential commercial information to preserve the value of a proposed transaction or protect employee retention or morale. Specifically, for purposes of section 107(b), “commercial information” includes information which could negatively impact a debtor or its creditors. *See Orion Pictures*, 21 F.3d at 27 (affirming the protection of information which could negatively impact the debtor’s ability to negotiate favorable promotional agreements in the future); *In re Georgetown Steel Co., LLC*, 306 B.R. 542, 547 (Bankr. D.S.C. 2004) (protecting information which could negatively impact employee retention and morale); *In re Global Crossing, Ltd.*, 295 B.R. 720, 726 (Bankr. S.D.N.Y. 2003) (protecting information which could “injure the Debtors or thwart a transaction that the debtor and their unsecured creditors desire”).

Rule 9018 sets forth the procedure by which a party may move for relief to seal and states that the Court “may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development or commercial information.”

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1 FED. R. BANKR. P. 9018. Under § 2.8(b)(1) of the Court Manual, a party seeking to file documents
2 under seal must not file the sealed documents until the Court has ruled on its motion to seal the
3 information. The moving party “must describe the nature of the information that the party asserts
4 is confidential (without disclosing the confidential information itself) and explain why the
5 information should not be publicly disclosed.” *Id.*

6 The Debtors seek to file the Correspondence under seal because:

- 7 i. the SGM Sale is still pending and the Debtors do not desire to adversely impact the
8 SGM Sale by making public any of the Parties’ ongoing discussions concerning the
9 SGM Sale;
- 10 ii. given the possibility that the SGM Sale may still close, the Debtors do not wish to
11 further disrupt operations, employee retention and morale, and vendor support by
12 filing the Correspondence;
- 13 iii. the Debtors wish to maximize the value of any alternative sales under Plan B and
14 avoid any adverse impact to such sales; and
- 15 iv. the Debtors do not wish to file documents that contain confidential commercial
16 information at such a sensitive juncture.

17 Applying § 107(b), courts have stated that § 107(b) is not a “narrow exception, [but is]
18 designed to adapt the common law rule to the business realities of Chapter 11” and that § 107(b)
19 “is a pretty strong statement by Congress that confidential information should be protected” for
20 information that “[c]ompanies don’t go around publishing, internally let alone externally.” *In re*
21 *Energy Future Holdings Corp.*, No. 14-10979 [Docket No. 2375] (Hr’g Tr. at 29:7-30:23) (Bankr.
22 D. Del. Oct. 8, 2014) (available at Docket 718-1 in these Cases).

23 Here, the “business realities” support sealing the Correspondence from the public and
24 parties that might seek to wield the contents of the Correspondence against the Debtors. The
25 Debtors strongly believe that it would be highly prejudicial and harmful to the estates and their
26 ability to close the SGM Sale at the stated purchase price—or maximize value for any sales under
27 Plan B—should the Correspondence prematurely become a matter of public record. Accordingly,
28

the interests of the Debtors' estates and the Debtors' constituents are best served by filing the Correspondence under seal at this time.²

Notwithstanding the foregoing, Debtors will serve the Correspondence before the Status Conference to: (i) counsel for the UCC; (ii) counsel for the indenture trustees for the Debtors' prepetition lenders, UMB Bank N.A., as Successor Master Trustee for the Master Indenture Obligations, Wells Fargo Bank National Association as Indentures Trustee for Series 2005 Revenue Bonds, U.S. Bank National Association, as Series 2015 and Series 2017 Note Collateral Agent and Note Trustee, Verity MOB Financing LLC, and Verity MOB Financing II LLC; (iii) counsel for SGM; and (iv) other parties in interest who have signed non-disclosure agreements, per the Debtors' discretion (the "Disclosure Parties").

III.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court issue an order:

- (a) Allowing the Debtors to file the Correspondence under seal, with service to the Disclosure Parties; and
- (b) Granting such other and further relief as the Court deems just and proper.

Dated: November 25, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

Attorneys for Debtors

² The Debtors reserve all rights to seek an order unsealing the Correspondence for any purpose, including, without limitation, in connection with any motion pursuant to § 9.1(c) of the SGM APA.

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Debtors' Ex Parte Motion Allowing The Debtors To File Correspondence Regarding the SGM Sale Under Seal* (the "Motion"),³ and hereby state as follows:

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, budgeting, disease management, and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. I have personal knowledge of the facts stated in this Declaration, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

4. The Debtors intend to send a letter today in response to the SGM Letter.

5. The Correspondence is relevant to the Court's request that the Debtors provide "the status of the closing of the SGM Sale." *See* Order at 2. The Debtors, however, believe that publicly filing the Correspondence may be prejudicial and harmful to the estates because the Correspondence contains sensitive and confidential commercial information. Public disclosure of the Correspondence may have an adverse impact on (i) closing the SGM Sale, (ii) any alternative sales under Plan B, and the Debtors' ability to maximize value thereto, and (iii) the current operations of the Debtors, employee retention and morale, and vendor support. Consequently, the Debtors request authority to file the Correspondence under seal.

6. The Debtors seek to file the Correspondence under seal because:

³ Capitalized terms not otherwise defined in this Declaration have the definitions set forth in the Motion.

- 1 i. the SGM Sale is still pending and the Debtors do not desire to adversely
2 impact the SGM Sale by making public any of the Parties' ongoing
3 discussions concerning the SGM Sale;
- 4 ii. given the possibility that the SGM Sale may still close, the Debtors do not
5 wish to further disrupt operations, employee retention and morale, and
6 vendor support by filing the Correspondence;
- 7 iii. the Debtors wish to maximize the value of any alternative sales under Plan
8 B and avoid any adverse impact to such sales; and
- 9 iv. the Debtors do not wish to file documents that contain confidential
10 commercial information at such a sensitive juncture.

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

13 Executed this 25th day of November, 2019, in Los Angeles, California.

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16 Richard G. Adcock
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EXHIBIT 32

1 SAMUEL R. MAIZEL (Bar No. 189301)
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2 TANIA M. MOYRON (Bar No. 235736)
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3 NICHOLAS A. KOFFROTH (Bar No. 287854)
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Tel: (213) 623-9300 / Fax: (213) 623-9924
6 Attorneys for the Chapter 11 Debtors and
7 Debtors In Possession

FILED & ENTERED

NOV 25 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re

11 VERITY HEALTH SYSTEM OF
12 CALIFORNIA, INC., *et al.*,

13 Debtors and Debtors In Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
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Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Ernest M. Robles

**ORDER GRANTING DEBTORS' *EX PARTE*
MOTION FOR AN ORDER ALLOWING THE
DEBTORS TO FILE CORRESPONDENCE
REGARDING THE SGM SALE UNDER SEAL**

[RELATES TO DOCKET NO. 3697]

Status Conference:

Date: November 26, 2019

Time: 10:00 a.m.

Location: Courtroom 1568, 255 E. Temple St., Los
Angeles, CA

24 Debtors and Debtors In Possession.

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1 The Court, having read and considered the *Debtors' Ex Parte Motion for an Order*
2 *Allowing The Debtors To File Correspondence Regarding the SGM Sale Under Seal* (the
3 "Motion") [Docket No. 3697] and *Strategic Global Management, Inc.'s Objection to Debtor's Ex*
4 *Parte Motion for an Order Allowing the Debtors to File Correspondence Regarding the SGM*
5 *Sale Under Seal* (the "Objection") [Doc. No. 3698]; it further appearing that proper notice of the
6 Motion was provided; and good and sufficient cause having been shown,

7 IT IS HEREBY ORDERED:

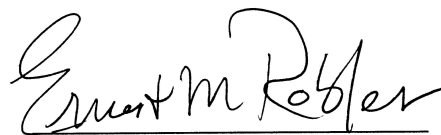
8 A. The **Objection is OVERRULED** and the Motion is GRANTED;

9 B. The Debtors may file the Correspondence (as defined in the Motion) under seal.

10 **IT IS SO ORDERED.**

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24 Date: November 25, 2019

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Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 33

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Attorneys for Strategic Global Management, Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF

CALIFORNIA, INC., *et al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

LEAD CASE NO.: 2:18-bk-20151-ER

CHAPTER: 11
JOINTLY ADMINISTERED WITH:

CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
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CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

**STRATEGIC GLOBAL MANAGEMENT,
INC.'S OBJECTION TO DEBTOR'S EX
PARTE MOTION FOR AN ORDER
ALLOWING THE DEBTORS TO FILE
CORRESPONDENCE REGARDING THE
SGM SALE UNDER SEAL**

[No Hearing Required per Bankruptcy Rule
9018]



1 Strategic Global Management, Inc. (“SGM”) respectfully submits the following *Objection*
2 *to the Debtor’s Ex Parte Motion for an Order Allowing the Debtors to File Correspondence*
3 *Regarding the SGM Sale under Seal* [Doc. 3697] (“Motion to Seal Correspondence”).

4 **I.**

5 **STATEMENT OF FACTS**

6 As this Court is aware, the Debtors and SGM are the parties to an Asset Purchase
7 Agreement, the final version of which was filed with this Court on May 2, 2019 [Doc. 2305]
8 (“APA”).

9 As this Court is also aware, certain disputes and controversies have arisen between SGM
10 and the Debtors with regard to the APA and, as a result of the emergence of those issues, the
11 parties have exchanged letters; the Debtor’s letter to SGM dated November 19, 2019 and SGM’s
12 letter to the Debtors dated November 22, 2019.

13 In the Debtors’ Status Report, which was filed on November 24, 2019 [Doc. 3692] the
14 Debtors acknowledged SGM’s letter of November 22, 2019 and stated, in Footnote 1:

15 “The Debtors did not attach the Debtor’s letter or SGM’s letter to this Status
16 Report, at this time, given that they pertain to ongoing discussions between the
17 parties.”

18 SGM believes that the Debtors’ position was appropriate since the present matter, i.e. a
19 Status Conference pertaining to the Debtors’ Disclosure Statement (a proceeding in which SGM
20 has not been involved and in connection with which it has taken no position), is not the
21 appropriate forum to request that the Court begin considering the issues, controversies and claims,
22 that may exist between the parties; and, certainly not to make any ruling, preliminary or
23 otherwise, concerning any of those claims and controversies. Indeed, SGM has been steadfast in
24 reserving all of its rights and not, in any way, conceding claims and arguments that the Debtors
25 have been making concerning the Debtors’ compliance with all conditions required of the Debtors
26 in connection with the APA.

27 ///

28 ///

II.

OBJECTION TO RELIEF REQUESTED

IN MOTION TO SEAL CORRESPONDENCE

At approximately 2:55 p.m. this afternoon, SGM received, through ECF, the *Debtor's Motion to Seal Correspondence* in connection with which the Debtor is proposing to file with this Court, and serve on certain "Disclosure Parties," including SGM, the Debtor's response to SGM's letter of November 22, 2019. **However, the Debtor does not propose to submit to the Court SGM's letter of November 22, 2019.** Thus, the Debtor is proposing to submit to the Court an entirely one-sided statement, out of context, which would be grossly prejudicial and fundamentally unfair to SGM. Indeed, SGM does not see any conceivable justification for the Debtors to file their correspondence other than as an attempt to influence the Court regarding the substantive merit of various, serious and complex claims that SGM has been asserting, without adhering to any rules of procedure, rules of evidence or due process. The "Correspondence" should not be submitted to the court at this time. Such correspondence should only be presented when doing so is proper under applicable rules of procedure and evidence.¹

CONCLUSION

For the reasons stated above, the *Debtor's Ex Parte Motion for an Order Allowing the Debtors to File Correspondence Regarding the SGM Sale under Seal* should be denied.

Dated: November 25, 2019

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: /s/ Gary E. Klausner
Gary E. Klausner
Counsel for Strategic Global Management, Inc.

¹ At the same time, the Debtors are apparently going to request that the Court resolve certain of those claims on an expedited and truncated process, which completely ignores applicable rules of bankruptcy procedure and due process protections to which SGM is entitled. This issue will be addressed in SGM's forthcoming Reservation of Rights in connection with Debtor's Status Report, which will be filed later today.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **STRATEGIC GLOBAL MANAGEMENT, INC.'S OBJECTION TO DEBTOR'S EX PARTE MOTION FOR AN ORDER ALLOWING THE DEBTORS TO FILE CORRESPONDENCE REGARDING THE SGM SALE UNDER SEAL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 25, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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12 **2. SERVED BY UNITED STATES MAIL:** On **November 25, 2019**, I served the following persons and/or
13 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true
14 and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
15 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be
16 completed no later than 24 hours after the document is filed.

15 ☐ Service information continued on attached page

16 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**
17 **EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
18 on **November 25, 2019**, I served the following persons and/or entities by personal delivery, overnight
19 mail service, or (for those who consented in writing to such service method), by facsimile transmission
20 and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or
21 overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

19 **Served via Attorney Service**

20 The Honorable Ernest M. Robles
21 United States Bankruptcy Court
22 Edward R. Roybal Federal Building
23 255 E. Temple Street, Suite 1560
24 Los Angeles, CA 90012

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

24 November 25, 2019	Lisa Masse	/s/ Lisa Masse
25 <i>Date</i>	<i>Type Name</i>	<i>Signature</i>

EXHIBIT 34

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES

3 --oOo--

4 In Re:) Case No. 2:18-bk-20151-ER
5)
6 VERITY HEALTH SYSTEM) Chapter 11
7 OF CALIFORNIA, INC.,)
8 Debtor,) Los Angeles, California
9) November 26, 2019
10) Wednesday, 10:00 A.M.
11 -----)
12

13 STATUS CONFERENCE RE:
14 [2995] MOTION FOR APPROVAL
15 OF CHAPTER 11 DISCLOSURE
16 STATEMENT NOTICE OF
17 HEARING AND MOTION OF THE
18 DEBTORS FOR AN ORDER
19 APPROVING: (I) PROPOSED
20 DISCLOSURE STATEMENT; (II)
21 SOLICITATION AND VOTING
22 PROCEDURES; (III) NOTICE
23 AND OBJECTION PROCEDURES
24 FOR CONFIRMATION OF
25 DEBTORS' PLAN; AND (IV)
GRANTING RELATED RELIEF

16 TRANSCRIPT OF PROCEEDINGS
17 BEFORE THE HONORABLE ERNEST ROBLES
18 UNITED STATES BANKRUPTCY JUDGE

19 APPEARANCES:

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24 Proceedings produced by electronic sound recording;
25 transcript produced by transcription service.

Page

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1 MR. MAIZEL: Well, Your Honor, we believe that
2 the vast majority -- in fact, we believe all of the
3 conditions are either satisfied or the allegations that
4 have been raised were waived because of the due diligence
5 period that expired on January 8th of this year.

6 THE COURT: Well --

7 MR. MAIZEL: So we agree with Your Honor, but the
8 problem is we have a buyer who believes there are material
9 adverse effects and the asset pur --

10 THE COURT: That's what confused me and that's
11 why I wasn't sure who was on first on this because why is
12 it your responsibility to give an avenue for the airing of
13 some sort of dispute which I think is the obligation of the
14 purchaser to have raised?

15 MR. MAIZEL: Well, Your Honor, we have an
16 obligation as fiduciary, as do our creditors, to see if
17 this sale can close because this is still Plan A sale. If
18 we can -- we are optimistic that if we show this buyer that
19 there are no -- that the Court would find there are no
20 material adverse effects, that this buyer who says in their
21 papers --

22 THE COURT: I have a surprise for you. As far as
23 the Court is concerned, the purchaser is a proud owner of a
24 passel of funds. Have fun.

25 All right. Look, there is no definition, as far

Page

13

1 as I'm aware, in Article II of what a material adverse
2 effect is, so let me supply what I think that definition is
3 and that definition is con -- a condition under which a
4 transaction -- a transaction would no longer be viable.
5 And because it appears in Article II there is another
6 requirement that that adverse effect is either a result of
7 fraud or misrepresentation. And if the -- and also because
8 there is a specific time requirement to get that material
9 adverse effect, it is the product of misrepresentation or
10 fraud before the Court has long since passed.

11 So what we have here, in my view, is just buyer's
12 remorse and I don't share in the boo-hoo of that. I had an
13 opportunity to review some of the correspondence going back
14 and forth. The picayune, the smallness of those alleged
15 transactions do not, in my view, reach the level of
16 material adverse effect. Sorry. That's what I think

17 The argument that somehow this Court is required
18 to have an adversary proceeding is absurd. That only
19 appears as far -- again, as far as I'm aware in the longest
20 paragraph known to man and that is I believe 8.6. Yes,
21 8.6. We're long past 8.6. The Attorney General has done
22 the right thing and we don't have those conditions.

23 So now we're left with a curious statement at
24 page 35 of my copy of the APA, which says that whether a
25 material adverse effect has occurred for any purpose under

Page

14

1 this agreement shall be exclusive settled by determination
2 made by the Bankruptcy Court. Doesn't say anything about
3 an adversary proceeding. "Exclusively," in my view, means
4 not appealable. So once we make the determination, which I
5 don't think we can do on a timely basis anymore, that's
6 gone.

7 After reviewing the statement of strategic, I
8 don't want to cast any negative aspersions at all. But I
9 want to make clear that I believe that it is operating very
10 closely within the satellite of bad faith. I think it has
11 an obligation to close. I think it wants to negotiate a
12 better deal. I think it believes that it will be
13 unpalatable for the Court and for others here to see
14 patients, young, old, infirmed, being wheeled or carted out
15 of the hospitals. That's a cynical view and I don't adhere
16 to it.

17 I believe that this contract is interpreted under
18 the laws of the State of California and so it has with it
19 the implied covenant of good faith and fair dealing and I
20 don't think that we have that here. I suspect that this
21 will close and if not, then they will pay damages pursuant
22 to this agreement.

23 All right. And that's all. And I don't see a
24 need for any further hearing.

25 Mr. Klausner.

EXHIBIT 35

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

FILED & ENTERED

NOV 27 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

☒ Affects All Debtors

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

Jointly Administered With:

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

Chapter 11 Cases.

ORDER (1) FINDING THAT SGM IS OBLIGATED TO CLOSE THE SGM SALE BY NO LATER THAN DECEMBER 5, 2019 AND (2) SETTING CONTINUED HEARING ON DEBTORS' MOTION FOR APPROVAL OF DISCLOSURE STATEMENT

Date: November 26, 2019

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

For the reasons set forth in the concurrently-issued *Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019* (the "Memorandum of Decision"), the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**



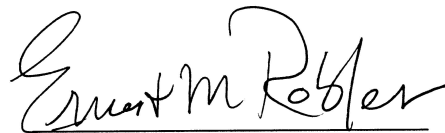
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- 1) Pursuant to § 1.3 of the APA,¹ SGM is obligated to close the SGM Sale by no later than December 5, 2019.
- 2) A continued hearing on the Debtors' motion to approve the adequacy of the Debtors' proposed Disclosure Statement (the "Disclosure Statement Motion") shall take place on **December 12, 2019, at 10:00 a.m.** The Debtors shall file a reply in support of the Disclosure Statement Motion by no later than **December 9, 2019.**

IT IS SO ORDERED.

###

Date: November 27, 2019



Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Memorandum of Decision.

EXHIBIT 36

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

FILED & ENTERED

NOV 27 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

☒ Affects All Debtors

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

Jointly Administered With:

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION FINDING THAT
SGM IS OBLIGATED TO CLOSE THE SGM SALE
BY NO LATER THAN DECEMBER 5, 2019**

Debtors and Debtors in Possession.,

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

I. Introduction

At the above-captioned date and time, the Court conducted a Status Conference regarding the Asset Purchase Agreement (the "APA") under which Strategic Global Management ("SGM") agreed to purchase the Debtors' four remaining hospitals (the "Hospitals," and the sale transaction, the "SGM Sale"). For the reasons set forth below, the Court finds that as of November 19, 2019, all conditions precedent to SGM's obligation to close had been satisfied.



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Accordingly, pursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019.

II. Findings and Conclusions

A. Adjudication of SGM's Obligations Under the APA Does Not Require an Adversary Proceeding

At the outset, the Court rejects SGM's contention that the Court is required adjudicate issues pertaining to SGM's obligations under the APA within the context of an adversary proceeding. SGM asserts that not all conditions precedent to closing have been satisfied. Specifically, SGM maintains that the Debtors have failed to comply with certain of the conditions and obligations imposed upon them by the APA, and that these alleged failures to perform have resulted in a Material Adverse Effect under the APA, relieving SGM of its obligation to close.

SGM is not obligated to close unless all the conditions precedent set forth in Article 8 have been satisfied. Among the conditions precedent is Article 8.4, which provides:

Sellers [the Debtors] shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; provided, however, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

The APA provides that "any dispute between Purchaser [SGM] and Sellers [the Debtors] as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court." APA at Art. 9.1(c). Nothing within Article 9.1(c) requires that the determination contemplated therein occur through an adversary proceeding. In contrast, Article 8.6 provides that any dispute pertaining to certain aspects of that article "shall be determined by the Bankruptcy Court only in the context of an adversary proceeding." The absence of comparable language in Article 9.1(c) undercuts SGM's contention that disputes under that article must be determined through an adversary proceeding.

Bankruptcy Rule 7001¹ provides that the following matters are adversary proceedings:

- 1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
- 2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

¹ Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

- 3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
- 4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), 1 (a)(9), or 1328(f);
- 5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
- 6) a proceeding to determine the dischargeability of a debt;
- 7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
- 8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
- 9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
- 10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

SGM contends that a determination of whether a Material Adverse Effect has occurred is “a proceeding to recovery money or property,” “a proceeding to obtain an injunction or other equitable relief,” and/or “a proceeding to obtain a declaratory judgment relating” to any of the types of proceedings set forth in Bankruptcy Rule 7001(1)–(8). SGM is mistaken.

First, adjudication of whether a “Material Adverse Effect” has occurred is not “a proceeding to recover money or property.” Instead, such adjudication involves interpretation of a contract (the APA). It is true that a determination that there has been no Material Adverse Effect and that SGM is obligated to close the sale would require SGM to perform under its agreement to purchase the Hospitals. The fact that performance would require SGM to transfer money to the Debtors (the purchase price for the Hospitals) does not transform the “Material Adverse Effect” issue into a “proceeding to recovery money or property” within the meaning of Bankruptcy Rule 7001(1). SGM voluntarily chose to execute the APA and serve as the stalking horse bidder for the Hospitals for a purchase price of \$610 million, subject to various adjustments. A determination requiring SGM to follow through on its commitments is very different from the typical actions brought under Bankruptcy Rule 7001(1)—such as proceedings to avoid preferences under § 547, proceedings to avoid fraudulent transfers under § 548, or proceedings to set aside post-petition transfers under § 549.

Second, adjudication of the “Material Adverse Effect” issue is not “a proceeding to obtain an injunction or other equitable relief.” A determination setting forth SGM’s obligations under a contract which it executed (the APA) is not an injunction or a form of equitable relief.

Third, adjudication of the “Material Adverse Effect” issue is not “a proceeding to obtain a declaratory judgment” relating to any of the types of proceedings set forth in Bankruptcy Rule 7001(1)–(8). Interpretation of the APA does not fall within the scope of any of the types of proceedings set forth in Bankruptcy Rule 7001(1)–(8). Therefore, a declaration of SGM’s obligations under the APA does not fall within the ambit of Bankruptcy Rule 7001(9).

B. Adjudication of SGM’s Obligations Under the APA Is Not Premature

SGM asserts that the issue of whether it has performed its obligations under the APA is not yet properly before the Court, and that the Debtors’ request for a determination as to this issue is premature. SGM states that it has not yet decided whether it will close the SGM Sale. According to SGM, a case or controversy will arise only after SGM makes a final determination that it will not close the SGM Sale.

SGM is incorrect. SGM has made representations to the Debtors that provide reasonable grounds for the Debtors to doubt that SGM will fulfill its obligations under the APA. (The contents of those representations are not discussed herein because they have been presented to the Court under seal.) In response to the Debtors' demand for written assurance that SGM would fulfill its obligations, SGM sent the Debtors two letters casting further doubt upon whether it would perform under the APA (the "Nov. 22 Letters").² SGM's actions have given rise to a case or controversy.

The Court further notes that although SGM presented its ripeness argument in a document captioned as a reservation of rights,³ SGM's submission was in reality an opposition to the Debtor's assertion that all conditions precedent to SGM's obligation to close have been satisfied. The Nov. 22 Letters also qualify as an opposition to the Debtors' assertions regarding SGM's obligation to close. The Nov. 22 Letters contain 19 single-spaced pages of legal argument and 38 pages of supporting exhibits. SGM's arguments regarding its obligations under the APA have been fully presented to the Court.

Finally, and as further discussed in Section II.D., below, the Court finds that SGM's contention that it is not obligated to close is a cynical attempt to extract a better purchase price. A key component of SGM's negotiation strategy is its attempt to delay as long as possible the adjudication of its obligations under the APA. The Court will not facilitate SGM's dubious tactics.

C. SGM Is Not Entitled to Appeal the Bankruptcy Court's Determination Regarding a Material Adverse Effect

SGM received substantial benefits under the APA, including the right to receive a breakup fee in the event that it was outbid and consultation rights in the event that an auction of the Hospitals occurred. In exchange for receiving those benefits, SGM waived certain rights, including its right to appeal any determination made by the Bankruptcy Court with respect to the occurrence of a Material Adverse Effect.

As noted, the APA provides that "any dispute between Purchaser [SGM] and Sellers [the Debtors] as to whether a Material Adverse Effect has occurred for any purpose under this Agreement *shall be exclusively settled* by a determination made by the Bankruptcy Court." APA at Art. 9.1(c). This provision means that only the Bankruptcy Court, and no other court (including any appellate court), is entitled to determine Material Adverse Effect issues.

D. No Material Adverse Effect Has Occurred

As set forth above, SGM alleges that the Debtors have failed to comply with certain of the conditions and obligations imposed upon them by the APA, and that these alleged failures to perform have resulted in a Material Adverse Effect, relieving SGM of its obligation to close. This Memorandum of Decision does not discuss SGM's allegations in detail, as doing so would damage the estates by adversely affecting (1) the Debtors' efforts to close the SGM Sale and (2) the Debtors' ability to maximize the value of the Hospitals in the event the SGM Sale does not close.

² The Nov. 22 Letters have also been filed under seal.

³ Doc. No. 3701.

Under Section 8.4 of the APA, SGM is excused from its obligation to close only if (1) the Debtors have failed to perform their obligations under the APA and if (2) such failure to perform has resulted in a Material Adverse Effect.

The APA's definition of "Material Adverse Effect" is very brief. Under the APA, a "Material Adverse Effect" is "a material adverse effect upon the Hospitals, taken as a whole" APA at Art. 2, Preamble.

"Material Adverse Effect" is a term of art routinely used in asset purchase agreements of the type at issue here. The parties' use of a term of art, combined with their decision to define the term with only minimal detail, shows that the parties intended to rely upon the definition of the term contained in applicable caselaw.

The APA is governed by California law, except to the extent that California law is superseded by the Bankruptcy Code or other applicable federal law. APA at Art. 12.3. California law on the meaning of a material adverse effect clause—sometimes known as a material adverse change clause—is not well developed. The few cases which do address material adverse effect clauses view their enforcement with disfavor. For example, in *1601 McCarthy Blvd., LLC v. GMAC Comm'l Mortg. Corp.*, 2005 WL 4859147 (Cal. Super. Ct. June 1, 2005), the court held that a loan servicer's invocation of a material adverse effect clause to avoid its obligation to disburse funds to a borrower was an "unfair business practice or act," because the servicer "used the material adverse change clause as a lever against [the borrower] to retain control over the borrower's ... funds." *McCarthy Blvd.*, 2005 WL 4859147 at *¶ 59. The court found:

[L]enders rarely employ—and even less frequently invoke and enforce—this type of broad-based material adverse change clause in commercial real estate transactions.... And even when they are invoked, ... lenders only use the clause as a tool to "bring the borrower to the table, use it as lever against the borrower, or ... a club against the borrower to modify the loan or change the loan." There is no evidence in the record that the material adverse change clause in the Deed of Trust benefits any side but the lender, or serves any other purpose than to threaten the borrower with dire consequences....

The record supports Mr. Greenwald's opinion that broad-based material adverse change clauses are rarely used, and in those rare instances when they are, they are placed in deeds of trust purely for their in terrorem effect and not with any genuine intention to invoke them.

Id. at ¶¶ 59 and 68.

Although the APA is governed by California law, Delaware cases interpreting material adverse effect clauses are helpful persuasive authority. A significant amount of the litigation over the enforcement of asset purchase agreements occurs before Delaware courts, and the Delaware caselaw interpreting material adverse effect clauses is well developed.

In *In re IBP, Inc. Shareholders Litigation*, the court rejected purchaser Tyson Foods' claim that it was not required to consummate a merger because of a material adverse effect. The court held:

[A] buyer ought to have to make a strong showing to invoke a Material Adverse Effect exception to its obligation to close. Merger contracts are heavily negotiated and cover a large number of specific risks explicitly. As a result, even where a Material Adverse Effect condition is as broadly written as the one in the Merger Agreement, that provision

is best read as a backstop protecting the acquiror from the occurrence of unknown events that substantially threaten the overall earnings potential of the target in a durationally-significant manner. A short-term hiccup in earnings should not suffice; rather the Material Adverse Effect should be material when viewed from the longer-term perspective of a reasonable acquiror.

In re IBP, Inc. Shareholders Litig. (IBP, Inc. v. Tyson Foods, Inc.), 789 A.2d 14, 68 (Del. Ch. 2001).

In *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.*, 965 A.2d 715, 738 (Del. Ch. 2008), the court reiterated that a “buyer faces a heavy burden when it attempts to invoke a material adverse effect clause in order to avoid its obligation to close.”

Assessment of the occurrence of a Material Adverse Effect must take into account the \$610 million purchase price for the Hospitals. To prevail upon its assertion of a Material Adverse Effect, SGM would be required to show the occurrence of unexpected events which have substantially reduced the value of the Hospitals. Here, representative examples of a “Material Adverse Effect” under Article 8.4 of the APA would include the Debtors’ failure to maintain the Hospitals’ licensure, or the Debtors’ operation of the Hospitals in a manner that caused regulatory authorities to close key departments within the Hospitals, such as the emergency department or pharmacy.

None of SGM’s allegations come even close to showing a Material Adverse Effect. Even if all the allegations are true (a finding the Court does not make), SGM would not be excused from closing the sale under Article 8.4 of the APA.⁴

SGM’s invocation of the APA’s Material Adverse Effect provision is not well taken. The Court has previously made clear that the closing of the SGM Sale is the lynchpin of the Debtors’ plan of liquidation; that if the SGM Sale does not promptly close, the most likely outcome will be the closure of three of the four Hospitals; and that the prompt closing of the sale is critical to the estates’ liquidity position.⁵ SGM is well aware that it was the only bidder for the Hospitals. By presenting non-meritorious arguments as to why it is not obligated to close, SGM is holding the estates, creditors, and patients of the Hospitals hostage in an attempt to extort a better purchase price. SGM’s cynical tactics are especially offensive given the significant harm that closure of the Hospitals would impose upon patients. For example, two of the Hospitals that

⁴ Had SGM presented its allegations by way of an adversary complaint, the Court would dismiss such a complaint under Civil Rule 12(b)(6) for failure to state a claim upon which relief could be granted.

⁵ See Memorandum of Decision Granting Debtors’ Emergency Motion to Enforce the Sale Order (the “Sale Enforcement Memorandum”) [Doc. No. 3446] at 3–4 and Memorandum of Decision (1) Finding that SGM is Obligated to Promptly Close the SGM Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors’ Motion for a Continuance of the Hearing to Approve the Disclosure Statement [Doc. No. 3632]. The Sale Enforcement Memorandum was subsequently vacated pursuant to a stipulation between the Debtors and the California Attorney General (the “Attorney General”), under which the Attorney General agreed not to pursue an appeal in exchange for vacatur of the Sale Enforcement Memorandum. Doc. No. 3599. Notwithstanding such vacatur, the Sale Enforcement Memorandum’s findings regarding the importance of consummation of the SGM Sale remain valid.

would likely close upon failure of the SGM Sale contain large populations of long-term patients suffering from severe illnesses, all of whom would have to be relocated to other facilities.

E. All Conditions Precedent to Closing Have Been Satisfied

The Court has previously found that the condition precedent to closing set forth in Article 8.6 of the APA has been satisfied.⁶ All other conditions precedent to closing were satisfied as of November 19, 2019. On that date, the Debtors obtained a settlement with the Centers for Medicare and Medicaid Services providing for the transfer of their Medicare Provider Agreements to SGM, thereby satisfying their remaining obligations under Article 8.7 of the APA.⁷

Article 1.3 obligates SGM to close the sale “promptly but no later than ten (10) business days following the satisfaction” of all conditions precedent. As all conditions precedent were satisfied on November 19, 2019, SGM is obligated to close the sale by no later than December 5, 2019.

III. Conclusion

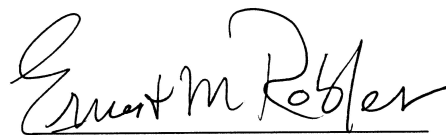
Based upon the foregoing, the Court finds that all conditions precedent to SGM’s obligation to close the SGM Sale have been satisfied. Pursuant to Article 1.3 of the APA, SGM is obligated to close by no later than December 5, 2019. The Court will enter an order consistent with this Memorandum of Decision.

⁶ Memorandum of Decision (1) Finding that SGM is Obligated to Promptly Close the SGM Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors’ Motion for a Continuance of the Hearing to Approve the Disclosure Statement [Doc. No. 3632].

⁷ Article 8.7 also obligates the Debtors to transfer their Medi-Cal Provider Agreements to SGM pursuant to a settlement agreement with the California Department of Health Care Services (the “DHCS”). The Debtors materially complied with Article 8.7 by obtaining an order authorizing the transfer of the Medi-Cal Provider Agreements free and clear of any interest asserted by the DHCS. *See* Order Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interest Asserted by the California Department of Health Care Services, Pursuant to §§ 363(b) and (f)(5) [Doc. No. 3372].

###

Date: November 27, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The middle initial "M" is smaller and positioned between the first and last names.

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 37

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>GARY E. KLAUSNER (SBN 69055) LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard, Suite 1700 Los Angeles, CA 90067 Telephone: (310) 229-1234 Facsimile: (310) 229-1244 Email L gek@lnbyb.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Strategic Global Management, Inc.</p>	<p>FOR COURT USE ONLY</p>
<p align="center">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</p>	
<p>In re:</p> <p>Verity Health System of California, Inc., et al.,</p> <p align="right">Debtor(s).</p>	<p>CASE NO.: 2:18-bk-20151-ER</p> <p>ADVERSARY NO.: <i>(if applicable)</i></p> <p>CHAPTER: 11</p>
<p align="center">Plaintiff(s) <i>(if applicable)</i>. vs. Defendant(s) <i>(if applicable)</i>.</p>	<p align="center">NOTICE OF APPEAL AND STATEMENT OF ELECTION</p>

Part 1: Identify the appellant(s)

- Name(s) of appellant(s): Strategic Global Management, Inc.
- Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:
 For appeals in an adversary proceeding.
☐ Plaintiff
☐ Defendant
☒ Other (*describe*):
 For appeals in a bankruptcy case and not in an adversary proceeding.
☐ Debtor
☐ Creditor
☐ Trustee
☒ Other (*describe*): Party in Interest and proposed buyer in Section 363 sale



Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:
Order Granting "Debtors' Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale Is Free and Clear of Conditions Materially Different than Those Approved by the Court; (III) Finding that..." [Dkt. No. 3611]
2. The date the judgment, order, or decree was entered: 11/14/2019
See Exhibit A attached hereto.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Verity Health System of California, Inc.
Attorney:
Samuel R. Maizel; Tania M. Moyron; and Nicholas A Koffroth
Dentons US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: 213-623-9300
2. Party: California Department of Health Care Services
Attorney:
Xavier Becerra; Jennifer M. Kim; Kenneth K. Wang
Attorney General of California
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: 213-897-2805

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

/s/ Gary E. Klausner Date: 11/29/2019
Signature of attorney for appellant(s) (or appellant(s)
if not represented by an attorney)

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

EXHIBIT A

SAMUEL R. MAIZEL (Bar No. 189301)
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Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

FILED & ENTERED

NOV 14 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



182015119111400000000009

The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No. 3572] by and among the Debtors and the Attorney General, and good cause appearing,

HEREBY ORDERS AS FOLLOWS:

1. The Motion is GRANTED.
2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and withdrawn.
3. Solely and exclusively for purposes of the APA (as defined below) and the Motion, the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f). The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions without the imposition of any other conditions which would adversely affect the Purchaser (as defined in the APA).
4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or controversies regarding the interpretation or enforcement of this Order. Notwithstanding the preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the Attorney General to enforce, in the California state courts and pursuant to section 5926 of the California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the APA.

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

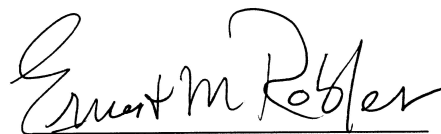
1 5. The Attorney General waives any right to appeal this Order.

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3 **IT IS SO ORDERED.**

4 ###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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24 Date: November 14, 2019


Ernest M. Robles
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled: **NOTICE OF APPEAL AND STATEMENT OF ELECTION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 29, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY UNITED STATES MAIL: On December 2, 2019 served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 29, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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

November 29, 2019	Jeffrey Kwong	/s/ Jeffrey Kwong
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

EXHIBIT 38

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>GARY E. KLAUSNER (SBN 69055) LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard, Suite 1700 Los Angeles, CA 90067 Telephone: (310) 229-1234 Facsimile: (310) 229-1244 Email: gek@lnbyb.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Strategic Global Management, Inc.</p>	<p>FOR COURT USE ONLY</p>
<p align="center">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</p>	
<p>In re:</p> <p>Verity Health System of California, Inc., et al.,</p> <p align="right">Debtor(s).</p>	<p>CASE NO.: 2:18-bk-20151-ER</p> <p>ADVERSARY NO.: <i>(if applicable)</i></p> <p>CHAPTER: 11</p>
<p align="center">Plaintiff(s) <i>(if applicable)</i>. vs. Defendant(s) <i>(if applicable)</i>.</p>	<p align="center">NOTICE OF APPEAL AND STATEMENT OF ELECTION</p>

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Strategic Global Management, Inc.
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:
 For appeals in an adversary proceeding.
☐ Plaintiff
☐ Defendant
☒ Other (*describe*):
 For appeals in a bankruptcy case and not in an adversary proceeding.
☐ Debtor
☐ Creditor
☐ Trustee
☒ Other (*describe*): Party in Interest and proposed buyer in Section 363 sale



Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:
Order (1) Finding that SGM Is Obligated to Promptly Close the SGM Sale Under Sec. 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement [Dkt. 3633]
2. The date the judgment, order, or decree was entered: 11/18/2019
See Exhibit A attached hereto.

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Verity Health System of California, Inc.
Attorney:
Samuel R. Maizel; Tania M. Moyron; and Nicholas A. Koffroth
Dentons US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: 213-623-9300
2. Party: California Department of Health Care Services
Attorney:
Xavier Becerra; Jennifer M. Kim; Kenneth K. Wang
Attorney General of California
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: 213-897-2805

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

/s/ Gary E. Klausner Date: 11/29/2019
Signature of attorney for appellant(s) (or appellant(s)
if not represented by an attorney)

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

EXHIBIT A

FILED & ENTERED

NOV 18 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Illewis DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

ORDER (1) FINDING THAT SGM IS OBLIGATED TO PROMPTLY CLOSE THE SGM SALE UNDER § 8.6 OF THE APA, PROVIDED THAT ALL OTHER CONDITIONS TO CLOSING HAVE BEEN SATISFIED AND (2) GRANTING DEBTORS' MOTION FOR A CONTINUANCE OF THE HEARING TO APPROVE THE DISCLOSURE STATEMENT

CONTINUED HEARING TO APPROVE DISCLOSURE STATEMENT:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



1820151191118000000000014

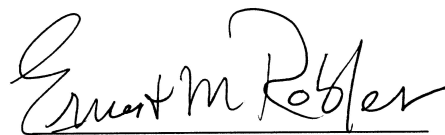
For the reasons set forth in the concurrently-issued *Memorandum of Decision (1) Finding that SGM is Obligated to Promptly Close the SGM Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement* (the “Memorandum of Decision”), the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

- 1) The Debtors have complied with their obligation under the APA¹ to obtain a final, non-appealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.
- 2) The hearing on the Disclosure Statement Motion is **CONTINUED** from November 20, 2019, at 10:00 a.m. to **November 26, 2019, at 10:00 a.m.** The Debtors' Reply in support of the Disclosure Statement Motion shall be filed by no later than **November 21, 2019.**

IT IS SO ORDERED.

###

Date: November 18, 2019



Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Memorandum of Decision.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled: **NOTICE OF APPEAL AND STATEMENT OF ELECTION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 29, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY UNITED STATES MAIL: On December 2, 2019 served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows.

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **November 29, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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

November 29, 2019	Jeffrey Kwong	/s/ Jeffrey Kwong
<i>Date</i>	<i>Type Name</i>	<i>Signature</i>

EXHIBIT 39

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Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

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

Jointly administered with:

Case No. 2:18-bk-20162-ER;
Case No. 2:18-bk-20163-ER;
Case No. 2:18-bk-20164-ER;
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Case No. 2:18-bk-20178-ER;
Case No. 2:18-bk-20179-ER;
Case No. 2:18-bk-20180-ER;
Case No. 2:18-bk-20181-ER;

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DEBTORS' EMERGENCY MOTION FOR (I) ISSUANCE
OF AN ORDER TO SHOW CAUSE WHY STRATEGIC
GLOBAL MANAGEMENT, INC. FAILED TO CLOSE
THE SALE TRANSACTION BY DECEMBER 5, 2019;
AND (II) ENTRY OF AN ORDER ENFORCING PRIOR
COURT ORDERS REQUIRING STRATEGIC GLOBAL
MANAGEMENT, INC. TO CLOSE THE SALE
TRANSACTION BY DECEMBER 5, 2019**

[RELATED TO DOCKET NOS. 2306, 3724]

Hearing Date and Time:

Date: TBD

Time: TBD

Place: Courtroom 1568,
255 E. Temple Street
Los



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EMERGENCY MOTION

Pursuant to LBR¹ 9020-1 and 9075-1, Rule 6004, and §§ 363 and 105(a), Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request, on an emergency basis (the “Motion”), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. (“SGM”) and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court’s order [Docket No. 3724] (the “Closing Order”) requiring SGM to close the sale (the “SGM Sale”) pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “APA”) by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors’ request for an order (a) enforcing this Court’s order [Docket No. 2306] (the “Sale Order”) approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer immediate and irreparable harm without the relief requested in this Motion. The

¹ All references to “§” herein are to sections of the “Bankruptcy Code,” 11 U.S.C. §§101, *et seq.* unless otherwise noted. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure. All references to “LBR” refer to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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1 prompt sale and transition of the Debtors' four remaining general acute care hospitals² is needed to
2 prevent any deterioration in critical healthcare in underserved communities caused by accelerating
3 employee turnover, as well as the operating losses continuing to reduce anticipated recoveries to
4 creditors. The Debtors (i) are operating at a loss of approximately \$450,000 per day, imposing
5 significant costs upon the estates and upon creditors, and (ii) the uncertainty caused by SGM has
6 significantly increased the rate of employee turnover at Verity's hospitals, a void filled by expensive
7 per diem, temporary nurses and *locum tenens* physicians at a much greater cost to the estates.
8 Finally, but crucially, the APA specifically provides that "[t]ime is of the essence." See APA at §§
9 12.17. SGM's failure to close the Sale violates the express terms of the APA, as well as this Court's
10 unambiguous Orders. In order to make critical decisions impacting the Hospitals and alternative
11 plans, the Debtors must have immediate clarity on (i) whether SGM has the financial ability to
12 proceed with the Sale transaction, and (ii) whether SGM intends to proceed with the Sale transaction
13 in 2019. SGM steadfastly has refused to provide such critical information to the Debtors, even in
14 the face of its utter failure to comply with this Court's prior Orders. This Court's immediate
15 intervention is respectfully requested and required.

16 **I.**

17 **SUMMARY OF REQUESTED RELIEF**

18 As set forth above, the Debtors seek the entry of three orders. **First**, pursuant to LBR 9020-1,
19 the Debtors respectfully request that the Court issue an order to show cause, lodged concurrently
20 herewith pursuant to LBR 9020-1(a), on an expedited basis ordering SGM and its principals, Kali
21 Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11,
22 2019, at 10:00 a.m., and show cause as to why SGM failed to (a) close the SGM Sale by December
23 5, 2019, (b) comply with this Court's Closing Order, (c) demonstrate to the Debtors that SGM
24 currently has the financial ability or access to sufficient capital to timely proceed with this
25 transaction in accordance with the APA, and (d) advise the Debtors as to SGM's intention to close
26 _____

27 ² Specifically, the hospitals and healthcare facilities subject to the SGM Sale include St. Francis
28 Medical Center, St. Vincent Medical Center, Seton Medical Center (including the Daly City and
Coastside campuses), and St. Vincent Dialysis Center.

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1 the transaction. Given the exigencies of the Debtors' Cases, the Debtors respectfully request that
2 the Court reduce the 7-day opposition or response deadline set forth in LBR 9020-1(b), or
3 provisionally issue the order to show cause and provide that parties may object to the issuance at
4 the hearing on the order to show cause. Pursuant to LBR 9020-1, the Court is not required to hold
5 a hearing on the Debtors' request to issue the order to show cause. *See* LBR 9020-1(d)(2). **Second**,
6 the Debtors respectfully request that the Court enter an order setting the balance of the relief
7 requested in this Motion and the attached Memorandum of Points and Authorities for an emergency
8 hearing on December 11, 2019, at 10:00 a.m. **Third**, following the emergency hearing, the Debtors
9 request entry of an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that
10 SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by
11 December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further
12 notice to SGM, (d) finding that the Debtors shall retain the \$30 million non-refundable deposit
13 received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final
14 DIP Order [Docket No. 409], and (e) granting such other and further relief as the Court deems just
15 and proper

16 This Motion is based upon §§ 105 and 363, Rule 6004, LBR 9020-1 and 9075-1(a), the
17 attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of*
18 *Emergency First-Day Motions* [Docket No. 8], the *Declaration of Richard G. Adcock* [Docket No.
19 3188], the *Declaration of Richard G. Adcock* [Docket No. 3644], the *Declaration of Carsten Beith*
20 (the "Beith Declaration"), *Declaration of Sonia R. Martin* (the "Martin Declaration"), and the
21 *Declaration of Elspeth Paul* (the "Paul Declaration"), which are filed concurrently herewith, the
22 arguments and statements of counsel to be made at the hearing on the Motion, and any other
23 admissible evidence as may properly be brought before the Court. The Debtors further request that
24 the Court take judicial notice of all documents filed with the Court in this case that relate to the
25 status conference held before the Court on November 26, 2019, including the Debtors' status report
26 [Docket No. 3692], the documents filed under seal pursuant to the Court's orders [Docket Nos.
27 3679, 3699], and SGM's reservation of rights [Docket No. 3701].
28

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1 II.

2 **RESPONSES**

3 By this Motion, the Debtors have requested that the Court issue the order to show cause on
4 an expedited basis. Any party opposing or responding to the Debtors' request that the Court issue
5 an order to show cause pursuant to LBR 9020-1 may present such opposition or response as directed
6 by the Court in any subsequent order.

7 Any party opposing or responding to any other relief requested in the Motion may present
8 such response (the "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-
9 1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the
10 Motion or in support, declarations and copies of all evidence on which the responding party intends
11 to rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the
12 failure to file and serve a timely objection to any request for relief set forth in the Motion may be
13 deemed by the Court to be consent to the relief requested herein.

14 III.

15 **SERVICE OF MOTION**

16 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
17 Authorities, the concurrently-filed Beith Declaration, Martin Declaration and Paul Declaration, and
18 any notice required by the Court on: (i) Strategic Global Management, Inc., (ii) the Official
19 Committee of Unsecured Creditors, (iii) the Debtors' Prepetition Secured Creditors as defined in
20 the Final DIP Order, (iv) the Office of the United States Trustee; and (v) any other parties on the
21 Limited Service List set forth in the *Order Granting Emergency Motion of Debtors for Order*
22 *Limiting Scope of Notice* [Docket No. 132]. To the extent necessary, the Debtors request that the
23 Court waive compliance with LBR 9075-1(a)(6) and approve service (in addition to the means of
24 services set forth in such Local Bankruptcy Rule) by overnight delivery.

25 IV.

26 **RESERVATION OF RIGHTS**

27 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
28 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in

1 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
2 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
3 holder.

4 **V.**

5 **CONCLUSION**

6 WHEREFORE, for all the foregoing reasons and such additional reasons as may be
7 advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the
8 Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a),
9 on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas,
10 and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause
11 as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5,
12 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with
13 this transaction in accordance with the APA, and whether it intends to close the transaction; and
14 (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points
15 and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the
16 Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding
17 that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale
18 by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without
19 further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable
20 deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of
21 the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court
22 deems just and proper.

1 Dated: December 6, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
SONIA R. MARTIN
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

5 By /s/ Tania M. Moyron
Tania M. Moyron

Attorneys for Verity Health Systems of
California, Inc., *et al.*

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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request, on an emergency basis (the “Motion”), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. (“SGM”) and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court’s order [Docket No. 3724] (the “Closing Order”) requiring SGM to close the sale (the “SGM Sale”) pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “APA”) by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors’ request for an order (a) enforcing this Court’s order [Docket No. 2306] (the “Sale Order”) approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Motion is based on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”), the *Declaration of Richard G. Adcock* [Docket No. 3188] (“Adcock Declaration”), the *Declaration of Carsten Beith* (the “Beith Declaration”), *Declaration of Sonia R. Martin* (the “Martin Declaration”), and the *Declaration of Elspeth Paul* (the “Paul Declaration”), which are filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, the record in the Debtors’ Cases

1 and any other judicially noticeable facts, and other admissible evidence properly brought before
2 the Court. In further support of the Motion, the Debtors respectfully state as follows:

3 I.

4 INTRODUCTION

5 Six months after this Court entered the order (the “Sale Order”)¹ authorizing the Debtors to
6 sell their four remaining general acute care hospitals² and St. Vincent Dialysis Center (the
7 “Hospitals”) to SGM, the Court entered its order, on November 27, 2019, obligating SGM to close
8 the SGM Sale pursuant to the APA by December 5, 2019 (the “Closing Order”).³ The Court’s
9 Closing Order also found that there has been no material adverse effect under the APA, and that
10 the APA does not permit SGM to appeal this Court’s determination as to that issue.

11 Despite the clear requirements of the APA and in direct contravention of this Court’s prior
12 Orders, SGM announced that it *would not close the SGM Sale—and, then, did not close the SGM*
13 *Sale—by December 5, 2019*. In a transparent attempt to delay this proceeding, frustrate the
14 Debtors’ ability to transfer the Hospitals pursuant to the APA, and manufacture a context to
15 renegotiate the purchase price under the APA, SGM has filed three frivolous appeals. Further,
16 SGM has taken the facially implausible position that it is entitled to a 21-day “Evaluation Period”
17 under Section 8.6 of the APA, during which it may “determine” whether it is satisfied with the
18 Attorney General Order that provides precisely the same protection that is set forth in Section 8.6
19 of the APA. Docket No. 2305-1. These actions expressly violate this Court’s Orders and the APA.
20 *See, e.g.,* APA, § 1.3 (“ . . . Purchaser shall reasonably cooperate in any efforts to render the
21 Supplemental Sale Order a final, non-appealable order[.]”).

22 Each day that goes by without prompt action by SGM to close this transaction harms the
23 estates. The Debtors’ estates and their constituents have already borne operating losses of

24
25 _____
26 ¹ Docket No. 2306.

27 ² Specifically, the Hospitals include St. Francis Medical Center, St. Vincent Medical Center, and
Seton Medical Center (including the Daly City and Coastsides campuses).

28 ³ Docket No. 3723-24.

1 approximately \$450,000 per day waiting for SGM to close the SGM Sale. SGM's failure to timely
2 issue offer letters has had a negative impact on employee morale. Moreover, the Debtors and third
3 parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the
4 Sale Order and the Closing Order. Despite this, SGM has intentionally frustrated the closing
5 process by refusing to participate. In addition to announcing that it would not close the SGM Sale
6 on December 5, as ordered by the Court, throughout the week leading up to the filing of this Motion,
7 SGM has refused to participate in the regular, pre-scheduled joint closing calls and operational
8 transition calls, apparently based on the advice of its counsel.

9 By signing the APA, SGM represented and agreed that "[p]urchaser has the ability to obtain
10 funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and
11 will at the Closing have immediately available funds in cash, which are sufficient to pay the
12 Purchase Price and to pay any other amounts payable pursuant to this Agreement and to
13 consummate the transactions contemplated by this Agreement." Given the actions and inactions of
14 SGM over the past month, which suggest SGM lacks the financial ability to close the SGM Sale,
15 the Debtors have made repeated and direct requests that SGM state whether it has the financial
16 ability to close the SGM Sale, and whether it intends to do so. SGM has refused to respond,
17 attempting to distract from its apparent financial inability to perform and seeking to preserve the
18 ability to argue at some later date that the Debtors breached the APA by deciding prematurely to
19 distribute their assets in a different manner, *i.e.* "Plan B" as it was referred to during the November
20 26, 2019, status conference.

21 SGM is in direct violation of this Court's prior Orders. Its conduct is an effort to gain
22 leverage against the Debtors in order to force a modification of the APA as to price and/or timing
23 of closing. Such efforts are a manifestation of SGM's lack of good faith and fair dealing under the
24 APA and constitute willful misconduct designed to harm the Debtors and impair the effectiveness
25 of this Court's orders, *i.e.*, its actions have been taken in bad faith. The Debtors respectfully urge
26 the Court to issue an order (i) enforcing this Court's Sale Order and Closing Order; (ii) ordering
27 SGM and its principals, Kali Pradip Chaudhuri, William Thomas and Peter Baronoff, to appear in
28 this Court, on December 11, 2019, and show cause as to why SGM failed to (a) close the SGM Sale

1 by December 5, 2019, (b) comply with this Court’s Closing Order, (c) demonstrate to the Debtors
2 that SGM currently has the financial ability or access to sufficient capital to timely proceed with
3 this transaction in accordance with the APA, and (d) advise the Debtors as to SGM’s intention to
4 close the transaction; (iii) finding that SGM is in material breach of the APA for (among other
5 things) failing to Close the SGM Sale by December 5, 2019; (iv) finding that the Debtors may
6 terminate the APA at any time without further notice to SGM; (v) finding that the Debtors shall
7 retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the
8 meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; (vi) granting such
9 other and further relief as the Court deems just and proper.

10 II.

11 JURISDICTION, VENUE, AND STATUTORY PREDICATES

12 The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157
13 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant
14 to 28 U.S.C. §§ 1408 and 1409.

15 The Motion seeks an order of the Court enforcing the terms of its final order approving the
16 SGM Sale [Docket No. 2306] and its order [Docket No. 3723-24] obligating SGM to close the
17 SGM Sale, as well as to show cause to SGM for its failure to comply. The statutory predicates for
18 this relief are §§ 363 and 105, and Bankruptcy Rule 6004. This Court “plainly ha[s] jurisdiction to
19 interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151,
20 (2009); *see also In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) (“A bankruptcy
21 court retains jurisdiction to interpret and enforce its own orders” (quoting *Luan Inv. S.E., v.*
22 *Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002)).

23 III.

24 FACTUAL BACKGROUND

25 1. On May 2, 2019, this Court entered its *Order (A) Authorizing the Sale of Certain of*
26 *the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims,*
27 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of An*
28 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (“Sale

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Order”), approving the SGM Sale pursuant to the APA. Since this Court issued its Sale Order, the Debtors have engaged in extensive, time-consuming efforts on multiple fronts to transition the Hospitals to SGM. By way of example: (i) the Debtors have sent multiple rounds of WARN notices to all employees; (ii) medical groups affiliated with the Debtors have sent termination notices to their physicians; (iii) thousands of counterparties to executory contracts and unexpired leases have relied on the Sale Order and continued to provide services in reliance on the finality of that Sale Order; (iv) the Debtors and SGM have spent almost an entire year facilitating an efficient close of the SGM Sale and developing transition plans as appropriate, including the transition of various licenses, employees, etc.; (v) the Debtors and SGM spent months successfully negotiating and reaching modified collectively bargaining agreements with all of the unions; (vi) the Debtors spent months reaching finality with the California Attorney General, the Centers for Medicare and Medicaid Services, and the California Department of Health Care Services; and (vii) created plans to shut off certain services and modify various insurance policies.

2. On October 23, 2019, the Court issued a *Memorandum of Decision Granting the Debtors’ Emergency Motion to Enforce the Sale Order* [Doc. No. 3188]. [Docket 3446.] Following extensive negotiations, the Debtors and the Attorney General reached a *Stipulation Resolving “Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief”* [Docket No. 3188]. [Docket 3572.] Accordingly, on November 14, 2019, the Court issued an *Order Granting “Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief”* [Doc. 3188] [Docket 3611] (the “Enforcement Order”).

3. APA section 1.3 obligates SGM to close the sale “promptly but no later than ten (10) business days following the satisfaction” of all conditions precedent. On November 18, 2019, the Court issued an Order finding that: “The Debtors have complied with their obligation under the APA to obtain a final, nonappealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.” Docket No. 3632.

4. On November 19, 2019, the Debtors obtained a settlement with the Centers for Medicare and Medicaid Services providing for the transfer of their Medicare Provider Agreements to SGM, thereby satisfying their remaining obligations under Article 8.7 of the APA. Docket No. 3680. With respect to California Department of Health Care Services (“DHCS”), the Debtors secured an Order [Docket No. 3372] from the Bankruptcy Court authorizing the transfer free and clear of any interests asserted by DHCS, in addition to the Sale Order which terminated any creditor’s recoupment rights [Docket No. 2306]. Those Orders afford equal or greater protection to SGM than any settlement could have, thereby satisfying Section 8.7. In addition, on November 22, 2019, the Debtors reached a settlement in principle with DHCS to the same effect. *See* Nov. 26, 2019 Hr’g Tr. at 10:18-24.

5. As set forth in the Debtors’ status report [Docket No. 3692] (the “Status Report”), Debtors sent a letter to SGM, on November 20, 2019, stating (i) the conditions to close under the APA had been satisfied on November 19, 2019, and that (ii) the transaction should promptly close by December 5, 2019. *See* Status Report at 1. The letter requested assurances from SGM that the transaction would close by that date. *See id.*

6. On November 19, 2019, SGM’s CEO, Peter Baronoff, telephoned the Debtors’ investment banker and stated that SGM could not obtain sufficient financing for the transaction, contrary to Section 3.9 of the APA. [Docket No. 3644.] That telephone call immediately resulted in the Debtors’ request for an order [entered at Docket No. 3646] continuing the hearing on the Debtors’ motion [Docket No. 2995] for approval of its disclosure statement [Docket No. 2994]. *See* Beith Decl., ¶ 2. Recognizing that the existence of financing is not a condition to close, SGM resorted to making unfounded and self-serving assertions that the Debtors breached the APA and

1 embarked on impermissible efforts to re-trade the purchase price without regard to: (i) the language
2 in the APA; (ii) the indisputable fact that SGM’s diligence period had expired in January 2019;
3 (iii) SGM’s prior representations; and (iv) the fact that all conditions of the Debtors to close had
4 been satisfied.

5 7. On November 22, 2019, SGM sent the Debtors letters from Gary Klausner, Esq. of
6 Levene, Neale, Bender, Yoo & Brill L.L.P. and Robert W. Lundy, Jr. of Hooper, Lundy &
7 Bookman, P.C. (with enclosures), setting forth the issues that SGM had asserted amounted to a
8 “Material Adverse Effect” under the APA [Docket No. 3705] (the “November 22, 2019 Letters”).⁴
9 The issues SGM raised at the eleventh hour were not “new”—they were all known or discoverable
10 during the diligence period. And none of them change the inescapable conclusion that this
11 transaction was required to close by December 5 because the Debtors and SGM negotiated the sale
12 as an “AS IS, WHERE IS” sale under the express terms of the APA. SGM’s untimely, baseless
13 and immaterial complaints were nothing more than a transparent attempt to delay the closing and
14 manufacture a basis for a re-trade to obtain a lower purchase price.

15 8. On November 26, 2019, the Court held a Status Conference. In advance of the
16 Status Conference, SGM filed a Reservation of Rights, alleging (among other things) that “there
17 are no genuine disputes of material fact as to the [sic] whether there have been Material Adverse
18 Effects under the terms of the APA.” [Docket 3701.] In addition, the Debtors lodged with the
19 Court SGM’s November 22, 2019 Letters. At the status conference, the Court rejected SGM’s
20 arguments, stating (among other things) that “[a]s far as the Court is concerned” SGM is the “proud
21 owner” of the Debtors’ assets as set forth in the APA, and that SGM “has an obligation to close”
22 the transaction pursuant to the APA. (Nov. 26, 2019 Hr’g Tr. at 12:22-24, 14:10-11.)

23 9. On November 27, 2019, the Court issued an Order finding that, “[p]ursuant to § 1.3
24 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019.” [Docket
25 3724.] The Memorandum Decision supporting that Order concluded, among other things, that
26 (i) “Adjudication of SGM’s Obligations Under the APA Does Not Require an Adversary
27

28 ⁴ The November 22, 2019 Letters were filed under seal pursuant to Court order [Docket No. 3699].

1 Proceeding,” (ii) “Adjudication of SGM’s Obligations Under the APA Is Not Premature,” (iii)
2 “SGM Is Not Entitled to Appeal the Bankruptcy Court’s Determination Regarding a Material
3 Adverse Effect,” (iv) “No Material Adverse Effect Has Occurred,” (v) “All Conditions Precedent
4 to Closing Have Been Satisfied.” [Docket 3723.] The Court further concluded that:

5 SGM’s contention that it is not obligated to close is a cynical attempt
6 to extract a better purchase price. A key component of SGM’s
7 negotiation strategy is its attempt to delay as long as possible the
8 adjudication of its obligations under the APA. The Court will not
9 facilitate SGM’s dubious tactics.

10 * * *

11 By presenting non-meritorious arguments as to why it is not
12 obligated to close, SGM is holding the estates, creditors, and patients
13 of the Hospitals hostage in an attempt to extort a better purchase
14 price. SGM’s cynical tactics are especially offensive given the
15 significant harm that closure of the Hospitals would impose upon
16 patients. For example, two of the Hospitals that would likely close
17 upon failure of the SGM Sale contain large populations of long-term
18 patients suffering from severe illnesses, all of whom would have to
19 be relocated to other facilities.

20 [Id., pp, 6-7.]

21 10. On November 29, 2019, SGM filed two notices of appeal [Docket Nos. 3726, 3727]
22 related to (i) the order granting the Debtors’ motion to enforce the sale order [Docket No. 3611],
23 and (ii) the order finding that SGM is obligated to promptly close the transaction under section 8.6
24 of the APA provided all other conditions to closing are satisfied [Docket No. 3633].

25 11. This week, beginning Monday, December 2, 2019, SGM representatives failed to
26 participate in five pre-scheduled operations closing calls, stating that they were doing so on the
27 advice of SGM’s counsel. *See* Paul Decl., ¶ 2.

28 12. On December 3, 2019, the Debtors emailed SGM, expressing continued concern for
the delay and the impact on the Hospitals, including that many employees no longer have
confidence that SGM will purchase the hospitals given that they are still waiting for formal offers,
that the Hospitals continue to flex staff and registry to manage patient care, and that vendors and
the Hospitals’ risk pool participants/IPAs have expressed concern that SGM does not intend to
close the transaction. *See* Martin Decl., ¶ 2, Ex. A. In response, SGM announced that it would not

1 close the Sale by December 5, and that it had filed a notice of appeal [Docket No. 3746] of the
2 Court's Closing Order. *See id.*, ¶ 3, Ex. B.

3 13. On December 4 and 5, 2019, the Debtors sent additional demands to SGM for
4 information and assurances bearing on whether it has the financial ability to perform the APA and
5 whether it intends to do so. *See* Martin Decl., ¶¶ 4, 6, Exs. C, E. SGM has not provided this
6 information to Debtors. *Id.* ¶ 8.

7 IV.

8 ARGUMENT

9 SGM is unquestionably in violation of this Court's Sale Order and Closing Order, and time
10 is of the essence. Bankruptcy courts have the inherent power and authority to enforce their own
11 orders, including levying sanctions and/or civil contempt against violating parties. *See Travelers*
12 *Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (finding that the "Bankruptcy Court plainly had
13 jurisdiction to interpret and enforce its own prior orders"); *see also In re Millenium Seacarriers,*
14 *Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and
15 enforce its own orders[.]") (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*,
16 304 F.3d 223, 230 (2d Cir.2002)); *In re Azevedo*, 506 B.R. 277, 282 (Bankr. E.D. Cal. 2014); *In re*
17 *Gonzales*, 512 B.R. 255, 258 (Bankr. C.D. Cal. 2014) ("Bankruptcy court[s] have always been
18 empowered to interpret and enforce their own orders.").

19 Accordingly, the Debtors request the following emergency relief:

20 A. The Court Should Order SGM's Principals To Appear And Show Cause.

21 SGM did not close the SGM Sale by December 5, 2019, in direct contravention of the
22 Court's Sale Order and Closing Order. Accordingly, the Court should order the appearance of
23 SGM's principals and explanation of why they did not comply because they are in contempt of the
24 Court's Order. There is no disputing that the Court's order directed SGM to close on December 5,
25 2019 and was, therefore, a specific and definite order of the Court. Given that fact, SGM must
26 appear before the Court and explain why it did not comply or be held in contempt. *See, e.g., Stone*
27 *v. City and County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir.1992) ("The moving party
28 has the burden of showing by clear and convincing evidence that the contemnors violated a specific

1 and definite order of the court. The burden then shifts to the contemnors to demonstrate why they
2 were unable to comply.”).

3 While refusing to Close the transaction by December 5, 2019 in accordance with the Court’s
4 Closing Order, SGM has simultaneously and steadfastly refused to state whether it has the financial
5 ability to close the SGM Sale and whether it ever intends to do so. As explained above, SGM’s
6 conduct strongly suggests that it has no intention of closing this transaction, as underscored by the
7 recent statement of its CEO Peter Baronoff that SGM lacks the ability to secure funding at the level
8 required for the purchase price under the APA. The Debtors have repeatedly and directly
9 confronted SGM regarding whether it has the financial wherewithal to comply with the APA. SGM
10 has consistently dodged those questions with the pretense that it is entitled to an alleged “Evaluation
11 Period” under Section 8.6. SGM’s position is meritless for at least three reasons.

12 First, the Evaluation Period contemplated by Section 8.6 is only triggered when the
13 Attorney General is imposing conditions that *materially differ* from the conditions to which SGM
14 agreed under the APA, i.e., the Purchaser Approved Conditions. Because the Attorney General is
15 not imposing any such conditions, no Evaluation Period is implicated. Second, as the Court
16 previously found, “SGM is judicially estopped from contending that it is entitled to the Evaluation
17 Period and is not obligated to promptly close the sale” based on “its prior representations regarding
18 its obligation to close the sale.” [Docket No. 3632, pp. 4-5.] Third, even if a 21-business day
19 Evaluation Period had been triggered (which the Debtors dispute), Section 8.6 provides that SGM
20 “shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-
21 appealable order” and “shall consummate the Sale” if “the Supplemental Sale Order becomes a
22 final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other
23 conditions to closing have been satisfied.” Here, as the Court has previously determined, there is
24 a final non-appealable order, namely the Enforcement Order. [Docket No. 3611]. Obviously, filing
25 meritless appeals is a far departure from SGM’s obligation to reasonably cooperate. SGM’s appeals
26 are frivolous and designed solely to delay and frustrate these proceedings.

SGM should be directed to immediately and clearly respond to questions regarding its financial ability to perform under the APA. By signing the APA, SGM represented and agreed that:

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

See APA § 3.9. This representation, warranty and covenant does not expire, and SGM “shall be deemed to remake” it “as of the Closing Date,” *i.e.*, December 5, 2019. APA, Article III. SGM has repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in its filing dated November 11, 2019, SGM described this as a “transaction in which SGM will be paying over \$600 Million,” and SGM’s November 25, 2019 Reservation of Rights states that “SGM continues to desire to close the transaction between SGM and Verity as described in the APA.”

If SGM does not have the financial ability to close the SGM Sale, as required by Section 3.9 of the APA, then it has an obligation to inform the Court and the Debtors of that fact, so they may immediately proceed with asset distribution in an alternative manner. Accordingly, the Debtors respectfully request that Court direct the following representatives of SGM to appear in Court on December 11, 2019, to address these issues and otherwise show cause why this transaction has not close: Chairman Kali Pradip Chaudhuri, MD, Chief Executive Officer Peter Baronoff and General Counsel William Thomas.

And, to be clear, SGM’s only explanation must be why it did not comply with the order; this hearing should not be an opportunity for SGM to rehash its arguments already rejected by the Court. *See, e.g., Maggio v. Zeitz*, 333 U. S. 56, 333 U. S. 69 (1948) (“It would be a disservice to the law if we were to depart from the longstanding rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed, and thus become a retrial of the original controversy. The procedure to enforce a court’s order commanding or forbidding an act should not be so inconclusive as to foster experimentation with disobedience.”

B. The Court Should Find That SGM Is In Material Breach, That The Debtors May Immediately Terminate The APA And Retain The Deposit.

Finally, the Debtors respectfully request the Court issue an order finding that SGM is in material breach of the APA by failing to close the SGM Sale on December 5, 2019, as required by the APA and as specifically ordered by the Court in its Closing Order. “[A] material breach of a contract excuses further performance by the injured party and entitles that party to terminate the contract.” *Pena v. GMAC Mortg., LLC*, No. CV0906939MMMJCX, 2010 WL 11519504, at *7 (C.D. Cal. Sept. 13, 2010) (citing *Pry Corp. of America v. Leach*, 177 Cal.App.2d 632, 639 (1960) and 1 B. Witkin, Summary of Cal. Law, Contracts, § 796 p. 719 (9th ed. 1990)). As a result of that material breach by SGM, the Debtors are now entitled to (i) walk away from the APA with no further notice to SGM, (ii) sue SGM for damages under APA Section 11.1 and as otherwise allowed under applicable law, and (iii) proceed with alternative plans to dispose of the assets. The Debtors respectfully request that the Court issue an Order to this effect.

In addition, the Debtors request an order that the Debtors may retain the \$30 million non-refundable Deposit. Section 1.2 of the APA provides that: “The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon.” Here, Sections 6.1(b) and Section 6.2 are inapplicable, and SGM has not terminated the Agreement under Section 9.2—rather, SGM has materially breached the Agreement by failing to perform. Accordingly, the Deposit is non-refundable, and the Debtors respectfully request that the Court order that the Debtors may retain it regardless of the manner in which the assets are ultimately distributed.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a),

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; and (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

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1 Dated: December 6, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
SONIA R. MARTIN
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

5 By /s/ Tania M. Moyron
Tania M. Moyron

7 Attorneys for Verity Health Systems of
California, Inc., *et al.*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF CARSTEN BEITH

I, Carsten Beith, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am a Managing Director and Co-Head of Health Systems M&A at Cain Brothers, a division of KeyBanc Capital Markets, investment bankers in this matter for the Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”). I submit this Declaration in support of the *Emergency Motion for the Entry of an Order: (i) Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019; (ii) To Show Cause Why Strategic Global Management, Inc. Failed to Close Sale Transaction by December 5, 2019* (the “Motion”).

2. On November 19, 2019, I received a telephone call from Peter Baronoff, the Chief Executive Officer of Strategic Global Management (“SGM”). Mr. Baronoff stated, among other comments, that SGM was not able to obtain sufficient financing to fund the sale transaction.

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

Executed this 6th day of December 2019, at New York, New York.

By: 

CARSTEN BEITH

DECLARATION OF ELSPETH PAUL

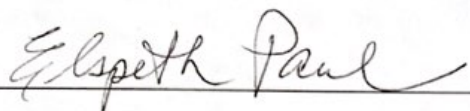
I, Elspeth Paul, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and I serve as General Counsel for the Verity Health System Of California, Inc. ("VHS"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. In connection with working towards closing the sale transaction with Strategic Global Management, Inc. ("SGM") pursuant to the Asset Purchase Agreement, SGM and the Debtors have participated in regular pre-scheduled calls in connection with operational works streams. This week, beginning on Monday, December 2, 2019, SGM representatives failed to participate in five pre-scheduled operations closing calls, stating that they were doing so on the advice of SGM's counsel.

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

Executed this 6th day of December 2019, at Los Angeles, California.

By: 
ELSPETH PAUL

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF SONIA R. MARTIN

I, Sonia R. Martin, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Dentons US LLP, counsel in this matter for the Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. Attached hereto as **Exhibit A** is a true and correct copy of an email I sent to Gary Klausner of Levene, Neale, Bender, Yoo & Brill L.L.P., counsel to Strategic Global Management, Inc. ("SGM"), on December 3, 2019.

3. In response, I received an email from Mr. Klausner on December 3, 2019. A true and correct copy is attached hereto as **Exhibit B**.

4. In response, I sent an email to Mr. Klausner on December 4, 2019. A true and correct copy is attached hereto as **Exhibit C**.

5. Attached hereto as **Exhibit D** is a true and correct copy of an email Mr. Klausner sent to me and others on December 5, 2019.

6. Attached hereto as **Exhibit E** is a true and correct copy of an email I sent Mr. Klausner on December 5, 2019.

7. Attached hereto as **Exhibit F** is a true and correct copy of an email and letter that Mr. Klausner sent to Mr. Maizel on December 5, 2019.

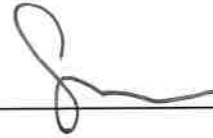
8. As of this date, Mr. Klausner has not demonstrated to the Debtors that SGM has the financial ability or access to sufficient capital to timely proceed with this transaction in accordance with that certain asset purchase agreement [Docket No. 2305-1].

///

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

3 Executed this 6th day of December 2019, at San Francisco, California.

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5 By: _____



6 SONIA R. MARTIN
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit A

**December 3, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Tuesday, December 03, 2019 11:18 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: RE: Verity

Gary,

As set forth in my emails dated November 16 and 18, 2019, there is no basis for SGM to appeal and there is no Evaluation Period. Even if SGM were correct about the existence of an Evaluation Period (which it is not), the appeal and SGM's failure to take reasonable steps towards closing the transaction would constitute a breach of the APA ("Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order[.]").

Indeed, the Debtors believe SGM's appeals are frivolous, and we reserve the right to seek sanctions against you and your clients pursuant to FRAP 38 and 28 USC 1927. Further, it is the position of the Debtors, that as of December 6, 2019, the Deposit, as defined in the APA, will irrevocably belong to the Debtors and its use is permitted by the Final DIP Order and the Supplemental Cash Collateral Order.

Each day that goes by without prompt action by your clients towards closing this transaction is injuring the Hospitals. Employees are leaving on a daily basis as a direct result of your clients' failure to timely issue offer letters. And, as you know, the Debtors are suffering net operating losses estimated at \$450,000 per day. Despite this, your clients continue to drag their feet on closing. Yesterday, you directed that they not participate on three regular, pre-scheduled closing calls -- calls that are essential to the transition of the Hospitals. Your clients are plainly in breach of APA Section 12.17, which provides that "[t]ime is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement."

The conduct of you and your clients strongly suggests that they have no intention of closing this transaction, which is consistent with Mr. Baronoff's statement two weeks ago that they lack the ability to secure funding at the level required for the purchase price under the APA. By signing the APA, your clients represented and agreed that "[p]urchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement." On the basis of the APA, the Court entered its Sale Order. Since then, you and your clients have repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in your filing dated November 11, 2019, you described this as a "transaction in which SGM will be paying over \$600 Million," and your November 25, 2019 Reservation of Rights states that "SGM continues to desire to close the transaction between SGM and Verity as described in the APA."

If these representations are no longer true, your clients owe a duty to the Court and the Debtors to say so. As an officer of the court, you also owe that duty.

"Counsel, as an officer of the court, also owes a duty of candor to the tribunal. Model Rules of Professional Conduct Rule 3.3. This duty precludes counsel from making false statements of law or fact to the court and offering false evidence, and requires counsel to disclose controlling adverse legal authority not disclosed by opposing counsel, and facts necessary to avoid assisting the client in a criminal or fraudulent act. Id."

Hansen, Jones & Leta, PC v. Segal, 220 B.R. 434, 455 (D. Utah 1998). See also Cal. Rule Prof. Conduct 5-200.

The Debtors again demand that you and your clients affirm whether they have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction. If you do not respond to this request by close of business tomorrow, the Debtors will ask the Court to schedule an emergency Order to Show Cause hearing and require your clients to respond to such questions in open court.

Sonia

 Sonia R. Martin

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. >
Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas
& Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@Inbyb.com>

Sent: Monday, December 02, 2019 6:26 PM

To: Martin, Sonia R. <sonia.martin@dentons.com>

Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Montgomery, Claude D. <claudemontgomery@dentons.com>; Alberts, Sam J. <sam.alberts@dentons.com>; Gary E. Klausner <GEK@Inbyb.com>

Subject: Verity

[External Sender]

Sonia; as you are aware, SGM has filed a notice of appeal from the Bankruptcy Court's order of November 14, 2019 regarding Verity's emergency motion. We understand your position regarding the "finality" of that order and we respectfully disagree as our client had standing to appeal to order entered by the court, notwithstanding the fact that SGM did not oppose the underlying emergency motion. Ultimately the appellate court will decide this issue. In the meantime, so that there is no confusion or misunderstanding about SGM's position on this issue, the 21 business days evaluation period under section 8.6 began on November 14; that means, if my review of the calendar is correct, the 21 business days to respond under section 8.6 will not expire until December 16, 2019.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244

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Please consider the environment before printing this email

From: Martin, Sonia R. [mailto:sonia.martin@dentons.com]
Sent: Saturday, November 16, 2019 9:59 AM
To: Gary E. Klausner
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: FW: Verity

Gary,

As Tania stated on the record in court on Wednesday, we do not agree with SGM's position that it has a 21-day Evaluation Period.

The Evaluation Period contemplated by Section 8.6 was included to account for the possibility that the Attorney General might insist on imposing conditions that materially differ from the Purchaser Approved Conditions. Because the Attorney General is not imposing any such conditions, the provisions relating to an Evaluation Period are not implicated.

We also note that, even if a 21-day Evaluation Period had been triggered (which we do not concede), Section 8.6 provides that SGM "shall consummate the Sale" if "the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other conditions to closing have been satisfied." Here, we have a final non-appealable order because the only parties who could have standing to appeal have waived that right.

Sonia

 Sonia R. Martin

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sonia.martin@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. >
Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas
& Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Friday, November 15, 2019 2:09 PM
To: Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>
Cc: Gary E. Klausner <GEK@lnbyb.com>
Subject: Verity

[External Sender]

Sam, Tania; I have heard through the grapevine that Verity may be taking the position that SGM does not have (or somehow lost) the 21 day Evaluation Period provided for in section 8.6 of the APA, which started as of the entry of the supplemental sale order yesterday. Would you please let me know if this is, in fact, Verity's positions and if so, please advise me of Verity's basis for that position. Obviously, this is a time critical issue so please get back to me immediately as I have a call scheduled with SGM at 3:00 today. Thanks.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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gek@lnbyb.com | www.lnbyb.com

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Exhibit B

**December 3, 2019 Email from
Gary E. Klausner to Sonia R. Martin**

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM
To: Martin, Sonia R.
Cc: Moyron, Tania M.; Maizel, Samuel R.; Gary E. Klausner
Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067

Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244

gek@lnbyb.com | www.lnbyb.com

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Exhibit C

**December 4, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Wednesday, December 04, 2019 9:30 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.
Subject: RE: Verity, SGM

Gary,

You have not responded to the Debtors' request that you state whether your clients "have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction." This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. The Debtors insist that you and your clients provide this information outside the context of any confidentiality agreement, either now or in court.

Your clients have no valid basis to refuse to close this transaction. They are in breach of the APA, and the Debtors will proceed accordingly. Indeed, it has become increasingly clear that SGM likely never had the financial ability to perform the APA, and has been in breach of APA Section 3.8 from the outset.

Moreover, SGM lacks standing and has waived any ability to appeal the Court's orders. Manufacturing the Evaluation Period is precisely the type of bad faith conduct with which the Court expressed concern, and which permits the Debtors to recover damages in excess of Section 11.1 of the APA.

If SGM has a proposal that it wishes the Debtors to consider, it should send that proposal immediately. Be advised that the Debtors will proceed down another path unless SGM (i) provides a meaningful, actionable offer, and (ii) demonstrates the financial ability to perform (the failure of either condition would be fatal).

We will be sending you a revised confidentiality stipulation shortly.

 Sonia R. Martin

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@Inbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM

To: Martin, Sonia R. <sonia.martin@dentons.com>

Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Gary E. Klausner <GEK@lnbyb.com>

Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067

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Exhibit D

**December 5, 2019 Email from
Gary E. Klausner to Sonia R. Martin**

From: Gary E. Klausner <GEK@Inbyb.com>
Sent: Thursday, December 05, 2019 9:58 AM
To: Martin, Sonia R.
Cc: Maizel, Samuel R.; Moyron, Tania M.; Gary E. Klausner
Subject: Verity | Weekly KPC/Verity Transaction Committee Call

[External Sender]

Sonia; a checklist call is scheduled for 10:00 today.

As you are aware, SGM is not closing the sale reflected in the APA today. SGM disputes that the notice to close set forth in Sam's letter of November 20, 2019 was effective or consistent with the APA and, notwithstanding Judge Robles order of November 27, which is now on appeal, SGM is under no contractual obligation to close today. Indeed, Verity is not, itself, prepared to close the sale today or to provide the "deliverables" and complete all of the processes necessary for closing.

Notwithstanding the foregoing, SGM has been requesting an opportunity to meet and confer with Verity and other stakeholders to attempt to resolve the disputes that have so far prevented the parties from proceeding to a closing in an organized fashion and consistent with the APA. SGM requested mediation and Verity rejected that request. SGM requested a meeting, which would be governed by applicable privileges, and Verity rejected that request. SGM submitted a proposed confidentiality stipulation to Verity yesterday, made every change that you requested, submitted a draft order to you as requested, and then was advised that Verity refused to meet and confer unless SGM first provided a proposal and financial information, not protected by any privilege.

It is apparent from your litany of threatening letters and rejection of any opportunity to salvage this transaction, that Verity has elected to attempt to force SGM into a position of breach and will pursue litigation, as opposed to participating in a process that might save the hospitals, protect the patients and avoid terminating thousands of employees.

The scheduled "checklist" call for today is clearly a sham, designed to create the appearance, although not legitimate, that Verity is still pursuing a transaction which Verity has now chosen to forego, and to attempt to obtain information for use in the eventual litigation. Accordingly, SGM sees no useful purpose in participating in such a call.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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Exhibit E

**December 5, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Thursday, December 05, 2019 10:17 AM
To: 'Gary E. Klausner'
Cc: Maizel, Samuel R.; Moyron, Tania M.; Montgomery, Claude D.
Subject: In re Verity Health System of California, et al., Case No. 2:18-bk-20151-ER

Gary,

SGM still has not responded to the Debtors' request that it confirm whether it has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction in accordance with the APA, i.e., for a purchase price of \$610 million. This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. These are simple and direct questions that must be answered under the APA.

SGM cannot hide behind the charade of an "Evaluation Period" any longer. It is becoming increasingly clear that SGM does not have the financial ability to perform under the APA, and may never have had that ability. This is in direct contravention to the representation, warranty and covenant set forth in APA Section 3.9:

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

By failing to respond to the Debtors' direct questions regarding SGM's financial ability (or lack thereof), and while still purporting to "reserve rights" under the APA, you and your clients are continuing to engage in bad faith conduct at the expense of the Debtors, as well as their patients, employees and creditors. As the Court aptly observed in its November 29, 2019 Order:

SGM's contention that it is not obligated to close is a cynical attempt to extract a better purchase price. A key component of SGM's negotiation strategy is its attempt to delay as long as possible the adjudication of its obligations under the APA. The Court will not facilitate SGM's dubious tactics.

* * *

By presenting non-meritorious arguments as to why it is not obligated to close, SGM is holding the estates, creditors, and patients of the Hospitals hostage in an attempt to extort a better purchase price. SGM's cynical tactics are especially offensive given the significant harm that closure of the Hospitals would impose upon patients.

Nor are the Debtors willing to allow SGM to try to immunize itself with a nebulous "mediation agreement." The information the Debtors have requested is squarely within the scope of the APA, and the Debtors are entitled to answers under the APA and without confidentiality. The Debtors will not enter any agreement that SGM might try to use to shield the financial information we have requested. The Debtors must have the ability to promptly disclose and

act on such information in order to make critical decisions impacting the Hospitals and alternative plans for disposition of the assets. You have made it clear that the Debtors must seek the Court's immediate intervention with these issues.

As to any settlement proposal that SGM wishes to make, the protections of Rule 408 should suffice and SGM should transmit any such proposal without further delay. That said, we are continuing to discuss the proposed stipulation with the Debtors and their advisors, and will revert on that issue separately.

 Sonia R. Martin

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

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Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas
& Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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Exhibit F

**December 5, 2019 Email and Letter from
Gary E. Klausner to Samuel R. Maizel**

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Thursday, December 05, 2019 4:42 PM
To: Maizel, Samuel R.
Cc: Moyron, Tania M.; Martin, Sonia R.; Montgomery, Claude D.; Koffroth, Nick
Subject: Verity
Attachments: Letter to Sam Maizel re Verity 12-5-19.pdf

[External Sender]

Sam, please see the attached letter. According to the APA, we are required to give notices to you and to Rich Adcock, however, I do not believe it would be appropriate for me to write to him directly. Would you please forward the attached to him. Thanks very much.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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December 5, 2019

VIA EMAIL

Samuel R. Maizel
Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704

Re: In re Verity Health Systems of California, Inc., et al., Debtors (“Verity”)
Sale to Strategic Global Management, Inc. (“SGM”)

Dear Sam:

The purpose of this letter is to notify Verity that Verity is in material default with respect to the Asset Purchase Agreement, which was filed with the Court on May 2, 2019 (Doc 2305) and that SGM is demanding that the immediate return of its deposit of \$30 Million, with all interest earned thereon.

The Closing Condition in Section 8.7 Was Not and Continues to be Unsatisfied

Section 8.7 of the APA creates a closing condition, as follows:

“8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal; provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.”

Notwithstanding the fact that Verity had not complied with APA section 8.7, on November 20, 2019, Verity sent SGM, through counsel, a demand for a closing of the APA transaction on or before December 5, 2019 (herein the “Closing Demand”) In your letter of November 20, 2019, you stated:

Samuel R. Maizel
December 5, 2019
Page 2

“Yesterday, as we notified you, that the Debtors reached a settlement agreement the United States on behalf of the Department of Health and Human Services and the Centers for Medicare and Medicaid Services, allowing for the transfer of the Medicare Provider Agreement without successor liability. Consequently, SGM must close this transaction promptly, but no later than ten (10) business days from yesterday, or December 5, 2019, because all conditions to closing are satisfied. See APA § 1.3”. (Emphasis Added.)

Your representation that “all conditions to closing are satisfied” was false. As we now know (and there is no dispute) as of November 20, 2019, Verity had not complied with the condition set forth in 8.7 because, *inter alia*, Verity had not, as of November 20, 2019, entered into a settlement agreement with DHCS which resulted in: (1) resolution of all outstanding financial defaults under any of Verity’s Medi-Cal Provider Agreements, and (2) full satisfaction, discharge and release of any claims under the Medi-Cal Provider Agreements, whether known or unknown that DHCS had against the seller or purchaser.

Indeed, as you acknowledged to the Court, at the hearing on November 26, 2019, Verity had not, even as of that hearing date, entered into a settlement agreement with DHCS. Nor, had Verity entered into such a settlement agreement, as of December 5, 2019, the time Verity set for closing.

Accordingly, Verity failed, as of the date and time which Verity set for closing, to satisfy the condition set forth in § 8.7 of the APA and, was and continues to be in material default.

Neither The Sale Order entered May 2, 2019, nor the Order Authorizing the Transfer of the Medi-Cal Provider Agreement, entered October 11, 2019, satisfies the Condition in Section 8.7.

On November 25, 2019, in recognition that Verity had failed to reach an agreement with DHCS, you sent me an email in which you contended that no such agreement was necessary; notwithstanding the clear and unambiguous language of § 8.7. Your contention was based on the theory that the Bankruptcy Court’s Order, entered on May 2, 2019, authorizing the sale to SGM, satisfied the requirements of § 8.7 because the sale generally provided for it to be free and clear. However, as you well know, DHCS had objected to the sale and, to accommodate that objection, Verity agreed, and the Sale Order so provided, for DHCS to reserve all of its rights pertaining to the assumption of the Medi-Cal Provider Agreements. The Sale Order addressed the objection that DHCS had filed to the proposed transfer of the Medi-Cal Provider Agreements, in part, as follows:

Samuel R. Maizel
December 5, 2019
Page 3

“Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS’s objection” (Doc. 2306 at 25 l. 6-8).
(Emphasis added.)

Consistent with that reservation and the need to resolve all issues regarding assumption and assignment of the Medi-Cal provider agreement, including the issue of recoupment, Verity filed its Reply Brief (Doc 3043) on September 18, 2019 seeking an order, which was necessary to satisfy its obligation under § 8.7 with respect to the transfer of the Medi-Cal Provider Agreement.

In the Court’s Memorandum of Decision, issued on September 26, 2019 the Court expressly referred to § 8.7 and the necessity for Verity to obtain an order in compliance with that section as a condition to closing.

The Asset Purchase Agreement (the “APA”) [Doc. No. 2305-1] which governs the sale of the Hospitals to SGM, provides that the sale cannot close unless issues regarding alleged financial defaults existing under each Provider Agreement have been resolved” (Doc. No. 3146 at 3, citing to footnote 5, which states: APA at par. 8.7)

Even more significantly, in the Bankruptcy Court’s Order granting the relief requested by Verity, which was entered on October 11, 2019, the Court deleted the word “recoup” from the section providing for a transfer “free and clear”, and the Court expressly stated that it was reserving the issue of DHCS’s right to recoup for future adjudication.

Provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HQAF Program.” (Doc. 3372 at 4:7-10, 16-20).

Not only does the Court’s reservation of the recoupment issue render any argument regarding the effect of either that order or the Sale Order completely meritless, but whatever benefit that might have been achieved by the Court’s October 11, 2019 Order has been nullified by the fact that the DHCS has appealed it to the U.S. District Court and that appeal has not been adjudicated.

L N B Y & B

Samuel R. Maizel
December 5, 2019
Page 4

While we do not concede that the condition in § 8.7 could have been satisfied by a court order, as opposed to a “settlement agreement”, even if Verity could have sought an order from the Bankruptcy Court resolving the recoupment issue, Verity chose not to do so.

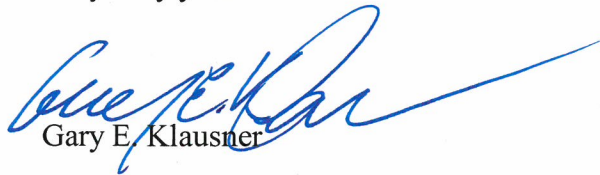
Despite the fact that Verity was required to satisfy the section 8.7 condition by a “settlement agreement”, no such settlement agreement existed as of November 20, 2019, the date of the Closing Demand and the representation that “all conditions of closing are satisfied”. Thus, the demand was improper that statement constituted a material misrepresentation as of that date. Nor was any such agreement reached prior to the date and time, which Verity set, for closing of the APA on December 5, 2019.

As a consequence of the foregoing, Verity improperly and knowingly misrepresented the status of conditions to closing in your letter of November 20, 2019. In reality, all conditions to closing had not been satisfied and remained unsatisfied as of the date and time that Verity set for closing.

The foregoing is by no means the sum-total of all Verity’s material defaults and failed conditions relating to the APA. However, because the issue raised here regarding § 8.7 and the Debtor’s failure to comply with its requirements relating to the Medi-Cal Provider Agreements are factually and legally indisputable, SGM need not present or prove any other basis to establish Verity’s material default.

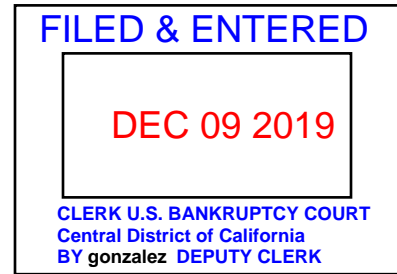
Based upon the foregoing, and pursuant to § 11.2 of the APA, SGM hereby demands the immediate return of its deposit in the amount of \$30 Million, plus all interest earned thereon.

Very truly yours



Gary E. Klausner

EXHIBIT 40



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,

Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.

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

Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION DENYING
DEBTORS' EMERGENCY MOTION FOR
ISSUANCE OF AN ORDER TO SHOW CAUSE
RE: CLOSING OF THE SGM SALE**

[No hearing required pursuant to Federal Rule of Civil
Procedure 78(b) and Local Bankruptcy Rule 9013-
1(j)(3)]



18201511912090000000000008

The Court has reviewed the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Application for OSC") [Doc. No. 3373]. Pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j), this matter is suitable for disposition without oral argument. For the reasons set forth below, the Application for OSC is **DENIED**.

I. Background

On November 27, 2019, the Court issued a *Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019* (the "Closing Memorandum") [Doc. No. 3723] and an accompanying *Order (1) Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement* (the "Closing Order") [Doc. No. 3724]. The Closing Order provided in relevant part: "Pursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019." Closing Order at ¶ 1.

SGM¹ did not close the SGM Sale by December 5, 2019. The Debtors move for issuance of an order requiring SGM's principals, Chairman Kali Pradip Chaudhuri, MD, Chief Executive Officer Peter Baranoff, and General Counsel William Thomas, to appear and testify as to (1) why SGM did not close the SGM Sale by December 5, 2019 and (2) whether SGM has the financial ability to close the SGM Sale. The Debtors further request issuance of an order finding that: (1) SGM is in material breach of the APA by failing to close the SGM Sale on December 5, 2019, (2) the Debtors may retain SGM's \$30 million good-faith deposit, and (3) the Debtors may proceed with alternative plans to dispose of the Hospitals.

II. Findings and Conclusions

Requiring SGM's representatives to testify as to SGM's reasons for not closing the SGM Sale would not increase the likelihood of the sale actually closing. By failing to close, SGM risks the loss of its \$30 million good-faith deposit as well as the possibility of damages for breach of contract in an amount of up to \$60 million.² Being compelled to offer testimony will not motivate SGM to close where the threat of the loss of up to \$90 million has failed to accomplish that end. In the future, the Debtors will have the opportunity to litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain SGM's good-faith deposit. In the meantime, the Debtors' efforts would be better spent ensuring the health and safety of the patients at the affected Hospitals.

The prompt closing of the SGM Sale would be in the best interests of all constituents in these cases, and the Court remains hopeful that SGM will fulfill its obligation to close. However, the estates' precarious cash position requires that the Debtors have the ability to immediately explore options for the alternative disposition of the Hospitals. The Court finds that any efforts undertaken by the Debtors with respect to the alternative disposition of the Hospitals will not violate the Debtors' obligation under Article 12.1 of the APA to cooperate with SGM to

¹ Capitalized terms not defined herein have the meaning set forth in the Closing Memorandum.

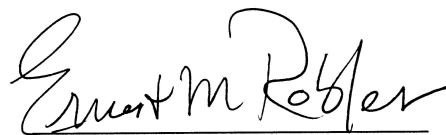
² See APA at Art. 11.1 ("If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00.").

consummate the SGM Sale; nor shall any such efforts constitute a material default by the Debtors under any other provision of the APA.

The Court will enter an order consistent with this Memorandum of Decision.

###

Date: December 9, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The middle initial "M" is smaller and positioned between the first and last names.

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 41

Michael St. James, CSB No. 95653
ST. JAMES LAW, P.C.
22 Battery Street, Suite 888
San Francisco, California 94111
(415) 391-7566 Telephone
(415) 391-7568 Facsimile
michael@stjames-law.com

Counsel for the Medical Staff of Seton Medical Center.

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

In re:

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

Lead Case No. 18-20151

Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20171-ER
Chapter 11 Cases

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

Debtors and Debtors In Possession.

EXPRESSION OF CONCERN



1 The Medical Staff of Seton Medical Center hereby expresses its profound concern over the delay
2 in the closing of the sale. Attached hereto is a true and correct copy of a letter sent by the President of
3 the Medical Staff to the Chief Executive Officers of VHS and SGM presenting its concerns.

4 DATED: December 10, 2019

Respectfully submitted,

ST. JAMES LAW, P.C.

7 By: /s/ Michael St. James

8 Michael St. James

Counsel for the Medical Staff of Seton Medical Center



1900 Sullivan Ave, Daly City, CA 94015

Rich Adcock, CEO
Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245

Peter Baronoff, CEO
Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879

Gentlemen:

The medical staff, nurses and personnel of Seton Medical Center are deeply committed to its mission to provide excellent medical care to its community. I write, following up my conversations with each of you, to express our deep concern that our commitment will not suffice to enable Seton to sustain ongoing operations and that Seton will fail unless the sale closes quickly.

At its core, Seton is its people. Maintaining morale and commitment in the face of the cutbacks and uncertainty of the Chapter 11 process has been difficult. Attempting to do so in the traumatic circumstances associated with the sale, however, has become impossible.

On or about November 15th, 2019, VHS sent the attached letter to approximately 1,000 nurses and ancillary staff at Seton, terminating them and inviting them to retrieve their severance packages on December 2, 2019 (the "Severance Letter"). It was originally assumed that the Severance Letter would be coupled with an employment offer from SGM, but SGM has been very slow to make just a few offers, and so the only definitive statement that has been received by the vast majority of Seton's 1,000 nurses is VHS's Severance Letter, terminating them as of December 2, 2019.

The effect has been devastating. I have personally attempted to console more than three dozen nurses in tears over the termination, many of whom had worked at Seton for more than 20 years. Most are now looking for new jobs, since they cannot afford to be unemployed in the Bay Area.

This has disabled key medical functions at Seton. For example, Seton has about 100 cancer patients who must receive periodic infusions of blood and chemicals. Since the chemicals can be lethal, the nurses who operate Seton's Infusion Center are certified to possess this specific skillset. All of the three certified nurses at the Infusion Center are gone: two have already left, the third will leave effective

Medical Executive Committee
Verity Health System/Strategic Global Management
December 2019
Page 2

December 13th and has been reassigned to even more critical duties until she departs. The Infusion Center no longer takes new patients, and all of the current patients have been reassigned to St. Mary's, although it is unknown whether St. Mary's can capably cover this substantial increase in its workload. How unfortunate for these poor cancer patients!

The *uncertainty* about whether the Buyer will perform has caused 6 nurses to leave the Emergency Room, severely reducing its ability to function. The majority of the nurses in the Intensive Care Unit have accepted jobs elsewhere over the last three weeks. There are not enough Intensive Care Physicians now, leaving gaps in coverage for the intensive care patients. The Operating Room was already reliant on a skeleton staff and routinely approved overtime before the problems associated with the sale arose. Following issuance of the Severance Letter, we lost at least 4 nurses. Just this week, a critical gallbladder surgery I was scheduled to perform on Thursday afternoon was rescheduled to Friday morning because appropriate nursing staff was not available.

The situation at Seton is truly dire. Seton loses key personnel and critical functions as each day goes by. In my last conversation with Mr. Baronoff, he said that the closing may be delayed to "January or February." It seems unlikely that Seton will be an operating hospital by then. If anything is to be salvaged from Seton and its mission, the sale must close immediately.

Gratefully,

A handwritten signature in black ink, appearing to read "Robert Perez".

Robert Perez, M.D.
President, Medical Staff

Notice to RN:

Strategic Global Management, the Buyer, has provided notice that upon the close of the purchase transaction it will not hire the following number of FTEs in the following departments.

Department	Job Classification	FTEs Not Hired
Infusion	RN	3.3

The date of the purchase transaction closing has not yet been determined. Based on the application of the CBA between the Hospital and NUHW you have been selected as an impacted employee. The Buyer, the Hospital, and the Union agree that impacted employees shall have bumping rights afforded under the parties CBA.

You may volunteer for separation and to waive your bumping rights. If you are a regular full-time or regular part-time employee and meet the eligibility requirements for severance under the CBA (based on years of severance), you will receive it should you volunteer.

If you voluntarily accept a separation and are waiving your bumping rights, please indicate below by Tuesday, December 3, 2019, and return this notice to Jeanette Corbett jeanettecorbett@verity.org in Human Resources with a copy to Steven Sharrer SteveSharrer@verity.org and labor representative Julie Tran at JTran@CalNurses.org

If you wish to exercise bumping rights, please so indicate and return the notice to these same persons listed above by Tuesday, December 3, 2019. If you take no action, then you'll be separated by the Hospital upon the close of the transaction and you will not be hired by the Buyer and receive a letter from the Buyer to that effect.

Your labor representative will contact you concerning your bumping rights.

Jeanette Corbett
Seton Medical Center
Interim Director, Human Resources

Please initial one of the two below:

_____(Initial if Accepted): I, _____, accept my separation from employment and waive bumping rights.

_____(Initial if Requested): I, _____, wish to assert my bumping rights.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
22 Battery Street, Suite 888, San Francisco, CA. 94111

A true and correct copy of the foregoing document entitled (*specify*): _____
Expression of Concern _____

_____ will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/07/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See Attached

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

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

☐ Service information continued on attached page

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

The Honorable Ernest Robles
United States Bankruptcy Judge
255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

☐ Service information continued on attached page

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

12/10/2019 Michael St. James /s/ Michael St. James
Date Printed Name Signature

Mailing Information for Case 2:18-bk-20151-ER

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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EXHIBIT 42

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*Counsel for the Official Committee of
Unsecured Creditors of Verity Health System of
California, Inc., et al.*

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

In re:

VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., *et al.*,

Debtors and Debtors In Possession.

Affects:

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

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

Chapter 11 Cases

Hon. Ernest M. Robles

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS'
STATEMENT IN SUPPORT OF THE
MEDICAL STAFF OF SETON
MEDICAL CENTER'S EXPRESSION
OF CONCERN [DKT. 3790]**



182015119121100000000010

1 The Official Committee of Unsecured Creditors of Verity Health System of California, Inc.,
2 *et al.* (the “Committee”) shares the concerns of the Medical Staff of Seton Medical Center and urges
3 SGM to promptly close the sale, as required by:

- 4 1. the asset purchase agreement entered into by and between the Debtors and SGM
5 [Docket No. 2305-1];
- 6 2. the Court’s *Order (1) Finding that SGM Is Obligated to Promptly Close the SGM*
7 *Sale Under Sec. 8.6 of the APA, Provided that All Other Conditions to Closing Have*
8 *Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to*
9 *Approve the Disclosure Statement* [Dkt. 3633], and
- 10 3. the Court’s *Order (1) Finding that SGM Is Obligated to Close the SGM Sale by No*
11 *Later Than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion*
12 *for Approval of Disclosure Statement* [Dkt. 3724].

13
14 DATED: December 11, 2019

MILBANK LLP

15 /s/ Mark Shinderman
16 GREGORY A. BRAY
17 MARK SHINDERMAN
18 JAMES C. BEHRENS

19 Counsel for the Official Committee of
20 Unsecured Creditors of Verity Health System of
21 California, Inc., et al.
22
23
24
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

2029 Century Park E, 33rd Floor, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **OFFICIAL COMMITTEE OF UNSECURED CREDITORS' STATEMENT IN SUPPORT OF THE MEDICAL STAFF OF SETON MEDICAL CENTER'S EXPRESSION OF CONCERN** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) December 11, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) December 11, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) December 11, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

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

December 11, 2019 Ricky Windom
Date *Printed Name*

/s/ Ricky Windom
Signature

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EXHIBIT 43

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

In Re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et. al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

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

Jointly Administered With:
Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
Case No. 2:18-bk-20166-ER
Case No. 2:18-bk-20167-ER
Case No. 2:18-bk-20168-ER
Case No. 2:18-bk-20169-ER
Case No. 2:18-bk-20170-ER
Case No. 2:18-bk-20171-ER
Case No. 2:18-bk-20172-ER
Case No. 2:18-bk-20173-ER
Case No. 2:18-bk-20175-ER
Case No. 2:18-bk-20176-ER
Case No. 2:18-bk-20177-ER
Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

Adversary No. _____.

**COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, ATTORNEYS FEES**

**1. Workers Adjustment Training and
Notification Act (“Warn Act”) 29
U.S.C. §§ 2101, *et. seq.***

2. California WARN Act, California



Labor Code § 1400, *et. seq.*

3. Intentional Misrepresentation by Concealment

4. Negligent Misrepresentation

JURY TRIAL DEMANDED

CALIFORNIA NURSES ASSOCIATION
(CNA)

Plaintiff,

v.

VERITY HEALTH SYSTEMS OF
CALIFORNIA, INC., a California
Corporation; ST. FRANCIS MEDICAL
CENTER, an Affiliate; ST. VINCENT
MEDICAL CENTER, an Affiliate; SETON
MEDICAL CENTER, an Affiliate; ST.
FRANCIS MEDICAL CENTER OF
LYNWOOD, an Affiliate; ST. VINCENT
DIALYSIS CENTER, INC., an Affiliate;
VERITY HOLDINGS, LLC, an Affiliate;
DEPAUL VENTURES, LLC, an Affiliate;
RICHARD ADCOCK, an Individual;
STEVEN SHARRER, an Individual, and
DOES 1 through 500,

Defendants.

PRELIMINARY STATEMENT

JURISDICTION AND VENUE

6 THE PARTIES

7. CNA is a “representative” as defined in 29 U.S.C. § 2101(a)(4), of a unit of affected nurses who were employed by Defendants until they were terminated without proper notice as part of mass layoffs and/or plant closings that began on about January 14, 2020. Defendants’ actions directly harmed both CNA and the affected nurses. CNA brings this Action on behalf of itself and, in its representative capacity, on behalf of the affected nurses.

8. Verity Health Systems, Inc. (“Verity”) is a California nonprofit public benefit corporation located at 601 S. Figueroa, Suite 4050, Los Angeles, California, and the sole corporate member of St. Vincent Medical Center, St. Vincent Dialysis Center, St. Francis Medical Center, and Seton Medical Center (“Defendant Hospitals”).

10. St. Vincent Dialysis Center is a California nonprofit public benefit corporation and wholly owned subsidiary of St. Vincent Medical Center located at 201 S. Alvarado Street in Los Angeles, California doing business in the County of Los Angeles. Until the middle of January of 2019, St. Vincent Dialysis Center provided dialysis medical services. Unless otherwise indicated, the term “St. Vincent” will also encompass St. Vincent Dialysis Center.

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13. Verity Holdings, LLC (“Holdings”) is a California limited liability company, located at 1850 Sullivan Avenue in Daly City, California. Holdings was created in 2016 to hold and finance Verity’s interest in medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and some of the Defendant Hospitals. Holdings is a direct subsidiary of its sole member Verity.

15. This Complaint refers to Verity, St. Vincent, St. Vincent Dialysis Center, St. Francis, Seton, Holdings, and DePaul Ventures as the “Institutional Defendants.”

17. At all times relevant herein, the Institutional Defendants have been and are joint employers.

19. Richard Adcock is an individual. At all times relevant herein, he was the Chief Executive Officer of Verity and exercised control and influence over key decisions at issue in this Complaint.

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Human Resources Officer of Verity and exercised control and influence over key decisions at issue in this Action.

21. This Complaint refers to Richard Adcock and Steven Sharrer as the “Individual Defendants.”

22. Plaintiffs are ignorant of the true names or capacities of the defendants sued under fictitious names Does 1 through 500, inclusive. Plaintiffs are informed and believe that each of the defendants designated as a Doe is responsible in some manner for the events and happenings alleged herein.

FACTUAL BACKGROUND

23. On about August 31, 2018, the Institutional Defendants filed a bankruptcy petition for Chapter 11 relief in this Court.

24. On about May 2, 2019, this Court issued an order, inter alia, approving the Asset Purchase Agreement (“APA”) entered into between Strategic Global Management (“SGM”) and Verity, St. Vincent, St. Francis, Seton, and Holdings [Docket No. 2306¹]. Under the APA, SGM would acquire St. Vincent, St. Francis, and Seton [*Id.*].

25. Under Section 5.3 of the APA, as a condition of closing, SGM was required to offer employment “to substantially all persons (whether such person are full time employees, part-time employees, on short-terms or long-term disability or on leave of absence, military leave or workers compensation leave) who . . . are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller. . . (iii) employed by an affiliate of any Seller . . .” [Docket No. 1279].

26. The terms and conditions of the St. Vincent nurses’ employment were governed by a collective bargaining agreement (“CBA”) between St. Vincent and CNA. The CBA is effective December 22, 2016 to December 21, 2020.

27. Beginning on about July 25, 2019, CNA, Verity, and SGM negotiated a new

¹ All docket references refer to *In re Verity Health Systems*, Case No. 2:18-bk-20151 (Bankr. C.D. Cal. 2018) unless otherwise noted.

29. The August 12 notice also stated: “The closing of the Sale is subject to certain regulatory and other approvals and the satisfaction of certain other conditions agreed to between the Debtors and the Purchaser. While the Debtors are optimistic that the Sale will close, there is a possibility that the Sale will be unsuccessful.”

31. On August 23, 2019, as part of its opposition to any additional conditions imposed by the California Attorney General on the sale of Defendant Hospitals to SGM, Verity represented to this Court that failure to consummate the SGM sale would likely result in the closure of St. Vincent and Seton hospitals [Docket No. 2946].

33. On October 23, 2019, Verity issued a WARN extension notice (the “October WARN Notice”). That notice stated: “Verity Health System of California, Inc. and certain affiliates entered into a Court approved agreement (“Agreement”) to sell substantially all of the

1 assets of [the hospitals, including St. Vincent,] to Strategic Global Management, Inc.” The
2 notice further stated: “The Agreement requires satisfaction of certain milestones to complete
3 the Sale. Not all of the milestones have been met. Consequently, the separations of
4 employment must be postponed and will not occur at the time originally anticipated. At this
5 time, we anticipate the Sale and separations of employment will occur between November 17,
6 2019 and November 30, 2019.” And that notice assured CNA that “[w]e will continue to keep
7 you apprised of any new developments and will provide you with updated information should
8 circumstances change with respect to the Sale and the separations of employment.” [See
9 attached Exhibit 2].

10 34. Nothing in the October Warn Notice indicated any uncertainty about whether
11 the sale would close, only when. Because the October WARN Notice plainly stated that the
12 Defendants anticipated close of the sale and because Defendants had previously represented
13 that SGM would continue to employ substantially all the nurses, this notice effectively
14 communicated to CNA and the St. Vincent nurses that substantially all the nurses’ employment
15 would continue.

16 35. On November 13, 2019, Verity filed a motion to approve the modifications to
17 the CBA and resolve other issues between the parties [Docket No. 3604].

18 36. Between about November 13 and November 26, 2019, Verity engaged in
19 approximately four to five effects bargaining sessions with CNA over severance for the nurses
20 who would not be hired by SGM at the close of the sale. In this process, Verity identified
21 around nine nurses whose employment it expected would not be continued after closing the
22 sale. Verity communicated to CNA that all other employees would be hired by SGM. At no
23 time during these bargaining sessions did Verity express doubt or concern that SGM would
24 consummate the sale. Based on these bargaining sessions, CNA and the nurses believed that
25 “substantially all” meant at all but nine of the nurses would continue employment once the
26 SGM sale closed, and the approximately nine nurses whose employment did not continue
27 would receive severance pay.

28 37. Based on information and belief, on about November 18, SGM’s CEO, Peter

1 Baronoff, telephoned Verity's Investment Banker, Carsten Beith, to inform Verity that SGM
2 could not obtain sufficient financing to close the sale [*Verity Health Systems, Inc. v. Strategic*
3 *Global Management*, 2:20-ap-01001-ER (Bankr. C.D. Cal. January 22, 2020), Docket No. 1].
4 Immediately after receiving this information, Verity requested a continuance of the hearing for
5 its motion to approve its disclosure statement [*Id.*]. This Court granted Verity's request for
6 continuance and ordered that Verity submit a "Plan B" to the Court regarding Verity's plan for
7 resolving the bankruptcy case should SGM fail to close the sale.

8 38. On November 20, 2019, Verity sent a letter to SGM representing that all of the
9 conditions in the APA had been met on November 19, and, consequently, SGM was obligated
10 to close by December 5, 2019 [*Id.*].

11 39. On November 22, 2019, SGM responded to Verity complaining of various
12 issues which amounted to a "Material Adverse Effect" under the APA and that prevented SGM
13 from closing [*Id.*].

14 40. On November 22, 2019, Verity filed a motion with this Court for permission to
15 file its "Plan B" should SGM not consummate the sale. The motion was filed under seal and
16 represented that "SGM has yet to provide the Debtors with specific information regarding their
17 intentions for the SGM sale" [Docket No. 3678]. In this same motion, Verity also noted that it
18 did not want to file Plan B publicly because it "may have an adverse impact on operations and
19 employee morale" [*Id.*]. This admission reveals that Verity did not want its employees to learn
20 that Verity planned to permanently shut down St. Vincent if, as by then Verity believed to be
21 likely, the SGM sale fell through.

22 41. On about November 25, 2019, Mr. Steven Sharrer, Verity's Chief Human
23 Resources Officer, sent a WARN extension notice ("November WARN Notice") to CNA
24 representative Andrew Prediletto informing him that it anticipated the sale of St. Francis, St.
25 Vincent, and Seton to SGM would close between December 6, 2019 and December 19, 2019
26 [See Attached Exhibit 3].

27 42. Defendants' November WARN Notice also stated that the Defendants were
28 continuing "to work expeditiously for a prompt close of the sale with SGM" [*Id.*]. Verity also

1 advised that in support of its efforts to promptly close the sale, Defendants had obtained a court
2 order regarding the Attorney General conditions and reached settlement with the U.S.
3 Department of Health and Human Services, two crucial matters that had to be resolved for sale
4 closing [*Id.*].

5 43. Defendants' November WARN Notice failed to disclose the fact that SGM had
6 already informed Verity it did not have the financing to close and, in any event, believed it was
7 not required to close [*Id.*]. Furthermore, while the notice proudly announced its settlement
8 agreement with the U.S. Department of Health and Human Services, it neglected to mention
9 that Verity did not yet have a settlement agreement with the California Department of
10 Healthcare Services (DCHS). Based on information and belief, if Verity failed to execute a
11 settlement agreement with DCHS, DCHS would have a potential recoupment claim against
12 SGM (as the purchaser) for \$80 million. This outstanding liability and lack of funds would and
13 ultimately did impact SGM's ability and willingness to close the sale. Because Defendants had
14 already represented to CNA that SGM would continue the employment of substantially all
15 CNA members, Defendants' November WARN Notice amounted to false assurance that CNA
16 members would likely keep their jobs because of the impending sale, when in fact Defendants
17 already knew that the sale was unlikely to close.

18 44. By the actions described in Paragraphs 27-30, 32-36, and 40-43, Defendants led
19 CNA to believe that closure of the SGM sale was imminent and that substantially all of CNA's
20 members at St. Vincent would retain their jobs after SGM purchased the hospital [Docket No.
21 36042]. By these same actions, Defendants led the nurses working at St. Vincent to believe
22 that closure of the SGM sale was imminent and that as a result, substantially all the nurses at St.
23 Vincent would retain their jobs. Upon information and belief, St. Vincent registered nurses
24 relied on Defendants' repeated assurances that it expected to promptly close the sale to SGM,
25 and as a result, did not seek other employment when they otherwise would have.

26 45. On November 26, 2019, this Court ordered that SGM close the sale by
27
28

December 5, 2019 [Docket No. 3724].

46. On December 4, 2019, this Court held a hearing on Verity's motion to approve the modifications to the CBA and granted said motion in its entirety [Docket No. 3755].

47. On December 5, 2019, SGM failed to close the sale by the deadline in the APA, and there was no reason to expect that it would do so in the future. The Defendants did not amend the November WARN Notice at that time or take any other action to inform CNA or the St. Vincent nurses that it was increasingly likely that the SGM sale would not close or that if the sale to SGM did not close, it was likely that Defendants would permanently shut down the St. Vincent Medical Center in very short order.

48. By December 16, 2019, at the latest, Defendants had already begun meeting with professional consultants to develop plans to permanently shut down St. Vincent.

49. On December 17, 2019, Verity called SGM and advised SGM that Verity was terminating the APA, effective December 27, 2019, as a result of SGM's failure to close the sale on December 5 [*Verity Health Systems, Inc. v. Strategic Global Management*, 2:20-ap-01001-ER (Bankr. C.D. Cal. January 22, 2020), Docket No. 20]. The Defendants did not amend the November WARN Notice at that time or take any other action to inform CNA or the St. Vincent nurses that the SGM sale would not close or that because the SGM would not close, it was likely that Defendants would permanently shut down the St. Vincent Medical Center.

50. On December 18, 2019, Rich Adcock emailed the nurses, informing them that SGM did not close the sale as required by the bankruptcy court, and so their employment with Verity would "NOT end on December 19, 2019" as Verity had previously anticipated. This email communication did not disclose that Defendants anticipated permanently closing St. Vincent because the sale to SGM had fallen through. It did not disclose that it was likely that the St. Vincent nurses would all lose their jobs as a result. The notice merely stated that Verity would advise them of "any further developments relating to [their] employment" [See attached Exhibit 4].

51. Upon information and belief, St. Vincent registered nurses relied on Defendants' December 18 assurance that their employment with Verity would "NOT end," and as a result,

1 did not seek other employment.

2 52. By December 19, 2019, at the latest, Defendants' counsel began researching
3 whether they could shoe-horn the planned permanent closure of St. Vincent into an exception
4 to the WARN Acts, which would enable them to avoid civil penalties for having failed to
5 timely disclose the planned shutdown.

6 53. Effective December 27, 2019, Verity terminated the APA between it and SGM
7 [Docket No. 3899]. Defendants did not amend the November WARN Notice at that time or
8 take any other action to inform CNA or the St. Vincent nurses that because the SGM would not
9 close, it was likely that Defendants would permanently shut down the St. Vincent Medical
10 Center.

11 54. On January 6, 2020, Verity filed an emergency motion with this Court to shut
12 down St. Vincent [Docket No. 3906]. In this Motion Verity expressed concern that once the
13 fact that it was seeking authorization to shut down St. Vincent was public, the turnover of
14 nursing staff would be "likely to accelerate, making maintenance of high quality patient care
15 more difficult, and, to the extent that temporary nursing replacements are required, significantly
16 more expensive" [Docket No. 3906]. Defendants did not amend the November WARN Notice
17 at that time.

18 55. On January 8, 2020, this Court granted Defendants' emergency motion to shut
19 down St. Vincent. Defendants did not amend the November WARN Notice at that time.

20 56. On January 9, 2020 at 7:00 a.m., Defendants permanently shut down St.
21 Vincent's emergency department [Docket No. 3982]. Defendants did not amend the November
22 WARN Notice at that time.

23 57. On January 13, 2020, Verity's Chief Human Resources Officer, Mr. Steven
24 Sharrer, emailed Mr. Prediletto a new WARN notice dated January 10, 2020 ("January WARN
25 Notice"). This notice did not refer to itself as an extension to the November WARN Notice
26 [See attached Exhibit 5]. The January WARN Notice stated that closure and separations of
27 employment at St. Vincent Medical Center would occur between January 14, 2019 and January
28 27, 2020 [*Id.*]. The January WARN Notice asserted that Defendants had previously expected

1 the SGM sale to close, but that it did not, and stated that the permanent closure of St. Vincent
2 was a result of the failure of SGM to close. The January notice included an Exhibit A, which
3 listed the names of approximately 365 nurses who would be terminated as a result of the
4 closure [*Id.*].

5 58. As of January 18, 2020, St. Vincent had no patients [Docket No. 3982].

6 59. As of January 27, 2020, only approximately 20 employees remained at Saint
7 Vincent to complete winddown operations [*Id.*].

8 **INTERGRATED ENTERPRISE & JOINT EMPLOYER**

9 **Common Ownership & Financial Control**

10 60. Upon information and belief, all Institutional Defendants are owned and/or
11 controlled by Defendant Verity. As previously stated, Verity is the sole corporate member of
12 St. Vincent, Seton, and St. Francis.

13 61. Upon information and belief, Richard Adcock serves as the CEO and Peter
14 Chadwick serve as the Secretary and CFO of St. Vincent, Seton and St. Francis. The only
15 difference in Verity's officers is that Terry Belmont serves as its Secretary instead of Mr.
16 Chadwick.

17 62. The manager of Holdings is Verity and the manager of DePaul Ventures is
18 Richard Adcock.

19 **Common Management, Directors, and Officers**

20 63. Upon information and belief, the bylaws of Verity and each of the Defendant
21 Hospitals vest ultimate authority over major decisions to the Verity board of directors such as
22 whether to change the mission of a hospital, amend a hospital's bylaws, appoint and remove its
23 directors, approve the incurrence of debt and, inter alia, approve the operating budget.

24 64. Upon information and belief, business plans are developed by Verity, rather than
25 individual Defendant Hospitals.

26 65. Upon information and belief, per each Defendant Hospitals' bylaws, at least one
27 member of Defendant Hospitals' board of directors must be a member of Verity's Board of
28 Directors.

66. Upon information and belief, outside consultants are retained at the system-level for all Defendant Hospitals and Verity.

67. Elspeth D. Paul serves as the General Counsel for all the Institutional Defendants.

De Facto Control

68. Upon information and belief, Verity makes all major decisions for St. Vincent, St. Francis, Seton, Holdings, and DePaul Ventures including the decision to place these entities into bankruptcy.

69. Upon information and belief, Verity made the determination to shut down St. Vincent.

70. Upon information and belief, Verity sent the WARN notices to Defendant Hospitals' employees.

71. Upon information and belief, Verity and the Individual Defendants determined when and how to provide or not provide notification to employees regarding the imminent closure of St. Vincent.

Interrelation Between & Dependency of Operations

72. Upon information and belief, Verity and Defendant Hospitals hold themselves out to the public as an integrated and unified health system. Per its own representations to this Court, Verity operates Defendant Hospitals [Docket No. 8, p. 7].

73. Upon information and belief, Verity and Defendant Hospitals share insurance policies for workers' compensation coverage, general liability, storage tank liability, commercial property, commercial automobile, and helipad liability.

74. Upon information and belief, Verity and Defendant Hospitals are part of an obligated group whereby the prepetition loans they received imposed joint and several liability upon them and allowed all obligated group members use of such loan proceeds.

75. Upon information and belief, Verity negotiated numerous system-wide agreements for all the Defendant Hospitals.

76. Upon information and belief, capital improvements were financed for Defendant

Hospitals based on financings undertaken on a joint and several basis.

77. Upon information and belief, Verity routinely transferred funds between all Institutional Defendants.

78. Upon information and belief, all Institutional Defendants list the same business address on their filings with the California Secretary of State: 601 S. Figueroa Suite 4050, Los Angeles, CA 90017 which is the physical location of Verity.

79. Upon information and belief, all employees of Verity and Defendant Hospitals have an email address that is not specific to each entity and instead is in the form of employeesname@verity.com.

Centralized Control of Labor Relations

80. Upon information and belief, Verity's Chief Human Resources Officer, Mr. Steven Sharrer, oversees the labor relations at all Defendant Hospitals.

81. Upon information and belief, negotiations for CBAs at Defendant Hospitals are performed by Verity management on a system-wide basis.

82. Upon information and belief, prior to the sale of O'Connor Regional Hospital ("O'Connor) and Saint Louise Regional Hospitals ("Saint Louise") to Santa Clara County and the closure of St. Vincent, Verity recognized a single unit of CNA-represented registered nurses comprised of those who worked at St. Vincent, O'Connor, St. Louise, and Seton. These nurses' terms and conditions were covered by a single master CBA and supplemental local agreements for each hospital.

83. Upon information and belief, all of the Institutional Defendants' employees participate in common retirement plans, healthcare plans and other employee benefit plans.

84. Upon information and belief, Verity and Defendant Hospitals maintain common personnel policies, a shared employee recruitment website, and human resources portal.

COUNT I: VIOLATION OF THE FEDERAL WARN ACT

85. Plaintiff restates and realleges paragraphs 1-84 as if fully set forth herein.

86. The Federal WARN Act, 29 U.S.C. § 2101, et. seq., regulates the amount of

1 notice an employer must provide to employees who will be terminated due to the employer's
2 closing of a plant or mass layoffs, as well as the back pay and other associated benefits an
3 affected employee is due based on a violation of the required notice period.

4 87. The Federal WARN Act prohibits an employer from ordering a mass layoff for
5 at least 60 days after it serves written notice of the pending layoff to affected employees, each
6 representative of the affected employees, the entity designated by the State to carry out rapid
7 response activities, and the chief elected official of the unit of local government within which
8 the layoff is to occur.

9 88. The Institutional Defendants were, and are, subject to the notice and back pay
10 requirements of the Federal WARN Act because they are individually and collectively a
11 business enterprise that employs 100 or more employees, excluding part-time employees, as
12 defined in the Act. 29 U.S.C. § 2101(1)(A).

13 89. At all times material herein, the St. Vincent registered nurses have been entitled
14 to the rights, protections, and benefits provided under the Federal WARN Act, 29 U.S.C.
15 § 2101, et. seq.

16 90. The Institutional Defendants violated the Federal WARN Act by ordering a
17 mass layoff and closing without providing 60 days' written notice to CNA, affected employees,
18 or any State of California or City of Los Angeles agency or official of the permanent closure of
19 St. Vincent.

20 91. The St. Vincent nurse-employees of the Institutional Defendants who were
21 terminated and/or laid off without 60 days' notice are aggrieved and entitled to the remedies
22 provided by law.

23 92. As a result of the Institutional Defendants' actions, each aggrieved employee has
24 suffered damages in an amount to be proven at trial.

25 **COUNT II: VIOLATION OF THE CALIFORNIA WARN ACT**

26 93. Plaintiff restates and realleges paragraphs 1-84 as if fully set forth herein.

27 94. At all times material herein, the St. Vincent registered nurses have been entitled
28 to the rights, protections, and benefits provided under the California WARN Act, California

1 Labor Code § 1401, et seq.

2 95. The California WARN Act regulates the amount of notice an employer must
3 provide to employees who will be terminated due to the employer's closing of a plant or mass
4 layoffs, as well as the back pay and other associated benefits an affected employee is due based
5 on a violation of the required notice period.

6 96. The Institutional Defendants were, and are, subject to the notice and back pay
7 requirements of the California WARN Act because they are individually and collectively a
8 business enterprise that employs 75 or more employees, excluding part-time employees, as
9 defined in the Act. Cal. Labor Code § 1400, et. seq.

10 97. The Institutional Defendants violated the California WARN Act by failing to
11 provide the required notice to the affected employees and/or any of the various government
12 agencies to which they were required by law to give notice, in writing, at least 60 days prior to
13 the terminations and/or layoffs of the permanent closure of St. Vincent.

14 98. The St. Vincent nurse-employees of the Institutional Defendants who were
15 terminated and/or laid off without 60 days' notice are aggrieved and entitled to the remedies
16 provided by law.

17 99. As a result of the Institutional Defendants' actions, each aggrieved employee has
18 suffered damages in an amount to be proven at trial.

19 **COUNT III: INTENTIONAL MISREPRESENTATION BY CONCEALMENT**

20 100. Plaintiff restates and realleges paragraphs 1-84 as if fully set forth herein.

21 101. Beginning in August 2019, Defendants disclosed some facts to CNA and the St.
22 Vincent nurses about the bankruptcy and planned sale of Defendant Hospitals to SGM.
23 However, for extended periods of time beginning in November 2019, Defendants intentionally
24 failed to timely disclose that:

- 25 a. New information had arisen and then continued to arise that made it
26 increasingly unlikely the sale would close;
- 27 b. Defendants anticipated permanently shutting down St. Vincent entirely and
28 expeditiously in the increasingly likely event that the sale did not close;

104. Defendants' deliberately concealed these material facts to lead nurses and CNA to the false conclusion that the nurses' employment was very likely to continue despite the bankruptcy. Defendants misled the nurses and CNA in this way to avoid incurring additional expenses to secure the necessary nursing staff to keep St. Vincent running until they were ready to close it and to avoid the possibility of effective organized opposition to the planned closure.

1 105. St. Vincent nurses who would have looked for other work if they had known
2 that the hospital was likely to shut down did not do so because they were intentionally kept
3 ignorant of these facts. As a result, those nurses only began to look for work when the news of
4 shut down reached the general public after Verity finally disclosed its shutdown plans in a
5 filing with this Court on January 6, 2020. This was less than two weeks before the nurses lost
6 their jobs.

7 106. Because of Defendants' deliberate concealment of these material facts, nurses
8 experienced periods of unemployment, financial hardship, and emotional hardship that they
9 would not otherwise have experienced.

10 107. CNA would have engaged in different bargaining and organizing strategies if it
11 had known that the hospital was likely to permanently shut down but did not do so because
12 Defendants intentionally kept CNA ignorant of these facts.

13 108. Because of Defendants' deliberate concealment of these material facts, CNA
14 incurred expenses and wasted time engaging in bargaining based on false pretenses.

15 **COUNT IV: NEGLIGENT MISREPRESENTATION**

16 109. Plaintiff restates and realleges paragraphs 1-84 as if fully set forth herein.

17 110. Beginning in August 2019, Defendants disclosed some facts to CNA and the
18 CNA-represented nurses at St. Vincent about the bankruptcy and planned sale of Defendant
19 Hospitals to SGM. However, for extended periods of time beginning in November 2019,
20 Defendants failed to timely disclose the facts that:

- 21 a. New information had arisen and then continued to arise that made it
22 increasingly unlikely the sale would close;
- 23 b. Defendants anticipated permanently shutting down St. Vincent entirely and
24 expeditiously in the increasingly likely event that the sale did not close;
- 25 c. The sale fell through;
- 26 d. Defendants were planning to shut down St. Vincent entirely and
27 expeditiously because the sale fell through.

28 111. Prior to Defendants' late disclosure on December 18, 2019 that the SGM sale

1 did not close on the date ordered by this Court, CNA and the St. Vincent nurses believed that
2 the nurses' employment was likely to continue because the SGM sale was going to close and
3 SGM was going to continue operating the hospital. Defendants had not disclosed to the nurses
4 or CNA, and the nurses and CNA did not know that:

- 5 a. New information had been arising for weeks that made it increasingly
6 unlikely the sale would close;
- 7 b. Defendants anticipated shutting down St. Vincent entirely and expeditiously
8 in the increasingly likely event that the sale did not close;
- 9 c. The sale fell through;
- 10 d. Defendants were planning to shut down St. Vincent entirely and
11 expeditiously because the sale fell through.

12 112. In the December 18, 2019 email in which Defendants notified the CNA-
13 represented nurses that the sale to SGM had not occurred as ordered, Defendants also stated
14 that the nurses' employment would "NOT end." As a result, prior to Defendants' public
15 disclosure in January 2020, CNA and the CNA-represented nurses believed that the nurses'
16 employment at St. Vincent was likely to continue even though the sale to SGM had not
17 occurred as ordered. They did not know that Defendants were planning to permanently shut
18 down St. Vincent entirely and expeditiously because the sale fell through.

19 113. Defendants previous representations about the likely future of St. Vincent
20 became misrepresentations when Defendants failed to advise CNA and the CNA-represented
21 nurses of these changes in circumstances. And Defendants had no reasonable grounds for
22 believing their prior representations remained true after they learned that sale to SGM was
23 increasingly unlikely and decided that they would permanently shut down St. Vincent if the
24 sale fell through.

25 114. St. Vincent nurses who would have looked for other work if they had known
26 that the hospital was likely to shut down did not do so because they reasonably relied on
27 Defendants' representations that the hospital would keep operating. As a result, those nurses
28 only began to look for work when the news of shut down reached the general public after

1 Verity finally disclosed its plans in its filing with this Court on January 6, 2020. This was less
2 than two weeks before the nurses lost their jobs.

3 115. Because of Defendants' misrepresentation of material facts, nurses experienced
4 periods of unemployment, financial hardship, and emotional hardship that they would not
5 otherwise have experienced.

6 116. CNA would have engaged in different bargaining and organizing strategies if it
7 had known that the hospital was likely to shut down but did not do so because it reasonably
8 relied on Defendants' misrepresentations.

9 117. Because of Defendants' misrepresentations of material facts, CNA incurred
10 expenses and wasted time engaging in bargaining based on false pretenses.

11 **PRAYER**

12 Plaintiff prays for judgment against Defendants, and each of them as follows:

13 118. A judgment in favor of the Plaintiff and each of the "affected employees" under
14 the State and Federal WARN Acts equal to the sum of sixty-days of: their unpaid wages,
15 accrued holiday pay, accrued vacation pay, health and life insurance, and other ERISA benefits
16 that would have been covered and paid under the then-applicable employee benefit plans had
17 that coverage continued for that period, all determined in accordance with the California and
18 Federal WARN Acts;

19 119. Civil penalties for each day of the WARN Act violations;

20 120. Compensatory damages, including lost wages and lost employee benefits,
21 damages to CNA related to bargaining expenses and missed organizing opportunities;

22 121. Damages for mental pain and anguish and emotional distress;

23 122. Punitive damages;

24 123. Liquidated damages, as allowed by law;

25 124. Interest as allowed by law on the amounts owed under the preceding paragraphs;

26 125. Treatment of all damage claims as first priority administrative expense pursuant
27 to 11 U.S.C. § 503(b)(1)(A)(i)-(ii). For such other and further relief as Bankruptcy Court deems
28 just and proper.

22

Demand for Jury Trial

Plaintiff California Nurses Association, by and through their attorneys of record, hereby demand a trial by jury as to all issues so triable in this action.

Dated: March 5, 2020

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By Kyrsten B. Skogstad
Kyrsten B. Skogstad
Attorneys for Plaintiff
CALIFORNIA NURSES ASSOCIATION

Exhibit 1

verity.org



2040 E Mariposa Avenue
 El Segundo, CA 90245

EXHIBIT A

List of Represented St. Vincent Employees - California Nurses Association

Employee Name	Job Title
ABAD,JENNIFER K	RN, POB DIALYSIS PD-3
ABAD,ROMEO G	RN, MED/SURG 7
ABRISHAMIAN,MANDANA	RN, MED/SURG 6
ACOYMO,KERWIN M	RN, EMERGENCY ROOM PD-3
ADARO,VIDA T	RN, MED/SURG 6
ADLAWAN-DOBLE,MARIA ROSELIE I	RN, AUDITOR - EMER. ROOM 10/40
ADRAYAN,GILBERT C	RN, EMERGENCY ROOM PD-3
ADRINEDA,LORINNE M	RN, ICU
AGUILAR,JUSTIN E	RN, EMERGENCY ROOM PD-1
AGUSTIN,RACHELLE ANN C	RN, ICU
ALDANA,MARCO P	RN, ICU
ALDRETE,MANUEL M	CHARGE NURSE, SHORT STAY
ALIBUTOD,RODERICK H	RN, MED/SURG 6
ALQUIROZ,JHOANNA M	RN, TELEMETRY
ALWAN,ALEXZANDRIA	RN, CASE MANAGEMENT PD-3
AMADOR,PAMELA M	RN, ICU
AMPONG,GRANVILLE H	RN, ACUTE REHAB
APELIZAN,PAULA LORENA H	RN, ACUTE REHAB
APOLINAR,JOCELYN L	CHARGE NURSE, ICU
AQUINO,HILDA L	EDUCATOR, LEAD CLINICAL RN
ARGUETA-CORDERO,FRANCISCO J	RN, SHORT STAY
ARREGLO,VICTORIA A	RN, TELEMETRY
ARSUA,AILEEN E	RN, MED/SURG 7
ASSADI,AMIR H	RN, INTERVENTIONAL RADIOLOGY
ASTAKHINA,LYUDMYLA	RN, EMERGENCY ROOM
ATIENZA,JORDAN	RN, EMERGENCY ROOM
BAE,STELLA N	RN, MED/SURG 7 KP
BAE,YEAHEUN	RN, ACUTE REHAB
BAL,JENNIFER JOY L	RN, TELEMETRY
BALCRUZ,THERESA I	RN, MED/SURG 6



Employee Name	Job Title
BALINGIT,CORAZON I	CHARGE NURSE, SURG & RECOVERY
BALINGIT,NORMITA V	RN, MED/SURG 6
BALLADA,GLENDA S	RN, ICU
BALUYOT,VANESSA FAYE P	RN, CASE MANAGEMENT
BATAC,AIMEE A	RN, TELEMETRY
BATISTA,CRYSTAL L	RN, ICU
BAUTISTA,DINO LOREN M	RN, EMERGENCY ROOM
BAUTISTA PALANOG,MARICEL	RN, CATH LAB PD-1
BAYLON,RONEL D	RN, MED/SURG 6
BAZAN,GERARDO	CHARGE NURSE, INTER. RADIOLOGY
BELL,JESSICA M	RN, ICU
BELL,KENNETHA	RN, RECOVERY ROOM
BELLOSO,FRANCINE E	RN, TELEMETRY PD-1
BERANGO,NICOMEDES	RN, MED/SURG 6
BERNARDO,KATHLEEN A	RN, ICU
BIGASIN,JHOANNA	RN, MED/SURG 7
BIRIOUKOV,LEONID	RN, ACUTE DIALYSIS PD-2
BOESSI,CHRISTOPHINE K	RN, ICU
BOONE,LASHANDA	RN, MED/SURG 6
BOTE,III,ROMERO P	RN, ACUTE REHAB
BRACAMONTE,JESSICA K	RN, ONCOLOGY
BUENO,REGINALD C	RN, MED/SURG 7
BURCH,KATALEE	RN, MED/SURG 6
BURRELL,LISA D	RN, TELEMETRY
CABALLERO,JEFFREY E	RN, EMERGENCY ROOM
CABANAS,JEANETTE A	RN, MED/SURG 6
CABAUATAN DUMAG,MICHELLE	CHARGE NURSE, MED/SURG 6
CAISIP,THADEUS B	RN, ACUTE DIALYSIS
CALIBOSO,MITCH DATOR	RN, EMERGENCY ROOM PD-2
CALZADO,JANET O	RN, TELEMETRY
CAMPOS,YASMINI V	RN, ONCOLOGY
CANLAS,MICHAEL	RN, EMERGENCY ROOM PD-3
CAO,JENNIFER T	RN, MED/SURG 6



Employee Name	Job Title
CARO,ALYSSA L	RN, ICU
CARREIRO,ANNIE E	RN, TELEMETRY
CARRILLO,MARICELA	CHARGE NURSE, MED/SURG 7
CASCONI,FRANCESCA M	RN, ICU
CASTELLTORT,MARIE C	RN, ACUTE REHAB
CEBALLOS,VILMAR M	RN, ONCOLOGY
CEMANESEVANGELISTA,CLARISSE M	RN, MED/SURG 6
CENTENO,MARIA LIBERTY C	RN, ICU
CERAOS,JERIC	RN, NURSING ADMIN
CERVANTES,REDENTOR T	CHARGE NURSE, EMERGENCY ROOM
CHAE,JEONG R	RN, EMERGENCY ROOM
CHAN,ELAINE M	RN, EMERGENCY ROOM PD-1
CHAN,LINH N	RN, TELEMETRY
CHANG,AH YEON	RN, CASE MANAGEMENT
CHANG,MARY W	RN, SURG & RECOVERY
CHANG,SUN Y	RN, TELEMETRY
CHAVEZ,SILVIA M	RN, ICU
CHEA,DAVY	RN, ICU
CHO,ANDY S	RN, EMERGENCY ROOM
CHO,JUNG H	RN, TELEMETRY
CHO,MEONGHEE	RN, RECOVERY ROOM
CHOI,ALICIA A	RN, MED/SURG 7
CHOI,BO YEON H	RN, CASE MANAGEMENT PD-1
CHOI,EUN AH	RN, TELEMETRY
CHOI,IN H	RN, MED/SURG 6
CHOI,MIRAN	RN, POB DIALYSIS
CHOI,PILL	RN, SHORT STAY
CHOI,SOONKI	RN, TELEMETRY
CHOTAROONVIPHAT,LADDA	RN, EMERGENCY ROOM
CHUA,HONEE L	EDUCATOR, CLINICAL RN 10HR
CHUA,MA SHEILA G	RN, MED/SURG 7
CHUNG,HA NIE C	RN, MED/SURG 6
CLARK,ELIZABETH A	RN, ICU



Employee Name	Job Title
CONCEPCION, RODEN B	RN, ICU
CORONA, DAISY	RN, MED/SURG 7
CORTADA, DANA O	RN, CASE MANAGEMENT
CORTES-MORA, YESENIA	RN, MED/SURG 6
CRISOSTOMO, TABETHA P	RN, POB DIALYSIS
CROWLEY, VALERIE J	RN, RECOVERY ROOM
CROWLEY, VERONICA M	RN, CATH LAB
CRUDUP, IMANI M	RN, SURG & RECOVERY
CRUZ, LIEZL Q	RN, CASE MANAGEMENT PD-1
CRUZ, SYLVIA P	RN, ICU
CUARESMA, DENICE K	RN, ONCOLOGY
CUBE, REALLINE M	RN, MED/SURG 7
CUELLAR, MATTHEW S	RN, TELEMETRY
CUPP, CHRISTINE J	RN, RECOVERY ROOM 10HR
DADASHYAN, INNA	RN, TELEMETRY PD-1
DADHANIA, AKRUTI J	RN, ACUTE REHAB
DANG, PAULINE L	RN, ACUTE DIALYSIS
DANIEL, JOANNA	RN, EMERGENCY ROOM
DAO, CONNIE P	RN, ICU
DATOR, COSSETTE P	RN, ONCOLOGY
DAVIDSON, ALTHIA J	RN, EMERGENCY ROOM
DE LEON, BRENN A	RN, TELEMETRY
DE QUIROS, IVY LEE V	RN, POB DIALYSIS PD-1
DEEGAN, GERARD J	RN, SURG & RECOVERY
DEL FIERRO, JOSEPH ARNEL M	RN, ACUTE DIALYSIS
DERECI, MARY ANN	RN, SHORT STAY
DINSAY, ANNABELLE D	RN, MED/SURG 7
DIONISIO, BERNARD S	RN, EMERGENCY ROOM PD-1
DORAN, CHARLES C	RN, ACUTE DIALYSIS
DORIA, MIRIAM S	RN, MED/SURG 6 PD-1
DUMANSKY, ELENA	RN GI LAB-8/80
DUMLAO, TERESITA A	RN, SURG & RECOVERY
DUTTON, NOELLE M	RN, CATH LAB (STEMI)

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Employee Name	Job Title
GUZMAN,JAMES BRIAN S	RN, MED/SURG 6
HA,DA YEONG	RN, MED/SURG 7 KP
HAKOPIAN,MELINA D	RN, ICU PD-3
HAMILTON,KADE	RN, NURSING ADMIN
HAN,BONA I	RN, MED/SURG 6
HEARN,TAYLOR	RN, TELEMETRY
HEO,GJIYOUNG	RN, SURG & RECOVERY
HERTZ,ALEXANDRA L	RN, TELEMETRY
HIPUS,JOSEFINA C	RN, CATH LAB
HO,THERESE T	RN, ICU
IBARRA,JACOB	RN, EMERGENCY ROOM PD-3
IMAYSAY,GENEVIEVE	RN, SHORT STAY
INNOCENT,COURTNEY N	RN, TELEMETRY
INTAL,MARIVIC GRACE D	RN, MED/SURG 7
ITANI,KAZUMI	RN, MED/SURG 6
IZUCHUKWU-MUONAGOR,RITA U	RN, TELEMETRY
JANG,EUNHAE	RN, ICU
JANG,JI-YOUNG	RN, ACUTE REHAB
JANG,JONGSOOK	RN, MED/SURG 7 KP
JAVIER,CAROL D	RN, TELEMETRY
JIMENEZ,EVANGELINE B	RN, SHORT STAY 12HR
JUAREZ,MARIANA	RN, ICU
JUNG,JU YOUNG	RN, ICU PD-1
KANG,MISEON	RN, TELEMETRY
KANG,SANDY	RN, ICU
KANG,SO HEE	RN, SURG & RECOVERY 2
KATIGBAK,AGNES M	RN, MED/SURG 6
KILALA,MARY JANE C	RN, SHORT STAY
KIM,AIMEE K	RN, ICU
KIM,BOOYOUNG	RN, MED/SURG 7
KIM,GEUMCHUL	RN, ACUTE DIALYSIS
KIM,HEEJUNG	RN, TELEMETRY
KIM,HYANGHEE	RN, SHORT STAY

Exhibit A - List of Represented St. Vincent Employees - California Nurses Association



Employee Name	Job Title
LIM,SEUNGAE	RN, MED/SURG 7 KP
LIM,TERESA	RN, EMERGENCY ROOM
LITTLE,MARIA F	RN, SHORT STAY 12HR
LO,CELINA Y	RN, MED/SURG 6
LOPES,STEVEN N	RN, TELEMETRY
LOPEZ,ANGELA T	RN, TELEMETRY
LOPEZ,MA VICTORIA T	RN, MED/SURG 6
LORENZO,JASMINE R	RN, TELEMETRY
LORICA,RHODA R	RN, MED/SURG 7
LOZANO,CARMEN C	RN, ICU
LUISTRO,ROMEO C	RN, CASE MANAGEMENT
LUZURIAGA,RYAN S	RN, MED/SURG 6
LYON,LORNA C	RN, SURG & RECOVERY
MACAPAGAL,YOLANDA L	RN, ONCOLOGY
MACASERO,BEN REAGAN T	RN, ICU
MADLANGBAYAN,HAYCELYN O	RN, MED/SURG 7
MALIT,CHERYL JOY L	RN, MED/SURG 7 KP
MANALO,ALEXIS P	RN, EMERGENCY ROOM PD-2
MANALO,ARLENE B	RN, ICU
MANALO,EVELYN M	RN, ONCOLOGY
MANALO,MARIA CECILIA	RN, MED/SURG 6
MANAYTAY,NELLAFLOR G	RN, ICU
MARQUEZ,JESSICA P	RN, ICU
MARTINEZ,KAREN KAYE R	RN, MED/SURG 7 KP
MAYFIELD,CHRIS E	RN, INTERVENTIONAL RADIOLOGY
MCFARLAND,ALLEN GRACE C	RN, CASE MANAGEMENT
MENDOZA,JOCELYN S	RN, ICU
MENDOZA,KEIR	RN, EMERGENCY ROOM
MENDOZA,MARILOU M	RN, SURG & RECOVERY
MESA,ROCIO	RN, EMERGENCY ROOM
MILIAN,RAMIRO A	RN, MED/SURG 6
MINGUEZ,MARY MAE T	RN, MED/SURG 7 PD-1
MISOLA,GABRIELLE P	RN, ONCOLOGY

Exhibit A - List of Represented St. Vincent Employees - California Nurses Association

Exhibit A - List of Represented St. Vincent Employees - California Nurses Association



Employee Name	Job Title
ROH, HAE S	RN, ACUTE DIALYSIS
RUANTO, ROZALDO C	RN, CATH LAB
RUIZ, JENNIE L	RN, MED/SURG 7
SADEK, SHERINE	RN, ICU
SALAZAR, GUSTAVO P	RN, EMERGENCY ROOM PD-1
SALCEDO, CHERYL ANN P	CHARGE NURSE, MED/SURG 6
SALDANA, MARIA V	RN, EMERGENCY ROOM PD-1
SAMSON, TIFFANY A	RN, CASE MANAGEMENT PD-1
SANCHEZ, BEATRIZ A	RN, SURG & RECOVERY
SANDIGAN, ULYSSES M	CHARGE NURSE, EMERGENCY ROOM
SANTIAGO, PATRICIA E	RN, NURSING ADMIN
SANTIAGO, ZAYRA A	RN, NURSING ADMIN
SANTOS, DONNABEL J	RN, MED/SURG 6
SANTOS, ROSEMARIE A	RN, CASE MANAGEMENT
SATO, ASAMI	RN, TELEMETRY
SEGISMUNDO, MAXINE G	RN, TELEMETRY
SENATIN, VADA FRANCEZCA	RN, TELEMETRY
SEO, MOON HYANG	CHARGE NURSE, MED/SURG 6
SHEBELYAN, KRISTINA	RN, EMERGENCY ROOM
SHIM, GEMMA S	RN, MED/SURG 7 KP
SHIMASAKI, SAYURI H	RN, ICU
SHIN, ALICE S	RN, TELEMETRY
SHIN, ANNIE J	RN, TELEMETRY
SHIN, SUNGMIN	RN, SHORT STAY
SHIN, YOUNG SUK	RN, ACUTE DIALYSIS
SHORT, JENNIFER L	RN, TELEMETRY
SIA, MARY ANN P	RN, MED/SURG 6
SIAPNO, JOANN P	RN, ACUTE REHAB
SMITH-ANDERSON, EMMA D	RN, TELEMETRY
SOK, MICHELLE M	CHARGE NURSE, TELEMETRY
SOLIS, KARINA	RN, MED/SURG 6
SONG, EUN O	RN, MED/SURG 6
SONG, JOO Y	RN, EMERGENCY ROOM

Exhibit A - List of Represented St. Vincent Employees - California Nurses Association

Exhibit A - List of Represented St. Vincent Employees - California Nurses Association

Exhibit 2

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Exhibit 3

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Exhibit 4

----- Forwarded message -----

From: Adcock, Rich <RichAdcock@verity.org>

Sent: Wednesday, December 18, 2019 2:50:17 PM

Subject: Important Update

Exhibit 5

Exhibit 5



January 10, 2020

By U.S. Mail and Email

Andrew Prediletto
C.N.A.
225 West Broadway, Suite 500
Glendale, CA 91204
aprediletto@calnurses.org

**Re: Notice Pursuant to Worker Adjustment and Retraining Notification Act
and the California WARN Act**

Dear Mr. Andrew Prediletto:

This notice is being issued to you under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§2101 et seq. (the “WARN Act”) and the California WARN Act, California Labor Code §§1400-1408 (“Cal-WARN Act”). The purpose of this notice is to inform you of the permanent closure of St. Vincent Medical Center, located at 2131 West Third Street, Los Angeles, CA 90057, and St. Vincent Dialysis Center, located at 201 S. Alvarado St., Los Angeles, CA 90057 (together, “St. Vincent”).

On August 31, 2018, Verity Health System of California, Inc. (“VHS”) and sixteen of its affiliates, including St. Vincent (referred to collectively with VHS and other debtor affiliates as the “Debtors”), filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Central District of California, and are being jointly administered under Lead Case No. 2:18-bk-20151.

The Debtors entered an agreement to sell St. Vincent and other assets to KPC Group, aka Strategic Global Management, Inc. (together, “SGM”), which was approved by the Bankruptcy Court. In connection with the planned sale, we previously noticed you of the anticipated separations of employment in accordance with the WARN Act and Cal-WARN Act. The timing of that WARN notice was based upon the agreement with SGM. The Debtors expected the sale to be completed because the Bankruptcy Court approved the sale and entered an order providing that SGM was obligated to close the sale. SGM, however, did not close the sale. Given SGM’s failure to close the sale transaction, and there being no feasible alternative for continued operations, the Debtors made the difficult decision to close St. Vincent. The Court granted the Debtors’ emergency motion for authority to close St. Vincent on January 9, 2020 (the “Order”). Consequently, you are receiving this WARN notice.

We know that you were aware of the separations of employment at St. Vincent based on the prior WARN notice you received. We had hoped there would be an opportunity for continued employment with SGM when the sale closed. In light of the unforeseen circumstances relating to the sale and the



unexpected need to close St. Vincent as a last resort, this additional WARN notice is being provided to you as soon as practicable after the Order.

In connection with the closure, the Debtors will be separating the employment of all of St. Vincent's employees. Based on the best information available to date, we believe the closure and separations of employment will occur between **January 14, 2020 and January 27, 2020**. A list of the job titles of positions affected and the names of the workers currently holding the affected jobs is attached hereto as Exhibit A.

If you have any questions or require additional information, please do not hesitate to contact me at (424) 367-0733.

Sincerely,

SSS

Steven Sharrer
Chief Human Resources Officer

Enclosure: Exhibit A



2040 E Mariposa Avenue
El Segundo, CA 90245

EXHIBIT A

List of Represented St. Vincent Employees - CNA

Employee Last Name	First Name	Job Title
ADRINEDA	LORINNE	RN, ICU
AGUSTIN	RACHELLE ANN	RN, ICU
ALDANA	MARCO	RN, ICU
AMADOR	PAMELA	RN, ICU
APOLINAR	JOCELYN	CHARGE NURSE, ICU
BALLADA	GLENDA	RN, ICU
BATISTA	CRYSTAL	RN, ICU
BERNARDO	KATHLEEN	RN, ICU
BOESSI	CHRISTOPHINE	RN, ICU
CARO	ALYSSA	RN, ICU
CENTENO	MARIA LIBERTY	RN, ICU
CHAVEZ	SILVIA	RN, ICU
CHEA	DAVY	RN, ICU
CLARK	ELIZABETH	RN, ICU
CRUZ	SYLVIA	RN, ICU
DAO	CONNIE	RN, ICU
FERNANDEZ	RODIERAECA	RN, ICU
FERRER	RONALD	RN, ICU
GEMZON	JOPHE	CHARGE NURSE, ICU
GOMEZ	AARON	RN, ICU
HAKOPIAN	MELINA	RN, ICU PD-3
HO	THERESE	RN, ICU
JANG	EUNHAE	RN, ICU
JUAREZ	MARIANA	RN, ICU
JUNG	JU YOUNG	RN, ICU PD-1



Employee Last Name	First Name	Job Title
KANG	SANDY	RN, ICU
KIM	AIMEE	RN, ICU
KIM	KAREN	RN, ICU
LAY	XUANANH	RN, ICU
LOZANO	CARMEN	RN, ICU
MANALO	ARLENE	RN, ICU
MANAYTAY	NELLAFLOR	RN, ICU
NATIVIDAD	PAUL	RN, ICU
ODIA	IRENE	RN, ICU
ORIENZA	MINA RIA	RN, ICU
PEREIRA	JOSUE	RN, ICU PD-1
PETERSON	MA ARSENIA	RN, ICU
PONCE	BELKI	RN, ICU
RAMIREZ PONCE	LUCIO	CHARGE NURSE, ICU
RAMOS GIL	JULIO	RN, ICU
REBUYACO	TRISTAN	RN, ICU
RESURRECCION	NINA GRACE	RN, ICU
REYES	KAYLA LYNN	RN, ICU
RINGPIS	MARYLOU	RN, ICU
SADEK	SHERINE	RN, ICU
SHIMASAKI	SAYURI	RN, ICU
STANWOOD	TERRICA	RN, ICU
TAN	JENNIFER	RN, ICU
TOLEDO	MA KHARISMA	CHARGE NURSE, ICU
TREADWELL	JULITA	RN, ICU
TRINH	KATHY	RN, ICU

Exhibit A - 2



Employee Last Name	First Name	Job Title
UMALI	ROSANNE	RN, ICU
VALMEO	JAN MICHAEL	RN, ICU
YAMZON	ARMIE	RN, ICU
ALQUIROZ	JHOANNA	RN, TELEMETRY
ARREGLO	VICTORIA	RN, TELEMETRY
BAL	JENNIFER JOY	RN, TELEMETRY
BATAC	AIMEE	RN, TELEMETRY
BELLOSO	FRANCINE	RN, TELEMETRY PD-1
BURRELL	LISA	RN, TELEMETRY
CALZADO	JANET	RN, TELEMETRY
CARREIRO	ANNIE	RN, TELEMETRY
CHANG	SUN	RN, TELEMETRY
CHO	JUNG	RN, TELEMETRY
CHOI	EUN AH	RN, TELEMETRY
CHOI	SOONKI	RN, TELEMETRY
CORTEZ	SHANNON	RN, TELEMETRY
CUELLAR	MATTHEW	RN, TELEMETRY
DADASHYAN	INNA	RN, TELEMETRY PD-1
DE LEON	BRENNAN	RN, TELEMETRY
FERNANDEZ	NOLIE	RN, TELEMETRY
FINLEY	KASUMI	RN, TELEMETRY
GAGUAN	CHRISTINA	RN, TELEMETRY
GAMUROT	ANNE CAROLINE	RN, TELEMETRY
GUTIERREZ	LUZ	RN, TELEMETRY
HERTZ	ALEXANDRA	RN, TELEMETRY
INNOCENT	COURTNEY	RN, TELEMETRY



Employee Last Name	First Name	Job Title
IZUCHUKWU-MUONAGOR	RITA	RN, TELEMETRY
KANG	MISEON	RN, TELEMETRY
KIM	JUNGWOO	RN, TELEMETRY
KIM	KUNTHY	CHARGE NURSE, TELEMETRY
LAGUMBAY	SUZETTE	RN, TELEMETRY
LEE	GINA	RN, TELEMETRY
LICUP	RONALD	CHARGE NURSE, TELEMETRY
LOPES	STEVEN	RN, TELEMETRY
LOPEZ	ANGELA	RN, TELEMETRY
MUNOZ	TAMARA	RN, TELEMETRY
NAM	JISUN	RN, TELEMETRY
NGUYEN	DON	RN, TELEMETRY
NICOLAS	EMILY	RN, TELEMETRY
NOTARIO	ZACHARY	RN, TELEMETRY PD-1
NYE	HAYLEY	RN, TELEMETRY
OUATTARA	NAGNINLTAHA	RN, TELEMETRY
PARK	CHUNG AH	RN, TELEMETRY
PARK	SUE	RN, TELEMETRY
PARUNGAO	ARLENE	RN, TELEMETRY
PESA	EVELYN	RN, TELEMETRY
POSUELOZ	ARIEL	RN, TELEMETRY
PRYOR	VINCENT	RN, TELEMETRY
RAMIREZ	EVELYN	RN, TELEMETRY
REDDIX	TRACY	CHARGE NURSE, TELEMETRY
SATO	ASAMI	RN, TELEMETRY
SEGISMUNDO	MAXINE	RN, TELEMETRY

Exhibit A - 5



Employee Last Name	First Name	Job Title
DORIA	MIRIAM	RN, MED/SURG 6 PD-1
FITKOWSKI	ANDREW	RN, MED/SURG 6
GARCIA	DOROTHY	RN, MED/SURG 6
GONZALES	YVETTE	CHARGE NURSE, MED/SURG 6
GUZMAN	JAMES BRIAN	RN, MED/SURG 6
HAN	BONA	RN, MED/SURG 6
ITANI	KAZUMI	RN, MED/SURG 6
KATIGBAK	AGNES	RN, MED/SURG 6
KIM	HYEON SOO	RN, MED/SURG 6
LEE	BO	RN, MED/SURG 6
LEE	JOMAR	RN, MED/SURG 6
LEE	NAM	RN, MED/SURG 6
LEE	ROBIN	RN, MED/SURG 6
LEE	SARAH SO-YOUNG	RN, MED/SURG 6
LEON	CINZIA	RN, MED/SURG 6
LIM	ROWENA	RN, MED/SURG 6
LO	CELINA	RN, MED/SURG 6
LOPEZ	MA VICTORIA	RN, MED/SURG 6
LUZURIAGA	RYAN	RN, MED/SURG 6
MANALO	MARIA CECILIA	RN, MED/SURG 6
MILIAN	RAMIRO	RN, MED/SURG 6
ORANTE	CHRISTIAN	RN, MED/SURG 6
ORIS	JACQUELINE	RN, MED/SURG 6
OSE	TATIANA	RN, MED/SURG 6
PALANCA	RYAN	RN, MED/SURG 6
POSADAS	NIDA	RN, MED/SURG 6



Employee Last Name	First Name	Job Title
SALCEDO	CHERYL ANN	CHARGE NURSE, MED/SURG 6
SEO	MOON HYANG	CHARGE NURSE, MED/SURG 6
SIA	MARY ANN	RN, MED/SURG 6
SOLIS	KARINA	RN, MED/SURG 6
SONG	EUN	RN, MED/SURG 6
SUH	YURI	RN, MED/SURG 6
TRAN	DIEM	RN, MED/SURG 6 PD-3
VASQUEZ	GRISELDA	RN, MED/SURG 6
VERGARA	HERMIE	RN, MED/SURG 6
ABAD	ROMEO	RN, MED/SURG 7
ARSUA	AILEEN	RN, MED/SURG 7
BIGASIN	JHOANNA	RN, MED/SURG 7
BUENO	REGINALD	RN, MED/SURG 7
CARRILLO	MARICELA	CHARGE NURSE, MED/SURG 7
CHOI	ALICIA	RN, MED/SURG 7
CHUA	MA SHEILA	RN, MED/SURG 7
CORONA	DAISY	RN, MED/SURG 7
CUBE	REALLINE	RN, MED/SURG 7
DINSAY	ANNABELLE	RN, MED/SURG 7
EHSAN	RAHAL	RN, MED/SURG 7
GARCIA	SHERWIN	CHARGE NURSE, MED/SURG 7
GO	EDWIN	RN, MED/SURG 7
GONZALES	KRISTINE	RN, MED/SURG 7
INTAL	MARIVIC GRACE	RN, MED/SURG 7
KIM	BOOYOUNG	RN, MED/SURG 7
LEGASPI	ROMMEL	RN, MED/SURG 7



Employee Last Name	First Name	Job Title
LORICA	RHODA	RN, MED/SURG 7
MINGUEZ	MARY MAE	RN, MED/SURG 7 PD-1
OBILLE	MARK	RN, MED/SURG 7
OCAMPO	GEORGE	RN, MED/SURG 7
RUIZ	JENNIE	RN, MED/SURG 7
UCHE	PATRICIA	RN, MED/SURG 7
UMALI	MARY KRISTINE L	RN, MED/SURG 7
YU	FERNANDO II	RN, MED/SURG 7
BAE	STELLA	RN, MED/SURG 7 KP
HA	DA YEONG	RN, MED/SURG 7 KP
JANG	JONGSOOK	RN, MED/SURG 7 KP
KIM	MEEYUN	RN, MED/SURG 7 KP
KO	HYANGMI	RN, MED/SURG 7 KP
LIM	SEUNGAE	RN, MED/SURG 7 KP
MALIT	CHERYL JOY	RN, MED/SURG 7 KP
MARTINEZ	KAREN KAYE	RN, MED/SURG 7 KP
SHIM	GEMMA	RN, MED/SURG 7 KP
BRACAMONTE	JESSICA	RN, ONCOLOGY
CAMPOS	YASMINI	RN, ONCOLOGY
CEBALLOS	VILMAR	RN, ONCOLOGY
CUARESMA	DENICE	RN, ONCOLOGY
DATOR	COSSETTE	RN, ONCOLOGY
ESTRADA	MARTIN	RN, ONCOLOGY
EVANGELISTA	ALLAN	CHARGE NURSE, ONCOLOGY
GILL	JAGVEER	RN, ONCOLOGY
MACAPAGAL	YOLANDA	RN, ONCOLOGY



Employee Last Name	First Name	Job Title
MANALO	EVELYN	RN, ONCOLOGY
PLAZO	JONATHAN	RN, ONCOLOGY
REBUYACO	ARIANNA	RN, ONCOLOGY
RODRIGUEZ	DENISE	RN, ONCOLOGY
TOLENTINO	CHONA	CHARGE NURSE, ONCOLOGY
AMPONG	GRANVILLE	RN, ACUTE REHAB
APELIZAN	PAULA LORENA	RN, ACUTE REHAB
BAE	YEAHEUN	RN, ACUTE REHAB
BOTE	ROMERO	RN, ACUTE REHAB
DADHANIA	AKRUTI	RN, ACUTE REHAB
GUMAYAGAY	VINA	RN, ACUTE REHAB
JANG	JI-YOUNG	RN, ACUTE REHAB
KIM	JUNGMIN	RN, ACUTE REHAB
NGUYEN	KELLY THUY-KHANH	RN, ACUTE REHAB
NOBLEFRANCA	CHITA	RN, ACUTE REHAB
PARK	ELLEN	RN, ACUTE REHAB
PASCUA	JULIA	RN, ACUTE REHAB
PERALTA	VIOLETA	RN, ACUTE REHAB
RANGEL	SANDRA	RN, ACUTE REHAB
SIAPNO	JOANN	RN, ACUTE REHAB
TICON-GALLARDO	MARY GRACE	RN, ACUTE REHAB
YAO	SUJUE	RN, ACUTE REHAB
ACOYMO	KERWIN	RN, EMERGENCY ROOM PD-3
ADLAWAN-DOBLE	MARIA ROSELIE	RN, AUDITOR - EMER. ROOM 10/40
ADRAYAN	GILBERT	RN, EMERGENCY ROOM PD-3
AGUILAR	JUSTIN	RN, EMERGENCY ROOM PD-1

Exhibit A - 9



Employee Last Name	First Name	Job Title
QUITZON	MARIA	RN, EMERGENCY ROOM PD-3
SALAZAR	GUSTAVO	RN, EMERGENCY ROOM PD-1
SALDANA	MARIA	RN, EMERGENCY ROOM PD-1
SANDIGAN	ULYSSES	CHARGE NURSE, EMERGENCY ROOM
SONG	JOO	RN, EMERGENCY ROOM
VALISNO SANCHEZ	MARIA	RN, EMERGENCY ROOM
ZABLAN	RODERICK	RN, EMERGENCY ROOM PD-1
ABAD	JENNIFER	RN, POB DIALYSIS PD-3
CHOI	MIRAN	RN, POB DIALYSIS
DE QUIROS	IVY LEE	RN, POB DIALYSIS PD-1
LEE	YUN	RN, POB DIALYSIS PD-2
LIM	REBECCA	RN, POB DIALYSIS
LIM	SEOKSOON	RN, POB DIALYSIS
OH	KYUNG SOON	RN, POB DIALYSIS
VILLAR	MARNIT	RN, POB DIALYSIS
ALDRETE	MANUEL	CHARGE NURSE, SHORT STAY
ARGUETA-CORDERO	FRANCISCO	RN, SHORT STAY
CHOI	PILL	RN, SHORT STAY
DERECI	MARY ANN	RN, SHORT STAY
GARCIA	RHODORA	RN, SHORT STAY
JIMENEZ	EVANGELINE	RN, SHORT STAY 12HR
KILALA	MARY JANE	RN, SHORT STAY
KIM	HYANGHEE	RN, SHORT STAY
LEE	HYAE JIN	RN, SHORT STAY
LIM	HYO	RN, SHORT STAY
PARK	JINSUN	RN, SHORT STAY



Employee Last Name	First Name	Job Title
SHIN	SUNGMIN	RN, SHORT STAY
TAI	ELLEN	RN, SHORT STAY
BALINGIT	CORAZON	CHARGE NURSE, SURG & RECOVERY
CHANG	MARY	RN, SURG & RECOVERY
CRUDUP	IMANI	RN, SURG & RECOVERY
DEEGAN	GERARD	RN, SURG & RECOVERY
DUMLAO	TERESITA	RN, SURG & RECOVERY
EOM	HOKYOUNG	RN, SURG & RECOVERY
FAMILARA	MYRA	RN, SURG & RECOVERY PD-3
HEO	GJIYOUNG	RN, SURG & RECOVERY
LYON	LORNA	RN, SURG & RECOVERY
MENDOZA	MARILOU	RN, SURG & RECOVERY
POSUELOZ	ARIEL	RN, SURG & RECOVERY
SANCHEZ	BEATRIZ	RN, SURG & RECOVERY
TAMANAHA	MA CORAZON	RN, SURG & RECOVERY
TAN	JULIE ANN	RN, SURG & RECOVERY
KANG	SO HEE	RN, SURG & RECOVERY 2
MUZYCHUK	NELLI	RN, SURG & RECOVERY 2
YUN	CHRISTINA	RN, SURG & RECOVERY 2
CHO	MEONGHEE	RN, RECOVERY ROOM
CROWLEY	VALERIE	RN, RECOVERY ROOM
CUPP	CHRISTINE	RN, RECOVERY ROOM 10HR
NILO	VIDAL	RN, RECOVERY ROOM
ORAIS	GRECITA PRIMA	RN, RECOVERY ROOM
BAUTISTA PALANOG	MARICEL	RN, CATH LAB PD-1
CROWLEY	VERONICA	RN, CATH LAB



Employee Last Name	First Name	Job Title
DUTTON	NOELLE	RN, CATH LAB (STEMI)
GERMINAL	GLADYS	RN, CATH LAB
HIPUS	JOSEFINA	RN, CATH LAB
KIM	SINSIL	RN, CATH LAB
LEE	EUNJIN	RN, CATH LAB
RUANTO	ROZALDO	RN, CATH LAB
VILLAROMAN	CHIQUI	RN, CATH LAB
ASSADI	AMIR	RN, INTERVENTIONAL RADIOLOGY
BAZAN	GERARDO	CHARGE NURSE, INTER. RADIOLOGY
MAYFIELD	CHRIS	RN, INTERVENTIONAL RADIOLOGY
BIRIOUKOV	LEONID	RN, ACUTE DIALYSIS PD-2
CAISIP	THADEUS	RN, ACUTE DIALYSIS
DANG	PAULINE	RN, ACUTE DIALYSIS
DEL FIERRO	JOSEPH ARNEL	RN, ACUTE DIALYSIS
DORAN	CHARLES	RN, ACUTE DIALYSIS
GROEHLER	MIRA	RN, ACUTE DIALYSIS
KIM	GEUMCHUL	RN, ACUTE DIALYSIS
LEYRAN	NOEL	RN, ACUTE DIALYSIS
LICAYAN	SORIANO	RN, ACUTE DIALYSIS
OH	YESUL	RN, ACUTE DIALYSIS PD-3
PARK	KI	RN, ACUTE DIALYSIS
ROH	HAE	RN, ACUTE DIALYSIS
SHIN	YOUNG SUK	RN, ACUTE DIALYSIS
THOMAS	CRISTINA	RN, ACUTE DIALYSIS
TULANDA	NSIMBA	RN, ACUTE DIALYSIS
DUMANSKY	ELENA	RN GI LAB-8/80



Employee Last Name	First Name	Job Title
ESTELL	CORNELIA	CHARGE NURSE, GI LAB
LARGAESPADA	FRANCES	RN GI LAB-8/80
AQUINO	HILDA	EDUCATOR, LEAD CLINICAL RN
CHUA	HONEE	EDUCATOR, CLINICAL RN 10HR
CERAOS	JERIC	RN, NURSING ADMIN
GOLORAN	PATRICIA	RN, NURSING ADMIN
REYES	JENNIE	RN, NURSING ADMIN
SANTIAGO	PATRICIA	RN, NURSING ADMIN
SANTIAGO	ZAYRA	RN, NURSING ADMIN
WILSON	MICHELLE	RN, NURSING ADMIN
ALWAN	ALEXZANDRIA	RN, CASE MANAGEMENT PD-3
BALUYOT	VANESSA FAYE	RN, CASE MANAGEMENT
CHANG	AH YEON	RN, CASE MANAGEMENT
CHOI	BO YEON	RN, CASE MANAGEMENT PD-1
CRUZ	LIEZL	RN, CASE MANAGEMENT PD-1
ENRIQUEZ	VERE JONAS	RN CASE MANAGEMENT
LEMUS	LITA	RN, CASE MANAGEMENT
LENON	AUDREY	RN, CASE MANAGEMENT
LUISTRO	ROMEO	RN, CASE MANAGEMENT
MADLANGBAYAN	HAYCELYN	RN, CASE MANAGEMENT
MCFARLAND	ALLEN GRACE	RN, CASE MANAGEMENT
MOJARRO	YARETH	RN, CASE MANAGEMENT PD-2
OANDASAN	JAYCEL	RN, CASE MANAGEMENT
RAMOS	SHEILA	RN, CASE MANAGEMENT
SAMSON	TIFFANY	RN, CASE MANAGEMENT PD-1
SANTOS	ROSEMARIE	RN, CASE MANAGEMENT

Exhibit A - 14

verity.org

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS California Nurses Association		DEFENDANTS Verity Health Systems of California, Inc, a California nonprofit public benefit corporation; St. Vincent Medical Center, an affiliate; St. Francis Medical Center, an affiliate; Seton Medical Center, an affiliate; Verity Holdings, LLC, an affiliate; DePaul Ventures, LLC, an affiliate; Richard Adcock, an individual; Steven Sharrer, an individual
ATTORNEYS (Firm Name, Address, and Telephone No.) Carol Igoe (SBN 267673) cigoe@calnurses.org Kyrsten Skogstad (SBN 281583) kskogstad@calnurses.org Nicole Daro (SBN 276948) ndaro@calnurses.org California Nurses Association 155 Grand Avenue Oakland, CA 94612 510-273-2273		ATTORNEYS (If Known) Sam Alberts sam.alberts@dentons.com Denton's US LLP 1900 K Street, NW Washington, DC 20006 T: 202-408-7004 An Ruda aruda@BZBM Bartko Zankel Bunzel One Embarcadero Center, Suite 800 San Francisco, CA 94111 T: 415-956-1900
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Violations of 29 U.S.C. section 2100, et. seq., California Labor Code section 1400, et. seq. , Intentional Misrepresentation by Concealment, Negligent Misrepresentation		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input checked="" type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input checked="" type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa et. seq. <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP23
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought Damages to be Proved At Trial; General Damages, Special Damages, Statutory Damages, Punitive Damages, Attorneys' Fees and Expenses; Prejudgment Interest		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Verity Health Systems of California, Inc., et. al.		BANKRUPTCY CASE NO. 2:18-bk-20151-ER
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISION OFFICE Los Angeles	NAME OF JUDGE Hon. Ernest M. Robles
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF None	DEFENDANT None	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Kyrsten Skogstad		
DATE March 5, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Kyrsten Skogstad	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

EXHIBIT 44

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Jointly Administered With:

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

Chapter 11 Cases

**DEBTORS' EMERGENCY MOTION FOR
AUTHORIZATION TO CLOSE ST. VINCENT
MEDICAL CENTER; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATIONS IN SUPPORT THEREOF**

Date: TBD

Time: TBD

Place: Courtroom: 1568

U.S. Bankruptcy Court

255 East Temple Street

Los Angeles, CA 90012

Judge: Hon. Ernest M. Robles



182015120010600000000012

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Pursuant to §§ 105, 363, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),¹ Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors” or the “Verity Health System”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”), for the entry of an order authorizing the Debtors to: (1) take all actions necessary in the exercise of their business judgment to effectuate the orderly and expedited closure (the “Closure”) of Debtor hospital St. Vincent Medical Center (“SVMC”) and its dialysis center, St. Vincent Dialysis Center, Inc. (as a separate Debtor entity, “SVDC,” and together with SVMC as an integrated medical center, “St. Vincent”), including the transfer of patient care to other health care providers,² the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent (the “Closure Plan”);³ and (2) granting such other relief as the Court deems just and proper in connection therewith.

The Debtors request that the relief sought be granted on an emergency basis to avoid immediate and irreparable harm given (i) St. Vincent's continuing economic losses, (ii) the Debtors' need to have sufficient cash on hand for the orderly closure of St. Vincent, (iii) the acceleration of staff turnover once this Motion is filed which will further increase short-term

¹ All references to “§” are to sections of the Bankruptcy Code.

² As part of the Closure Plan, St. Vincent intends to enter into an agreement with Good Samaritan Hospital (“GSH”) whereby GSH agrees to accept transfers of St. Vincent’s inpatients, subject to applicable legal requirements and patient consent. GSH is located approximately one mile from St. Vincent.

³ Certain elements of the Closure Plan may require the Debtors to enter into new contracts and dispose of equipment and other property, which relief is incorporated in this Motion, and assume or reject current contracts and leases, which relief is not requested herein. To the extent the Debtors determine in their business judgment to assume or reject contracts and leases in connection with implementing the Closure Plan, such relief will be sought by separate motion(s).

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operational costs, (iv) the Debtors' need to begin the closure process as soon as possible given that it will take at a minimum one month to safely transfer all patient care, and (v) generally that VHS cannot continue to subsidize St. Vincent's operations without putting the continued existence of the entire Verity Health System at risk. The sale of St. Vincent as documented in the Asset Purchase Agreement ("APA," and the sale documented thereby, the "SGM Sale") between the Debtors and Strategic Global Management, Inc. ("SGM") did not close as contemplated therein. At this point, any delay in St. Vincent's closure will significantly impact these Cases because St. Vincent operates with cash losses that put the entire Verity Health System at peril under the current circumstances. St. Vincent lost approximately \$65 million in fiscal year 2019, which translates to daily cash losses of over \$175,000. Accordingly, there are limited cash resources available for continued operation and patient care, which cannot at this stage be mitigated by either additional external financing (which is no longer available to the Debtors beyond a short extension by their current prepetition secured creditors to help allow the Debtors to finance an orderly wind-down) or sale prospects (of which there were none for St. Vincent as an operating entity). Moreover, once the relief sought in this Motion is made public, turnover of staff, especially nurses, is likely to accelerate, making maintenance of high quality patient care more difficult, and, to the extent that temporary nursing replacements are required, significantly more expensive. Thus, reducing the period of time between filing of the Motion and a hearing on the Motion is essential to maintaining patient care.

Finally, key constituents, including secured creditors and the Unsecured Creditors Committee have been fully informed of the Debtors' intent to file this Motion and the basis for the relief sought herein.

Accordingly, the Debtors respectfully request that the Court grant the Motion for an emergency hearing because the proposed expedited hearing will not prejudice any parties and is in the best interests of the Debtors' estates and creditors.

I.

BASIS FOR THE REQUESTED RELIEF

The Debtors seek authority to close St. Vincent as expeditiously as possible because continued subsidy of its operations by VHS puts the continued existence of the entire Verity Health System at risk. The Motion is based upon §§ 105, 363, and 1108, Bankruptcy Rule 6004, the attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the "First-Day Decl."), the *Declaration of James M. Moloney in Support of the Debtors' Memorandum. in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 2220] (the "Moloney Sale Decl."); the Declarations of Richard Adcock (the "Adcock Decl."), Peter C. Chadwick (the "Chadwick Decl."), and James M. Moloney (the "Moloney SVMC Decl.") filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, and any other admissible evidence properly brought before the Court. The Debtors request that the Court take judicial notice of the record in the Debtors' Cases and any other judicially noticeable facts in support of the Motion, as appropriate, including all documents filed with the Court in these Cases that relate to the SGM Sale and the prior sale of hospitals to Santa Clara County.

II.

RESPONSES

Any party opposing or responding to the Motion may present such response (the "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the Motion or in support, declarations and copies of all evidence on which the responding party intends to

1 rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the
2 failure to file and serve a timely objection to the Motion may be deemed by the Court to be
3 consent to the relief requested herein.

4 **III.**

5 **SERVICE OF MOTION**

6 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
7 Authorities, the Adcock Decl., the Chadwick Decl., the Moloney SVMC Decl., and any notice
8 required by the Court on: (i) the California Attorney General; (ii) the Official Committee of
9 Unsecured Creditors; (iii) the Debtors' prepetition secured creditors; (iv) SGM; (iv) the Office of
10 the United States Trustee; and (v) any other parties on the Limited Service List set forth in the
11 *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No.
12 132]. To the extent necessary, the Debtors request that the Court waive compliance with LBR
13 9075-1(a)(6) and approve service (in addition to the means of service set forth in such LBR) by
14 overnight delivery.

15 **IV.**

16 **RESERVATION OF RIGHTS**

17 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
18 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in
19 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
20 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
21 holder.

22 **V.**

23 **CONCLUSION**

24 For all the foregoing reasons and such additional reasons as may be advanced at or prior
25 to the hearing regarding this Motion, the Debtors respectfully request that the Court hold a
26 hearing on an emergency basis to consider the Debtors request for an order (i) permitting the
27 Debtors to implement the Closure Plan and to take all actions which in their business judgment
28 they deem necessary and appropriate to effectuate the orderly Closure of St. Vincent; and (ii)

granting such other relief as the Court deems just and appropriate.

Dated: January 6, 2020

DENTONS US LLP

SAMUEL R. MAIZEL

TANIA M. MOYRON

NICHOLAS A. KOFFROTH

By /s/ Tania M. Moyron

*Attorneys for Verity Health System of
California, Inc., et. al.*

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”) has always been a vital part of the Verity Health System.¹ It is undeniable that everyone involved has done his and her utmost to promote St. Vincent’s continued existence for the benefit of its patients, employees, and the communities it serves. However, St. Vincent has been operating at significant financial losses (more than \$65 million in fiscal year 2019 alone), which has become unsustainable for both St. Vincent, and for the other Debtors forced to subsidize its losses. Additionally, as the Court is aware, the sale of St. Vincent as documented in the Asset Purchase Agreement (“APA,” and the sale documented thereby, the “SGM Sale”) between the Debtors and Strategic Global Management, Inc. (“SGM”)—which would have provided for the sale of St. Vincent as a going concern—did not close. During the extensive marketing and sale process leading up to the APA with SGM, there was no interest for St. Vincent as a going concern. Currently, there is no buyer who has presented a feasible offer to purchase St. Vincent as a going concern.²

As responsible stewards of patient safety, the Debtors’ foremost responsibility is delivery of high quality patient care, and, consequently, the Debtors must immediately begin the Closure Plan (as defined below) with sufficient cash on hand to orderly implement the plan and transfer of

¹ The “Verity Health System” comprises the following affiliated debtors and debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Cases”): Verity Health System of California, Inc. (“VHS”), O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center (“SVMC”), Seton Medical Center, O’Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical Center of Lynwood Foundation, St. Vincent Foundation (the “Foundation”), St. Vincent Dialysis Center (“SVDC”), Inc., Seton Medical Center Foundation, Verity Business Services, Verity Medical Foundation, Verity Holdings, LLC, De Paul Ventures, LLC, De Paul Ventures - San Jose Dialysis, LLC.

² Even if there were any material interest to purchase St. Vincent, St. Vincent and the estates could not sustain the losses that would be incurred during the regulatory review process, such as the losses borne during the Attorney General review process for the sale to SGM, which failed when SGM did not close the sale.

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patients. The Debtors anticipate that by mitigating St. Vincent's operational losses through closure of its facilities as expediently as possible, the Debtors will have sufficient cash-on-hand (e.g., remaining proceeds from the hospital sales to Santa Clara County plus extended consensual use of cash collateral) to fund the closure (the "Closure") in an orderly manner. Continuing to incur operating losses at St. Vincent outside the Closure Plan would only deplete cash resources and place St. Vincent and the Debtors in a position that they would not have sufficient cash on hand to conduct the orderly Closure.

The Debtors anticipate it will take 30 days to discharge acute care patients. As part of the closure plan (the "Closure Plan"), St. Vincent intends to enter into an agreement with Good Samaritan Hospital ("GSH"), whereby GSH will accept transfers of St. Vincent's inpatients, subject to applicable legal requirements. GSH is located approximately one mile from St. Vincent. With respect to patients in St. Vincent's kidney/pancreas transplant program, it will take (i) 30 days to transfer those currently receiving care to alternate providers, and (ii) 60 days to coordinate care with other outpatient health care providers for those patients who are being evaluated for the program or have already received a transplant and been discharged. St. Joseph Hospital ("St. Joseph") has agreed to assume care of the kidney transplant patients who are part of the St. Vincent Transplant Program (defined below), subject to approval of the United Network for Organ Sharing ("UNOS"). St. Joseph has its own UNOS-approved Kidney Transplant Program. The Debtors are in discussions with other area hospitals to coordinate the transfer of care for the kidney/pancreas-only transplant patients (less than twenty patients).

Accordingly, the Debtors respectfully request that the Court grant the Motion to protect patient care and to avoid immediate and irreparable harm to the Debtors, the Hospitals, and the estates. The Debtors respectfully submit the proposed relief is in the best interests of St. Vincent, St. Vincent's patients, and the Debtors and their estates as a whole.

II.

JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant to 28 U.S.C.

§§ 1408 and 1409.

The statutory predicates for the relief sought in the Motion are §§ 105, 363, and 1108.³

III.

STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”). Since the commencement of their Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108. On September 14, 2018, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors [Docket No. 197].

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O’Connor Hospital and Saint Louise Regional Hospital, and currently operates St. Francis Medical Center, St. Vincent (the subject of this Motion), and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, the “Hospitals”).

3. As of the Petition Date, the Verity Health System operated as a nonprofit healthcare system in the State of California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *See Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Decl.”), at ¶ 12. The scope of the services provided by the Verity Health System is exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.* The Verity Health System was originally established by the Daughters of Charity of St. Vincent de Paul, Province of the West, to support the mission of the Catholic Church through a commitment to the sick and poor.

³ All references to “§” are to sections of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”); all references to “LBR” are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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4. St. Vincent was founded as the first hospital in Los Angeles in 1856. First-Day Decl., at ¶ 34. In 1971, a new facility was constructed at the Hospital’s current location at 2131 West Third Street, Los Angeles, CA 90057. *Id.* The Hospital has expanded to a 366 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer care, total joint and spine care, and multi-organ transplant services. *Id.* The Hospital serves both local residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. *Id.* St. Vincent provides medical care for both inpatients (*i.e.*, patients who remain in the hospital for more than 24 hours) and outpatients (*i.e.*, patients who receive outpatient services, such as MRIs). Additionally, the Debtors operate a Kidney-Pancreas Transplant Program at St. Vincent (the “St. Vincent Transplant Program”).⁴ The St. Vincent Transplant Program operates under UNOS approval. As a provider of healthcare services for a high percentage of elderly patients, many of the Hospital’s services and programs are focused on the treatment of various chronic diseases. *Id.* In 2015, under a restructuring agreement, St. Vincent was converted from a religious corporation to a public benefit corporation. *Id.* at ¶¶ 21, 92. St. Vincent owns real property commonly known as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities located thereon; and (ii) vacant land in Salton Sea, California. *Id.* at ¶ 23.⁵

5. St. Vincent has its own dialysis center (SVDC) on-campus, where St. Vincent’s kidney disease patients receive dialysis services, including hemodialysis and isolated ultrafiltration treatments as part of St. Vincent’s end-stage renal disease program. *Id.* at ¶ 36. Although together they form St. Vincent, the Hospital, SVMC and SVDC have separate corporate

⁴ There are approximately 300 patients on the waitlist in the St. Vincent Transplant Program and approximately 700 patients who have received transplants in the last five years. Another one thousand individuals are currently being evaluated for a place on the transplant waitlist.

⁵ The Foundation is governed by a Board of Trustees, and SVMC is the sole corporate member of the Foundation. Because the Foundation exists to support St. Vincent, the Debtors ultimately will seek to wind it down as well; however, they do not seek to do so through this Motion. Given its status as a medical foundation, the Foundation will be subject to a separate wind-down plan in coordination with the California Attorney General. The Foundation holds donor restricted funds, and owns: (i) a fractional timeshare of a condominium commonly known as 2600 Avenida Del Presidente, San Clemente, CA 92672; and (ii) Lot 10 of Block 572 of Rio Grande Estates, Unit 25, Valencia, NM.

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1 identities, and SVMC is the sole corporate member of SVDC. *Id.* Both SVMC and SVDC are
2 exempt from federal income taxation as an organization described in § 501(c)(3) of the Internal
3 Revenue Code of 1986. *Id.* at ¶ 21.

4 6. St. Vincent as of the Petition date employed approximately 1,099 employees, of
5 which 897 were full time, 42 were part time, and 160 were per diem. *Id.* at ¶ 59(f). St. Vincent
6 employees are represented by two unions with the respective contractual obligations: (i) SEIU-
7 UHW (Non-Nursing Service Employees); and (ii) California Nurses' Association ("CNA")
8 (Nurses). *Id.* at ¶ 60.

9 7. St. Vincent is a jointly "obligated" party with its affiliates on approximately
10 \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million outstanding tax
11 exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities
12 Development Authority (the "2005 Bonds"), which loaned the bond proceeds to certain Debtors
13 to provide funds for capital improvements and to refinance certain tax exempt bonds previously
14 issued in 2001 by the Daughters of Charity Health System, and (b) \$202.0 million outstanding tax
15 exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California
16 Public Finance Authority. *Id.* at ¶ 121.

17 8. St. Vincent has consistently lost money for many years due to, among other things,
18 unfavorable payor contracts, rising health care costs, high pension obligations and certain
19 requirements imposed on St. Vincent by the State of California Attorney General, as more fully
20 described below. *See id.* at ¶¶ 95, 99. St. Vincent is also dramatically under invested in structural
21 improvements necessary to meet California's state mandated seismic and clean energy
22 requirements. *Id.* The combined effect of these issues have been a consistent drag in operating
23 cash balances absent additional financing. *See Chadwick Decl.*, at ¶ 5.

24 9. While the Debtors collectively have a poor financial history, St. Vincent has been
25 particularly troubled. *Id.* at ¶ 6. On the Petition Date, although St. Vincent accounted for
26 approximately only 23% of the patient volume of the entire Verity Health System, the hospital
27 accounted for approximately 60% of the operating losses. *Id.* The Debtors project continuing
28 operating losses by St. Vincent. The reported financial statements of St. Vincent reflect that, in

1 fiscal year 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which was an 18%
2 and 103% increase over the fiscal years 2018 and 2017, respectively. *Id.* at ¶ 8.

3 **B. Marketing and Sale Efforts**

4 (1) *Prepetition Sale Efforts*

5 10. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
6 solicit interest in their assets, including the five Hospitals and related assets (collectively, the
7 “Assets”). *See Declaration of James M. Moloney in Support of the Debtors’ Memorandum. in*
8 *Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims,*
9 *Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated*
10 *Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 2220]
11 (the “Moloney Sale Decl.”), at ¶ 4. In June 2018, Debtors engaged Cain Brothers, a division of
12 KeyBanc Capital Markets (“Cain”), to assist in identifying potential buyers of some or all of the
13 Assets and commenced discussions with those potential Buyers. *Id.* Cain prepared a
14 Confidential Investment Memorandum and organized an online data site to share information
15 with potential buyers and contacted strategic and financial buyers beginning in July 2018. *Id.* In
16 this initial marketing process, Cain contacted more than 100 potential partners to evaluate their
17 interest in exploring a transaction involving some or all of the Assets. *Id.* By August 2018, as a
18 result of its ongoing and broad marketing process, Cain had received 11 “Indications of Interest”
19 from potential buyers of some or all of the Assets. *Id.*

20 (2) *DIP Facility*

21 11. At the commencement of the Cases, the Debtors obtained court approval for a DIP
22 financing facility with up to \$185 million of availability from Ally Bank subject to a borrowing
23 base (the “DIP Facility”). (*See* Docket No. 409). The DIP Facility was secured by substantially
24 all of the Debtors’ assets and also provided for super priority administrative priority status for all
25 obligations under the facility. *Id.* The DIP Facility enabled Debtors to operate the Hospitals
26 while they continued their efforts to find a purchaser for their assets and to reach agreements with
27 key constituents. *See* Chadwick Decl., at ¶ 7. On September 6, 2019, the Debtors received
28

1 authority to pay off the DIP Facility and continue funding operations through the consensual use
2 of cash collateral [Docket No. 3022].

3 (3) *Postpetition Sale Efforts*

4 12. Postpetition, Cain continued to work with potential buyers for some or all of the
5 Assets. Moloney Sale Decl., at ¶ 5. Based on these discussions, the Debtors determined that
6 seeking a buyer for the Assets in Santa Clara and a separate buyer for the other Assets would
7 most likely yield higher net proceeds for the Debtors' estates. *Id.* As a result, the sale of the
8 Santa Clara Assets to Santa Clara County was approved by the Court on December 27, 2018
9 [Docket No. 1153].

10 13. Thereafter, Cain focused on marketing the Debtors' remaining Assets, including
11 St. Vincent. Moloney Sale Decl., at ¶ 6. As a part of this process, Cain contacted more 189
12 potential parties to evaluate potential stalking horse bidders for some or all of the Debtors'
13 remaining Assets of which 92 had executed a NDA and 18 submitted written proposals. *Id.*
14 Subsequent to receiving access to the virtual data room and being offered additional information
15 via conference calls and site visits, many of the potential purchasers indicated that they were not
16 interested in being the stalking horse bidder. *Id.* During November and December 2018, the
17 Debtors and their advisors had substantial discussions with those potential buyers remaining,
18 during which Prime Healthcare and SGM emerged as the leading potential candidates to be
19 selected as the stalking horse bidder for the Debtors' remaining Assets. *Id.*

20 (4) *The SGM APA*

21 14. After extensive negotiations with both parties and careful review of the proposed
22 transactions by the Debtor and its advisors, the Debtors selected SGM as the stalking horse bidder
23 (the "Stalking Horse Bidder") for the Debtors' remaining Assets. *Id.* at ¶ 7. On February 19,
24 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered
25 an order approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order")
26 [Docket No. 1572]. SGM served as the Stalking Horse Bidder under the terms of the Bidding
27 Procedures Order. The Bidding Procedures Order also approved that certain asset purchase
28 agreement [Docket No. 2305-1] (the "SGM APA") as modified therein.

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1 15. Cain sent the approved bidding procedures to the 90 parties with whom the Debtor
2 had previously executed NDAs and included the timetable for the sale of the Debtors' remaining
3 Assets. Moloney Sale Decl., at ¶ 8. Cain also requested that each party confirm that each party
4 continued access to the data room and were interested in continuing to evaluate the purchase of
5 some or all of the Debtors' remaining assets. *Id.* Nineteen of those parties confirmed that were
6 still evaluating the transaction and requested continued access to the data room. *Id.*

7 16. Cain facilitated due diligence by potential buyers, including arranging site visits,
8 organizing calls with the Debtors' leadership team and facilitated follow-up from the Debtors and
9 their advisors to address diligence requests. *Id.* at ¶ 9. Of these nineteen interested parties,
10 certain parties evaluated acquiring all the Debtors' remaining Assets, others evaluated acquiring
11 individual hospitals, and others were real estate companies that evaluated purchasing St. Vincent
12 to convert its campus to non-hospital uses. *Id.*

13 17. At the end of the marketing period, two parties submitted Qualified Bids, one for
14 St. Vincent and one for St. Francis Medical Center, one party submitted a non-Qualified Bid for
15 St. Francis Medical Center and one party submitted a non-Qualified Bid for all of the assets. *Id.*
16 at ¶ 10. No Qualified Full Bid was received.

17 18. Accordingly, under the terms of the SGM APA and the Bidding Procedures Order,
18 no auction was held and the Debtors declared SGM as the "winning bidder" of the Hospitals.
19 Docket No. 2053, at 2.

20 19. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale*
21 *of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens,*
22 *Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
23 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (the "Sale
24 Order"), approving the sale to SGM (the "SGM Sale"). Pursuant to the SGM APA, SGM agreed
25 to continue to operate St. Vincent as well as the Debtors' other three Hospitals.

26 20. The Debtors had expected the SGM Sale to close in the fourth quarter of 2019. On
27 November 27, 2019, the Court entered an order and accompanying memorandum decision
28

1 requiring SGM to close the sale by December 5, 2019 [Docket Nos. 3723-24]. SGM did not
2 close the sale by December 5, 2019.

3 21. The previous marketing and sale process yielded no buyer interested in the
4 purchase of St. Vincent as a going concern, and no alternate buyer is anticipated. Moloney
5 SVMC Decl., at ¶ 4. St. Vincent's operating losses are significant and unsustainable. Chadwick
6 Decl., at ¶ 8. Consequently, the Debtors must start expeditiously resolving these Cases through
7 alternative transactions, including the relief sought in this Motion, pursuant to the authority
8 granted by the Court's order and accompanying memorandum decision [Docket Nos. 3783-84],
9 and consistent with their fiduciary duty.

10 22. The Debtors recently stipulated with their prepetition secured lenders to extend
11 their consensual use of cash collateral [Docket Nos. 3871-72] (the "Cash Collateral Agreement").

12 **C. Closure Plan**

13 *(1) Overview*

14 23. The Debtors, in consultation with their professionals and healthcare advisors, have
15 developed a comprehensive Closure Plan, certain key elements of which are described herein.

16 24. The Closure Plan provides for each of the following steps to conclude St.
17 Vincent's operations and services:

- 18 • Cessation of new inpatient admissions and closure of the emergency department;
 - 19 • Transfer, discharge, and referral of patients;
 - 20 • Communication to employees, patients, providers, government entities, area
21 hospitals, and the community at large;
 - 22 • Transfer, storage, and, when permitted, disposal of medical records;
 - 23 • Disposal of pharmaceuticals, including controlled substances;
 - 24 • Disposal and handling of medical waste and other hazardous materials;
 - 25 • Coordination with Emergency Medical Services ("EMS") and removal of St.
26 Vincent road signs; and
 - 27 • Implementation of enhanced security measures.
- 28

25. Above all, the Closure Plan emphasizes patient safety. The Debtors plan to work closely with the California Department of Public Health (“CDPH”), UNOS, EMS, the Center for Medicare and Medicaid Services (“CMS”), and other licensing and governmental authorities, and area providers to prevent disruption of patient care and ensure a smooth transition of the Debtors’ patients to alternate health care providers. As part of the Closure Plan, St. Vincent’s medical personnel will, among other steps, evaluate patients for safe transport, assess whether a patient is stable, obtain patient consents, obtain health plan authorization if required, and arrange for continuing care. In furtherance of this goal, by this Motion the Debtors also seek authority to enter into and perform under new contracts, as appropriate (*e.g.*, with such providers who accept transfer of patients), to the extent permitted by the terms of their Cash Collateral Agreement.

(2) *Timeline*

26. Although subject to modification based on patient needs and input from the CDPH and others, the Debtors’ current general timeline for shut-down of operations is as follows (all dates are calculated with reference to entry of an order granting this Motion):⁶

- Order + 1 day: Notify EMS and place St. Vincent on diversion protocol for all patients. Begin process of transferring patients, along with their medical record information, to a hospital of their choice. This process includes outreach to local outpatient dialysis providers to help facilitate scheduling for St. Vincent dialysis outpatients with future appointments.
- Order + 3 days: Complete the emergency unit closure.
- Order + 5 days: Cease scheduling all elective procedures.
- Order + 7 days: Conclude and cease all elective surgeries and other procedures.
- Order + 21 days: Complete the dialysis unit closure.
- Order + 30 days: Complete the transplant unit closure.

⁶ All dates are subject to discussions with the CDPH, UNOS, and others as appropriate.

- Order + 30 days: Complete closure and cease clinical operations (the “Closure Date”).

27. Subsequent to the Closure Date, the Debtors will continue to assist with the coordination of care for certain patients with future outpatient appointments, namely those who are in the process of being evaluated for kidney and/or pancreas transplants and patients undergoing outpatient dialysis treatment. The Debtors expect it will take approximately another 30 days to complete the coordination of care with other outpatient health care providers.

(3) *Transfer, Discharge, and Referral of Patients*

28. The most critical aspect of the Closure Plan is ensuring continuity of care for the Debtors’ patients. The majority of currently-admitted patients will be discharged in the ordinary course, and, if necessary, provided with information and assistance to make follow-up appointments with alternate providers. Inpatients will be notified of the anticipated Closure and will be transferred to other area hospitals (such as GSH) if they still require inpatient hospital services as of the Closure Date.⁷ Arrangements with an ambulance carrier will be in place to accommodate the orderly transfer of all inpatients needing ambulance transport. Outpatients with future appointments and patients of the St. Vincent Transplant Program will similarly be notified of the anticipated Closure and the Debtors will assist with care coordination with other hospitals and outpatient health care providers as appropriate for each type of patient (e.g., GSH, St. Joseph, etc.). Such care transfer arrangements likely will require entry into one or more postpetition contracts (e.g., with hospitals, ambulance companies, outpatient providers, etc.), authority for which the Debtors request as part of this Motion’s relief to implement the Closure Plan. The Debtors expect to complete the transfer and discharge of all inpatients by the Closure Date.

⁷ Transfers arranged by St. Vincent will require, at minimum, that (i) the attending physician has determined the patient is stable for transfer, approved the mode of transportation for the transfer and approved the transfer, in accordance with the medical staff bylaws of St. Vincent, (ii) the patient or the patient’s representative has consented to the transfer, and (iii) the patient’s health plan, if any, has approved the transfer.

(4) *Medical and Business Records Safeguard, Storage, Transfer, and Disposal*

29. The safeguard, storage, transfer, and disposal of medical and business records are also an important element of the Closure Plan. As part of the Closure Plan, the Debtors intend to transfer custody of St. Vincent's records to St. Francis Medical Center ("SFMC"). St. Vincent's electronic records are currently stored on the same server as SFMC's records, so only St. Vincent's physical records require manual transfer. In SFMC's custody, St. Vincent's records will be maintained and retained in accordance with this Court's previous orders regarding (a) patient records [Docket No. 3597] and (b) business and other non-patient records [Docket No. 3596], to the extent applicable; otherwise, the Debtors will seek further disposition through a separate motion. A phone number and email address will be posted for patients to request copies of their medical records and this information will also be provided to CDPH as part of the closure notification process.

(5) *Communications Regarding the Closure Plan*

30. The Debtors are currently developing a comprehensive approach to keep patients, employees, government agencies, area hospitals, and the community at large informed of the Closure process. In particular, the Debtors will contact area hospitals and certain outpatient providers to inform them of the Closure and to discuss procedures for the transfer of patients. In addition, the Debtors will notify the fire department and the appropriate regulatory and governmental agencies of the Closure.

31. With respect to employees, the Debtors intend to arrange for job fairs with the desire that St. Vincent personnel may be hired by transferee hospitals and other local health care providers.

(6) *Disposal of Controlled Substances, Pharmaceuticals, Medical Waste, and Other Hazardous Materials*

32. The Debtors will manage and dispose of controlled substances, pharmaceuticals, medical waste, and other hazardous materials in accordance with state and federal guidelines. Medications, including controlled substances, radioactive materials, chemicals, medical waste, infectious materials, and other hazardous materials will be identified, secured and inventoried,

1 then destroyed, disposed of, returned to vendors, or transferred to other providers, as appropriate.
2 St. Vincent will engage vendors, as needed, to manage the disposal of medical waste and
3 infectious materials. Retention of such vendors likely will require entry into one or more
4 postpetition contracts, authority for which the Debtors request as part of this Motion's relief to
5 implement the Closure Plan.

6 **IV.**

7 **ARGUMENT**

8 Pursuant to §§ 105(a), 363, and 1108, given the failure of the SGM Sale to close, the
9 Court should authorize the orderly closure of St. Vincent in accordance with the Closure Plan
10 because Closure will then be in the best interests of St. Vincent's patients, creditors, and the
11 Debtors' estates.

12 **A. This Court Can Authorize the Closure of St. Vincent Pursuant to §105.**

13 Section 105(a) of the Bankruptcy Code in conjunction with the other sections referenced
14 herein permits the requested relief. Section 105(a) provides:

15 The court may issue any order, process, or judgment that is
16 necessary or appropriate to carry out the provisions of this title. No
17 provision of this title providing for the raising of an issue by a party
18 in interest shall be construed to preclude the court from, *sua sponte*,
taking any action or making any determination necessary or
appropriate to enforce or implement court orders or rules, or to
prevent an abuse of process.

19 11 U.S.C. § 105(a).

20 "Section 105(a) vests bankruptcy courts with broad residual powers". *In re Mastro*, 585
21 B.R. 587 (B.A.P. 9th Cir. 2018). Section 105(a) thus "confers authority to 'carry out' the
22 provisions of the Code . . .". *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014).

23 The Bankruptcy Court may evoke § 105(a) if necessary to preserve a right provided
24 elsewhere in the Code. *Bessette v. Avco Fin. Servs. Inc.*, 230 F.3d 439 (1st Cir. 2000), *cert*
25 *denied*, 532 U.S. 1048 (2001); *Law v. Siegel*, 134 S. Ct. at 1194; *see also In re Chaussee*, 399
26 B.R. 225, 235 (B.A.P. 9th Cir. 2008) ("powers granted to the court under § 105(a) to implement
27 the Code and prevent an abuse of process"); *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003)
28 (§ 105(a) provides bankruptcy courts the power to enforce the Bankruptcy Code). .

1 “In enacting § 105, Congress also recognized bankruptcy courts’ inherent authority to ‘run
2 their courtrooms and to supervise the attorneys appearing before them.’” *In re Thueson*, No. 4-
3 08-BK-10121-JMM, 2009 WL 1076888, at *12 (Bankr. D. Ariz. Mar. 12, 2009) (*quoting In re*
4 *Brooks-Hamilton*, 2009 WL 226002, at *5 (9th Cir. BAP January 21, 2009)). Bankruptcy courts,
5 accordingly, also have the power under § 105(a) to enforce their prior orders. *See In re Stokes*,
6 No. 09-60265-7, 2013 WL 492477, at *8 (Bankr. D. Mont. Feb. 8, 2013), *vacated and remanded*,
7 No. ADV 12-00052-RBK, 2013 WL 5313412 (B.A.P. 9th Cir. Sept. 23, 2013) (“This Court has
8 broad powers to enforce its orders under § 105(a).”).

9 As more fully described below, the requested relief under § 105(a) is needed to preserve
10 Debtors’ rights under §§ 363(b) and 1108 to use their property in a manner that will enable them
11 to move quickly to stave off continued losses and to address the current situation facing St.
12 Vincent given no new purchaser is reasonably anticipated. In this case, if the Court enters an
13 order permitting closure, the Debtors will be able to quickly move forward and implement the
14 plans and procedures necessary to close the hospital.

15 **B. Section 363(b) Authorizes the Debtors to Use Their Property According to Their**
16 **Business Judgment**

17 The Court has the authority to grant the requested relief under § 363(b), which permits a
18 debtor to use its property in a manner which will enhance value to the estate. The Debtors must
19 be able to “use” their property in a manner that permits them to stop St. Vincent’s mounting
20 losses and to retain value for the benefit of the remaining estates. More importantly in this case,
21 as a hospital system, the Debtors must use their property in a manner that protects the patients in
22 their care, who are best served by the orderly implementation of the Closure Plan.

23 Section 363(b) provides, in relevant part, that a debtor “after notice and a hearing, may
24 **use**, sell or lease, other than in the ordinary course of business, property of the estate . . .”. 11
25 U.S.C. § 363(b) (emphasis added). While there is no legislative history to explain why the term
26 “use” is part of § 363(b), courts have viewed § 363(b) as providing flexibility to debtors in the
27 exercise of their business judgment. In reviewing a debtor’s decision to use estate property
28 pursuant to § 363, courts have routinely held that if such use represents reasonable business

1 judgment on the part of the debtor, such use should be approved. *See In re Gardens Reg'l Hosp.*
2 *& Med. Ctr., Inc.*, Case No. 2:16-bk-17463-ER (Bankr. C.D. Cal. Jan. 20, 2017) (Robles, J.)
3 (“The closing of the hospital constitutes use of estate property, outside the ordinary course of
4 business, within the meaning of Bankruptcy Code §363(b). The Debtor’s decision to close the
5 hospital is a proper exercise of the Debtor’s business judgment.”); *see also In re Lionel Corp.*,
6 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a “good business reason” to approve a
7 transaction under § 363). “Ordinarily, the position of the trustee is afforded deference,
8 particularly where business judgment is entailed in the analysis or where there is no objection.”
9 *In re Lahijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005).

10 While the closure of St. Vincent is far from an ideal solution—in fact, it is a last, tragic
11 resort—in the absence of other alternatives, it is the only viable solution that will grant the
12 greatest safeguards to the patients in St. Vincent’s care, accomplish the goal of addressing St.
13 Vincent’s cash losses, and retain some value for the Debtors’ stakeholders. Declaration of
14 Richard Adcock (the “Adcock Decl.”), at ¶¶ 5-6. The Debtors are aware of their fiduciary duty to
15 creditors as debtors in possession, and have determined that ceasing operations at St. Vincent in
16 the absence of another viable solution is in the best interests of St. Vincent’s individual estate as
17 well as the Debtors’ collective estates. *Id.*; *see also In re R.H. Macy & Co., Inc.*, 170 B.R. 69, 74
18 (Bankr. S.D.N.Y. 1994) (“The debtor’s duty to maximize estate assets may require the cessation
19 of operations at one location.”).

20 Courts emphasize that the business judgment rule may be satisfied “as long as the
21 proposed transaction appears to enhance the debtor’s estate.” *In re Food Barn Stores, Inc.*, 107
22 F.3d 558, 566 n.16 (8th Cir. 1997); *accord In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D.
23 Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the
24 business judgment rule, “management of a corporation’s affairs is placed in the hands of its board
25 of directors and officers, and the Court should interfere with their decisions only if it is made
26 clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the
27 officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate
28 information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re*

1 *Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists*
2 *Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762
3 F.2d 1303, 1309 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th
4 Cir. 1992)). Here, the Debtors have determined in their business judgment that it is prudent to
5 seek permission to cease operations at St. Vincent. Adcock Decl., at ¶ 6. The Debtors have
6 limited cash, cannot continue operations of St. Vincent, and have therefore determined that it is in
7 the best interests of their respective estates and creditors to effectuate a Closure of St. Vincent and
8 focus on a safe and orderly wind-down through implementation of the Closure Plan. *Id.* at ¶¶ 5-8.

9 In *Gardens Regional Hospital*, this Court granted similar relief under similar
10 circumstances. This Court recognized the following facts in that case:

11 The Debtor's existing operations do not generate sufficient cash flow to
12 keep the hospital open. To maintain operations, the Debtor would be
13 required to obtain additional debtor-in-possession ("DIP") financing. No
14 lenders will extend credit to the Debtor unless the credit is secured by a
15 lien senior in priority to the liens of the Debtor's pre-petition secured
16 creditors. Under the circumstances, the Court lacks the statutory authority
17 to authorize the Debtor to obtain additional credit priming the liens of the
18 secured creditors.

19 Case No. 2:16-bk-17463-ER, Docket No. 633 (Bankr. C.D. Cal. Jan. 20, 2017). As a result, the
20 Bankruptcy Court concluded that "[t]he closing of the hospital constitutes use of estate property,
21 outside the ordinary course of business, within the meaning of Bankruptcy Code §363(b). The
22 Debtor's decision to close the hospital is a proper exercise of the Debtor's business judgment."
23 *Id.*

24 Indeed, this Court in *Gardens Regional Hospital* further recognized that under these
25 circumstances, the Debtors' very duty is to close the Hospital:

26 In view of the lack of funds to continue operations, and the inability of the
27 Debtor to obtain additional credit, the vote by the Debtor's Board of
28 Directors ("Board") to seek closure of the hospital was entirely consistent
with the Board's fiduciary duties, imposed under state law, to uphold the
hospital's mission of sustaining public health and welfare. Public health
and safety would be jeopardized if the Debtor continued to admit new
patients when it lacks funds to adequately sustain operations. In fact, the
Board would be acting in violation of its fiduciary duties to the community
if it attempted to continue operating the hospital despite the lack of
sufficient cash to sustain operations.

1 *Id.*

2 For all the same reasons here, the Debtors request urgent approval to close St. Vincent.
3 Absent the SGM Sale, there are no viable offers for St. Vincent as a going concern, and any delay
4 in commencing a closure plan prejudices patients and estate stakeholders. Adcock Decl., at ¶ 5;
5 Moloney SVMC Decl., at ¶ 4; *see also* Chadwick Decl., at ¶¶ 7, 9. The Motion is being made at
6 this time because the orderly transfer of patients and wind-down of St. Vincent will take time,
7 including time to arrange patient transfers with alternate health care providers. Adcock Decl., at
8 ¶ 6. Beyond transfer of inpatients, St. Vincent provides longer-term care for certain outpatients
9 receiving dialysis or on the UNOS transplant waitlist, which patients require further advance
10 planning as part of any transition. *Id.* So timing is truly of the essence and St. Vincent is seeking
11 authority to initiate this process as soon as possible.

12 **C. Section 1108 Authorizes the Debtors *Not* to Operate Their “Moribund” Businesses**

13 Section 1108 of the Bankruptcy Code grants a debtor in possession the *right* to operate its
14 businesses, providing that the trustee (or debtor in possession) “*may* operate the debtor’s
15 business.” 11 U.S.C. § 1108 (emphasis added). With its use of the permissive term, “may,” the
16 statute “clearly indicates that a trustee is not required to operate the debtor’s business.” *In re*
17 *Thrifty Liquors, Inc.*, 26 B.R. 26, 28 (Bankr. D. Mass. 1982). Indeed, § 1108 “necessarily implies
18 the lesser authority to modify the operation of the business on such grounds as he deems
19 appropriate under the circumstances.” *Id.* Thus, a debtor is not required to operate its business
20 “if such operations will reduce the value of the debtor’s assets or if the debtor’s business is
21 moribund.” 7 *Collier on Bankruptcy*, ¶ 1108.13 (Alan N. Resnick & Henry Sommer eds., 16th
22 ed.). Indeed, in such circumstances, “continued operation of a business that ought to be closed
23 down and liquidated may be a breach of the fiduciary duties of a trustee or debtor in possession.”
24 *Id.* As discussed further herein, the Debtors have determined that there are compelling reasons to
25 cease operations at St. Vincent.

26 **D. Good Cause Exists for Granting the Relief**

27 This Court has the authority to order the closure based on the facts and evidence
28 presented. *See* 11 U.S.C. §§ 105(a), 363(b), and 1108. The Debtors intend to conduct the closure

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1 in coordination with regulatory authorities and with due care for the patients and with the
2 assistance of their medical personnel. Adcock Decl., at ¶ 9. St. Vincent will place its license in
3 suspense, consistent with applicable law and with the assistance of the Debtors' health care
4 experts.⁸ *Id.*

5 After the closure of St. Vincent, the Debtors will seek to sell the land and buildings and
6 otherwise dispose of their assets (e.g., equipment), as may be approved by this Court in
7 subsequent orders.

8 Relief similar to that requested herein has been granted in previous chapter 11 cases. *See*
9 *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 2:16-bk-17463-ER, Docket No. 633
10 (Bankr. C.D. Cal. Jan. 20, 2017) (Robles, J.) (order authorizing closure of the debtor hospital); *In*
11 *re Saint Vincents Catholic Med. Ctrs. of N.Y.*, Case No. 10-11963, Docket No. 276 (Bankr.
12 S.D.N.Y. May 14, 2010) (order authorizing continued implementation of closure plan for the
13 debtors' Manhattan hospital and certain affiliated outpatient clinics and practices); *In re Saint*
14 *Vincents Catholic Med Ctr. of N.Y.*, Case No. 05-14945, Docket No. 394 (Bankr. S.D.N.Y. Sept.
15 20, 2005) (order authorizing closure of St. Mary's hospital).

16 V.

17 **REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY**

18 Pursuant to Bankruptcy Rule 6004(h), the Debtors seek a waiver of any stay of the
19 effectiveness of any order granting the relief sought herein. Bankruptcy Rule 6004(h) provides
20 that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed
21 until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R.
22 Bankr. P. 6004(h). Here, failure to grant immediate relief would risk immediate and irreparable
23 harm to the Debtors' patients and the estates. Adcock Decl., at ¶ 5; Chadwick Decl., at ¶ 4.
24 Notwithstanding the skill and dedication of the Debtors' employees to maintain St. Vincent's
25 operations, given the Debtors' financial condition and available funding, the Debtors must be
26

27
28 ⁸ *See* Cal. Health & Safety Code § 1300(a); *see also* Cal. Code Regs., tit. 22, §§ 70131 and 70133.

permitted to move expeditiously to implement a closure plan for St. Vincent, in coordination with applicable governmental authorities. Adcock Decl., at ¶ 5.

VI.

CONCLUSION

For all of the reasons stated above, the Debtors request that the Court grant the requested relief.

Dated: January 6, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

By: /s/ Tania M. Moyron

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

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DECLARATION OF RICHARD ADCOCK

I, Richard G. Adcock, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure (the “Closure”) of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent (the “Closure Plan”); and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of the Debtors as well as those affiliated entities that are not in bankruptcy.

3. I have worked for more than 25 years in the healthcare arena, with 15 years in not for profit operations. During this period, I have accumulated extensive senior level experience in the areas of not-for-profit healthcare, especially in healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I also have meaningful experience in other related areas, including human resources and personnel management.

4. My background and familiarity with the Debtors’ day-to-day operations, business and financial affairs, and the circumstances leading to the commencement of these chapter 11 bankruptcy cases are set forth more fully in my *Declaration filed in Support of Emergency First-*

¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

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1 *Day Motions* [Docket No. 8] on the Petition Date, and is incorporated by reference into this
2 Declaration.

3 5. For all of the reasons set forth in the Motion and the supporting declarations, I
4 believe failure to grant immediate relief would risk immediate and irreparable harm to the
5 Debtors' patients and the estates. The Debtors must be permitted to move expeditiously to
6 implement a closure plan for St. Vincent because it is the only viable solution at this point in
7 these cases and grants the greatest safeguards to the patients in St. Vincent's care. As set forth in
8 the declaration of Peter Chadwick, St. Vincent has been operating at significant financial losses
9 (more than \$65 million in fiscal year 2019 alone), which has become unsustainable for both St.
10 Vincent, and for the other Debtors forced to subsidize its losses. Further, as set forth in the
11 declaration of James Moloney, there is no buyer who has presented a feasible offer to purchase
12 St. Vincent as a going concern and the previous marketing and sale process yielded no bid for St.
13 Vincent as a stand-alone hospital. Even if there were any material and viable interest to purchase
14 St. Vincent, St. Vincent and the estates could not sustain the losses that would be incurred during
15 the regulatory review process, such as the losses borne during the Attorney General review
16 process for the sale to Strategic Global Management, Inc. ("SGM"), which failed when SGM did
17 not close the sale.

18 6. Given the foregoing, the Debtors have determined in their business judgment that
19 it is in the best interest of the Debtors and their estates to seek immediate closure of St. Vincent.
20 Any delay in commencing a closure plan prejudices patients and the estates' stakeholders. The
21 Motion is being made at this time because the orderly transfer of patients and wind-down of St.
22 Vincent will take time, including time to arrange patient transfers with alternate health care
23 providers. Beyond transfer of inpatients, St. Vincent provides longer-term care for certain
24 outpatients receiving dialysis or on the UNOS transplant waitlist, which patients require further
25 advance planning as part of any transition.

26 7. Further, as responsible stewards of patient safety, the Debtors' foremost
27 responsibility is delivery of high quality patient care, and consequently the Debtors must begin
28 the Closure Plan with sufficient cash on hand to orderly implement the plan and transfer of

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1 patients. Currently, through use of cash collateral, the Debtors have sufficient cash on hand to
2 conduct the Closure. However, this assumes that the current daily loss rate does not increase
3 significantly and that the proposed Closure Plan is approved. Continuing to incur operating
4 losses at St. Vincent outside the Closure Plan would only deplete cash resources and place St.
5 Vincent and the Debtors in a position that they would not have sufficient cash on hand to conduct
6 the orderly Closure.

7 8. The Debtors anticipate it will take 30 days to discharge acute care patients. As
8 part of the Closure Plan, St. Vincent intends to enter into an agreement with Good Samaritan
9 Hospital (“GSH”) whereby GSH will accept transfers of St. Vincent’s inpatients, subject to
10 applicable legal requirements. GSH is located approximately one mile from St. Vincent. With
11 respect to patients in St. Vincent’s kidney/pancreas transplant program, it will take (i) 30 days to
12 transfer those currently receiving care to alternate providers, and (ii) 60 days to coordinate care
13 with other outpatient health care providers for those patients who are being evaluated for the
14 program or have already received a transplant and been discharged. St. Joseph Hospital (“St.
15 Joseph”) has agreed to assume care of the kidney transplant patients who are part of the St.
16 Vincent Transplant Program, subject to approval of the United Network for Organ Sharing
17 (“UNOS”). St. Joseph has its own UNOS-approved Kidney Transplant Program. The Debtors
18 are in discussions with other area hospitals to coordinate the transfer of care for the pancreas-only
19 transplant patients (less than twenty patients).

20 9. The Debtors intend to conduct the Closure in coordination with regulatory
21 authorities and with due care for the patients and with the assistance of their medical personnel.
22 St. Vincent will place its license in suspense, consistent with applicable law and with the
23 assistance of the Debtors’ health care experts.

24 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
25 inquiry, the foregoing is true and correct.

26 Executed this 6th day of January, 2020, at Los Angeles, California.

27 

28 RICHARD G. ADCOCK

DECLARATION OF PETER C. CHADWICK

I, Peter C. Chadwick, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent; and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am a Managing Director of Berkeley Research Group, LLC (“BRG”) and am duly authorized to make this declaration on behalf of BRG. Except as otherwise noted, the facts set forth herein are personally known to me and, if called as a witness, I could and would testify thereto.² In July 2018, BRG began its engagement serving as the financial advisor to the Debtors, which has continued since the Petition Date. In this capacity, I have become intimately familiar with the Debtors’ operations, business, books, records, financial affairs, material agreements, and sale processes, and, as a result, have become uniquely situated to assist the Debtors.

3. As a result, pursuant to the Debtors’ request, and as authorized by the Bankruptcy Court, I have agreed to serve in the role of Chief Financial Officer to the Debtors in these chapter 11 cases. I have significant operating experience, including improving underperforming businesses and advising debtors and creditors in complex financial matters. I have served as chief executive officer, chief operating officer, chief financial officer, and advisor to companies in a variety of industries. My healthcare experience includes acting as the advisor or an officer to healthcare providers, including leading hospital systems and long-term care providers through

¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

² Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at BRG and are based on information provided to me by such other BRG professionals.

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1 operational turnarounds and financial restructurings. As an officer or advisor, I prepared and
2 implemented post-acquisition integration plans, viability plans, asset dissolution strategies, and
3 liquidity enhancement plans. My experience spans the spectrum from the largest U.S. companies
4 to middle market proprietary companies.

5 4. For all of the reasons set forth in the Motion and the supporting declarations,
6 failure to grant immediate relief would risk immediate and irreparable harm to the Debtors'
7 patients and the estates.

8 5. When the Debtors filed their chapter 11 cases, they represented that St. Vincent
9 had consistently lost money for many years due to, among other things, unfavorable payor
10 contracts, rising health care costs, high pension obligations and certain requirements imposed on
11 St. Vincent by the State of California Attorney General. They also represented that St. Vincent
12 was dramatically under invested in structural improvements necessary to meet California's state
13 mandated seismic and clean energy requirements. However, the combined effect of these issues
14 have been a consistent drag in operating cash balances absent additional financing.

15 6. While the Debtors collectively have a poor financial history, St. Vincent has been
16 particularly troubled. On the Petition Date, although St. Vincent accounted for approximately
17 only 23% of the patient volume of the entire Verity Health System, the hospital accounted for
18 approximately 60% of the operating losses.

19 7. The DIP Facility enabled Debtors to operate the Hospitals while they continued
20 their efforts to find a purchaser for their assets and to reach agreements with key constituents.
21 The Debtors had expected the SGM Sale to close in the fourth quarter of 2019, but it did not. At
22 this point, even if there were any material interest (which there is not), St. Vincent and the estates
23 could not sustain the losses that would be incurred during the regulatory review process, such as
24 the losses borne during the Attorney General review process for the sale to Strategic Global
25 Management, Inc. ("SGM"), which failed when SGM did not close the sale.

26 8. St. Vincent's operating losses are significant and unsustainable. The reported
27 financial statements of St. Vincent reflect that, in fiscal year 2019 (ended June 30, 2019), SVMC
28

1 lost approximately \$65 million which was an 18% and 103% increase over the fiscal years 2018
2 and 2017, respectively.

3 9. Although the Debtors have continued operating St. Vincent by subsidizing its
4 losses in pursuit of selling the entire health system as a whole, the failure of SGM to close the
5 SGM Sale and the Debtors' liquidity constraints requires the immediate reduction of operating
6 losses to preserve the other hospitals' ability to continue to operate while alternative transactions
7 are pursued.

8 10. The Debtors recently stipulated with their prepetition secured lenders to extend
9 their consensual use of cash collateral to help fund the resolution of these Bankruptcy Cases. The
10 Debtors anticipate that by mitigating St. Vincent's operational losses through closure of its
11 facilities as expediently as possible, the Debtors will have sufficient cash-on-hand (e.g.,
12 remaining proceeds from the hospital sales to Santa Clara County plus extended consensual use
13 of cash collateral) to fund the Closure in an orderly manner.

14 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
15 inquiry, the foregoing is true and correct.

16 Executed this 6th day of January, 2020, at Los Angeles, California.

17 
18 PETER C. CHADWICK

DENTONS US LLP
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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF JAMES M. MOLONEY

I, James M. Moloney, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent; and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am a managing director of Cain Brothers (“Cain”), which is a division of KeyBanc Capital Markets Inc., a wholly-owned broker/dealer subsidiary of KeyCorp and an affiliate of KeyBank National Association. I am located in Cain’s San Francisco office which is located at One California Street, Suite 2400, San Francisco, California. Mr. Carsten Beith and I are the co-heads of Cain’s Health Systems Mergers & Acquisition group. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon.

3. As set forth in my previous declarations, beginning in June 2018, Cain began working with the Debtors to collect and review financial, operational and other information about the historic, current and project future operations and financial performance of each of the Debtors. Cain also began searching for a buyer or buyers for the Debtors’ assets and created a potential list of buyers for the Verity Health System as a whole or in parts. Mr. Beith and I led the marketing and sale efforts on behalf of Verity and advised Verity in connection with Verity’s selection of Strategic Global Management, Inc., as the Stalking Horse Buyer for the Debtors’ Hospitals and related assets.

4. The previous marketing and sale process yielded no bid for St. Vincent as a stand-alone hospital. Further, in our most recent discussions and outreach to potential buyers of the

¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

1 debtors' assets, no potential bidders have expressed an interest in purchasing St. Vincent to
2 operate the hospital as a going concern. Today, however, I did have a telephone conversation
3 with a potential bidder that expressed an interest in acquiring St. Vincent with an unidentified
4 partner with hospital operating experience. This potential bidder indicated that their long-term
5 interest for St. Vincent was as a real-estate investment if the hospital operating partner could not
6 develop a viable plan to operate St. Vincent's profitably. My discussion with this bidder
7 indicated that limited due diligence had been conducted and that it may not have experience with
8 the regulatory approval process required for such a transaction.

9 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
10 inquiry, the foregoing is true and correct.

11 Executed this 6th day of January, 2020, at San Francisco, California.

12 

13 _____
14 JAMES M. MOLONEY

EXHIBIT 45

FILED & ENTERED

JAN 09 2020

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**ORDER GRANTING DEBTORS' EMERGENCY
MOTION FOR AUTHORIZATION TO CLOSE ST.
VINCENT MEDICAL CENTER**

[RELATES TO DOC. NO. 3906]

Date: January 8, 2020
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



182015120010900000000025

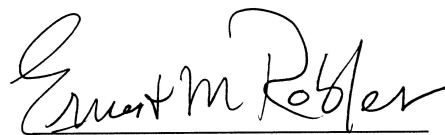
At the above-captioned date and time, the Court conducted a hearing on the *Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center* (the "Motion") [Doc. No. 3906]. For the reasons set forth in the concurrently-issued *Memorandum of Decision Granting Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center*, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Motion is **GRANTED**.
- 2) Notwithstanding Bankruptcy Rule 6004(h), this Order shall take effect immediately upon entry.
- 3) The Closure Plan¹ is **APPROVED** in its entirety, except that the deadline for physicians leasing medical office space at St. Vincent to vacate the premises shall be **April 30, 2020**.
- 4) The Debtors are authorized to take all actions necessary in their business judgment to immediately implement the Closure Plan and to effect the orderly closure of St. Vincent, including without limitation (a) transferring patients to other health care providers, (b) disposing of controlled substances and hazardous materials, (c) notifying governmental entities, and (d) ceasing operations.
- 5) By no later than **January 23, 2020**, the Debtors shall submit a Status Report regarding implementation of the Closure Plan. Subsequent Status Reports shall be submitted every fourteen days until the Closure Plan has been fully implemented.²

IT IS SO ORDERED.

###

Date: January 9, 2020

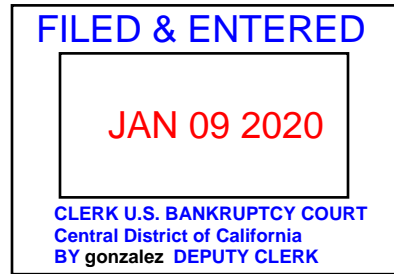


Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Motion.

² No hearings will be conducted in connection with the Status Report unless otherwise ordered by the Court.

EXHIBIT 46



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION GRANTING
DEBTORS' EMERGENCY MOTION FOR
AUTHORIZATION TO CLOSE ST. VINCENT
MEDICAL CENTER**

[RELATES TO DOC. NO. 3906]

Date: January 8, 2020
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



1820151200109000000000024

Before the Court is the Debtors' emergency motion (the "Motion") for authorization to implement a plan to close St. Vincent Medical Center and St. Vincent Dialysis Center, Inc. (collectively, "St. Vincent"). The Court conducted a hearing on the Motion at the above-captioned date and time. Because the Motion was heard on an emergency basis, the Court allowed parties who had not filed a written opposition to the Motion to present arguments at the hearing.¹ For the reasons set forth below, the Motion is GRANTED.

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County (the "Santa Clara Sale").² The Santa Clara Sale closed on February 28, 2019.

On February 19, 2019, the Court entered an order establishing bidding procedures (the "Bidding Procedures Order")³ for the auction of the Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), Seton Medical Center ("Seton"), and Seton Medical Center Coastside ("Seton Coastside") (collectively, the "Hospitals"). Under the Bidding Procedures Order, Strategic Global Management ("SGM") was designated as the stalking horse bidder.

¹ In addition to the oral presentations made at the hearing, the Court considered the following papers in adjudicating the Motion:

- 1) Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center (the "Motion") [Doc. No. 3906];
 - a) Order Setting Hearing on Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3907];
 - b) Notice of Hearing on Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3909];
 - c) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3906, 3907 and 3909 [Doc. No. 3913];
- 2) Opposition by California Nurses Association to Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3914];
- 3) Opposition to Emergency Motion Filed by Marc Girskey, M.D., Chief of Staff of St. Vincent Medical Center [Doc. No. 3916]; and
- 4) Opposition to Emergency Motion Filed by Samuel K. Lee [Doc. No. 3926].

² For a description of the Santa Clara Sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018) ("*Verity I*").

³ See Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice To Be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 1572].

SGM's bid for all four of the Hospitals was \$610 million. The Bidding Procedures Order approved an Asset Purchase Agreement (the "APA") between the Debtors and SGM.

The Hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain Brothers"). Cain Brothers notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the Hospitals.

Notwithstanding Cain Brothers' thorough marketing efforts, the Debtors did not receive any qualified bids for all of the Hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").⁴

On November 27, 2019, the Court entered a memorandum of decision and accompanying order finding that as of November 19, 2019, all conditions precedent under the APA to SGM's obligation to close the SGM Sale had been satisfied.⁵ The Court found that pursuant to § 1.3 of the APA, SGM was obligated to close the SGM Sale by no later than December 5, 2019. *Id.* SGM did not close the sale by December 5, 2019.⁶ On December 27, 2019, the Debtors sent SGM a notice terminating the APA and asserting that SGM had materially breached the APA.⁷

The Debtors seek authorization to implement a plan to close St. Vincent (the "Closure Plan"). The Debtors assert that there is no buyer interested in purchasing St. Vincent as a going-concern; that the operating losses generated by St. Vincent threaten the viability of the entire Verity Health System; and that if the Debtors do not immediately begin implementing the Closure Plan, they will lack sufficient funds to conduct an orderly closure.

The timeline contemplated by the Closure Plan is as follows (all dates are calculated with reference to entry of an order granting the Motion):

- Order + 1 day: Notify Emergency Medical Services and place St. Vincent on diversion protocol for all patients. Begin process of transferring patients, along with their medical information, to a hospital of their choice.
- Order + 3 days: Complete closure of emergency department.
- Order + 5 days: Cease scheduling all elective procedures.
- Order + 7 days: Conclude and cease all elective surgeries and other procedures.
- Order + 21 days: Complete closure of the dialysis department.
- Order + 30 days: Complete closure of the transplant department.

⁴ See Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Unexpired Leases Related Thereto; and (C) Granting Related Relief [Doc. No. 2306].

⁵ See Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 [Doc. No. 3723] and Order (1) Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement [Doc. No. 3274].

⁶ *Id.*

⁷ See Notice Re Termination of Asset Purchase Agreement with Strategic Global Management, Inc. [Doc. No. 3899].

- Order + 30 days: Complete closure and cease clinical operations.

Summary of the California Nurses Association's Opposition to the Motion

The California Nurses Association (the "CNA"), which represents registered nurses employed at St. Vincent, opposes the Motion. The CNA makes the following arguments and representations in support of its opposition:

The Debtors have not demonstrated that they have provided the notice of the contemplated closure that is required under California law. Specifically, the contemplated closure violates the following provisions of the Cal. Health & Safety Code:

- Cal. Health & Safety Code § 1255.1(a) requires that any hospital providing emergency medical services give 90 days' advance notice of the elimination of such services to "the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity."
- Cal. Health & Safety Code § 1225.1(b) requires a hospital to provide 90 days' advance notice of the closure "in a manner that is likely to reach a significant number of residents of the community" serviced by the hospital.
- Cal. Health & Safety Code § 1255.25(a)(1) requires that not less than 30 days prior to the closure, the hospital (1) post notice of the closure "at the entrance to all affected facilities" and (2) provide notice of the closure to the department and the board of supervisors of the county in which the hospital is located.
- Cal. Health & Safety Code § 1255.25(b)(2) requires that not less than 30 days prior to closure, the hospital provide notice to Medicare and Medi-Cal beneficiaries, including information on the nearest available facilities providing similar healthcare services.

The notification requirements serve a vital role in helping underserved communities prepare for the devastating loss of essential healthcare services. As set forth in a January 7, 2020 letter from California State Senator Maria Elena Durazo and California State Assembly Member Wendy Carrillo, who represent constituents in the district in which St. Vincent is located, closure of the hospital will be "devastating" for the district, and the public notice requirement "is crucial because it gives [the public] time to figure out where patients should be going to receive care in the area" and "ensure[s] workers are not left unemployed"

In *Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.)*, the Bankruptcy Court enjoined a hospital from closing because it had failed to comply with applicable notice requirements imposed by state law. 86 B.R. 393, 400 (Bankr. E.D. Pa. 1988). The Motion should be denied based on the Debtors' failure to comply with the notice requirements imposed by California law.

The timeframe proposed by the Debtors for closing the emergency department creates an unreasonable risk to public safety. The Debtors plan to close the emergency department within three days after entry of an order granting the Motion. Even if ambulances are placed on diversion status, many residents of the community will still drive to the emergency department to receive care. Based on the most recent filing with the California Office of Statewide Health Planning and Development, the emergency department receives approximately 83 visits per day.

II. Discussion

A. CNA's Opposition to the Motion is Overruled

CNA asserts that the Closure Plan cannot be approved because the Debtors have failed to provide notification of the closure in accordance with the provisions of the Cal. Health & Safety Code. CNA's argument incorrectly assumes that the Cal. Health & Safety Code's notice provisions are controlling within the bankruptcy context.

Title 28 U.S.C. § 959(b) requires the Debtors to "manage and operate the property" in their possession "according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." However, § 959(b) applies only to property used in connection with an operating business; it does not apply to property where business operations have ceased and the assets are being liquidated. In *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, this Court held that § 959(b) did not apply to the sale of a closed hospital. 567 B.R. 820, 829 (Bankr. C.D. Cal. 2017). *See also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) ("Modern courts have ... concluded that § 959(b) does not apply to liquidations"); *Alabama Surface Min. Comm'n v. N.P. Min. Co. (In re N.P. Min. Co., Inc.)*, 963 F.2d 1449, 1460 (11th Cir. 1992) ("A number of courts have held that section 959(b) does not apply when a business's operations have ceased and its assets are being liquidated"); *Saravia v. 1736 18th St., N.W., Ltd. P'ship*, 844 F.2d 823, 827 (D.C. Cir. 1988) (viewing § 959(b) "as applying only to operating businesses, not ones that were in the process of being liquidated").

Upon initiation of the Closure Plan, St. Vincent will enter the process of liquidation and will no longer be an operating business. Therefore, § 959(b) does not require the Debtors to comply with the notice deadlines of the Cal. Health & Safety Code when implementing the Closure Plan.

This case provides a compelling illustration of why the Bankruptcy Court's authority to supervise the use of estate property under § 363(b) must trump the Cal. Health & Safety Code. The Debtors worked to close the SGM Sale, which would have allowed St. Vincent to continue operating, until December 27, 2019. Compliance with the Cal. Health & Safety Code's notice requirements would have required the Debtors to provide notice that St. Vincent would be closing at a time when the Debtors reasonably expected that the SGM Sale would close. The provision of such notice would have interfered with St. Vincent's operations, disrupting the Debtors' efforts to close the SGM Sale. Premature publication of notice of closure would have harmed employee retention and morale, confused patients, and caused vendors to cease furnishing critical supplies. These serious harms would have undercut the central objective of the § 363 sale process—providing the Debtors the opportunity to realize the optimal value of their assets. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (9th Cir. BAP 2005).

CNA's opposition suffers from an additional defect. As a party in interest, CNA "may appear and be heard on any issue" in these cases. § 1109(b). However, the Court must still assess whether CNA has standing to assert that the Closure Plan violates the Cal. Health & Safety Code. The Court finds that it does not.

The provisions of the Cal. Health & Safety Code cited by CNA are enforced by the California Department of Public Health (the "CDPH"). CDPH did not file a written opposition to the Motion.⁸ CNA's opposition essentially seeks to enforce various provisions of the Cal. Health

⁸ At the hearing, Deputy Attorney General Kenneth K. Wang, who represents the California Department of Health Care Services, alleged that the Motion had not been properly served upon

& Safety Code against the Debtors on CDPH's behalf. That is not appropriate, because the Health & Safety Code does not create a private right of action. The California Supreme Court has explained that a private right of action exists under the following circumstances:

A violation of a state statute does not necessarily give rise to a private cause of action. Instead, whether a party has a right to sue depends on whether the Legislature has "manifested an intent to create such a private cause of action" under the statute....

A statute may contain " 'clear, understandable, unmistakable terms,' " which strongly and directly indicate that the Legislature intended to create a private cause of action. For instance, the statute may expressly state that a person has or is liable for a cause of action for a particular violation. (See, e.g., Civ.Code, § 51.9 ["A person is liable in a cause of action for sexual harassment" when a plaintiff proves certain elements]; Health & Saf.Code, § 1285, subd. (c) ["Any person who is detained in a health facility solely for the nonpayment of a bill has a cause of action against the health facility for the detention"].) Or, more commonly, a statute may refer to a remedy or means of enforcing its substantive provisions, i.e., by way of an action.

Lu v. Hawaiian Gardens Casino, Inc., 50 Cal. 4th 592, 597, 236 P.3d 346, 348 (2010) (internal citations omitted).

None of the sections cited by CNA contains language expressly creating a private right of action. Further, there is no indication that the legislature intended for private entities to have the ability to enforce those provisions against hospitals. *See Lu*, 50 Cal. 4th at 600 (providing that if a statute does not expressly create a private right of action, there must be a "clear indication" that the legislature intended to do so). To the contrary, the structure of the statute indicates that the legislature delegated enforcement responsibilities solely to the CDPH. The provisions cited by CNA are contained within the chapter of the statute pertaining to licensure. That chapter also contains provisions setting forth the circumstances under which a health facility's license may be revoked, including the manner in which the CDPH must conduct hearings on license revocation. *See Cal. Health & Safety Code* § 1294 (the "state department may suspend or revoke any license

the CDPH. The Court finds that the CDPH received sufficient notice of the Motion. On January 6, 2020, the Motion was served upon Deputy Attorney General David K. Eldan, Deputy Attorney General Kenneth K. Wang, and Deputy Attorney General Scott Chan, via e-mail. Doc. No. 3913, Ex. B. On January 6, 2020, the Debtors provided telephonic notice of the hearing to Attorney General Xavier Becerra and Deputy Attorney General Kenneth K. Wang. *Id.* at Ex. A. On January 6, 2020, the Debtors served the Motion, via overnight mail, upon Attorney General Xavier Becerra, Deputy Attorney General Kenneth K. Wang, Deputy Attorney General David Eldan, the Office of the Attorney General located in Los Angeles, and the Consumer Law Section of the Office of the Attorney General. *Id.* at Ex. D. On January 7, 2020, at 5:48 p.m. (Pacific Time), the Debtors served the Motion electronically upon the CDPH, at seven different e-mail addresses. Doc. No. 3924. On that same date, the Debtors provided telephonic notice of the Motion and the hearing date to counsel to the CDPH. *Id.* CDPH had sufficient notice of the Motion to have a team of representatives onsite at St. Vincent preparing for the contemplated closure at the same time that the hearing was being conducted, as represented by Debtors' counsel at the hearing.

or special permit issued under the provisions of this chapter upon any of the following grounds”); *id.* at § 100171 (containing procedures for hearings on licensure).

In addition, at least one court has held that a provision contained within Division 2 of the Health & Safety Code (the same division containing the provisions cited by CNA) does not create a private right of action. *See John Muir Health v. Glob. Excel Mgmt.*, No. C-14-04226 DMR, 2014 WL 6657656, at *4 (N.D. Cal. Nov. 21, 2014) (dismissing a claim brought under Cal. Health & Safety Code § 13714(b) because the provision did not create a standalone private right of action).

B. The Debtors Are Authorized to Implement the Closure Plan to Effect an Orderly Closure of St. Vincent

Section 363(b) authorizes a debtor to use property of the estate outside the ordinary course of business upon court approval. The debtor must articulate a “business justification” to use property outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient “depends on the case,” in view of “all salient factors pertaining to the proceeding.” *Id.* at 19–20.

The Debtors’ decision to close St. Vincent constitutes a “use” of estate property within the meaning of § 363(b). The Debtors have articulated a sufficient business justification for closing St. Vincent. The following facts have been established by the declarations submitted in support of the Motion:

- No buyer has presented a realistic bid to purchase St. Vincent as a stand-alone hospital. Moloney Decl. at ¶ 4. Although James M. Moloney, the Debtors’ investment banker, had a telephone conversation with a potential bidder on January 6, 2020, that bidder had conducted limited due diligence and did not have experience with the regulatory approval process required to purchase a hospital. *Id.* Further, the bidder’s intended use for St. Vincent was as a real-estate investment if the bidder’s hospital operating partner could not develop a viable plan to profitably operate St. Vincent. *Id.*
- St. Vincent is generating substantial operating losses. As of the Petition Date, St. Vincent accounted for approximately 23% of the patient volume of the entire Verity Health System, but was responsible for 60% of the operating losses. Chadwick Decl. at ¶ 6. If the Debtors do not implement the Closure Plan rapidly, they will lack sufficient funds to conduct an orderly closure of St. Vincent. Adcock Decl. at ¶ 7.
- The Debtors lack sufficient funds to continue to subsidize St. Vincent’s operating losses. Absent the closure of St. Vincent, the Debtors will be unable to continue operating their other hospitals. Chadwick Decl. at ¶ 9.

Since it is not feasible for the Debtors to continue St. Vincent’s operations, implementation of the Closure Plan is necessary to sustain public health and welfare. Public safety would be jeopardized if the Debtors allowed St. Vincent to remain open while lacking sufficient funds to support its operations. In this respect, the Court notes that the Debtors do not have the ability to borrow under any debtor-in-possession financing facility. The Debtors’ cases are being financed by a consensual cash collateral stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”). Under the Cash Collateral Stipulation, the Debtors’ ability to use cash collateral terminates on January 31, 2020.

CNA asserts that the Debtors are entitled to damages from SGM for its failure to perform under the APA, and that St. Vincent's operations could be funded from these breach damages. CNA overlooks the fact that the Court has not made a finding as to whether SGM has breached the APA. The issue of SGM's alleged breach is subject to ongoing litigation, which will not be resolved in the near term. Sustaining St. Vincent's operations requires immediately available liquidity, which the Debtors lack. The speculative possibility of a future cash infusion based upon SGM's alleged breach is not a solution to St. Vincent's current funding crisis. Nor is pursuing a sale, another alternative suggested by CNA. There are no firm expressions of interest. Even if a buyer was identified, the sale process and review by the Attorney General's office would take months to conclude.

The Closure Plan preserves patient safety. Acute care patients will be transferred to Good Samaritan Hospital, which is located approximately one mile from St. Vincent. Adcock Decl. at ¶ 8. St. Joseph Hospital has agreed to assume care of the kidney transplant patients who are part of the St. Vincent Transplant Program, subject to approval of the United Network for Organ Sharing. *Id.*

1. The Timeline Set Forth in the Closure Plan is Approved, Except that the Deadline for Physicians to Vacate St. Vincent's Medical Office Facilities is Extended by 30 Days

At the hearing, multiple parties testified regarding the impact of the Closure Plan upon physicians, employees, patients, and other stakeholders. Having considered the evidence before it, the Court approves the deadlines set forth in the Closure Plan, with the exception of the deadline for physicians to vacate St. Vincent's medical office facilities, which is extended by 30 days to April 30, 2020.

The Court places substantial weight upon the testimony of Dr. Jacob Nathan Rubin, the Court-appointed Patient Care Ombudsman. Dr. Rubin testified as follows:

- To protect patient safety, St. Vincent must be closed as quickly as possible following the announcement of the hospital's closure. Once closure is announced, key members of St. Vincent's medical staff will immediately leave to seek employment elsewhere. Replacing experienced staff with temporary workers is not feasible because the temporary workers will be unfamiliar with St. Vincent's systems, procedures, and electronic medical records. There will not be a sufficient number of experienced staff remaining to adequately train the large influx of temporary workers. The result of the rapid departure of experienced staff will be a marked decline in the quality of patient care, seriously jeopardizing patient safety.
- The transfer of existing patients to other hospitals will not impair patient safety. Patients are routinely transferred from one hospital to another, and the hospital resources within St. Vincent's immediate vicinity are more than sufficient to accommodate St. Vincent's patients.

Alice Kirchner, director of Dialysis Services at St. Vincent, asserted that the Closure Plan did not provide sufficient notice to enable the smooth relocation of patients. Ms. Kirchner stated that the Closure Plan's deadlines were creating stress and trauma for affected patients, staff, and physicians. Ms. Kirchner requested that the Dialysis Unit be provided a minimum of 30 days to relocate patients before being shut down.

In view of Dr. Rubin's testimony, the Court does not find it appropriate to extend the deadlines set forth in the Closure Plan. In fact, Dr. Rubin testified that if the deadlines were to be modified, they should be shortened, not extended. The Court understands the difficulties that the Closure Plan's deadlines place upon stakeholders. However, the Court's first priority must be protecting patient safety, and that requires a rapid closure.

St. Vincent leases office space to physicians who provide outpatient services. Dr. Marc Girskey, St. Vincent's Chief of Staff, stated that the March 31, 2020 deadline for physicians to vacate the office space would not provide physicians adequate time to relocate their practices. Dr. Girskey requested that physicians be provided at least six months to relocate. Dr. Samuel Lee, St. Vincent's former Chief of Staff, and Ryan Yant, counsel for St. Vincent Independent Physicians Association, made statements in support of Dr. Girskey's request. The Court also received a letter signed by numerous physicians who lease office space at St. Vincent requesting that the deadline to relocate be extended to June 30, 2020.⁹

In response to the physicians' requests, the Debtors proposed extending the relocation deadline by 30 days, to **April 30, 2020**. The Court finds the compromise proposed by the Debtors to be appropriate. The April 30 deadline provides physicians approximately four months to relocate.

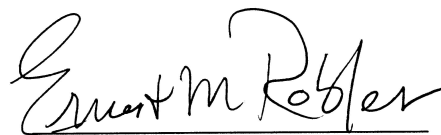
III. Conclusion

The Court is fully cognizant of the hardship that closure of St. Vincent will have upon employees and members of the surrounding community. The absence of any serious purchaser willing to acquire St. Vincent as a going-concern has placed all constituencies in this case in a difficult position. However, forcing the Debtors to keep St. Vincent open when there is insufficient money to operate it would only make the situation far worse for St. Vincent and for the patients of the Debtor's other hospitals.

The Motion is **GRANTED** to the extent set forth herein. Notwithstanding Bankruptcy Rule 6004(h), the order granting the Motion shall take effect immediately upon entry. By no later than **January 23, 2020**, the Debtors shall submit a Status Report regarding implementation of the Closure Plan. Subsequent Status Reports shall be submitted every fourteen days until the Closure Plan has been fully implemented.¹⁰ The Court will enter an order consistent with this Memorandum of Decision.

###

Date: January 9, 2020



Ernest M. Robles
United States Bankruptcy Judge

⁹ Doc. No. 3926.

¹⁰ No hearings will be conducted in connection with the Status Report unless otherwise ordered by the Court.

EXHIBIT 47

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Attorneys for the Chapter 11 Debtors and
Debtor In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
Possession.

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
Case No. 2:18-bk-20167-ER
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**DEBTORS' STATUS REPORT RE CLOSURE
OF ST. VINCENT MEDICAL CENTER
DATED JANUARY 23, 2020**

[RELATES TO DOCKET NO. 3933]

[No Hearing Required]

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



1820151200123000000000008

STATUS REPORT

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), submit this status report (the “Status Report”), pursuant to the Court’s *Order Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3934] (the “Order”) and the related *Memorandum of Decision Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3933] (the “Memorandum Decision”). The Order requires that the Debtors file this Status Report to discuss the implementation of the Closure Plan (as defined in the Memorandum of Decision) related to St. Vincent Medical Center (“St. Vincent” or “Hospital”). *See* Order at 2. Pursuant to the Order, and as may be further supplemented in subsequent status reports,¹ the Debtors respectfully state as follows:

I.

Introduction

The Debtors’ admirable efforts have resulted in the smooth, safe, and orderly implementation of the Closure Plan. As discussed below, the Debtors have closed the St. Vincent emergency department, discharged and transferred all hospital inpatients, referred and coordinated follow-up appointments to other providers for outpatients, notified all kidney and kidney/pancreas transplant patients about the closure of the transplant program and alternative treatment options, and notified key governmental agencies. The Debtors have also provided job fairs and placements for employees of St. Vincent.

The Debtors’ determined efforts have resulted in satisfaction of the milestones set forth in the Closure Plan that have come due thus far. The Debtors remain on-track to complete timely the Closure Plan. As remains paramount in these Cases, the Debtors will continue to prioritize patient care and safety as they continue to effectuate the Closure Plan.

¹ The Order requires that the Debtors a status report every 14 days hereafter until the Closure Plan is fully implemented. *See* Order at 2.

II.

The Status of the Closure Plan

A. Patients

1. Emergency Services

The Los Angeles Emergency Medical Services Agency (the “EMS Agency”) placed St. Vincent’s emergency department on permanent diversion (i.e., no ambulance transports should deliver patients to St. Vincent’s emergency department) as of January 8, 2020. Prior to doing so, the EMS Agency sent written notice to St. Vincent area hospitals with emergency rooms and numerous constituents regarding the permanent diversion. The St. Vincent emergency department was permanently closed as January 9, 2020 at 7:00 a.m. In anticipation of the closure, all exterior emergency department signage was removed and closure signage was posted at the emergency room entrance and at the main hospital entrances, providing further notice of the closure, as well as information about neighboring hospitals offering emergency services, including their addresses and phone numbers.

2. General Hospital Services

Beginning January 8, 2020, the Debtors, administrators, nurses and doctors at St. Vincent worked expeditiously to safely transfer patients. Inpatients were discharged in the normal course of operations. In addition, inpatients were transferred to other local hospitals (such as Hollywood Presbyterian Hospital and Sherman Oaks Hospital), as well as to skilled nursing facilities (such as Burlington Convalescent Hospital and Virgil Rehabilitation Center). As of January 18, 2020, there were no inpatients in the Hospital.

Outpatients with recurring appointments, such as the cancer treatment center patients and dialysis patients, were referred to other facilities (such as St. Francis Medical Center, US Renal Dialysis Centers and Davita Dialysis Centers) or were referred to their treating physician for appropriate care. St. Vincent staff assisted patients with setting up appointments with their new providers.

1 **3. Kidney / Pancreas Transplant Services**

2 In anticipation of the hospital closure, St. Vincent contacted the Organ Procurement and
3 Transplantation Network (“OPTN”) to discuss the timely closure of the St. Vincent kidney pancreas
4 transplant program (“Transplant Program”). St. Vincent provided formal written notice to OPTN
5 of the closure of its Transplant Program by letter, dated January 9, 2020. St. Vincent ceased
6 performing transplants as of January 10, 2020. By letters, dated January 14, 2020, St. Vincent
7 provided notification to its potential transplant candidates, waitlisted candidates, organ recipients
8 and living donors receiving care of the imminent closure of the Transplant Program, along with
9 information about other facilities offering kidney and/or kidney/pancreas transplant services.

10 St. Vincent’s primary transplant physician, Robert Naraghi, M.D., intends to continue to
11 treat all of the patients who are part of the St. Vincent Transplant Program, including all patients
12 being evaluated for a transplant, all patients on the transplant list, all patients who need post-
13 transplant care and all new referrals. Dr. Naraghi has established a clinic location approximately a
14 mile away (at Good Samaritan Hospital) and is working to establish other outreach locations.

15 Effective January 23, 2020, St. Joseph Hospital, Orange is accepting the collective transfer
16 of the St. Vincent waitlisted kidney transplant candidates and their respective waiting times
17 pursuant to a Collective Transfer Letter Agreement.

18 **B. Government Notifications**

19 On January 9, 2020, St. Vincent provided notice of the anticipated Hospital closure to the
20 California Department of Public Health (“CDPH”), the Los Angeles County Board of Supervisors,
21 Los Angeles County Emergency Medical Services Agency, the Joint Commission, and the
22 American College of Radiology. Further notices of the closure were provided to the Centers for
23 Medicare and Medicaid Services and the California Department of Health Care Services on January
24 10, 2020. Notice of the closure of the Hospital and dialysis center was also published in the Los
25 Angeles Times on Tuesday, January 14, 2020.

26 CDPH was provided notice of the closure of the St. Vincent Dialysis Center on January 13,
27 2020. This notice was sent concurrently to the Centers for Medicare and Medicaid Services and
28 the California Department of Health Care Services.

1 St. Vincent will continue to work collaboratively with the different regulatory agencies to
2 ensure the proper wind-down of hospital operations.

3 **C. Employees**

4 On January 10, 2020, St. Vincent employees were sent a written notice under the Workers
5 Adjustment and Retraining Notice (“WARN”) act regarding the closure. By Monday, January 27,
6 2020, there will be approximately twenty employees remaining to assist with the wind-down, plant
7 maintenance and security. St. Vincent management worked tirelessly to create opportunities for
8 the affected employees, including arranging for approximately 50 different healthcare
9 organizations to participate in on-site job fairs, whereat hundreds of employees received offers on
10 the spot or within days of the job fair. In addition, St. Francis Medical Center has made employment
11 offers to approximately 50 employees from St. Vincent.

12 Dated: January 23, 2020

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16 By /s/ Tania M. Moyron
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Debtor In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of
California, Inc.
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
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- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In
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Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:

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Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**DEBTORS' STATUS REPORT RE CLOSURE
OF ST. VINCENT MEDICAL CENTER
DATED FEBRUARY 6, 2020**

[RELATES TO DOCKET NOS. 3933, 3982]

[No Hearing Required]

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182015120020600000000005

STATUS REPORT

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), submit this status report (the “Status Report”), pursuant to the Court’s *Order Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3934] (the “Order”) and the related *Memorandum of Decision Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3933] (the “Memorandum Decision”). The Order requires that the Debtors file this Status Report to discuss the implementation of the Closure Plan (as defined in the Memorandum of Decision) related to St. Vincent Medical Center (“St. Vincent” or “Hospital”). *See* Order at 2. Pursuant to the Order, and as may be further supplemented in subsequent status reports,¹ the Debtors respectfully state as follows:

On January 23, 2020, the Debtors filed an initial status report [Docket No. 3982] concerning the status of the Closure Plan. Since the last status report, the Debtors have successfully continued to wind-down Hospital operations and maintain the safety of the Hospital properties. For example, Debtors’ staff have, among other activities:

- transferred St. Vincent medical records to St. Francis Medical Center;
- implemented augmented security details to ensure monitoring of empty buildings;
- completed terminal cleaning for all nursing areas;
- removed or covered all external signage;
- disabled fixed medical equipment;
- ensured cessation of medical gases;
- removed the leased oxygen tank;
- decommissioned the pharmacy hood;

¹ The Order requires that the Debtors a status report every 14 days hereafter until the Closure Plan is fully implemented. *See* Order at 2.

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- conducted a medication inventory and continue to collaborate with the California Board of Pharmacy and U.S. Drug Enforcement Agency in proper medication disposition;
- removed all nuclear sources and waste;
- cleared hot lab and linear accelerators for radioactivity pursuant to oversight by a nuclear physicist;
- continued conducting an inventory and valuation of all equipment;
- continued coordination with the state inspector on the hazardous waste removal process; and
- ceased operations of the Internal Review Board's oversight of clinical trials at St. Vincent.

The Debtors remain on-track to complete timely the Closure Plan. The Debtors will continue to prioritize patient care and safety as they continue to effectuate the Closure Plan.

Dated: February 6, 2020

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Hon. Judge Ernest M. Robles

**DEBTORS' STATUS REPORT RE CLOSURE
OF ST. VINCENT MEDICAL CENTER
DATED FEBRUARY 20, 2020**

**[RELATES TO DOCKET NOS. 3933, 3982,
4053]**

[No Hearing Required]

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Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**DEBTORS' STATUS REPORT RE CLOSURE
OF ST. VINCENT MEDICAL CENTER
DATED APRIL 2, 2020**

**[RELATES TO DOCKET NOS. 3933, 3982,
4053, 4126, 4219, 4308]**

[No Hearing Required]



STATUS REPORT

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), submit this status report (the “Status Report”), pursuant to the Court’s *Order Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3934] (the “Order”) and the related *Memorandum of Decision Granting Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* [Docket No. 3933] (the “Memorandum Decision”). The Order requires that the Debtors file this Status Report to discuss the implementation of the Closure Plan (as defined in the Memorandum of Decision) related to St. Vincent Medical Center. *See* Order at 2. Pursuant to the Order,¹ the Debtors respectfully state as follows:

On January 23, 2020, the Debtors filed an initial status report [Docket No. 3982] concerning the status of the Closure Plan, which the Debtors supplemented on February 6, 2020 [Docket No. 4053], February 20, 2020 [Docket No. 4126], March 5, 2020 [Docket No. 4219], and March 19, 2020 [Docket No. 4308]. Since the last status report, the Debtors completed the remaining objectives under the Closure Plan: (i) the transition of patient medical records to off-site storage was completed on March 23, 2020; and (ii) hazardous waste removal was completed on March 26, 2020. Accordingly, the Debtors have fully implemented the Closure Plan pursuant to the Order and are not required to file further status reports. *See* Order at ¶ 5.

Dated: April 2, 2020

By /s/ Tania M. Moyron
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Attorneys for Verity Health Systems of
California, Inc., *et al.*

¹ The Order requires that the Debtors a status report every 14 days hereafter until the Closure Plan is fully implemented. *See* Order at 2.

EXHIBIT 51

EXHIBIT 2 - Part 3

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**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

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 Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**DEBTORS' MOTION FOR APPROVAL OF
 SETTLEMENT AGREEMENT WITH SEIU-UHW
 RELATED TO THE CLOSURE OF ST. VINCENT
 MEDICAL CENTER, INCLUDING ALLOWANCE
 OF CERTAIN CLAIMS AND CONSENSUAL
 MODIFICATION OF THE APPLICABLE
 COLLECTIVE BARGAINING AGREEMENT;
 DECLARATION OF RICHARD G. ADCOCK IN
 SUPPORT THEREOF**

Hearing:

Date: [TBD]

Time: [TBD]

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA



1820151200313000000000001

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1 **PLEASE TAKE NOTICE** that, at the above-referenced date, time and location, Verity
2 Health System of California, Inc., a California nonprofit benefit corporation and a debtor herein,
3 and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-
4 captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), will move (the “Motion”),
5 pursuant to §§ 105 and 1113 of the Bankruptcy Code,¹ and Rule 9019 for the entry of an order
6 approving a settlement agreement (the “Settlement Agreement,” attached hereto as **Exhibit “A”**)
7 dated March 3, 2020 between the Debtors and the Service Employees International Union-United
8 Healthcare Workers–West (“SEIU-UHW”) that resolves all issues related to the recent emergency
9 closure of St. Vincent Medical Center (“SVMC”), including the allowance and treatment of certain
10 claims and the modification of the Collective Bargaining Agreement effective November 1, 2018 -
11 October 31, 2021 (the “SEIU-UHW CBA”) so as to remove all reference and applicability of that
12 SEIU-UHW CBA to SVMC. A redacted copy of the SEIU-UHW CBA with changes in redline is
13 attached hereto as **Exhibit “B.”**²

14 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this Notice of Motion,
15 Motion, Memorandum of Points and Authorities, the *Declaration of Richard G. Adcock* filed
16 concurrently herewith, the *Declaration of Richard G. Adcock in Support of Emergency First-Day*
17 *Motions* [Docket No. 8], the declarations of Richard G. Adcock, Peter C. Chadwick and James M.
18 Moloney appended to the *Debtors Emergency Motion For Authorization to Close St. Vincent*
19 *Medical Center* [Docket No. 3906], supporting statements, arguments and representations of
20 counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence
21 properly brought before the Court in all other matters of which this Court may properly take judicial
22 notice.

23
24
25 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
26 U.S.C. §§ 101-1532. All “Rule” references are to the Federal Rules of Bankruptcy Procedure. All
“LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for
the Central District of California.

27 ² Exhibit B is redacted to exclude confidential information. An unredacted version will be
28 provided to the Court *in camera* and to third parties who have a need to know and are party to an
appropriate confidentiality agreement.

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

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5	<i>In re Tribune Co.</i> ,	
6	464 B.R. 126 (Bankr. D. Del. 2011)	18
7	<i>United States v. Alaska Nat’l Bank (In re Walsh Constr., Inc.)</i> ,	
8	669 F.2d 1325 (9th Cir. 1982).....	18, 19
9	<i>In re W.T. Grant & Co.</i> ,	
10	699 F.2d 599 (2nd Cir. 1983).....	18
11	<i>In re Walter Energy</i> ,.....	16
12	542 B.R. 859 (Bankr. N.D. Ala. 2015)	
13	<i>In re Yellowstone Mountain Club, LLC</i> ,	
14	460 B.R. 254 (Bankr. D. Mont. 2011)	20
15	Statutes	
16	11 United States Code	
17	§§ 101-1532	1
18	§ 105.....	1
19	§ 1107.....	2
20	§ 1108.....	2
21	§ 1113.....	<i>passim</i>
22	§ 1113(2)	5
23	Title 11, chapter 11	2
24	28 United States Code	
25	§ 157.....	2
26	§ 157(b)(2)	2
27	§ 1334.....	2
28	§ 1408.....	2
	§ 1409.....	2
	Internal Revenue Code of 1986	
	§ 501(c)(3).....	3
	Rules and Regulations	
	Federal Rules of Bankruptcy Procedure	
	Rule 9019	<i>passim</i>
	Rule 9019(a).....	17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 9, 2020, this Court authorized the emergency closure of St. Vincent Medical Center (“SVMC”). [Docket No. 3933] In connection therewith, SVMC and St. Vincent Dialysis Center (“SVDC” and referred to collectively with SVMC as “St. Vincent”) separated employees working at that facility, including employees represented by Service Workers Employees International Union-United Healthcare Workers–West (“SEIU-UHW”). Subsequent to the closure, representatives of SEIU-UHW and the Debtors engaged in good faith discussions and negotiations to address issues, including claims, arising in connection with the SVMC closure and related separations.

The Debtors and SEIU-UHW have entered into a settlement agreement dated March 3, 2020 (“Settlement Agreement”), attached hereto as **Exhibit “A.”** The Settlement Agreement is the product of good faith, arms-length negotiations between the parties that began after the closure of St. Vincent. These negotiations included the exchange of proposals, including a proposal delivered by Debtors to SEIU-UHW on February 23, 2020 (the “Proposal”) the terms of which are now encapsulated by the Settlement Agreement. The Settlement Agreement provides several important provisions, the most material of which are:

- Payment of \$500,000 in cash and allowance of general unsecured claims in satisfaction of any and all claims of SEIU-UHW represented employees. The Debtors are authorized to use and to reserve from cash collateral the \$500,000 payment.
- Modification of the Collective Bargaining Agreement effective November 1, 2018 - October 31, 2021 (the “SEIU-UHW CBA”) to remove all reference and applicability to SVMC under it. A redacted copy of the modified SEIU-UHW (the “Modified SEIU-UHW CBA”) is attached hereto as **Exhibit “B.”**¹

¹ Exhibit B is redacted to exclude confidential information. An unredacted version will be provided to the Court *in camera* and to third parties who have a need to know and are party to an appropriate confidentiality agreement.

1 In light of the relief being requested, the Debtors seek approval pursuant to §§ 105 and 1113
2 of the Bankruptcy Code² and Rule 9019 for the entry of an order approving the Settlement
3 Agreement and the desired modifications of the SEIU-UHW CBA as evidenced by the Modified
4 SEIU-UHW CBA.

5 **II. JURISDICTION AND VENUE**

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

9 **III. STATEMENT OF FACTS**

10 **A. General Background**

11 1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition
12 for relief under chapter 11 of title 11 of the Bankruptcy Code. Since the commencement of their
13 cases, the Debtors (except those whose facilities have been sold or closed) have been operating
14 their businesses as debtors in possession pursuant to §§ 1107 and 1108.

15 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate
16 member of Debtor California nonprofit public benefit corporations that operated and operate acute
17 care hospitals and other facilities in the state of California. *Declaration of Richard G. Adcock in*
18 *Support of Emergency First-Day Motions* at 4, ¶ 11 [Docket No. 8] (the “First-Day Decl.”).

19 3. The Debtors incorporate the First-Day Declaration for further general background.

20 **B. St. Vincent Hospital**

21 4. SVMC was founded as the first hospital in Los Angeles in 1856. First-Day Decl. at
22 ¶ 34. In 1971, a new facility was constructed at the Hospital’s current location at 2131 West Third
23 Street, Los Angeles, CA 90057. *Id.* The Hospital expanded to a 366 licensed bed, regional acute
24 care, tertiary referral facility, specializing in cardiac care, cancer care, total joint and spine care,
25 and multi-organ transplant services. *Id.* The Hospital served both local residents and residents
26

27 ² Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
28 U.S.C. §§ 101-1532. All “Rule” references are to the Federal Rules of Bankruptcy Procedure. All
“LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for
the Central District of California.

1 from Los Angeles, San Bernardino, Riverside, and Orange Counties. *Id.* SVMC provided medical
2 care for both inpatients (*i.e.*, patients who remain in the hospital for more than 24 hours) and
3 outpatients (*i.e.*, patients who receive outpatient services, such as MRIs). SVMC owns real
4 property commonly known as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the
5 hospital and all of the facilities located thereon; and (ii) vacant land in Salton Sea, California. *Id.*
6 at ¶ 23.

7 5. SVMC's campus has a dialysis center, SVDC, where SVMC's kidney disease
8 patients received dialysis services, including hemodialysis and isolated ultrafiltration treatments as
9 part of SVMC's end-stage renal disease program. *Id.* at ¶ 36. SVMC and SVDC have separate
10 corporate identities, and SVMC is the sole corporate member of SVDC. *Id.* Both SVMC and
11 SVDC are exempt from federal income taxation as an organization described in § 501(c)(3) of the
12 Internal Revenue Code of 1986. *Id.* at ¶ 21.

13 6. As of the Petition Date, SVMC and SVDC employed approximately 1,099
14 employees, of which 897 were full time, 42 were part time, and 160 were *per diem*. *Id.* at ¶ 59(f).

15 7. SVMC is a jointly "obligated" party with its affiliates on approximately \$461.4
16 million of outstanding secured debt consisting of: (a) \$259.4 million outstanding tax exempt
17 revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities
18 Development Authority (the "2005 Bonds"), which loaned the bond proceeds to certain Debtors to
19 provide funds for capital improvements and to refinance certain tax exempt bonds previously issued
20 in 2001 by the Daughters of Charity Health System, and (b) \$202.0 million outstanding tax exempt
21 revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California Public Finance
22 Authority. *Id.* at ¶ 121.

23 8. SVMC had consistently lost money for many years due to, among other things,
24 unfavorable payor contracts, rising health care costs, high pension obligations and certain
25 requirements imposed on SVMC by the State of California Attorney General. *See id.* at ¶¶ 95, 99.
26 SVMC is also dramatically under-invested in structural improvements necessary to meet
27 California's state mandated seismic and clean energy requirements. *Id.* The combined effect of
28 these issues was a consistent drag in operating cash balances absent additional financing. *See*

1 Declaration of Peter C. Chadwick [Docket No. 3906] at ¶ 5.

2 9. While the Debtors collectively have a poor financial history, SVMC has been
3 particularly troubled. *Id.* at ¶ 6. On the Petition Date, although SVMC accounted for approximately
4 only 23% of the patient volume of the entire Verity Health System, the hospital accounted for
5 approximately 60% of the operating losses. *Id.* Before closing SVMC, the Debtors projected
6 continuing operating losses by SVMC. The reported financial statements of St. Vincent reflect
7 that, in fiscal year 2019 (ended June 30, 2019), it lost approximately \$65 million, which was an
8 18% and 103% increase over the fiscal years 2018 and 2017, respectively. *Id.* at ¶ 8.

9 **C. The SEIU-UHW CBA And The Represented Employees**

10 10. The SEIU-UHW CBA currently covers SEIU-UHW represented employees at St.
11 Francis Medical Center (“SFMC”) and, of relevance to the instant Motion, 370 former employees
12 of St. Vincent (the St. Vincent former employees referred to herein as the “SEIU-UHW
13 Represented Employees”). The SEIU-UHW Represented Employees were comprised of service
14 workers, including, but not limited to, environmental services aides, certified nurse assistants, unit
15 coordinators, and technical workers, including, but not limited to, radiological technician and
16 pharmacy technicians.

17 11. On the Petition Date, the Debtors filed their *Emergency Motion Of Debtors For*
18 *Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries,*
19 *And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing*
20 *And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By*
21 *The Debtors Relating To The Foregoing; Memorandum Of Points And Authorities In Support*
22 *Thereof* [Docket No. 26] (the “Wage Motion”), which requested authority to pay priority employee
23 claims and to pay employees in the ordinary course of business for post-petition work. On October
24 22, 2018, the Court granted the Wage Motion³ and authorized the payment of priority and

25 _____
26 ³ See *Final Order Granting the [Debtors’] Emergency Motion of Debtors for Entry of Order: (I)*
27 *Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and*
28 *Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing*
the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors
Relating to the Foregoing [Docket No. 612]; and concurrently issued *Memorandum of Decision (1)*
Overruling Objections to the (A) Prepetition Wages Motion and (B) Financing Motions and (2)

administrative wage and benefit claims, including for union-represented employees.

12. In connection with the previous sale of assets, the Debtors obtained final orders [Docket Nos. 1575, 1576, 1577 and 1578] (the “SCC Rejection Orders”) modifying or rejecting (the “SCC Rejection”) collective bargaining agreements including the SEIU-UHW CBA to remove references and applicability to O’Connor Hospital (“OCH”) and St. Louise Regional Hospital (“SLRH”), upon the closing of sale of certain assets to Santa Clara County (“SCC,” and the “SCC Sale,” respectively); *see also* Docket No. 1541 (tentative decision/memorandum for SCC Rejection Orders) (the “First 1113 Decision”).⁴ The SCC Sale closed, and the modifications of the SEIU-UHW CBA related to removal of SLRH and OCH came into immediate effect.

D. The Proofs Of Claim

13. SEIU-UHW has filed fourteen proofs of claims in these cases: (claim nos. 4718, 4719, 4722, 4723, 4725, 4726, 5117, 5137, 5140, 5150, 5160, 5158, 6186, 6221) against the Debtors (the “SEIU-UHW Claims”). The SEIU-UHW Claims seek, *et. al.*, pre-petition pension contributions, severance payments, grievances and rejection damages.

E. Marketing and Sale Efforts and First 1113 Negotiations

a. Pre-petition Sale Efforts

14. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and solicit interest in their assets (collectively, the “Assets”). *See Declaration of James M. Moloney in Support of the Debtors’ Memorandum. in Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B) Authorizing the*

Denying Motion for Reconsideration of the Final Financing Order [Docket No. 614] (together, the “Wage Order”).

⁴ The SCC Rejection Orders approved the SCC Rejection through the two mechanisms: (i) a contested full rejection and termination of collective bargaining agreement terms, including with SEIU-UHW regarding the SEIU-UHW CBA [Docket Nos. 1577; 1578] and approval of two stipulations [Docket Nos. 1575; 15776] entered into under § 1113(2) (the “SCC Stipulations”). In the SCC Stipulations, the parties agreed to the rejection of the collective bargaining agreements with OCH and SLRH, reserved rights regarding the filing of claims and objections to same, agreed that allowed Paid Time Off (“PTO”) would be treated as administrative expenses or unsecured claims depending on its accrual date, and agreed that employees not re-hired by SCC would be entitled to severance.

1 *Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (C)*
2 *Granting Related Relief* [Docket No. 2220] (the “Moloney Sale Decl.”) at ¶ 4.

3 15. In June 2018, Debtors engaged Cain Brothers, a division of KeyBanc Capital
4 Markets (“Cain”), to assist in identifying potential buyers of some or all of the Assets and
5 commenced discussions with those potential Buyers. *Id.* Cain prepared a Confidential Investment
6 Memorandum and organized an online data site to share information with potential buyers and
7 contacted strategic and financial buyers beginning in July 2018. *Id.* In this initial marketing
8 process, Cain contacted more than 100 potential partners to evaluate their interest in exploring a
9 transaction involving some or all of the Assets. *Id.* By August 2018, as a result of its ongoing and
10 broad marketing process, Cain had received 11 “Indications of Interest” from potential buyers of
11 some or all of the Assets. *Id.*

12 **b. Post-petition Sale Efforts**

13 16. Post-petition, Cain continued to work with potential buyers for some or all of the
14 Assets. Moloney Sale Decl. at ¶ 5. Based on these discussions, the Debtors determined that seeking
15 a buyer for the Assets in SCC, and a separate buyer for the other Assets, would most likely yield
16 higher net proceeds for the Debtors’ estates. *Id.* As a result, the sale of the Santa Clara Assets to
17 SCC was approved by the Court on December 27, 2018 [Docket No. 1153].

18 17. Thereafter, Cain focused on marketing the Debtors’ remaining Assets, including St.
19 Vincent. Moloney Sale Decl. at ¶ 6. As a part of this process, Cain contacted 189 potential parties
20 to evaluate potential stalking horse bidders for some or all of the Debtors’ remaining Assets, 92 of
21 which had executed an NDA, and 18 of which submitted written proposals. *Id.* Subsequent to
22 receiving access to the virtual data room and being offered additional information via conference
23 calls and site visits, many of the potential purchasers indicated that they were not interested in being
24 the stalking horse bidder. *Id.* During November and December 2018, the Debtors and their advisors
25 had substantial discussions with those potential buyers remaining, during which Prime Healthcare
26 and Strategic Global Management, Inc. (“SGM”) emerged as the leading potential candidates to be
27 selected as the stalking horse bidders for the Debtors’ remaining Assets. *Id.*

1 **c. The SGM APA**

2 18. The Debtors selected SGM as the stalking horse bidder (the “Stalking Horse
3 Bidder”) for substantially all of the Debtors’ remaining Assets, including SVMC. *Id.* at ¶ 7. On
4 February 19, 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and
5 thereafter entered an order approving the Sale and Bidding Procedures Motion [Docket No. 1572]
6 (the “Bidding Procedures Order”). SGM served as the Stalking Horse Bidder under the terms of
7 the Bidding Procedures Order. The Bidding Procedures Order also approved that certain asset
8 purchase agreement [Docket No. 2305-1] (the “SGM APA”) as modified therein.

9 19. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale*
10 *of Certain of the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens,*
11 *Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
12 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (the “Sale
13 Order”), approving the sale to SGM (the “SGM Sale”). Pursuant to the SGM APA, SGM agreed
14 to continue to operate St. Vincent as well as the Debtors’ other three hospital facilities. In addition,
15 pursuant to the SGM APA, SGM agreed to provisionally hire St. Vincent’s employees and to
16 negotiate in good faith with labor unions to restructure the CBAs, including the SEIU-UHW CBA.
17 *See* SGM APA at §§ 4.7; 5.3; 5.11.

18 **d. The § 1113 Negotiations Regarding the SGM Sale and the Settlement**
19 **Agreements**

20 20. Between July and September 2019, the Debtors negotiated settlement agreements
21 with SEIU-UHW and other unions comprehensively resolving labor issues relating to St. Vincent
22 and other hospitals and to modify the CBAs that were to be assumed by SGM. [Docket No. 3604].
23 In addition, these settlement agreements resolved disputes between the Debtors and the unions,
24 including allowance and treatment of certain claims. The settlement agreements were conditioned
25 on the closing of the SGM Sale.

26 21. On November 21, 2020, the Debtors filed their *Omnibus Motion For Approval of 1)*
27 *Settlement Agreements With Labor Unions, 2) Assumption and Assignment of Modified Collective*
28 *Bargaining Agreements To SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related*

1 *Relief* [Docket No. 3604] (the “Omnibus 1113 Motion”) seeking approval of the settlement
2 agreements under § 1113. On December 4, 2019, the Court ruled in favor of the Omnibus 1113
3 Motion and approved the relevant settlement agreements [Docket No. 3755] (the “Omnibus 1113
4 Order”).

5 **e. Non-closing of SGM Sale**

6 22. The SGM Sale was scheduled to close no later than December 5, 2019. On
7 November 27, 2019, the Court entered an order and accompanying memorandum decision
8 providing that SGM was obligated to close the sale by December 5, 2019 [Docket Nos. 3723-24].
9 SGM did not close the sale by December 5, 2019 or thereafter and as a result, the settlement
10 agreements were rendered null and void by their own terms.

11 **F. The Closure of St. Vincent**

12 23. On January 6, 2020, the Debtors filed their *Emergency Motion for Authorization to*
13 *Close St. Vincent Medical Center* [Docket No. 3906] (the “Closure Motion”), under which the
14 Debtors sought authorization to close SVMC (the “Closure”), pursuant to a “Closure Plan” (as
15 defined in the Closure Motion). On January 7, 2020 California Nurses Association (“CNA”) filed
16 an objection to the Closure Motion [Docket No. 3914] (the “CNA Closure Objection”) In the CNA
17 Closure Objection and at the hearing held on the Closure Motion, CNA argued that improper notice
18 had been given and that the Closure was not necessary because of a potential sale or recovery from
19 SGM. *Id.*

20 24. On January 9, 2020, the Court granted the Closure Motion, overruled the CNA
21 Closure Objection, and authorized the Closure Plan [Docket No. 3934]. The Court explained this
22 order through a memorandum decision [Docket No. 3933] (the “Closure Decision”), where the
23 Court found:

- 24 a. “Upon initiation of the Closure Plan, St. Vincent will enter the process of liquidation
25 and will no longer be an operating business.” Closure Decision at 5.
26 b. “Premature publication of notice of closure would have harmed employee retention
27 and morale, confused patients, and caused vendors to cease furnishing critical
28 supplies. These serious harms would have undercut the central objective of the §

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363 sale process—providing the Debtors the opportunity to realize the optimal value of their assets.” *Id.*

c. “The Debtors have articulated a sufficient business justification for closing St. Vincent.” *Id.* at 7.

d. “No buyer has presented a realistic bid to purchase St. Vincent as a stand-alone hospital.” *Id.*

e. “St. Vincent is generating substantial operating losses. As of the Petition Date, St. Vincent accounted for approximately 23% of the patient volume of the entire Verity Health System, but was responsible for 60% of the operating losses [and that the] Debtors lack sufficient funds to continue to subsidize St. Vincent’s operating losses. Absent the closure of St. Vincent, the Debtors will be unable to continue operating their other hospitals. Chadwick Decl. at ¶ 9.” *Id.*

f. “The speculative possibility of a future cash infusion based upon SGM’s alleged breach is not a solution to St. Vincent’s current funding crisis. Nor is pursuing a sale, another alternative suggested by CNA.” *Id.* at 8.

25. The Debtors have substantially implemented the Closure Plan, as described more fully in status reports *Status Report Re Closure Of St. Vincent Medical Center*, dated January 23, 2020, [Docket No. 3982]; *Debtors’ Status Report Re Closure of St. Vincent Medical Center*, dated February 6, 2020 [Docket No. 4053]; *Debtors’ Status Report Re Closure of St. Vincent Medical Center*, dated February 20, 2020 [Docket No. 4126]. *See* Adcock Decl. at ¶ 6.

26. There are no current employees at St. Vincent. The Debtors’ management team, however, have worked to create opportunities for the affected employees, including arranging for approximately 50 different healthcare organizations to participate in on-site job fairs, where hundreds of employees received offers on the spot or within days of the job fair. Adcock Decl. at ¶ 7. In addition, SFMC has made employment offers to approximately 50 employees from St. Vincent. Adcock Decl. at ¶ 7.

G. The § 1113 Process

27. The Debtors and SEIU-UHW negotiated the ultimate terms of the Settlement

1 Agreement (the “Negotiations”) through a series of meetings and exchanges (the “Meetings”).
2 Adcock Decl. at ¶ 8. The process, which began in January 2020, was manifested by negotiations,
3 written proposals and counter-proposals.⁵ Adcock Decl. at ¶ 8.

4 28. Thereafter, the Debtors and SEIU-UHW met and conferred once in person and at
5 least once more by video conference during which the Debtors provided SEIU-UHW with relevant
6 information as requested. Adcock Decl. at ¶ 9.

7 29. The in-person meetings were also supplemented by substantial discussions over
8 phone and by email, which culminated in the Debtors’ February 23, 2020 Proposal, which was then
9 integrated into the Settlement Agreement. Adcock Decl. at ¶ 11.

10 **H. The Settlement Agreement**

11 30. The Settlement Agreement incorporates the Modified SEIU-UHW CBA that is
12 consensually modified under § 1113. *See Exhibit “B.”* The Modified SEIU-UHW CBA eliminates
13 reference and application to St. Vincent.⁶

14 31. Under the Settlement Agreement, the Debtors and SEIU-UHW “resolve and settle
15 all claims, controversies, grievances, and unfair labor practice charges related to the closure of
16 SVMC, including, but not limited to, any claims raised under [POC # 4722 and # 5140] or any
17 other [proof of claim] related to St. Vincent, and under the terms stated below:”⁷

- 18 a. the Debtors will make payments that total one aggregate amount of Five Hundred
19 Thousand Dollars and No Cents (\$500,000.00) (the “Settlement Payment”) with
20 respect to and for the benefit of SEIU-UHW and its respective represented
21 bargaining unit employees (including those who were employed on a *per diem* basis)
22 who worked at St. Vincent and are not actively employed by St. Francis Medical
23 Center as of the date of the entry of a Bankruptcy Court order approving the
24 Settlement Agreement (as defined below) (each an “Eligible BU Member” and,
25 collectively, the “Eligible BU Members”); and

26
27 ⁵ The Debtors will make the written copies of their proposals available if the Court determines they
are relevant.

28 ⁶ Settlement Agreement at ¶ 1.

⁷ *Id.* at ¶ 2.

b. in the event that the Debtors effects bargaining § 1113 modification settlement payment to California Nurses Association for the waiver of claims, grievances, and unfair labor practices against the Debtors arising out of or related to the closure of St. Vincent, if any, exceeds \$500,000, the Settlement Payment in this agreement will be adjusted to match that amount.⁸

32. The Settlement Payment is supported and agreed to by the Debtors' pre-petition lenders. Adcock Decl. at ¶ 12.

33. The Settlement Agreement also provides that SEIU-UHW will "provide the amount for distribution of the Settlement Payments to each Eligible BU Member (each, a 'BU Member Share'),"⁹ that "[e]ach BU Member Share shall be made payable to each Eligible BU Member and be given to [SEIU-UHW] to be distributed to each Eligible BU Member, only after occurrence of the following:¹⁰

A. fifteen (15) business days after entry of a Bankruptcy Court order approving the Settlement Agreement (as defined [in the Settlement Agreement]);

B. eight (8) days after: i) execution and delivery by [SEIU-UHW] to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims, grievances or unfair labor practices against the Debtors and all related or affiliated entities, owners, principals, agents, employees, officers, directors, agents, attorneys and other professionals (collectively referred to with the Debtors as the "Released Parties") arising out of or related to the closure of St. Vincent, including any claims under the Federal Worker Adjustment and Retraining Notification Act and the California Worker Adjustment and Retraining Notification Act [together, the "WARN Acts"], or any other alleged violation of state or Federal law, including any alleged claims arising from the SEIU-UHW CBA (collectively, the 'Released Claims'); ii) [SEIU-UHW]'s withdrawal of any pending unfair labor practice charges related to St. Vincent or its closure; and iii) withdrawal of [SEIU-UHW]'s

⁸ *Id.* at ¶¶ 2(A); 2(B).

⁹ *Id.* ¶ 3.

¹⁰ *Id.* at ¶ 4.

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information requests concerning St. Vincent. This provision does not affect the ordinary course payment of the full-time guarantee (Article 11) or applicable across the board retroactive increase, which was due under the SEIU-UHW CBA as on the first full pay period following November 1, 2019. Additionally, the [SEIU-UHW] general release and waiver does not affect severance claims as outlined in section 5 [of the Settlement Agreement]; and

C. eight (8) days after execution by an Eligible BU Member and delivery by [SEIU-UHW] to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims against the Released Parties arising out of or related to the closure of St. Vincent, including any Released Claims except for severance claims, for which the employees reserve the right to file as general unsecured claims.”¹¹

34. Under the Settlement Agreement, “[e]ach Eligible BU Member who provides a timely waiver and release as described [in section 4.C. of the Settlement Agreement] shall receive, in addition to the BU Member Share, an allowed general unsecured claim in the amount otherwise due and owing under the SEIU-UHW CBA for severance. Any other [SEIU-UHW] represented employee who was hired by SFMC or another Debtor is entitled to receive an allowed general unsecured claim in the amount otherwise due and owing under the SEIU-UHW CBA for severance, provided that person executes and delivers a waiver and release that is timely delivered to the Debtors. The amount of general unsecured claims will be provided by the Debtors to [SEIU-UHW] who will then convey such information to its represented employee members, and thereupon, [SEIU-UHW] and employees shall have 30 days from the date of delivery of the information to [SEIU-UHW] to file in the Bankruptcy Court any challenge to the proposed claim amount(s) provided by the Debtors. For the avoidance of doubt, any and all amounts owing for severance will be allowed as a general unsecured claim only, and not as priority claim or administrative expense and no other claim for severance shall exist or otherwise remain.”¹²

¹¹ *Id.* at ¶ 4(A), (B) and (C).

¹² *Id.* at ¶ 5.

35. Under the Settlement Agreement, “[a]ny BU Member Share that is not cashed or otherwise negotiated within 90 days of issuance shall a) render the BU Member Share void, b) permanently nullify that employee’s status as a BU Eligible Member, and c) cause the amount of the BU Member Share to permanently revert back to the Debtors.”¹³ Moreover, “[e]ligible BU Members who do not execute a general release and waiver by April 15, 2020 shall forfeit their BU Member Share which shall permanently revert back to Debtors,”¹⁴ and SEIU-UHW agreed to “assist and cooperate with Debtors to distribute general releases/waivers to Eligible BU Members.”¹⁵

36. In the Settlement Agreement, SEIU-UHW agreed to “to support any Plan of the Debtors that does not contradict the material terms of this Agreement”¹⁶ and to “to support and not otherwise oppose any sale or disposition of St. Vincent or its assets.”¹⁷

69. Settlement Agreement ¶ 16 provides that “[t]his Agreement is subject to the approval of the Bankruptcy Court. Approval will be sought by motion of the Debtors and affirmatively supported by SEIU-UHW.”

IV. ARGUMENT

The Debtors seek relief under Bankruptcy Code § 1113 and Rule 9019.

A. **SECTION 1113 PROVIDES THE DEBTORS WITH AUTHORITY TO MODIFY THE SEIU-UHW CBA.**

Initially, the Debtors move to implement the modification of the SEIU-UHW CBA and applicable portions of the Settlement Agreement under § 1113 because such section allows the mutually-agreed modification of CBAs, and “consistent with [the statutes] the parties [the debtor and a union] should have every opportunity to come to an agreement themselves.” *In re Nw. Airlines Corp.*, 346 B.R. 307, 315 (Bankr. S.D.N.Y. 2006) (authorizing debtor to institute new terms and conditions of employment in a proposal union had previously agreed to unless debtor and union agreed to alternative deal within two weeks). As explained by another Bankruptcy Court

¹³ *Id.* at ¶ 6

¹⁴ *Id.* at ¶ 7.

¹⁵ *Id.* at ¶ 8.

¹⁶ *Id.* at ¶ 12.

¹⁷ *Id.* at ¶ 13.

1 in this District, § 1113 codified an “expedited form of collective bargaining” to allow unions and
2 debtors to enter into settlements in distressed situations with a primary goal to “to protect the
3 existence of collective bargaining agreements in chapter 11 cases.” *In re Certified Air Techs., Inc.*,
4 300 B.R. 355, 361 (Bankr. C.D. Cal. 2003) (citations omitted). Here, the parties have engaged in
5 good faith, arms-length, expedited collective bargaining that § 1113 was designed to engender and
6 have arrived at the equitable and necessary Modified SEIU-UHW CBA and the Settlement
7 Agreement.

8 **a. The Debtors have met the Test for Modification under § 1113.**

9 The 1113 Decisions described the test for modification or rejection of a CBA, as originally
10 articulated in *In re Am. Provision Co.*, 44 B.R. 907, 910 (Bankr. D. Minn. 1984), for rejection or
11 modification of a CBA. This test contains the following factors: (1) the debtors make a proposal;
12 (2) the proposal is based on the most complete and reliable information available at the time of the
13 proposal; (3) the proposed modifications or rejections are necessary to permit reorganization of the
14 debtor; (4) the modifications assure that all creditors, the debtors, and all other affected parties are
15 treated fairly and equitably; (5) the debtors provide the union relevant information as is necessary
16 to evaluate the proposal; (6) the debtors meet at reasonable times with the union between the time
17 of the proposal and the time of the hearing; (7) the debtors negotiate with the union in good faith at
18 these meetings; (8) the union has refused to accept such proposal without good cause; and (9) the
19 balance of equities clearly favors the relief (the “1113 Test”).

20 Although the Debtors meet all elements of the 1113 Test, courts have recognized that the
21 provisions of § 1113 are ill-suited to a case like this case, where debtors are liquidating their assets
22 under chapter 11. *In re Chicago Constr. Specialties, Inc.*, 510 B.R. 205, 215 (Bankr. N.D. Ill. 2014)
23 (quoting *In re Rufener Contr., Inc.*, 53 F.3d 1064, 1067 (9th Cir. 1995)). As noted in the thoughtful
24 analysis in *Chicago Constr.*, supra, the Court “must not just consider the tests that have developed
25 in the case law for reorganizing cases. The court must also determine how, if any, those tests should
26 be treated differently in a liquidating case.” *Id.* at 216. Here, with the closure of a hospital, the
27 guidance of *Chicago Constr.*, a case where a debtor had ceased operations and moved to reject a
28 surviving CBA for its defunct business, is especially poignant. *Id.* at 217 (discussing why rejection

1 of CBAs, even, in liquidation, are important, including to avoid administrative expenses which can
2 dilute creditors' recoveries and even make confirmation of a plan impossible).

3 **b. The Settlement Agreement Itself Satisfies Four of the § 1113 Factors.**

4 Factors (1), (5), (6) and (7),¹⁸ which are procedural in nature, are met as evidenced by SEIU-
5 UHW's execution of the Settlement Agreement, and consent to the Modified SEIU-UHW CBA.
6 *See* Omnibus 1113 Decision at p. 6 of 9 (finding these factors met under similar facts). Similarly,
7 as found in the Omnibus 1113 Decision, factor (8) is rendered moot because SEIU-UHW has not
8 "refused" the Debtors' proposal, it has accepted it. *Id.*

9 The Debtors will therefore analyze the remaining four substantive factors: (2) (proposal
10 made on good information); (3) (proposal necessary for cases); (4) (parties treated fairly); and (9)
11 (balance of equities favor relief) which concern the substantive effects of the Modification.

12 **c. The Proposal was based on the Most Complete and Reliable Information**
13 **Available.**

14 To satisfy this factor, "the debtor is simply required to gather the most complete information
15 available at the time and to base its proposal on the information it considers reliable." *In re*
16 *Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010). Here, the "information" utilized and
17 provided was rather simple: the Court has ordered the Closure of St. Vincent for the reasons found
18 in the Closure Order, the Debtors no longer employ the Represented Employees at St. Vincent, the
19 Debtors risk incurring liability under the CBAs and the Debtors are financially strained. *See* First
20 1113 Decision at 27 of 29.

21 **d. The Settlement Agreement is Necessary to Permit a Successful Plan**
22 **Confirmation.**

23 This Court has found that, "within the context of this [Verity] case, the term 'necessary to
24 permit the reorganization of the debtor' is best interpreted to mean 'necessary to permit the Debtors
25 to confirm a liquidating plan.'" First 1113 Decision at 23 at 29; Omnibus 1113 Decision at 79.

26 _____
27 ¹⁸ The Settlement Agreement acknowledges that (i) the Debtors made a proposal (at 1), (ii) SEIU-
28 UHW does not have any outstanding informational requests (at ¶ 15), (iii) the Debtors met with
SEIU-UHW to negotiate and reached the Settlement Agreement (at 1-2) and (iv) the Debtors
negotiated in good faith (at 2).

1 The Debtors' CEO has testified from the beginning of these cases that "**some or all**" of the hospitals
2 might be sold, with the logical implication that some Debtor hospitals might not find a buyer. First
3 Day Decl. at ¶ 95 (emphasis added).

4 As SEIU-UHW recognized, with the closure of SVMC, rejection is necessary for the
5 Debtors to move forward with marketing their assets and confirm a plan. *In re Nat'l Forge Co.*,
6 289 B.R. 803, 810–11 (Bankr. W.D. Pa. 2003) ("No buyer was willing to assume the CBA. ... The
7 proposed modification in the form of rejection of the CBA is necessary to permit reorganization of
8 the Debtor."). Notably, the SEIU-UHW CBA covers another hospital (SFMC) that might be sold
9 or otherwise disposed.

10 Relief is also necessary to limit the Debtors' potential liability and expenses to those agreed
11 under the Settlement Agreement including the Settlement Payment. As the Court found in the SCC
12 Rejection, unchecked, the CBAs could expose the Debtors to "substantial" administrative claims
13 from unions for enterprises that the Debtors would neither be operating nor wish to be operating,
14 with the total of these administrative claims in excess of the estimated funds available to pay all
15 administrative claims. Prior 1113 Decision at 24-25 (citing *Declaration of David Galfus* [Docket
16 1507]); see also *In re Chicago Const.*, 510 B.R. at 217-18. Waiting to reject as a part of a confirmed
17 plan, when such plan confirmation process may be protracted and the intermediate period results
18 in accrual of administrative obligations, would not be in the best interest of the Debtors' estate as
19 a whole.") (citations omitted). This Court summarized the immediate "necessity" for rejection best
20 in its Prior 1113 Decision (at 26):

21 Here, the Debtors are in the process of selling the Hospitals ... and
22 will no longer operate the Hospitals once the sale has closed. As was
23 the case in *Chicago Const.*, it makes little sense to require the Debtors
24 to remain bound by CBAs that pertain to assets which they will no
longer operate.

25 In the instant matter, the Negotiations, Meetings and the § 1113 process produced a
26 consensual, productive result—the Debtors and SEIU-UHW negotiated a deal to reflect economic
27 reality, and the Settlement Agreement is necessary to the estates.

e. **The Modification and Settlement Agreement Treat all Creditors, the Debtors, and all of the Affected Parties Fairly and Equitably, and the Balance of the Equities Favors the Requested Relief.**

This Court, in finding that the SCC Rejection treated parties fairly, found:

In sum, prior to seeking bankruptcy relief, the Debtors diligently attempted to put their operations on a sound financial footing. **The unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs is simply too great to permit the Hospitals to continue to sustainably operate.** This reality was confirmed by the recent sales process ... Many parties have been required to make sacrifices to permit continued operations of the Hospitals. Under these circumstances, the proposed rejection and/or modification of the CBAs is fair and equitable.

First 1113 Decision at 26-27 of 29 (emphasis added). The Court also cited precedent that this factor does not require unions to be paid in full, nor that all employees are re-hired or re-represented, and instead the inquiry is whether the debtor is placing a disproportionate burden on non-represented employees. *Id.* (citing *In re Walter Energy*, 542 B.R. 859, 892 (Bankr. N.D. Ala. 2015)); *see also In re Nat'l Forge Co.*, 289 B.R. at 811.

The Settlement Agreement places no disproportionate burden on the Represented Employees or anyone else. The remaining “burden” of a closed hospital felt by all is a result of SGM abandoning a deal it had signed to own and operate SVMC (and continue under modified CBAs). Now, SVMC is operationally closed, and the Represented Employees (and other employees) are not needed going-forward because of the unfortunate circumstances leading to the Closure. Some of these employees were re-hired by the Debtors to work at SFMC, and the Settlement Agreement fairly treats these Represented Employees differently by excluding them from receiving a Settlement Payment and severance.

However, all the Represented Employees contributed value to the Debtors. Like the previously-approved SCC Stipulation, the Settlement Agreement, in consideration for SEIU-UHW’s cooperation and waivers, allows severance rights and preserved claims but disallows other claims that otherwise have no basis, especially if the CBAs had been rejected. *See In re Chicago Constr. Specialties, Inc.*, 510 B.R. at 222 (“[T]he Debtor’s proposal to reject the CBA simply treats CBA claims [as they would be liquidated and disposed of under the Bankruptcy Code].”).

1 **B. THE DEBTORS HAVE SATISFIED RULE 9019 AND THE NECESSARY**
2 **FACTORS.**

3 Though the Debtors urge the Court to apply § 1113 as umbrella statutes for their entire deal
4 with SEIU-UHW (as Congress intended), Rule 9019 also supports the requested relief. *See In re*
5 *Leslie Fay Companies, Inc.*, 168 B.R. 294, 301 (Bankr. S.D.N.Y. 1994) (finding that Rule 9019
6 would apply to a debtor’s decision to enter into new post-petition CBA where transaction settled
7 all liability by and between union and debtor). Therefore, the Debtors move for approval of the
8 Settlement Agreement under Rule 9019 as well as under § 1113. This analysis is made simpler
9 because the requirements for approval under Rule 9019 is highly complementary with the above-
10 discussed 1113 Test.

11 **a. The Debtors have Satisfied Rule 9019.**

12 Under Rule 9019(a), “compromises are favored because they minimize costly litigation and
13 further parties’ interests in expediting the administration of the bankruptcy estate” and the Court
14 only needs to find that the settlement was negotiated in good faith and is reasonable, fair, and
15 equitable by utilizing the following factors:

- 16 • the complexity of the litigation involved, and the expense, inconvenience, and delay
- 17 necessarily attending it and the probability of success in the litigation;
- 18 • the difficulties, if any, to be encountered in the matter of collection; and
- 19 • the paramount interest of the creditors and a proper deference to their reasonable
- 20 views in the premises.

21 *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Sabine Oil & Gas Corp.*, 555
22 B.R. 180, 256 (Bankr. S.D.N.Y. 2016).

23 As to the “paramount interest of the creditors” factor, the Debtors incorporate their above
24 analysis that the Settlement Agreement is in the best and paramount interests of the creditors under
25 the § 1113 Test, that the transaction is “necessary,” is in the “best interest” of the estate, is “fair” to
26 all parties and that the balance of equities favor it.

27 Further, the “difficulty of collection factor” is not relevant here, as the Debtors are the ones
28 settling claims from SEIU-UHW and the Debtors are not receiving cash consideration. This leaves

1 the first listed *A&C* factor: “The complexity of the litigation involved, and the expense,
2 inconvenience, and delay necessarily attending it and the probability of success in the litigation,”
3 for consideration for Rule 9019 approval.

4 “The purpose of a compromise agreement [under Rule 9019] is to allow the [debtor in
5 possession] and the creditors to avoid the expenses and burdens associated with litigating sharply
6 contested ... claims.” *In re A & C Properties*, 784 F.2d 1377, 1380-81. Accordingly, in approving
7 a settlement agreement, the Court need not conduct an exhaustive investigation of the claims sought
8 to be compromised. *See United States v. Alaska Nat’l Bank (In re Walsh Constr., Inc.)*, 669 F.2d
9 1325, 1328 (9th Cir. 1982). A court should not substitute its own judgment for the judgment of the
10 debtor in possession. *Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). A
11 court, in reviewing a proposed settlement, is not to decide the numerous questions of law and fact
12 but rather to canvass the issues to determine whether the settlement falls below the lowest point in
13 the range of reasonableness. *In re Tribune Co.*, 464 B.R. 126, 158 (Bankr. D. Del. 2011) (“the
14 settlement need only be above the “lowest point in the range of reasonableness”); *In re W.T. Grant*
15 *& Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); the court should not conduct a “mini-trial” on the merits
16 of the issues; and *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849 (9th Cir.
17 1976).

18 The Settlement Agreement primarily disposes of two pieces of litigation: (1) § 1113
19 litigation over modification or rejection of the SEIU-UHW CBA; and (2) litigation over the validity
20 and amounts of SEIU-UHW’s claims, including, but not limited to, potential WARN Act liability.

21 As to SEIU-UHW’s previous opposition, the SCC Rejection was an arduous, months-long
22 undertaking involving § 1113 questions. Section 1113 is a highly complex, factually-intensive
23 statute, made particularly difficult to analyze in a liquidation context. *See In re Rufener Const.,*
24 *Inc.*, 53 F.3d 1064, 1067 (9th Cir. 1995) (“the procedural requirements imposed by § 1113 appear
25 ill-suited to a liquidation proceeding”). The Debtors would be required to meet nine factors,
26 potentially requiring marshaling substantial evidence and rebutting and replying to legal arguments
27 under an expedited, contested setting. The Settlement Agreement not only fulfills the express
28 Congressional goals of compromise and “expedited collective bargaining,” it also resolves any

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1 uncertainty of potentially “sharply contested” § 1113 process over the SEIU-UHW CBA. *In re A*
2 & *C Properties*, 784 F.2d at 1380-81. Further, the Settlement Agreement streamlines and settles
3 key aspects of the SEIU-UHW claims and the Debtors’ liability for severance, PTO and any alleged
4 WARN Act liability.

5 Given the complexity of this potential litigation, interposed with the fact that the Debtors
6 are in the largest healthcare case currently in the country, attorneys’ fees and costs (which could
7 most likely run well into the six figures for each side) and attorneys and professionals’ investment
8 in time and attention to bring this matter to full fruition would be high compared to the total gain
9 and exposure. *In re Lawrence & Erausquin, Inc.*, 124 B.R. 37, 39 (Bankr. N.D. Ohio 1990)
10 (approving Rule 9019 settlement where “[i]f all the issues which have been raised in this case were
11 to be litigated by the Trustee, the litigation would be time consuming, burdensome, somewhat risky,
12 and would quite possibly cost the estate more than it would generate for the payment of unsecured
13 creditors.”); *In re Partsearch Techs., Inc.*, 453 B.R. 84, 105 (Bankr. S.D.N.Y. 2011) (approving
14 Rule 9019 agreement where “the risks of litigation here appear to be significant because of the
15 substantial time and expense required to conduct a trial.”).

16 The Modified SEIU-UHW CBA and all aspects of the Settlement Agreement result from
17 the good faith, arm’s-length negotiations. The parties are entitled to deference in their decisions.
18 *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849; *see also In re Yellowstone*
19 *Mountain Club, LLC*, 460 B.R. 254, 265 (Bankr. D. Mont. 2011) (*citing A& C Properties*, 784 F.2d
20 1381) (“rather than an exhaustive investigation or a mini-trial on the merits, this court need only
21 find that the settlement was negotiated in good faith and is reasonable, fair and equitable”); *In re*
22 *Adelphia Communications Corp.*, 327 B.R. 143, 163 (Bankr. S.D.N.Y. 2005), adhered to on
23 reconsideration, 327 B.R. 175 (Bankr. S.D.N.Y. 2005) (approving settlement of claims where
24 debtor was to pay \$715 million even where court found there “there [was] quite a high probability
25 that [the debtor] would ultimately prevail on at least some of its claims,” because “that litigation”
26 had already “been hotly contested [through] numerous legal and factual defenses” by the
27 counterparty against the debtors’ claims and where debtors were not likely to “win quickly,” given
28 the “complexities of [the] situation,” and concluding that “even a successful outcome in such

litigation likely would take substantial time [and the] the [s]ettlement [a]greements eliminate these risks.”).

The Settlement Agreement represents the type of rational, negotiated solutions that Rule 9019 encourages, and that the Court should approve. *See generally Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 434, 88 S. Ct. 1157, 1168, 20 L. Ed. 2d 1 (1968) (“Litigation and delay are always the alternative to settlement, and whether that alternative is worth pursuing necessarily depends upon a reasoned judgment as to the probable outcome of litigation.”).

V. CONCLUSION

Based upon the foregoing, the Debtors respectfully request that the Court enter an order: (i) granting and approving the Settlement Agreement as attached as **Exhibit “A”** so that its terms will become effective and the SEIU-UHW CBA will be modified as reflected under **Exhibit “B”**; and (ii) for such other and further relief as the Court may deem proper.

Dated: March 12, 2020

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

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

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of VHS and its above-captioned affiliates who have also filed for bankruptcy protection (collectively the “Debtors,” and each a “Debtor”) as well as those affiliated entities that are not in bankruptcy. I submit this Declaration in support of the *Debtors’ Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* (the “Motion”).¹

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

3. True and correct copies of the Settlement Agreement and the Modified SEIU-UHW CBA are attached, respectively as **Exhibit “A”** and **Exhibit “B”** to the Motion.

4. The SEIU-UHW CBA currently covers SEIU-UHW represented employees at SFMC, and, of relevance to the instant Motion, 370 former employees of SVMC (with these former SVMC employees as the “SEIU-UHW Represented Employees”). The SEIU-UHW Represented Employees were comprised of service workers, including, but not limited to, environmental services aides, certified nurse assistants, unit coordinators, and technical workers, including, but not limited to, radiological technician and pharmacy technicians.

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

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1 5. The SGM Sale was scheduled to close no later than December 5, 2019. On
2 November 27, 2019, the Court entered an order and accompanying memorandum decision requiring
3 SGM to close the sale by December 5, 2019 [Docket Nos. 3723-24]. SGM did not close the sale
4 by December 5, 2019 or thereafter.

5 6. The Debtors have substantially implemented the Closure Plan, as described more
6 fully in status reports filed with the Court, which incorporate herein to my Declaration. *See Status*
7 *Report Re Closure Of St. Vincent Medical Center Dated January 23, 2020*, [Docket No. 3982],
8 *Debtors' Status Report Re Closure of St. Vincent Medical Center Dated February 6, 2020* [Docket
9 No. 4053], and *Debtors' Status Report Re Closure of St. Vincent Medical Center Dated February*
10 *20, 2020* [Docket No. 4126].

11 7. There are no current employees at SVMC. The Debtors' management team,
12 however, have worked to create opportunities for the affected employees, including arranging for
13 approximately 50 different healthcare organizations to participate in on-site job fairs, where
14 hundreds of employees received offers on the spot or within days of the job fair. In addition, SFMC
15 has made employment offers to approximately 50 employees from SVMC.

16 8. The Debtors and SEIU-UHW negotiated the ultimate terms of the Settlement
17 Agreement (the "Negotiations") through a series of meetings and exchanges (the "Meetings"). The
18 process began on January 31, 2020, when the Debtors delivered a proposal under § 1113 to SEIU-
19 UHW.

20 9. Thereafter, the Debtors and SEIU-UHW met and conferred once in person and at
21 least once more by video conference during which the Debtors provided SEIU-UHW with relevant
22 information as requested.

23 10. The in-person Meetings were supplemented by substantial negotiations over phone
24 and by email, which culminated in the Debtors making a proposal that was agreed to by SEIU-
25 UHW (the "Proposal"), and subsequently integrated into the Settlement Agreement attached hereto
26 as **Exhibit "A."**

27 11. The Modified SEIU-UHW CBA and all aspects of the Settlement Agreement result
28 from the arm's-length negotiations. The Settlement Agreement streamlines and settles key aspects

1 of the SEIU-UHW claims and the Debtors' liability for severance, PTO and any alleged WARN
2 Act liability.

3 12. The Debtors' pre-petition lenders support the Settlement Agreement and Settlement
4 Payment.

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

7
8 [signature page follows]
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Executed this 12th day of March, 2020, at Los Angeles, California.

By: 
RICHARD G. ADCOCK

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Exhibit A

Settlement Agreement

Settlement Agreement

On this 3 day of March, 2020, and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc. ("VHS"), St. Vincent Medical Center ("SVMC"), St. Vincent Dialysis Center ("SVDC," and referred to with SVMC as "St. Vincent") and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and the Service Employees International Union - United Healthcare Workers West ("SEIU-UHW" and, collectively with the Debtors, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, the Debtors previously obtained an order [Docket No. 1577] (the "SCC CBA Order"), approving the modification of the Collective Bargaining Agreement effective November 1, 2018 - October 31, 2021 (the "CBA"), in order to excise the then-covered O'Connor Hospital ("OCH") and St. Louise Regional Hospital ("SLRH") upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the "SCC Closing");

WHEREAS, after the entry of the SCC CBA Order, SEIU-UHW and SVMC and St. Francis Medical Center ("SFMC") remained parties to the CBAs;

WHEREAS, in connection with an approved sale of the Debtors remaining hospital assets to Strategic Global Management, Inc., a California Corporation ("SGM"), the Debtors and SEIU-UHW entered into a Settlement Agreement dated September 17, 2019 (the "September Settlement") with the purpose of resolving all or substantially all material issues in dispute between those parties, providing for the treatment of SEIU-UHW claims, and providing for the modification and assignment of the CBA to SGM upon closing of the transaction to SGM (the "SGM Sale"), which was expected to occur no later than December 5, 2019;

WHEREAS, on November 21, 2019, the Debtors filed an *Omnibus Motion For Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements To SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* [Docket No. 3604] (the "Omnibus § 1113 Motion") seeking modification and assignment of the CBA (and collective bargaining agreements with other unions), approval of the Settlement Agreement (and similar settlement agreements with other unions) under (*et. al.*) Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and §§ 1113 and 1114 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code").

NOW THEREFORE, the Parties agree as follows:

Terms

1. Upon Bankruptcy Court approval of this Agreement, the CBA immediately shall be deemed and shall be modified in the form attached hereto as Exhibit 1 (the “Modified CBA”) under § 1113 of the Bankruptcy Code (the “Modification”) so as to remove all references and application to SVMC.

2. To resolve and settle all claims, controversies, grievances, and unfair labor practice charges related to the closure of SVMC, including, but not limited to, any claims raised under POC #4722 and #5140 or any other POC related to St. Vincent, and under the terms stated below:

A. the Debtors will make payments that total one aggregate amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) (the “Settlement Payment”) with respect to and for the benefit of SEIU-UHW and its respective represented bargaining unit employees (including those who were employed on a *per diem* basis) who worked at St. Vincent and are not actively employed by St. Francis Medical Center as of the date of the entry of a Bankruptcy Court order approving the Settlement Agreement (as defined below) (each an “Eligible BU Member” and, collectively, the “Eligible BU Members”); and

B. in the event that the Debtors’ effects bargaining/§ 1113 modification settlement payment to California Nurses Association for the waiver of claims, grievances, and unfair labor practices against the Debtors arising out of or related to the closure of St. Vincent, if any, exceeds \$500,000, the Settlement Payment in this agreement will be adjusted to match that amount.

3. SEIU-UHW will provide the amount for distribution of the Settlement Payments to each Eligible BU Member (each, a “BU Member Share”).

4. Each BU Member Share shall be made payable to each Eligible BU Member and be given to SEIU-UHW to be distributed to each Eligible BU Member, only after occurrence of the following:

A. fifteen (15) business days after entry of a Bankruptcy Court order approving the Settlement Agreement (as defined below);

B. eight (8) days after: i) execution and delivery by SEIU-UHW to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims, grievances or unfair labor practices against the Debtors and all related or affiliated entities, owners, principals, agents, employees, officers, directors, agents, attorneys and other professionals (collectively referred to with the Debtors as the “Released Parties”) arising out of or related to the closure of St. Vincent, including any claims under the Federal Worker Adjustment and Retraining Notification Act and the California Worker Adjustment and Retraining Notification Act, or any other alleged

violation of state or Federal law, including any alleged claims arising from the CBA (collectively, the “Released Claims”); ii) SEIU-UHW’s withdrawal of any pending unfair labor practice charges related to St. Vincent or its closure; and iii) withdrawal of SEIU-UHW’s information requests concerning St. Vincent. This provision does not affect the ordinary course payment of the full-time guarantee (Article 11) or applicable across the board retroactive increase, which was due under the CBA as on the first full pay period following November 1, 2019. Additionally, the SEIU-UHW general release and waiver does not affect severance claims as outlined in section 5 below; and

C. eight (8) days after execution by an Eligible BU Member and delivery by SEIU-UHW to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims against the Released Parties arising out of or related to the closure of St. Vincent, including any Released Claims except for severance claims, for which the employees reserve the right to file as general unsecured claims as outlined in section 5 below.

5. Each Eligible BU Member who provides a timely waiver and release as described in section 4.C. shall receive, in addition to the BU Member Share, an allowed general unsecured claim in the amount otherwise due and owing under the CBA for severance. Any other SEIU-UHW represented employee who was hired by SFMC or another Debtor is entitled to receive an allowed general unsecured claim in the amount otherwise due and owing under the CBA for severance, provided that person executes and delivers a waiver and release that is timely delivered to the Debtors. The amount of general unsecured claims will be provided by the Debtors to SEIU-UHW who will then convey such information to its represented employee members, and thereupon, SEIU-UHW and employees shall have 30 days from the date of delivery of the information to SEIU-UHW to file in the Bankruptcy Court any challenge to the proposed claim amount(s) provided by the Debtors. For the avoidance of doubt, any and all amounts owing for severance will be allowed as a general unsecured claim only, and not as priority claim or administrative expense and no other claim for severance shall exist or otherwise remain.

6. Any BU Member Share that is not cashed or otherwise negotiated within 90 days of issuance shall a) render the BU Member Share void, b) permanently nullify that employee’s status as a BU Eligible Member, and c) cause the amount of the BU Member Share to permanently revert back to the Debtors.

7. Eligible BU Members who do not execute a general release and waiver by April 15, 2020 shall forfeit their BU Member Share which shall permanently revert back to Debtors.

8. SEIU-UHW shall assist and cooperate with Debtors to distribute general releases/waivers to Eligible BU Members.

11. The Bankruptcy Court shall retain and have exclusive jurisdiction to address any dispute concerning the terms and interpretation of this Agreement.

13. SEIU-UHW agrees to support and not otherwise oppose any sale or disposition of St. Vincent or its assets.

15. SEIU-UHW hereby withdraws any outstanding information requests that relate to any claims or issues being resolved by this Agreement, the § 1113 process or St. Vincent.

17. The terms of this Agreement supersede any prior agreement(s) between the Parties.

19. The Parties expressly agree that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated damages and hereby waive and releases any and all rights under Section 1542 of the California Civil Code as said statute pertains to the claims released hereunder. California Civil Code Section 1542 reads as follows:

5

20. For the avoidance of doubt, the releases noted in paragraphs 4.B and 4.C shall contain language similar to that which is contained in paragraph 19 so as to comply with California Civil Code Section 1542.

21. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement, subject to Bankruptcy Court approval.

AGREED TO:

SEIU-UHW

By: 

The Debtors

By:  CHRO

3/3/2020

Exhibit B

Redacted Modified SEIU-UHW CBA

United Healthcare Workers West
United Healthcare
Workers — West
Service Employees International Union
CTW, C LC
560 Thomas L Berkley Wy.
Oakland, CA 94612
510-251-1250 ☐ 800-585-4250
www.seiu-uhw.org
Quality Healthcare for All
Collective Bargaining Agreement with
~~O'CONNOR HOSPITAL~~
~~SAINT LOUISE REGIONAL HOSPITAL~~
~~ST. FRANCIS MEDICAL CENTER~~
~~ST. VINCENT MEDICAL CENTER~~
November 1, 2018 — October 31, 2021

AGREEMENT

This Agreement is executed on this November 19, 2015. It is between United Healthcare Workers - SEIU West (hereinafter for convenience called "the Union") and O'Connor Hospital ("O'Connor"), Saint Louis Regional Hospital ("Saint Louis"), St. Vincent Medical Center ("St. Vincent") and St. Francis Medical Center ("St. Francis") (jointly and separately, the "EmployersEmployer"). This Agreement is the embodiment of the understanding between the parties for the term that it shall be effective; and as such it represents a compromise of all interests resulting from collective bargaining negotiations. The EmployersEmployer and the Union, and each of the officers thereof executing this Agreement, jointly and severally represent that they it are duly authorized to execute this Agreement.

PREAMBLE

It is the mutual intent of the parties that all EmployersEmployer, Employees, managers, physicians, and Union Representatives treat each other with dignity, respect, courtesy and trust, and that these principles shall also apply in all dealings with patients and visitors. It is further the intent of the parties that the provisions of this Agreement further these goals.

ARTICLE 1: SHARED VISION AND RESPONSIBILITY

A. The EmployersEmployer and the Union share a commitment to provide high-quality, therapeutic, accessible, affordable healthcare to the communities we serve. The EmployersEmployer and Union further agree that they it shall use their best efforts to provide the highest level of patient care and that they it will work together to improve the lives of the people and communities they it serve, as well as to maintain a constructive working relationship by: recognizing our own values and the value of others; providing excellent care with gentleness and kindness; acting with integrity, clarity, and honesty; supporting those who lack resources for a healthy life and full human development; and being continuously resourceful and creative. All parties recognize that it is also to their mutual advantage to have efficient and continuous operations of the Hospital in order to provide quality patient care. The EmployersEmployer acknowledges the benefits of understanding varied cultural/ethnic differences and the need to respect cultural/ethnic diversity.

B. This Agreement reflects the Parties' commitment to improving quality care; to reducing the cost of healthcare; to reforming the financial framework to serve higher quality and lower costs; to enabling the employer to manage and operate the hospitals within the system efficiently; to making hospital workers the healthiest in California; to making hospital jobs the most desirable in California; and to making California the healthiest state in the country. This Agreement not only embodies these joint commitments, but is premised on the principle that through Labor-Management collaboration and through the joint pursuit of the "common good," we can remake the healthcare system into what is needed at this moment for patients, healthcare workers, and healthcare EmployersEmployer.

C. Management Rights

Retained Rights of Management

Subject to the provisions contained in this Agreement and laws and regulations governing patient care and the practice of nursing, the Employer has the right to operate its business, which includes

1. The number, location, or types of facilities;
2. The medical and patient care standards, methods;
3. The price of all products and services, the price of all purchases, and the corporate and financial structure of the facilities;
4. The equipment and machinery;
5. The promotion and demotion of all Supervisors at the facilities, provided that the creation of new Supervisorial positions shall not displace bargaining unit Employees;
6. The number of Employees, including the number of Employees assigned to any particular procedure or shift, and whether, when, or where there is a job opening;
7. Reasonable standards of performance and whether any Employee meets such standards;
8. The need for and the administration of physical examinations or psychological tests, background information, criminal record or drug screening as they it pertains to new or probationary Employees;
9. The direction and supervision of all of the Employees;
10. The adoption of reasonable rules and regulations for all of the Employees;
11. The hiring of Full-Time, Part-Time, and Per Diem Employees and the number thereof;
12. The utilization of registry and traveling Employees;
13. The security of the Employees, premises, facilities, and the property of the Employer; and
14. The utilization of the Employer's premises, equipment, and facilities.

3. The price of all products and services, the price of all purchases, and the corporate and financial structure of the facilities;

4. The equipment and machinery;

5. The promotion and demotion of all Supervisors at the facilities, provided that the creation of new Supervisorial positions shall not displace bargaining unit Employees;

6. The number of Employees, including the number of Employees assigned to any particular procedure or shift, and whether, when, or where there is a job opening;

7. Reasonable standards of performance and whether any Employee meets such standards;

8. The need for and the administration of physical examinations or psychological tests, background information, criminal record or drug screening as theyit pertainsto new or probationary Employees;

9. The direction and supervision of all of the Employees;

10. The adoption of reasonable rules and regulations for all of the Employees;

11. The hiring of Full-Time, Part-Time, and Per Diem Employees and the number thereof;

12. The utilization of registry and traveling Employees;

13. The security of the Employees, premises, facilities, and the property of the Employer; and

14. The utilization of the Employer's premises, equipment, and facilities.

ARTICLE 2: CONTINUOUS QUALITY IMPROVEMENT

Continuous quality improvement is critical to our success. A number of our hospitals' large payers, both governmental and private, have implemented payment reforms tied to clinical processes, patient care experiences, mortality rates, and outcomes. The Parties believe that improving patient care is critical to our success. Employees also desire to improve their work lives by improving the input into key decisions and then observing the outcomes and results. We commit to a course that is evidence-based, that holds all participants (the Employer, the Union, and Employees) accountable in areas that require greater focus, and that ultimately allows all participants to share the rewards of our success.

ARTICLE 3: RECOGNITION OF UNION AND EXCLUSIONS.

A. The ~~Employers~~Employer recognizes the Union as the exclusive representative of Employees covered by this Agreement in the following single bargaining unit:-

At O'Connor, the Employer recognizes the Union as the exclusive representative for all Full-Time, Regular Part-Time, Limited Part-Time and Per Diem Service and Maintenance and Technical Employees employed by O'Connor Hospital, including those listed in Appendix B. At Saint Louise, the Employer recognizes the Union as the exclusive representative for all Full-Time, Regular Part-Time, Limited Part-Time and Per Diem Service and Maintenance and Technical Employees employed by Saint Louise, including those listed in Appendix B. At St. Francis, the Employer recognizes the Union as the exclusive representative for all Full-Time, Regular Part-Time, Limited Part-Time and Per Diem Service and Maintenance and Technical Employees employed by St. Francis, including those listed in Appendix B. At St. Vincent, the Employer recognizes the Union as the exclusive representative for all Full-Time, Regular Part-Time and Per Diem Service and Maintenance and Technical Employees employed by St. Vincent, as described in NLRB Election Certification 31-RC-8876. This Agreement shall not apply to executive or professional Employees, nor to Employees presently represented by any other collective bargaining representative recognized by the ~~Employers~~Employer, nor to confidential Employees, nor to supervisory personnel as defined by Section 2(11) of the NLRA.

B. This Agreement shall also apply to any other classification(s) which may be established within the scope of duties now included within this bargaining unit.

C. The ~~Employers~~Employer agrees to recognize the Union as the collective bargaining agent on behalf of Employees in any appropriate unit, as defined herein, where a majority of Employees voting vote for SEIU-UHW representation. Such Employees shall be accreted into and covered by this Agreement upon certification of the election results by the NLRB or third party. Where classifications are accreted into this Agreement that are not currently covered, the parties will meet and negotiate over their wages and other terms and conditions that are not already covered by this Agreement.

D. The ~~Employers~~Employer agrees not to, and expressly waives any right they ~~it~~ may have to withdraw recognition concerning, to petition for unit clarification concerning, or in any other way to challenge the inclusion in the bargaining unit of any Employees or classifications or job titles who or which are currently included in the unit on the grounds that they are or may be supervisory or supervisors.

ARTICLE 4: STANDARDS PRESERVED, PAST PRACTICES AND PRIOR AGREEMENTS

A. No Employee shall suffer any reduction in wages or benefits as a result of coverage under this Agreement, unless specifically provided for otherwise in this Agreement.

B. Past practices in place at the time of the signing of this Agreement will NO LONGER be binding or applicable. Side letters entered by the parties prior to the signing of this Agreement shall no longer be applicable unless newly executed.

C. With the exception of arbitration decisions, this Agreement supersedes all past practices and all previous oral and written agreements between the Union and the ~~Employers~~Employer. The parties

agree that the relationship between them shall be governed by the terms of this Agreement, or any other amendments, modifications, or alterations thereto.

D. Additions, changes or amendments shall not be controlling in any way, unless such additions, changes or amendments are reduced to writing and dully executed by the parties subsequent to the date of this agreement.

ARTICLE 5: JOB SECURITY

A. The parties acknowledge a common goal and intent of providing employment and income security to Employees. As such, it is the intent of the parties to avoid displacement of Employees, but recognize that there are circumstances when avoiding displacement cannot be achieved. The parties acknowledge a mutual intention to make use of attrition, business growth, aggressive job matching, retraining and/or other mutually agreed upon mechanisms to accomplish this goal. The ~~Employers~~Employer will make every effort to avoid displacing Employees (e.g., reduction in force, reduction in hours, daily cancellations, job elimination on a Temporary, indefinite, or permanent basis, etc.) and in so far as it is able, will provide employment security to bargaining unit Employees. The parties agree that Employees faced with displacement from their position shall be given first consideration for reassignment or floating wherever possible in lieu of involuntary reduction. Furthermore, if an Employee is unavoidably displaced, the ~~Employers~~Employer will assist Employees in identifying other job opportunities in other departments at the home facility, or at other facilities of the Employer. The ~~Employers~~Employer also agree to the following:

B. Beginning after January 1, 2018, Regular Full-Time and Regular Part-Time Employees who are covered by this Agreement and who have ten (10) or more years of service shall not be permanently laid off or have their hours permanently reduced except (1) if they have been or are being suspended or terminated for cause; (2) if the Union and Employee have voluntarily agreed to such reductions; or (3) under the circumstances set forth in (a) through (d) below. Employees who are covered by this Agreement and who have ten (10) or more years of service may be laid off for any of the following reasons: (a) the state or federal government declare a state of emergency; (b) material changes have been made in the laws regulating and providing health care delivery in California or the USA; (c) the economy has suffered a substantial economic downturn; or (d) the relevant hospital fails to generate a positive cash flow (EBIDA less Cap Ex). In these circumstances, the Employer will undertake its best efforts to provide secure jobs for its Employees to the extent possible. Prior to the implementation of any layoff of an Employee with ten (10) or more years of service, for any reason or combination of reasons in this subsection, the Employer shall meet with the Union to discuss the decisions and bargain over the effects of any such layoff.

C. With respect to Employees covered by this Agreement who have less than ten (10) years of service, the Employer has the right to temporarily or permanently layoff such Employees based on the needs of the business. In addition prior to January 1, 2018, the Employer has the right to temporarily or permanently layoff any Employee as allowed by this Agreement.

D. Training and Upgrade Fund

At Saint Louise, St. Francis, O'Connor, and St. Vincent, the ~~The~~EmployersEmployer shall each contribute [REDACTED] of the gross wages of the Employees in the bargaining unit in the first year of this

There shall be no distinction between the wages paid to men and the wages paid to women for the performance of comparable quality and quantity of work on the same or similar operations.

ARTICLE 8: UNION MEMBERSHIP

Union Security Provisions

A. Union Membership Requirements

1. During the life of this Agreement, Employees of the ~~Employers~~ Employer who are covered by this Agreement shall be required as a condition of employment to meet and maintain the core requirements of membership in the Union in good standing, subject to federal law. Compliance is required by the 31st day after employment or the 31st day after the date of this Agreement, whichever is later.

2. The Union shall notify the Employer and the affected Employee in writing of an Employee's failure to comply with the provisions of this Article and shall afford each such Employee fifteen (15) work days, after the Employee has been mailed such notice at his or her last known address, in which to comply. If said Employee does not comply with the provisions of this Article within the ten (10) day period following actual notice, the Employee shall be promptly terminated upon written notice of such fact from the Union and the Employer. The Union will hold the Employer harmless from any claims or liability arising out of this Section, including the expense of defending against such claims.

B. Notice to New Employees

1. At the time a new Employee, who will be covered by this Agreement, is hired, the Employer shall deliver to the Employee a written notice stating that the Employer recognizes the Union as the collective bargaining agent for the Employees covered by the Agreement and a Union application, dues authorization card, and COPE authorization card. This written notice shall quote or paraphrase the provisions of this Article of the Agreement.

2. The Employer will also provide each new Employee with a list, prepared by the Union, of current Union Problem Solvers, their departments and/or work areas and telephone numbers.

C. Deduction of Union Membership Fees and COPE Check-Off

1. The Employer will honor an authorization by Employees to withhold from wages and remit to the Union for the payment of Union membership fees when such authorizations are submitted in a form agreed to by the Employer and the Union.

2. The Employer will promptly remit the financial obligations deducted pursuant to such authorizations, together with a list on hard copy and a disk or electronically showing the following information for Union rate, former and new department, shift status (i.e. regular, Part-Time, Per Diem, Temporary) and date of transfer. The Employer is not required to provide that data for Employees who have transferred out of the bargaining unit, other than a list of Employees with their name, former and new department, date of transfer and social security number.

3. The Employer hereby agrees to honor COPE contribution deduction authorizations from its Employees who are Union members.

4. The Union will hold the ~~Employers~~ Employer harmless against any claim which may be made by any person by reason of the COPE deductions described herein, including the cost of defending against such claim. The Union will have no monetary claim against the ~~Employers~~ Employer by reason of failure to perform under this Article.

ARTICLE 9: BULLETIN BOARDS

The posting of Union notices will be limited to the bulletin boards to which the Union is given use under this Section.

A. ~~At Saint Louise~~, the Union shall be given use of one (1) glass, locked, and enclosed bulletin board located in the hallway near engineering, near east entrance for the exclusive use of the Union.

In addition, the Union shall be given use of unlocked bulletin boards in the following locations:

Admitting	Dietary
Housekeeping	Laboratory
MSP	Labor and Delivery
Diagnostic Imaging	Materials Management
Respiratory Therapy	Surgery
Central Processing	Pharmacy

~~At O'Connor~~, the Union shall be given use of one (1) glass, locked, and enclosed bulletin board located in the hallway (next to the Human Resource bulletin board) leading to the Cafeteria, for the exclusive use of the Union.

In addition, the Union shall be given use of unlocked bulletin boards in the following locations:

Pharmacy	ER
ER Registration	EVS
Sports Medicine	Nutritional Services
Laboratory	Surgery
Center for Life	Pat KS ⁴ egy
Radiology	Med Surg Oncology
Labor & Delivery (3W)	Nursery
Med Surg Ortho	Ambulatory Surgery
ICU	Medical Records
Physical Medicine	2 SE 2nd Floor
Radiation Therapy	Inpatient Admitting
Supply	Distribution
Out Patient Admitting	Wound Care Center
Telemetry/ACTU	

C. ~~At St. Francis, the~~ The Employer will provide locked bulletin boards of a size not less than two (2) feet by three (3) feet, glass enclosed with a key provided to the Union, for the exclusive use of the Union. List of locations as follows:

1. Family Life
2. Human Resources
3. PCU Building
4. Health Services Pavilion (HSP)
5. Tower, Terrace Level, Support Services Corridor

Additionally, the Union will have access to a space not less than 8 1/2 inches by 14 inches on existing bulletin boards in all break rooms or equivalent areas in bargaining unit Employees' home departments.

~~D. At St. Vincent, the Employer shall have two (2) glass, locked and enclosed bulletin boards located outside the doctors' dining room for posting of official Union business.~~

ARTICLE 10: CATEGORIES OF EMPLOYEES

A. Employee Categories Described: There shall be five (5) Employee categories:

1. Regular Full-Time

A "Regular Full-Time" Employee is one who is regularly scheduled on a predetermined basis for forty (40) hours in each workweek, or eighty (80) hours in each fourteen (14) day pay period, or thirty-six (36) or more hours in a workweek in the case of any Employee regularly scheduled on an alternative work schedule. Commencing on the first of the month following completion of the Employee's thirty (30) day waiting period, the employee will be eligible for Paid Time Off and health and welfare benefits.

2. Regular Part-Time

A "Regular Part-Time" Employee is one who is regularly scheduled on a predetermined basis to work at least thirty (30) hours but less than forty (40) hours in each workweek, or at least sixty (60) hours but less than eighty (80) hours in each fourteen day period (except for Employees referenced in "1." above who work twelve-(12) hour shifts). Commencing on the first of the month following completion of the Employee's thirty (30) day waiting period, the employee will be eligible for Paid Time Off and health and welfare benefits.

Transition of Updated Definition of Regular Part-Time

a. New Hires — the above definitions of Regular Full-Time and Regular Part-Time will apply to new hires with a start date of December 1, 2015, or later.

b. Current Employees classified as Regular Part-Time who work 20 hours and less than 30 hours in each workweek will be offered a Regular Part-Time position working 30 hours per workweek or more prior to January 1, 2017. Regular part-time employees who work less than 30 hours per week and are currently receiving medical or other benefits shall continue to receive those benefits until such time as the employee either waives benefits and/or is offered a benefited position in accordance with "c" below and declines such position, in which case the employee shall become benefits ineligible the following month.

c. Employees will be offered open Regular Part-Time positions in their job classification in seniority order. If no Employee accepts the position within the seven (7) day posting period, the lowest senior Employee in that job classification will be given the choice of taking the available position or staying in their current position as a Limited Part-Time Employee without benefits. The Employee's benefits will terminate the last day of the month in which the employee makes the choice to remain in the Limited Part-Time position.

3. Limited Part-Time

Limited Part-Time. A "Limited Part-Time" Employee is one who is regularly scheduled on a predetermined basis to work less than thirty (30) hours in each workweek, or less than sixty (60) hours in each pay period.

4. Per Diem

A "Per Diem" Employee is one who is not scheduled to work on a regular basis, works intermittently, and works such hours as needed to cover sick calls, vacation or holiday time in accordance with the following:

a. All Per Diem Employees will provide a list of available dates to the manager/designee three (3) weeks prior to the posting of the new schedule.

b. All Per Diem Employees must be available to work a minimum of five (5) shifts per twenty-eight (28) day schedule.

c. All Per Diem Employees must be available to work two (2) weekend shifts per twenty-eight (28) day schedule.

d. All Per Diem Employees must be available to work three (3) holidays per year. At least one of the holidays must be Thanksgiving, Christmas or New Year's.

e. Per Diem Employees who have been scheduled to work, but are not needed may be required to float or be called off in accordance with the provisions of Articles 16 and 17.

f. An unworked shift for which any Per Diem has been scheduled to work, but is not needed shall be counted toward satisfying the Per Diem's availability obligations.

g. Per Diem Employees may be terminated if they refuse to work pre-scheduled work assignments or are unable to meet the minimum availability requirements.

h. A Per Diem may request and if qualified, be placed on more than one list in those departments which maintain such lists, subject to the needs of the departments.

i. Per Diem Employees shall submit a written current availability for work, including days of the week and shifts, and current phone number.

5. Temporary

Before resorting to Registry or Temporary Agency personnel, the ~~Employers~~ Employer shall offer Temporary work to existing Employees. A Temporary Employee is one who is hired either Part-Time or Full-Time on a pre-determined work schedule to work for a limited period which shall not extend beyond ninety (90) calendar days. The ninety (90) calendar days may be extended in any given case by mutual agreement of the Union and the ~~Employers~~ Employer, and the Union's agreement to such extension will not be unreasonably denied.

a. In the event that a Temporary Employee becomes a Regular Full-Time or Regular Part-Time Employee, the qualifying date for any applicable pay raises pursuant to Article 18 starts with his or her most recent date of continuous employment, and the qualifying date for fringe benefit eligibility and accrual is the date of reclassification to Regular Full-Time or Part-Time status.

b. A Temporary Employee shall not be terminated solely to prevent his or her advancement to Regular or Limited Part-Time status when the Temporary job continues in effect or for the sole purpose of keeping a regular job constantly staffed by Temporary Employees.

c. Posting Temporary Positions. Temporary positions will be posted in accordance with Article 14, Seniority and Job Vacancies, if such positions are expected to last for periods in excess of thirty (30) days. A Temporary position is a position for which the ~~Employers~~ Employer establishes a pre-determined work schedule for a limited duration not expected to exceed ninety (90) days and which the ~~Employers~~ Employer intends to fill a pre-scheduled regular basis.

d. Return from Temporary Position. If a Regular Full-Time, Regular Part-Time, Limited Part-Time, or Per Diem Employee successfully bids for a Temporary position, he/she will maintain his/her Employee category and, in the case of a Regular Full-Time or Regular Part-Time Employee, will continue to accrue benefits and upon the conclusion of the Temporary assignment, he/she shall return to his/her former position.

e. In this case, the vacated position of this Employee will also be posted, but any Temporary position resulting from the bidding of the second posting will not be posted, unless the second (or other vacant position) is a Regular Full-Time or Regular Part-Time position.

An Employee working in a Temporary position shall not be reclassified to Regular Employee status unless such position extends beyond ninety (90) days.

B. Allocation of Additional Hours of Work

1. Additional hours of work is Temporary work, work required due to a sudden increase in patient census that was not anticipated, work that is not pre-scheduled or a hole created in the schedule by the scheduled time off of regularly scheduled Employees.

2. Availability for Work. Limited Part-Time Employees and Per Diem Employees will submit, in writing, their availability for work. Full-Time, and Part-Time Employees will submit, in writing, their availability for additional work. Employees will indicate the days of the week and shifts for which they are available. The ~~Employers~~Employer shall maintain such records and lists by classification and Employee category so that the provision of this Section can be properly maintained.

3. The ~~Employers~~Employer shall offer additional hours of work to Employees who have made themselves available in the same classification and department as long as the additional work would not cause the ~~Employers~~Employer to incur overtime or double time liability. The ~~Employers~~Employer will offer pre-scheduled additional hours of work by seniority according to the following preference list.

- a. Regular Full-Time Employees who have been canceled due to Low Census Days, as long as the additional work would not cause the Employer to incur overtime or double time liability.
- b. Regular Part-Time Employees who have been canceled
- c. Regular Part-Time
- d. Limited Part-Time
- e. Per Diem

The above preference order will not result in bumping Employees out of work which is prescheduled.

4. If the ~~Employers~~Employer cannot fill the additional hours of work at a straight time rate, overtime will be offered to qualified Employees by seniority before resorting to Registry.

- a. Overtime shifts will be assigned from a list of those Employees indicating their desire to work such shifts.
- b. Scheduled and unscheduled voluntary overtime will be offered beginning with the most senior Employee on the voluntary overtime list and rotating through the list.
- c. Employees shall have the right to decline the overtime if offered, except as provided in the section on Mandatory Overtime, below.

5. Mandatory Overtime: The ~~Employers~~Employer and the Union recognize that mandatory overtime is not desirable and represents a burden on the Employees. Acceptance of overtime and shifts beyond the Employee's schedule shall be voluntary and in accordance with state law or regulations, except where patient care would be endangered by an internal or external emergency declared by state, local or federal government, or declared by the administrator on duty. An internal or external emergency, for the purposes of this section is defined as an unexpected situation and sudden occurrence of a serious and urgent nature that demands immediate action.

C. Reclassification

The reclassification provisions shall not apply to hours worked by an Employee temporarily replacing another Employee who is on any approved leave of absence.

1. A Per Diem or Limited Part-Time Employee who regularly works sixty (60) hours or more each pay period, every pay period (in a single job classification but not necessarily on the same list) for ninety (90) days or more shall be reclassified, to Regular Employee status, and the applicable regular work schedule. The applicable work schedule shall be based on the lowest number of hours worked during any pay period within the ninety (90) calendar day period. Any reclassification to Regular Employee status under this paragraph shall be effective as of the 90th day, except:
 - a. Benefit accruals shall be effective as of the beginning of the pay period closest to the date of such reclassification and are subject to any waiting period or other requirements contained in the Agreement;
 - b. If retroactive corrections in status are made, health benefits and life insurance shall be effective prospectively (at the beginning of the following month), and the Employee shall have no deduction for any premium in lieu of benefits received in the interim.
2. A Per Diem Employee shall not be reduced in hours solely to prevent his or her advancement to Regular or Limited Part-Time status when the Per Diem hours continue to be available or for the sole purpose of keeping a regular job constantly staffed by Per Diem Employees.
3. A Regular Part-Time Employee who is regularly assigned for ninety (90) calendar days or more to a work schedule which exceeds the Employee's regular work schedule by at least a full shift, for each and every pay period of the ninety (90) day period (e.g. a Regular Part-Time 4/5 Employee is regularly assigned a Full-Time schedule), shall be reclassified to the applicable regular work schedule provided that the additional hours fall on the Employee's normal shift. For the sole purpose of the first sentence (1) if the Employee has Paid Time Off (PTO/ESL) for a one week period or longer, the ninety (90) day period shall be extended by the same number of days for which the Employee was off work on such Paid Time Off, and (2) if the Employee has a paid day off, on a scheduled workday, such day(s) shall be counted as a regularly assigned workday. The applicable regular work schedule shall be based on the lowest number of additional shift(s) worked during any pay period within such ninety (90) day period. Any reclassification under this Paragraph shall be effective as of the ninetieth (90th) day, and increased benefit accruals shall be effective the beginning of the pay period closest to the date of such reclassification. The provisions of this Paragraph may be waived only by the mutual written agreement of the Employee, the Union and the ~~Employers~~Employer.
4. Employees performing duties in a higher classification for ninety (90) calendar days shall be reclassified to the higher classification on the ninety-first (91st) day, unless the Employee is covering for an Employee on a leave of absence for any duration. The Employer shall not reassign duties for the sole purpose of avoiding the reclassification.
5. For the purpose of this Section only, shifts shall be defined as follows: (1) Days start on or after 5:00 a.m. but prior to 12:00 noon; (2) PMs start on or after 12:00 noon but before 10:00 p.m.; and (3) Nights start on or after 10:00 p.m. but before 5:00 a.m.

ARTICLE 11: FULL-TIME EMPLOYMENT

The ~~Employers~~Employer, after January 1, 2018, will guarantee sixty-six percent (66%) of all bargaining unit individual Employees across the system (not each facility) represented by the Union under this Agreement Full-Time employment (specific jobs, specific departments, and specific shifts shall not be guaranteed). For purposes of defining Full-Time employment for this Article, the following applies:

A. Thirty-six (36) hours per week Employees

Employees who work a twelve (12) hour shift, three (3) days a week, shall be guaranteed a minimum of 936 hours of work or wages over a six (6) month period.

B. Forty hours per week Employees

Employees who work a ten (10) hour shift, four (4) days a week, or an eight (8) hour shift, five (5) days a week, shall be guaranteed a minimum of 1,040 hours of work or wages over a six (6) month period.

C. Paid Time Off (PTO), which is taken voluntarily, paid time for meetings, and overtime hours will count as hours worked toward the guaranteed hours; provided, however, that the ~~Employers~~Employer shall not require an Employee to involuntarily take PTO to satisfy the applicable number of guaranteed hours under this Section.

D. If an Employee fails to work scheduled hours, such hours will be subtracted from the total guaranteed hours.

E. If an Employee is suspended due to discipline for cause, such hours will be subtracted from the total guaranteed hours.

F. Full-Time Employees who take unpaid leave for any reason, who expect to return to work will not be paid their guaranteed hours, but will be counted as Full-Time Employees in satisfying the sixty-six percent (66%) requirement. Regular Part-Time, Limited Part-Time, Per Diem, and Travelers who temporarily fill in for Full-Time Employees on unpaid leave who expect to return to work will not be treated as Full-Time Employees, and will not be guaranteed Full-Time hours and pay.

G. At or around July 1 and January 1, the ~~Employers~~Employer will assess and account for the hours worked by each Full-Time Employee to ensure that to the extent possible consistent with business conditions, they have worked the guaranteed minimum hours and to make deficient Employees whole financially, consistent with the above provisions.

ARTICLE 12: PROBATIONARY PERIOD

A. Regular Full-Time and Part-Time Employees shall be on probation for ninety (90) calendar days following their date of hire. All other Employees shall be on probation for 135 calendar days or the completion of sixty-five (65) shifts, whichever occurs first, after date of hire.

B. At its sole discretion, the ~~Employers~~Employer may terminate the employment of any probationary Employee and such termination shall not be subject to the grievance procedure of this

Agreement. Nothing in this Agreement shall preclude a grievance alleging violation of Article 7 Equal Employment Opportunities during the Employee's probationary period.

C. The probationary period may be extended by an additional thirty (30) days with notice to the Union. The Employer may extend the probationary period beyond the additional thirty (30) days only with the consent of the Union.

D. At the completion of the probationary period, seniority date shall be from the Employee's most recent date of hire into a bargaining unit position by the ~~Employers~~ Employer.

ARTICLE 13: NEW EMPLOYEES, ORIENTATION, EMPLOYEE LISTS

A. During the new hire orientation for new Employees, the ~~Employers~~ Employer will allow a representative of the Union up to one (1) hour during the final period of such program, to discuss the Union and the terms of this Agreement. Attendance by new Employees shall not be counted as work time if the discussion causes the orientation to exceed eight (8) hours in the workday. However, the ~~Employers~~ Employer will make every effort to ensure that the Union orientation occurs within the eight-hour period. In the event a Shop Steward is assigned, the Steward shall be released from work without loss of pay to participate in the session, provided that patient care permits. Where such program is regularly scheduled such release should normally occur.

B. The ~~Employers~~ Employer will provide to the Union the following information no later than the 15th of each month in both hard copy and on disk (on Excel or Quattro Pro or any similar computer format):

1. a list of new hires, including their name, home address, home phone number, classification, wage rate, department, shift, status (i.e. Regular Full-Time, Regular Part-Time, Per Diem, Temporary), and date of hire;
2. a list of terminations, including the name, home address, home phone number, classification, department, shift, status (i.e. Regular Full-Time, Regular Part-Time, Per Diem, Temporary), date of termination, and reason for termination (i.e. resignation, discharge, permanent reduction in force, retirement); and
3. a list of Employees who have transferred into, or within the bargaining unit, including name, home address and phone number, in addition to an Employee's former and new classification, former and new wage rate, former and new department, shift status (e.g. Regular Full-Time, Regular Part-Time, Per Diem, Temporary), and date of transfer. The ~~Employers~~ Employer are not required to provide the data for Employees who have transferred out of the bargaining unit, other than a list of Employees with their names, former and new departments, and dates of transfer.

C. Use of Social Security Numbers

1. The Union represents that it intends to use Employee social security numbers for its valid business purposes relating to its record keeping and dues collection functions only, and agrees that it will use its best efforts to keep Employee social security numbers confidential.

2. The Union agrees to indemnify and hold harmless the ~~Employers~~Employer from any and all claims and liabilities that result from the Union having been given Employee social security numbers. The Union further agrees that, where required, the ~~Employers~~Employer will provide Employee social security numbers to the Union on lists (in hard copy and electronic format) separate from Employee addresses and telephone numbers.

ARTICLE 14: SENIORITY AND JOB VACANCIES

A. Bargaining Unit Seniority

Bargaining unit seniority shall be defined as the period of continuous employment from the most recent date of hire that a Full-Time, Part-Time or Per Diem Employee works in a job classification covered by this Agreement. Bargaining unit seniority shall not be adjusted for legally protected leaves of absence. If an Employee terminates or leaves a covered job classification and returns within three (3) months or less, the time away from the bargaining unit will not be adjusted, and the previous bargaining unit seniority date would remain. If an Employee returns to a covered job classification after three (3) months or more, their previously accrued bargaining unit seniority will not be bridged, and their bargaining unit seniority will be reestablished as of the new date they are placed into a job classification covered by this Agreement.

B. Department Seniority

Department seniority is defined as the date of hire into the current department or date of hire into the former department if placed in the current department as a result of reorganization or restructuring of work. Department seniority shall have limited uses as described below.

Department seniority shall govern in the following applications only within the department: job bidding for higher rated or equal classifications within the department only, additional hours, PTO scheduling, and designated holiday scheduling. For all other purposes, bargaining unit seniority shall govern.

C. Seniority List

There shall be one bargaining unit seniority list, which shall be updated every month and sent to the Union representative. A separate quarterly list shall be maintained for Per Diem and On-Call Employees, and they shall be ranked on such list by total hours of employment.

D. Use of Seniority

Seniority may be utilized in accordance with the terms of this Agreement.

Loss of Seniority

An Employee's seniority will be permanently lost under the following scenarios:

1. Voluntary termination of employment, unless rehired within three (3) months;
2. Discharge for just cause;

3. Failure to return from any authorized leave of absence (In the event of an emergency, the Employee will receive an additional 5 business days to request an extension);
4. Failure to return to work within thirty (30) days after being recalled to work;
5. Layoff of two (2) years or more; or
6. Voluntary transfer to a non-bargaining unit position unless returned to bargaining unit within 90 days.

F. Retained Seniority

If an Employee transfers from Full-Time or Part-Time to Per Diem status, she or he shall not lose his or her seniority and such seniority shall continue to accrue.

G. Job Vacancies, Posting and Bidding

Positions under this Agreement which are permanently vacated and/or newly created will be posted internally for an initial period of seven (7) calendar days. Interested Employees may bid for such jobs within the seven (7) calendar day period by completing a transfer request form provided by the Employer for that purpose. The seven (7) calendar day period for posting and receiving bids may be extended or shortened at the Employer's discretion. Posting for open positions shall be displayed at appropriate locations at the Employer. Job title, shift, minimum requirements, primary functions and status will be included in the posting. Should temporary positions become available for permanent placement, the position must be posted. All current associates who meet minimum requirements are to be given primary consideration. This does not prevent the Employer from filling the vacancy on a Temporary basis until such position is filled.

Preference among those bidding shall be given in the following order among bidding Employees from the same preference level. Among bidding Employees from the same preference level, seniority shall govern. The prior sentence is subject to the provisions that (1) the bidding Employee must meet all reasonable qualifications of the job established by the ~~Employers~~ Employer (the Union has the burden of establishing that the ~~Employers~~ Employer's qualifications are unreasonable), and (2) ability and performance must meet minimum requirements in the ~~Employers~~ Employer's reasonable judgment, and if the ~~Employers~~ Employer's judgment is disputed, the ~~Employers~~ Employer have the burden of establishing that their judgment was reasonable.

- a. Regular Employees from the same department, including Regular Employees on layoff, and Regular Employees who remain on the Per Diem list who have been laid off.
- b. Regular Employees from other departments and Limited Part-Time Employees from the same department, including such Employees on layoff, and Regular Employees who remain on the Per Diem list.
- c. Per Diem and Temporary Employees, in that order, from the same department.
- d. Limited Part-Time Employees from other departments.
- e. Per Diem and Temporary Employees, in that order, from other departments.

Regular Employees from another facility covered by this Agreement, in a comparable classification from the same department.

- g. Regular Employees from another facility covered by this Agreement, from another department, and Limited Part-Time Employees from another facility covered by this Agreement, in a comparable classification from the same department.
- h. Per Diem and Temporary Employees, in that order, from another facility covered by this Agreement, from the same department.
- i. Limited Part-Time Employees from another Verity facility covered by an SEIU contract, from other departments.
- j. Per Diem and Temporary Employees, in that order, from another facility covered by this Agreement, from other departments.
- k. Applicants who are former Employees who left in good standing with not more than one (1) year's absence from the ~~Employers~~ Employer.

1. Other applicants.

4. Application of Seniority for Transferring Employees

- a. Employees who are transferring from another Employer covered by an SEIU contract, shall have their bargaining unit seniority with the previous facility recognized for the purposes of wage rates and benefit accruals.

b. With regard to the application of seniority, for the purposes of layoffs and subsequent job bidding, bargaining unit seniority from the previous facility will be credited provided that the facility from which the Employee originates reciprocally recognizes the seniority of an Employee from another Employer covered by an SEIU contract.

5. Notification of Selection

Employees submitting a written bid for a posted vacancy under this subsection shall be informed by the ~~Employers~~Employer whether or not they are awarded the position.

6. External Selection

For vacancies that are not filled internally (i.e. according to the preference order set forth above), the ~~Employers~~Employer may employ the person who, in its judgment, will make the best Employee. The ~~Employers~~Employer shall be the sole judge of the fitness of any applicant.

7. Seniority Application

The seniority of bidding Employees shall be determined by the Employee's bargaining unit seniority rather than in the particular classification or Employee category.

8. Limitation

It is understood that any bid under this Article is limited to vacancies in bargaining unit positions and not to assignments arising from rotation of personnel, paid time off, or sickness relief

9. Potential Vacancies

Employees expected to be on vacation for a period of more than seven (7) days may submit a request for transfer to a potentially available position. Such request must be submitted in writing to the Human Resources Department. Such written request shall constitute an automatic bid for thirty (30) days or for the period of vacation, whichever is less. It is understood that any written request under this Article is limited to vacancies or potential vacancies in permanent positions subject to this Agreement.

10. Evaluation Period after Promotion or Transfer

Employees who are promoted to a new position or who transfer to another position through the bidding process, shall have up to ninety (90) days of evaluation of their performance. If, at any time within such ninety (90) day period, the Employee fails to perform satisfactorily, such Employee shall be returned to his/her former position including shift, assignment and scheduled hours without loss of seniority, provided his/her former position is still available. If the Employee's former position is not available, the Employee shall be returned to a comparable position in the same classification, provided such position is available, or become a Per Diem Employee in their previous classification until such time as they are able to re-apply into a benefited position.

11. Departmental Structure

The following are the Hospitals' departments for purposes of bidding, layoff, and recall only. These departments shall not apply to any other section of this Agreement.

At Saint Louise and O'Connor Only:

Admitting	Cardiopulmonary
Clerical	Diagnostic Imaging
EVS	Laboratory
Materials Management	Medical Records
Nutritional Services	Patient Care Services
Pharmacy	

At St. Francis Only:

Admitting	Adult Respiratory Therapy/Pulmonary Lab
BioMed	Cardiology/Cath Lab
Case Management	Central Processing
Clerical	Diagnostic Imaging
Dietary/Nutritional Services	Engineering
EVS	Gift Shop
Lab	Materials Management
NICU Respiratory Therapy	Patient Care Services
Pharmacy	

At St. Vincent Only:

Admitting	Multi-Cultural Health Awareness
APLC	Nursing (Acute Rehab, ICU, Med Surg-6, Med Surg-7, Short Stay, TCU, Telemetry)

CTC	Orthopedic Services (JRI, Spine, Ortho)
Cardiac Cath	POB Dialysis
Cardiology-OP	Radiology Services/Diagnostic Imaging (CT, MRI, Ultrasound, X-Ray, Mammography, Nuclear Medicine)
	Receptionists
Central Services Supply	Respiratory
Clinical Lab & Pathology	Surgical Services (Doheny & Main)
Communications	Transplant Services (Pre & Post)
Emergency Room	Unit Secretary
Gift Shop/Guest Relations	Pharmacy

12. Seniority Tie Breaker

If Employees have the same seniority date, the following tie-breaker will be used to determine the seniority order:

- Date first worked.
- If the date first worked is the same, date of submission of application for employment.
- If the date of submission of application is the same, the larger of the last four (4) numbers of the Employees' social security numbers.

ARTICLE 15: LAYOFF AND RECALL

A. Layoff Defined

Temporary Layoff is defined as a layoff which is not expected to be more than one (1) to fifteen (15) calendar days. Indefinite layoff is defined, as a layoff, which is of uncertain duration and is expected to be in excess of fifteen (15) days. Permanent layoff is defined as a layoff in which there is no reasonable expectation of recall. Associate status or classification changes for any reason do not entitle an associate to severance pay.

B. Implementation of Indefinite or Permanent Layoff

If after exercising every effort to avoid layoff in conformance with Article 5, it is necessary to conduct an indefinite or permanent layoff, then such layoff shall be undertaken through the following

procedure. It is the intent of the following provisions to protect the most senior Employees in case of reductions, and to preserve their shift and hours as is practicable under the circumstances.

1. Notice

Prior to implementing an indefinite or permanent layoff, the ~~Employers~~ Employer will provide the Union and affected Employees with thirty (30) ~~thirty (30)~~ days written notice and six (6) months notice in the case of facility closure.

2. Order

Indefinite or permanent layoffs shall occur in the following order:

- a. Volunteers
- b. Temporary
- c. Probationary
- d. Per Diem
- e. Limited Part-Time
- f. Regular Part-Time
- g. Regular Full-Time

Indefinite or permanent layoffs will be in reverse order of seniority by classification within a department, provided that the remaining Employees are qualified and able to perform the work with reasonable orientation and/or training.

C. Alternative Arrangements

Upon mutual agreement the Union and the ~~Employers~~ Employer may agree to an alternative arrangement regarding reduction in force.

D. Time Frames Regarding Layoffs

The Union and the ~~Employers~~ Employer acknowledge their mutual intention to meet and address issues involving reductions in force in an expeditious manner, and such issues shall be resolved without undue delay. Accordingly: 30 days

- a. In situations involving ten (10) or fewer Employees, alternatives to the layoffs shall be identified and implemented in thirty (30) days or less; and
- b. In situations involving more than ten (10) Employees, alternatives to the layoffs shall be identified and implemented in sixty (60) days or less.

E. Arbitrator

REDACTED

Should the ~~Employers~~Employer and Union fail to reach agreement on alternatives to the reductions in force within the timelines set forth above, the matter shall be submitted to a permanent Arbitrator within five (5) days of the expiration of the timelines set forth in (1) and (2) above and the Arbitrator shall issue a decision within thirty (30) days thereafter. The ~~Employers~~Employer and the Union may mutually agree to extend the timelines above. Should the Arbitrator find that either party, through action or inaction, has caused undue delay or otherwise failed to provide relevant information, the Arbitrator may extend the thirty (30) day time limit for issuance of a decision by an additional fourteen (14) days. During the term of this Agreement, the permanent Arbitrator shall be John Kagel. It is not the intent of this paragraph to circumvent any rights the parties may have under Article 30: Committees or other provisions of the collective bargaining agreement.

F. Transfer Rights


Bargaining unit Employees who are subject to layoff may submit a bid for an existing or potential vacancy under the job bidding procedure set forth above. An Employee who is subject to layoff and who is interested in being oriented and/or trained for a vacant position covered by this Agreement, may request to be provided orientation and/or training by the ~~Employers~~Employer for a specific vacant position, provided the Employee could qualify for the position after a reasonable orientation/training period. Such bidding rights are in addition to the Employee's recall rights as set forth below. An Employee transferring to a new classification or department under this section shall retain those recall rights in the former classification which were earned up to the time of transfer and can exercise such rights if a vacancy occurs in such classification in the twenty-four (24) months following the layoff

G. Benefits

An Employee who has been indefinitely or permanently laid off and who is covered by the ~~Employers~~Employer-sponsored Health Benefits will be covered until the last day of the calendar month in which the notice or severance period ends.

H. Severance Pay

When a Regular Full-Time or Regular Part-Time Employee is displaced from his or her position as a result of an indefinite position elimination, and he or she is unable to identify another comparable position for which he or she is qualified, eligibility for severance pay shall be in accordance with the following schedule:

Service	Severance
	

Benefited Part-Time Employees will receive severance pay, per the schedule above, prorated in direct proportion to their current scheduled hours as noted on the time card.

comparable

I. Recall

1. For a period of twenty-four (24) months from the date of indefinite or permanent layoff, Employees who, as a result of the reduction, are laid off, are entitled to recall.
2. Recall of Employees to regular positions in a particular classification and department from an indefinite or permanent layoff shall be by seniority.
3. An Employee shall remain on the recall list unless he or she is offered and declines a position in the same classification in the same department at the same facility on the same shift with the same number of hours as the position from which he/she was laid off or reduced from.

ARTICLE 16: CALL-OFFS AND DAILY CANCELLATIONS

After exercising every effort to avoid cancellations, it may be necessary to require an Employee to take time off without pay during temporary periods of low census or other occasions when staffing needs to be adjusted on a temporary basis.

A. Definition

"Call-off" occurs when an Employee, at the request of the Employer, is directed not to report to work for a regularly scheduled shift. "Flexing" occurs when an Employee who is at work is directed to cease work before the end of the Employee's regularly scheduled shift.

B. Rotation

During periods of low patient census, Employees will be flexed or called off in the following order:

1. Volunteers
2. Registry
3. Travelers
4. Temporary Employees
5. Employees Working an-Overtime Shift (double time first)
6. Per Diem
7. Limited Part-Time Employees
8. Regular Part-Time Employees

9. Regular Full-Time Employees

Cancellations shall be by rotation (so long as qualifications, competencies, and abilities of the affected Employees are substantially equal), by classification, within each department and shift. The rotation list will begin with the least senior Part-Time Employee and proceed in seniority order through all Part-Time Employees followed by Full-Time Employees in seniority order, in a given classification, within each department and shift. The Employee that is selected for cancellation will be the individual who has the greatest length of time since his/her last call-off or cancellation.

C. PTO Election

An Employee who is called-off or is flexed may elect to be paid for such time by applying accrued PTO.

Called-Off Employees Excused for Shift

In the event an Employee is called-off for her/his scheduled shift or a portion thereof due to low census, an Employee will be considered excused for the entire balance of her/his shift and return to work shall be voluntary. If the Employee is requested to and agrees to go "On Call" following call-off or flexing, the Employee shall be paid for such On Call time and Call Back in accordance with Article 18 Section I. 4.

E. Call-Off Log/ Record

A log/record shall be maintained by the Employer, available to Employees and the Union, that records all HCD's/LCD, call-offs and flexing.

F. Call-Off Notice

The employer will call-off Employees at least two (2) hours prior to the commencement of their scheduled shift.

G. Call-Off or Flexing as Time Worked

If an Employee is cancelled, the hours that an Employee was scheduled to work shall be counted as time worked for the following only:

1. Vesting and service credit under the retirement plan
2. Waiting periods under health insurance and other fringe benefit plans

ARTICLE 17: FLOATING

A. Orientation for Floating

When Employees are floated between units or departments, they will not be required to perform duties for which they are not competent, and will be given orientation, as appropriate. Employees may be floated to other units or departments in order to receive training that will enable the Employee to competently perform duties in the unit.

B. Floating Order

1. Employees who float to another unit or department will do so on a rotational basis within the departmental classification being floated, provided said Employee is competent to perform the assignment in the unit to which he/she is floated.
2. A unit/department may float on a straight seniority basis within a classification, if in a vote conducted by the Union, a majority of Employees in that unit or department chooses to implement a seniority system.
3. Before floating regular Employees, the ~~Employers~~ Employer shall float Employees in the following order:
 - a. Volunteers
 - b. Registry/Travelers (provided competencies exist)
 - c. Temporary Employees
 - d. Per Diem Employees
 - e. Limited Part-Time Employees
 - f. Regular Part-Time Employees
 - g. Regular Full Time Employees
- C. Floating to More than One Unit/Department

No Employee will float to more than one (1) department or unit during a single shift, unless floating to multiple departments/units is a regular part of an Employee's assignment.

ARTICLE 18: CLASSIFICATION AND WAGES

A. Schedule of Wages

The minimum straight-time hourly rates of pay at Saint Louise, O'Connor, St. Vincent and St. Francis shall be shown in Appendix B, attached hereto and made a part hereof.

Effective the first full pay period following November 1, 2018:	Across the board wage increase of [REDACTED] to the base wage rates of all individuals.
Effective the first full pay period following November 1, 2019:	Across the board wage increase of [REDACTED] to the base wage rates of all individuals
Effective the first full pay period following November 1, 2020:	Across the board wage increase of [REDACTED] to the base wage rates of all individuals.

B. Step Advancement

On an employee's anniversary date, an employee shall be placed on the step corresponding to his or her year of service as provided in the applicable wage grid. Any employee who qualifies for step progression effective January 1, 2017 shall be advanced as provided in this section. The step placement shall be effective with the first full pay period following June 29, 2017. To avoid any ambiguity, no employee will receive retroactive payment for the 2015 and 2016 step progression.

The above paragraph does not apply to St. Vincent employees and O'Connor technical employees who were placed on the applicable wage grid following the parties' bargaining in 2016. The phase in step agreement remains in place. However, prior to or on October 31, 2018, employees shall be placed on the step corresponding to his or her year of service as provided in the actual wage grid. There shall be no retroactive payment made to these employees. Those employees specifically named in the implementation schedule for the wage scale agreement will be on a the step appropriate to years of service on or by October 31, 2018 and will thereafter have their steps unfrozen. Those employees i) not specifically named in the implementation schedule for the wage scale agreement and ii) who were hired after the wage scale agreement was signed shall be unfrozen as the rest of the bargaining unit in the first full pay period following June 29, 2017. This section is not intended to reduce the rights or wages scheduled under the O'Connor Techs or St. Vincent Medical Center Wage Scale agreements.

C. Compensation Rate Review

The Union and the ~~Employers~~Employer agree that it is in their best interest to recruit and retain qualified experienced staff. To this end, upon request of either party, the Employer and Union will meet to bargain wage scales where they do not exist for classifications in comparable unionized hospitals in a given geography. The Employer and Union shall negotiate at least four (4) sessions per month for a four (4) month period. If no agreement is reached, the parties shall submit final proposals to a neutral FMCS mediator, Stephan Kessler, who will mediate the case within thirty (30) days of reaching impasse. The mediator shall work with the Employer and Union to reach an agreement within thirty (30) days. If no agreement is reached, the Employer and Union will submit their final proposals to a neutral mutually agreed upon arbitrator who will arbitrate the case within thirty (30) days of the end of mediation. The arbitrator will then decide the wage scales in dispute based on comparable unionized hospitals in the same geographic area. The arbitrator shall issue the decision within thirty (30) days of the arbitration. The Employer will implement the arbitrator's decision within thirty (30) days.

D. Pay Day

1. All wages shall be paid on the basis of two-week periods.
2. The ~~Employers~~Employer's payday is on a Friday (Thursday for St. Francis) and this shall continue as the designated payday.
3. Direct deposit shall continue to be offered to all Employees and shall be deposited by no later than the designated payday and earlier if practicable.

EmployersEmployer; provided, however, that the EmployersEmployer shall not be required to furnish apparel traditionally worn by such Employees in healthcare generally. The term "uniform" includes wearing apparel and accessories of distinctive design or color. Employees shall have meaningful input into all decisions regarding all aspects of uniforms or special types of work clothing.

G. Training

1. Training is strictly voluntary for non-lead Employees. Orientation is not considered training.
2. Training is teaching in order to prepare a novice and/or new Employee with the required skill to meet the requirements of the position; or, to instruct so as to make proficient.
3. An Employee other than those designated as "leads" who is assigned by management to train other Employees shall receive a differential of [REDACTED] over his or her base wage rate for time doing such training.

H. Evaluations

The Employee shall be given a copy of any periodic written formal performance evaluation. Performance evaluations shall not be subject to the grievance procedure unless it contributes to disciplinary action.

I. Relief in Higher Paid Classification

Any Employee directed to relieve another Employee in a higher paid classification will be paid at the rate of pay of the higher paid classification's pay grade, but at the rate commensurate with the Employee's level of experience for all hours worked in the higher classification.

J. Premium Pay

1. Charge Pay

Employees in classifications which have job titles that include "lead" and who are regularly scheduled as such and who direct other Employees will have a minimum of [REDACTED] incorporated into their base salary. Employees who are scheduled as "lead," "charge," or "relief" on a sporadic, rotating or temporary basis are not entitled to lead differential but will receive [REDACTED] per hour for such duties.

2. Shift Differential

- a. Evening Regular and Short-Hour/Per Diem Employees who work half ($1/2$) or more of their shift at or after 3 PM shall be paid a shift differential as follows: At St. Francis and St. Vincent— [REDACTED] hour for Techs and [REDACTED] hour for all other work at the facility; facilities; at St. Louise and O'Connor— [REDACTED] hour for Techs and [REDACTED] hour for all other work at facilities.

REDACTED

b. Night Regular and Short-Hour/Per Diem Employees who work half ($\frac{1}{2}$) or more of their shift at or after 11:00 p.m., but prior to 3:00 a.m. shall be paid a shift differential as follows: At St. Francis and St. Vincent— /hour for Techs and /hour for all other work at the facility facilities; at St. Louise and O'Connor— hour for Techs and /hour for all other work at facilities.

c. Differentials for In Lieu of Benefits Employees

i. *At Saint Louise only:*

Limited Part Time, Per Diem and Temporary Employees shall receive a differential as follows:

(a) Radiology Technologists, MRI Technologists, Respiratory Care Technologists, Ultrasound Technologists and Operating Room Technologists: per hour

(b) CNA and Radiology Clerks: per hour

(c) All Other Classifications: per hour *At O'Connor only:*

Limited Part Time, Per Diem and Temporary Employees shall receive a differential on their straight time hourly rate as follows:

(a) Certified Nursing Assistants per hour

(b) Remaining Classifications per hour

(c) Radiology Technologists, MRI Technologists, Respiratory Care Technologists, Ultrasound Technologists and Operating Room Technologists: per hour

iii. At St Francis:

(a) Per Diem Rates: Technical Per Diem Employees shall be paid above and Service and Maintenance Employees above the Employee's base rates assigned in the wage scale attached as Appendix B or the current wage, whichever is greater.

(b) Pay in Lieu of Benefits: Employer shall pay "Pay in Lieu of Benefit" rates at above the base rates. Employees currently working as Pay in Lieu of Benefits may continue to work in such status; other Employees may be hired into or converted to such status at the Employees' discretion.

3. Bilingual Services — *At all hospitals*

An Employee shall not be required to provide translation and/or interpreting services for the Hospital. An Employee agreeing to provide such services shall do so only on a voluntary basis and shall be held harmless for any legal or other adverse action arising from an alleged misrepresentation or misinterpretation as a result of translating or interpreting activities.

An Employee who has volunteered to provide translating or interpreting services and who has been designated by the Hospital as an interpreter or translator pursuant to the provisions of California

Health and Safety Code Section 1259(c)(5) shall be paid a Bilingual differential at the rate of [REDACTED] per month.

4. Standby/On Call/Call Back

- a. An Employee is on On Call status when she/he is scheduled or asked to be available by phone or beeper for the purpose of coming back to the facility if required by staffing levels, and is required to report if called.
- b. An Employee is on Call Back when an Employee, who was on On-Call status, is called back to the facility if required by staffing levels.
- c. An Employee who has completed her/his regular work and has left the facility and is called back to work is on Call Back.
- d. All Employees who have been instructed to be "on standby" but who are not called to work, shall be paid at the rate of one-half CA his or her straight time hourly rate of pay when "On Standby" (On Call), except on a holiday designated in Article 24 A on which they will be paid at the rate of [REDACTED] his or her straight time hourly rate of pay.
- e. An Employee On-Call who is called back to work shall be paid at [REDACTED] times the base rate with a guaranteed minimum of two (2) hours of work or pay in lieu thereof. An Employee On-Call who is called back to work will not be paid his or her standby or On-Call pay while working the guaranteed minimum of two (2) hours; there will be no pyramiding of call back and standby or On-Call pay.
- f. No Employee shall be required to report to work during a scheduled time off unless they are on on-call status and being paid the applicable On-Call premium, unless an internal or external disaster is called and the Employer's disaster plan is implemented.
- g. An Employee On-Call who is called back to work shall be paid a guaranteed minimum of two (2) hours of work or pay in lieu thereof. In the event an Employee On-Call is called into the facility to work, he or she shall be paid at [REDACTED] times the base rate or if eligible for a different overtime rate, at the relevant overtime rate.
- h. During the two (2)-hour call back guarantee, the Employee shall perform all identified procedures that are ordered.
- i. The intent of this provision is not to allow Employees to initiate unnecessary multiple guarantees.

5. Report-in Pay

- a. An Employee who reports for work on a scheduled shift of eight (8) hours or more without receiving prior notice that no work is available shall be guaranteed pay for four (4) hours of work, and the Employee shall perform any work she or he is competent to perform and may be assigned in accordance with this Agreement.

REDACTED

b. If an Employee is called to work on a day he/she is not regularly scheduled to work, he/she shall be guaranteed a minimum of two (2) hours work or pay in lieu thereof at the applicable rate of pay required by law, provided that such guarantee shall only apply if the Employee is called to work prior to the start of the Employee's next scheduled shift and shall not exceed the period between the Employee's reporting for work and next scheduled shift.

c. If an Employee is called back to work on the same day after having already left the hospital at the conclusion of his/her shift, he/she shall be guaranteed a minimum of two (2) hours work or two (2) hours pay in lieu thereof for such second reporting in one day at the applicable rate of pay required by law and this Agreement.

d. This section shall not apply if work is not available because (i) operations cannot commence or continue due to threats to Employees or property, or when recommended by civil authorities; (ii) public utilities fail to supply electricity, water or gas, or there is a failure in the public utilities or sewer system; or (iii) the interruption of work is caused by an Act of God or other cause not within the Employer's control.

6. Split Shifts

No Employees shall be assigned to work a split shift, unless mutually agreed upon by the Union and the Employer.

7. Meals

All Employees covered by this Agreement who are assigned to the Hospital's Food Service Department shall be entitled to free meals as follows: When they work fewer than four (4) hours in any one (1) day, one (1) meal; and when they work four (4) or more hours, two (2) meals.

All other Employees shall receive current cafeteria discounts.

8. Transfers to higher or lower job classification

a. When an Employee transfers to a higher job classification, he or she will be placed on the wage grid at a pay rate commensurate with years of experience and competencies for the new position, provided it does not cause a reduction in pay.

b. With the exception of layoffs, when an Employee transfers voluntarily to a lower job classification, he or she will be placed on the wage grid at a pay rate based on a credit of [REDACTED] of their years of employment with the Employer up to but not to exceed the mid-point on the wage grid.

c. New hires will be placed in the wage grade based on the Employer's evaluation of their experience and qualifications.

9. Certification Pay — *St. Francis only*

a. In 2016, Employees who already have a credential/certification will be eligible for the annual maintenance bonus of [REDACTED] as described above.

i. Certification Gerontology

iii. CCM — Case Management

v. RDMS

vii. National CT

ix. National Mammography

xi. National CI (Cardiac Invasive)

xiii. National BS (Breast Sonography)

xv. National Surgical Tech Certification

d. For any additional credentials/certification not listed above, Employees are free to submit for payment for the same but the Employer and the Union must agree upon the credential/certification before any payment is made.

A. Hours of Work

Workweek

The workweek for eight (8) hour Employees shall be five (5) days per week, eight (8) hours per day. The workweek for ten (10) hour Employees shall be four (4) days per week, ten (10) hours per day. The workweek for twelve (12) hour Employees shall be three (3) days a week, twelve (12) hours per day. The workweek will commence each Sunday at 12:00AM.

B. Overtime

1. Workweek

For an Employee who works in excess of forty (40) hours in any one (1) workweek overtime shall be paid at the rate of time and one-half (1½) the regular rate of pay, per state and federal law.

2. Daily

If an eight (8) hour Employee works over eight (8) hours in a day excluding meal period, such time worked in excess of eight (8) hours will be paid at the rate of time and one-half (1½). If a ten (10) hour Employee works over ten (10) hours in a day excluding meal period, such time worked in excess of ten (10) hours will be paid at the rate of time and one-half (1½). If an Employee works in excess of twelve (12) hours in any one work day excluding meal period or in excess of twelve (12) hours in consecutive time excluding meal period, such Employee shall be paid at two (2) times the Employee's regular rate of pay, per applicable state or federal law, for such work in excess of twelve (12) hours. Overtime hours will not be pyramided and will only be paid once.

3. Computation of Overtime

The overtime premium shall be calculated in accordance with applicable state and federal law. Paid hours during which no work is performed, including but not limited to pay in lieu of work, PTO, vacation, holidays, and other types of paid leave, shall not be counted as hours worked for overtime purposes.

4. Meal Period and Payment for Meal Time Worked

Employees scheduled to work eight (8) hours within a spread of eight and one-half (8½) hours shall receive an unpaid, duty free meal period of one-half (½) hour. Employees scheduled to work ten (10) hours within a spread of ten and one-half (10½) hours shall receive an unpaid, duty free meal period of one-half (¼) hour. If such Employee is required to work during the meal period, such meal period shall be paid as time worked in addition to payment for the full shift and shall be deemed time worked for the purpose of computing overtime. The Employee shall be provided a reasonable opportunity to eat when an on-duty meal period is worked, consistent with patient care duties. An Employee shall be paid a penalty of one (1) hour's pay at the Employee's regular rate of pay for a missed meal period, as "missed meal period" is defined by applicable law. "Penalty Pay" hours do not qualify as hours worked in calculation of overtime. Employees who work scheduled shifts of more than eight (8) hours waive their second meal period until and unless each individual Employee who intends to take a second meal period provides one (1) day's advanced notice to his/her supervisor of his/her intent to take such second meal period. The waiver of second meal periods on twelve (12) hour shifts shall continue in effect except for such specific occasions that an Employee

provides one (1) day's advance notice of a desire to take a second meal period. The taking of a second lunch period shall not reduce the number of hours to be worked on twelve (12) hour shifts.

5. Premium Pay on Seven Consecutive Days

An Employee required to work on the seventh (7th) consecutive day in a single workweek shall be compensated for work on such seventh (7th) consecutive day at time and one-half (1 1/2). All hours worked in excess of eight (8) hours a day on the seventh (7th) consecutive day in a single workweek shall be compensated at two times (2X) the regular rate.

C. Early Call-in

1. Day shift Employees who are called in and agree to begin work prior to the commencement of their assigned shifts will receive night shift differential for all hours worked on the night shift. When the day shift begins, the day shift rate will apply.

2. Night shift Employees who are called in and agree to work at or after 7:00 PM will receive the night shift differential for all hours worked.

D. Alternative Workweeks

1. The parties agree to maintain all existing alternative workweek schedules currently in effect unless two-thirds (2/3) of the affected Employees petition to terminate or modify such arrangement. The Employer will comply with applicable law regarding alternative workweek schedules. In cases of hardship, Employees may request, and shall be granted whenever possible, to continue their same shift in a unit or work area that converts to alternative scheduling.

2. Any new alternative workweek schedules require that the ~~Employers~~Employer first meet and bargain with the Union to arrive at a mutually satisfactory schedule and other issues related to the implementation of the new schedules.

E. Posting of Schedules

1. Monthly schedules of starting and quitting times and days off will be posted no less than thirteen (13) days in advance of the schedule, subject to emergency situation changes. The Employer may change schedules prior to posting to meet patient care and related service demands. However, the Union may submit such changes for review under Article 30 Committees.

2. In the event the ~~Employers~~Employer need to change the schedule after it has been posted, any such change requires mutual consent by an in-person or direct telephone conversation initiated by the ~~Employers~~Employer, unless emergency conditions dictate otherwise.

a. The ~~Employers~~Employer shall use every reasonable effort to grant Employee schedule requests made at least two (2) weeks in advance of the effective date of the next work schedule. Late changes in the schedule requested by individual Employees may be possible with the approval of the Employee's Supervisor and will not be unreasonably denied if coverage is available.

REDACTED

4. Meal Periods: There shall be one (1) uninterrupted unpaid meal period of thirty (30) minutes and one (1) additional paid meal period of thirty (30) minutes; however the second paid meal period may be waived.
5. Compensation: Employees shall be paid their straight time hourly rate for all hours worked within the twelve (12) hour shift.
6. Shifts: Day Shift: 0700 -1930; Night Shift: 1900 - 0730
7. Rest Between Shifts: Each Regular Full-Time, Regular Part-Time, and Limited Part-Time Employee shall have an unbroken rest period of at least eleven and one half (11 1/2) hours between shifts. Also, a Per Diem Employee will not be charged with a refusal for declining a shift that starts within eleven and one half (11 1/2) hours of the end of the last shift worked. All hours worked within the above rest period shall be paid at the rate of time and one-half (1 1/2). Overtime for which premium pay is given shall count as rest periods for purposes of this paragraph. The provisions of this paragraph may be waived on the written request of the individual Employee and with the agreement of the Supervisor.
8. Shift Differentials: For 12 hour employees, the following PM shift differentials will be paid for all hours worked between 2:30pm and 6:59pm. For 12 hour employees, the following NOC shift differentials will be paid for all hours worked between 7:00 PM and 7:30am.

Techs:	PM: [REDACTED]	NOC [REDACTED]
All Others:	PM [REDACTED]	NOC [REDACTED]

ARTICLE 20: PAID TIME OFF

- A. Paid Time Off (PTO) will be utilized for all approved paid absences from work including, vacations, holidays, extended bereavement, and sick leave. PTO will be utilized for personal business, medical office visits and leaves of absence.
- B. Eligibility for PTO: All Regular Full-Time and Regular Part-Time Employees who are regularly scheduled to work thirty (30) or more hours per standard workweek are entitled to PTO. Limited Part Time, Per Diem and Temporary Employees are not eligible for PTO accrual or use.
- C. Use of PTO: Where an Employee has an accrued but unused balance of PTO, such PTO must be used for all scheduled and unscheduled time off from regular days of work including, but not limited to, vacations, holidays, sick time, personal business days, education and training leaves, extended bereavement leave, and all leaves of absence. PTO shall only be used on otherwise regularly scheduled days of work. In cases where an Employee actually works less than the scheduled work due to reduced patient census or other departmental work needs as determined by the Employer, or is requested to take a call off day, PTO use shall be at the Employee's discretion. An Employee who has taken a scheduled PTO day with the approval of the supervisor, or who has taken a PTO day due to a call-off resulting from a lack of work, may, with the approval of the immediate

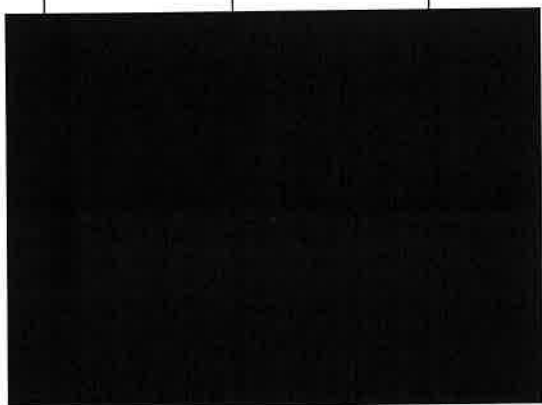
REDACTED

supervisor, elect to work any additional time which may become available during the same pay period, and no charge will be made to the Employee's PTO account.

D. Accrual and Payment: All Regular Full-Time and Regular Part-Time Employees who are eligible for PTO will receive accrued PTO credit based on their regular status for scheduled work for each scheduled hour, up to a maximum of [REDACTED] per pay period. Employees will NOT accrue PTO for overtime hours, unpaid leaves of absence, on-call/stand-by hours, shifts in addition to regularly scheduled shifts, and call back hours.

E. Effective the pay period following after June 29, 2017, PTO accrual for employees shall be as follows and shall replace the Rate Per Hour and Rate Per Days.

Years of Employment	Accrual Rate



No accrual rates for current employees will be reduced as a result of this agreement. The new accrual rate shall not be retroactive. The Maximum Annual Accrual Cap is eliminated.

F. PTO will not be counted as hours worked for purposes of computing overtime.

G. Requests for unpaid time off will not be granted, except as otherwise provided.

H. PTO accruals shall not exceed the following maximum accrual totals:

Years of Service	Maximum PTO Accrued
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N. PTO time shall be scheduled in increments of not less than four (4) hours, except as necessary under FMLA, CFRA, CESLA, or the California Family School Partnership Act, or any other applicable state or federal law.

O. The Employer shall have the right to cancel any approved PTO time upon at least forty-eight (48) hours advance notice if deemed reasonably necessary for staffing based solely on verifiable emergent patient care requirements. Employees not in a vacation status will be first utilized to maintain staffing regardless of seniority.

P. Individual requests for PTO shall not be unreasonably denied for any reason, including the time of the year, and every effort will be made to provide PTO as requested. The Employer shall have the right to approve or disapprove PTO requests. No Employee will be required to return to work from a scheduled vacation or other scheduled PTO unless emergency conditions so require.

Q. The number of Employees scheduled to be off work on PTO at any one time shall be determined by the Employer depending on staffing based on patient care requirements. Where two or more Employees concurrently request the same PTO dates or times, PTO shall be granted on the basis of seniority.

R. Scheduling PTO as Vacation: Employee seniority shall be utilized for two (2) choices of vacation time off but only one (1) choice may include a Major Holiday (as defined below). If the Employer approves a vacation that encompasses time off during a holiday this approval supersedes the holiday rotation requirements.

S. If an Employee voluntarily cancels a vacation request, the Employee must do so at least fourteen (14) days of the vacation. Under such circumstances, the vacation shift(s) will be granted to the next Employee who would have been eligible to have the vacation days off based on the formal PTO request process.

T. Employees shall be solicited prior to February 15, of the year in order to determine preferences for vacation/ PTO. Prior to April 15, the Employer shall advise all employees as to when their vacation/ PTO is scheduled and shall post the full twelve (12) month vacation/ PTO schedule in an accessible location.

U. Vacations/ PTO will, insofar as possible, be granted at times requested by employees (longer service employees being given preference as to choice based on department seniority). If employees have equal department seniority or classification, a higher continuous service date will prevail. For those employees choosing to split their vacation/ PTO into three (3) or more increments, seniority will apply only on the first (1st) and second (2nd) choice of vacation/ PTO increments in each anniversary year. All vacation/ PTO request forms shall allow the employee to indicate which requested vacation/ PTO period is his or her first (1st) choice, which is his or her second (2nd) choice, and which is third (3rd) choice.

V. Vacation/ PTO requests may be submitted at any time of year. After the February 1 scheduling, requests will be considered on a first come, first serve basis. The Employer shall notify the employee of approval or denial of the request within two (2) weeks of the request being submitted.

W. Unscheduled PTO: Unscheduled PTO for illnesses or other unanticipated personal emergencies will require two (2) hours advance notification to the Employee's immediate Supervisor prior to the start of the shift for Employees on the day shift, and three hours advance notification for other shifts.

X. Notification is not required if the employee's own disability, or an emergency, makes it impossible to provide such notification. In such cases, the Employee will provide notice to the immediate Supervisor of the reason for such absence as soon as is reasonably possible.

Y. Failure to give notification may result in formal discipline.

Z. Donation of PTO. On approval of Human Resources, Employees may donate unused PTO hours to another Employee who has experienced an unforeseeable emergency as defined by the IRS. Employees must maintain a minimum PTO balance of forty (40) hours after the donation.

AA. Hardship Distribution. Subject to the approval of the Employer, Employees may receive a distribution from their PTO account to provide for an unforeseeable emergency as defined by the IRS. Distribution must comply with the guidelines issued by the IRS in Code 457 2(h)(4) and (5).

BB. PTO Cash-out

1. Employees may cash out PTO two times during the calendar year, consistent with Internal Revenue Service requirements and under the following guidelines:

- a. The Employee's PTO account may not be reduced below [REDACTED] hours after the cash-out.
- b. The Employer will cash out during the first pay period of July and December any PTO elected by the Employee for cash out that has not been used.

2. Employees may elect PTO cash-out per calendar year as follows:

- a. Employees between their first (1st) and fourth (4th) year(s) of employment - [REDACTED].
- b. Employees between their fifth (5th) and ninth (9th) year(s) of employment - [REDACTED].
- c. Employees with ten (10) or more years of employment - [REDACTED].

3. PTO shall normally be paid on the regular pay check of the pay period in which the time off is taken. However, an Employee who is using at least five (5) PTO days may request an advance check for those days. The request must be received by the Payroll Department at least ten (10) days prior to the beginning of the PTO. The advance check is available in the Payroll Department on the day prior to the beginning of the time off.

CC. Extended Sick Leave Accruals

Effective November 1, 2015, Employees with Extended Sick Leave (ESL) will accrue ESL at [REDACTED] the rate they accrued ESL under the previous labor agreement. Effective November 1, 2016, Employees with ESL will accrue ESL [REDACTED] the rate they accrued ESL in year one of this Agreement (November 1, 2015 - October 31, 2016). Effective November 1, 2017, Employees will no longer accrue ESL. This provision does not give any Employee ESL accrual rights who did not have the right to accrue ESL as of October 31, 2015.

REDACTED

DD. ESL may be used under the following circumstances:

1. Unable to work due to injury or illness for seven (7) consecutive calendar days; or
2. One the first day of hospitalization; or
3. When placed in the status of "Observation Patient — overnight stay-23 hour hold"; or
4. Outpatient Surgery (including oral surgery) — on the first day with physician verification or recovery period; or
5. First day the employee receives Temporary Disability for a Worker's Compensation illness/injury; or
6. Relapse of a qualifying illness/injury.
7. Employees on an approved Family Leave are required to use PTO and ESL.

ARTICLE 22: JURY AND WITNESS PAY

An Employee subpoenaed by the Employer to appear in a judicial proceeding on a regularly scheduled work day will receive the difference between the applicable statutory witness fee and straight time earnings for each such day.

An Employee who presents proper documentation from a court informing of the Employee's being called for jury duty will be placed on a leave of absence throughout the entire period during which the Employee is required to serve. The Employer will pay Employee for a maximum [REDACTED] days per rolling twelve (12) month period when called to jury duty on a day in which the Employee is regularly scheduled to work. The Employee must provide proof of jury duty from the jury commissioner before receiving such payment.

ARTICLE 23: BEREAVEMENT

A. Definition of Family

Except as set forth herein, "immediate family" for purposes of this section means spouse, children, sister, brother, parents, legal guardians, current parents-in-law, grandparents, grandchildren, registered domestic partner (their parents and children), step relative (parent, child, sibling), and foster children.

B. Paid Time Off

When a member of the Employee's immediate family dies, the employer will grant the Employee bereavement leave with full pay up to [REDACTED] for Full-Time and Part-Time Employees, provided the Employee takes such leave within a reasonable time thereafter, not to exceed [REDACTED] (unless circumstances warrant longer on which case an extension will be granted by mutual consent). No Employee shall be charged with any absence which may result in discipline under the

REDACTED

employer attendance policy for attending the funeral of a member of the Employee's immediate family. In addition, if more time is needed the Employee may request PTO or unpaid time to plan, travel, make arrangements or other funeral related activities. Such request will not be unreasonably denied.

C. Additional Leave Without Pay

In case of death of an immediate family member as defined above, the Employee shall be entitled to an additional leave of absence of [REDACTED] days without pay at the Employee's request. The Employee and the Employer may agree to extend the period of bereavement leave. For any such agreed extension the Employee may use PTO or take an unpaid leave at the employer's discretion. The Employer will not unreasonably deny such requests.

ARTICLE 24: HOLIDAYS

A. The Employer will recognize the following holidays:

1. New Year's Day
2. Martin Luther King Jr. Day
3. President's Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Thanksgiving Day
8. Christmas Day

Holidays listed will be observed on the dates provided by federal legislation.

In addition, Employees may request and will be granted one (1) holiday of their choice per year, other than the holidays listed above, as PTO, provided the Employer is able to schedule such absence without adversely affecting patient care.

Pay for Holidays Worked: If an Employee in any status works a recognized holiday, the Employee shall receive pay [REDACTED] times the Employee's straight time rate of pay for all hours worked on such holiday provided the Employee has worked the scheduled shifts of work immediately before and after the holiday. Only one shift at such premium rate will be paid for each observed holiday, except that customary overtime provisions may apply to hours worked in excess of scheduled shifts or over forty (40) hours in a week. In the event an Employee is precluded from working his/her regularly scheduled shift, including on a holiday, due to a closure of his/her department, they will not be required to take PTO. If additional days off are provided as a result of closure of their department, PTO usage shall be at the discretion of the Employee.

REDACTED

4. Employees assigned to the night shift will be required to work the majority of the shift on a holiday in order to receive the holiday worked premium.
5. Employees working a twelve (12) hour shift will receive holiday pay for the shift they work with the majority of the hours falling during the observed holiday.

The Employer may schedule Employees to work on holidays according to required patient care needs. All Employees will normally be guaranteed at least two (2) minor holidays off duty on an equitable basis from amongst the holidays of Martin Luther King Jr. Birthday, Memorial Day, Independence Day and Labor Day unless the Employee wishes to work a greater number of holidays. Each Employee will normally receive at least two (2) Major Holidays off between and including Thanksgiving and New Year's Day, and Christmas.

If an Employee voluntarily cancels a holiday request, the Employee must do so at least fourteen (14) days prior to the holiday. Under such circumstances the holiday slot will be granted to the next Employee on the holiday list.

ARTICLE 25: HEALTH INSURANCE

A. General Provisions

1. Coverage. Health Insurance coverage shall be limited to Regular Full-Time and Regular Part-Time Employees. Coverage for new Regular Employees shall commence as of the first of the month following completion of the Employee's waiting period. In the case of resignation or termination, coverage shall terminate as of the last calendar day in the month of termination.
2. LDA Coverage (other than Registered Domestic Partner who will remain eligible for the medical, dental and vision plans), for currently identified Legally Domiciled Adults ("Grandfathered LDAs"), shall continue to be eligible for dependent medical, dental and vision coverage provided they are qualified tax dependents and reside at the same resident address on the Employee's Federal Income Tax, and can provide periodic proof of their tax dependent qualification. LDAs who reach age 65 will be terminated from coverage as of the last day of the month in which he/she turns age 65. The LDA coverage option has ceased (except for Registered Domestic Partners).
3. Payroll Deduction or Payments. Employee contributions for medical, dental and vision, shall be made through the LRS Section 125 Plan (on a pretax basis) as permitted by law. Employees on unpaid leave of absence who are eligible to continue medical coverage shall submit payments directly to the Employer (or the designated service provider). Coverage shall terminate if the required deductions or payments are not made during the month.
4. Duplicate coverage. Duplicate coverage for dependents covered by two (2) or more Employees will be eliminated (based on date-of-birth) upon ratification of the contract. A [REDACTED] per pay period waiver allowance will be added to bi-weekly pay at O'Connor and Saint Louise. St. Francis will maintain the current waiver at [REDACTED] per pay period for Full-Time and [REDACTED] per pay period for Part-Time Employees. St. Vincent will maintain the current waiver at [REDACTED] per pay period for benefits eligible Employees.

D. Medical Benefits

REDACTED

The ~~Employers~~Employer have provided and will continue to provide a fully Employer paid health plan for all current Regular benefit eligible employees and their qualified dependents. This health plan or plans will be provided as stated herein.

Effective upon ratification the ~~Employers~~Employer will continue to offer the same fully Employer paid Blue Shield HMO plan in effect on June 1, 2017 on the same terms and conditions as this plan is currently provided, and with benefit levels that meet or exceed that of the current plan. The ~~Employers~~Employer will continue to offer this plan through December 31, 2017.

Effective upon ratification the ~~Employers~~Employer will also continue to offer the same alternative POS "Buy-Up Plan" in effect on June 1, 2017 on the same terms and conditions (including premium payment options) as this plan is currently provided, and with benefit levels that meet or exceed that of the current plan. The ~~Employers~~Employer will continue to offer this plan through December 31, 2017.

Effective January 1, 2018 through the term of the agreement, the Blue Shield HMO plan in effect on December 31, 2017 will be replaced with the fully Employer paid Verity EPO Tier 1 and Tier 2 plans. The employer will continue to pay [REDACTED] of the cost for the Verity EPO Tier 1 and Tier 2 plan premiums for their employees and their qualified dependents. There will be no increase in cost for employees and their qualified dependents for plan out of pocket expenses (including co-pays), for annual deductibles (if any), or for annual out of pocket maximums for employees and their qualified dependents, beyond what employees and their qualified dependents pay for such costs in the BlueShield HMO in effect on June 1, 2017, notwithstanding the deductible and co-insurance for the Verity EPO Tier 2.

For plan year 2018 through the term of the agreement, the Verity EPO Tier 2 calendar year medical deductible will be [REDACTED]. The out of pocket maximums will be [REDACTED]. The co-insurance will be [REDACTED] for the following services:

- Outpatient surgery performed at a free-standing ambulatory surgery center;
- Outpatient surgery performed in a hospital or affiliated ambulatory surgery center;
- Outpatient services for treatment of illness or injury and necessary supplies;
- Radiological and nuclear imaging (CT scans, MRI's, PET scans);
- Inpatient physician services; and
- Inpatient non-emergency facility services.

However, should Verity or a Verity Preferred Partner provide additional services not included in the list above, those services will be added to the list and will be subject to the [REDACTED] co-insurance applicable to Verity EPO Tier 2. Should Verity or a Verity Preferred Partner provide additional services not included in the list above, these additional services to the Verity EPO Tier 1 and corresponding Verity Tier Medical Benefits will be communicated/implemented on an annual basis.

REDACTED

The Claims Administrator will apply the Tier 1 charges when the employee: (i) receives services by a Verity Health Provider; (ii) receives services by a BlueShield PPO Network provider because the service was not available at the employee's designated Verity Health Facility; or (iii) employee or the employee's dependent does not live within the thirty-five (35) mile radius of a Verity Health Facility.

Verity will honor employees' and qualified dependents' coordination of benefits.

The Verity EPO Tier 1 and Tier 2 plans, which will replace the BlueShield HMO, must have qualities that meet or exceed the qualities of the BlueShield HMO that it is replacing. Such qualities must include, but are not limited to, choice of doctors on the BlueShield PPO Network and services, and as otherwise stated herein. The radius for the Verity EPO Verity Tier 1 services will be thirty-five (35) miles measured from employees' residential zip code to the Verity facility zip code, and with a "Special Transportation Exception." Every year, the ~~Employers~~Employer will provide a list of zip codes which reflect which employees (and their covered dependents) fall within the thirty-five (35) mile radius.

If there is no Verity facility within the thirty-five (35) mile radius or the Special Transportation Exception applies, the employee may go to any facility within the BlueShield PPO Network. The Special Transportation Exception means that no employee and/or any qualified dependent seeking services or treatment will be required to travel to another geographic location that under normal, non-circuitous driving circumstances, would require travel across a bridge (for example, without limitation, from Oakland to San Francisco, or from San Rafael to Richmond). Every year, a list of zip codes which reflect the areas that qualify for the Special Transportation Exception shall be released at open enrollment.

If there is no Verity facility within thirty-five (35) miles of where the employee or the employee's qualified dependent resides, or the needed service or treatment is not available at a Verity facility, including those with the Special Transportation Exception, the employee or the employee's qualified dependent may go to any facility within the BlueShield PPO network, at the same cost structure as the Verity EPO Tier 1.

Effective January 1, 2018 through the term of the agreement, the ~~Employers~~Employer will replace the Blue Shield POS "buy up" plan with the Verity PPO for those employees choosing the alternative "buy up" plan. The employee and their qualified dependents' costs for share of the Verity PPO plan premiums, total costs for out of pocket expenses, annual deductibles, and annual out of pocket maximums, will be increased by no more than [REDACTED] during the life of this contract, over similar costs of the Blue Shield POS in effect on June 1, 2016.

As of January 1, 2017, the "Wellness Assessment" required of certain employees and their qualified dependents will no longer be required.

It is the intent of the ~~Employers~~Employer to provide a health plan that will ensure the privacy of employees under the plans. If any employee has a privacy concern related to a service and/or procedure that would be performed by the employee's own department at a Verity facility or a concern about continuity or disruption of care or if the employee's physician does not have admitting privileges at Verity facility, the ~~Employers~~Employer's Benefits Services Manager will not unreasonably deny any request to receive such services and/or procedures at an alternative

REDACTED

facility in the Verity/Blue Shield PPO network. Such request must be made directly to the Benefits Services Manager at least five (5) business days prior to the procedure.

E. Dental Plans

The ~~Employers~~Employer will provide a Delta Dental Basic Plan, or its equivalent, fully paid by the Employer for the employee and his/her dependents (including spouse, registered domestic partner and children). The ~~Employers~~Employer will maintain the PPO Dental plan, if any, on the same terms as currently provided to employees.

F. Vision Plan

The ~~Employers~~Employer will provide the Vision Service Plan (VSP), or its equivalent, fully paid by the ~~Employers~~Employer for the employee and his/her dependents (including spouse, registered domestic partner and children).

The ~~Employers~~Employer will offer a voluntary VSP Premier Buy-up option. Any employee electing this Buy-up option will pay the difference between the Buy-up and the standard VSP option.

G. Voluntary Short Term Disability Plan

The ~~Employers~~Employer will offer a voluntary Short Term Disability Plan option on an employee paid basis.

H. Voluntary Long Term Care Plan

The ~~Employers~~Employer will offer a voluntary Long Term Care Plan option on an employee paid

ARTICLE 26: GROUP INSURANCE

A. The ~~Employers~~Employer will provide each Regular Employee working a predetermined work schedule of not less than thirty (30) hours per week with a group life insurance policy that will provide a benefit equal to at least [REDACTED] or [REDACTED] the Employee's base pay, whichever is greater.

1. Base pay is defined as the Employee's hourly base rate times his or her regularly scheduled hours per pay period times the number of pay periods per year.

2. The coverage will be effective on the first day of the month following completion of thirty (30) calendar days of continuous employment as a Regular Full-Time or Regular Part-Time Employee. However, when a Temporary Employee is reclassified to Regular Full-Time or Regular Part-Time status, coverage will be effective the first day of the month following such reclassification.

3. The ~~Employers~~Employer will pay the full cost of premiums for group life insurance for each eligible Employee who qualifies for non-smoker rates. Employees who do not qualify for non-smoker rates will be required to pay the additional cost, if any, of premiums above the non-smoker rates.

REDACTED

4. Employees may also continue to purchase additional life insurance as well as dependent life for spouse and child(ren) at group rates.

B. LONG TERM DISABILITY (LTD)

██████ of base pay with premium paid by the Employer.

ARTICLE 27: PHYSICAL EXAMINATIONS

All physical examinations required of Employees in connection with their employment, according to the practice of the ~~Employers~~Employer, shall be given without charge, and all costs incident to those examinations shall be borne by the ~~Employers~~Employer. Notwithstanding the foregoing, nothing in this Article shall be construed to obligate the ~~Employers~~Employer to pay for any treatment which may be required as a result of any disease or condition disclosed during such physical examinations. Such examinations shall be without loss of pay, and shall include all laboratory, diagnostic and other clinical tests required by Title XXII or the Department of Health Services and/or the county in which the hospital operates and examinations and review of the Employee's medical history by a physician or nurse practitioner. Any disclosures to the ~~Employers~~Employer by the physician or nurse practitioner concerning the results of such physical examination shall be limited to certification that the Employee is physically able to perform the essential functions of his or her job.

ARTICLE 28: RETIREMENT

A. Until the effective date of the transactions contemplated by the System Restructuring and Support Agreement by and among Daughters of Charity Health System ("DCHS") and other parties thereto, dated as of July 17, 2015 (the "Effective Date"), the existing retirement plans shall continue as provided for by the predecessor collective bargaining agreement (the "CBA").

B. As of and following the Effective Date, during the term of this CBA, Verity Health System, Inc. (formerly known as DCHS) will operate the Verity Health System Retirement Plan (formerly known as the Daughters of Charity Health System Retirement Plan) (the "Plan") as a retirement plan subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") as well as the Internal Revenue Code ("Code"). As of and following the Effective Date, during the term of this CBA, Verity Health System will take all necessary steps to comply with all laws and regulations applicable to the Plan, including but not limited to (1) administering and funding such Plan in accordance with ERISA, (2) making application to the Pension Benefit Guaranty Corporation ("PBGC") under the PBGC insurance program, and (3) making all contributions necessary to satisfy the funding and PBGC premium requirements of ERISA and the Code.

C. Thereafter, during the term of this CBA, Verity Health System will continue to maintain and operate the Plan and/or any successor plan in compliance with applicable laws and regulations. In the event that Verity Health System decides, in the best interests of the System, to merge the Plan into the existing multiemployer pension plan, the Retirement Plan for Hospital Employees ("RPHE"), the Union will support the merger of the Plan into the RPHE, provided that such merger is effectuated in accordance with all applicable laws and regulations.

REDACTED

D. As of and following the Effective Date, Verity Health System will, during the term of this CBA, continue to be a participating employer in the Retirement Plan for Hospital Employees ("RPHE") on the same terms and conditions applicable to DCHS prior to the Effective Date.

E. Also as of and following the Effective Date, during the term of this CBA, Verity Health System will operate the Verity Health System Supplemental Retirement Plan (401(a)) (formerly known as the Daughters of Charity Health System Supplemental Retirement Plan (401(a))), the Verity Health System Retirement Plan Account (formerly known as the Daughters of Charity Health System Retirement Plan Account) and any other applicable defined contribution plan (the "Defined Contribution Plans") and the Employer-Sponsored 403(b) Plan in accordance with Title I of ERISA and any applicable provisions of the Code, and shall continue to operate the Defined Contribution Plans and the Employer-Sponsored 403(b) Plan in compliance with all other applicable laws and regulations. Thereafter, during the term of this CBA, Verity Health System will continue to maintain the Defined Contribution Plans and the Employer-Sponsored 403(b) Plan as provided for by the predecessor CBA (to the extent such provisions in the predecessor CBA do not conflict with the provisions herein), including but not limited to making at least the same levels of employer contributions provided for by that CBA.

F. Pension [THE EXISTING PLAN WILL BE CONTINUED FOR ALL EMPLOYEES ON THE SAME TERMS].

1. ~~At St. Vincent Only: St. Vincent Employees will continue in their current Retirement Plan which became effective March 1, 2011.~~

2. At Saint Louise, O'Connor and St. Francis:

a. On January 1, 2013 ("RPA Effective Date"), the ~~Employers~~ Employer shall extend the DCHS Retirement Plan Account (the "RPA Plan") to all eligible Regular Part-Time and Full-Time Employees as well as eligible Per Diem Employees each in accordance with RPA Plan terms.

b. As of the RPA Effective Date, all benefits accrued up and to such date under the Daughters of Charity Retirement Plan and the RPHE Plan shall be frozen.

c. Except at Facilities where the RPA Plan was in place prior to ratification, Employees employed as of the RPA Effective Date shall receive the following contributions pursuant to the following schedule:

Years of Service	Contribution Rate
------------------	-------------------

3. At All Facilities:

REDACTED

Employees hired after the RPA Effective Date under this Agreement, shall receive the following contributions pursuant to the following schedule:

Years of Service	Contribution Rate
[REDACTED]	

4. For the Daughters of Charity Retirement Plan Only:

- a. The Employer will adopt a revised funding policy for the DCHS Retirement plan, based on a ten (10) year amortization schedule. The initial unfunded liability determined as of the January 1, 2012, actuarial valuation will be amortized over a ten (10) year fixed period. Annual changes in unfunded liability due to such factors as market changes, demographic experience or changes in assumptions will be amortized over a seven (7) year period following the valuation year in which they are recognized.
- b. The Employer agrees to maintain this funding policy through the life of the Agreement once adopted. The Employer shall meet the obligations of the funding policy by contributing funds required by said policy in the year in which they come due. In the case an event or actuarial change occurs, such as a failure to meet investment assumptions in effect at the time of execution of this agreement, the Employer shall notify the Union and meet and confer over a contribution schedule that meets the contribution obligations as promptly as reasonably possible.
- c. On an annual basis, the Employer shall, within ninety (90) days of receiving a written request, provide the Union with the annual DCHS Retirement Plan valuation.
- d. Beginning on January 1, 2013, and annually thereafter, the Employer shall provide each bargaining unit participant an Annual Funding Notice for the DCHS Retirement Plan.
- e. If the Daughters of Charity Health System adopts a Defined Contribution retirement plan that is different from that which is adopted pursuant to this Article, such new Defined Contribution retirement plan will also be offered to bargaining unit members.

5. 403(b) Plan

The ~~Employers~~Employer will match contributions made to the ~~Employers~~Employer-Sponsored 403(b) Plan. The match benefit will be provided through the ~~Employers~~Employer-Sponsored 401(a) Plan and subject to the terms and conditions of the Plan. Pursuant to this provision, the ~~Employers~~Employer will contribute [REDACTED] to an Employee's 401(a) Plan account for every [REDACTED] that an Employee contributes, for all of the Employee's contributions up to a maximum of [REDACTED] of the Employee's total annual compensation (i.e., maximum [REDACTED] of total annual compensation).

ARTICLE 29: CAREER OPPORTUNITIES AND TUITION ASSISTANCE

- A. The ~~Employers~~Employer agrees to support opportunities for Employees to attend

REDACTED

educational activities in the health care field which are consistent with the goals, objectives and action plans of the ~~Employers~~ Employer.

B. The ~~Employers~~ Employer will provide the following educational opportunities:

1. Tuition Assistance: The ~~Employers~~ Employer will support continuing education and training of Employees who participate in educational courses in the health care field including certifications, licensures and other training programs. Employees must apply for and receive written approval from the Employee's department manager prior to commencement of the course, in order to be eligible for reimbursement, as provided below:

a. Eligibility: All Regular Full-Time and Regular Part-Time Employees who have completed the probationary period and who maintain their status while taking such courses are eligible for Tuition Assistance.

b. Maximum Reimbursement: In any calendar year (January -December) the maximum reimbursement for an eligible Employee is [REDACTED]. Reimbursement will be limited to tuition, books, supplies, and uniforms.

c. Reimbursement will be provided upon successful completion of the course, provided that the Employee submits proof of satisfactory completion to the Employee's department manager along with the request for reimbursement.

ARTICLE 30: COMMITTEES

Team Care, Collaborative Problem Solving and Leadership

A goal of this Agreement is to foster shared success through developing and empowering models of team-based care. Each hospital will develop organization plans to support team based care.

Joint Labor-Management Committees

A. Composition and Purpose

1. The Parties will work together to develop joint committee(s) between management and Caregivers to address, discuss, and improve upon the operational functioning of the hospitals. The concept of joint committee(s) shall include opportunities for Caregivers to participate in leadership roles in workplace matters and improve the quality of care.

2. There shall be a Joint Labor Management Committee of no more than six (6) representatives appointed by the Employer and six (6) representatives appointed by the Union. In addition, one (1) Union field representative and one (1) representative of the Employer's Human Resources Department shall also be part of the JLMC and may attend all meetings of the JLMC. The parties shall advise each other in writing of appointments to the Committee. On written notice to the other, the Employees and Employer Administration may change their representatives on the Committee from time to time. The Joint Labor-Management Committee will be formed for the purpose of reviewing, discussing and resolving issues of mutual concern to the parties in order to improve

performance, to achieve the objectives of the organization, and to improve the work lives of Employees.

3. The Joint Labor-Management Committee may develop procedures to address the following:
 - a. Identifying current and anticipated vacancies. In this review, the parties will consider whether and how to combine available hours to maximize Full-Time employment;
 - b. Projecting changes in the delivery of healthcare at each Hospital;
 - c. Identifying retraining opportunities for Employees at the Hospital;
 - d. Identifying creative retention programs such as one that contemplates the identification of transferable skills of Employees to work in classifications other than their own to avoid daily cancellations;
 - e. Identifying cross-training opportunities to minimize involuntary daily cancellations;Identify systems to support effective reassignment processes such as float pools, cross-training programs, Employee lists by competencies;
- g. Identifying new and creative recruitment sources;
- h. Other opportunities to enhance recruitment, retention and retraining;
- i. Impact on the workforce as a result of business changes that would result in closures, consolidations or shared entities;
- j. Monitoring the quality of patient services and making recommendations to improve patient services in the context of work design, if applicable, or in the current method or system of patient services delivery.

4. In addition, the Joint Labor Management Committee may also consider the following subjects, which include but are not limited to: appropriate education and training programs, child care issues, cultural diversity in the workplace, methods for improving scheduling and resolution of scheduling problems, and other issues the Committee deems appropriate.

5. This committee may recommend wellness programs at each facility that will (a) expand the participation of Employees and dependents in current health and wellness initiatives, (b) develop new health and wellness initiatives, (c) develop positive means of encouraging greater levels of participation in health, wellness and safety initiatives such as annual vaccinations, and (d) explore potential plan re-design options that could result in more effective and efficient utilization of the health plan by Employees and their dependents.

B. Compensation

If an Employee committee member is regularly scheduled to work during the time in which the committee meeting is held, the Employee representatives on the Committee shall be compensated at

REDACTED

straight-time pay for attendance at Committee meetings up to a maximum of [REDACTED] per Employee per month.

Attendance at committee meetings will not be considered "time worked" for the purposes of overtime calculation.

C. Frequency of Meetings

Meetings of the Committee shall be no longer than [REDACTED] and shall be held once every month except by mutual agreement.

D. Dispute Resolution

The Union and the Employer acknowledge that unless mutually agreed, neither shall use this committee for the purposes of collective bargaining. Disputes within the Joint Labor Management Committee shall not be subject to Article 31, Grievance and Arbitration provisions of this Agreement. However, this Paragraph shall not prevent an Employee, the Union, or the Employer from subsequently pursuing an otherwise grievable issue through Article 31, Grievance and Arbitration.

E. Health and Safety Issues

1. Compliance

The Employer will continue to comply with applicable federal and California laws and regulations pertaining to occupational safety and health, including its obligation, under the general duty clause, to provide a safe environment for Employees.

2. Reporting Health Hazards by Employee

It is the duty of each Employee to comply with all health and safety regulations of the Employer, and if any safety or health hazard is detected by an Employee, the Employee shall promptly report it to the Employer. An Employee's failure to comply with such health and safety regulations, or to promptly report a detected health or safety hazard, may result in disciplinary action.

3. Union Notification

The Union shall promptly notify the Employer of any potential health and safety hazards, violations or problems of which it is aware.

4. Remedying Health/Safety Problems

The Employer shall have a reasonable period of time to remedy any problems or situations brought to its attention by Employees or the Union. If in the judgment of the Employee or the Union, the Employer shall thereafter fail to remedy the situation, the Employee or the Union shall be free to contact Cal-OSHA, or other state or federal authorities, for appropriate action. No adverse action shall be taken against any Employee for reporting health and safety concerns to the Employer, to the Union, or to federal or state authorities. Disputes under this Article shall not be subject to Article 31,

REDACTED

Grievance and Arbitration procedure of this Agreement, and shall continue to be subject to the applicable administrative procedures established by federal and/or California law. However, the issue of whether the Employer has met its obligation to meet with the Union under this section shall be arbitrable.

5. The Union shall address Health and Safety Issues through the Joint Labor-Management Committee.

6. In-Service

The Employer shall continue to provide in-service or other training and information to Employees concerning health and safety.

7. Hepatitis B Vaccine

Hepatitis 'B' vaccine shall be made available free of charge and at a covered Employee's request, if the Employee's normal functions include exposure to blood, blood products, bodily fluids, or needlesticks or cuts by other sharps that may have patient blood, blood products, or bodily fluids on them. Such vaccine also will be provided to other Employees, at their request if their normal functions do not include such exposure but the Employee has an on-the-job needlestick or cut, as described.

F. Patient Care Committee

1. Quality Patient Care

The ~~Employers~~Employer and the Union agree that quality patient care and an appropriate working environment require adequate staffing and that staffing levels within all departments vary with census, acuity, shift, the specialization of various areas, changes in the specialization of the units, structural changes in delivery of patient services and qualitative changes in average acuity. Each of the ~~Employers~~Employer will establish a committee comprised of six (6) bargaining unit Employees selected by the Union and six (6) representatives of the Employer selected by the Employer. In addition to the six (6) from each side, both the Union representatives and the Human Resource representatives may participate in Patient Care Committee meetings. The parties may mutually agree to expand the number of representatives to this committee as the need may arise.

2. Purpose

Monitoring the quality of patient services and making recommendations to improve patient services in the context of work design, if applicable, or in the current method or system of patient services delivery.

3. Meetings

The ~~Employers~~Employer will allow [REDACTED] every month of paid time for each Employee member of the committee to attend meetings

G. Resolution of Staffing Issues

1. Review Committee

If the Joint Labor Management Committee cannot reach agreement on a recommendation, the issue may be referred to a Review Committee of four (4) for consideration and recommendation. Two (2) representatives shall be selected by SEIU and two (2) by the Employer. A majority of the Review Committee may invite resource persons to attend and participate in such Review Committee meetings.¹ Such resource persons may review all relevant information before the Committee pertaining to the subject matter under consideration and offer advice to resolve differences between the parties. The Review Committee may adopt recommendations by a majority vote of all four (4) members of the Committee.

2. Recommendation Implementation Process

Recommendations, both those approved by the Joint Labor Management Committee and through the Review Committee, will be forwarded to the appropriate Administrative Director of the Hospital for implementation. Thirty (30) calendar days after receipt of a recommendation the appropriate Administrative Director will send the Joint Labor Management Committee a written summary of progress and may at the Joint Labor Management Committee co-chair's request attend the next Joint Labor Management Committee meeting to report on progress.

3. Resolution of Staffing Issues

In the event the Review committee is unable to reach agreement on a recommendation concerning a staffing issue, a mutually agreed upon third-party neutral may be brought to join the Review Committee. In the event the Review Committee remains unable to resolve the staffing issue, the third-party neutral shall decide the final resolution which will be implemented. In reaching resolution, the third-party neutral must take into account area standards regarding staffing, state and federal laws, physician recommendations regarding quality of care, business needs and any other relevant information presented by the parties. In making a final decision on the issue presented by the Review Committee, based upon the information presented by the parties, the neutral third-party will be acting as a labor Arbitrator, and the decision will be treated as a final and binding by the parties. Either the Union or the Hospital may seek to vacate the decision pursuant to applicable state and federal law.

Unless the parties agree otherwise, the third party neutral shall be selected by alternative striking (first strike determined by lot) from one (1) of the following seven (7) persons:

Matthew Goldberg
Robert Hirsch
Barry Winograd
Andrea Knapp
Richard Kagen
John Kagel
Frank Silver

4. Impact on Other Units

Both parties agree that it is not their intent to make recommendations or resolutions that adversely impact any other bargaining unit.

Additionally, if the Employer grants any other Union similar rights to resolve staffing disputes, it will make every effort to include in such contract a provision that it is not the intent of the parties to make recommendations or resolutions that adversely impact any other bargaining unit including the Union.

ARTICLE 31: GRIEVANCE AND ARBITRATION

A. Definitions. In this Article the following definitions apply:

1. Definition of Grievance. Grievance means a dispute raised by an Employee, the Union or the ~~Employers~~Employer concerning the interpretation or application of any provision in this Agreement. Unless otherwise provided in this Agreement, a violation of this Agreement is subject to this Grievance and Arbitration procedure set forth below.

2. Definition of Days. Days means calendar days. In this Article, whenever a period of time is specified, the day of the event or action which commences the period shall not be included calculating the length of the period. If the last day for responding and acting is a Saturday, Sunday or contract holiday, the period shall be extended to the next day which is not a Saturday, Sunday or contract holiday.

3. Limitation on Precedents. Settlements reached with Shop Stewards in Step 1 of the grievance procedure shall not establish a precedent or a practice for future cases unless by specific written agreement signed by a Field Representative and by the ~~Employers~~Employer.

B. Informal Resolution or the Initiating of a Grievance. The ~~Employers~~Employer and the Union recognize that the goal of this grievance and arbitration procedure is to attempt to resolve the grievance at the lowest level possible with the least amount of time and resources. The Employee or the Union Representative (Field Representative or Shop Steward) may first confer with the supervisor or with such other person as the ~~Employers~~Employer may designate and attempt to settle the matter.

1. The Union must initiate the grievance procedure by completing and delivering a grievance form to the Vice President of Human Resources or designee within fourteen (14) days of the date upon which the Union first became aware, or reasonably should have first become aware, of the events or circumstances which gave rise to the grievance.

2. A meeting to resolve the grievance shall take place within fourteen (14) days after the filing of the grievance.

3. In this meeting the parties shall engage in a full and frank discussion of their respective positions including the supporting rationale for their positions. A representative from the Vice President of Human Resources or designee will respond in writing within fourteen (14) days of the meeting.

C. ~~Employers~~Employer Timeliness/Failure to Meet Grievance Timelines. If the ~~Employers~~Employer ~~do~~does not timely respond to a Union or an Employee grievance, the grievance shall automatically move to the next step.

D. ~~Employers~~Employer Grievances. ~~Employers~~Employer grievances shall be submitted at the Step 1 level in writing on the appropriate form directly to the Union's Field Representative. If requested, a Union Representative and a representative of the Human Resources Department shall meet in an effort to resolve the grievance within fourteen (14) days of the date of the written grievance. The Union shall provide an answer, in writing, within fourteen (14) days following the meeting, or within fourteen (14) days after the date of the ~~Employers~~Employer's grievance if no meeting is requested.

If the Union's Step 1 answer is not satisfactory, or if no answer is given within the specified time period, the matter shall be submitted to arbitration by written request of the ~~Employers~~Employer in accordance with the time limits set forth for a Union request for arbitration and subject to the provisions of Step 1 above and Section (G) (1) below.

E. Union Participation. A representative of the Union, designated by the Union, has the right to prompt notice from the ~~Employers~~Employer of any grievances filed by individual Employees. A Union Representative and/or Steward, designated by the Union, has the right to be present at any grievance meeting called for the purpose of discussing an Employee grievance.

F. Mediation By Mutual Agreement at All Facilities. Prior to arbitrating, the parties may submit any grievance to mediation by mutual agreement. However, such mediation shall not delay the arbitration.

G. Arbitration

1. Demand for Arbitration. If the grievance is not resolved in Step 1, either party may proceed by submitting a written request for arbitration to the other party (a) within fourteen (14) days after the due date of the Step 1 response or (b) within fourteen (14) days following the receipt of the Step 1 response. A Union request for arbitration will be sent to the Vice President of Human Resources or designee.

2. Selection of Arbitrator. The Parties will select an Arbitrator within seven (7) days of notice of intent to arbitrate. The parties will select an Arbitrator by alternately striking a name from the following list of Arbitrators:

Matthew Goldberg
Robert Hirsch
Barry Winograd
Andrea Knapp
Richard Kagen
John Kagel
Frank Silver

The order of striking will be determined by the winner of a coin toss.

3. Arbitration Hearing and Decision. The Arbitrator shall hear the submitted grievances as expeditiously as possible, and shall render a decision in writing within fourteen (14) days after the conclusion of the last hearing or submission of briefs, whichever is later.
4. Arbitration Fees and Costs. The fees and expenses of the Arbitrator, the cost of the hearing room, and the cost of the court reporter, if required by the Arbitrator, shall be shared jointly by the parties, except in the case of a postponement that results in the cancellation of an arbitration date. Each party will bear its own expenses of representation and presentation of its case, including witnesses, and including the cost of any transcript for the party's own use.
5. Arbitration postponements and cancellations. Either party has the right to one (1) postponement of a case. If the postponement results in a cancellation fee to the Arbitrator, the proposing party shall pay the Arbitrator's cancellation fee, unless a date is substituted at no additional cost.
6. Arbitrator's Authority. The Arbitrator shall have no power to add to, to subtract from or to change any of the terms or provisions of the Agreement. His or her jurisdiction shall extend solely to claims of violation of specific written provisions of the Agreement and involve only the interpretation and application of such Agreement. The award shall be based upon the joint submission agreement of the parties, or in the absence thereof, the questions raised by the parties in respect to the specific interpretation and application of the Agreement. Further, the Arbitrator's decision will be final and binding upon all parties concerned.
7. Processing Grievances in Good Faith. Consistent with the Preamble of this Agreement, the parties agree that it is in everyone's best interests to address grievances in a timely, professional and ethical manner. With respect to a particular complaint or grievance of an Employee concerning the interpretation or application of this Agreement the Field Representative of the Union or Shop Steward may inspect relevant material in the Employee's personnel file upon which the ~~Employers~~Employer are or will be relying. Such information will be provided in a timely manner. The Union may request other information it deems relevant to the processing of a grievance, and if the ~~Employers~~Employer are in agreement that the information is relevant, the Union will be provided with it. In the event of a disagreement on the appropriateness or relevance of any information requested, such disputes are not subject to the grievance procedure. This does not preclude either party from exercising its rights under any applicable Federal or California State laws.
8. Employee Participation. The ~~Employers~~Employer and the Union agree that Employees having direct knowledge of facts giving rise to a grievance should be free to participate on behalf of any party in all steps of the Grievance and Arbitration Procedure, and should be free from recriminations from either side for so doing.

ARTICLE 32: DISCIPLINE AND DISCHARGE

A. Just Cause

The ~~Employers~~Employer may only discipline or terminate any Employee for just cause.

B. Progressive Discipline

Unless circumstances warrant severe actions, the ~~Employers~~Employer will utilize a system of progressive discipline. Progressive steps shall include verbal counseling, and/or warnings, written counseling and/or warnings, disciplinary suspensions without pay, and termination of employment. Except where prohibited by law, if after a one (1) year period of time following the issuance of discipline, there has been no discipline of a similar nature the disciplinary notice will be removed from the Employee's record upon request from the Employee. Time spent on a leave of absence does not count toward the time frame to remove discipline from an Employees file.

C. Investigatory Suspension

No Employee shall be held in unpaid investigatory suspension or unpaid administrative leave status for more than seven (7) calendar days.

D. Written Disciplinary Action

A written warning is a document designated as such by the ~~Employers~~Employer. An Employee who receives a written warning shall be given a copy of the warning and shall sign a receipt to acknowledge having received the document. Acknowledging receipt of the warning shall not constitute an admission of the Employee's agreement with the substance of the warning. A Union grievance contesting a written warning shall be subject to the requirements of Article 31, Grievance and Arbitration.

E. Disciplinary Notices, Rebuttal, and Inspection of Personnel Files

1. There shall be one official personnel file for all bargaining unit Employees and ~~they~~it shall have the right to inspect and to be provided, on request, with one copy of any document in the Employee's personnel file.
2. Employees will receive copies of all disciplinary notice(s) placed in their personnel files and shall have the right to rebut in writing any disciplinary notice. Such rebuttals, other than grievances, shall be attached to the disciplinary notice and placed in the personnel file.
3. In any case where the ~~Employers~~Employer and the Union agree to revise personnel record materials, the ~~Employers~~Employer shall, upon request, provide evidence of the revision.

F. Weingarten Rights

The following holding of the United States Supreme Court in *NLRB v. Weingarten, Inc.*, shall apply to investigatory interviews conducted by the ~~Employers~~Employer when an Employee, upon his or her request, is entitled to have a Union Representative (Field Representative or Union Steward) present during an investigatory interview in which the Employee is required to participate where the Employee reasonably believes that such investigation will result in disciplinary action. The ~~Employers~~Employer will notify the Employee of their right to Union representation prior to any investigatory interview where the ~~Employers~~Employer reasonably believe that such investigation may result in disciplinary action. The right to the presence of a Union Representative (Field Representative or Union Steward) is conditioned upon a requirement that the Union Representative (Field Representative or Union Steward) be available for participation in such investigatory

interview within twenty-four (24) hours, excluding Saturday, Sunday, and holidays, of the Employee's request for his/her presence.

ARTICLE 33: FIELD REPRESENTATIVES' VISITS AND SHOP STEWARDS

A. Field Representatives' Visits

Duly authorized Union Field Representative shall be allowed access to visit the facility at all times to ensure compliance with this Agreement and to conduct Union business. This right shall be exercised reasonably so as not to interfere with the ~~Employers~~Employer's operations or the work of any Employee. The Union Field Representative shall advise the Vice President of Human Resources or his/her designee immediately, in person or by telephone, upon entering the campus of the departments and areas the representative will visit.

B. Union Shop Stewards/Representational Leaders

Union Stewards/Representational Leaders lead the representation work of the Union at the facility level. Both parties recognize the critical role of trained Union Stewards/Representational Leaders as the primary representatives of Employees in grievance, discipline and other matters.

1. The Union shall provide the ~~Employers~~Employer with a written list of Union Stewards after their designation, and shall notify the ~~Employers~~Employer of changes as they occur. The Union may designate one steward per facility as the Rep. Chair.
2. The functions of the Union Steward include the authority (1) to settle or assist in settling problems arising in connection with the application or interpretation of the Agreement, (2) to resolve grievances at Step 1 of the grievance procedure, and (3) to serve as a Union representative for Weingarten meetings.
3. Union Stewards will be released without loss of pay to attend grievance and Weingarten meetings scheduled during working hours. Investigation of grievances by such stewards shall normally be conducted during non-working hours. Otherwise, Union Stewards shall perform their functions or Union related activities on their own time. However, if a meeting is mutually agreed to with the Union Steward during the steward's work shift, that time will be paid for by the ~~Employers~~Employer. Upon notification to the manager, if the Union Steward wishes to schedule a meeting with an Employee during the steward's work shift, release time shall not be unreasonably denied.
4. Union Stewards shall not direct any Employee how to perform or not perform his/her work, shall not countermand the order of any Supervisor, and shall not interfere with the normal operations of the ~~Employers~~Employer or any other Employee.
5. The ~~Employers~~Employer's designated representative will meet with two Union Representatives (Field Representative and/or Union Stewards) and any affected Employee on any grievance or issue concerning this Agreement. If additional Employee(s) or Union Representatives have firsthand facts to present as a witness concerning the Union's grievance issue, however, then such additional person(s) also may attend, by prior mutual agreement with the ~~Employers~~Employer at the time the meeting is set.

REDACTED

6. Upon advance written request and subject to staffing and scheduling needs, the ~~Employers~~ Employer will provide up to [REDACTED] without pay per calendar year to a Union Steward for the purpose of participating in Union educational programs.

7. Upon proper advance notice, the ~~Employers~~ Employer shall continue to exercise good faith efforts to release duly recognized Shop Stewards to leave their normal work to attend the monthly Shop Steward meeting. No more than [REDACTED] of such release time per month will be allowed. Stewards not scheduled to work will not receive any pay for attendance at such meeting. The paid time spent at monthly steward meetings will not count towards overtime calculations. Within thirty (30) days of the ratification of the contract, the Union will provide to the ~~Employers~~ Employer a schedule of the Union Steward's Council's regularly scheduled meetings, for the next twelve (12) months (and will further submit a schedule on an annual basis for succeeding years of this Agreement). A maximum of one (1) steward for every twenty-five (25) bargaining unit Employees shall receive the release time, not to exceed eight (8) stewards at Saint-Louis, and ten (10) at O'Connor.

8. Shop Stewards will be permitted to leave their normal work to attend the monthly Shop Steward meeting. No more than [REDACTED] quarterly in the aggregate, of such paid time will be allowed. Stewards not scheduled to work will not receive any pay for attendance at such meetings. Time spent at monthly Shop Steward meetings will not be used to compute overtime. In departments with multiple Stewards and patient care needs, the Stewards will determine a rotation for attendance if warranted.

9. Time spent attending arbitration hearings by Shop Stewards, grievants and witnesses called by the Union shall be unpaid.

C. Union Healthcare Leaders: Shop Stewards

1. The Union will notify the hospital of bargaining unit Employees designated by the Union as Union healthcare leaders, i.e. Shop Stewards.

2. Within the workplace, the role of Union healthcare leaders/Shop Stewards shall be to (a) promote participation by Employees in health and wellness initiatives, and (b) promote Employee participation in practices designed to improve Employee health and quality healthcare measures, including but not limited to infection control practices within the hospital.

3. Effective January 1, 2016, the employer agrees to grant up to [REDACTED] of paid release time per quarter, for a maximum of three (3) healthcare leaders/Shop Stewards, to be scheduled by mutual agreement between the Union and the employer for the purpose of providing training to the Union healthcare leaders/Shop Stewards on relevant issues and practices. Such paid release time will not be counted as hours worked for purposes of calculating overtime.

4. Upon advance request by the Union healthcare leaders/Shop Stewards, and subject to the approval of the hospital through its appropriate supervisors, these Employees will be allowed time to address relevant and appropriate topics in such forums as (a) regular or special departmental meetings, (b) one-on-one meetings with individual Employees in their department or area, or (c) other meetings as may be mutually agreed. It is understood that any such activities which occur during working time will be scheduled in such a way that patient care and operations will not be

adversely affected, and with the approval of the Employee's supervisor. It is further agreed that any such participation shall be limited to the topics of promoting health objectives as outlined in subsection C.2 above, and shall not be used for other purposes unrelated to these goals.

D. Employee Representatives to Union Negotiation Committee

Upon proper advance notice, the ~~Employers~~Employer shall continue to exercise good faith efforts to release Employees appointed to the Union's Negotiating Committee, subject to staffing, scheduling and immediate patient care needs. A maximum of five (5) such Employees per facility who miss time worked from their regular work schedule due to attending negotiating sessions including caucuses shall be paid by the ~~Employers~~Employer for all hours missed from work up to the Employee's regular scheduled work hours. Additionally, they it shall suffer no loss of seniority, benefits or paid time off accruals, including extended sick leave. Such release time shall not be counted towards the computation of overtime or any premium pay.

ARTICLE 34: NO STRIKE/NO LOCKOUT

There shall be no strike, work stoppage or other interruption of work during the life of this Agreement by the Union or Employees. During the life of this Agreement there shall be no sympathy strikes by the Union. Furthermore, the Union will not threaten to engage in any activity prohibited by this Article. Similarly, there shall be no lockout by the Employer during the life of the Agreement. Informational picketing is not prohibited if the Union provides a timely 8(g) notice; its activity is limited to such picketing; and if the Union's 8(g) notice and other communications clearly say that its activity will be limited to such picketing.

ARTICLE 35: CHANGE OF OWNERSHIP, MERGERS, SALES, CLOSURES AND TRANSFERS

In the event of a merger, sale, closure, leasing assignment, divestiture, or other transfer of ownership and/or management of its operation in whole or in part, the ~~Employers~~Employer shall comply with the following. This article shall not apply to subcontracting or outsourcing of a department or service. In that event, Article 6 shall apply.

A. Notification

The ~~Employers~~Employer shall notify the Union in writing at least ninety (90) days prior to taking any action described in the preceding paragraph, except for hospital closure for which six (6) months advance notice is required.

B. Successor

This agreement shall be binding upon the Union and the ~~Employers~~Employer or any successor thereof whether the succession is by any of the means described above as it applies to the business of the ~~Employers~~Employer, in whole or in part, or to any change in management companies.

C. Conditions and Liabilities

1. All professional Employees, except physicians and registered nurses;
2. All technical Employees, except those already included in existing units;
3. All home health non-professional Employees;
4. All home health professional Employees;
5. All residual service and maintenance Employees; and
6. All Business Office clerical Employees.

Bargaining units pursuant to this provision will be on a single facility basis, and shall be as set forth in the National Labor Relations Board Health Care Rules.

At Saint Francis only:

Appropriate Unit Defined The parties agree that, except as provided herein, an appropriate unit is that which is defined by the National Labor Relations Board for healthcare providers. Appropriate bargaining units shall be as follows:

1. All professional Employees, except physicians and registered nurses;
2. All technical Employees, except those already included in existing units;
3. All home health non-professional Employees;
4. All home health professional Employees;
5. All residual service and maintenance Employees;
6. All Business Office clerical Employees;
7. All skilled maintenance Employees.

Bargaining units pursuant to this provision will be on a single facility basis, and shall be as set forth in the National Labor Relations Board Health Care Rules.

Determination of Majority Status/Election. Upon presentation of the percentage of Union authorization cards required by the NLRB to the NLRB from the Employees in an appropriate bargaining unit, as defined above, Employees in any of the appropriate bargaining units are entitled to petition for an election to be held by the NLRB in an expedient and timely manner.

The ~~Employers~~Employer and Union agree to the mutual goal of scheduling an election conducted by the NLRB within forty-five (45) days of the filing of the petition.

If, within three (3) weeks after filing the petition, the Board fails or is unable to schedule an election within forty-five (45) days, the parties shall meet and decide upon a third party to conduct and oversee the election process. The parties agree that the selection of the third party shall be from

among Charles Askin, Boren Cherkov, Dan Altemus or any other mutually agreed upon third party based on the availability to adhere to the timelines set forth herein. The election shall be held within forty-five (45) days after filing the petition. The election will be conducted in a mutually agreeable location and manner and shall follow generally accepted NLRB guidelines.

Within five (5) days after the election is directed by the Board or alternative third party, the Employer will provide the Union with a List of the names, addresses, and current telephone numbers of Employees in the appropriate unit the Union seeks to organize, subject to applicable laws.

The ~~Employers~~ Employer agree to recognize the Union as the collective bargaining agent on behalf of Employees in any appropriate unit, as defined herein, where a majority of Employees vote for SEIU-UHW representation, subject to applicable law. Such Employees shall be accreted into and covered by this Agreement upon certification of the election results by the NLRB or third party. Where classifications are accreted into this Agreement that are not currently covered, the parties will meet and negotiate over their wages and other terms and conditions that are not already covered by this Agreement.

Section 4 — Code of Conduct

1. Employees shall be entitled to make a decision regarding Union representation free from coercion, intimidation, promises, or threats.
2. The ~~Employers~~ Employer and the Union agree that ~~they~~ it will communicate only that which ~~they~~ it believe to be factual and will do so in a way that does not personally attack officers, executives, representatives, Employees, or sponsors of either the Employer or the Union.
3. The ~~Employers~~ Employer will not inform or imply to eligible voters that ~~they~~ it will lose benefits, wages, or be subject to less favorable working conditions by unionizing.
4. The ~~Employers~~ Employer agree that their authorized communication with Employees regarding Unionization shall take place in group meetings and that ~~they~~ it shall not initiate one-on-one conversations with Employees about Union representation. Employee participation in Employer initiated group meetings for the purpose of discussing unionization shall be voluntary.
5. During the period following provisions of notice of "Intent to Organize" as described above, the parties will meet periodically to regulate adherence to the Code of Conduct.

Section 5 — Dispute Resolution

Regardless of who conducts the election, the parties agree that ~~they~~ it will use the rules and procedures approved by the National Labor Relations Board to ensure that a fair and representative election occurs in an appropriate bargaining unit as defined above among properly eligible Employees, and that if the NLRB processes are utilized, that ~~they~~ it will not abuse such processes for purposes of delay or any other improper purposes.

The parties agree that, upon filing of the petition with the Board, the Union and the Employer will meet promptly and will exert their best efforts to identify and resolve issues concerning Supervisors, managerial Employees, and confidential Employees before a hearing is scheduled before the Board

or third party. Should any disagreements arise that cannot be resolved between the parties, any such Employee whose eligibility is in dispute at the time of the election shall be allowed to vote by challenge ballot. The NLRB or third party (whichever conducts the election or is chosen by the parties) shall have the authority to fully resolve any such disputes with respect to the inclusion or exclusion of any classification in the unit and the eligibility of any Employee to vote. When so utilized, both parties agree to accept and be bound by all of the decisions of the third party or NLRB.

ARTICLE 38: TERM OF AGREEMENT

This Agreement shall be effective as of November 1, 2018, and shall remain in effect until October 31, 2021. November 1 shall be the anniversary date of this Agreement.

[PLACE HOLDER FOR SIGNATURE PAGE]

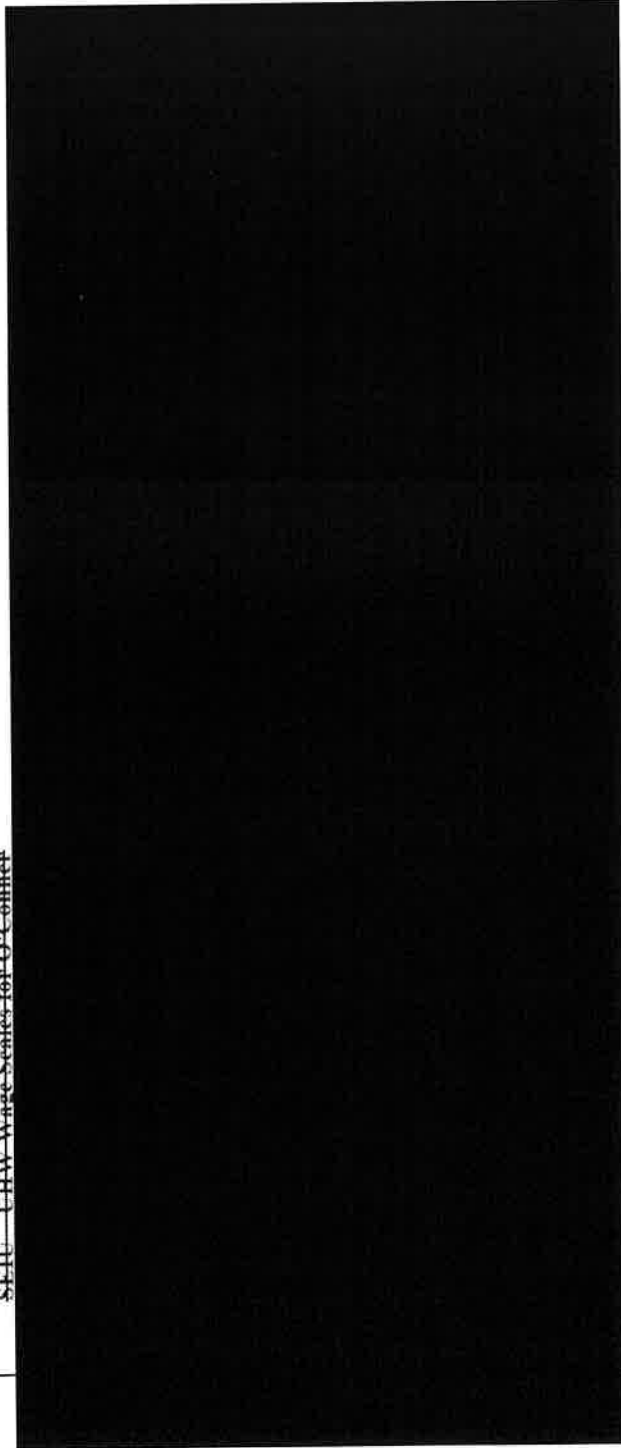
Appendix A: Cope Check Off Form

SEIU-UHW Committee on Political Education - COPE	
<input type="checkbox"/> \$5 per month <input type="checkbox"/> \$10 per month <input type="checkbox"/> \$ _ per month	<p>In order to build political power for healthcare workers and make healthcare a priority for public officials. I hereby authorize SEIU United Healthcare Workers-West to file this payroll deduction with my employer and for my employer to forward the amount specified as a voluntary contribution to SEIU COPE and to transfer such funds to SEIU United Healthcare Workers-West. This authorization shall remain in full force and effect until revoked in writing by me. This authorization is voluntarily made on my specific understanding that:</p> <p>I am not required to sign this form or make COPE contributions as a condition of my employment or membership in the Union;</p> <ul style="list-style-type: none"> • I may refuse to contribute without any reprisal; • Only Union members and executive/administrative staff who are U.S. citizens are eligible to contribute to SEIU COPE; • The amounts on this form are merely a suggestion, and I may contribute more or less by this or some other means without fear or favor or discharge from the Union or my employer. <p>SEIU COPE uses the money it receives for political purposes, including but not limited to addressing political issues of public importance and contributing to and spending money in connection with federal, state and local elections. Contributions to SEIU COPE are not tax deductible for federal income tax purposes.</p>
First Name Middle	
Last Name	
Social Security Number	
Employer	
Job Title or Department	
Phone Number	
Cell Phone	
Email	
<p>Signature _____</p> <p>Date _____</p>	

REDACTED

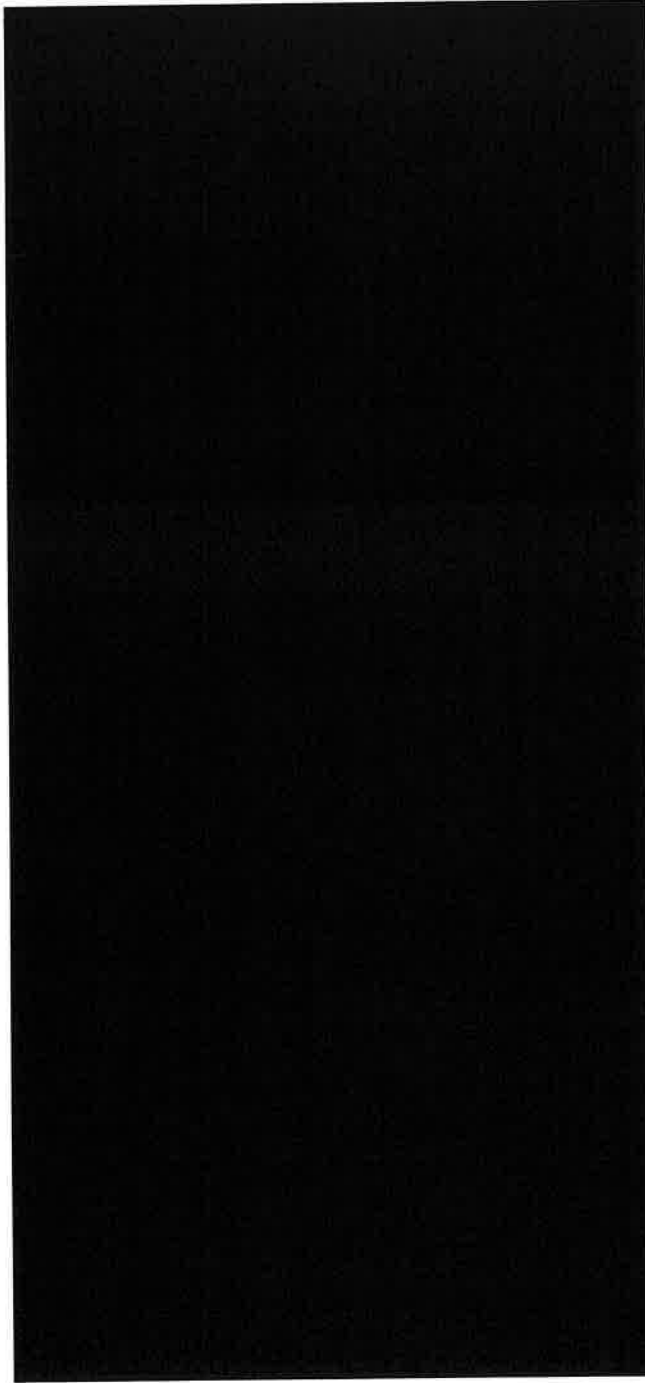
Appendix B: Wage Scales – Effective November 1, 2018

SEIU UHW Wage Scales for O'Connor



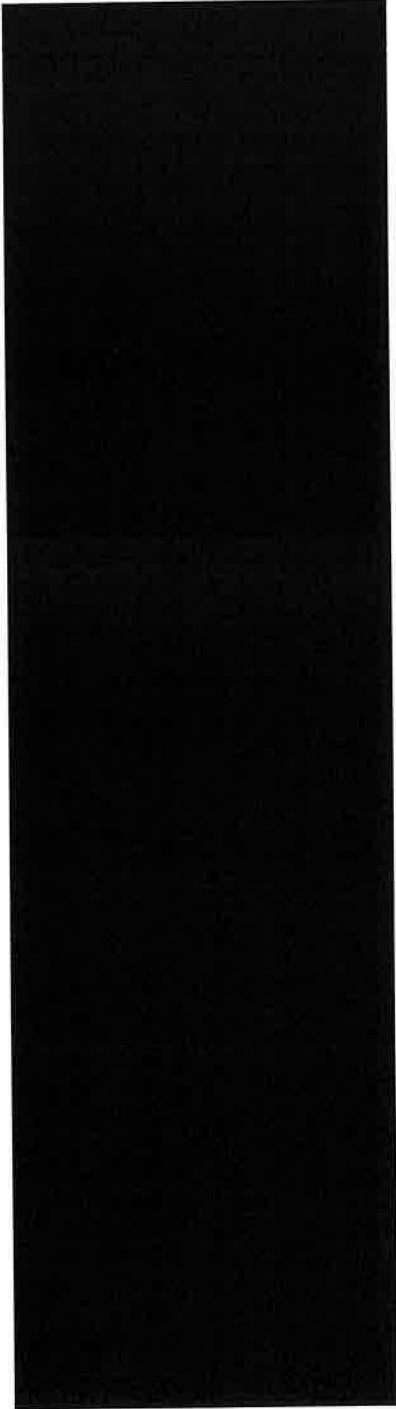
Appendix B
86

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Appendix B
87

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Appendix B
88

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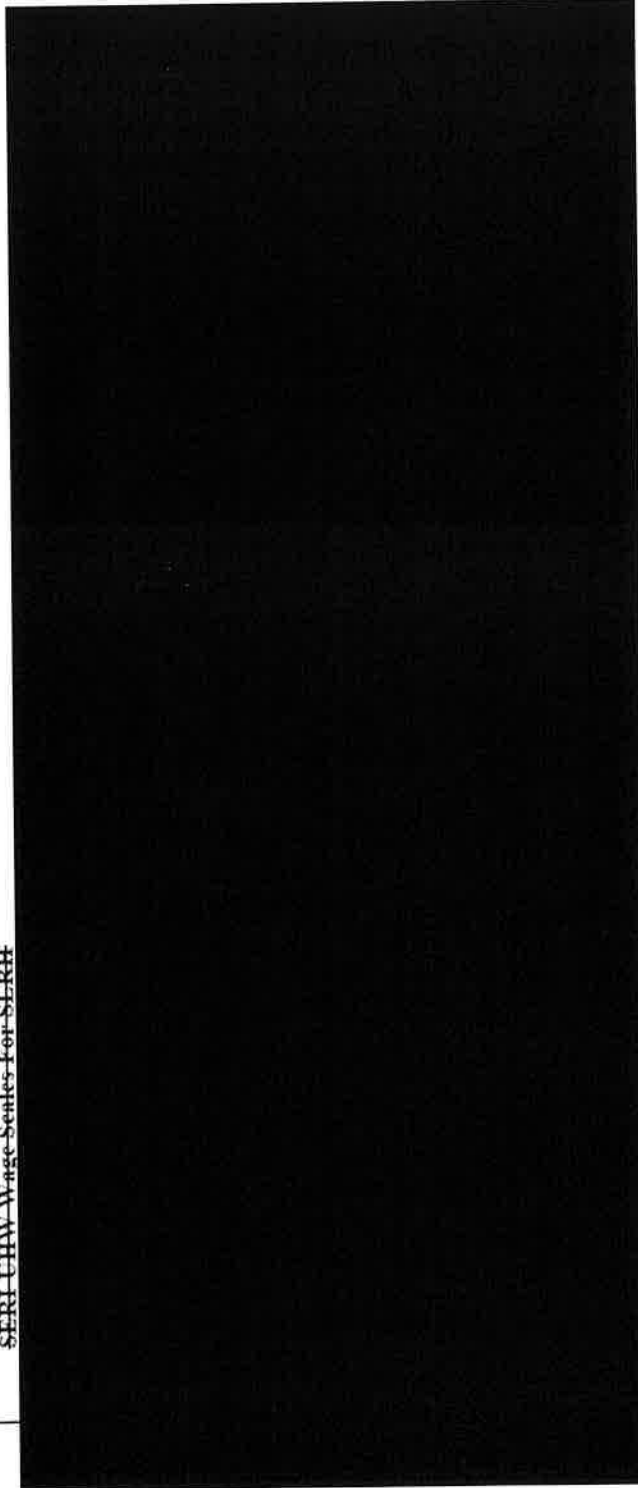
SERU ITHW Wage Scales For O'Connor Tech



Appendix B
89

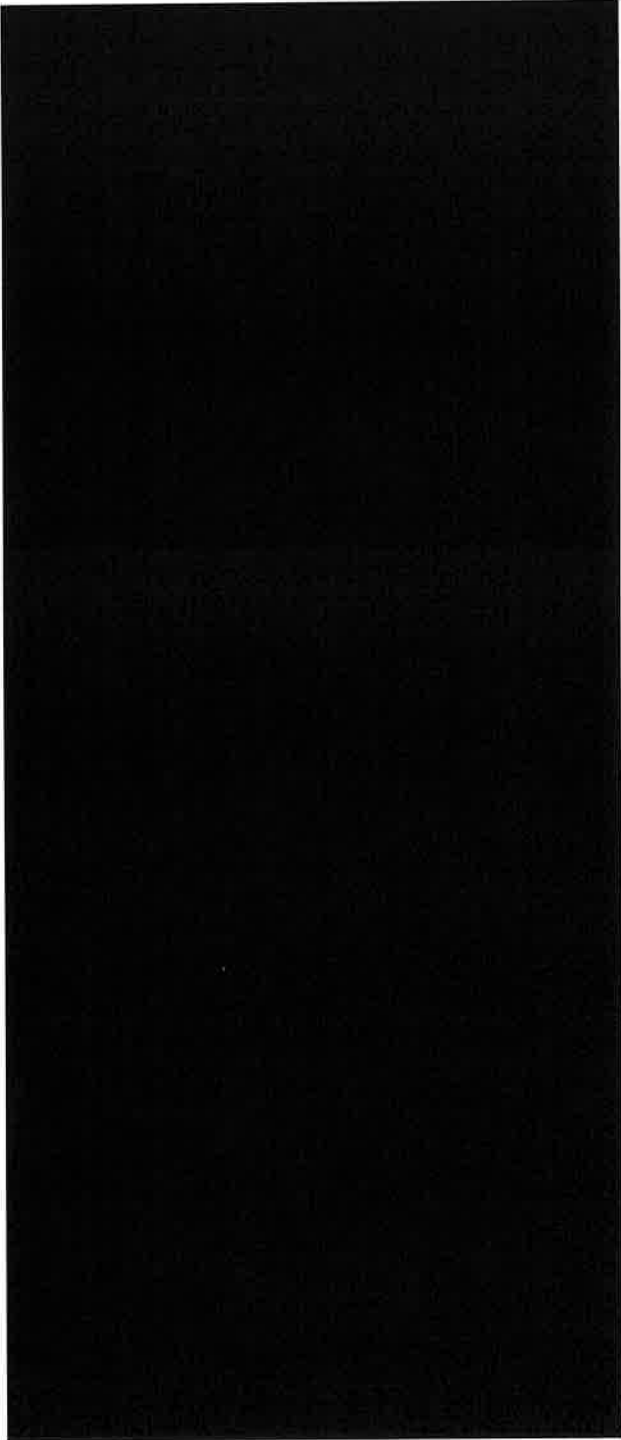
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SERI UHW Wage Scales For SLRH



Appendix B
99

REDACTED



Appendix B
94

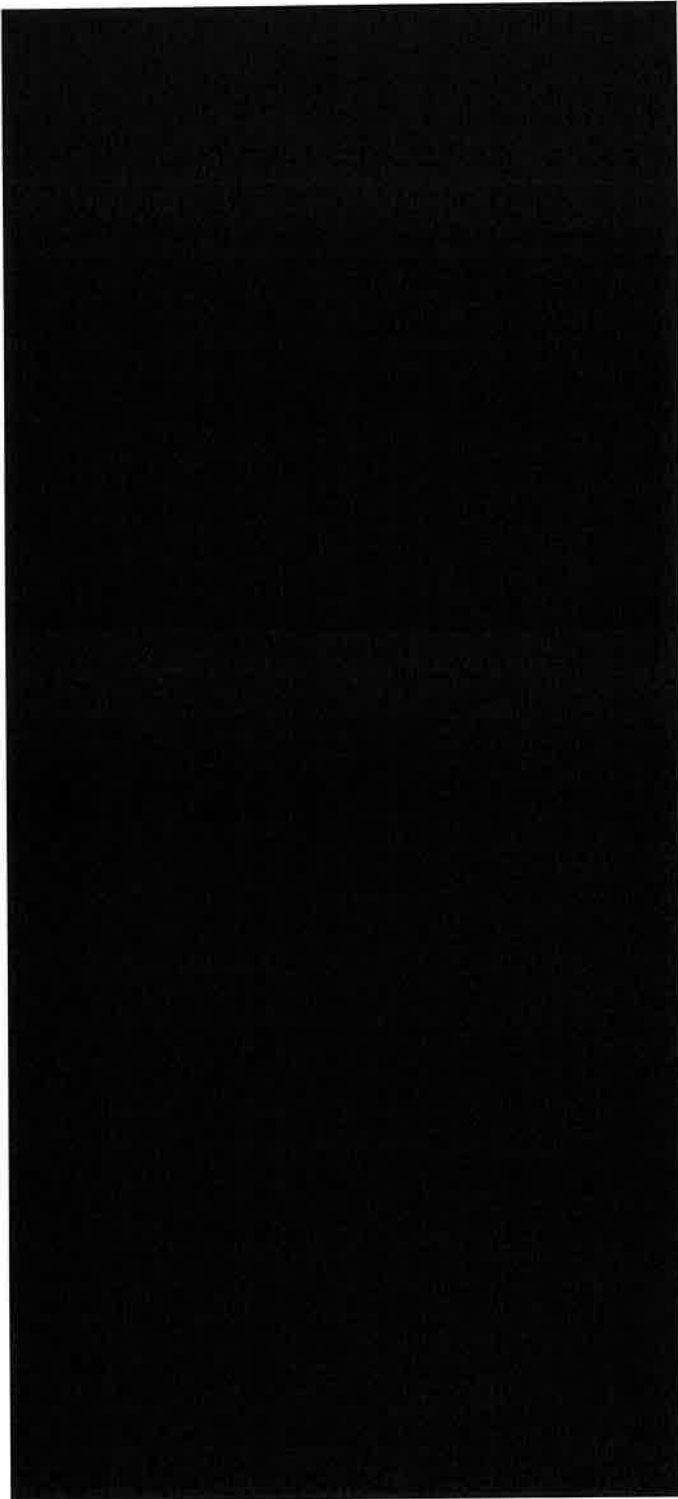
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SEIU-UHW Wage Scales For SFMC



Appendix B
92

REDACTED

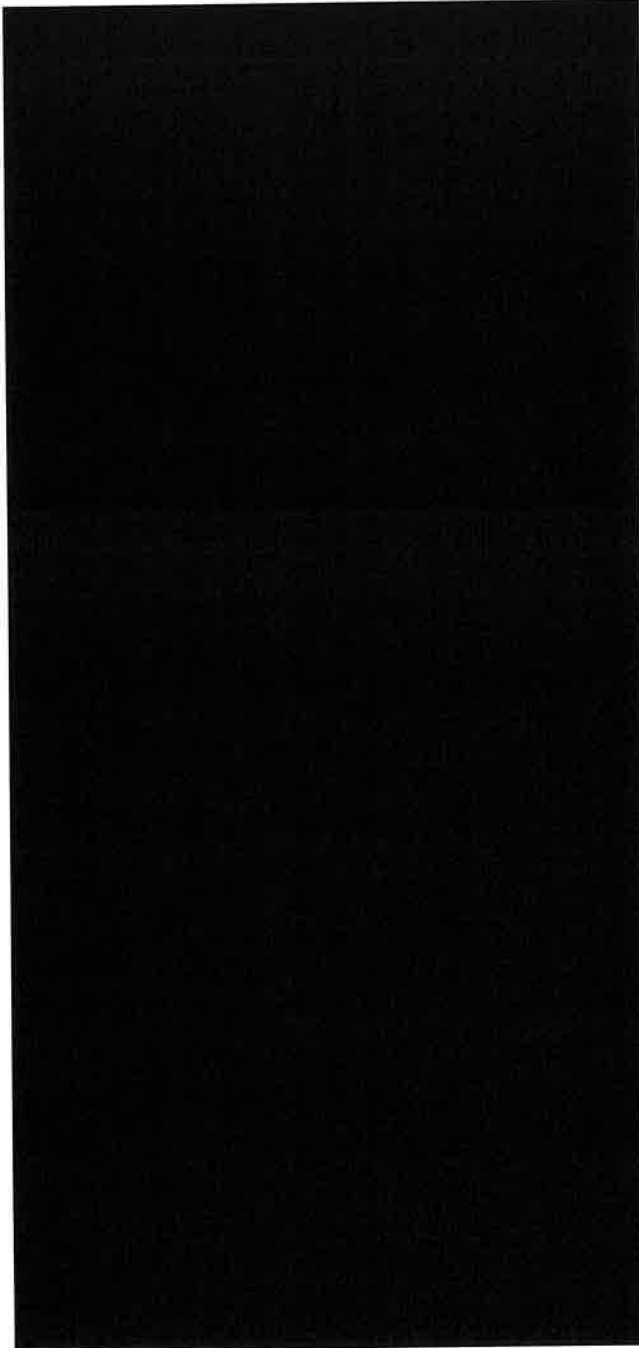


Appendix B
93

The image shows a dark, textured surface, possibly a book cover or a piece of aged paper. The color is a deep, mottled black or dark brown. There are subtle variations in tone and texture throughout, with some areas appearing slightly lighter or more grainy than others. The overall appearance is aged and somewhat worn, with no discernible text or figures.

87

REDACTED



Appendix B
95

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SEIU UHW Wage Survey For SVMC

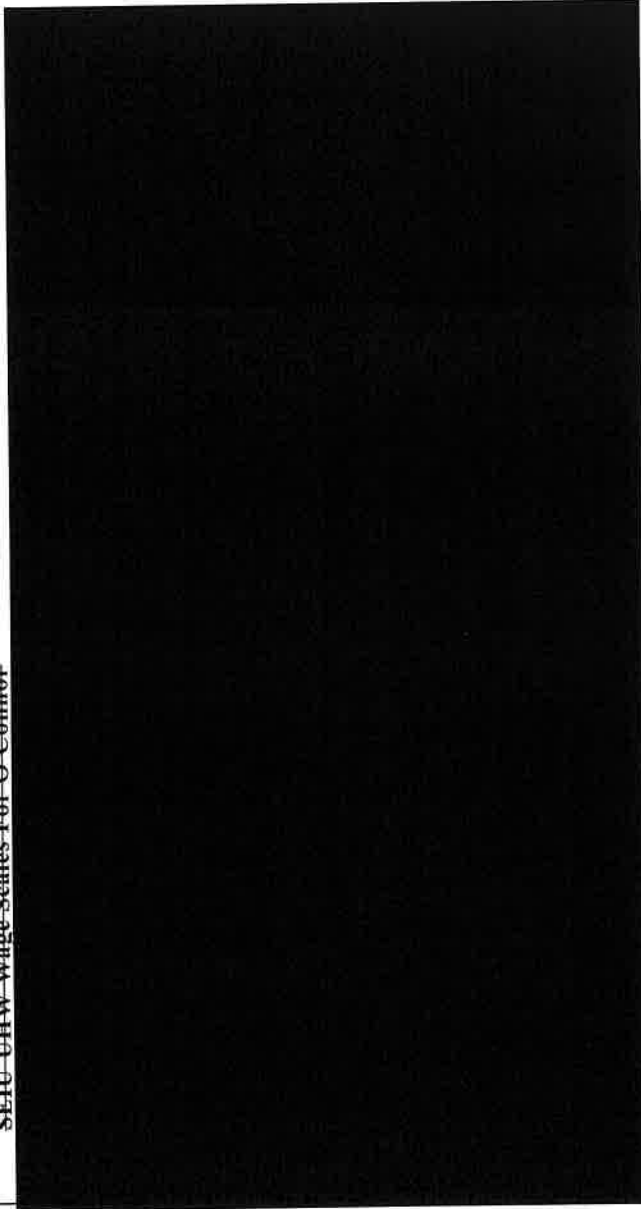
Appendix B
96

Appendix B
76

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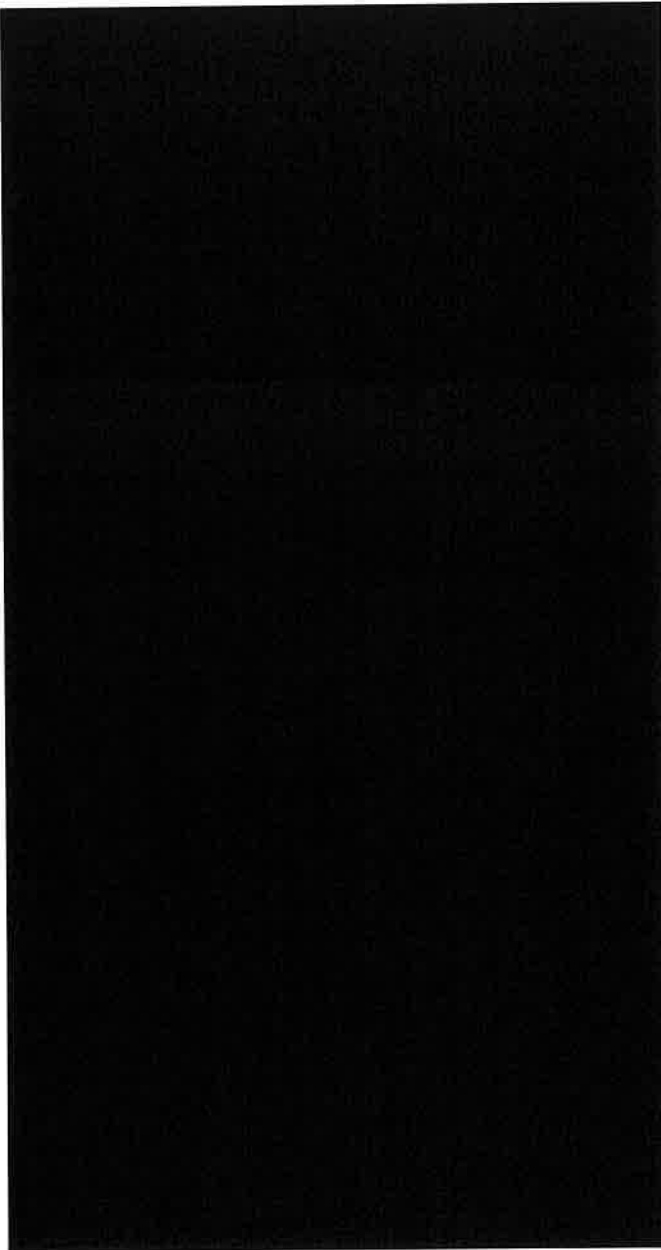
Appendix B: Wage Scales Effective November 1, 2019

SEIU UHW Wage Scales For O'Connor



Appendix B
98

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Appendix B
99

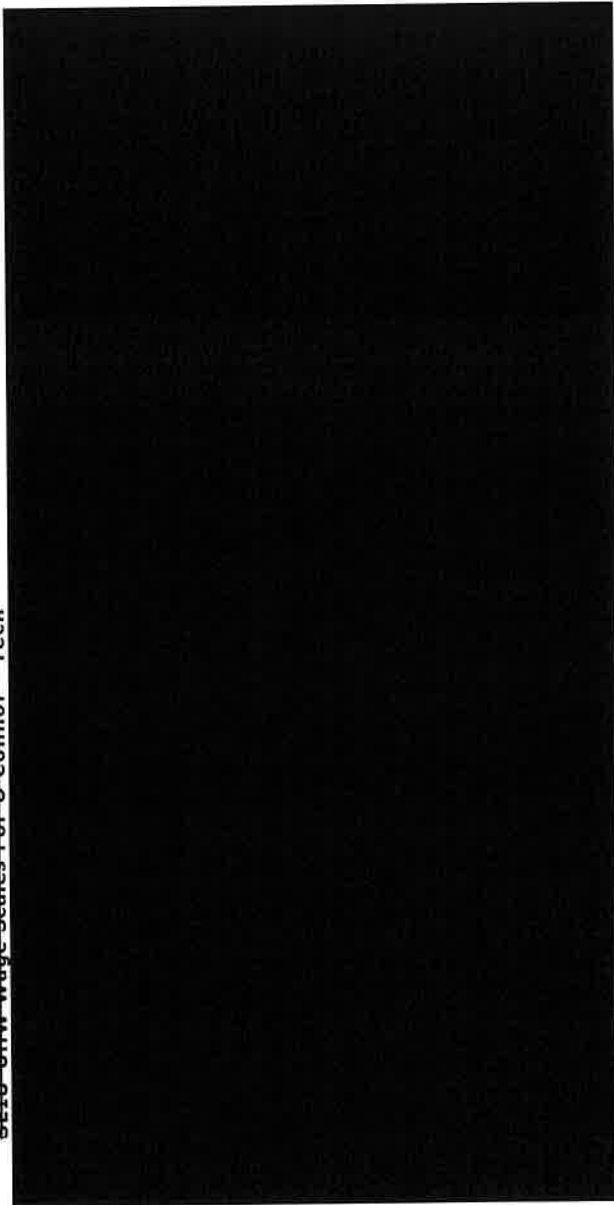
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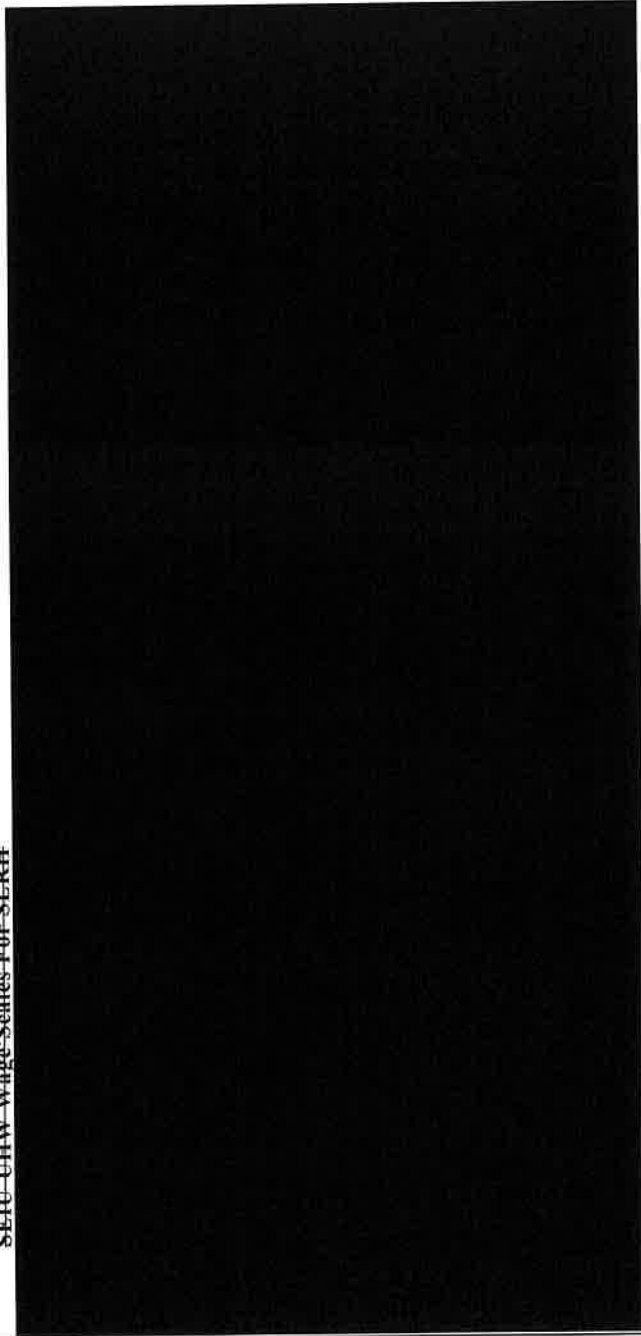
SEIU UHW Wage Scales For O'Connor Tech



Appendix B
101

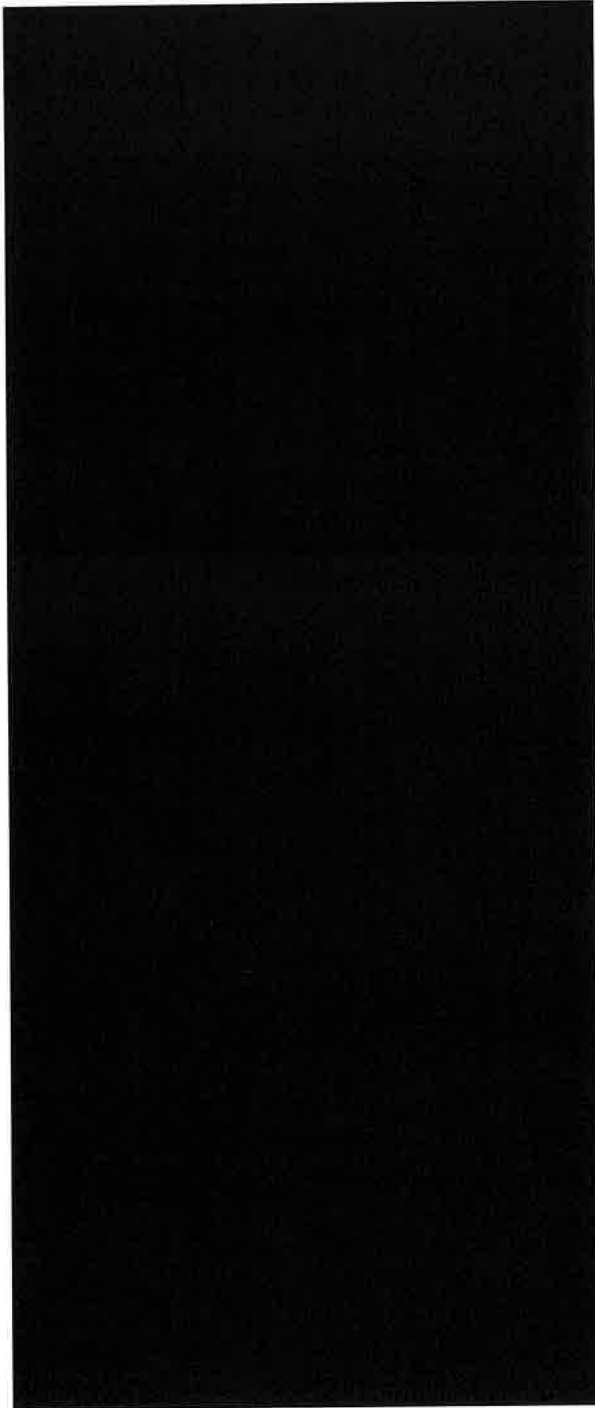
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SEIU UHW Wage Seates For SLRH



Appendix-B
102

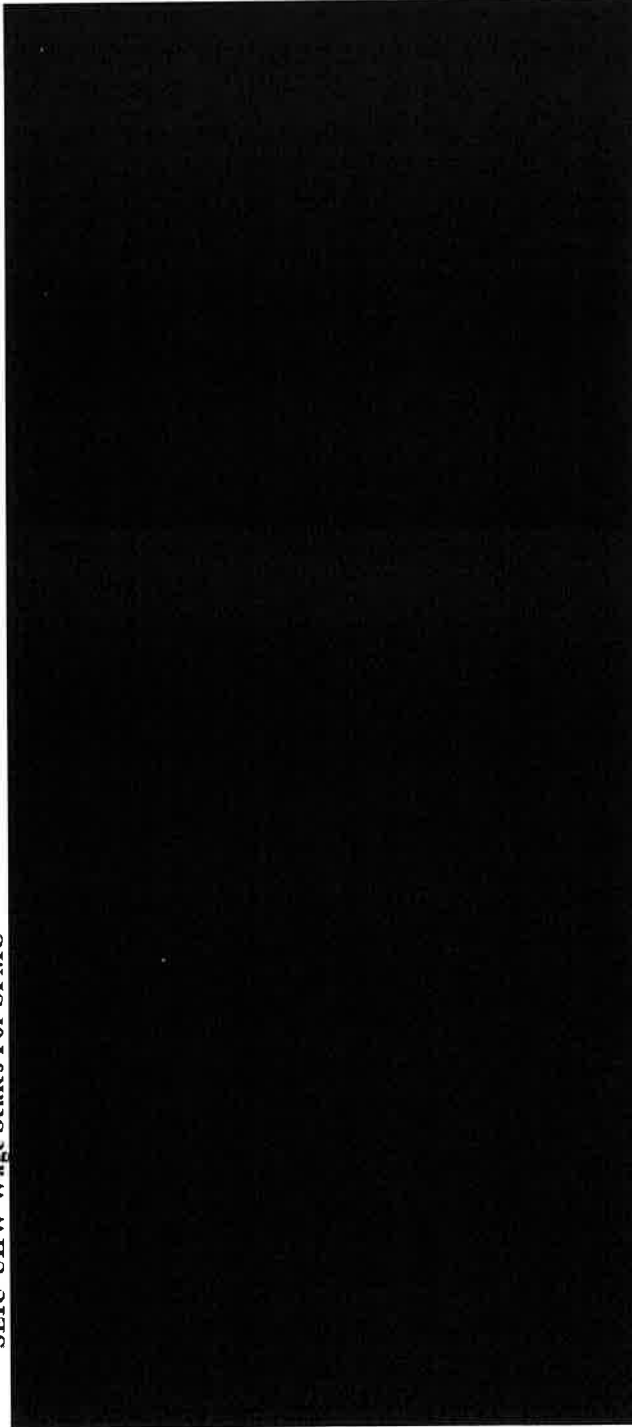
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Appendix B
-103

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SEIU-UHW Wage Scales For SFMC

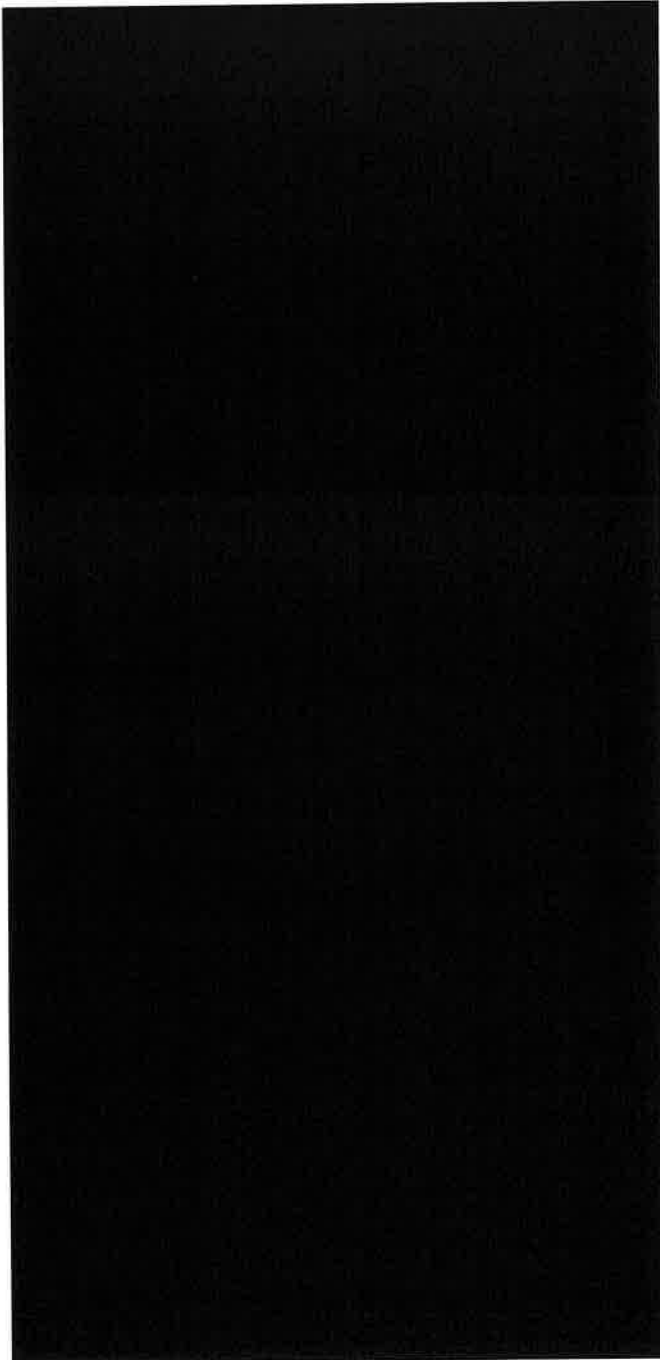


Appendix B
104

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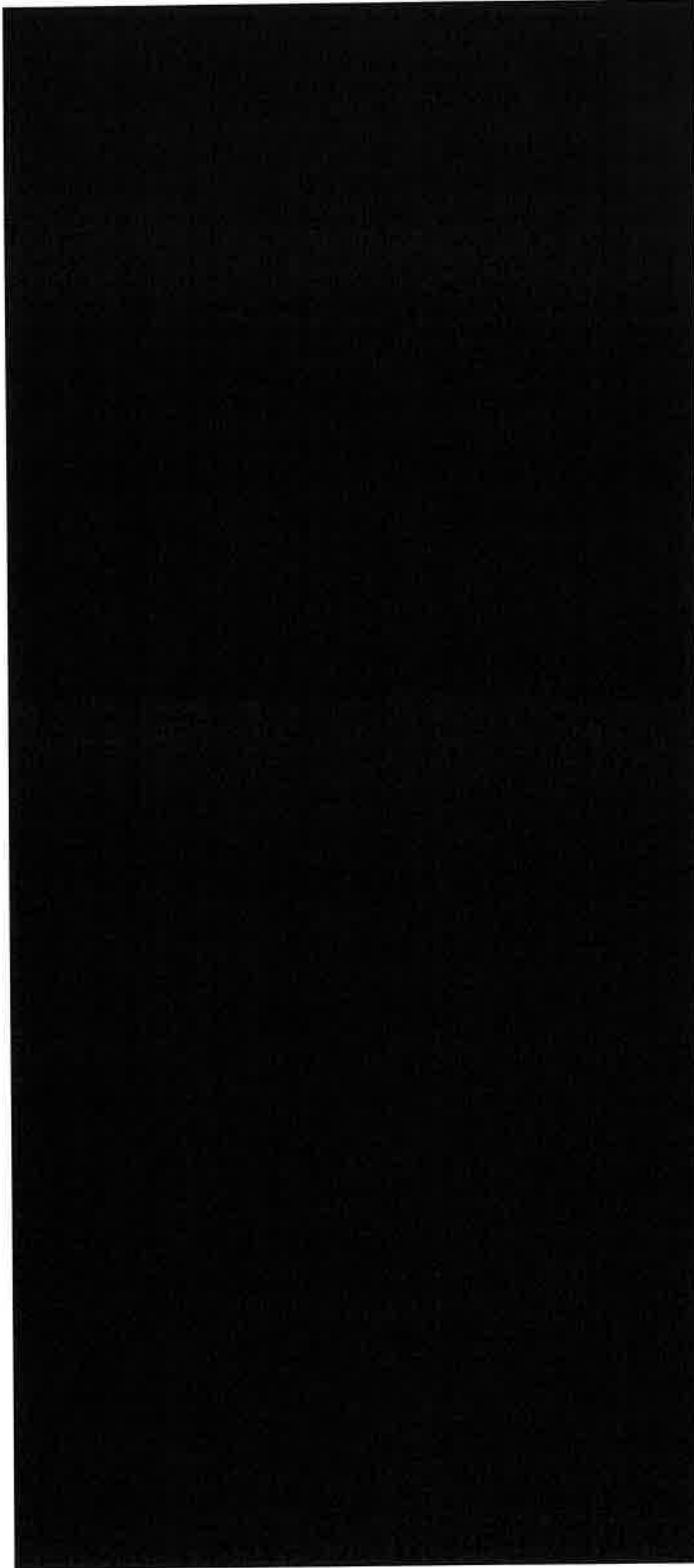


Appendix B
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SEIU UHW Wage Scales For SVWC



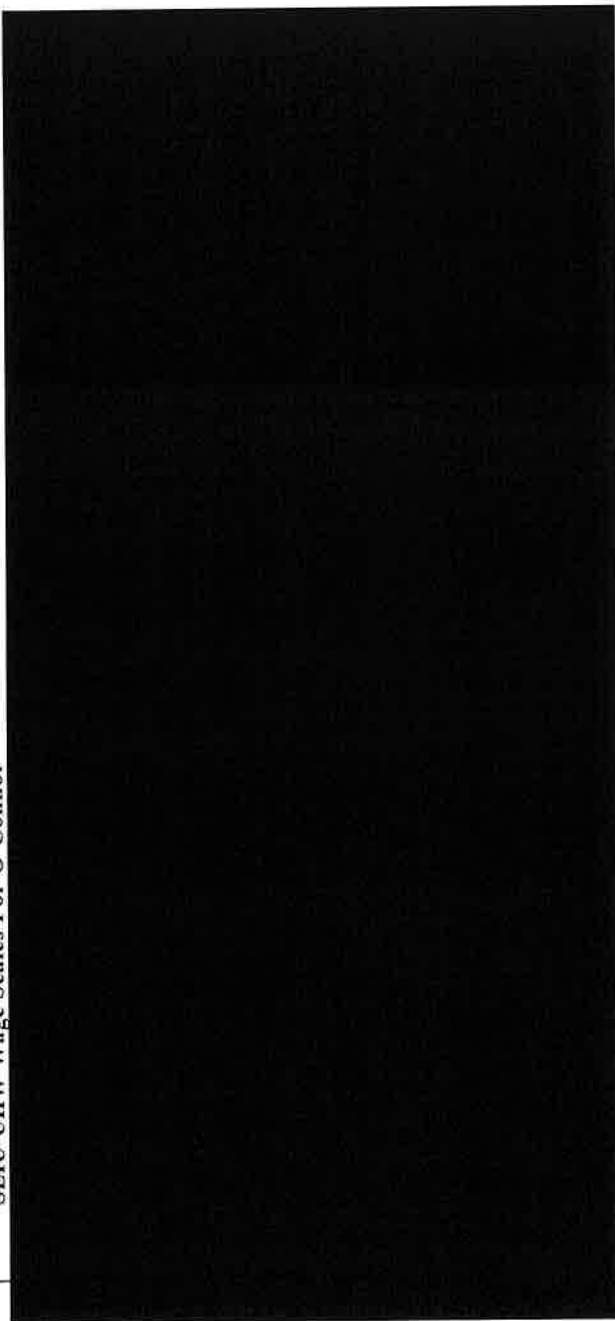
Appendix B
108

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Appendix B: Wage Scales - Effective November 1, 2020

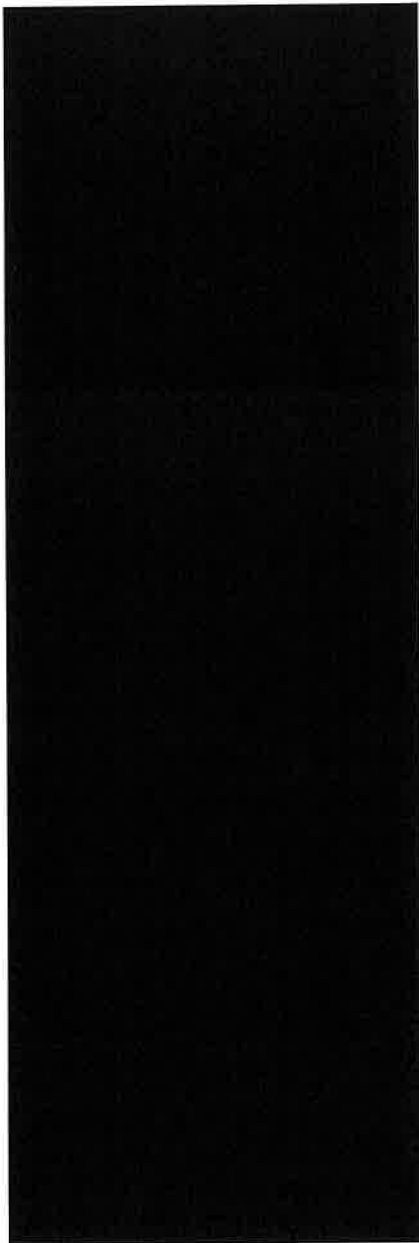
SEIU UHW Wage Scales For O'Connor



Appendix-B
110

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Appendix B
112

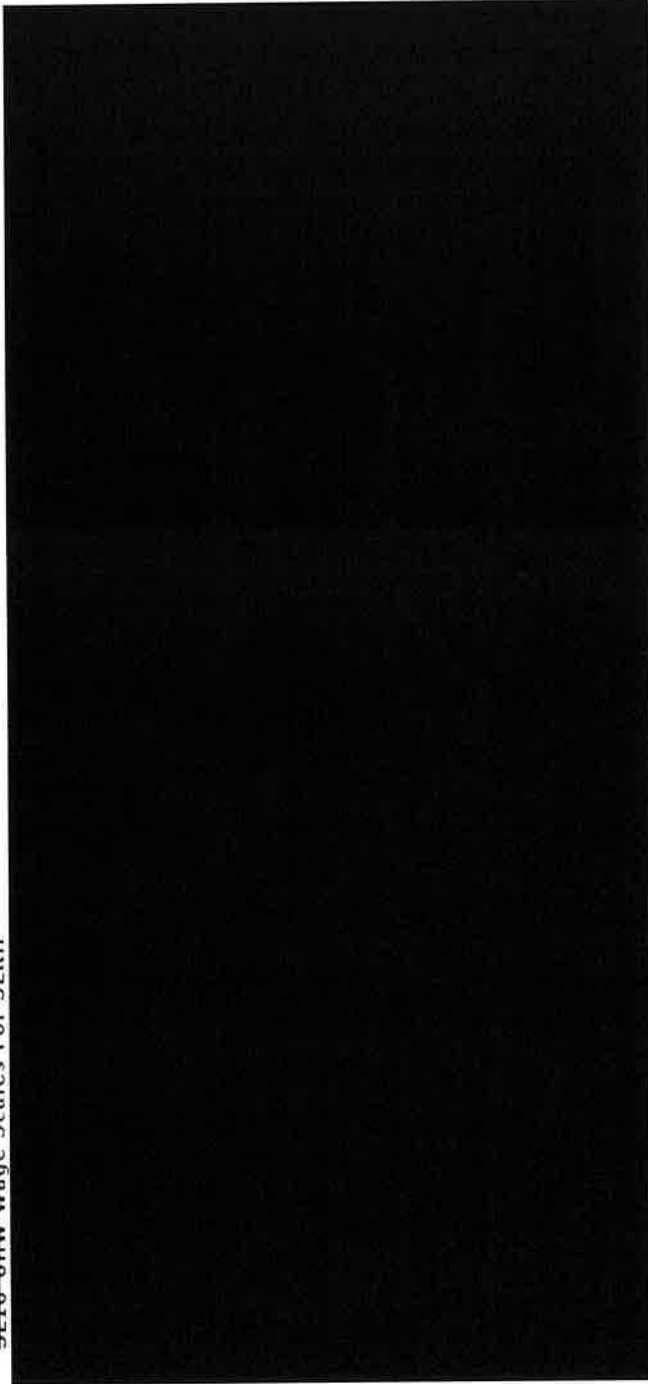
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SEIU UHW Wage Scales For O'Connor Tech

Appendix B
113

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SEIU UHW Wage Scales for SEIU



Appendix B
111

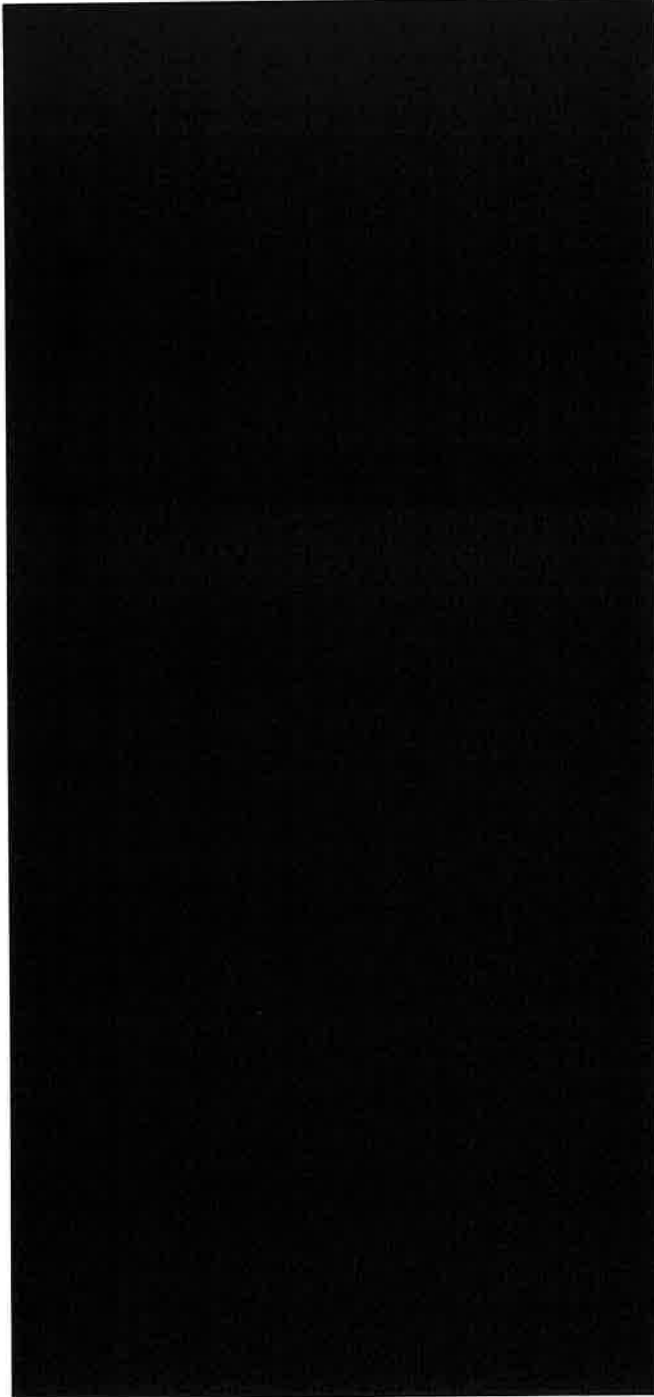
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Appendix B
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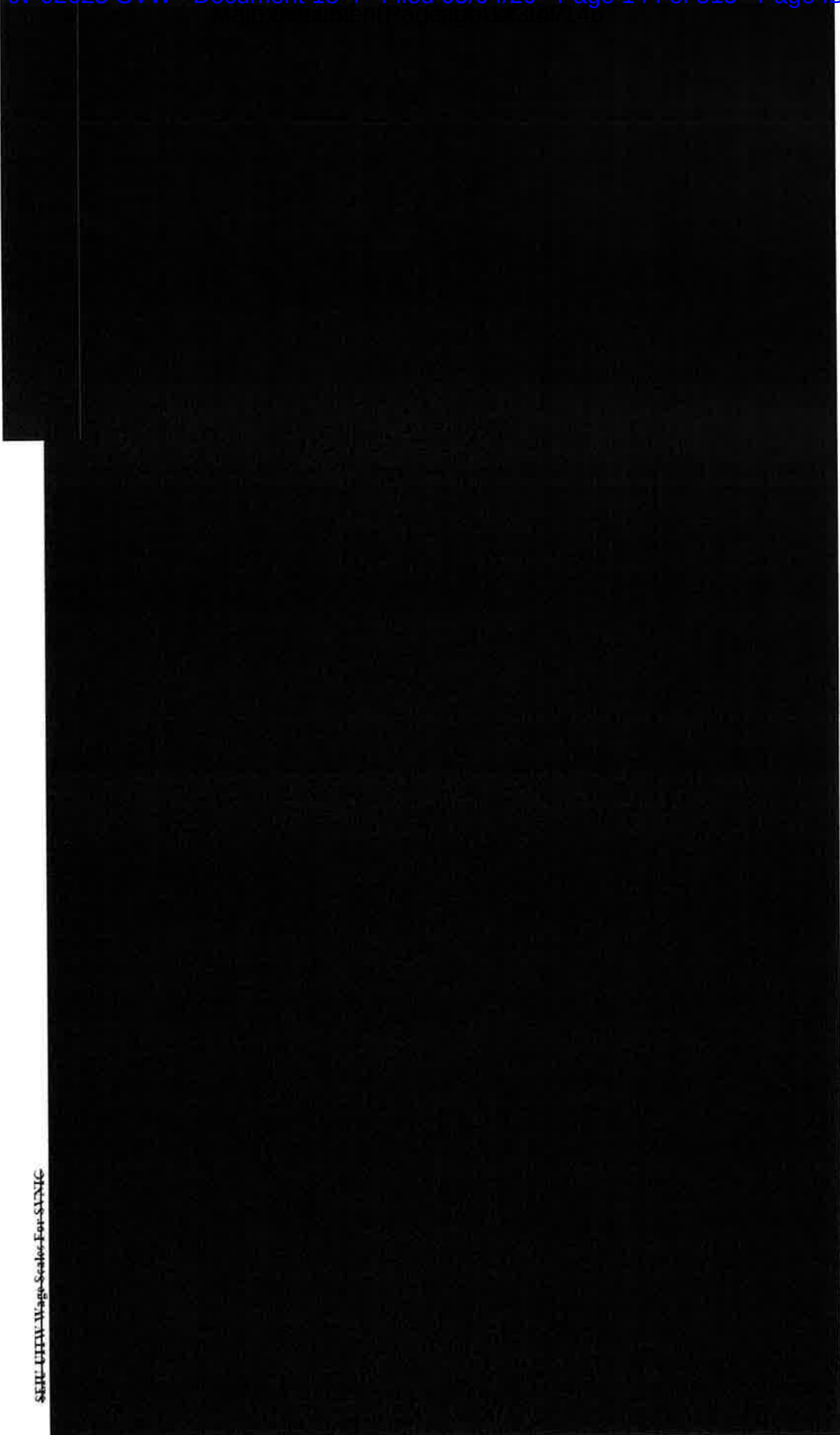
Appendix B
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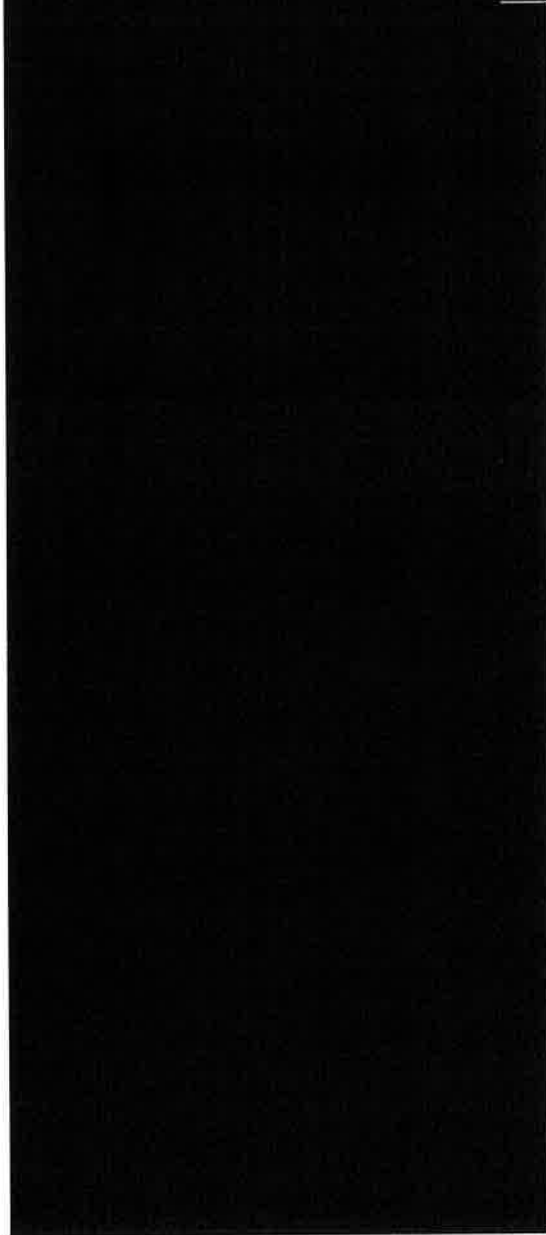
Appendix B
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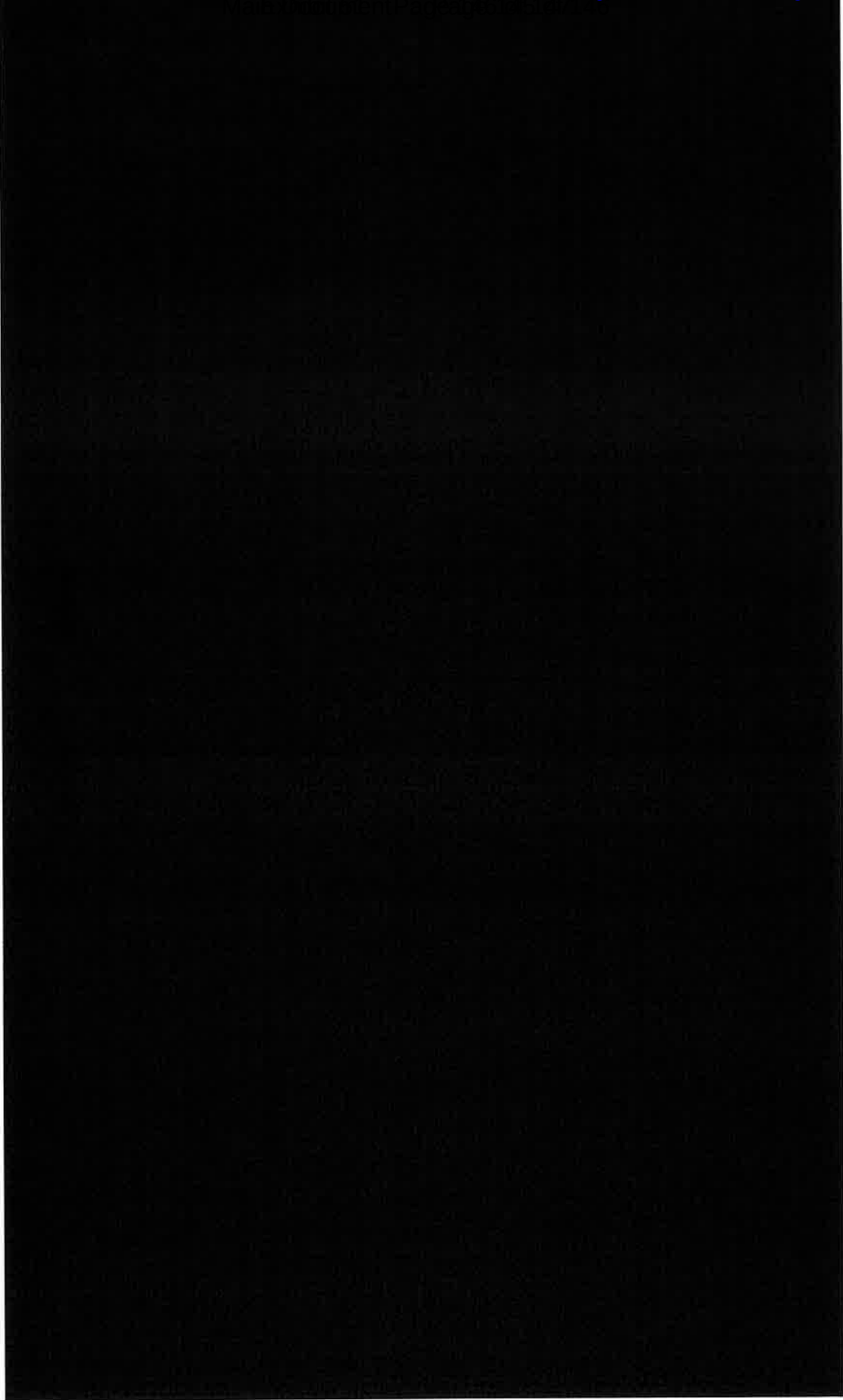
SEE CHW-Wage-Scales-For-Sizing

REDACTED



Appendix B
129

REDACTED



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Appendix B
121

EXHIBIT 52

FORM NLRB-501
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 31-CA-255580	Date Filed 1/31/2020

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Verity Health Systems of California, Inc.		b. Tel. No. 424-367-0733
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 2040 E Mariposa Avenue El Segundo, CA 90245	e. Employer Representative Steven Sharrer, Chief Human Resources Officer	
	g. e-mail stevesharrer@verity.org	
	h. Number of workers employed 500	
i. Type of Establishment (factory, mine, wholesaler, etc.) Hospital	j. Identify principal product or service Healthcare Services	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (11) subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
Within the last six months, Verity Health Systems of California, Inc through its officers, agents, and employees has refused to engage in effects bargaining with the California Nurses Association regarding the closure of Saint Vincent Medical Center in violation of section 8 (a)(5) of the Act.

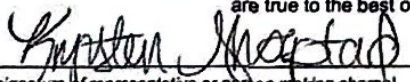
3. Full name of party filing charge (if labor organization, give full name, including local name and number)
California Nurses Association

4a. Address (Street and number, city, state, and ZIP code) 155 Grand Avenue Oakland, CA 94612	4b. Tel. No. 510-273-2273
	4c. Cell No. 510-761-1522
	4d. Fax No. 510-663-4822
	4e. e-mail kskogstad@calnurses.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
National Nurses United

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.


(signature of representative or person making charge)

Kyrsten Skogstad, Legal Counsel

(Print/type name and title or office, if any)

Tel. No. 510-273-2273
Office, if any, Cell No. 510-761-1522
Fax No. 510-663-4822
e-mail kskogstad@calnurses.org

Address 155 Grand Avenue, Oakland, CA 94612

Date January 31, 2020

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

EXHIBIT 53

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
First Amended **CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE

Case
31-CA-255580Date Filed
Mar 20, 2020**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Verity Health Systems of California, Inc.		b. Tel. No. 424-367-0733
		c. Cell No.
		f. Fax. No.
d. Address (Street, city, state, and ZIP code) 2040 E Mariposa Avenue El Segundo, CA 90245	e. Employer Representative Steven Sharrer, Chief Human Resources Officer	g. e-mail stevesharrer@verity.org
		h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Hospital	j. Identify principal product or service Healthcare Services	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Verity Health Systems of California, Inc. through its officers, agents, and employees has refused to engage in effects bargaining with the California Nurses Association (CNA) regarding the closure of Saint Vincent Medical Center and failed to provide CNA with adequate advance notice of such closure to allow for meaningful effects bargaining in violation of section 8(a)(5) of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

California Nurses Association

4a. Address (Street and number, city, state, and ZIP code)

155 Grand Avenue
Oakland, CA 94612

4b. Tel. No.

510-273-2273

4c. Cell No.

510-761-1522

4d. Fax No.

510-663-4822

4e. e-mail

kskogstad@calnurses.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

National Nurses United

6. DECLARATION

I declare that I have read the above charge and that the statements
are true to the best of my knowledge and belief.

/s/ Kyrsten Skogstad

Kyrsten Skogstad, Legal Counsel

(signature of representative or person making charge)

(Print/type name and title or office, if any)

155 Grand Avenue, Oakland, CA 94612

Address

Date March 20, 2020

Tel. No.

510-273-2273

Office, if any, Cell No.

510-761-1522

Fax No.

510-663-4822

e-mail

kskogstad@calnurses.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

EXHIBIT 54

INTERNET
 FORM NLRB-501
 (2-08)

UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

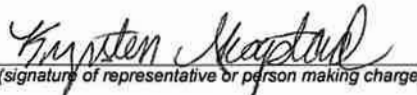
DO NOT WRITE IN THIS SPACE

Case
 31-CA-256890

Date Filed
 2/21/2020

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Verity Health Systems of California, Inc.		b. Tel. No. 426-367-0733	
		c. Cell No.	
		f. Fax No.	
d. Address (Street, city, state, and ZIP code) 2040 E Mariposa Avenue El Segundo, CA 90245		e. Employer Representative Steven Sharrer, Chief Human Resources Officer	
		g. e-Mail stevesharrer@verity.org	
		h. Number of workers employed 500+	
i. Type of Establishment (factory, mine, wholesaler, etc.) Hospital		j. Identify principal product or service Healthcare Services	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six months, Verity Health Systems of California, Inc., through its officers, agents, and employees has engaged in bad faith bargaining with the California Nurses Association regarding bargaining the effects of the closure of St. Vincent Medical Center in violation of section 8(a)(5) of the Act.			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) California Nurses Association			
4a. Address (Street and number, city, state, and ZIP code) 155 Grand Avenue Oakland, CA 94612		4b. Tel. No. 510-273-2273	
		4c. Cell No. 510-761-1522	
		4d. Fax No. 510-663-4822	
		4e. e-Mail kskogstad@calnurses.org	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) National Nurses United			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Kyrsten Skogstad, Legal Counsel (signature of representative or person making charge) (Print/type name and title or office, if any)		Tel. No. 510-273-2273	
		Office, if any, Cell No. 510-761-1522	
		Fax No. 510-663-4822	
		e-Mail kskogstad@calnurses.org	
Address 155 Grand Avenue, Oakland, CA 94612		Feb. 21, 2020 (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 55

CAROL A. IGOE (SBN 267673)
KYRSTEN B. SKOGSTAD (SBN 281583)
NICOLE J. DARO (SBN 2769480)
CALIFORNIA NURSES ASSOCIATION
155 Grand Ave.
Oakland, CA 94612
(510) 273-2200 (telephone)
(510) 663-4822 (facsimile)
cigoe@calnurses.org
kskogstad@calnurses.org
ndaro@calnurses.org
Attorneys for Plaintiff
CALIFORNIA NURSES ASSOCIATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re	)	Dist. Case No.
	)	Lead Bk Case No. 2:18-bk-20151-ER
VERITY HEALTH SYSTEM OF	)	Chapter 11
CALIFORNIA, INC., <i>et. al.</i>,	)	Adv. Proc No. 2:20-ap-1051-ER
Debtors and Debtors in	)	NOTICE OF MOTION AND
Possession.	)	MOTION OF PLAINTIFF FOR
	)	WITHDRAWAL OF REFERENCE
	)	OF ADVERSARY PROCEEDINGS
	)	PENDING IN BANKRUPTCY
CALIFORNIA NURSES	)	COURT
ASSOCIATION (CNA)	)	<u>Hearing:</u>
	)	Date: to be determined
Plaintiff,	)	Time: to be determined
	)	Courtroom: to be determined
v.	)	Assigned to the Honorable (unknown)
VERITY HEALTH SYSTEMS OF)	
CALIFORNIA, INC., a California)	
Corporation; ST. FRANCIS MEDICAL)	
CENTER, an Affiliate; ST. VINCENT)	

1 MEDICAL CENTER, an Affiliate; }
2 SETON MEDICAL CENTER, an }
3 Affiliate; ST. FRANCIS MEDICAL }
4 CENTER OF LYNWOOD, an Affiliate; }
5 ST. VINCENT DIALYSIS CENTER, }
6 INC., an Affiliate; VERITY }
7 HOLDINGS, LLC, an Affiliate; }
8 DEPAUL VENTURES, LLC, an }
9 Affiliate; RICHARD ADCOCK, an }
Individual; STEVEN SHARRER, an }
Individual, and DOES 1 through 500, }
Defendants. }

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TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on a date and time to be set upon assignment of this matter to a District Judge, plaintiffs in the above-captioned action (collectively, “Plaintiffs”), will, and hereby do, move this Court for an order immediately withdrawing, for all purposes, the reference of this action to the United States Bankruptcy Court for the Central District of California in which the Chapter 11 bankruptcy case of the Verity Health Systems of California, Inc., et. al. is pending (the “Motion”).

This Motion is made pursuant to 28 U.S.C. § 157(d), and other applicable law on the grounds that:

(1) this action involves federal claims for relief under the WARN Act, 29 USC § 2101, et. seq., the resolution of which requires consideration of laws of the United States regulating organizations or activities affecting interstate commerce, for which withdrawal of the reference is mandatory and which must be tried in the District Court pursuant to 28 U.S.C. § 157(d); and

(2) to the extent not mandatory, permissive withdrawal of the reference is appropriate given the “non-core” nature of this proceeding, the presence of common law state claims, Plaintiff’s asserted right to a jury trial, and to advance the interests of judicial economy and efficiency.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this notice of Motion and Motion, the accompanying memorandum of points and authorities, the complaint and record in the adversary proceeding and the pending chapter 11 bankruptcy case of Verity Health Systems of California, et. al. (“Verity”), all matters that are subject of judicial notice, and any other or further argument and evidence that may be presented to the Court before or any hearing on this Motion.

1 **PLEASE TAKE FURTHER NOTICE** that CNA will serve this Notice
2 of Motion and Motion on the parties set forth in the Proof of Service attached
3 hereto. A response to this Motion must be filed in accordance with Local Rule 7-9.

4 **PLEASE TAKE FURTHER NOTICE** that, in the event that the Court
5 sets a hearing on the Motion, CNA shall provide notice of entry of the order setting
6 the hearing as directed by the Court.

7 **PLEASE TAKE FURTHER NOTICE** that this Motion is made
8 following good faith efforts at conference of counsel pursuant to Local Rule 7-3
9 which occurred between February 28 and March 18, 2020.

10
11 Dated: March 19, 2020

Respectfully submitted,

12 CALIFORNIA NURSES ASSOCIATION
13 LEGAL DEPARTMENT
14

15 By: /s/ Carol A. Igoe

16 Carol A. Igoe

17 Counsel for Plaintiff

18 California Nurses Association
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I. INTRODUCTION

Plaintiff California Nurses Association (“CNA”) filed an Adversary Proceeding Complaint in the Central District of California Bankruptcy Court against several Institutional Defendants that are Debtors in the related bankruptcy case, and two Individual Defendants who are not. CNA sues based on the Institutional Defendants’ failure to comply with California and Federal Worker Adjustment and Retraining Notification (“WARN”) Acts when they permanently closed St. Vincent Medical Center in Los Angeles (the “Hospital” or “St. Vincent”) without providing 60 days’ advance notice to CNA and the St. Vincent nurses. Relatedly, CNA also sues all Defendants for fraudulent concealment and negligent misrepresentation based on their representations about the probability that the Hospital would close.

CNA now respectfully moves this Court to withdraw the reference pursuant to 28 U.S.C. § 157(d) on the bases that both mandatory and permissive withdrawal are warranted. While CNA moves to withdraw the reference for all of its claims, for the sake of clarity, it does not move to withdraw the reference for its requested relief that any recovery in this case be granted administrative claim priority. This determination is within the purview of the bankruptcy court and a secondary issue of this case in any event.

Withdrawal of the reference is mandatory because this case presents three substantial and material questions of a non-bankruptcy federal law, namely the federal WARN Act. First, adjudication requires resolution of the novel question of whether a notice is legally ineffective for all WARN Act purposes where it forecasts sale and continued operation of the business, as well as continued employment long after Defendants’ knew such an outcome was unlikely. Second, adjudication requires resolution of the novel question regarding whether Defendants’ WARN Act Notice obligations were triggered as soon as Defendants’ first realized that sale of the Hospital was becoming increasingly unlikely and that

1 they intended to shut down the Hospital in the event the sale fell through. Third,
2 this case requires close consideration of complex issues of joint and several
3 liability between multiple entities, including entities that are not in a direct parent-
4 subsidiary relationship.

5 In the alternative, permissive withdrawal is warranted. CNA's Complaint
6 presents non-core claims that are not created by bankruptcy law, could exist
7 outside bankruptcy court, and would exist based on Defendants' misconduct even
8 if no Defendant had filed for bankruptcy. Furthermore, three out of four of the
9 causes of action presented are state law claims. All four claims carry a right to a
10 jury trial. And CNA does not consent to final adjudication by the Bankruptcy
11 Court. Accordingly, efficiency will be promoted by having this matter adjudicated
12 by the District Court in the first instance to avoid probable duplication of judicial
13 management and consideration. Avoidance of duplicate attorney work before two
14 courts also supports withdrawal. Moreover, because CNA's Complaint does not
15 involve any bankruptcy questions, withdrawal does not implicate the uniform
16 administration of that area of the law. Nor is forum shopping implicated, as this
17 matter is yet in its infancy. Accordingly, even if the District Court finds that
18 withdrawal is not mandatory, permissive withdrawal is still warranted for good
19 cause shown.

20 II. FACTS

21 On March 5, 2020, CNA filed the Complaint underlying this motion as an
22 Adversary Proceeding in Bankruptcy Court against the entities Verity Health
23 Systems, Inc. ("Verity"), Verity Holdings, DePaul Ventures, St. Vincent Medical
24 Center, St. Vincent Dialysis Center, St. Francis Medical Center, Seton Medical
25 Center; and against the individuals Richard Adcock and Steven Sharrer.
26 Complaint at ¶¶ 8-21, 2:20-ap-01051-ER, Doc. 1. A copy of this Complaint is
27 attached to this pleading as Exhibit 1.

28 CNA is a labor union that represents hundreds of registered nurses who

1 worked at St. Vincent until Defendants permanently shut it down in January 2020.
2 Complaint at ¶ 7. CNA brings its Complaint on its own behalf, and in a
3 representative capacity, on behalf of the St. Vincent registered nurses. *Id.*

4 As most relevant to this Motion, CNA’s Complaint alleges that:

5 The Institutional Defendants in this matter are several hospitals, their parent
6 company, and related entities — all of which share common ownership, financial
7 control, management, directors, officers, operational control, and labor relations.
8 Complaint at ¶¶ 8-21, 60-82. In August 2018, the Institutional Defendants in this
9 matter filed for Chapter 11 relief. *Id.* at ¶ 23.

10 In about May 2019, Defendants entered an agreement to sell several
11 hospitals, including St. Vincent, to Strategic Global Management (“SGM”).
12 Complaint at ¶ 24. As part of that Agreement, public through the bankruptcy and
13 emphasized by Defendants, SGM agreed to hire “substantially all” the St. Vincent
14 employees. *Id.* at ¶ 25. Beginning in July 2019, CNA negotiated a new Collective
15 Bargaining Agreement with Defendants and SGM on behalf of the St. Vincent
16 nurses that would take effect once SGM took ownership of the Hospital. *Id.* at ¶¶
17 24-27.

18 In August 2019, Defendants sent the St. Vincent nurses a “Notice Pursuant
19 to Worker Adjustment and Retraining Notification Act and the California WARN
20 Act.” *Id.* at ¶ 28. It stated that while the sale of the Hospital to SGM was still
21 subject to certain contingencies, Defendants were optimistic that the sale would
22 close and SGM had agreed to employ substantially all the St. Vincent employees.
23 *Id.* at ¶¶ 29-30. During this same period, Defendants acknowledged to the
24 Bankruptcy Court, but did not share with employees, that if the sale did not close,
25 Defendants would likely shut down the St. Vincent. *Id.* at ¶ 31.

26 In September 2019, CNA, Defendants and SGM reached a new Collective
27 Bargaining Agreement that would govern the St. Vincent nurses’ terms and
28 conditions of employment once SGM became the owner. Complaint at ¶ 32.

1 In October 2019, Defendants sent the St. Vincent nurses a WARN Act
2 extension notice that stated:

3
4 Verity Health System of California, Inc. and certain affiliates
5 entered into a Court approved agreement (“Agreement”) to sell
6 substantially all of the assets of [the hospitals, including St.
7 Vincent,] to Strategic Global Management, Inc. * * * The
8 Agreement requires satisfaction of certain milestones to
9 complete the Sale. Not all of the milestones have been met.
10 Consequently, the separations of employment must be
11 postponed and will not occur at the time originally anticipated.
At this time, we anticipate the Sale and separations of
employment will occur between November 17, 2019 and
November 30, 2019.”

12 Complaint at ¶ 33.

13 Nothing in the October Warn Notice indicated uncertainty about whether the
14 sale would close, only when. Because the October WARN Notice stated that the
15 Defendants anticipated close of the sale and because Defendants had previously
16 represented that SGM would continue to employ substantially all the nurses, this
17 Notice effectively communicated to CNA and the St. Vincent nurses that
18 substantially all the nurses’ employment would continue. Complaint at ¶ 34.

19 From about November 13-26, 2019, Defendants bargained with CNA over
20 severance for the St. Vincent nurses who would not be hired by SGM. Complaint
21 at ¶ 35. In this process, Defendants identified around nine nurses whose
22 employment it expected would not be continued. *Id.* Defendants communicated to
23 CNA that SGM would hire all the other St. Vincent nurses. *Id.* At no time during
24 this bargaining did Defendants express doubt or concern over whether SGM would
25 consummate the sale. *Id.* Based Defendants’ representations, CNA and the nurses
26 believed that the requirement that SGM hire “substantially all” the St. Vincent
27 employees meant that all but nine of the St. Vincent nurses would have continued
28 employment once the SGM sale closed and that those nine nurses would receive

1 severance pay. *Id.*

2 Also in November 2019, and before Defendants concluded severance
3 negotiations with CNA: Defendants learned that SGM could not obtain sufficient
4 financing to close the sale. Complaint at ¶ 35. SGM notified Defendants that it
5 believed issues of “Material Adverse Effect” prevented SGM from closing. *Id.* at ¶
6 39. And Defendants filed a “Plan B” motion under seal with the Bankruptcy Court
7 to ensure that employees did not learn that Defendants planned to permanently shut
8 down the Hospital if the sale to SGM fell through. *Id.* at ¶ 40. But Defendants did
9 not disclose these facts to CNA or the St. Vincent nurses.

10 Instead, on about November 25, 2019, Mr. Steven Sharrer, Verity’s Chief
11 Human Resources Officer, sent a WARN Act extension notice to CNA stating that
12 it anticipated the sale of St. Vincent to SGM would close between December 6,
13 2019 and December 19, 2019. *Id.* at ¶ 41. It also stated that the Defendants were
14 continuing “to work expeditiously for a prompt close of the sale with SGM.” *Id.*
15 And Defendants advised that in support of their efforts to promptly close the sale,
16 they had obtained a court order regarding the Attorney General conditions and
17 reached settlement with the U.S. Department of Health and Human Services, two
18 crucial matters that had to be resolved for sale closing. *Id.*

19 Because Defendants had already represented to CNA that SGM would
20 continue to employ substantially all the nurses, Defendants’ November WARN
21 Notice amounted to false assurance that the nurses would likely keep their jobs
22 because of the impending sale, when in fact Defendants already knew that the sale
23 was unlikely to close. Because of Defendants’ repeated assurances, St. Vincent
24 nurses did not seek other employment when they otherwise would have, and CNA
25 wasted time and money on bargaining strategies that it otherwise would not have
26 pursued. Complaint at ¶ 44.

27 On December 5, 2019, SGM failed to close the sale of St. Vincent Medical
28 Center by the deadline imposed by the bankruptcy court. Complaint at ¶ 47. By

1 December 16, 2019, Defendants were meeting with professional consultants to
2 plan the permanent closure of St. Vincent Medical Center. *Id.* at ¶ 48.

3 On December 18, 2019, Defendants emailed the St. Vincent nurses that the
4 sale of the Hospital to SGM did not close and so their employment with Verity
5 would “NOT end on December 19, 2019” as previously anticipated. Complaint at
6 ¶ 50. Defendants did not disclose that they had begun the process of permanently
7 closing St. Vincent because the sale had fallen through or that all the St. Vincent
8 nurses would lose their jobs as a result. *Id.* Instead, the notice merely stated that
9 Verity would advise them of “any further developments relating to [their]
10 employment.” *Id.* Nurses relied on Defendants’ December 18 assurance that their
11 employment with Verity would “NOT end,” and because of it, did not seek other
12 employment. Complaint at ¶ at 51.

13 By December 19, 2019, at the latest, Defendants’ counsel began researching
14 whether they could shoe-horn the closure of St. Vincent, still undisclosed to the
15 workforce, into an exception to the WARN Acts to avoid penalties for their failure
16 to timely disclose the planned shutdown. Complaint at ¶ 52.

17 On January 6, 2020, Defendants filed an emergency motion with the
18 Bankruptcy Court to shut down St. Vincent Medical Center. Complaint at ¶ 54.
19 The Motion expressed concern that once the fact that of an eminent shutdown was
20 public, turnover of nursing staff would be “likely to accelerate, making
21 maintenance of high-quality patient care more difficult, and, to the extent that
22 temporary nursing replacements are required, significantly more expensive.” *Id.*
23 On January 8, 2020, the Bankruptcy Court granted Defendants’ emergency motion
24 to shutdown St. Vincent. *Id.* at ¶ 55. On January 9, 2020, Defendants permanently
25 shut down St. Vincent’s emergency department. *Id.* at ¶ 56.

26 But it was not until January 13, 2020, that Defendants emailed CNA a new
27 WARN notice (dated January 10, 2020) that finally disclosed that Defendants were
28 shutting down St. Vincent Medical Center and all the nurses’ employment would

1 end between January 14, 2019 and January 27, 2020. Complaint at ¶ 57.
2 Defendants then shutdown the Hospital as announced in the January 2020 Notice,
3 and all the St. Vincent nurses lost their jobs with little to no notice or time to
4 secure alternative employment.

5 The lawsuit underlying this Motion followed.

6 **III. ARGUMENT**

7 **A. Withdrawal of the Reference Is Mandatory.**

8 All complaints related to a case under Title 11 are, as a general matter,
9 referred to the bankruptcy court. C.D. Cal. General Order 266. But withdrawal of
10 that reference is mandatory where resolution of the matter requires “consideration
11 of both title 11 and other laws of the United States regulating organization or
12 activities affecting commerce.” 28 U.S.C. § 157(d).

13 Courts have consistently found that the statutory mandatory withdrawal
14 requirements are met when the legal issues involve the substantial and material
15 consideration of non-bankruptcy federal law. *Security Farms v. Int’l Bhd. Of*
16 *Teamsters*, 124 F.3d 999, 1008 (9th Cir. 1997). “The issues in question must
17 require more than the mere application well-settled or hornbook non-bankruptcy
18 law; significant interpretation of the non-[Bankruptcy] Code statute must be
19 required.” *United Nat’l Ins. Co. v. Vicars Ins. Agency (In re Vicars Ins. Agency)*,
20 96 F.3d 949, 953 (7th Cir. 1996) (quotation marks and citation omitted). But the
21 legal questions involved need not be of “cosmic proportions.” *Id.* at 954.

22 Instead a federal issue is “substantial and material” if it requires something
23 more than the “routine application” of the non-bankruptcy federal laws. *Shugrne v.*
24 *Air Line Pilot’s Ass’n. Int’l. (In re Ionosphere Clubs Inc.)*, 922 F.2d 984, 995 (2d
25 Cir. 1990). “Under this standard, withdrawal is required where there is a question
26 of first impression.” *County of L.A. Tax Collector v. Bank of Am.*, 2:10-cv-03536-
27 SVW, *9 (C.D. Cal. June 29, 2010) (collecting cases establishing this rule).
28 “Withdrawal is also required if there is meaningful analysis and consideration of a

1 non-bankruptcy federal commerce law, even in the absence of a question of first
2 impression.” *Id.* (collecting cases establishing this rule). The reason being,
3 “Congress intended for difficult questions of non-bankruptcy federal law must be
4 addressed by Article III courts rather than Bankruptcy Courts.” *Id.* (citing *Northern*
5 *Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982); Alan N.
6 Resnick & Henry J. Sommer, eds., 1 *Collier on Bankruptcy* ¶ 3.04[2] (16th ed.
7 2010 supp.)).

8 CNA’s Federal WARN Act claim alleges that CNA and the St. Vincent
9 nurses were not provided with 60-days’ advance notice of the Hospital closure as
10 required by 29 U.S.C. § 2102. Because of the unusual of facts of this case this
11 claim present several substantial and material questions of non-bankruptcy federal
12 law, as detailed below. Moreover, federal labor laws of which the WARN Act is
13 included are precisely the type of laws governing interstate commerce that
14 Congress envisioned when it enacted Section 1157(d). *In re White Motor Corp.*,
15 42 B.R. 693, 700 (N.D. Ohio 1984) (approvingly citing to Representative Kramer’s
16 colloquy during consideration of the final version of Section 1157(d), in which he
17 explained that the phrase “activities affecting interstate commerce” refers to related
18 cases which require consideration of the ‘National Labor Relations Act, civil rights
19 laws, the Securities and Exchange Act of 1934 and similar laws’). Accordingly,
20 withdrawal of the reference is in this case mandatory. *See, e.g., Sec. Investor Prot.*
21 *Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 454 B.R. 307, *9 (S.D.N.Y. 2011)
22 (“[I]n determining whether withdrawal of the refence is mandatory, this Court need
23 not evaluate the merits of the parties’ claims; rather, it is sufficient for the court to
24 determine that the proceeding will involve consideration of federal non-bankruptcy
25 law.”)

1 **1. Legal Sufficiency of Institutional Defendants’ WARN Act**
2 **Notices**

3 While bankruptcy courts occasionally adjudicate WARN Act cases,
4 mandatory withdrawal is required in this case because CNA’s Federal WARN Act
5 claim is not the routine “cookie-cutter” case in which the employer provides no
6 notice whatsoever to the union or employees at issue. In those cases, a bankruptcy
7 court judge simply applies the statute to the facts at hand. *See In re Dana Corp.*,
8 379 B.R. 449, 458 (S.D.N.Y. 2002) (granting motion to withdraw reference
9 because while the “bankruptcy court is certainly competent to address CERCLA
10 issues, and although bankruptcy courts have done so in the past, I am not
11 convinced that resolution of the disputed issues [would require straightforward
12 application of established law]”).

13 On the contrary, this case will require significant interpretation of the
14 WARN Act to determine if Institutional Defendants’ issuance of prior notices
15 indicating that SGM would purchase St. Vincent and hire substantially all of the
16 employees amounted to any form of WARN Act compliance. *In re St. Mary*
17 *Hosp.*, 115 B.R. 495, 498 (E.D. Pa. 1990) (“When a bankruptcy court must engage
18 in a complex search for the appropriate interpretation of a non-bankruptcy federal
19 statute involving an issue of first impression section 157(d) withdrawal is
20 required.”) This case will also require a judge to decide if Institutional
21 Defendants’ January 2020 WARN Act Notice appropriately amended their prior
22 notices to inform employees that they would in fact all lose their jobs when these
23 prior notices led workers to expect continued employment, information
24 Defendants’ knew was misleading at the time.

25 Furthermore, since Institutional Defendants’ January 2020 WARN Notice
26 relied on the “unforeseeable business circumstances” exception this case will
27 require interpretation of how this defense applies under these unique
28 circumstances. Complaint at Ex.5. *In re Dana Corp.*, 379 B.R. at 461 (finding
 that determination of which circumstances qualify for the “act of God” defense

1 under CERCLA would require the bankruptcy court to “materially” consider the
2 statute and so mandatory withdrawal was appropriate). Additionally, a court will
3 need to determine if the exception even applies given Defendants’ inclusion of
4 incomplete and inaccurate information in the prior notices, done to prevent
5 employees from finding alternative work until their departure was convenient for
6 Defendants. Furthermore, a court will need to determine if the failure of SGM to
7 close the sale amounted to an unforeseeable business circumstance based on
8 SGM’s recalcitrance from early on in the sale process.

9 Moreover, given that this defense only exists under the Federal WARN Act
10 (*see* 29 U.S.C. § 2102(b)(2)(A)) and not the state WARN Act counterpart (Cal.
11 Labor Code § 1400, *et. seq.*), a court will need to examine this federal and state
12 law conflict determine if this exception applies to a California hospital operating in
13 bankruptcy such as St. Vincent. Accordingly, this case is only appropriate for an
14 Article III judge to adjudicate since no clear authority on these questions of law
15 exist which would provide an “easy conclusion.” *County of L.A. Tax Collector v.*
16 *Bank of Am.*, 2:10-cv-03535-SVW, *18 (C.D. Cal 2010).

17 **2. Legal Issues Regarding Timing of Amendments to Prior** 18 **WARN Notices**

19 Assuming *arguendo* that not all of Defendants’ WARN Act notices were
20 misleading and could have been amended to state that the hospital would likely
21 close, the question still exists of when such amendments were required in order to
22 reduce Defendants’ exposure. Some courts outside of this Circuit have held that
23 notice is required as soon as a plant closing is foreseeable. *See, e.g., Local 1239*
24 *Int’l Bhd. Of Boilermakers v. Allsteel, Inc.*, 1996 Dist. Lexis 4829 (N.D. Ill. 1996)
25 (finding that “interested parties [must] be notified of plant-closings when they
26 become foreseeable, not when they are absolute certainties”). However, based on
27 the timing and language of their January 13, 2020 WARN notice, Institutional
28 Defendants will likely argue that such amendments were not required until the

1 bankruptcy judge granted their emergency motion to close St. Vincent on January
2 9, 2020. Complaint at Ex. 5 (noting that the “additional notice [was provided] as
3 soon as practicable” following the bankruptcy court’s order). Thus, because to
4 Plaintiff’s knowledge no controlling authority exists, the judge deciding this case
5 must significantly engage with the WARN Act to decide an issue of first
6 impression in this Circuit, further militating in favor of mandatory withdrawal.

7 **3. Joint and Several Liability Among Multiple Related Entities**

8 Mandatory withdrawal is also triggered in this case by complex issues of
9 joint and several liability. Where employers’ operations are sufficiently
10 intertwined, various entities may be found to be a single employer, jointly and
11 severally liable to their employees, even though the businesses attempted to avoid
12 that organization. This is commonly referred to as single employer or integrated
13 enterprise. And CNA alleges that the Institutional Defendants in this case should
14 be held liable in this way.

15 Courts generally determine whether distinct businesses amount to a single
16 employer by considering (i) common ownership, (ii) common directors and/or
17 officers, (iii) de facto exercise of control, (iv) unity of personnel policies
18 emanating from a common source, and (v) the dependency of operations. *Int’l*
19 *Bhd. of Teamsters v. American Delivery Serv. Co.*, 50 F.3d 770, 776 (9th Cir.
20 1995). In WARN Act cases, the courts also consider the Department of Labor
21 regulations and state corporate law. *Local 397 v. Midwest Fasteners, Inc.*, 779 F.
22 Supp. 788 (D. N.J. 1992); *Wholesale & Retail Food Distribution Local 63 v. Santa*
23 *Fe Terminal Servs.*, 826 F. Supp. 326, 334 (C.D. Cal. 1993). CNA has alleged
24 facts establishing that in this case, all the single employer and DOL factors weigh
25 in favor of treating the Institutional Defendants as a single employer. ¶ 8-21, 60-
26 82.

27 And analyzing these issues results is a particularly complex and legal and
28 fact-based inquiry. *Cf. In re Dana Corp*, 379 B.R. 449, 457-58 (S.D.N.Y. 2007)

(finding that mandatory withdrawal of CERCLA claims appropriate because determining joint and several liability would require substantial material consideration, both factual and legal, of issues outside the realm of expertise of the bankruptcy court). That is especially true where, as here, Plaintiff seeks to establish joint and several liability between entities that do not share a direct parent-subsidary relationship. *See Rogers v. Sugar Tree Prods.*, 7 F.3d 577, 582-583 (7th Cir. 1993) (“The single employer doctrine is not limited to parent-subsidary relationships, but the issue becomes more difficult when considering whether two separate corporations owned by a single entity should be considered a single employer.”). Accordingly, mandatory withdrawal is also warranted in this case because of the complexity of the issue of joint and several liability.

B. Cause Exists for Permissive Withdrawal of the Reference.

Permissive withdrawal of the reference is also appropriate in this case for “cause shown.” *See* 28 U.S.C. § 157(d) (in relevant part, specifying that district courts may grant permissive withdrawal for cause shown). In deciding whether to grant permissive withdrawal, courts consider whether the underlying claims are core or non-core as one factor in a multi-factor balancing test. Courts also consider efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, prevention of forum shopping, and other related factors. *E.g., Security Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1009-10 (9th Cir. 1997) (discussing factors that inform whether to grant permissive withdrawal). Here permissive withdrawal is strongly supported both by the reasons discussed above and by the general permissive withdrawal factors.

1. Plaintiff’s Complaint Arises Entirely Outside of the Bankruptcy Statute and so Consists of Non-Core Claims.

It is well settled that “[t]he applicable test for what constitutes a non-core matter is whether the right invoked is not one created by federal bankruptcy law and is one which could exist outside the bankruptcy court. If the answer to

1 each of these questions is yes, then the claim is designated as non-core.” *Oakview*
2 *Terrace v. Owens Fin. Group (In re Oakview Terrace)*, 1994 U.S. Dist. LEXIS
3 825, *6 (N.D. Cal. Jan. 25, 1994) (citing *In re Eastport Assoc.*, 935 F.2d 1071,
4 1076-77 (9th Cir. 1991)). Stated in the reverse, “[a] cause of action is core and
5 ‘aris[es] under’ the Bankruptcy Code if it is ‘created or determined by a statutory
6 provision of title 11,’ while ‘arising in’ refers to proceedings that are ‘not based on
7 any right expressly created by title 11, but nevertheless, would have no existence
8 outside of the bankruptcy.’” *In re Fraser's Boiler Serv.*, 2019 U.S. Dist. LEXIS
9 37840, *10 (W.D. Wash. Mar. 8, 2019).

10 Here, all of CNA’s claims are completely independent of bankruptcy law.
11 And all these claims could have been brought in the absence of any bankruptcy.
12 Three of the four causes of action are based entirely on state law: California
13 WARN Act, fraud, and negligence. These are quintessential non-core claims. *E.g.*
14 *Henderson v. Bank of Am. N.A. (In re Simmons)*, 510 B.R. 76, 87 n.18 (Bankr. S.D.
15 Miss. 2014) (“[I]f a claim is based on state law and the claim could arise outside of
16 the context of a bankruptcy proceeding, then it is not a core proceeding.”) (quoting
17 *Sago v. Wal-Mart Stores, Inc.*, 280 F. Supp. 2d 578, 587 (S.D. Mass 2003)).
18 CNA’s Federal WARN Act claims are likewise the type of civil proceeding that
19 could have been brought in state or district court in the absence of a related
20 bankruptcy matter. For that reason, the Federal WARN Act cause of action is also
21 a non-core proceeding. *E.g.*, *In re Colorado Energy Supply*, 728 F.2d 1283, 1286
22 (10th Cir. 1984) (“Related proceedings are those civil proceedings that, in the
23 absence of a petition in bankruptcy, could have been brought in a district court or
24 state court.”); *Johnson v. First NLC Fin. Servs., LLC (In re First NLC Fin. Servs.,*
25 *LLC)*, 410 B.R. 726, 731 (Bankr. S.D. Fla. 2008) (assessing motion to dismiss of
26 non-debtor alleged to be single employer and finding that WARN Act claims
27 against the non-debtor were related to bankruptcy but were “not a core proceeding”
28 because the claims “did not involve a bankruptcy right” and are claims “typically

brought outside of bankruptcy court”).

The only reason that CNA filed its Complaint in bankruptcy court is because it is “related to” the Institutional Defendants’ bankruptcy case since any recovery from this lawsuit may impact the administration of the bankruptcy estate. Thus, it is referred under C.D. Cal. General Order 266. *Green v. FDIC (In re Tamalpais Bancorp)*, 451 B.R. 6, 11 (N.D. Cal. 2011). However, “the mere fact that the proceeding may ultimately affect the size of the estate does not mandate that the proceeding is a core proceeding.” *Air Line Pilots Ass’n Int’l v. Pension Ben. Guar. Corp. (In re United Air Lines, Inc.)*, 337 B.R. 904, 910 (N.D. Ill. 2006) (collecting examples of cases in which size of estate was impacted by non-core claims); *In re Tamalpais Bancorp*, 451 B.R. at 10 (A case having a “profound impact on the bankruptcy proceedings” is not enough to transform a claim “that could have been brought even if the Debtor had never filed for bankruptcy” into a core claim.). Instead, the bottom-line is that if, as here, “the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy, it is not a core proceeding” even if “it may be *related* to the bankruptcy because of its potential effect[.]” *Wisdom v. Gugino (In re Wisdom)*, 2015 Bankr. LEXIS 1532, at *8 (Bankr. D. Idaho May 5, 2015) (quoting *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071, 1076 (9th Cir. 1991)).

Because none of the causes of action in CNA’s complaint invoke or depend on rights created by bankruptcy law, and because all these claims could be brought even if none of the Defendants were involved in a bankruptcy, CNA’s claims are all non-core. This factor thus weighs in favor of permissive withdrawal.

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1 **2. Permissive Withdrawal Would Support the Efficient Use of**
2 **Judicial Resources.**

3 The efficient use of judicial resources likewise supports withdrawal of the
4 reference for CNA's Complaint. First, CNA filed this Complaint as an adversary
5 proceeding on March 5, 2020 — just two weeks before filing this motion to
6 withdraw the reference. And Defendants have yet to answer it. Accordingly, the
7 Bankruptcy Court has yet to expend any meaningful judicial resources on this
8 matter.

9 Second, as an Article I court, a bankruptcy court cannot enter final judgment
10 on common-law and state law claims. *Stern v. Marshall*, 564 U.S. 462, 465(2011);
11 *Blixseth v. Brown*, 470 B.R. 562, 570 (D. Mont. 2012). Specifically, the *Stern*
12 Court ruled that an Article I court cannot exercise “the most prototypical exercise
13 of judicial power: the entry of a final binding judgment *by a court* with broad
14 substantive jurisdiction, on a common law cause of action, when the action neither
15 derives from nor depends upon any agency regulatory regime.” *Stern*, 564 U.S. at
16 494 (emphasis in original). Thus, the bankruptcy court may not enter final
17 judgments on dispositive motions for CNA's claims for fraudulent concealment
18 and negligent representation which are the type of common-law state claims
19 encompassed by the *Stern* Court ruling. Accordingly, the District Court will
20 ultimately have to consider these issues *de novo*, even if the Bankruptcy Court has
21 already issued a recommendation. *See, e.g., Verity Health System of California v.*
22 *Chaudhuri*, 2:20-cv-00613-DSF, Dkt. No. 23 (C.D. Cal. March 5, 2020). For this
23 reason, it would be more efficient to have the District Court manage this matter in
24 the first instance. *Id.*

25 Third, Plaintiff has a right to a jury trial on all four causes of action, has
26 demanded a jury trial, and does not consent to having the matter instead heard by
27 the Bankruptcy Court. *See Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782
28 (1989) (holding that state law claims which “include legal as opposed to strictly
 equitable elements” and which seek monetary relief “are entitled to a jury trial,

1 under the Seventh Amendment”); *Carlberg v. Guam Indus. Servs.*, 2017 U.S. Dist.
2 LEXIS 164619, *7-9 (D. Guam 2017) (explaining that there is a right to jury trial
3 for WARN Act claims); Cal. Code Civ. Pro § 592 (right to jury trial in negligence
4 claims). Furthermore, under 28 U.S.C. § 157(e), a bankruptcy court may only
5 conduct a jury trial with the consent of all parties. CNA does not consent to any
6 jury trial before the Bankruptcy Court. This further militates in favor of
7 permissive withdrawal. *E.g.*, *Gumport v. Growth Fin. Corp. (In re Transcon*
8 *Lines)*, 121 B.R. 837, 838 (C.D.Cal. 1990) (explaining that defendant’s right to
9 jury trial before district court weighed in favor of withdrawal in the interest of
10 efficient use of judicial resources).

11 Ultimately, because the bankruptcy court has yet to consider these issues and
12 cannot issue a final decision, and because Plaintiff has a right to a jury trial before
13 an Article III judge, consideration of judicial efficiency weighs in favor of
14 withdrawal. This is especially true because, as outlined in the above section on
15 mandatory withdrawal, this case presents a novel issue of interpretation based on
16 the purpose of the WARN Act, and while the district courts routinely tackle legal
17 issues of first impression in many areas of the law, bankruptcy courts do not. For
18 this reason too, it would be more efficient for the District Court to handle this
19 matter in the first instance.

20 **3. Withdrawal of the Reference Would Not Increase Delay or** 21 **Costs to the Parties.**

22 Consideration of potential delay and costs to the Parties likewise supports
23 withdrawal. As of the date of this Motion, Defendants’ deadline to respond to the
24 Complaint has not yet passed and none of the Parties have initiated discovery. On
25 the contrary, as noted above, because the Bankruptcy Court lacks authority to
26 finally adjudicate these claims, the Parties’ resources will be preserved by
27 withdrawal to ensure avoidance of any duplicate proceeding. For these reasons,
28 consideration of cost to the Parties supports withdrawal in this case.

1 **4. Withdrawal of the Reference Does Not Implicate Uniform**
2 **Administration of Bankruptcy Law.**

3 As noted above, the only causes of action in Plaintiff's Complaint are
4 Federal WARN Act claims, and California WARN Act, fraud, and negligence
5 claims. This case does not involve any question of bankruptcy law. Accordingly,
6 the uniform administration of bankruptcy law is not implicated. *See, e.g.,*
7 *McMahon v. Providence Capitol Enters., Inc. (In re McMahon)*, 222 B.R. 205
8 (S.D.N.Y. 1998) (granting a motion to withdraw the reference in a breach of
9 contract case because uniformity of bankruptcy law would not be affected as the
10 breach claim did not turn on questions of bankruptcy law).

11 **5. Permissive Withdrawal Does Not Implicate Forum**
12 **Shopping.**

13 This Adversary Proceeding is in its infancy. The Bankruptcy Court has not
14 yet taken any action on this matter. It has not issued any related unfavorable
15 rulings against CNA related to this case. And as a result, CNA is not motivated to
16 seek a friendlier venue, but instead asserts that the District Court is the proper
17 venue for CNA's Complaint for all the reasons discussed above. Accordingly,
18 withdrawal in this case does not implicate forum shopping concerns.

19 In sum, analyzing the permissive withdrawal factors indicates that the
20 District Court should exercise its discretion to withdraw the reference in this matter
21 because: (1) CNA's Complaint involves non-core causes of action, (2) withdrawal
22 will promote efficient use of judicial resources; (3) the parties will not incur
23 increased cost or delay on account of withdrawal; (4) withdrawal does not
24 implicate the uniform administration of substantive bankruptcy law; and (5) none
25 of the concerns typically associated with forum shopping litigants are present.

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IV. CONCLUSION

In short, the Complaint underlying this Motion ought to be heard in the District Court. Mandatory withdrawal of the reference is triggered because this case presents several substantial and material issues of non-bankruptcy federal law. And permissive withdrawal is warranted because these are non-core claims, including several complex state law issues, that all carry a right to a jury trial, which Plaintiff does not waive. For all these reasons, CNA respectfully requests this Court withdraw the reference in this matter.

Dated: March 19, 2020

Respectfully submitted,

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By: /s/Carol A. Igoe

Carol A. Igoe
Counsel for Plaintiff
California Nurses Association

EXHIBIT 1

EXHIBIT 1

In Re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et. al.*,

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
Case No. 2:18-bk-20166-ER
Case No. 2:18-bk-20167-ER
Case No. 2:18-bk-20168-ER
Case No. 2:18-bk-20169-ER
Case No. 2:18-bk-20170-ER
Case No. 2:18-bk-20171-ER
Case No. 2:18-bk-20172-ER
Case No. 2:18-bk-20173-ER
Case No. 2:18-bk-20175-ER
Case No. 2:18-bk-20176-ER
Case No. 2:18-bk-20177-ER
Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Debtors and Debtors in Possession.

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

Chapter 11 Cases

Hon. Ernest M. Robles

Adversary No. .

COMPLAINT FOR DAMAGES, CIVIL PENALTIES, ATTORNEYS FEES

- Exhibit 1
-
- 000028

PRELIMINARY STATEMENT

JURISDICTION AND VENUE

6 THE PARTIES

7. CNA is a “representative” as defined in 29 U.S.C. § 2101(a)(4), of a unit of affected nurses who were employed by Defendants until they were terminated without proper notice as part of mass layoffs and/or plant closings that began on about January 14, 2020. Defendants’ actions directly harmed both CNA and the affected nurses. CNA brings this Action on behalf of itself and, in its representative capacity, on behalf of the affected nurses.

8. Verity Health Systems, Inc. (“Verity”) is a California nonprofit public benefit corporation located at 601 S. Figueroa, Suite 4050, Los Angeles, California, and the sole corporate member of St. Vincent Medical Center, St. Vincent Dialysis Center, St. Francis Medical Center, and Seton Medical Center (“Defendant Hospitals”).

10. St. Vincent Dialysis Center is a California nonprofit public benefit corporation and wholly owned subsidiary of St. Vincent Medical Center located at 201 S. Alvarado Street in Los Angeles, California doing business in the County of Los Angeles. Until the middle of January of 2019, St. Vincent Dialysis Center provided dialysis medical services. Unless otherwise indicated, the term “St. Vincent” will also encompass St. Vincent Dialysis Center.

Exhibit 1 4
000031

22. Plaintiffs are ignorant of the true names or capacities of the defendants sued under fictitious names Does 1 through 500, inclusive. Plaintiffs are informed and believe that each of the defendants designated as a Doe is responsible in some manner for the events and happenings alleged herein.

23. On about August 31, 2018, the Institutional Defendants filed a bankruptcy petition for Chapter 11 relief in this Court.

25. Under Section 5.3 of the APA, as a condition of closing, SGM was required to offer employment “to substantially all persons (whether such person are full time employees, part-time employees, on short-terms or long-term disability or on leave of absence, military leave or workers compensation leave) who . . . are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller. . . (iii) employed by an affiliate of any Seller . . .” [Docket No. 1279].

27. Beginning on about July 25, 2019, CNA, Verity, and SGM negotiated a new

Exhibit 1 6
000033

34. Nothing in the October Warn Notice indicated any uncertainty about whether the sale would close, only when. Because the October WARN Notice plainly stated that the Defendants anticipated close of the sale and because Defendants had previously represented that SGM would continue to employ substantially all the nurses, this notice effectively communicated to CNA and the St. Vincent nurses that substantially all the nurses' employment would continue.

35. On November 13, 2019, Verity filed a motion to approve the modifications to the CBA and resolve other issues between the parties [Docket No. 3604].

36. Between about November 13 and November 26, 2019, Verity engaged in approximately four to five effects bargaining sessions with CNA over severance for the nurses who would not be hired by SGM at the close of the sale. In this process, Verity identified around nine nurses whose employment it expected would not be continued after closing the sale. Verity communicated to CNA that all other employees would be hired by SGM. At no time during these bargaining sessions did Verity express doubt or concern that SGM would consummate the sale. Based on these bargaining sessions, CNA and the nurses believed that “substantially all” meant at all but nine of the nurses would continue employment once the SGM sale closed, and the approximately nine nurses whose employment did not continue would receive severance pay.

37. Based on information and belief, on about November 18, SGM's CEO, Peter

39. On November 22, 2019, SGM responded to Verity complaining of various issues which amounted to a “Material Adverse Effect” under the APA and that prevented SGM from closing [*Id.*].

41. On about November 25, 2019, Mr. Steven Sharrer, Verity's Chief Human Resources Officer, sent a WARN extension notice ("November WARN Notice") to CNA representative Andrew Prediletto informing him that it anticipated the sale of St. Francis, St. Vincent, and Seton to SGM would close between December 6, 2019 and December 19, 2019 [See Attached Exhibit 3].

Exhibit 1 9
000036

44. By the actions described in Paragraphs 27-30, 32-36, and 40-43, Defendants led CNA to believe that closure of the SGM sale was imminent and that substantially all of CNA's members at St. Vincent would retain their jobs after SGM purchased the hospital [Docket No. 36042]. By these same actions, Defendants led the nurses working at St. Vincent to believe that closure of the SGM sale was imminent and that as a result, substantially all the nurses at St. Vincent would retain their jobs. Upon information and belief, St. Vincent registered nurses relied on Defendants' repeated assurances that it expected to promptly close the sale to SGM, and as a result, did not seek other employment when they otherwise would have.

December 5, 2019 [Docket No. 3724].

46. On December 4, 2019, this Court held a hearing on Verity's motion to approve the modifications to the CBA and granted said motion in its entirety [Docket No. 3755].

47. On December 5, 2019, SGM failed to close the sale by the deadline in the APA, and there was no reason to expect that it would do so in the future. The Defendants did not amend the November WARN Notice at that time or take any other action to inform CNA or the St. Vincent nurses that it was increasingly likely that the SGM sale would not close or that if the sale to SGM did not close, it was likely that Defendants would permanently shut down the St. Vincent Medical Center in very short order.

48. By December 16, 2019, at the latest, Defendants had already begun meeting with professional consultants to develop plans to permanently shut down St. Vincent.

49. On December 17, 2019, Verity called SGM and advised SGM that Verity was terminating the APA, effective December 27, 2019, as a result of SGM's failure to close the sale on December 5 [*Verity Health Systems, Inc. v. Strategic Global Management*, 2:20-ap-01001-ER (Bankr. C.D. Cal. January 22, 2020), Docket No. 20]. The Defendants did not amend the November WARN Notice at that time or take any other action to inform CNA or the St. Vincent nurses that the SGM sale would not close or that because the SGM would not close, it was likely that Defendants would permanently shut down the St. Vincent Medical Center.

50. On December 18, 2019, Rich Adcock emailed the nurses, informing them that SGM did not close the sale as required by the bankruptcy court, and so their employment with Verity would "NOT end on December 19, 2019" as Verity had previously anticipated. This email communication did not disclose that Defendants anticipated permanently closing St. Vincent because the sale to SGM had fallen through. It did not disclose that it was likely that the St. Vincent nurses would all lose their jobs as a result. The notice merely stated that Verity would advise them of "any further developments relating to [their] employment" [See attached Exhibit 4].

51. Upon information and belief, St. Vincent registered nurses relied on Defendants' December 18 assurance that their employment with Verity would "NOT end," and as a result,

1 the SGM sale to close, but that it did not, and stated that the permanent closure of St. Vincent
2 was a result of the failure of SGM to close. The January notice included an Exhibit A, which
3 listed the names of approximately 365 nurses who would be terminated as a result of the
4 closure [*Id.*].

5 58. As of January 18, 2020, St. Vincent had no patients [Docket No. 3982].

6 59. As of January 27, 2020, only approximately 20 employees remained at Saint
7 Vincent to complete winddown operations [*Id.*].

8 **INTERGRATED ENTERPRISE & JOINT EMPLOYER**

9 **Common Ownership & Financial Control**

10 60. Upon information and belief, all Institutional Defendants are owned and/or
11 controlled by Defendant Verity. As previously stated, Verity is the sole corporate member of
12 St. Vincent, Seton, and St. Francis.

13 61. Upon information and belief, Richard Adcock serves as the CEO and Peter
14 Chadwick serve as the Secretary and CFO of St. Vincent, Seton and St. Francis. The only
15 difference in Verity's officers is that Terry Belmont serves as its Secretary instead of Mr.
16 Chadwick.

17 62. The manager of Holdings is Verity and the manager of DePaul Ventures is
18 Richard Adcock.

19 **Common Management, Directors, and Officers**

20 63. Upon information and belief, the bylaws of Verity and each of the Defendant
21 Hospitals vest ultimate authority over major decisions to the Verity board of directors such as
22 whether to change the mission of a hospital, amend a hospital's bylaws, appoint and remove its
23 directors, approve the incurrence of debt and, inter alia, approve the operating budget.

24 64. Upon information and belief, business plans are developed by Verity, rather than
25 individual Defendant Hospitals.

26 65. Upon information and belief, per each Defendant Hospitals' bylaws, at least one
27 member of Defendant Hospitals' board of directors must be a member of Verity's Board of
28 Directors.

104. Defendants' deliberately concealed these material facts to lead nurses and CNA to the false conclusion that the nurses' employment was very likely to continue despite the bankruptcy. Defendants misled the nurses and CNA in this way to avoid incurring additional expenses to secure the necessary nursing staff to keep St. Vincent running until they were ready to close it and to avoid the possibility of effective organized opposition to the planned closure.

1 105. St. Vincent nurses who would have looked for other work if they had known
2 that the hospital was likely to shut down did not do so because they were intentionally kept
3 ignorant of these facts. As a result, those nurses only began to look for work when the news of
4 shut down reached the general public after Verity finally disclosed its shutdown plans in a
5 filing with this Court on January 6, 2020. This was less than two weeks before the nurses lost
6 their jobs.

7 106. Because of Defendants' deliberate concealment of these material facts, nurses
8 experienced periods of unemployment, financial hardship, and emotional hardship that they
9 would not otherwise have experienced.

10 107. CNA would have engaged in different bargaining and organizing strategies if it
11 had known that the hospital was likely to permanently shut down but did not do so because
12 Defendants intentionally kept CNA ignorant of these facts.

13 108. Because of Defendants' deliberate concealment of these material facts, CNA
14 incurred expenses and wasted time engaging in bargaining based on false pretenses.

15 **COUNT IV: NEGLIGENT MISREPRESENTATION**

16 109. Plaintiff restates and realleges paragraphs 1-84 as if fully set forth herein.

17 110. Beginning in August 2019, Defendants disclosed some facts to CNA and the
18 CNA-represented nurses at St. Vincent about the bankruptcy and planned sale of Defendant
19 Hospitals to SGM. However, for extended periods of time beginning in November 2019,
20 Defendants failed to timely disclose the facts that:

- 21 a. New information had arisen and then continued to arise that made it
- 22 increasingly unlikely the sale would close;
- 23 b. Defendants anticipated permanently shutting down St. Vincent entirely and
- 24 expeditiously in the increasingly likely event that the sale did not close;
- 25 c. The sale fell through;
- 26 d. Defendants were planning to shut down St. Vincent entirely and
- 27 expeditiously because the sale fell through.

28 111. Prior to Defendants' late disclosure on December 18, 2019 that the SGM sale

112. In the December 18, 2019 email in which Defendants notified the CNA-represented nurses that the sale to SGM had not occurred as ordered, Defendants also stated that the nurses' employment would "NOT end." As a result, prior to Defendants' public disclosure in January 2020, CNA and the CNA-represented nurses believed that the nurses' employment at St. Vincent was likely to continue even though the sale to SGM had not occurred as ordered. They did not know that Defendants were planning to permanently shut down St. Vincent entirely and expeditiously because the sale fell through.

114. St. Vincent nurses who would have looked for other work if they had known that the hospital was likely to shut down did not do so because they reasonably relied on Defendants' representations that the hospital would keep operating. As a result, those nurses only began to look for work when the news of shut down reached the general public after

1 Verity finally disclosed its plans in its filing with this Court on January 6, 2020. This was less
2 than two weeks before the nurses lost their jobs.

3 115. Because of Defendants' misrepresentation of material facts, nurses experienced
4 periods of unemployment, financial hardship, and emotional hardship that they would not
5 otherwise have experienced.

6 116. CNA would have engaged in different bargaining and organizing strategies if it
7 had known that the hospital was likely to shut down but did not do so because it reasonably
8 relied on Defendants' misrepresentations.

9 117. Because of Defendants' misrepresentations of material facts, CNA incurred
10 expenses and wasted time engaging in bargaining based on false pretenses.

11 **PRAYER**

12 Plaintiff prays for judgment against Defendants, and each of them as follows:

13 118. A judgment in favor of the Plaintiff and each of the "affected employees" under
14 the State and Federal WARN Acts equal to the sum of sixty-days of: their unpaid wages,
15 accrued holiday pay, accrued vacation pay, health and life insurance, and other ERISA benefits
16 that would have been covered and paid under the then-applicable employee benefit plans had
17 that coverage continued for that period, all determined in accordance with the California and
18 Federal WARN Acts;

19 119. Civil penalties for each day of the WARN Act violations;

20 120. Compensatory damages, including lost wages and lost employee benefits,
21 damages to CNA related to bargaining expenses and missed organizing opportunities;

22 121. Damages for mental pain and anguish and emotional distress;

23 122. Punitive damages;

24 123. Liquidated damages, as allowed by law;

25 124. Interest as allowed by law on the amounts owed under the preceding paragraphs;

26 125. Treatment of all damage claims as first priority administrative expense pursuant
27 to 11 U.S.C. § 503(b)(1)(A)(i)-(ii). For such other and further relief as Bankruptcy Court deems
28 just and proper.



August 12, 2019

By U.S. Mail

Andy Prediletto
C.N.A.
225 West Broadway
Suite 500
Glendale, CA 91204
818-637-7129 (office) | 213-810-8222 (mobile)
aprediletto@calnurses.org

**Re: Notice Pursuant to Worker Adjustment and Retraining Notification Act
and the California WARN Act**

Dear Mr. Andy Prediletto:

This notice is being issued to you under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§2101 et seq. (the “WARN Act”) and the California WARN Act, California Labor Code §§1400-1408 (“Cal-WARN Act”). The purpose of this notice is to inform you of the sale of St. Vincent Medical Center, located at 2131 West Third Street, Los Angeles, CA 90057 and St. Vincent Dialysis Center, located at 201 S. Alvarado St., Los Angeles, CA 90057 (together, “St. Vincent”).

On August 31, 2018, Verity Health System of California, Inc. (“VHS”) and sixteen of its affiliates, including St. Francis (referred to collectively with VHS and other debtor affiliates as the “Debtors”) filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), and are being jointly administered under Lead Case No. 2:18-bk-20151. The Debtors have entered into an agreement to sell substantially all of the assets of St. Francis to Strategic Global Management, Inc. (the “Purchaser”), pursuant to which the Purchaser will purchase St. Vincent and related assets (the “Sale”). On April 17, 2019, the Bankruptcy Court entered an order approving the Sale.

In connection with the Sale, the Debtors will be separating the employment of all of St. Vincent's employees, which may result in an "employment loss" within the meaning of the WARN Act and the Cal-WARN Act. Under the Asset Purchase Agreement between the Debtors and the Purchaser, the Purchaser has agreed to make offers of employment to substantially all of St. Vincent's employees, subject to the other terms and conditions contained in such Asset Purchase Agreement.

The closing of the Sale is subject to certain regulatory and other approvals and the satisfaction of certain other conditions agreed to between the Debtors and the Purchaser. While the Debtors are optimistic that the Sale will close, there is a possibility that the Sale will be unsuccessful. In that event, St. Vincent may close and none of its employees may be hired by the Purchaser. Even if the Sale closes and St. Vincent remains open, employees at St. Vincent may suffer an “employment loss” within the meaning of the WARN Act and Cal-WARN Act because the Debtors will separate the employment of all of St. Vincent’s

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List of Represented St. Vincent Employees - California Nurses Association

Employee Name	Job Title
ABAD,JENNIFER K	RN, POB DIALYSIS PD-3
ABAD,ROMEO G	RN, MED/SURG 7
ABRISHAMIAN,MANDANA	RN, MED/SURG 6
ACOYMO,KERWIN M	RN, EMERGENCY ROOM PD-3
ADARO,VIDA T	RN, MED/SURG 6
ADLAWAN-DOBLE,MARIA ROSELIE I	RN, AUDITOR - EMER. ROOM 10/40
ADRAYAN,GILBERT C	RN, EMERGENCY ROOM PD-3
ADRINEDA,LORINNE M	RN, ICU
AGUILAR,JUSTIN E	RN, EMERGENCY ROOM PD-1
AGUSTIN,RACHELLE ANN C	RN, ICU
ALDANA,MARCO P	RN, ICU
ALDRETE,MANUEL M	CHARGE NURSE, SHORT STAY
ALIBUTOD,RODERICK H	RN, MED/SURG 6
ALQUIROZ,JHOANNA M	RN, TELEMETRY
ALWAN,ALEXZANDRIA	RN, CASE MANAGEMENT PD-3
AMADOR,PAMELA M	RN, ICU
AMPONG,GRANVILLE H	RN, ACUTE REHAB
APELIZAN,PAULA LORENA H	RN, ACUTE REHAB
APOLINAR,JOCELYN L	CHARGE NURSE, ICU
AQUINO,HILDA L	EDUCATOR, LEAD CLINICAL RN
ARGUETA-CORDERO,FRANCISCO J	RN, SHORT STAY
ARREGLO,VICTORIA A	RN, TELEMETRY
ARSUA,AILEEN E	RN, MED/SURG 7
ASSADI,AMIR H	RN, INTERVENTIONAL RADIOLOGY
ASTAKHINA,LYUDMYLA	RN, EMERGENCY ROOM
ATIENZA,JORDAN	RN, EMERGENCY ROOM
BAE,STELLA N	RN, MED/SURG 7 KP
BAE,YEAHEUN	RN, ACUTE REHAB
BAL,JENNIFER JOY L	RN, TELEMETRY
BALCRUZ,THERESA I	RN, MED/SURG 6

Employee Name	Job Title
BALINGIT,CORAZON I	CHARGE NURSE, SURG & RECOVERY
BALINGIT,NORMITA V	RN, MED/SURG 6
BALLADA,GLENDA S	RN, ICU
BALUYOT,VANESSA FAYE P	RN, CASE MANAGEMENT
BATAAC,AIMEE A	RN, TELEMETRY
BATISTA,CRYSTAL L	RN, ICU
BAUTISTA,DINO LOREN M	RN, EMERGENCY ROOM
BAUTISTA PALANOG,MARICEL	RN, CATH LAB PD-1
BAYLON,RONEL D	RN, MED/SURG 6
BAZAN,GERARDO	CHARGE NURSE, INTER. RADIOLOGY
BELL,JESSICA M	RN, ICU
BELL,KENNETHA	RN, RECOVERY ROOM
BELLOSO,FRANCINE E	RN, TELEMETRY PD-1
BERANGO,NICOMEDES	RN, MED/SURG 6
BERNARDO,KATHLEEN A	RN, ICU
BIGASIN,JHOANNA	RN, MED/SURG 7
BIRIOUKOV,LEONID	RN, ACUTE DIALYSIS PD-2
BOESSI,CHRISTOPHINE K	RN, ICU
BOONE,LASHANDA	RN, MED/SURG 6
BOTE,III,ROMERO P	RN, ACUTE REHAB
BRACAMONTE,JESSICA K	RN, ONCOLOGY
BUENO,REGINALD C	RN, MED/SURG 7
BURCH,KATALEE	RN, MED/SURG 6
BURRELL,LISA D	RN, TELEMETRY
CABALLERO,JEFFREY E	RN, EMERGENCY ROOM
CABANAS,JEANETTE A	RN, MED/SURG 6
CABAUATAN DUMAG,MICHELLE	CHARGE NURSE, MED/SURG 6
CAISIP,THADEUS B	RN, ACUTE DIALYSIS
CALIBOSO,MITCH DATOR	RN, EMERGENCY ROOM PD-2
CALZADO,JANET O	RN, TELEMETRY
CAMPOS,YASMINI V	RN, ONCOLOGY
CANLAS,MICHAEL	RN, EMERGENCY ROOM PD-3
CAO,JENNIFER T	RN, MED/SURG 6

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Employee Name	Job Title
EHSAN,RAHAL	RN, MED/SURG 7
ENRIQUEZ,VERE JONAS S	RN CASE MANAGEMENT
EOM,HOKYOUNG	RN, SURG & RECOVERY
ESTELL,CORNELIA S	CHARGE NURSE, GI LAB
ESTRADA,MARTIN A	RN, ONCOLOGY
EUSEBIO,CECILIA	RN, POB DIALYSIS
EVANGELISTA,ALLAN F	CHARGE NURSE, ONCOLOGY
FABROS,NASH A	RN, MED/SURG 7
FAMILARA,MYRA B	RN, SURG & RECOVERY PD-3
FERNANDEZ,NOLIE V	RN, TELEMETRY
FERNANDEZ,RODIERAECA C	RN, ICU
FERRER,RONALD M	RN, ICU
FINLEY,KASUMI	RN, TELEMETRY
FITKOWSKI,ANDREW E	RN, MED/SURG 6
FONSECA,ANDRES	RN, TELEMETRY
GAMUROT,ANNE CAROLINE E	RN, TELEMETRY
GANZ,JEFFREY A	RN, TELEMETRY
GARCIA,DOROTHY E	RN, MED/SURG 6
GARCIA,MARIA ROSARIO C	RN, ICU
GARCIA,RHODORA D	RN, SHORT STAY
GARCIA,SHERWIN R	CHARGE NURSE, MED/SURG 7
GEMZON,JOPHE A	CHARGE NURSE, ICU
GERMINAL,GLADYS F	RN, CATH LAB
GHIRMAY,MICKY	RN, EMERGENCY ROOM
GILL,JAGVEER S	RN, ONCOLOGY
GO,EDWIN L	RN, MED/SURG 7
GOLORAN,PATRICIA M	RN, NURSING ADMIN
GOMEZ,AARON I	RN, ICU
GONZALES,KRISTINE M	RN, MED/SURG 7
GONZALES,YVETTE	CHARGE NURSE, MED/SURG 6
GROEHLER,MIRA	RN, ACUTE DIALYSIS
GUMAYAGAY,VINA N	RN, ACUTE REHAB
GUTIERREZ,LUZ M	RN, TELEMETRY



Employee Name	Job Title
GUZMAN,JAMES BRIAN S	RN, MED/SURG 6
HA,DA YEONG	RN, MED/SURG 7 KP
HAKOPIAN,MELINA D	RN, ICU PD-3
HAMILTON,KADE	RN, NURSING ADMIN
HAN,BONA I	RN, MED/SURG 6
HEARN,TAYLOR	RN, TELEMETRY
HEO,GJIYOUNG	RN, SURG & RECOVERY
HERTZ,ALEXANDRA L	RN, TELEMETRY
HIPUS,JOSEFINA C	RN, CATH LAB
HO,THERESE T	RN, ICU
IBARRA,JACOB	RN, EMERGENCY ROOM PD-3
IMAYSAY,GENEVIEVE	RN, SHORT STAY
INNOCENT,COURTNEY N	RN, TELEMETRY
INTAL,MARIVIC GRACE D	RN, MED/SURG 7
ITANI,KAZUMI	RN, MED/SURG 6
IZUCHUKWU-MUONAGOR,RITA U	RN, TELEMETRY
JANG,EUNHAE	RN, ICU
JANG,JI-YOUNG	RN, ACUTE REHAB
JANG,JONGSOOK	RN, MED/SURG 7 KP
JAVIER,CAROL D	RN, TELEMETRY
JIMENEZ,EVANGELINE B	RN, SHORT STAY 12HR
JUAREZ,MARIANA	RN, ICU
JUNG,JU YOUNG	RN, ICU PD-1
KANG,MISEON	RN, TELEMETRY
KANG,SANDY	RN, ICU
KANG,SO HEE	RN, SURG & RECOVERY 2
KATIGBAK,AGNES M	RN, MED/SURG 6
KILALA,MARY JANE C	RN, SHORT STAY
KIM,AIMEE K	RN, ICU
KIM,BOOYOUNG	RN, MED/SURG 7
KIM,GEUMCHUL	RN, ACUTE DIALYSIS
KIM,HEEJUNG	RN, TELEMETRY
KIM,HYANGHEE	RN, SHORT STAY

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Exhibit A - List of Represented St. Vincent Employees - California Nurses Association

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Employee Name	Job Title
PALANCA,RYAN P	RN, MED/SURG 6
PARK,CHUNG AH	RN, TELEMETRY
PARK,ELLEN Y	RN, ACUTE REHAB
PARK,JINSUN	RN, SHORT STAY
PARK,KI	RN, ACUTE DIALYSIS
PARK,SUE A	RN, TELEMETRY
PARUNGAO,ARLENE P	RN, TELEMETRY
PASCUA,JULIA B	RN, ACUTE REHAB
PENSERGA,MA BRENDA	RN, EMERGENCY ROOM
PERALTA,VIOLETA A	RN, ACUTE REHAB
PEREIRA,JOSUE	RN, ICU PD-1
PESA,EVELYN T	RN, TELEMETRY
PETERSON,MA ARSENIA S	RN, ICU
PLAZO,JONATHAN C	RN, ONCOLOGY
PONCE,BELKI G	RN, ICU
POSADAS,NIDA J	RN, MED/SURG 6
POSUELOZ,ARIEL S	RN, TELEMETRY
POSUELOZ,ARIEL	RN, SURG & RECOVERY
PRYOR,VINCENT F	RN, TELEMETRY
QUILA,REMIEL A	CHARGE NURSE, EMERGENCY ROOM
QUITZON,MARIA N	RN, EMERGENCY ROOM PD-3
RAMIREZ,EVELYN B	RN, TELEMETRY
RAMIREZ PONCE,LUCIO S	CHARGE NURSE, ICU
RAMOS,SHEILA A	RN, CASE MANAGEMENT
RAMOS GIL,JULIO C	RN, ICU
RANGEL,SANDRA	RN, ACUTE REHAB
REBUYACO,ARIANNA	RN, ONCOLOGY
REBUYACO,TRISTAN L	RN, ICU
REDDIX,TRACY J	CHARGE NURSE, TELEMETRY
REYES,JENNIE	RN, NURSING ADMIN
REYES,KAYLA LYNN T	RN, ICU
RINGPIS,MARYLOU B	RN, ICU
RODRIGUEZ,DENISE A	RN, ONCOLOGY

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Exhibit A - List of Represented St. Vincent Employees - California Nurses Association



2040 E Mariposa Avenue
El Segundo, CA 90245

October 23, 2019

VIA EMAIL

Andy Prediletto
C.N.A.
225 West Broadway
Suite 500
Glendale, CA 91204
818-637-7129 (office) | 213-810-8222 (mobile)
aprediletto@calnurses.org

Re: Postponement of Terminations of Employment - WARN Extension

Dear Mr. Andy Prediletto:

This notice is being provided in follow up to the August 12, 2019 notice you received under the Worker Adjustment and Retraining Notification Act and the California WARN Act advising that separations of employment would occur between October 18, 2019 and October 31, 2019.

As you know, Verity Health System of California, Inc. and certain affiliates entered into a Court approved agreement (“Agreement”) to sell substantially all of the assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Seton Medical Center and Seton Medical Center Coastsides (together, the “Hospitals”) to Strategic Global Management, Inc. (“SGM”), pursuant to which SGM will purchase the Hospitals and related assets (the “Sale”).

The Agreement requires satisfaction of certain milestones to complete the Sale. Not all of the milestones have been met. Consequently, the separations of employment must be postponed and will not occur at the time originally anticipated. At this time, we anticipate the Sale and separations of employment will occur between **November 17, 2019 and November 30, 2019**.

We will continue to keep you apprised of any new developments and will provide you with updated information should circumstances change with respect to the Sale and the separations of employment. If you have any questions or require additional information, please do not hesitate to contact me at (424) 367-0733.

We appreciate your understanding during this time of transition.

Sincerely,

Steven Sharret

Steven Sharrer
Chief Human Resources Officer

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----- Forwarded message -----

From: Adcock, Rich <RichAdcock@verity.org>

Sent: Wednesday, December 18, 2019 2:50:17 PM

Subject: Important Update



January 10, 2020

By U.S. Mail and Email

Andrew Prediletto
C.N.A.
225 West Broadway, Suite 500
Glendale, CA 91204
aprediletto@calnurses.org

**Re: Notice Pursuant to Worker Adjustment and Retraining Notification Act
and the California WARN Act**

Dear Mr. Andrew Predilleto:

This notice is being issued to you under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§2101 et seq. (the “WARN Act”) and the California WARN Act, California Labor Code §§1400-1408 (“Cal-WARN Act”). The purpose of this notice is to inform you of the permanent closure of St. Vincent Medical Center, located at 2131 West Third Street, Los Angeles, CA 90057, and St. Vincent Dialysis Center, located at 201 S. Alvarado St., Los Angeles, CA 90057 (together, “St. Vincent”).

On August 31, 2018, Verity Health System of California, Inc. (“VHS”) and sixteen of its affiliates, including St. Vincent (referred to collectively with VHS and other debtor affiliates as the “Debtors”), filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Central District of California, and are being jointly administered under Lead Case No. 2:18-bk-20151.

The Debtors entered an agreement to sell St. Vincent and other assets to KPC Group, aka Strategic Global Management, Inc. (together, “SGM”), which was approved by the Bankruptcy Court. In connection with the planned sale, we previously noticed you of the anticipated separations of employment in accordance with the WARN Act and Cal-WARN Act. The timing of that WARN notice was based upon the agreement with SGM. The Debtors expected the sale to be completed because the Bankruptcy Court approved the sale and entered an order providing that SGM was obligated to close the sale. SGM, however, did not close the sale. Given SGM’s failure to close the sale transaction, and there being no feasible alternative for continued operations, the Debtors made the difficult decision to close St. Vincent. The Court granted the Debtors’ emergency motion for authority to close St. Vincent on January 9, 2020 (the “Order”). Consequently, you are receiving this WARN notice.

We know that you were aware of the separations of employment at St. Vincent based on the prior WARN notice you received. We had hoped there would be an opportunity for continued employment with SGM when the sale closed. In light of the unforeseen circumstances relating to the sale and the



unexpected need to close St. Vincent as a last resort, this additional WARN notice is being provided to you as soon as practicable after the Order.

In connection with the closure, the Debtors will be separating the employment of all of St. Vincent's employees. Based on the best information available to date, we believe the closure and separations of employment will occur between **January 14, 2020 and January 27, 2020**. A list of the job titles of positions affected and the names of the workers currently holding the affected jobs is attached hereto as Exhibit A.

If you have any questions or require additional information, please do not hesitate to contact me at (424) 367-0733.

Sincerely,

SSS

Steven Sharrer
Chief Human Resources Officer

Enclosure: Exhibit A

List of Represented St. Vincent Employees - CNA

Employee Last Name	First Name	Job Title
ADRINEDA	LORINNE	RN, ICU
AGUSTIN	RACHELLE ANN	RN, ICU
ALDANA	MARCO	RN, ICU
AMADOR	PAMELA	RN, ICU
APOLINAR	JOCELYN	CHARGE NURSE, ICU
BALLADA	GLENDA	RN, ICU
BATISTA	CRYSTAL	RN, ICU
BERNARDO	KATHLEEN	RN, ICU
BOESSI	CHRISTOPHINE	RN, ICU
CARO	ALYSSA	RN, ICU
CENTENO	MARIA LIBERTY	RN, ICU
CHAVEZ	SILVIA	RN, ICU
CHEA	DAVY	RN, ICU
CLARK	ELIZABETH	RN, ICU
CRUZ	SYLVIA	RN, ICU
DAO	CONNIE	RN, ICU
FERNANDEZ	RODIERAECA	RN, ICU
FERRER	RONALD	RN, ICU
GEMZON	JOPHE	CHARGE NURSE, ICU
GOMEZ	AARON	RN, ICU
HAKOPIAN	MELINA	RN, ICU PD-3
HO	THERESE	RN, ICU
JANG	EUNHAE	RN, ICU
JUAREZ	MARIANA	RN, ICU
JUNG	JU YOUNG	RN, ICU PD-1

Exhibit A - 1



Employee Last Name	First Name	Job Title
KANG	SANDY	RN, ICU
KIM	AIMEE	RN, ICU
KIM	KAREN	RN, ICU
LAY	XUANANH	RN, ICU
LOZANO	CARMEN	RN, ICU
MANALO	ARLENE	RN, ICU
MANAYTAY	NELLAFLOR	RN, ICU
NATIVIDAD	PAUL	RN, ICU
ODIA	IRENE	RN, ICU
ORIENZA	MINA RIA	RN, ICU
PEREIRA	JOSUE	RN, ICU PD-1
PETERSON	MA ARSENIA	RN, ICU
PONCE	BELKI	RN, ICU
RAMIREZ PONCE	LUCIO	CHARGE NURSE, ICU
RAMOS GIL	JULIO	RN, ICU
REBUYACO	TRISTAN	RN, ICU
RESURRECCION	NINA GRACE	RN, ICU
REYES	KAYLA LYNN	RN, ICU
RINGPIS	MARYLOU	RN, ICU
SADEK	SHERINE	RN, ICU
SHIMASAKI	SAYURI	RN, ICU
STANWOOD	TERRICA	RN, ICU
TAN	JENNIFER	RN, ICU
TOLEDO	MA KHARISMA	CHARGE NURSE, ICU
TREADWELL	JULITA	RN, ICU
TRINH	KATHY	RN, ICU

Exhibit A - 2



Employee Last Name	First Name	Job Title
UMALI	ROSANNE	RN, ICU
VALMEO	JAN MICHAEL	RN, ICU
YAMZON	ARMIE	RN, ICU
ALQUIROZ	JHOANNA	RN, TELEMETRY
ARREGLO	VICTORIA	RN, TELEMETRY
BAL	JENNIFER JOY	RN, TELEMETRY
BATAC	AIMEE	RN, TELEMETRY
BELLOSO	FRANCINE	RN, TELEMETRY PD-1
BURRELL	LISA	RN, TELEMETRY
CALZADO	JANET	RN, TELEMETRY
CARREIRO	ANNIE	RN, TELEMETRY
CHANG	SUN	RN, TELEMETRY
CHO	JUNG	RN, TELEMETRY
CHOI	EUN AH	RN, TELEMETRY
CHOI	SOONKI	RN, TELEMETRY
CORTEZ	SHANNON	RN, TELEMETRY
CUELLAR	MATTHEW	RN, TELEMETRY
DADASHYAN	INNA	RN, TELEMETRY PD-1
DE LEON	BRENNAN	RN, TELEMETRY
FERNANDEZ	NOLIE	RN, TELEMETRY
FINLEY	KASUMI	RN, TELEMETRY
GAGUAN	CHRISTINA	RN, TELEMETRY
GAMUROT	ANNE CAROLINE	RN, TELEMETRY
GUTIERREZ	LUZ	RN, TELEMETRY
HERTZ	ALEXANDRA	RN, TELEMETRY
INNOCENT	COURTNEY	RN, TELEMETRY

Exhibit A - 3



Employee Last Name	First Name	Job Title
IZUCHUKWU-MUONAGOR	RITA	RN, TELEMETRY
KANG	MISEON	RN, TELEMETRY
KIM	JUNGWOO	RN, TELEMETRY
KIM	KUNTHY	CHARGE NURSE, TELEMETRY
LAGUMBAY	SUZETTE	RN, TELEMETRY
LEE	GINA	RN, TELEMETRY
LICUP	RONALD	CHARGE NURSE, TELEMETRY
LOPES	STEVEN	RN, TELEMETRY
LOPEZ	ANGELA	RN, TELEMETRY
MUNOZ	TAMARA	RN, TELEMETRY
NAM	JISUN	RN, TELEMETRY
NGUYEN	DON	RN, TELEMETRY
NICOLAS	EMILY	RN, TELEMETRY
NOTARIO	ZACHARY	RN, TELEMETRY PD-1
NYE	HAYLEY	RN, TELEMETRY
OUATTARA	NAGNINLTAHA	RN, TELEMETRY
PARK	CHUNG AH	RN, TELEMETRY
PARK	SUE	RN, TELEMETRY
PARUNGAO	ARLENE	RN, TELEMETRY
PESA	EVELYN	RN, TELEMETRY
POSUELOZ	ARIEL	RN, TELEMETRY
PRYOR	VINCENT	RN, TELEMETRY
RAMIREZ	EVELYN	RN, TELEMETRY
REDDIX	TRACY	CHARGE NURSE, TELEMETRY
SATO	ASAMI	RN, TELEMETRY
SEGISMUNDO	MAXINE	RN, TELEMETRY

Exhibit A - 4



Employee Last Name	First Name	Job Title
SENATIN	VADA FRANCEZCA	RN, TELEMETRY
SHIN	ALICE	RN, TELEMETRY
SHIN	ANNIE	RN, TELEMETRY
SHORT	JENNIFER	RN, TELEMETRY
SMITH-ANDERSON	EMMA	RN, TELEMETRY
SOK	MICHELLE	CHARGE NURSE, TELEMETRY
STUTZMAN	SHELBY	RN, TELEMETRY
TAKAMATSU	RIEKO	RN, TELEMETRY
VIDRIO	MARISELA	RN, TELEMETRY
WILLIAMS	MARIA	RN, TELEMETRY
WU	DEBORAH	RN, TELEMETRY
ABRISHAMIAN	MANDANA	RN, MED/SURG 6
ADARO	VIDA	RN, MED/SURG 6
ALIBUTOD	RODERICK	RN, MED/SURG 6
BALCRUZ	THERESA	RN, MED/SURG 6
BALINGIT	NORMITA	RN, MED/SURG 6
BAYLON	RONEL	RN, MED/SURG 6
BERANGO	NICOMEDES	RN, MED/SURG 6
BOONE	LASHANDA	RN, MED/SURG 6
BURCH	KATALEE	RN, MED/SURG 6
CABANAS	JEANETTE	RN, MED/SURG 6
CABAUATAN DUMAG	MICHELLE	CHARGE NURSE, MED/SURG 6
CAO	JENNIFER	RN, MED/SURG 6
CEMANESEVANGELISTA	CLARISSE	RN, MED/SURG 6
CHOI	IN	RN, MED/SURG 6
CHUNG	HA NIE	RN, MED/SURG 6

Exhibit A - 5

Exhibit A - 6



Employee Last Name	First Name	Job Title
SALCEDO	CHERYL ANN	CHARGE NURSE, MED/SURG 6
SEO	MOON HYANG	CHARGE NURSE, MED/SURG 6
SIA	MARY ANN	RN, MED/SURG 6
SOLIS	KARINA	RN, MED/SURG 6
SONG	EUN	RN, MED/SURG 6
SUH	YURI	RN, MED/SURG 6
TRAN	DIEM	RN, MED/SURG 6 PD-3
VASQUEZ	GRISELDA	RN, MED/SURG 6
VERGARA	HERMIE	RN, MED/SURG 6
ABAD	ROMEO	RN, MED/SURG 7
ARSUA	AILEEN	RN, MED/SURG 7
BIGASIN	JHOANNA	RN, MED/SURG 7
BUENO	REGINALD	RN, MED/SURG 7
CARRILLO	MARICELA	CHARGE NURSE, MED/SURG 7
CHOI	ALICIA	RN, MED/SURG 7
CHUA	MA SHEILA	RN, MED/SURG 7
CORONA	DAISY	RN, MED/SURG 7
CUBE	REALLINE	RN, MED/SURG 7
DINSAY	ANNABELLE	RN, MED/SURG 7
EHSAN	RAHAL	RN, MED/SURG 7
GARCIA	SHERWIN	CHARGE NURSE, MED/SURG 7
GO	EDWIN	RN, MED/SURG 7
GONZALES	KRISTINE	RN, MED/SURG 7
INTAL	MARIVIC GRACE	RN, MED/SURG 7
KIM	BOOYOUNG	RN, MED/SURG 7
LEGASPI	ROMMEL	RN, MED/SURG 7

Exhibit A - 7



Employee Last Name	First Name	Job Title
LORICA	RHODA	RN, MED/SURG 7
MINGUEZ	MARY MAE	RN, MED/SURG 7 PD-1
OBILLE	MARK	RN, MED/SURG 7
OCAMPO	GEORGE	RN, MED/SURG 7
RUIZ	JENNIE	RN, MED/SURG 7
UCHE	PATRICIA	RN, MED/SURG 7
UMALI	MARY KRISTINE L	RN, MED/SURG 7
YU	FERNANDO II	RN, MED/SURG 7
BAE	STELLA	RN, MED/SURG 7 KP
HA	DA YEONG	RN, MED/SURG 7 KP
JANG	JONGSOOK	RN, MED/SURG 7 KP
KIM	MEEYUN	RN, MED/SURG 7 KP
KO	HYANGMI	RN, MED/SURG 7 KP
LIM	SEUNGAE	RN, MED/SURG 7 KP
MALIT	CHERYL JOY	RN, MED/SURG 7 KP
MARTINEZ	KAREN KAYE	RN, MED/SURG 7 KP
SHIM	GEMMA	RN, MED/SURG 7 KP
BRACAMONTE	JESSICA	RN, ONCOLOGY
CAMPOS	YASMINI	RN, ONCOLOGY
CEBALLOS	VILMAR	RN, ONCOLOGY
CUARESMA	DENICE	RN, ONCOLOGY
DATOR	COSSETTE	RN, ONCOLOGY
ESTRADA	MARTIN	RN, ONCOLOGY
EVANGELISTA	ALLAN	CHARGE NURSE, ONCOLOGY
GILL	JAGVEER	RN, ONCOLOGY
MACAPAGAL	YOLANDA	RN, ONCOLOGY

Exhibit A - 8



Employee Last Name	First Name	Job Title
MANALO	EVELYN	RN, ONCOLOGY
PLAZO	JONATHAN	RN, ONCOLOGY
REBUYACO	ARIANNA	RN, ONCOLOGY
RODRIGUEZ	DENISE	RN, ONCOLOGY
TOLENTINO	CHONA	CHARGE NURSE, ONCOLOGY
AMPONG	GRANVILLE	RN, ACUTE REHAB
APELIZAN	PAULA LORENA	RN, ACUTE REHAB
BAE	YEAHEUN	RN, ACUTE REHAB
BOTE	ROMERO	RN, ACUTE REHAB
DADHANIA	AKRUTI	RN, ACUTE REHAB
GUMAYAGAY	VINA	RN, ACUTE REHAB
JANG	JI-YOUNG	RN, ACUTE REHAB
KIM	JUNGMIN	RN, ACUTE REHAB
NGUYEN	KELLY THUY-KHANH	RN, ACUTE REHAB
NOBLEFRANCA	CHITA	RN, ACUTE REHAB
PARK	ELLEN	RN, ACUTE REHAB
PASCUA	JULIA	RN, ACUTE REHAB
PERALTA	VIOLETA	RN, ACUTE REHAB
RANGEL	SANDRA	RN, ACUTE REHAB
SIAPNO	JOANN	RN, ACUTE REHAB
TICON-GALLARDO	MARY GRACE	RN, ACUTE REHAB
YAO	SUJUE	RN, ACUTE REHAB
ACOYMO	KERWIN	RN, EMERGENCY ROOM PD-3
ADLAWAN-DOBLE	MARIA ROSELIE	RN, AUDITOR - EMER. ROOM 10/40
ADRAYAN	GILBERT	RN, EMERGENCY ROOM PD-3
AGUILAR	JUSTIN	RN, EMERGENCY ROOM PD-1

Exhibit A - 9



Employee Last Name	First Name	Job Title
SHIN	SUNGMIN	RN, SHORT STAY
TAI	ELLEN	RN, SHORT STAY
BALINGIT	CORAZON	CHARGE NURSE, SURG & RECOVERY
CHANG	MARY	RN, SURG & RECOVERY
CRUDUP	IMANI	RN, SURG & RECOVERY
DEEGAN	GERARD	RN, SURG & RECOVERY
DUMLAO	TERESITA	RN, SURG & RECOVERY
EOM	HOKYOUNG	RN, SURG & RECOVERY
FAMILARA	MYRA	RN, SURG & RECOVERY PD-3
HEO	GJIYOUNG	RN, SURG & RECOVERY
LYON	LORNA	RN, SURG & RECOVERY
MENDOZA	MARILOU	RN, SURG & RECOVERY
POSUELOZ	ARIEL	RN, SURG & RECOVERY
SANCHEZ	BEATRIZ	RN, SURG & RECOVERY
TAMANAHA	MA CORAZON	RN, SURG & RECOVERY
TAN	JULIE ANN	RN, SURG & RECOVERY
KANG	SO HEE	RN, SURG & RECOVERY 2
MUZYCHUK	NELLI	RN, SURG & RECOVERY 2
YUN	CHRISTINA	RN, SURG & RECOVERY 2
CHO	MEONGHEE	RN, RECOVERY ROOM
CROWLEY	VALERIE	RN, RECOVERY ROOM
CUPP	CHRISTINE	RN, RECOVERY ROOM 10HR
NILO	VIDAL	RN, RECOVERY ROOM
ORAIS	GRECITA PRIMA	RN, RECOVERY ROOM
BAUTISTA PALANOG	MARICEL	RN, CATH LAB PD-1
CROWLEY	VERONICA	RN, CATH LAB

Exhibit A - 12



Employee Last Name	First Name	Job Title
DUTTON	NOELLE	RN, CATH LAB (STEMI)
GERMINAL	GLADYS	RN, CATH LAB
HIPUS	JOSEFINA	RN, CATH LAB
KIM	SINSIL	RN, CATH LAB
LEE	EUNJIN	RN, CATH LAB
RUANTO	ROZALDO	RN, CATH LAB
VILLAROMAN	CHIQUI	RN, CATH LAB
ASSADI	AMIR	RN, INTERVENTIONAL RADIOLOGY
BAZAN	GERARDO	CHARGE NURSE, INTER. RADIOLOGY
MAYFIELD	CHRIS	RN, INTERVENTIONAL RADIOLOGY
BIRIOUKOV	LEONID	RN, ACUTE DIALYSIS PD-2
CAISIP	THADEUS	RN, ACUTE DIALYSIS
DANG	PAULINE	RN, ACUTE DIALYSIS
DEL FIERRO	JOSEPH ARNEL	RN, ACUTE DIALYSIS
DORAN	CHARLES	RN, ACUTE DIALYSIS
GROEHLER	MIRA	RN, ACUTE DIALYSIS
KIM	GEUMCHUL	RN, ACUTE DIALYSIS
LEYRAN	NOEL	RN, ACUTE DIALYSIS
LICAYAN	SORIANO	RN, ACUTE DIALYSIS
OH	YESUL	RN, ACUTE DIALYSIS PD-3
PARK	KI	RN, ACUTE DIALYSIS
ROH	HAE	RN, ACUTE DIALYSIS
SHIN	YOUNG SUK	RN, ACUTE DIALYSIS
THOMAS	CRISTINA	RN, ACUTE DIALYSIS
TULANDA	NSIMBA	RN, ACUTE DIALYSIS
DUMANSKY	ELENA	RN GI LAB-8/80

Exhibit A - 13



Employee Last Name	First Name	Job Title
ESTELL	CORNELIA	CHARGE NURSE, GI LAB
LARGAESPADA	FRANCES	RN GI LAB-8/80
AQUINO	HILDA	EDUCATOR, LEAD CLINICAL RN
CHUA	HONEE	EDUCATOR, CLINICAL RN 10HR
CERAOS	JERIC	RN, NURSING ADMIN
GOLORAN	PATRICIA	RN, NURSING ADMIN
REYES	JENNIE	RN, NURSING ADMIN
SANTIAGO	PATRICIA	RN, NURSING ADMIN
SANTIAGO	ZAYRA	RN, NURSING ADMIN
WILSON	MICHELLE	RN, NURSING ADMIN
ALWAN	ALEXZANDRIA	RN, CASE MANAGEMENT PD-3
BALUYOT	VANESSA FAYE	RN, CASE MANAGEMENT
CHANG	AH YEON	RN, CASE MANAGEMENT
CHOI	BO YEON	RN, CASE MANAGEMENT PD-1
CRUZ	LIEZL	RN, CASE MANAGEMENT PD-1
ENRIQUEZ	VERE JONAS	RN CASE MANAGEMENT
LEMUS	LITA	RN, CASE MANAGEMENT
LENON	AUDREY	RN, CASE MANAGEMENT
LUISTRO	ROMEO	RN, CASE MANAGEMENT
MADLANGBAYAN	HAYCELYN	RN, CASE MANAGEMENT
MCFARLAND	ALLEN GRACE	RN, CASE MANAGEMENT
MOJARRO	YARETH	RN, CASE MANAGEMENT PD-2
OANDASAN	JAYCEL	RN, CASE MANAGEMENT
RAMOS	SHEILA	RN, CASE MANAGEMENT
SAMSON	TIFFANY	RN, CASE MANAGEMENT PD-1
SANTOS	ROSEMARIE	RN, CASE MANAGEMENT

Exhibit A - 14

Exhibit A - 15

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS California Nurses Association		DEFENDANTS Verity Health Systems of California, Inc, a California nonprofit public benefit corporation; St. Vincent Medical Center, an affiliate; St. Francis Medical Center, an affiliate; Seton Medical Center, an affiliate; Verity Holdings, LLC, an affiliate; DePaul Ventures, LLC, an affiliate; Richard Adcock, an individual; Steven Sharrer, an individual	
ATTORNEYS (Firm Name, Address, and Telephone No.) Carol Igoe (SBN 267673) cigoe@calnurses.org Kyrsten Skogstad (SBN 281583) kskogstad@calnurses.org Nicole Daro (SBN 276948) ndaro@calnurses.org California Nurses Association 155 Grand Avenue Oakland, CA 94612 510-273-2273		ATTORNEYS (If Known) Sam Alberts sam.alberts@dentons.com Denton's US LLP 1900 K Street, NW Washington, DC 20006 T: 202-408-7004 An Ruda aruda@BZBM Bartko Zankel Bunzel One Embarcadero Center, Suite 800 San Francisco, CA 94111 T: 415-956-1900	
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Other	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Violations of 29 U.S.C. section 2100, et. seq., California Labor Code section 1400, et. seq. , Intentional Misrepresentation by Concealment, Negligent Misrepresentation			
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)			
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input checked="" type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input checked="" type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa et. seq. <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$	
Other Relief Sought Damages to be Proved At Trial; General Damages, Special Damages, Statutory Damages, Punitive Damages, Attorneys' Fees and Expenses; Prejudgment Interest			

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Verity Health Systems of California, Inc., et. al.		BANKRUPTCY CASE NO. 2:18-bk-20151-ER
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISION OFFICE Los Angeles	NAME OF JUDGE Hon. Ernest M. Robles
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF None	DEFENDANT None	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) /s/ Kyrsten Skogstad		
DATE March 5, 2020	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Kyrsten Skogstad	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 155 Grand Ave., Oakland, CA 94612.

On March 19, 2020, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION OF PLAINTIFFS FOR WITHDRAWAL OF REFERENCE OF ADVERSARY PROCEEDINGS PENDING IN BANKRUPTCY COURT** on the interested parties in this action as follows:

BY OVERNIGHT MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the California Nurses Association's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the UPS, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Oakland, California.

The Honorable Ernest M. Robles
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

Office of the United States Trustee
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ttschneaux@calnurses.org to the persons at the e-mail addresses listed in below. The document(s) were transmitted at or before 5:00 p.m. I did not receive, within a reasonable time after the

transmission, any electronic message or other indication that the transmission was unsuccessful:

DEFENDANT: Richard Adcock, Verity Health Systems of California-
aruda@bzbm.com

DEFENDANT: Steven Sharrer, Verity Health
aruda@bzbm.com

DEFENDANT: De Paul Ventures, LLC
sam.alberts@dentons.com

DEFENDANT: St. Francis Medical Center, a California nonprofit public benefit
corporation sam.alberts@dentons.com

DEFENDANT: St. Vincent Medical Center, a California nonprofit public benefit
corporation sam.alberts@dentons.com

DEFENDANT: St. Vincent Dialysis Center, Inc.
sam.alberts@dentons.com

DEFENDANT: Seton Medical Center, a California nonprofit public benefit
corporation sam.alberts@dentons.com

DEFENDANT: Verity Health Systems of California, Inc., a California nonprofit
public benefit corporation sam.alberts@dentons.com

DEFENDANT: Verity Holding, LLC, a California limited liability company
sam.alberts@dentons.com

I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct and that I am employed in the office
of a member of the bar of this Court at whose direction the service was made.

Executed on March 19, 2020, at Oakland, California.

/s/Tym Tschneaux
Tym Tschneaux

EXHIBIT 56

KYRSTEN B. SKOGSTAD (SBN 281583)
NICOLE J. DARO (SBN 276948)
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LEGAL DEPARTMENT
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Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In Re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et. al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

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

) CHAPTER 11

) **OBJECTION BY CREDITOR**
) **CALIFORNIA NURSES ASSOCIATION**
) **TO MOTION FOR ENTRY OF FINAL**
) **ORDER: (I) AUTHORIZING THE**
) **DEBTORS TO (A) PAY PREPETITION**
) **EMPLOYEE WAGES AND SALARIES,**
) **AND (B) PAY AND HONOR EMPLOYEE**
) **BENEFITS AND OTHER WORKFORCE**
) **OBLIGATIONS; AND (II)**
) **AUTHORIZING AND DIRECTING THE**
) **APPLICABLE BANK TO PAY ALL**
) **CHECKS AND ELECTRONIC PAYMENT**
) **REQUESTS MADE BY THE DEBTORS**
) **RELATING TO THE FOREGOING**
) **[Docs. 22, 75]**

) Emergency Hearing:

) Date: October 3, 2018

) Time: 10:00 AM

) Place: Courtroom 1568

) U.S. Bankruptcy Court

) 255 East Temple Street

) Los Angeles, CA 90012

) Judge: The Honorable Ernest M. Robles



The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors”), submits this objection (the “Objection”) to the *Motion for Entry of Final Order: (1) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing* (the “First Day Wage Order”). In support of this Objection, CNA respectfully represents as follows:

BACKGROUND

1. On August 31, 2018 (the “Commencement Date”), the Debtors each commenced a voluntary case under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtors have been authorized to remain in possession of their property and continue in operation and management of their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On the Commencement Date, Debtors filed an *Emergency Motion of Debtors for Entry of Order: (1) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing* (the “Emergency Motion”) [Doc. 22].

4. On September 5, 2018, the Court granted the Emergency Motion pending a final hearing on it on October 3, 2018 [Doc. 75].

5. CNA represents approximately 1,500 of the Debtors’ registered nurse employees at four of the Debtors’ entities: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”), including Seton Medical Center Coastside campus (“SMCC”). The Debtors and CNA are parties to a total of four collective bargaining agreements (“CBAs”) that define the respective rights of the Debtors and CNA-represented employees, including, without limitation, pay,

1 working conditions and health and welfare and pension benefits payable to CNA-represented
2 employees (“CNA members”).

3 6. In compensation for their ongoing service to Debtors, CNA members employed
4 at OCH, SLRH, SMC and SMCC are presently accruing new benefits in a multiemployer
5 defined benefit pension plan sponsored by Debtors called the Retirement Plan for Hospital
6 Employees (the “RPHE”).

7 7. In compensation for their ongoing service to Debtors, CNA members employed
8 at SVMC are presently accruing new benefits in a single-employer defined benefit pension plan
9 sponsored by Debtors called Verity Retirement Plan A (“Plan A”).

10 8. In addition to CNA members, many of Debtors’ other employees are represented
11 by other unions, *e.g.*, the Service Employees International Union (“SEIU”), National Union of
12 Healthcare Workers (“NUHW”), United Nurses Association of California (“UNAC”), and the
13 International Union of Operating Engineers, Stationary Local No. 39 (“Local 39 Stationary
14 Engineers”).

15 **PRELIMINARY STATEMENT**

16 9. CNA objects to the First Day Wage Order on the grounds that, as currently
17 drafted, it provides preferential treatment to the members of certain unions, specifically SEIU
18 and Local 39 Stationary Engineers while neglecting the rights of CNA members and other
19 unions. Such disparate treatment will negatively affect the morale of Debtor’s registered nurses
20 and impact Debtors’ ability to efficiently operate their businesses during reorganization. The
21 discrepancies in treatment among the various unions can be addressed through modifying
22 Paragraphs 4, 7, 21 and 23 of the First Day Wage Order as noted below.

23 **OBJECTION**

24 10. CNA respectfully requests revision of Paragraph 4 of the First Day Wage Order
25 since it implies that only SEIU members have a right to object to payroll errors regarding the
26 prepetition Wages covered by the Order. The Order also confusingly singles out the SEIU
27 CBA as the only CBA to which Debtors are required to honor. This drafting is misleading
28 since Debtors are required to honor all CBAs unless this Court permits their rejection through

1 an appropriate § 1113 motion by Debtors. Additionally, all non-SEIU represented employees
2 should maintain all rights under state and federal law, as well as their own CBAs, to challenge
3 any payroll errors. Accordingly, CNA requests the following additions to Paragraph 41:

4 “4. To honor the collective bargaining agreements (“CBA”) with SEIU, and
5 remedy, through payment, any error identified by any Employee represented by SEIU
6 regarding payroll made on August 30, 2018 on account of prepetition Wages; provided,
7 however, that the Employee shall identify such errors within 24 hours of payroll in
8 accordance with the CBA. For the avoidance of doubt, Debtors will honor all valid
9 CBAs to which it is a party and non-SEIU represented employees retain all rights to
10 challenge payroll errors made regarding such prepetition Wages under state and federal
11 law, and any applicable collectively bargained grievance processes.”

12 11. CNA objects to Paragraph 7 of the First Day Wage Order on the grounds that it
13 privileges the pension obligations owed to the Local 39 Stationary Engineers Pension Plan over
14 those owed to the other retirement plans to which Debtor contributes, as well as offers special
15 treatment to the SEIU Training and Upgrade Fund. As demonstrated in Paragraph 35 of the
16 Emergency Motion [Doc. 22, p. 14:16-25], the \$176,524 Debtors requested be made available
17 to pay such “Union Obligations” is predominantly (and possibly entirely) an estimate of
18 monthly contributions due to the Local 39 Stationary Engineers Pension Trust. The description
19 of this cost makes no mention of whether this amount is due to a prepetition priority claim,
20 subject to the priority dollar cap limit contained in Bankruptcy Code section 507(a)(5), or a
21 postpetition claim entitled to administrative priority. To the extent, the amount claimed is due
22 to a prepetition priority claim, it is more appropriately included with the other pension plan
23 prepetition priority claims in Paragraph 21 of the Order where it states these plan payments are
24 subject to the priority cap. Conversely, to the extent this amount is for postpetition

25
26
27 ¹ Throughout this Objection, CNA has struck through words it requests that this Court delete
28 and double-underlined words it wishes to have added. All single-underlined words and so
underlined in the Order as currently drafted.

1 administrative expenses related to pension accruals for active employees, this amount is already
2 explicitly provided for in Paragraph 23 of the Order.

3 12. Additionally, Paragraph 35 of the Emergency Motion also refers to contributions
4 that are owed to the SEIU Training and Upgrade Fund that are due in February 2019 as part of
5 the “Union Obligations” and states that this amount is “not currently owing.” Based on the
6 Emergency Motion, it is unclear what, if any, part of the \$176, 524 is related to contributions
7 due to this Training and Upgrade Fund. Furthermore, it is unclear which of these amounts
8 relate to prepetition priority claims and so subject to the priority cap limit or postpetition
9 administrative expenses. CNA does not object to the payment of contributions to the Training
10 and Upgrade Fund, but it should be made on the same basis as payments to the other employee
11 benefit plans based on whether the amount due is a prepetition priority claim, a postpetition
12 administrative expense, or a combination thereof.

13 13. Accordingly, rather than state ambiguously that “Union Obligations” will be
14 paid, Paragraph 7 of the First Day Wage Order should be amended to explicitly state whether it
15 refers to prepetition priority claims subject to the cap or administrative expenses paid in the
16 ordinary cost of business that relate to the SEIU Training and Upgrade Fund. No reference
17 should be made to the Stationary Engineers Local 39 Pension Plan since treatment of
18 contributions to that plan are more appropriately addressed under Paragraphs 21 and 23 with all
19 of the other defined benefit pension plans. Therefore, CNA requests that Paragraph 7 be
20 deleted in its entirety and replaced with the following sentence:

21 “7. To honor and pay all accrued and unpaid prepetition contributions due to the
22 SEIU Training and Upgrade Fund, subject to the extent there is availability under the
23 priority cap of §§ 507(a)(4) and (a)(5). To continue to pay in ordinary course of their
24 business, postpetition contributions to the SEIU Training and Upgrade Fund.”

25 14. CNA seeks modification of Paragraph 21 of the First Day Wage Order so that it
26 mirrors the language in the preceding paragraphs regarding prepetition obligations and requires
27 payment of these expenses, as opposed to merely permitting them as it is currently drafted.
28 Specifically, CNA respectfully requests the following modifications noted below so that that all

pension plan prepetition priority claims are treated in the same manner as other prepetition priority claims related to employee wages and benefits. CNA also requests the deletion of the word “of” in the last clause for clarity:

“21. To the extent not expressly identified above, prepetition wages and benefits, including contributions that may be due or arise on all defined contribution plans and defined benefit plans, ~~may~~ shall be paid as a priority claim to the extent there is availability ~~of~~ under the priority cap of §§ 507(a)(4) and (a)(5);”

15. CNA seeks modification of Paragraph 23 of the First Day Wage Order to also include reference to the Pension Plans in which CNA members are actively earning new benefits, in addition to the Stationary Engineers Local 39 Pension Plan which is already incorporated into this paragraph. Such claims due to new new accruals earned postpetition are entitled to administrative priority. *PBGC v. Sunarhauserman*, 126 F.3d 811, 819 (6th Cir. 1997). Accordingly, CNA seeks the following revision of Paragraph 23:

“23. To continue to pay, in the ordinary course of their business, Employee-related expenses and obligations that accrue postpetition in the ordinary course of Debtors’ business. For the avoidance of doubt, this includes postpetition contributions for active Employees into the Local 39 Stationary Engineers defined benefit pension plan and trust and contributions for active California Nurses Association Represented Employees accruing new benefits into the Retirement Plan for Hospital Employees and Verity Health System Retirement Plan A.”

16. CNA also objects to the First Day Wage Order to the extent that it does not contemplate payments due to Plan A or the RPHE for funding obligations necessary to maintain these pension plans. CNA supports the objections raised by SEIU in this matter which state that the failure to fund these pension obligations violates existing CBAs which Debtors are obligated to adhere to until rejected pursuant to §1113. *SEIU-UHW’s Objections to Motion for Order (1) Authorizing the Debtors to (A) Pay Prepetition Employees Wages and Salaries, etc.* [Doc. 213, pp. 6-9]. CNA also supports the objections raised by RPHE to the *Motion for A Final Order Regarding Postpetition Financing* [Doc. 31] which demonstrates

1 that contributions necessary to meet funding obligations are entitled to administrative expense
2 priority [Doc. 218, pp. 4-6].

3
4 Wherefore, CNA respectfully requests that the Order be modified in accordance with
5 this Objection.

6
7 Dated: September 19, 2018

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

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CERTIFICATE OF SERVICE

In re: Verity Health Systems of California, Inc.
Case No. 2:18-bk-20151-ER

I am over the age of 18 years, employed in the County of Alameda, and not a party to the within action. My business address is 155 Grand Avenue, Oakland, California 94612.

I certify that on September 19, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Bankruptcy Court, Central District of California, by using the CM/ECF System.

Participants in the matter who are registered CM/ECF users will be served by the Court's CM/ECF system.

I further certify that some of the participants in the matter are not registered CM/ECF users. On September 19, 2018, I served the following non-CM/ECF participants by First Class United States Mail:

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EXHIBIT 57

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7 Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

9 In re,

10 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

11 Debtors and Debtors In Possession.

- 12 ☒ Affects All Debtors
13 ☐ Affects O'Connor Hospital
14 ☐ Affects Saint Louise Regional Hospital
15 ☐ Affects St. Francis Medical Center
16 ☐ Affects St. Vincent Medical Center
17 ☐ Affects Seton Medical Center
18 ☐ Affects O'Connor Hospital Foundation
19 ☐ Affects Saint Louise Regional Hospital
20 ☐ Affects Saint Louise Regional Hospital
21 ☐ Affects St. Francis Medical Center of Lynwood
22 ☐ Affects St. Vincent Foundation
23 ☐ Affects St. Vincent Dialysis Center, Inc.
24 ☐ Affects Seton Medical Center Foundation
25 ☐ Affects Verity Business Services
26 ☐ Affects Verity Medical Foundation
27 ☐ Affects Verity Holdings, LLC
28 ☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

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

Jointly administered with:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**NOTICE OF HEARING AND MOTION OF THE
DEBTORS FOR AN ORDER APPROVING: (I)
PROPOSED DISCLOSURE STATEMENT; (II)
SOLICITATION AND VOTING PROCEDURES; (III)
NOTICE AND OBJECTION PROCEDURES FOR
CONFIRMATION OF DEBTORS' PLAN; AND (IV)
GRANTING RELATED RELIEF; MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date and Time:

Date: [Application for OST filed concurrently herewith]

Place: Courtroom 1568

255 E. Temple Street

Los



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1 **PLEASE TAKE NOTICE** that at the above referenced date, time and location, before the
2 Honorable Ernest M. Robles, United States Bankruptcy Judge, in Courtroom 1568 located at 255
3 E. Temple Street, Los Angeles, California 90012, or as soon thereafter as the Court may hear the
4 matter, Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors
5 and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor”
6 and, collectively, the “Debtors”), shall hold a hearing on the *Motion of the Debtors for an Order*
7 *Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III)*
8 *Notice And Objection Procedures for Confirmation Of Debtors’ Plan; And (IV) Granting Related*
9 *Relief* (the “Motion”). The Debtors filed the *Debtors Chapter 11 Plan of Liquidation (Dated*
10 *September 3, 2019)* (the “Plan”) and related disclosure statement (the “Disclosure Statement”)
11 concurrently herewith.
12

13 **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon this Notice, the
14 accompanying Memorandum of Points and Authorities, the *Declaration of Richard G. Adcock In*
15 *Support of Emergency First-Day Motions* [Docket No. 8], the record in these cases and all other
16 matters of which this Court may take judicial notice pursuant to Rule 201 of the Federal Rules of
17 Evidence, the arguments of counsel to be made at the hearing, and all other admissible evidence
18 properly brought before the Court at or before the hearing on this Motion, if any.
19

20 **PLEASE TAKE FURTHER NOTICE** that any party may review and obtain a copy of
21 the proposed Plan and Disclosure Statement, by downloading same from the website
22 <https://www.kccllc.net/verityhealth> or by contacting and requesting a copy from: Kurtzman
23 Carson Consultants LLC (“KCC”), the Debtors’ Solicitation Agent (the “Solicitation Agent”) by
24 sending a written request via standard overnight or hand delivery to: Verity Ballot Processing
25 Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. Additionally,
26 copies of the Disclosure Statement and Plan are on file with the Office of the Clerk of the
27
28

1 Bankruptcy Court for review during normal business hours and are also available on the Debtors'
2 KCC website at <https://www.kccllc.net/verityhealth>. A copy may also be obtained by e-mail
3 request to: Verityinfo@kccllc.com.

4 **PLEASE TAKE FURTHER NOTICE** any party opposing or responding to the Motion
5 must file and serve the response (“Response”), pursuant to Local Bankruptcy Rule 9013-1(f), on
6 the moving party and the United States Trustee. A Response must be a complete written statement
7 of all reasons in opposition thereto or in support, declarations and copies of all evidence on which
8 the responding party intends to rely, and any responding memorandum of points and authorities.

9 **PLEASE TAKE FURTHER NOTICE** that, concurrently herewith, the Debtors are filing
10 an application under Local Bankruptcy Rule 9075-1(b) for this Motion to be heard on shortened-
11 notice on October 2, 2019 at 10:00 a.m. (Pacific Time) (the “Application”). After the Application
12 is ruled on, the Debtors will provide notice of Response and reply deadlines to the Motion. In the
13 Application, the Debtors request that the Court set a Response deadline of September 18, 2019,
14 and set a reply deadline of September 25, 2019.

15 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
16 1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to
17 be consent to the relief requested herein.

18 Dated: September 3, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

19 By /s/ Tania Moyron
Tania Moyron

20 Attorneys for Verity Health Systems
21 of California, Inc., *et al.*

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11 U.S.C. § 1052

11 U.S.C. § 3272

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor” and, collectively, the “Debtors”), request (the “Motion”) approval of (i) the *Disclosure Statement Describing Debtors’ Chapter 11 Plan Of Liquidation (Dated September 3, 2019)* (the “Disclosure Statement”)¹ filed concurrently herewith, (ii) the solicitation and voting procedures proposed herein, (iii) the proposed notice and objection procedures for confirmation of the *Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)* (the “Plan”) filed concurrently herewith, and (iv) granting related relief as set forth more fully herein. In support of the Motion, the Debtors refer to the *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”). Concurrently herewith, the Debtors have filed an application for an order setting the hearing on this Motion on shortened notice. The Debtors respectfully submit that Disclosure Statement contains “adequate information,” as that phrase is defined in § 1125(a)(1)², and, thus, request the Court grant the Motion.

II.

JURISDICTION, VENUE, AND REQUESTED RELIEF

The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

1. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Capitalized terms not otherwise defined herein have the same definitions set forth in the Disclosure Statement.

² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. All “Local Bankruptcy Rule” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

2. The statutory predicates for the relief sought herein are §§ 105, 327, 328, 1125, and 1126; Bankruptcy Rules 2002, 2014, 3016, 3017, 3018, and 3020; and Local Bankruptcy Rules 2002-1 and 3018-1.

III.

BACKGROUND

A. General Background.

3. On August 31, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code (the “Cases”). The Cases are jointly administered before the Bankruptcy Court. *See* Docket No. 17. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

4. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that, on the Petition Date, operated six acute care hospitals: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), Seton Medical Center (“SMC”), and Seton Medical Center Coastsides (“Seton Coastsides” and, together with OCH, SLRH, SFMC, and SVMC, the “Hospitals”). SMC and Seton Coastsides (collectively, “Seton”) operated under one consolidated acute care hospital license.

5. VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health System”) have operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *See* First-Day Decl., at 4, ¶ 12. The scope of the services provided by the Verity Health System are exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, ¶ 12.

6. Additional background facts on the Debtors, including an overview of the Debtors’ business, historical operations, capital structure, employment plans, prior restructuring efforts and liquidity issues that led to these chapter 11 Cases are contained in the First-Day Declaration. Below is an abbreviated description of major historical events that preceded the chapter 11 filing.

B. Events Leadings to the Bankruptcy Cases.

7. Between 1995 and 2015, the Hospitals incurred substantial operating losses. During that time period, Daughters of Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”) and the Daughters of Charity Health System (“DCHS”) attempted to find a solution which would resolve the operating losses, either through a sale of some or all of the hospitals or a merger with a more financially sound partner. These efforts were not successful, and the health system’s losses continued to mount.

8. In 2015, DCHS marketed the health system for sale and focused on offers that maintained the system as a whole, including the assumption of all existing obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”). In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of \$100 million, arrange loans for another \$160 million to the system, and manage operations, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”). DCHS’ name was changed to VHS, and Integrity Healthcare, LLC (“Integrity”) was formed to carry out the management services under a new management agreement.

9. On December 3, 2015, the California Attorney General (the “Attorney General”) approved the BlueMountain Transaction, subject to certain conditions. The Attorney General conditions were imposed for periods ranging from 5 to 15 years, and included, *inter alia*, limits on transfers of control; maintenance of specific health services and specific bed counts; required participation in Medicare and Medi-Cal programs; and required levels of charity care.

10. Under the Restructuring Agreement, VHS, OCH, SLRH, SFMC, SVMC, and Seton, were converted from religious corporations to public benefit corporations.

11. Despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system continued to incur losses.

1 12. In July 2017, NantWorks, LLC acquired a controlling stake in Integrity, and
2 brought in a new CEO, CFO, and COO. NantWorks also loaned another \$148 million to the
3 Debtors.

4 13. Despite the infusion of capital and new management, losses continued to mount to
5 approximately \$175 million annually on a cash flow basis. It soon became apparent that the
6 problems facing the Verity Health System were too large to solve without a formal, court-
7 supervised restructuring,

8 14. Accordingly, the Debtors commenced these Cases with the objective of protecting
9 the original legacy of the Daughters of Charity to the maximum extent possible. The Debtors
10 pursued a strategy to retire debt incurred over the past 18 years so the Hospital facilities and work
11 force can continue their critical operations under new ownership and leadership without the
12 accumulated crisis of the past.

13 **C. Appointment of Committee.**

14 15. On September 17, 2018, the Office of the United States Trustee appointed an
15 Official Committee of Unsecured Creditors in the Debtors' Cases. [Docket No. 197].

16 **IV.**

17 **DISCLOSURE STATEMENT AND PLAN**

18 Concurrently herewith, the Debtors filed the proposed Plan and related Disclosure
19 Statement. The Debtors worked diligently with their advisors to prepare the Plan, which
20 maximizes value for the estates for the benefit of creditors. The Debtors concluded, after a careful
21 analysis of the Debtors' complex corporate and financial structure, that a single plan of liquidation
22 contemplating the "deemed" substantive consolidation of all Debtors—rather than seventeen
23 separate plans—will maximize value and avoid unnecessary costs and potential litigation. Thus,
24 as more fully described in the Disclosure Statement, the Plan provides for the "deemed"
25 substantive consolidation of the Debtors solely for purposes of implementation of the Plan and
26 distributions to creditors otherwise in accordance with the Bankruptcy Code's distribution and
27 classification provisions. The Disclosure Statement describes further facts and legal bases that
28 support substantive consolidation.

As set forth in the Disclosure Statement, the net proceeds of the SCC Sale and the SGM Sale will be the primary source of funding for distributions under the Plan. The Debtors also anticipate other sources of recovery, including, but not limited to, recovery of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action, including Avoidance Actions, to be pursued by the Liquidating Trust.

The Debtors propose the following key dates in connection with the approval of the Disclosure Statement and confirmation of the Plan:³

Event Date/Deadline	Event Date/Deadline
Disclosure Statement Objection Deadline	September 18, 2019
Deadline to File Reply to Disclosure Statement Objections	September 25, 2019
Disclosure Statement Hearing	October 2, 2019 at 10:00 a.m. (Pacific Time)
Solicitation Commencement Deadline	Five (5) business days after entry of order approving the Disclosure Statement
Voting Record Date	October 2, 2019
Deadline to Object or to File a Motion to Estimate Claims for Voting Purposes	October 31, 2019
Voting Objection Deadline	October 31, 2019
Voting Deadline	November 7, 2019 at 4:00 p.m. (Pacific Time)
Confirmation Objection Deadline	November 7, 2019
Deadline to File Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order and Response to Objections to the Confirmation	November 14, 2019
Confirmation Hearing	November 21, 2019 at 10:00 a.m. (Pacific Time)

The Debtors respectfully request entry of an order: (i) approving the Disclosure Statement as containing “adequate information,” as that term is defined in § 1125(a)(1); (ii) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, including (a) approving the form and manner of the solicitation packages, (b) approving the form and manner of notice of the hearing to confirm the Plan, (c) establishing a voting record date and approving

³ The Debtors filed an application for an order setting the hearing on this Motion on shortened notice contemporaneously herewith. The dates set forth herein are subject to the Court’s ruling on the Debtors’ application and the Court’s availability with respect to the proposed confirmation schedule.

1 procedures for distributing the solicitation packages, (d) approving the forms of ballots, (e)
2 establishing the deadline for the receipt of ballots, and (f) approving procedures for tabulating
3 acceptances and rejections of the Plan; (iii) establishing procedures with respect to, and the
4 deadline for filing objections to, the confirmation of the Plan; and (iv) granting related relief.

5
6 **V.**

7 **ARGUMENT**

8 **A. The Disclosure Requirements of the Bankruptcy Code**

9 Pursuant to § 1125, a plan proponent must provide holders of impaired claims with
10 “adequate information” regarding a proposed chapter 11 plan. In that regard, § 1125(a)(1)
11 provides in pertinent part that:

12 “adequate information” means information of a kind, and in sufficient detail, as far
13 as is reasonably practicable in light of the nature and history of the debtor and the
14 condition of the debtor’s books and records, including a discussion of the potential
15 material Federal tax consequences of the plan to the debtor, any successor to the
16 debtor, and a hypothetical investor typical of the holders of claims or interests in the
17 case, that would enable such a hypothetical investor of the relevant class to make an
18 informed judgment about the plan

19 11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must as a whole, provide information that is
20 reasonably designed to permit an informed judgment by impaired creditors or equity or other
21 interest holders entitled to vote on a plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P.
22 9th Cir. 1996) (“At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate
23 information about the plan before the creditor is asked for a vote.”); *In re Art & Architecture*
24 *Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal.
25 Mar. 18, 2016) (“The primary purpose of a disclosure statement is to give creditors and interest
26 holders the information they need to decide whether to accept the plan.”) (citing *Captain Blythers,*
27 *Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re*
28 *Arnold*, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

29 In examining the adequacy of the information contained in a disclosure statement, the
30 Bankruptcy Court has broad discretion. *See Art & Architecture Books of the 21st Century*, 2016
31 WL 1118743, at *14 (“Bankruptcy judges have broad discretion in reviewing disclosure

1 statements and what constitutes adequate information and any particular instance will develop on a
2 case-by-case basis.”); *In re Brothby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (same); *Kirk v.*
3 *Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more
4 clear in granting broad discretion to bankruptcy judges under § 1125(a)”; *Menard-Sanford v.*
5 *Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *Tex. Extrusion Corp. v.*
6 *Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988); *see also In re*
7 *Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress intentionally drew vague
8 contours of what constitutes adequate information so that bankruptcy courts may exercise
9 discretion to tailor them to each case’s particular circumstances); *In re Dakota Rail Inc.*, 104 B.R.
10 138, 143 (Bankr. D. Minn. 1989) (a bankruptcy court has “wide discretion to determine . . .
11 whether a disclosure statement contains adequate information, without burdensome, unnecessary,
12 and cumbersome detail”).

13 Accordingly, the determination of whether a disclosure statement contains adequate
14 information is to be made on a case-by-case basis, focusing on the unique facts and circumstances
15 of each case. *See In re Diversified Inv’rs Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988)
16 (“According to the legislative history, the parameters of what constitutes adequate information are
17 intended to be flexible.”); *see also In re PC Liquidation Corp.*, 383 B.R. 856 at 866 (E.D.N.Y.
18 2008); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination is
19 largely within the discretion of the bankruptcy court.”); *In re Egan*, 33 B.R. 672, 674-75 (Bankr.
20 N.D. Ill. 1983). This discretion provides flexibility and facilitates the effective reorganization of
21 the different types of chapter 11 debtors by accommodating the varying circumstances
22 accompanying chapter 11 cases. *See H.R. REP. NO. 595*, at 408-09, 95th Cong. (1st Sess. 1977).

23 The determination of whether adequate information has been provided should take account
24 of expertise and resources, including outside advisors and relevant information already possessed
25 or publicly available, of the hypothetical investor of each class of claims or interests from which
26 classes the acceptance or rejection of the Plan is solicited after the commencement of the cases.
27 *See In re Zenith Elec. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

B. The Proposed Disclosure Statement Meets the Applicable Standards.

The Disclosure Statement provides “adequate information” to allow holders of Claims in the Voting Classes (as defined below) to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including:

- (i) An overview of the Plan (*see* Disclosure Statement, Section V);
- (ii) The corporate structure and indebtedness of the Debtors (*see id.*, Sections II.C., III);
- (iii) The operation of the Debtors’ business (*see id.*, Sections II, III);
- (iv) Key events leading to the commencement of the Chapter 11 Cases (*see id.*, Section III);
- (v) Significant events that occurred during the Chapter 11 Cases (*see id.*, Section IV);
- (vi) Information regarding Litigation (*see* Section IV);
- (vii) Financial information that would be relevant to determinations of whether to accept or reject the Plan (*see id.*, Section V);
- (viii) Tax consequences of the Plan (*see id.*, Sections IX, X);
- (ix) Risk factors affecting the Plan and the Debtors (*see id.*, Section XIII);
- (x) Requirements for confirmation of the Plan (*see id.*, Section XII);
- (xi) A liquidation analysis under chapter 7 of the Bankruptcy Code (*see id.*, Section XII at K); and
- (xii) Description of Plan Releases (*see id.*, Section VIII).

The Disclosure Statement also provides adequate notice of the release, exculpation, and injunction provisions in the Plan. Pursuant to Bankruptcy Rule 3016(c), “[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement [must] describe in specific and conspicuous language all acts to be enjoined and identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c). The Disclosure Statement provides a detailed description of releases and exculpations to be provided under the Plan. *See* Disclosure Statement, § VIII.B., C., D.

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1 Furthermore, the Disclosure Statement provides an analysis of the alternatives to
2 confirmation and consummation of the Plan. *See id.*, § X.II.K. (setting forth the Debtors’
3 liquidation analysis). Accordingly, the Debtors recommend that holders of claims eligible to vote
4 on the Plan vote to accept the Plan because it is the most efficient and effective means to provide
5 remaining recoveries to holders of claims against the Debtors’ estates.

6 The Disclosure Statement also contains a detailed description of means of implementation,
7 which includes the “deemed” substantive consolidation of the Debtors and the applicable factors
8 and legal basis. The Disclosure Statements sets forth adequate information concerning (i) the
9 legal requirements to establish deemed substantive consolidation, and (ii) the factual bases
10 supporting the Debtors’ request for deemed substantive consolidation. It also provides notice that
11 the Disclosure Statement and Plan shall be deemed a motion requesting that the Bankruptcy Court
12 approve the deemed substantive consolidation contemplated by the Plan at the Confirmation
13 Hearing, unless otherwise separately scheduled. *See* Disclosure Statement, Section XIV.

14 Specifically, the Disclosure Statement sets forth the effect of deemed substantive
15 consolidation and the facts of the cases that satisfy the standard for deemed substantive
16 consolidation in the Ninth Circuit. The facts relevant to the Ninth Circuit analysis and identified
17 in the Disclosure Statement include: (i) the impact of the conditions imposed by the Attorney
18 General and the extent to which the conditions required that the Debtors act as a single economic
19 unit; (ii) the manner in which the Debtors booked significant transfers on their general account
20 ledgers between entities and the effect the claims will have on recoveries among the unsecured
21 creditors of each Debtor; (iii) the issues raised by reconciliation of claims and the allocation of
22 liabilities among the Debtors; (iv) the Debtors’ lending and business relationships with the
23 creditors and the extent to which the Debtors dealt with creditors as a single enterprise; and
24 (v) facts reflecting the extent to which the proposed deemed substantive consolidation is
25 administratively convenient and benefits creditors. Accordingly, the Disclosure Statement
26 contains the pertinent information necessary for holders of impaired claims to make an informed
27 decision about whether to vote to accept or reject the Plan, including, among other things,

1 information regarding the effect and basis for the Debtors' request for deemed substantive
2 consolidation.

3 The Debtors respectfully submit that the Disclosure Statement complies with all aspects of
4 § 1125. The Debtors will demonstrate at the hearing to approve the Disclosure Statement that the
5 Disclosure Statement addresses the information set forth above in a manner that provides holders
6 of impaired unsecured claims that are entitled to vote to accept or reject the Plan with adequate
7 information within the meaning of § 1125 and should therefore be approved.

8 **VI.**

9 **ESTABLISHING PROCEDURES FOR SOLICITATION OF THE PLAN**

10 **A. Approval of Form and Manner of Solicitation Package.**

11 Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of
12 claims for the purpose of soliciting their votes and providing adequate notice of the hearing on
13 confirmation of a plan of reorganization:

14 Upon approval of a disclosure statement,—except to the extent that the court orders
15 otherwise with respect to one or more unimpaired classes of creditors or equity
16 security holders—the debtor in possession, trustee, proponent of the plan, or clerk
as the court orders shall mail to all creditors and equity security holders, and in a
chapter 11 reorganization case shall transmit to the United States trustee:

- 17 (1) the plan or a court-approved summary of the plan;
18 (2) the disclosure statement approved by the court;
19 (3) notice of the time within which acceptances and rejections of the
20 plan may be filed; and
21 (4) any other information as the court may direct, including any court
22 opinion approving the disclosure statement or a court-approved
23 summary of the opinion.

24 In addition, notice of the time fixed for filing objections and the hearing on
25 confirmation shall be mailed to all creditors and equity security holders in
26 accordance with Rule 2002(b), and a form of ballot conforming to the appropriate
Official Form shall be mailed to creditors and equity security holders entitled to
vote on the plan

27 Fed. R. Bankr. P. 3017(d).
28

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1 As further discussed below, if the Bankruptcy Court approves the Disclosure Statement as
2 containing adequate information pursuant to § 1125, the Debtors propose to distribute by First
3 Class Mail to holders of claims in the classes entitled to vote on the Plan (the “Voting Classes”)⁴
4 the Confirmation Hearing Notice (as defined below), as well as a package containing solicitation
5 materials (the “Solicitation Package”) including:

- 6 a) the Bankruptcy Court’s Order approving the Disclosure Statement (the
7 “Disclosure Statement Order”), excluding the exhibits attached thereto;
- 8 b) the applicable ballot (a “Ballot”), the proposed forms of which will be filed
9 with the Court as a supplement to this Motion, together with a pre-paid, pre-
10 addressed return envelope and, either paper copies of or electronic copies in
11 “pdf” format on a CD-ROM or USB flash drive containing the Disclosure
12 Statement (with the Plan and other exhibits attached thereto); and
- 13 c) any supplemental documents filed with the Bankruptcy Court and such
14 other materials as the Bankruptcy Court may direct, including any letters in
15 support of the Plan.

16 The Debtors submit that such materials and manner of service satisfy the requirements of
17 Bankruptcy Rule 3017(d).

18 Kurtzman Carson Consultants LLC (“KCC”) will serve as the Debtors’ Solicitation Agent
19 (the “Solicitation Agent”) and provide access to Solicitation Packages, among other things.
20 Solicitation Packages (except for Ballots) will be available (i) for download at
21 <https://www.kccllc.net/verityhealth>, (ii) by email request to verityinfo@kccllc.com, (iii) by written
22 request via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222

23 ⁴ The Voting Classes consist of Class 2 (Secured 2005 Revenue Bond Claims), Class 3 (Secured
24 2015 Notes Claims), Class 4 (Secured Series 2017 Revenue Note Claims), Class 5 (Secured MOB
25 I Financing Claims), Class 6 (Secured MOB II Financing Claims), Class 7 (Secured Mechanics
26 Lien Claims), Class 8 (PBGC Claims), Class 9 (RPHE Claims), Class 10 (General Unsecured
27 Claims), Class 11 (Convenience Claims), Class 12 (Insured Claims), and Class 13 (2016 Data
28 Breach Claims). Class 14 (Subordinated General Unsecured Claims) and Class 15 (Interests) are
deemed to reject the Plan, and, therefore, not entitled to vote. Similarly, Class 1A (Other Priority
Claims) and Class 1B (Secured PACE Tax Financing Claims) are deemed not impaired, and,
therefore, deemed to accept the Plan and not entitled to vote.

1 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245, and (iv) on the Bankruptcy Court's
2 website.⁵

3 **B. Approval of Form and Manner of Confirmation Hearing Notice**

4 Upon approval of the Disclosure Statement pursuant Disclosure Statement Order, the
5 Debtors will serve or cause to be served the following documents on the following parties, as
6 applicable: (i) a written notice to the Voting Classes (the "Confirmation Hearing Notice") of
7 (a) the Bankruptcy Court's approval of the Disclosure Statement, (b) the deadline for voting on the
8 Plan, (c) the time, date, and place for the hearing to consider confirmation of the Plan, and (d) the
9 deadline and procedures for filing objections to the confirmation of the Plan, together with the
10 Solicitation Package; (ii) a written notice to the non-voting accepting classes (the "Notice of Non-
11 Voting Accepting Status and Confirmation Hearing") that sets forth such parties' Plan treatment, a
12 summary of the Plan's release, injunction, and exculpation provisions, and certain information
13 regarding the hearing to consider confirmation of the Plan and related deadlines; and (iii) a written
14 notice to the non-voting rejecting classes (the "Notice of Non-Voting Rejecting Status and
15 Confirmation Hearing") that sets forth such parties' Plan treatment, a summary of the Plan's
16 release, injunction, and exculpation provisions, and certain information regarding the hearing to
17 consider confirmation of the Plan and related deadlines. The relevant notices will be served on the
18 appropriate parties by First Class Mail. The Debtors will file the proposed form of notices prior to
19 the hearing on this Motion.

20 Consistent with § 1126(f) and Bankruptcy Rule 3017(d), the Debtors propose to send the
21 Notice of Non-Voting Accepting Status and Confirmation Hearing to holders of Administrative
22 Claims, Professional Claims, Statutory Fees, Priority Tax Claims, Administrative DIP Lender
23 Claims, Other Priority Claims, and Secured PACE Tax Financing Claims (the
24 "Unclassified/Unimpaired Claimholders"), which classes are unclassified or deemed to accept the
25 Plan.,

26 _____
27 ⁵ <http://www.cacb.uscourts.gov/> (a PACER login and password are required to access documents
28 on the Bankruptcy Court's website).

1 Consistent with § 1126(g) and Bankruptcy Rule 3017(d), the Debtors proposed to send the
2 Notice of Non-Voting Rejecting Status and Confirmation Hearing to holders of Subordinated
3 General Unsecured Claims and Interests, which classes are deemed to reject the Plan.

4 The Debtors submit that such notices satisfy the requirements of the Bankruptcy Code and
5 Bankruptcy Rule 3017(d). Accordingly, the Debtors request that the Bankruptcy Court determine
6 that the Debtors are not required to distribute copies of the Plan, Disclosure Statement, or
7 Disclosure Statement Order to any of the Unclassified/Unimpaired Claimholders, holders of
8 Subordinated General Unsecured Claims, or Interest holders, unless otherwise requested in writing
9 or by the terms of the Disclosure Statement Order.

10 **C. Establishment of Voting Record Date and Approving of Procedures for Distribution**
11 **of Solicitation Packages.**

12 Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection
13 with the confirmation of a bankruptcy plan, “creditors and equity security holders shall include
14 holders of stock, bonds, debentures, notes and other securities of record on the date the order
15 approving the disclosure statement is entered or another date fixed by the court, for cause, after
16 notice and a hearing.” Fed R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar
17 provision regarding determination of the record date for voting purposes.

18 The Debtors request that the Bankruptcy Court establish October 2, 2019, as the record
19 date (the “Voting Record Date”), for purposes of determining the claimholders that are entitled to
20 vote (subject to the voting procedures set forth below) on the Plan or, in the case of non-voting
21 classes, for purposes of determining the claimholders to receive certain Plan-related materials.
22 The Debtors expect that they will be able to commence distribution of (i) the Confirmation
23 Hearing Notice and Solicitation Package to the Voting Classes and (ii) the Notice of Non-Voting
24 Accepting Status and Confirmation Hearing and/or Notice of Non-Voting Rejecting Status and
25 Confirmation Hearing to parties-in-interest outside of the Voting Classes, as applicable, as set
26 forth herein, within five (5) business days after the date of entry of the Disclosure Statement
27 Order, or as soon as reasonably practicable thereafter (the “Solicitation Commencement Date”).
28

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1 In the case of Class 2 (Secured 2005 Revenue Bond Claims), certain brokerage firms and
2 banks or their agents (collectively, the “Nominees”) hold Class 2 claims rather than the individual
3 holders themselves (collectively, the “Beneficial Holders”). To ensure proper tabulation of votes
4 for all Secured 2005 Revenue Bond Claims, the Debtors will deliver Solicitation Packages to
5 holders of record as of the Voting Record Date, including Nominees, as reflected on security
6 position reports provided by The Depository Trust Company (“DTC”). Additionally, the Debtors
7 will distribute “Master Ballots” and “Beneficial Holder Ballots” to Nominees under separate cover
8 from the Solicitation Packages delivered to all other holders of record. The Beneficial Holder
9 Ballots will instruct each Beneficial Holder voting on the Plan through a Nominee to return the
10 Beneficial Holder Ballot to the appropriate Nominee in sufficient time for such Nominee to timely
11 cast votes to accept or reject the Plan on behalf of the Beneficial Holders, or otherwise follow the
12 directions of the Nominee. The Nominee will complete and return a Master Ballot, which the
13 Debtors will tabulate for purposes of determining votes for Class 2.

14 The Debtors shall cause to be distributed electronically the Disclosure Statement Order
15 (excluding exhibits thereto), the Confirmation Hearing Notice, the Disclosure Statement (together
16 with the Plan and other exhibits attached thereto), and such other materials as the Bankruptcy
17 Court may direct (excluding a Ballot) to, among other parties (to the extent such parties did not
18 otherwise receive the Solicitation Package):

- 19 a) the U.S. Trustee;
- 20 b) the Internal Revenue Service;
- 21 c) the California Attorney General; and
- 22 d) all persons and entities that have filed a request for service of filings in the
- 23 Debtors’ Cases pursuant to Bankruptcy Rule 2002.

24 The Debtors anticipate that some of the notices served in the Debtors’ Cases, including
25 notices of the hearing to approve the Disclosure Statement and notices of the commencement of
26 the Debtors’ Cases, have been or may be returned, including because certain notice parties have
27 foreign addresses. The Debtors believe that it would be costly and inefficient to distribute the
28 Solicitation Package to the same addresses to which undeliverable notices were previously

distributed. Therefore, the Debtors seek the Bankruptcy Court’s approval for a departure from the strict notice rule, excusing the Debtors from distributing Solicitation Packages to those entities listed at such addresses if the Debtors are not provided with updated addresses for such entities before the Solicitation Commencement Date. Further, if the Debtors send Solicitation Packages that are deemed undeliverable and are not provided with a forwarding or more updated address, the Debtors seek that the Debtors be excused from attempting to re-deliver Solicitation Packages to such entities. The Debtors submit that good cause exists for implementing the aforementioned notice and service procedures.

D. Approval of Forms of Ballot

Bankruptcy Rule 3017(d) requires that the Debtors mail a form of Ballot to “creditors and equity security holders entitled to vote on the plan.” The Debtors propose to distribute to each holder of a claim in each Voting Class a Ballot, including the Master Ballots and/or Beneficial Holder Ballots, as applicable, the form of which will be filed by the Debtors as a supplement prior to the hearing on this Motion. The form of Ballot is based upon Official Form No. B314, but has been modified to address the particular aspects of the Debtors Cases and to include certain additional information that the Debtors believe to be relevant and appropriate for the applicable classes of claims that are entitled to vote to accept or reject the Plan, including information regarding the releases, injunctions, and exculpations contained in the Plan.

E. Establishment of Deadline for Receipt of Ballots

Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Debtors have developed the proposed schedule to allow for a solicitation period in the Debtors’ Cases of at least 28 days, which the Debtors believe is appropriate in light of the circumstances of the case and consistent with the requirements set forth in Bankruptcy Rule 2002(b). Accordingly, the Debtors propose that in order to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to the Debtors so as to be received by the Debtors no later than **4:00 p.m. (Pacific Time) on November 7, 2019** or as otherwise ordered by the Bankruptcy Court (the “Voting Deadline”) as set forth below. The

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Debtors submit that such solicitation period is a sufficient period within which creditors can make an informed decision to accept or reject the Plan in light of the circumstances of the case.

All Ballots must be delivered via First Class Mail, overnight courier, or hand delivery so as to be actually received by the Debtors' solicitation agent no later than the Voting Deadline. Except as provided below, Ballots must be submitted to the Solicitation Agent at the following address in accordance with the voting procedures set forth below:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245
(888) 249-2741(domestic)
(310) 751-2635 (international)

Master Ballots submitted by Nominees holding Class 2 (Secured 2005 Revenue Bond Claims), must be delivered to the Solicitation Agent at:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
1290 Avenue of the Americas, 9th Floor
New York, NY 10104
(877) 833-4150 (domestic)
(917) 281-4800 (international)

BALLOTS TRANSMITTED TO THE DEBTORS BY FACSIMILE, ELECTRONIC MAIL, OR OTHER MEANS NOT SPECIFICALLY APPROVED BY THE BANKRUPTCY COURT MAY BE ACCEPTED BY THE DEBTORS ON A CASE-BY-CASE BASIS.

F. Approval of Procedures for Vote Tabulation

16. Section 1126(c) provides as follows:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

1 For purposes of voting on the Plan, with respect to all creditors of the Debtors, the Debtors
2 propose that the amount of a claim used to tabulate acceptance or rejection of the Plan should be,
3 as applicable:

- 4 a) The amount of the claim listed in the Debtors' schedules of assets and
5 liabilities (the "Schedules"); provided that (i) such claim is not scheduled as
6 any of contingent, unliquidated, undetermined, disputed, or in a zero dollar
7 amount, and (ii) no proof of claim has been timely filed (or otherwise
8 deemed timely filed by the Bankruptcy Court under applicable law) with
9 respect to such claim.
- 10 b) The noncontingent and liquidated amount specified in a proof of claim
11 timely filed with the Bankruptcy Court (or otherwise deemed timely filed
12 by the Bankruptcy Court under applicable law) to the extent the proof of
13 claim is not the subject of an objection filed by **October 31, 2019** (the
14 "Voting Objection Deadline") (or, if such claim has been resolved for
15 allowance and/or voting purposes pursuant to a stipulation or order entered
16 by the Bankruptcy Court, or otherwise resolved by the Bankruptcy Court,
17 the amount set forth in such stipulation or order).
- 18 c) If a proof of claim has been timely filed prior to the applicable bar date and
19 such claim is asserted in the amount of \$0.00, such claim shall not be
20 entitled to vote.
- 21 d) Notwithstanding anything to the contrary in these tabulation rules, the
22 holder of any claim that has been indefeasibly paid, in full or in part, shall
23 only be permitted to vote the unpaid amount of such claim, if any, to accept
24 or reject the Plan.
- 25 e) The amount temporarily allowed or estimated by the Bankruptcy Court for
26 voting purposes, pursuant to Bankruptcy Rule 3018(a), subject to notice
27 consistent with the procedures set forth herein, the Bankruptcy Code, the
28 Bankruptcy Rules and the Local Bankruptcy Rules shall be the amount of
the claim for voting purposes.
- f) If a claim for which a proof of claim has been timely filed for unknown or
undetermined amounts (as determined on the face of the claim or after a
reasonable review of the supporting documentation by the Debtors) and
such claim has not been allowed, such Claim shall be temporarily allowed
for voting purposes only, and not for purposes of allowance or distribution,
at \$1.00.
- g) If a claim is listed on a timely filed proof of claim as either wholly or
partially contingent or unliquidated, such claim is temporarily allowed in
the amount that is the greater of (i) the liquidated and non-contingent
amount and (ii) \$1.00, for voting purposes only, and not for purposes of
allowance or distribution.

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- 1 h) If a claim is deemed allowed under the Plan, such claim is allowed for
2 voting purposes in the deemed allowed amount set forth in the Plan.
- 3 i) If a claim is not listed in the Schedules or is listed in the Schedules as
4 contingent, unliquidated, or disputed (or in a zero amount) and a proof of
5 claim was not (i) filed by the applicable bar date for the filing of proofs of
6 claim established by the Bankruptcy Court or (ii) deemed timely filed by an
7 order of the Bankruptcy Court prior to the Voting Deadline, such claim
8 shall be disallowed for voting purposes.
- 9 j) If a proof of claim has been amended by a later proof of claim that is filed
10 on or prior to the Voting Record Date, the later filed amending claim shall
11 be entitled to vote in a manner consistent with these tabulation rules, and
12 the earlier filed claim shall be disallowed for voting purposes, regardless of
13 whether the Debtors have objected to such amended claim. Except as
14 otherwise ordered by the Bankruptcy Court, any amendments to proofs of
15 claim after the Voting Record Date shall not be considered for purposes of
16 these tabulation rules.

12 The temporary allowance of claims for voting purposes does not constitute an allowance of
13 claims for purposes of distribution under the Plan and is without prejudice to the rights of the
14 Debtors or any other party-in-interest in any other context, including the right of the Debtors or
15 any other party-in-interest to contest the amount or validity of any claim for purposes of allowance
16 under the Plan.

17 Additionally, the Debtors seek authorization from the Bankruptcy Court for the Debtors to
18 object to any claim (as defined in § 101(5)) solely for Plan voting purposes by filing a
19 determination motion (the “Determination Motion”), no later than the Voting Objection Deadline.
20 If an objection to a claim (made by way of a Determination Motion or otherwise) filed on or
21 before the Voting Objection Deadline requests that such claim be reduced or reclassified, such
22 claimant’s Ballot shall be counted in such reduced amount or as falling into the reclassified
23 category. Further, if a creditor casts a Ballot and has timely filed a proof of claim (or has
24 otherwise had a proof of claim deemed timely filed by the Bankruptcy Court under applicable
25 law), but the creditor’s claim is the subject of an objection (made by way of a Determination
26 Motion or otherwise) filed no later than the Voting Objection Deadline, the Debtors request, in
27 accordance with Bankruptcy Rule 3018, that the creditor’s Ballot not be counted to the extent it is
28 challenged by the objection, unless such claim is temporarily allowed by the Bankruptcy Court for

1 voting purposes pursuant to Bankruptcy Rule 3018(a) after the creditor files a motion for such
2 temporary allowance (the “Claims Estimation Motion”).⁶

3 If a creditor seeks to have its claim temporarily allowed for purposes of voting to accept or
4 reject the Plan pursuant to Bankruptcy Rule 3018(a), the Debtors request that such creditor be
5 required to file a Claims Estimation Motion for such temporary allowance by the later of (i) the
6 Voting Objection Deadline or (ii) if such claim is the subject of an objection or a Determination
7 Motion, seven (7) days after the filing of the applicable objection or Determination Motion.

8 In the event that a Determination Motion or Claims Estimation Motion is filed, the Debtors
9 request that the Bankruptcy Court allow the non-moving party to file a reply to such motion by the
10 later of (i) the Voting Objection Deadline, or (ii) seven (7) days after the filing of the applicable
11 motion (the “Voting Objection Reply Deadline”). A hearing will be scheduled (subject to the
12 Bankruptcy Court’s availability) on such motion within seven (7) days of the Voting Objection
13 Reply Deadline but in no event later than the Confirmation Hearing (as defined below). The
14 Debtors further request that the ruling by the Bankruptcy Court on any Determination Motion or
15 Claims Estimation Motion be considered a ruling with respect to the allowance of the claim(s)
16 under Bankruptcy Rule 3018 and such claim(s) be counted, for voting purposes only, in the
17 amount determined by the Bankruptcy Court.

18 The Debtors propose that, in the event a claimant reaches an agreement with the Debtors,
19 as to the treatment of its claim for voting purposes, the claim may be treated in such manner.

20 The Debtors further request that the following voting procedures and standard assumptions
21 be used in tabulating the Ballots:

- 22 a) For purposes of the numerosity requirement of § 1126(c) and based on the
23 reasonable efforts of the Debtors, separate claims held by a single creditor
24 in a particular class will be aggregated as if such creditor held one claim
25 against the Debtors in such class, and the votes related to such claims will
be treated as a single vote to accept or reject the Plan.

26 ⁶ This proposed procedure is consistent with § 1126, which provides that a plan may be accepted
27 or rejected by the holder of a claim allowed under § 502. In turn, § 502(a) provides that a filed
28 proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502(a).

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- b) Any creditor who holds duplicate claims within the same class (against one Debtor or across multiple Debtors) shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such class, regardless of whether the Debtors have objected to such duplicate claims.
- c) Creditors must vote all of their claims within a particular class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple claims within a single class) that partially rejects and partially accepts the Plan will not be counted.
- d) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- e) Only Ballots that are timely received with signatures will be counted. Unsigned Ballots will not be counted.
- f) Ballots sent by mail or overnight delivery that are postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- g) Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- h) Ballots transmitted to the Debtors by facsimile, electronic mail, or other means not specifically approved by the Bankruptcy Court may be accepted by the Debtors on a case-by-case basis.
- i) Whenever a creditor casts more than one Ballot voting the same claim prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior received Ballots.
- j) If a creditor simultaneously casts inconsistent duplicate Ballots with respect to the same claim, such Ballots shall not be counted.
- k) Each creditor shall be deemed to have voted the full amount of its claim in a class. Unless otherwise ordered by the Bankruptcy Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Debtors, which determination shall be final and binding.
- l) Any Ballot containing a vote that the Bankruptcy Court determines, after notice and a hearing, was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code shall not be counted.

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- m) Any Ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Plan shall not be counted.
- n) Notwithstanding anything contained herein to the contrary, the Debtors may contact parties that submitted Ballots to cure any defects in the Ballots.
- o) Any class that does not contain any claim eligible to vote to accept or reject the Plan (by reason of temporary allowance by the Bankruptcy Court or otherwise) as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such class pursuant to § 1129(a)(8).
- p) If a class contains claims eligible to vote and no holders of claims eligible to vote in such class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such claims in such class.
- q) Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors or the Bankruptcy Court determines. Neither the Debtors nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor shall any incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots shall not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) shall not be counted.
- r) The Debtors, and subject to contrary order of the Bankruptcy Court, may waive any defect in any Ballot at any time, either before or after the Voting Deadline and without notice, and any such waivers shall be documented in the voting results filed with the Bankruptcy Court.
- s) Except as provided below, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may reject such Ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan by the Bankruptcy Court; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.
- t) Subject to contrary order of the Bankruptcy Court, the Debtors reserves the absolute right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.

In addition to the foregoing, as applicable, the Debtors request that the following voting procedures and standard assumptions be used in tabulating Master Ballots:

- 1 u) In the case of Class 2 (Secured 2005 Revenue Bond Claims), votes cast by
2 beneficial owners holding through Nominees will be applied to the
3 applicable positions held by such Nominees as of the Voting Record Date.
- 4 v) If conflicting votes or “over-votes” are submitted by or on behalf of a
5 Nominee, the Solicitation Agent shall use reasonable efforts to reconcile
6 discrepancies with such Nominee. The submission of a Master Ballot
7 reflecting an aggregate amount of Class 2 (Secured 2005 Revenue Bond
8 Claims) that exceeds the Voting Record Date position is referred to herein
9 as an “overvote”.
- 10 w) If overvotes are submitted by a Nominee which are not reconciled prior to
11 the preparation of the certification of vote results, the votes to accept and to
12 reject the Plan shall be counted in the same proportion as the votes to accept
13 and to reject the Plan submitted by the Nominee, but only to the extent of
14 the Nominee’s Voting Record Date position.

15 The Debtors submit that such procedures provide for a fair and equitable voting process.

16 **G. Establishment of Deadline and Procedures for Filing Objections to the Confirmation**
17 **of the Plan.**

18 **a. Scheduling the Confirmation Hearing**

19 17. Bankruptcy Rule 3017(c) provides:

20 On or before approval of the disclosure statement, the court shall fix a time within
21 which the holders of claims and interests may accept or reject the plan and may fix
22 a date for the hearing on confirmation.

23 Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Debtors request that
24 a hearing on confirmation of the Plan (the “Confirmation Hearing”) be scheduled for **November**
25 **21, 2019 at 10:00 a.m. (Pacific Time).**

26 The Debtors propose that, no later than **November 14, 2019**, the Debtors will file with the
27 Bankruptcy Court a tabulation report for Plan voting, a proposed form of confirmation order, a
28 memorandum in support of confirmation addressing the requirements of § 1129(a) and any
29 declarations or other evidence in support thereof, and replies to any objections received by the
30 Confirmation Objection Deadline. In light of these deadlines, the Debtors respectfully request that
31 the Court shorten the ballot tabulation deadline set forth in Local Bankruptcy Rule 3018-1(b) from
32 fourteen days to seven days.

1 The Debtors request that the Confirmation Hearing may be continued from time to time by
2 the Bankruptcy Court or the Debtors without further notice other than by notices of continuance
3 filed on the docket of the Debtors' Cases. The proposed timing for the Confirmation Hearing is in
4 compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules,
5 and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

6 **H. Establishing Procedures for the Confirmation Hearing**

7 Bankruptcy Rules 2002(b) and 3017(d) require not less than twenty-eight (28) days' notice
8 to all creditors and equity security holders of the time fixed for filing objections and the hearing to
9 consider confirmation of a chapter 11 plan. In accordance with Bankruptcy Rules 2002 and
10 3017(d), the Debtors propose to provide to all creditors and interest holders a copy of either the
11 Confirmation Hearing Notice, the Notice of Non-Voting Accepting Status and Confirmation
12 Hearing, or the Notice of Non-Voting Rejecting Status and Confirmation Hearing as proposed
13 herein, setting forth, among other things, (a) the date of approval of the Disclosure Statement, (b)
14 the Voting Record Date, (c) the Voting Deadline, (d) the time fixed for filing objections to
15 confirmation of the Plan, and (e) the time, date, and place for the Confirmation Hearing. Such
16 notice will be sent at least twenty-eight (28) days before the deadline to object to confirmation of
17 the Plan.

18 Bankruptcy Rule 2002(1) permits the Bankruptcy Court to "order notice by publication if it
19 finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R.
20 Bankr. P. 2002(1). In addition to mailing the Confirmation Hearing Notice, the Debtors propose to
21 publish the Confirmation Hearing Notice once, as soon as reasonably practical after the entry of
22 the Disclosure Statement Order, in the following newspapers: *Los Angeles Times*, *San Francisco*
23 *Chronicle*, *San Jose Mercury News* and *USA Today*. The Debtors believe that publication of the
24 Confirmation Hearing Notice will provide sufficient notice of the approval of the Disclosure
25 Statement; the Voting Record Date; the Voting Deadline; the time fixed for filing objections to
26 confirmation of the Plan; and the time, date, and place of the Confirmation Hearing to persons
27 who do not otherwise receive actual written notice by mail as provided for in the Disclosure
28 Statement Order.

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1 The Debtors submit that the foregoing procedures will provide adequate notice of the
2 Confirmation Hearing and, accordingly, requests that the Bankruptcy Court approve such notice as
3 adequate.

4 **I. Establishing Procedures for the Filing of Objections to the Confirmation of the Plan.**

5 Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed
6 and served “within a time fixed by the court.” The Confirmation Hearing Notice provides, and the
7 Debtors request the Bankruptcy Court to direct, that objections to the confirmation of the Plan or
8 proposed modifications to the Plan, if any, must:

- 9 a) be in writing;
- 10 b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules;
- 11 c) set forth the name of the objector and the nature and amount of any Claim
12 asserted by the objector against or in the Debtors;
- 13 d) state with particularity the legal and factual bases for the objection and, if
14 practicable, a proposed modification to the Plan that would resolve such
objection; and
- 15 e) be filed with the Bankruptcy Court, together with proof of service, and
16 served so that they are actually received by the Notice Parties (as defined
17 below) no later than **November 7, 2019** which deadline may be extended by
the Debtors (the “Confirmation Objection Deadline”).

18 The Debtors request that Court require any confirmation objection to be served on the
19 following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors, Dentons US LLP,
20 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, Attn: Tania M. Moyron, email:
21 tania.moyron@dentons.com; (ii) counsel to the Committee, Milbank LLP, 2029 Century Park
22 East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman, mshinderman@milbank.com;
23 (iii) counsel to the 2005 Revenue Bonds Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
24 P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel S. Bleck and Paul Ricotta,
25 dsblek@mintz.com, pricotta@mintz.com; (iv) counsel to the 2015 Notes Trustee, McDermott Will
26 & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, Illinois 60606, Attn: Nathan F. Coco,
27 ncoco@mwe.com; (v) counsel to the 2017 Notes Trustee, Maslon, LLP, 3300 Wells Fargo Center,
28 90 South Seventh Street, Minneapolis, Minnesota 55402, Attn: Clark Whitmore,

clark.whitmore@maslon.com; and (vi) counsel to the U.S. Trustee, Office of the United States Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017, Attn: Hatty K. Yip, hatty.yip@usdoj.gov.

The proposed timing for filing and service of objections and proposed modifications, if any, will afford the Bankruptcy Court, the Debtors, the Committee, and other parties in interest sufficient time to consider the objections and proposed modifications prior to the Confirmation Hearing.

VII.

CONCLUSION

WHEREFORE, the Debtors request that the Bankruptcy Court enter an order: (i) approving the Disclosure Statement; (ii) approving the solicitation and voting procedures; (iii) approving the proposed notice and objection procedures for confirmation of the Plan; and (iv) granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: September 3, 2019

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TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

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Debtors In Possession

8
9 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

10 In re

11 VERITY HEALTH SYSTEM OF CALIFORNIA,
12 INC., *et al.*,

13 Debtors and Debtors In Possession.

14 ☒ Affects All Debtors

- 15 ☐ Affects Verity Health System of California, Inc.
16 ☐ Affects O'Connor Hospital
17 ☐ Affects Saint Louise Regional Hospital
18 ☐ Affects St. Francis Medical Center
19 ☐ Affects St. Vincent Medical Center
20 ☐ Affects Seton Medical Center
21 ☐ Affects O'Connor Hospital Foundation
22 ☐ Affects Saint Louise Regional Hospital Foundation
23 ☐ Affects St. Francis Medical Center of Lynwood
Foundation
24 ☐ Affects St. Vincent Foundation
25 ☐ Affects St. Vincent Dialysis Center, Inc.
26 ☐ Affects Seton Medical Center Foundation
27 ☐ Affects Verity Business Services
28 ☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose ASC, LLC

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DISCLOSURE STATEMENT DESCRIBING
DEBTORS' CHAPTER 11 PLAN OF
LIQUIDATION (DATED SEPTEMBER 3, 2019)**

Disclosure Statement Hearing:

Date: _____, 2019

Time: __:__.m. (Pacific Time)

Plan Confirmation Hearing:

Date: [To Be Scheduled]

Time: [To Be Scheduled] (Pacific Time)

Place: Courtroom 1568

255 E. Temple Street

Los Angeles, CA 90012



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I.

INTRODUCTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated entities, the chapter 11 debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”)¹ on August 31, 2018 (the “Petition Date”). The Debtors’ chapter 11 bankruptcy cases (the “Chapter 11 Cases”) are pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”) and jointly administered under *In re Verity Health System of California, Inc.*, Lead Case No. 2:18-bk-20151-ER.

This document is the disclosure statement (the “Disclosure Statement”), which describes the Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019) (the “Plan”).² The Plan sets forth a proposal for the resolution of Claims and the distribution of proceeds to Holders of Allowed Claims. The Plan provides that (i) a Liquidating Trustee will continue the wind-down and liquidation of the Debtors, and (ii) a Responsible Officer will oversee the operations of the Post-Effective Date Debtors during the Sale Leaseback Period in accordance with the Interim Agreements and the Transition Services Agreement. The Plan also requests the Bankruptcy Court approve and implement the terms of (i) the Creditor Settlement Agreements, if any, and (ii) documents necessary to effectuate the Plan.

A. Disclaimer

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN IS INCLUDED HEREIN AND THEREIN FOR PURPOSES OF SOLICITING

¹ All references to “§” herein are to the Bankruptcy Code, unless otherwise noted. All references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as may be amended from time to time. All references to “Local Bankruptcy Rules” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

² Capitalized terms not otherwise defined in this Disclosure Statement have the definitions set forth in the Plan.

1 ACCEPTANCES OF THE PLAN AND DESCRIBING TREATMENT UNDER THE PLAN.
2 THE INFORMATION CONTAINED HEREIN AND THEREIN MAY NOT BE RELIED
3 UPON FOR ANY PURPOSE OTHER THAN (I) TO DETERMINE HOW TO VOTE ON
4 THE PLAN AND (II) TO DESCRIBE TREATMENT UNDER AND TERMS OF THE
5 PLAN. ALL CREDITORS AND PARTIES IN INTEREST ARE ADVISED AND
6 ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN
7 THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

8 **READ THIS DISCLOSURE STATEMENT CAREFULLY FOR INFORMATION**
9 **CONCERNING:**

- 10 1. WHO CAN VOTE FOR, OR OBJECT TO, CONFIRMATION OF THE
11 PLAN;
12 2. THE TREATMENT OF YOUR CLAIM (I.E., WHAT YOU WILL RECEIVE
13 ON ACCOUNT OF YOUR CLAIM IF THE PLAN IS CONFIRMED) AND HOW THIS
14 TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN
15 LIQUIDATION;
16 3. THE HISTORY OF THE DEBTORS AND SIGNIFICANT EVENTS
17 DURING THEIR BANKRUPTCY CASES;
18 4. WHAT THE BANKRUPTCY COURT WILL CONSIDER TO DECIDE
19 WHETHER TO CONFIRM THE PLAN;
20 5. THE EFFECT OF CONFIRMATION; AND
21 6. WHETHER THE PLAN IS FEASIBLE.

22 THE PLAN WILL CONTROL IF THERE IS AN INCONSISTENCY BETWEEN
23 THE TERMS OF THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN.
24 PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT
25 ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THIS
26 DISCLOSURE STATEMENT, AND THE EXHIBITS ANNEXED TO THIS DISCLOSURE
27 STATEMENT.
28

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1 NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY
2 REPRESENTATIONS REGARDING THE PLAN OR THE SOLICITATION OF
3 ACCEPTANCES OF THE PLAN OTHER THAN THE INFORMATION AND
4 REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR THE
5 PLAN. THE COURT HAS NOT YET DETERMINED WHETHER OR NOT THE PLAN
6 IS CONFIRMABLE AND THE COURT HAS NO RECOMMENDATION AS WHETHER
7 OR NOT YOU SHOULD SUPPORT OR OPPOSE THE PLAN.

8 THE FINANCIAL DATA RELIED UPON IN FORMULATING THE PLAN IS
9 BASED ON THE DEBTORS' BOOKS AND RECORDS, WHICH ARE UNAUDITED
10 UNLESS OTHERWISE INDICATED. THE INFORMATION CONTAINED IN THIS
11 DISCLOSURE STATEMENT IS PROVIDED BY THE DEBTORS. FURTHER, THE
12 DEBTORS ARE THE SOLE SOURCE OF THE INFORMATION AND THE
13 STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING,
14 WITHOUT LIMITATION, INFORMATION ABOUT THE DEBTORS, THEIR
15 BUSINESSES, AND THE ESTATES' ASSETS.

16 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE
17 MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE
18 THAT THE STATEMENTS CONTAINED HEREIN SHALL BE CORRECT AT ANY
19 TIME AFTER THE DATE HEREOF. ANY ESTIMATES OF CLAIMS SET FORTH IN
20 THIS DISCLOSURE STATEMENT MAY VARY FROM THE AMOUNTS OF CLAIMS
21 ULTIMATELY ALLOWED BY THE BANKRUPTCY COURT.

22 **B. Purpose of this Disclosure Statement**

23 This Disclosure Statement (i) summarizes the contents of the Plan, and (ii) provides certain
24 information related to the Plan and the process the Bankruptcy Court will follow to determine
25 whether or not to confirm the Plan.

26 You should read the Disclosure Statement and the Plan. This Disclosure Statement cannot
27 tell you everything about your rights. You should consider consulting your own lawyer to obtain
28

1 more specific advice on how the Plan will affect you and your best course of action with respect to
2 the Plan.

3 The Bankruptcy Code requires that a Disclosure Statement contain “adequate information”
4 concerning the Plan. The Bankruptcy Court has approved this document as an adequate Disclosure
5 Statement, which means that this Disclosure Statement contains adequate information to enable
6 parties affected by the Plan to make an informed judgment about the Plan.

7 **C. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

8 **THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN**
9 **DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS**
10 **OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE**
11 **BANKRUPTCY COURT CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING**
12 **ON ALL CREDITORS AND INTEREST HOLDERS IN THESE CHAPTER 11 CASES.**

13 **1. Time and Place of the Confirmation Hearing**

14 The hearing where the Bankruptcy Court will determine whether or not to confirm the Plan
15 (the “Confirmation Hearing”) will take place on _____, 2019, at __: __ .m. (Pacific
16 Time), in Courtroom 1568 of the Edward R. Roybal Federal Building and United States
17 Courthouse, located at 255 East Temple Street, Los Angeles, California 90012, before the
18 Honorable Ernest M. Robles, United States Bankruptcy Judge for the Bankruptcy Court.

19 **2. Deadline For Voting For or Against the Plan**

20 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and
21 return the ballot in the enclosed envelope to Verity Vote Plan Tabulation c/o KCC, LLC, 222 North
22 Pacific Coast Highway, Suite 300, El Segundo, California 90245. Your ballot must be received by
23 KCC by 4:00 p.m. (Pacific Time), on _____, 2019 or it will not be counted.

24 **3. Deadline for Objecting to the Confirmation of the Plan**

25 Objections to the confirmation of the Plan must be filed with the Bankruptcy Court and
26 served so that they are actually received by the following parties no later than _____,
27 2019 at 4:00 p.m. (Pacific Time) (i) counsel to the Debtors, Dentons US LLP, 601 South Figueroa
28 Street, Suite 2500, Los Angeles, CA 90017, Attn: Tania M. Moyron, email:

1 tania.moyron@dentons.com; (ii) counsel to the Committee, Milbank LLP, 2029 Century Park East,
2 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman, mshinderman@milbank.com;
3 (iii) counsel to the 2005 Revenue Bonds Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
4 P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel S. Bleck and Paul Ricotta,
5 dsblek@mintz.com, pricotta@mintz.com; (iv) counsel to the 2015 Notes Trustee, McDermott Will
6 & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, Illinois 60606, Attn: Nathan F. Coco,
7 ncoco@mwe.com; (v) counsel to the 2017 Notes Trustee, Maslon, LLP, 3300 Wells Fargo Center,
8 90 South Seventh Street, Minneapolis, Minnesota 55402, Attn: Clark Whitmore,
9 clark.whitmore@maslon.com; and (vi) counsel to the U.S. Trustee, Office of the United States
10 Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017, Attn: Hatty K. Yip,
11 hatty.yip@usdoj.gov.

12 **D. Identify of Person to Contact for Copies of the Plan and Related Documents**

13 Any interested party desiring further information about the Plan should contact KCC by
14 (i) mail at KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245;
15 or (ii) by phone at (310) 823-9000. You may also review the Debtors' Chapter 11 Case website
16 maintained by KCC at <https://www.kccllc.net/verityhealth>.

17 **II.**

18 **OVERVIEW OF THE DEBTORS AND THE NON-DEBTOR AFFILIATES**

19 **A. The Debtors**

20 Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member
21 of the following five Debtor California nonprofit public benefit corporations that, on the Petition
22 Date, operated six acute care hospitals: O'Connor Hospital ("OCH"), Saint Louise Regional
23 Hospital ("SLRH"), St. Francis Medical Center ("SFMC"), St. Vincent Medical Center ("SVMC"),
24 Seton Medical Center ("SMC"), and Seton Medical Center Coastsides ("Seton Coastsides" and,
25 together with OCH, SLRH, SFMC, and SVMC, the "Hospitals"). SMC and Seton Coastsides
26 (collectively, "Seton") operated under one consolidated acute care hospital license. All of the
27 Hospitals were licensed as general acute care hospitals by the California Department of Public
28 Health.

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As of the Petition Date, VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health System”) operated as a nonprofit health care system in California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and a host of medical specialties, including tertiary and quaternary care. The scope of the services provided by the Verity Health System is exemplified by the fact that, in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. The Hospitals were certified to participate in the Medicare and Medi-Cal programs. In furtherance of its mission to serve the community, Verity Health System provided care to patients even though they lacked adequate insurance or participated in programs that did not pay full charges. Further information concerning each of the Debtor’s operations are discussed in the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”).

The Debtors are as follows:

- Verity Health System of California, Inc.
- O’Connor Hospital
- Saint Louise Regional Hospital
- St. Francis Medical Center
- St. Vincent Medical Center
- Seton Medical Center (which includes Seton Medical Center Coastsides campus)
- Verity Business Services
- O’Connor Hospital Foundation
- Saint Louise Regional Hospital Foundation
- St. Francis Medical Center of Lynwood Foundation
- St. Vincent Medical Center Foundation
- Seton Medical Center Foundation
- Verity Medical Foundation
- Verity Holdings, LLC
- De Paul Ventures, LLC
- De Paul Ventures - San Jose Dialysis, LLC
- St. Vincent Dialysis Center

The Debtors employed approximately 7,385 employees (the “Employees”) in the aggregate. Almost three-quarters of the Debtors’ Employees, approximately 5,500 people in total, were represented by one of the following unions (the “Unions”) pursuant to collective bargaining agreements between the Unions and the respective Debtors: California Nurses Association (“CNA”); Service Employees International Union (“SEIU”); California Licensed Vocational Nurses’ Association (“CLVNA”); United Nurses Associations of California/Union of Health Care

1 Professionals (“UNAC”); the American Federation of Labor and Congress of Industrial
2 Organizations (“AFL-CIO”); International Operating Engineers, Stationary Engineers, Local No.
3 39 (“Local 39”); and the International Federation of Professional and Technical Engineers, Local
4 20 (“Local 20”).

5 **B. The Non-Debtor Affiliates**

6 Certain of the Debtors have interests in the entities listed below that did not file voluntary
7 petitions for relief (collectively, the “Non-Debtor Affiliates”). The Non-Debtor Affiliates are as
8 follows:

- 9 • De Paul Ventures - San Jose ASC, LLC
- 10 • Marillac Insurance Company, Ltd.
- 11 • O’Connor Health Center I
- 12 • Sports Medicine Management, Inc.
- 13 • St. Vincent de Paul Ethics Corporation
- 14 • VHoldings MOB, LLC
- 15 • Robert F. Kennedy Medical Center
- 16 • Robert F. Kennedy Medical Center Foundation

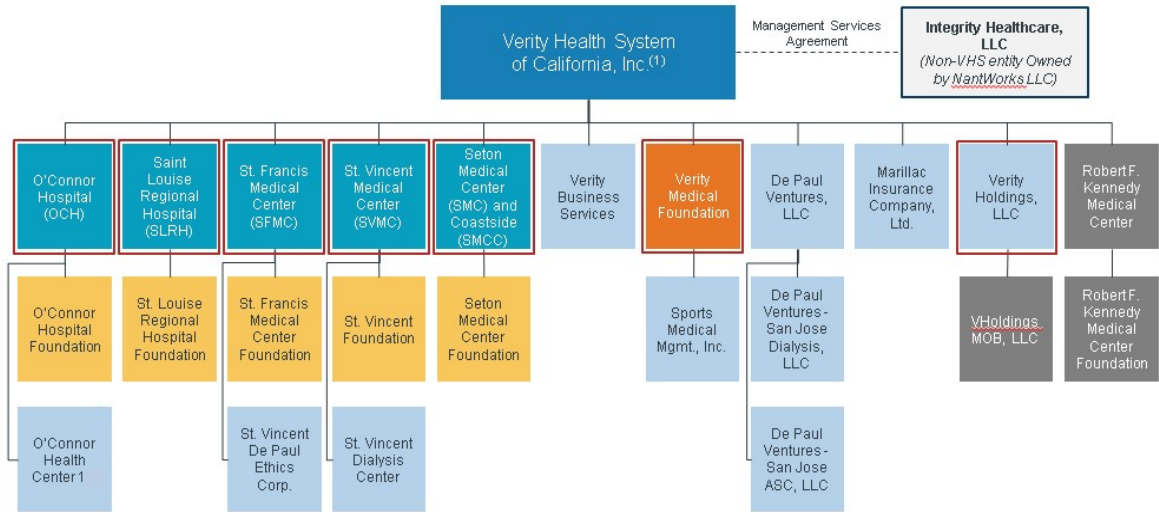
17 Further information concerning each of the Non-Debtor Affiliate’s operations are discussed
18 in the First-Day Declaration. The Non-Debtor Affiliates do not have material assets or value except
19 for Marillac Insurance Company, Ltd. (“Marillac”) and O’Connor Health Center I (“OCH1”).

20 Marillac, a wholly-owned subsidiary of VHS, provides insurance coverage to the Debtors.
21 Marillac was incorporated in the Cayman Islands on December 9, 2003, and holds a Class B(i)
22 Insurer’s License pursuant to the Cayman Islands Insurance Law, 2010. This class of licensure
23 applies to insurers writing at least 95% of net premiums with their related business (in this case
24 VHS). Marillac was granted a Class B(i) license effective April 2, 2015.

25 OCH1 is a California limited partnership, formed in January 1996. OCH Forest 1, LP is the
26 general partner in OCH1 and OCH is a limited partner. OCH1 owns certain real property at 455
27 O’Connor Drive, San Jose, California, which is leased by OCH.

28 **C. Corporate Structure**

The following graphic depicts the Debtors’ prepetition organizational structure:



The Debtors' senior management is as follows:

Name	Position
Chief Executive Officer	Richard Adcock
Chief Financial Officer	Anita Chou
Chief Operating Officer	Anthony Armada
Chief Medical Officer	Tirso del Junco, Jr. M.D.

VHS is governed by the following seven-member board of directors:

Name	Position
Dr. Ernest Agatstein	Director
James Barber	Director
Terry Belmont	Secretary
Jack Krouskup	Chairman
Charles B. Patton	Director
Christobel Selecky	Director
Andrew Pines	Vice Chair

III.

EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES

A. Overview of the Debtors' Prepetition Business Operations

The Daughters of Charity of St. Vincent de Paul, Province of the West, (the "Daughters of Charity") originally owned and operated the Hospitals and VMF. The Daughters of Charity began their healthcare mission in California in 1858 with the opening of Los Angeles Infirmary, now known as St. Vincent Medical Center. The Daughters of Charity expanded its hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to the poor and sick for more than 150 years.

In March 1995, the Daughters of Charity merged with Catholic Healthcare West ("CHW"). In June 2001, the Daughters of Charity Health System was formed. In October 2001, the Daughters of Charity withdrew from CHW. In 2002, the Daughters of Charity Health System commenced operations and was the sole corporate member of the Hospitals, which at that time were California nonprofit religious corporations.

Between 1995 and 2015, the Daughters of Charity and Daughters of Charity Health System struggled to find a solution to continuing operating losses, either through a sale of some or all of the hospitals or a merger with a more financially-sound partner. All these efforts failed, and the health system's losses continued to mount. In 2005, Daughters of Charity Health System issued \$364 million in bonds to refinance existing debt and to fund future capital expenditures. Three years later, in 2008, they issued another \$143 million in bonds to refinance existing debt (the "2008 Bonds").

Between 2012 and 2014, Daughters of Charity Health System participated in an affiliation with Ascension Health Alliance ("Ascension") in an effort to create greater operating efficiencies. Previously, Ascension was the largest Catholic health system in the world and the largest non-profit health system in the United States with facilities in 23 states and the District of Columbia. The affiliation between Daughters of Charity Health System and Ascension failed.

Despite continuous efforts to improve operations, operating losses continued to plague the health system due to, among other things, mounting labor costs, low reimbursement rates and the

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1 ever-changing healthcare landscape. In 2013, Daughters of Charity Health System actively
2 solicited offers for OCH, SLRH, and Seton. In 2013, to avoid failing debt covenants, the Daughters
3 of Charity Foundation, an organization separate and distinct from the Daughters of Charity Health
4 System, donated \$130 million to the health system to allow it to retire the 2008 Bonds in the total
5 amount of \$143.7 million.

6 In early 2014, Daughters of Charity Health System announced that they were beginning a
7 process to evaluate strategic alternatives for the health system. Throughout 2014, Daughters of
8 Charity Health System explored offers to sell the health system and, in October of 2014, they
9 entered into a purchase agreement with Prime Healthcare Services and Prime Healthcare
10 Foundation (collectively, “Prime”). However, to keep the Hospitals open during the sale process,
11 Daughters of Charity Health System borrowed another \$125 million to mitigate immediate cash
12 needs until the sale could be consummated. Notably, the goal of the transaction was to maintain
13 the status quo. The guiding principles for the sale included protecting existing pensions, repaying
14 all bond debt, continuation of all collective bargaining agreements, maintenance of existing
15 contracts for patient services, and obtaining promises for substantial capital expenditures. In early
16 2015, the Attorney General of California (the “Attorney General”) consented to the sale to Prime,
17 subject to certain conditions. Prime terminated the transaction in light of the “onerous conditions”
18 on the continued operation of the Hospitals imposed by the Attorney General.

19 In 2015, Daughters of Charity Health System again marketed their health system for sale,
20 and, again, focused on offers that maintained the health system as a whole and assumed all the
21 obligations. In July 2015, the Daughters of Charity Health System board of directors selected
22 BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to
23 recapitalize operations and transition leadership of the health system to the new Verity Health
24 System (the “BlueMountain Transaction”).

25 In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital
26 infusion of \$100 million to the Verity Health System, arrange loans for another \$160 million to the
27 Verity Health System, and manage operations of the Verity Health System, with an option to buy
28 Verity Health System at a future time. In addition, the parties entered into a System Restructuring

1 and Support Agreement (the “Restructuring Agreement”) that, among other things, changed the
2 Daughters of Charity Health System name to Verity Health System. The Restructuring Agreement
3 also provided that VHS and the Hospitals would be converted from religious corporations to
4 nonprofit public benefit corporations.

5 The Daughters of Charity Health System requested the Attorney General’s consent to enter
6 into the Restructuring Agreement and the BlueMountain Transaction. The Attorney General
7 retained MDS Consulting, an expert consulting firm, to prepare healthcare impact reports for the
8 Attorney General concerning the proposed transactions. According to the expert’s healthcare
9 impact reports, Daughters of Charity Health System outlined the following reasons why the
10 BlueMountain Transaction was either necessary or desirable:

- 11 • The current structure and sponsorship of Daughters of Charity Health System was no longer
12 possible as a result of cash flow projections and dire financial conditions.
- 13 • In July and August of 2014, Daughters of Charity Health System obtained a short-term
14 financing bridge loan in the amount of \$125 million to mitigate the immediate cash needs
15 for an estimated period of time long enough to allow for the transaction to close. Repayment
16 of the funds was due on December 15, 2015, at which time if the full amount was not repaid,
17 Daughters of Charity Health System would be at risk of defaulting on both their outstanding
2014 and 2005 revenue bonds.
- 18 • Without bankruptcy protection or additional financial support, Daughters of Charity Health
19 System could not continue hospital operations if there is a default.

20 On December 3, 2015, the Attorney General approved the BlueMountain Transaction,
21 subject to certain conditions (the “Conditions”). The Conditions were imposed for periods ranging
22 from 5 to 15 years and generally included: (1) limits on transfers of control; (2) maintenance of
23 specific health services and specific bed counts; (3) required participation in Medicare and Medi-
24 Cal programs; (4) required levels of community benefit programs; (5) required levels of charity
25 care; (6) maintenance of certain county payor contracts; (7) requirements for local governing
26 boards; (8) requirements for medical staff compliance; and (9) an annual attestation of compliance
27 with the Conditions.

28 In 2015, BlueMountain formed Integrity Healthcare, LLC (“Integrity”) to carry out
management services for Verity Health System. The Integrity management services were provided
pursuant to 15-year term Health System Management Agreement by and between Integrity and

VHS (the “Management Agreement”). Integrity received a monthly management fee pursuant to the Management Agreement, which was calculated based on a specified percentage of trailing 12-month operating revenues for VHS and provided that VHS could defer a portion of the fee payments with such deferments subject to interest accruing at 2.82% per annum. Integrity was wholly owned by BlueMountain through June 30, 2017.

Verity Health System did not prosper despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations.

In July 2017, NantWorks, LLC (“Nantworks”) acquired a controlling stake in Integrity. NantWorks brought in new officers and NantWorks loaned another \$148 million to the Debtors. The NantWorks transaction did not result in significant changes to the terms of the Restructuring Agreement or the Conditions.

Once again, Verity Health System did not achieve expected success despite the infusion of capital and new management. Losses continued at approximately \$175 million annually on a cash flow basis.

VHS’s great efforts to revitalize its Hospitals and improvements in performance and cash flow proved insufficient to overcome the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining agreements or payor contracts, the continuing need for significant capital expenditures for seismic obligations and aging infrastructure, and the general headwinds facing the hospital industry. It became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring.

B. The Debtors’ Prepetition Capital Structure³

VHS, Verity Business Services (“VBS”), and the Hospitals are jointly obligated parties on approximately \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million

³ For additional information concerning the Debtors’ prepetition capital structure, the Debtors refer to the *Declaration of Anita Chou, Chief Financial Officer, in Support of Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate*

1 outstanding tax exempt revenue bonds, the 2005 Series A, G and H Revenue Bonds, issued by the
2 California Statewide Communities Development Authority (“CSCDA”), which loaned the bond
3 proceeds to VHS to provide funds for capital improvements and to refinance certain tax exempt
4 bonds previously issued in 2001 by the Daughters of Charity Health System; and (b) \$202 million
5 outstanding tax exempt revenue notes, the 2015 Revenue Notes and the 2017 Revenue Notes issued
6 by the California Public Finance Authority (the “CPFA”), which loaned the proceeds to VHS to
7 provide working capital. Wells Fargo Bank, National Association, is the 2005 Revenue Bonds
8 Trustee, and U.S. Bank, National Association, is the 2015 Notes Trustee and 2017 Notes Trustee.

9 Except for the taxable Series 2015C of the 2015 Revenue Notes, the 2005 Series A, G and
10 H Revenue Bonds, 2015 Revenue Notes, and 2017 Revenue Notes are all tax exempt, meaning
11 interest on the bonds is not taxable to the holders, so long as the obligors maintains their qualified
12 tax exempt status and the proceeds of the bonds are used for the tax exempt purposes for which
13 they were originally intended. The Series 2005 A Bonds are comprised of four term bonds maturing
14 on July 1, 2024, 2030 and 2035, bearing interest at 5.75% (Series 2005A-2024), (Series 2005A-
15 2030), (Series 2005A-2035) and one maturing July 1, 2039 bearing interest at 5.50% (Series
16 2005A-2039). The Series 2005G term bond matures on July 1, 2022 and bears interest at 5.50%.
17 The Series 2005H- term bond matures on July 1, 2025 and bears interest at 5.75%. The 2015
18 Revenue Notes matured on June 10, 2019 (Series 2015A, Series 2015B, Series 2015C and Series
19 2015D) and the 2017 Revenue Notes mature on December 10, 2020 (Series 2017A, 2017B). Series
20 2015A and B and Series 2017 and 2017B bear interest at 7.25%, while the Series 2015D carries an
21 8.75% interest rate and the taxable Series 2015C accrues interest at 9.5%.

22 Holdings, a direct subsidiary of its sole member VHS, was created in 2016 to hold and
23 finance the Debtors’ interests in six medical office buildings whose tenants are primarily physicians
24 and other practicing medical groups and certain of the Hospitals. Holdings is the borrower of
25 approximately \$66 million through two series of non-recourse financing secured by separate deeds
26 of trust and revenue and accounts pledges, including lease rents on each medical building, pursuant

27 *Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107*
28 *And 1108 [Docket No. 32].*

1 to the MOB I Loan Agreement and MOB II Loan Agreement (collectively, the “MOB Financings”).
2 The MOB Financings bear interest at a variable interest rate equal to One Month LIBOR, plus a
3 spread of 5.0% with a floor of 6.23% for the first series and a floor of 6.92% for the second series.
4 The secured lenders for the MOB Financings are affiliates of NantWorks, which is an affiliate of
5 Integrity.

6 During May 2017, the CSCDA issued \$20 million of limited obligation tax exempt bonds,
7 pursuant to the CaliforniaFIRST Clean Fund Program in five series all with the same maturity date
8 of September 2, 2047 (the “Clean Fund Bonds”) as the conduit issuer for the benefit and obligation
9 of Verity. The purpose of the bond funding was to assist with clean energy construction efforts of
10 the SMC and are secured by SMC’s voluntary agreement to special tax assessments by Daly City.
11 No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National
12 Association (“WTNA”) is the Trustee holding the construction funds, and a prefunded capitalized
13 interest fund and is the collateral agent for collection of the special tax assessments for use in paying
14 interest and principal on the Clean Fund Bonds. Interest on the Clean Fund Bonds accrues at 6.4%.
15 The special assessment runs for a period which is the shorter of 30 years or the early full
16 defeasement of the Clean Fund Bonds.

17 In September 2017, the CSCDA issued \$20 million of limited obligation tax exempt bonds,
18 pursuant to the CaliforniaFIRST Program for the purpose of assisting with clean energy and seismic
19 improvement construction at SMC (“NR2 Petros Bonds”). The NR2 Petros Bonds also mature on
20 September 2, 2047, and carry an interest rate of 6.45%. The NR2 Petros Bonds are also California
21 tax exempt and are secured by a special Daly City tax assessment on SMC property. No other
22 Debtor is liable for repayment of the NR2 Petros Bonds. The special assessment runs for a period
23 which is the shorter of 30 years or the early full defeasement of the NR2 Petros Bonds. WTNA is
24 the Trustee holding the seismic improvement funds, as well as a pre-funded interest payment fund.

25 NantCapital also provided \$40 million of unsecured debt financing for Holdings as reflected
26 in two \$20 million unsecured notes (the “Nant Unsecured Notes”). The Nant Unsecured Notes are
27 balloon notes with interest and principal payable at maturity in 2020 and carry annual compounded
28 interest rates of 7.25%.

C. The Debtors' Prepetition Unsecured Claims

The unsecured claims against the Debtors on the Petition Date include claims made by vendors of goods and services, cost report payables, pension obligations, management fees, incurred but not reported third party claims and other claims as discussed in Section VI of this Disclosure Statement below.

D. The Debtors' Retirement Related Benefit Plans

The Debtors maintain several retiree-related benefit plans that include pension benefits and healthcare benefits. With respect to pensions, there are two single employer defined benefits plans, two multi-employer defined benefit plans (collectively, the "Defined Benefits Pension Plans") and several defined contribution plans (collectively, the "Defined Contribution Pension Plans" and, referred to along with the Defined Benefits Plans as the "Pension Plans"). In addition, the Debtors maintain a retiree health benefit plan that provides a supplement for retirees who timely select into the program (the "Retiree Health Benefit"). At present, there are only approximately 12 retirees who utilize the Retiree Health Benefit.

The Defined Benefits Pension Plans originated with or otherwise arose out of defined benefits pension plans that were maintained by, or otherwise contributed into, by Daughters of Charity. In connection with the BlueMountain Transaction, VHS retained liabilities with respect to certain of these Defined Benefits Pension Plans, including a single employer non-ERISA compliant, non-PBGC-insured "Church Plan." At the time of the BlueMountain Transaction, the Church Plan was significantly underfunded. As a provision of the BlueMountain Transaction, VHS agreed to convert the Church Plan to an ERISA-compliant, PBGC-insurable defined benefit plan, which was called the Verity Health System Retirement Plan (the "VHS Plan"). Subsequently, in an effort to enhance its ability to meet contribution requirements, the Board of Directors of VHS converted the VHS Plan into Verity Plan A and, using approximately \$7,966,440 from the corpus of Plan A, created Verity Plan B (collectively, the "Single-Employer Plans"). The creation of Plan B permitted the largest number of beneficiaries with the lowest account balances to be shifted into Plan B, thereby reducing insurance costs of Plan A. The Debtor entities that participate in the Single-Employer Plans include OCH, SLRH, SFMC, and SVMC. In addition, certain systems

1 office employees participate in Plan A. The Single-Employer Plans are frozen as to all employees,
2 other than with respect to Plan A for active CNA members. Since its creation and up to the Petition
3 Date, Verity made all required contributions to Plan A. Based upon those contributions, Plan A
4 became insured up to 40% of the maximum insurable level provided by PBGC. Since the Petition
5 Date, and pursuant to Bankruptcy Court authorization, contributions have been made to Plan A
6 with respect to active CNA members. Because Plan B was and remains fully funded, no
7 contributions have been made to Plan B since its creation. The PBGC has informed the Debtors
8 that it intends to terminate the Single-Employer Plans, which the Debtors' expect will be effective
9 upon or before the closing of the SGM Sale.

10 In addition to the Church Plan, Verity inherited obligations with respect to two
11 multiemployer defined benefit pension plans, referred to as the Retirement Plan for Hospital
12 Employees ("RPHE") and the Stationary Engineers Local 39 Pension Plan ("Local 39 Plan" and
13 ,collectively referred to with the RPHE as the "Multi-Employer Plans"). The Debtor entities that
14 participate in the RPHE are Seton (defined herein to include both Seton Medical Center and Seton
15 Medical Center Coastside), OCH, SLRH, and Caritas Business Services. The RPHE was frozen as
16 to these facilities, other than with respect to CNA members at OCH, SLRH and Seton Medical
17 Center. Benefits under the RPHE are generally based on years of service and employee
18 compensation. Contributions to the RPHE are based on actuarially determined amounts established
19 by the RPHE Board of Trustees to meet benefits to be paid to plan participants and satisfy IRS
20 funding requirements. Similar to the Church Plan, the RPHE was significantly underfunded. After
21 the BlueMountain transaction and up through July 31, 2018, the Debtors made all requisite
22 contributions to the RPHE.

23 In addition to the Defined Benefits Pension Plans, VHS and VMF maintain several Defined
24 Contribution Plans for employees, which include employer matching contributions and cover union
25 represented employees. The Defined Contribution Plans include the Verity Health System
26 Supplemental Retirement Plan (TSA), the Verity Health System Supplemental Retirement Plan
27 (401(a)), the Verity Health System Retirement Plan Account (RPA), the Verity Medical Foundation
28 401(k) Plan, the Verity Medical Foundation Management Bargaining Unit Employees 401(k) Plan

1 for represented employees and the Verity Health System Executive Long-Term Savings Plan s
2 457(b) (or “Rabbi Trust Plan”) for nonrepresented employees. The Defined Contribution Plans are
3 funded from employee and/or employer contributions generally on a payroll by payroll basis. In
4 addition to the above active defined contribution plans, there are several small, frozen ancillary
5 retirement plans. During the fiscal years ended June 30, 2017 and 2016, the employer’s
6 contribution expense for DC Plans was approximately \$18.48 million and \$21.75 million,
7 respectively. The Defined Contribution Pension Plans are fully funded and contributions have
8 continued throughout the Chapter 11 Cases.

9 **E. Fiscal Crisis on the Petition Date**

10 As described above, the fiscal crisis which faced the Debtors on the Petition Date was the
11 consequence of multiple historical challenges. Below are a few of the most significant financial
12 issues the Debtors faced when they filed the Chapter 11 Cases.

13 **1. Payor Rates**

14 The Debtors’ payor contracts with health plans were 20-43% below market. The Conditions
15 imposed by the Attorney General required that the Debtors maintain certain payor contracts, which
16 severely limited the Debtors’ negotiating power. These below market rates made it impossible for
17 the Hospitals to generate sufficient cash flow to maintain liquidity.

18 **2. Labor Rates**

19 Payroll costs in the twelve months before the Petition Date increased by nearly \$65 million.
20 The increase was partially related to Union contracts, which, prepetition, increased the Debtors’
21 labor costs by approximately 5% year-over-year.

22 **3. Pension Plan Obligations**

23 The Debtors incurred, and anticipated, significant expenses on account of Pension Plan and
24 other postretirement benefit liabilities, many of which are related to underfunded legacy obligations
25 dating back to the Daughters of Charity Health System.

26 For example, as of the Petition Date, the RPHE was frozen to ongoing benefit accruals,
27 except with respect to CNA members at OCH, SLRH, and SMC. However, prepetition, VHS had
28 recorded benefit expenses of \$16.72 million and \$20.46 million in cash contributions to the RPHE

1 for fiscal years ended June 30, 2018 and 2017, respectively, and \$12.36 million to the RPHE for
2 the period from December 2015 through June 2016. Further, on the Petition Date, VHS was
3 scheduled to make contributions to the RPHE totaling \$13.61 million in fiscal year 2019. A
4 significant amount of those scheduled contributions in fiscal year 2019—\$8.54 million—
5 represented make-up contributions for unfunded amounts that arose during the Daughters of
6 Charity Health System time period.

7 Similarly, as of the Petition Date, Verity Plans A & B were frozen with respect to ongoing
8 benefit accruals, except with respect to CNA members at SVMC participating in Verity Plan A.
9 VHS contributed \$45.40 million and \$41.68 million to Verity Plan A & B for fiscal years ended
10 June 30, 2018 and 2017, respectively, and \$7.73 million to Verity Plan A for the period from
11 December 2015 through June 2016. Further, on the Petition Date, VHS was scheduled to make
12 contributions to Verity Plan A totaling \$25.50 million in fiscal year 2019, of which \$20.26 million
13 represented make-up contributions for underfunded amounts that arose during the Daughters of
14 Charity Health System time period.

15 **4. IT Investment**

16 VHS's information technology ("IT") system required investments of nearly \$50 million
17 over the coming year. The Debtors IT systems relied on outdated electronic health records and
18 enterprise resource planning (i.e., human resources, supply chain management, inventory
19 management, etc.). Further, significant IT asset upgrades were required to modernize the Hospitals
20 and continue providing quality patient care services. For example, VHS needed to (i) immediately
21 replace its outdated local area and wireless networking equipment with modern equipment to enable
22 reliable access by all VHS system users (a \$15 million estimated cost over a one-year
23 implementation period), and (ii) replace VHS's obsolete clinical systems, including medical record
24 systems and financial systems, to provide up-to-date patient records, improved clinical planning,
25 care management, and better charge control (a \$220 million estimated cost over a period of two
26 years).

1 **5. Seismic and Energy Requirements**

2 VHS faced required seismic and energy expenditures of over \$150 million over the coming
3 years. The forecasted expenses included building improvements and demolitions at SVMC, SMC,
4 and OCH that must be completed by 2020, and another round of improvement obligations at
5 SVMC, SMC, OCH, and SLRH required by 2030. These seismic improvement deadlines are
6 mandated by the California Office of Statewide Health Planning and Development and the Attorney
7 General pursuant to the Conditions imposed on the BlueMountain Transaction.

8 **6. Insurance Obligations**

9 As set forth in the First-Day Declaration, the Debtors maintain various insurance policies
10 issued by several insurance carriers (collectively, the “Insurance Carriers”). Collectively, these
11 policies provide for coverage for, among other things: storage tank liability, commercial property,
12 workers’ compensation and employers liability, commercial automobile, helipad liability & non-
13 owned aircraft liability, sexual misconduct and molestation liability, D&O liability, general
14 liability, and professional liability (collectively, the “Insurance Policies”).⁴

15 Significant insurance is issued to the Debtors by its captive insurer Marillac. The policies
16 issued by Marillac cover professional and general liability (both at the primary and excess level)
17 and additional excess coverage as to automobile liability, heliport and non-owned aircraft liability,
18 employer’s liability and certain other general liability.

19 The Debtors maintain a workers’ compensation insurance policy with Old Republic
20 Insurance Company (“Old Republic”) with a \$500,000 deductible for each claim. Old Republic
21 provides coverage under the policy up to \$1 million for each claim. Marillac issued a Deductible
22 Liability Protection Policy which provides coverage for the deductible obligations on the Debtors’
23 workers’ compensation policy issued by Old Republic. On average, the monthly invoice amounts
24 for deductibles (including allocated loss adjustment expenses) incurred under the workers’
25 compensation policy is between \$400,000 and \$650,000, which are timely paid by Marillac under
26 the Deductible Liability Protection Policy.

27 ⁴ The Insurance Policies include six CA DHS Patient Trust Bonds, which will not come due for
28 renewal until December 2019.

1 The Debtors also maintain self-insured retentions of \$250,000 per claim under their D&O
2 liability coverage, \$350,000 per claim under their employment practices coverage, \$50,000 per
3 claim under their fiduciary liability coverage, \$100,000 per claim under their crime coverage, and
4 \$50,000 per claim under their sexual misconduct and molestation liability coverage (the “Self-
5 Insured Retentions” or “SIRs”). A SIR is a loss amount that the insured is obligated to pay before
6 the insurer’s coverage obligation is triggered.

7 The Debtors’ Self-Insured Retentions are administered, so that the Debtors pay directly for
8 the losses under each policy as they are incurred up to the amounts of the Self-Insured Retentions.
9 Such SIRs due prepetition have been paid pursuant to the Insurance Motion (as defined below).

10 **7. Medical Equipment**

11 On the Petition Date, VHS required over \$100 million in medical equipment expenditures
12 over a period of several years. The Debtors delayed these investments because significant debt,
13 pension, seismic and operating losses limited the Debtors’ liquidity.

14 **F. Working Capital Shortfalls**

15 The Debtors, like other hospitals serving similar communities, rely on government support
16 to help bridge the gap between what they get reimbursed by private insurance companies, Medicare
17 and Medi-Cal and their cost of providing care. The Quality Assurance Fee program, established in
18 2010, provides funding for supplemental payments to California hospitals that serve Medi-Cal and
19 uninsured patients. The program is successful, providing billions of dollars in supplemental
20 payments to California hospitals. The Medicare and Medi-Cal programs also provide funding to
21 hospitals that treat indigent patients through the Disproportionate Share Hospital (“DSH”)
22 programs, under which facilities are able to receive at least partial compensation. Under the Patient
23 Protection and Affordable Care Act of 2010 (P.L. 111-148, as amended) (the “ACA”), Congress
24 would have reduced federal DSH allotments beginning in 2014, to account for the decrease in
25 uncompensated care anticipated under health insurance coverage expansion. However, several
26 pieces of legislation enacted since 2010 have since delayed the ACA’s Medicaid DSH reduction
27 schedule. Unfortunately, the Quality Assurance Payments and DSH program payments are
28

unreliable sources of cash flow as the Debtors regularly experienced payment reductions and delays.

The Debtors' reliance on Quality Assurance Payments led to working capital shortages due to delays in approval and lower than expected payments. For example, on the Petition Date:

- *14-Month Delay*: QAF V FFS program (service period 1/1/17 - 6/30/19) was not approved until December 2017, and the Debtors did not start receiving payments until the end of February 2018 (14-month delay);
- *29-Month Delay*: QAF V HMO program's first payment was not funded until May 2019 (a 29-month delay on receiving funds);
- *Receiving less than Expected*: Through all 10 QAF V FFS cycles, the Debtors received anywhere from 70% to 100% of expected payments.

G. The Attorney General Conditions

As set forth above, as part of approving the Restructuring Agreement, the Attorney General placed certain operational restrictions on VHS and each of the Hospitals, which include certain minimum annual spending for charity care, community benefits, and capital expenditures among other mandates. The Conditions had the cumulative effect of locking the Debtors into a failing business model, dictating minute details of business operations, and denying the Debtors the ability to repurpose facilities. For example, SMC could potentially better serve its community by operating as a much-needed long-term post-acute care facility, rather than as one of the many acute care hospitals in a saturated service area. The Conditions foreclose this option.

The Conditions also compelled the Debtors to expend millions of dollars to provide charity care even though the number of uninsured people in California steadily decreased since passage of the ACA. In October 2017, VHS was also required to make an additional contribution to the Retirement Plans of \$7.62 million as a result of a shortfall in the fiscal year 2017 charity care requirement for certain hospitals.

The Conditions denied the Debtors the benefits of the marketplace. For example, as discussed above, the Conditions require the Debtors to enter into payor contracts with specific entities regardless of whether more economically advantageous contract terms are offered elsewhere. Because those payors were well aware of this obligation, VHS lost all bargaining power with those payors.

The Debtors commenced these Chapter 11 Cases as a result of the issues discussed in this Section III with the objective of protecting the original legacy of the Daughters of Charity to the maximum extent possible. The Debtors pursued a strategy to retire debt incurred over the past 18 years so the Hospital facilities and work force can continue their critical operations under new ownership and leadership without the accumulated crisis of the past.

IV.

SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES

Below is a discussion of the material pleadings and events to date during the Chapter 11 Cases.

A. Material First-Day Motions and Related Adversary Proceeding Filed on the Petition

Date

1. Emergency Motion to Pay the Debtors' Prepetition Priority Wages

The Debtors filed an emergency motion [Docket No. 22] (the "Wage Motion") for authority to pay the Debtors' prepetition priority wages and related benefits in the ordinary course of business to avoid the disruption to the Debtors' business from failing to do so. The Bankruptcy Court granted the Wage Motion. *See* Docket No. 612.

2. Emergency Motion to Provide Adequate Assurance of Payment to the Debtors'

Utilities

The Debtors filed an emergency motion [Docket No. 28] (the "Utilities Motion") for an order authorizing the Debtors to provide adequate assurance of future payment to certain utility companies pursuant to § 366(c). The Bankruptcy Court granted the Utilities Motion. *See* Docket No. 133.

3. Emergency Motion for Joint Administration of these Chapter 11 Bankruptcy

Cases

The Debtors filed an emergency motion [Docket Nos. 3-5] (the "Joint Administration Motion") for authority to jointly administer all of the Debtors' Chapter 11 Cases. The Bankruptcy Court granted the Joint Administration Motion. *See* Docket No. 17.

1 **4. Emergency Motion for Authority to Honor Prepetition Claims of Critical**
2 **Vendors**

3 The Debtors filed an emergency motion[Docket No. 29] (the “Critical Vendor Motion”) for
4 authority to honor the prepetition obligations to certain critical vendors. The Bankruptcy Court
5 granted the Critical Vendor Motion. *See* Docket Nos. 134, 436].

6 **5. Emergency Motion to Maintain Cash Management Systems**

7 The Debtors filed an emergency motion [Docket No. 23] (the “Cash Management
8 Motion”) for authority to maintain their cash management systems, which was imperative to avoid
9 significant disruption to the Debtors’ business operations. The U.S. Trustee provided the Debtors
10 with informal comments to the Cash Management Motion. *See* Docket No. 70 at 1. Based on the
11 comments, the Debtors supplemented the Cash Management Motion [Docket No. 70] and agreed
12 to a mutually acceptable postpetition cash management system with the U.S. Trustee. Accordingly,
13 the Bankruptcy Court granted the Cash Management Motion on an interim basis as modified and
14 supplemented. *See* Docket. No. 76.

15 On September 27, 2018, the Committee filed a response [Docket No. 313] to the Cash
16 Management Motion. On October 1, 2018, the Debtors filed their reply [Docket No. 357]. The
17 Bankruptcy Court overruled the objections raised in the Committee’s response and entered an order
18 granting the Cash Management Motion on a final basis. *See* Docket Nos. 384, 728.

19 **6. Emergency Motion to Maintain Insurance Programs and Related Adversary**
20 **Proceeding**

21 The Debtors filed an emergency motion [Docket No. 24] (the “Insurance Motion”) for
22 authority to maintain insurance programs, pay premiums and other obligations in the ordinary
23 course, and prevent insurance companies from enforcing *ipso facto* provisions or otherwise
24 terminating insurance policies without first seeking relief from the automatic stay. The Bankruptcy
25 Court granted the Insurance Motion. *See* Docket No. 131.

26 The Debtors filed an adversary proceeding against Old Republic requesting injunctive relief
27 to prevent Old Republic from drawing down the Letter of Credit due to the bankruptcy filing. *See*
28 Adv. Pro. No. 2-18-ap-01277-ER, Docket No. 1. That same day, the Bankruptcy Court entered an

1 order issuing a temporary restraining order, enjoining Old Republic from drawing down the Letter
2 of Credit in full based upon the Debtors' insolvency or bankruptcy filing. *See id.*, Docket No. 4.
3 On September 11, 2018, the Debtors and Old Republic entered into a stipulation whereby Old
4 Republic agreed not to draw on the Letter of Credit based upon the Debtors' insolvency or
5 bankruptcy filing which was approved in an order of the Bankruptcy Court. *See id.*, Docket Nos.
6 24, 25. On November 19, 2018, the Debtors voluntarily dismissed the adversary proceeding against
7 Old Republic. *See id.*, Docket No. 27.

8 **7. DIP Financing/Cash Collateral**

9 On August 31, 2018, the Debtors filed the *Emergency Motion Of Debtors For Interim And*
10 *Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The*
11 *Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured*
12 *Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Docket No. 31] (the "DIP
13 Motion"). Under the DIP Motion, the Debtors sought debtor-in-possession financing (the "DIP
14 Financing") from Ally Bank, as agent and lender under the DIP Credit Agreement (the "DIP
15 Lender"), and permission to use the cash-collateral. On October 4, 2018, the Court entered an order
16 (the "DIP Order") granting the DIP Motion [Docket No. 409], which authorized, among other
17 things, DIP Financing up to \$185 million and adequate protection to the Debtors' prepetition
18 secured creditors.

19 On December 27, 2018, the Committee appealed the DIP Order to the United States District
20 Court for the Central District of California (the "DIP Appeal"). *See* Case No. 2:18-cv-10675-RGK,
21 Docket No. 1 (C.D. Cal. Dec. 27, 2018). The Committee did not seek a stay pending appeal of the
22 DIP Order. On April 8, 2019, the District Court granted motions to intervene filed by UMB Bank,
23 N.A. ("UMB Bank"), Wells Fargo Bank, National Association ("Wells Fargo"), and U.S. Bank,
24 National Association ("U.S. Bank"). *See id.*, Docket Nos. 29, 30.

25 On March 14, 2019, the Committee filed its opening brief. *See id.*, Docket No. 22. On
26 April 15, 2019, VHS filed a reply brief, and U.S. Bank, UMB Bank, and Wells Fargo filed a
27 separate reply brief. *See id.*, Docket Nos. 31, 32. The Committee filed its reply brief on April 29,
28 2019, and the Court took the matter under submission. *See id.*, Docket Nos., 34, 36. On June 7,

2019, the parties requested expedited disposition of the DIP Appeal, which the District Court granted by order entered June 11, 2019. *See id.*, Docket Nos. 38, 39.

On August 2, 2019, the District Court issued an order dismissing the DIP Appeal as moot. *See id.*, Docket No. 40. On August 26, 2019, the Committee appealed the District Court order to the Ninth Circuit [Docket No. 2961].

Approximately \$37.3 million of adequate protection payments have been made as follows:

Verity Health System Post-Petition Adequate Protection		\$ in 000's
		Amount
Total Adequate Protection Payments	\$	(37,304)
Adequate Protection Debt Service	\$	(32,437)
Series 2017	\$	(2,791)
Series 2017A		(1,396)
Series 2017B		(1,396)
Series 2015	\$	(11,481)
Series 2015A		(3,988)
Series 2015B		(2,991)
Series 2015C		(871)
Series 2015D		(3,632)
Series 2005	\$	(13,493)
Series 2005A		(12,626)
Series 2005G		(445)
Series 2005H		(422)
MOB Notes	\$	(4,671)
Series 2018		(1,411)
Series 2017		(3,260)
Adequate Protection Professional Fees	\$	(4,867)
Series 2017		(721)
Series 2015		(905)
Series 2005		(2,070)
Master Trustee		(1,131)
MOB Notes		(40)

These payments will be credited against the applicable Claims as provided in the Plan.

The DIP facility is secured by substantially all of the Debtors' assets and also provides for superpriority administrative priority status for all obligations under the facility. The Debtors have a debtor in possession financing facility with up to \$185 million of availability from the DIP Lender subject to a borrowing base which was approved on a final basis. [Docket No. 409]. As of August 23, 2019, the outstanding balance of the DIP facility was approximately \$67 million.

Pursuant to the DIP Credit Agreement, the DIP Financing is due to expire and mature in accordance with its terms on September 7, 2019. On August 28, 2019, the Debtors filed a motion

[Docket Nos. 2962, 2968] (the “Cash Collateral Motion”) for use of cash collateral and payoff of outstanding DIP Financing amounts. The Bankruptcy Court set the Cash Collateral Motion for hearing on September 6, 2019 at 10:00 a.m.

B. Motion to Implement Key Employee Incentive Plan and Key Employee Retention Plan

On October 23, 2018, the Debtors filed a motion [Docket No. 631] (the “KEIP/KERP Motion”) to implement a key employee incentive plan [Docket No. 631-1] (the “KEIP”) and a key employee retention plan [Docket No. 631-2] (the “KERP”). The KEIP and KERP are designed to incentivize performance and ensure that the Debtors’ key employees remain employed by the Debtors during the Chapter 11 Cases until the Debtors’ Hospitals are fully liquidated. On November 28, 2018, the Court granted the KEIP/KERP Motion. *See* Docket No. 893.

The KEIP and KERP participants are only entitled to payments if the Debtors meet certain milestones to ensure that the payments serve the dual purposes of retaining critical employees and appropriately incentivize meeting case goals and objectives. The triggers for payments under the KEIP are tied to the timing and value received from the sales of the Hospitals and performance under the budget set forth in the DIP Credit Agreement. The triggers for the KERP are certain milestones where the applicable employee remains employed. The applicable KEIP participants were paid a 15% salary bonus for meeting the budget goals in the DIP Credit Agreement. The OCH and SLRH KEIP participants were paid an additional 15% bonus because the sale of OCH and SLRH closed before March 31, 2019.

The VHS KEIP participants may receive bonuses tied to the percentage of their salaries based on ranges of sale proceeds of the Debtors’ assets, with milestones of \$300 million, \$500 million, \$700 million, and \$950 million. Similarly, the Seton, SFMC, and SVMC KEIP participants may earn up to an additional 15% bonus because the sale of those facilities.

C. Motion to Reject Integrity Management Agreement

On September 21, 2018, the Debtors filed a motion [Docket No. 254] to reject the Management Agreement with Integrity. As of July 27, 2018, shortly before the Petition Date, the Debtors estimated that Integrity management fees from fiscal years 2016 through 2019 would total nearly \$157 million. The Debtors determined that they could achieve significant cost-savings—

1 approximately \$20 million annually—by employing directly the CEO, COO, CFO, and CMO and
2 rejecting the Management Agreement. Pursuant to the Conditions, and following a formal request
3 by the Debtors, the Attorney General approved termination of the Management Agreement. *See*
4 Docket No. 627. On November 8, 2018, the Bankruptcy Court entered an order [Docket No. 794]
5 granting the Debtors’ motion to reject the Management Agreement.

6 **D. Estate Professionals, the Committee, and the Patient Care Ombudsman**

7 On October 30, 2018, the Bankruptcy Court entered orders approving the employment of
8 the following professionals to the Debtors: (i) Dentons US LLP, as lead counsel [Docket No. 712];
9 and (ii) Nelson Hardiman, LLP, as special healthcare regulatory counsel [Docket No. 713]. On
10 November 5, 2018, the Bankruptcy Court entered an order [Docket No. 767] approving the
11 employment of Cain Brothers, a Division of Keybank Capital Markets, Inc. (“Cain”), as investment
12 banker. On November 7, 2018, the Bankruptcy Court entered an order [Docket No. 785] approving
13 the employment of Berkeley Research Group, LLC, as financial advisor to the Debtors. On
14 November 14, 2018, the Bankruptcy Court entered an order [Docket No. 818] approving the
15 employment of Pachulski Stang Ziehl & Jones LLP, as special conflicts counsel to the Debtors. On
16 August 7, 2019, the Bankruptcy Court entered an order [Docket No. 2862] approving the
17 employment of Jeffer Mangles Butler & Mitchell LLP, as special labor counsel to the Debtors.

18 Additionally, on October 1, 2018, the Debtors filed a motion [Docket No. 364] to employ
19 various ordinary course professionals. On October 29, 2018, the Bankruptcy Court entered an order
20 [Docket No 693] granting the motion. Since the Petition Date, the Debtors have employed,
21 pursuant to various filings, approximately 35 ordinary course professionals that provide an array of
22 important services to the Debtors in the ordinary course of business, including legal, accounting,
23 and consulting services.

24 On September 17, 2018, the U.S. Trustee appointed [Docket No. 197] an Official
25 Committee of Unsecured Creditors (the “Committee”) to represent the interests of general
26 unsecured creditors. The Committee is comprised of nine members consisting of the following: (i)
27 Aetna Life Insurance Company, (ii) Allscripts Healthcare, LLC, (iii) California Nurses Association,
28 (iv) Iris Lara, (v) Medline Industries, Inc., (vi) Pension Benefit Guaranty Corporation (“PBGC”),

(vii) SEIU United Healthcare Workers West, (viii) Sodexo Operations, LLC and (ix) St. Vincent IPA Medical Corporation. On November 6, 2018, the Bankruptcy Court entered an order [Docket No. 778] approving the employment of Milbank, Tweed, Hadley & McCloy LLP, as lead counsel to the Committee. On November 14, 2018, the Bankruptcy Court entered an order [Docket No. 822] approving the employment of FTI Consulting, Inc., as financial advisor to the Committee. On March 5, 2019, the Bankruptcy Court entered an order [Docket No. 1703] approving the employment of Arent Fox LLP, as special healthcare counsel to the Committee.

The U.S. Trustee appointed Dr. Jacob Nathan Rubin, MD, FACC, (the “Patient Care Ombudsman”) to serve as the patient care ombudsman in these Chapter 11 Cases, pursuant to § 333(a), in accordance with the order [Docket No. 430] entered by the Bankruptcy Court on October 9, 2018. On November 2, 2018, the Bankruptcy Court entered orders approving the employment of the following professionals to the Patient Care Ombudsman: Levene, Neale, Bender, Yoo & Brill LLP, as bankruptcy counsel [Docket No. 751]; and Dr. Tim Stacy DNP, ACNP-BC, as consultant [Docket No. 753].

E. Administrative Matters, Reporting and Disclosures

The Debtors were required to address the various administrative matters attendant to the commencement of these bankruptcy cases, which required an extensive amount of work by the Debtors’ employees and their professionals. These matters included the preparation of the *Schedules of Assets and Liabilities* and *Statements of Financial Affairs* for each of the Debtors’ seventeen Chapter 11 Cases (*see, e.g.*, Docket No. 514), and preparation of the materials required by the U.S. Trustee, including, without limitation, the 7-Day Package.

The Debtors have made every effort to comply with their duties under §§ 521, 1106 and 1107 and all applicable U.S. Trustee guidelines, including the filing of the Debtors’ monthly operating reports with the U.S. Trustee. *See* Docket Nos. 771, 945, 1172, 1174, 1453, 1670, 2008, 2287, 2478, 2653, 2825. The Debtors also attended their initial interview with the U.S. Trustee and the meeting of creditors required under § 341(a).

F. The SCC Sale

On October 1, 2018, the Debtors filed a motion [Docket No. 365] (the “SCC Sale Motion”)

1 requesting entry of an order (i) authorizing the proposed sale (the “SCC Sale”) of OCH and SLRH
2 to the County of Santa Clara, a political subdivision of California (“SCC”), (ii) approving the form
3 of the Asset Purchase Agreement between SCC and certain Debtors (the “SCC APA”),
4 (iii) approving certain procedures governing the SCC Sale process (the “SCC Bid Procedures”),
5 and (iv) approving certain procedures governing assumption and rejection of Executory
6 Agreements in connection with the SCC Sale.

7 On October 31, 2018, the Bankruptcy Court entered an order [Docket No. 724] approving
8 the SCC Bid Procedures. The order provided that all objections to the proposed SCC Bid
9 Procedures were overruled, remaining objections concerning the proposed SCC Sale were
10 premature, and that the Attorney General’s request to continue the hearing on the SCC Bid
11 Procedures was denied. *See* Docket No. 724 at 4-5.

12 On November 12, 2018, the Debtors filed a notice [Docket No. 810] to counterparties of
13 Executory Agreements that may be assumed and assigned in connection with the SCC Sale. The
14 Debtors filed a supplemental notice [Docket No. 998] on December 6, 2018 and an amended notice
15 [Docket No. 1110] on December 19, 2018. Certain counterparties to executory agreements filed
16 objections (collectively, the “SCC Cure Objections”) to the notices concerning assumption and
17 assignment. *See* Docket Nos. 882, 889, 904-05, 913-14, 919, 920-21, 923, 928-29, 931, 946, 970,
18 986, 1016, 1018, 1043, 1046, 1057-59, 1062, 1068-69, 1070-71, 1080, 1085, 1088-89, 1091-96,
19 1120-21.

20 On December 7, 2018, the Debtors filed a notice [Doc. 1005] that the Debtors did not
21 receive any bids pursuant to the SCC Bid Procedures, and, thus, the Debtors would not conduct an
22 auction.

23 On December 19, 2018, the Bankruptcy Court held a hearing to approve the SCC Sale
24 pursuant to the SCC Sale Motion. At the hearing, the Bankruptcy Court considered the SCC Cure
25 Objections as well as certain objections (collectively, the “SCC Sale Objections”) to the SCC Sale
26 as well as any withdrawals thereof. *See* Docket Nos. 437, 447, 562, 613, 463, 599, 605, 608, 619,
27 450, 458, 460, 465, 597, 439, 460, 452, 561, 444, 561, 592, 500, 906, 1057-62, 1067-71. The
28 Attorney General was among the parties that filed as SCC Sale Objection (the “Attorney General”

1 SCC Objection”). As set forth in further detail, below, the Bankruptcy Court overruled the SCC
2 Sale Objections.

3 On December 21, 2018, the Bankruptcy Court entered an order [Docket No. 1125] notifying
4 the parties of the Bankruptcy Court’s intent to authorize the Debtors to sell OCH and SLRH free
5 and clear of the Conditions and requesting briefing. SCC [Docket No. 1136], the Committee
6 [Docket No. 1137], the Debtors [Docket No. 1139], and the Attorney General [Docket No. 1140]
7 filed responses to the Bankruptcy Court’s order.

8 On December 26, 2018, the Bankruptcy Court entered a memorandum of decision [Docket
9 No. 1146] overruling the Attorney General SCC Objection. On December 27, 2018, the
10 Bankruptcy Court entered an order [Docket No. 1153] granting the SCC Sale Motion and approving
11 the SCC Sale (the “SCC Sale Order”).

12 On January 7, 2019, the Attorney General appealed of the Sale Order and the memorandum
13 decision [Docket No. 1146] overruling the Attorney General SCC Sale Objection to the United
14 States District Court for the Central District of California (the “Attorney General Appeal”). *See*
15 Case No. 2:19-cv-00133-DMG, Docket No. 1 (C.D. Cal. Jan. 7, 2019). On January 9, 2019, the
16 Attorney General filed a motion [Docket No. 1219] for stay pending appeal in the Bankruptcy Court
17 and requested that the Bankruptcy Court hold a hearing on shortened notice [Docket No. 1220].
18 The Bankruptcy Court denied the request for shortened notice [Docket No. 1226] and set the
19 hearing on the motion for January 30, 2019. The Debtors [Docket No. 1302] and the Committee
20 [Docket Nos. 1303, 1318] filed objections to the motion, and SCC joined in the Debtors’ objection
21 [Docket No. 1334]. The Attorney General filed its reply brief [Docket No. 1365] on January 25,
22 2019. At the hearing on January 30, 2019, the Court denied the motion for stay pending appeal,
23 and entered its order [Docket No. 1464] memorializing the decision on February 5, 2019.

24 On February 1, 2019, the Attorney General filed a motion in District Court to stay the
25 effectiveness of the Sale Order pending the appeal. *See* Case No. 2:19-cv-00133-DMG, Docket
26 No. 6 (C.D. Cal. Feb. 1, 2019). On February 22, 2019, the District Court entered an order denying
27 the motion for stay pending appeal. *See id.*, Docket No. 32. On March 20, 2019, the parties filed
28 a stipulation to dismiss the appeal, which was approved by order entered April 3, 2019. *See id.*,

Docket Nos. 40, 41.

On January 2, 2019, the Debtors filed motions under § 1113 to reject, modify, and terminate certain collective bargaining agreements between either OCH or SLRH and Local 20, CNA, CLVNA, and SEIU effective upon the closing of the SCC Sale. *See* Docket Nos. 1181, 1182, 1191, 1192. CNA and SEIU filed objections on January 16, 2019 [Docket Nos. 1269, 1271] and the Debtors filed an omnibus reply brief [Docket No. 1331] on January 23, 2019. As a result of negotiations, two Unions (Local 20 and CLVNA) reached consensual resolutions with the Debtors, and agreed not to oppose the motions subject to certain clarifications of the requested relief. On February 19, 2019, the Bankruptcy Court entered orders granting the rejection motions. *See* Docket Nos. 1575, 1576, 1577, 1578

The SCC Sale closed on February 28, 2019. After payment of certain cure costs, closing costs and other items, the net remaining proceeds were approximately \$184.38 million, which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the “Post-Closing Escrow”) by First American Title Insurance Company, the escrow agent. The Post-Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors’ post-closing obligations and expires in February 2020. In accordance with the SCC APA, the Debtors and SCC entered into a transition services agreement.

G. Motions Related to Verity Medical Foundation

The Debtors have taken certain steps to wind-down the Debtor Verity Medical Foundation (“VMF”). For example, VMF entered into settlements and asset purchase agreements with Union Square Hearing, Inc. [Docket Nos. 2439, 2693], San Jose Medical Group and Silicon Valley Medical Development, LLC [Docket Nos. 1636, 1919], Oncology Technology Associates, LLC [Docket Nos. 1635, 1915], and All Care Medical Group, Inc. [Docket Nos. 1180, 1368]. The Debtors also rejected a professional services agreement with All Care Medical Group, Inc. [Docket Nos. 576, 1622] and filed notices of intent to abandon certain property of VMF which is of inconsequential value or benefit to the estates. *See* Docket Nos. 2590, 2648. The Debtors also obtained approval of an agreement with Centurion Service Group, Inc. (“Centurion”) permitting

Centurion to sell, dispose of or move furniture and fixtures, medical equipment and office equipment, including three MRI machines. *See* Docket Nos. 2244, 2429.

H. The SGM Sale

On January 17, 2019, the Debtors filed a motion [Docket No. 1279] (the “SGM Sale Motion”) requesting entry of an order (i) authorizing the proposed sale (the “SGM Sale”) of SFMC, SVMC, and Seton to Strategic Global Management, Inc. (“SGM”), (ii) approving the form of the Asset Purchase Agreement between SGM and certain Debtors (the “SGM APA”), (iii) approving certain procedures governing the SGM Sale process (the “SGM Bid Procedures”), and (iv) approving certain procedures governing assumption and rejection of Executory Agreements in connection with the SGM Sale. The proposed sale was the product of more than six months of marketing efforts lead by the Debtor’s investment banker, Cain, and involved more than 110 potential purchasers.

On February 19, 2019, the Bankruptcy Court entered an order [Docket No. 1572] approving the SGM Bid Procedures. The order provided that all objections to the proposed SGM Bid Procedures were overruled and the remaining objections concerning the proposed SGM Sale were premature. *See* Docket No. 724 at 4-5.

On March 5, 2019, the Debtors filed a notice [Docket No. 1704] to counterparties of Executory Agreements that may be assumed and assigned in connection with the SGM Sale. The Debtors filed a supplemental notice [Docket No. 1836] on March 18, 2019, a second supplemental notice [Docket No. 2065] on April 5, 2019, a notice [Docket No. 2131] of Executory Agreements designated for assumption and assignment on April 11, 2019, and a supplemental notice [Docket No. 2441] of designated contracts on May 24, 2019. Certain counterparties to executory agreements filed objections (collectively, the “SGM Cure Objections”) to the notices concerning assumption and assignment. *See* Docket Nos. 1788, 1804, 1819, 1830, 1849, 1850, 1852, 1853, 1856-1858, 1863, 1866, 1869, 1870, 1873-1877, 1881, 1882, 1885, 1890-1892, 1904, 1926, 1930, 1933, 1940, 1946, 1948, 1949, 1953, 1954, 1965, 2058, 2066, 2108, 2113, 2144, 2146, 2148, 2150, 2157, 2161, 2162.

On April 4, 2019, the Debtors filed a notice [Doc. 2053] that no auction would be held and

1 that the stalking horse bid submitted by SGM was the winning bid.

2 On April 17, 2019, the Bankruptcy Court held a hearing to approve the SGM Sale pursuant
3 to the SGM Sale Motion. At the hearing, the Bankruptcy Court considered certain SGM Cure
4 Objections, and certain other objections (the “SGM Sale Objections”) and withdrawals thereof. *See*
5 Docket Nos. 1397, 1352, 1358, 1364, 2130, 2145, 2147, 2155, 2156, 2164, 2168. As set forth in
6 further detail, below, the Bankruptcy Court overruled the SGM Sale Objections and continued the
7 hearings on consideration of the SGM Cure Objections. The Debtors are currently in the process
8 of resolving the SGM Cure Objections.

9 On May 2, 2019, the Bankruptcy Court entered an order [Docket No. 2306] granting the
10 SGM Sale Motion and approving the SGM Sale.

11 On May 7, 2019, VHS provided notice to, and requested written consent from, the Attorney
12 General for the proposed SGM Sale. VHS requested that the Attorney General review its
13 submission as both a request for approval of the proposed SGM Sale and a request to amend the
14 existing Conditions. On August 16, 2019, the Attorney General publicly posted the Health Care
15 Impact Statements (the “Impact Statements”) for SFMC and SVMC, which were prepared by the
16 Attorney General’s expert, JD Healthcare, Inc. (“JD Healthcare”). *See* Docket No. 2946. On
17 August 19, 2019, the Attorney General publicly posted the Impact Statement for Seton. *See id.*
18 The Impact Statements contain certain conditions recommended by JD Healthcare to the Attorney
19 General. *See id.* On August 23, 2019, at the request of the Attorney General, the Debtors submitted
20 a response to the Impact Statements, which addresses whether any of the conditions proposed in
21 the Impact Statements constitute “deal breakers” with respect to consummation of the SGM Sale.
22 *See id.*

23 The closing of the SGM Sale is contingent on, among other things, the Attorney General’s
24 approval, with conditions that are substantially consistent with the conditions approved by SGM,
25 as set forth on Schedule 8.6 to the SGM APA. Additionally, the Debtors continue to negotiate in
26 good faith with the Unions concerning the modification of their collective bargaining agreements,
27 as may be acceptable to SGM.
28

The Debtors anticipate the SGM Sale to close in the last quarter of 2019 if the Attorney General imposes conditions that are substantially consistent with those set forth on Schedule 8.6 to the SGM APA. After payment of the estimated amount of certain cure costs, closing costs and other items, the net remaining proceeds from the SGM Sale are estimated to be approximately \$532 million, as set forth below:

SGM Sale Transaction

Cash Consideration	\$ in 000's
Purchase Price	\$ 610,000
Net QAF Reduction	(54,491)
Adj for Trauma earned prior to signing	<u>(5,807)</u>
Total cash consideration at closing	\$ 549,702

Closing Costs

Payment of accrued QAF liability (SMC)	(11,613)
Cain transaction fee	<u>(6,100)</u>
Total closing costs	\$ (17,713)
SGM net cash consideration at closing	\$ 531,989

These recovery forecasts are projections that are (i) based on a number of assumptions and estimates and (ii) subject to change.

The SGM APA approved by the Bankruptcy Court provides that the Debtors enter into the Interim Sale-Leaseback Agreement and Interim Management Agreement discussed herein. These Interim Agreements will facilitate the transition of the Hospital operations to SGM during the post-closing period before SGM obtains provider agreements and other licensure necessary to operate the Hospitals.

The Debtors will withdraw from or terminate certain of their retirement related benefit plans upon the SGM Sale closing. First, the Debtors have made postpetition contributions to RPHE with respect to active CNA members, pursuant to authorization from the Bankruptcy Court. Based upon information and belief, all requisite contributions have been made to the Local 39 Plan, including through the Chapter 11 Cases and no amounts are currently due and owing. The Debtors are in the process of withdrawing from the Multi-Employer Plans, which is intended to be effective upon the closing of the SGM Sale. Second, the Debtors are in the process of terminating the Defined Contribution Plans and will cease making employer contributions upon the closing of the SGM

1 Sale. Third, the Debtors expect to terminate the Retiree Health Benefit effective at the Closing of
2 the SGM Sale. Retirees who utilize the Retiree Health Benefit will receive treatment as set forth
3 under the Plan or under a separate order from the Bankruptcy Court. Amounts contributed
4 prepetition into the section 457(b) Plan will be returned to the Estates for distribution to creditors
5 in accordance with applicable law.

6 **I. Old Republic Accommodations**

7 The Debtors' workers' compensation policy with Old Republic was set to expire on July 1,
8 2019. Old Republic agreed to continue to provide coverage through January 1, 2020, following
9 approval Bankruptcy Court approval of certain accommodations requested by Old Republic. *See*
10 Docket Nos. 2654, 2803. Also, to provide sufficient collateral to secure a replacement letter of
11 credit necessary to renew the workers' compensation policy, the Debtors filed a supplemental
12 insurance motion, requesting authority to make a capital contribution to Marillac. [Docket No.
13 2672]. The Bankruptcy Court entered an order granting the supplemental insurance motion on July
14 26, 2019. [Docket No. 2802].

15 **J. Motions for Relief From the Automatic Stay**

16 Commencing in December, 2018, the Debtors have responded to 22 Motions For Relief
17 From Automatic Stay, in each of which motions a movant has sought relief in order to resolve the
18 amount of their claim in a forum outside the Bankruptcy Court. The Bankruptcy Court has granted
19 each of those motions, in certain instances in accordance with stipulations reached between the
20 Debtors and the movants. In the vast majority of those motions, the movant sought recovery *only*
21 from applicable insurance, if any, and waived any deficiency or other claim against the Debtors or
22 property of the Debtors' bankruptcy estates. In those few cases where a movant sought a deficiency
23 claim, relief from stay was granted on the basis that the stay would remain in effect as to the
24 enforcement of any resulting judgment against the Debtors or the bankruptcy estates, the movants
25 retaining the right to file a proof of claim and/or an adversary complaint under § 523 or § 727 in
26 the Chapter 11 Cases. No such adversary complaints have been filed.

K. Motions to Approve Settlements

The Debtors obtained Bankruptcy Court approval of the following settlements and compromises pursuant to Bankruptcy Rule 9019:

On October 4, 2018, the Debtors filed a motion [Docket No. 410] (the “Local 39 Settlement Motion”) to approve a compromise between OCH, SLRH, and Seton, on the one hand, and Local 39, on the other hand, that provided for the consensual modification of collective bargaining agreements between the parties. The Bankruptcy Court granted the Local 39 Settlement Motion. *See* Docket No. 410.

On February 20, 2019, the Debtors filed a motion [Docket No. 1591] (the “Medline Settlement Motion”) to approve a compromise with Medline Industries, Inc. (“Medline”)—one of the Debtors’ most important medical supply vendors—resolving Medline’s prepetition claims and preserving the parties going-forward business relationship. The Bankruptcy Court granted the Medline Settlement Motion. *See* Docket No. 1887.

On April 8, 2019, the Debtors filed a motion [Docket No. 2084] (the “SIS Settlement Motion”) to approve a compromise with Surgical Information Systems, LLC that allowed SCC to assume certain critical software licenses and ensure that the SCC Sale closed without disruption. The Bankruptcy Court granted the SIS Settlement Motion. *See* Docket No. 2097.

On April 10, 2019, the Debtors and the Committee filed a joint motion [Docket No. 2112] (the “St. Vincent IPA Settlement Motion”) for authority to enter into a settlement agreement with St. Vincent IPA Medical Corporation (“St. Vincent IPA”). The agreement (i) allowed St. Vincent IPA, a critical vendor, to receive a \$596,816 payment for certain prepetition amounts, (ii) allowed continuation of risk sharing between St. Vincent IPA and the Debtors, and (iii) provided for an agreed mechanism to resolve overpayments or underpayments pursuant a Healthcare Services Risk Sharing Agreement (the “St. Vincent IPA Agreement”). The Bankruptcy Court granted the St. Vincent IPA Settlement Motion. *See* Docket No. 2371.

On April 30, 2019, the Debtors filed a motion [Docket No. 2285] (the “Premier Settlement Motion”) to approve a compromise with Premier, Inc., Premier Services, LLC, Premier Healthcare Alliance, L.P., Premier Healthcare Solutions, Inc., and each of Premier, Inc.’s other subsidiaries

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(collectively, “Premier”). The settlement agreement provides (i) for the satisfaction of Premier’s claims and the Debtors’ counterclaims, (ii) resolves issues regarding Premier’s and the Debtors’ post-petition relationship, and (iii) enables the Debtors to recover value from the current and future disposition of certain limited partnership interests that may be worth approximately \$7.4 million before payment of cure costs. The Bankruptcy Court granted the Premier Settlement Motion. *See* Docket No. 2461.

On June 28, 2019, the Debtors filed a motion [Docket No. 2644] (the “Smith & Nephew Settlement Motion”) to approve a compromise with Smith & Nephew, Inc. that resolved disputes regarding ownership of a certain NAVIO surgical system located at OCH and preserved the parties’ going-forward business relationship. The Bankruptcy Court granted the Smith & Nephew Settlement Motion. *See* Docket No. 2793.

On July 3, 2019, the Debtors filed a motion [Docket No. 2670] (the “DMH Settlement Motion”) to approve a compromise with the County of Los Angeles Department of Mental Health that allowed the County of Los Angeles to dismiss an appeal brought on behalf of the Debtors in exchange for the modification of the parties’ Legal Entity Agreement such that the Debtors would receive \$215,590 in additional funding. The Bankruptcy Court granted the DMH Settlement Motion. *See* Docket No. 2814.

L. Other Motions

1. St. Vincent IPA Expedited Relief Motion

On September 7, 2018, St. Vincent IPA filed a motion [Docket No. 109] (the “St. Vincent IPA Expedited Relief Motion”) to shorten the Debtors’ time to assume or reject the St. Vincent IPA Agreement to October 15, 2018. St. Vincent IPA also filed an application [Docket No. 111] to shorten notice of the hearing on the St. Vincent IPA Expedited Relief Motion, which the Debtors opposed [Docket No. 146].

On September 10, 2018, the Bankruptcy Court entered an order [Docket No. 149] denying St. Vincent IPA’s application to shorten notice and set the matter for regular briefing. On September 19, 2018, the Debtors filed their opposition [Docket No. 212]. On September 26, 2018, the Committee filed response [Docket No. 301] and St. Vincent IPA filed a reply brief [Docket No.

306]. The parties entered into negotiations and requested that the Bankruptcy Court not rule on the pleadings to allow the parties to reach a mutual settlement. Ultimately, as discussed above, the Debtors filed the St. Vincent IPA Settlement Motion.

2. Seoul Medical Group Expedited Relief Motion

On June 20, 2019, Seoul Medical Group, Inc. ("Seoul Medical Group") filed a motion [Docket No. 2579] (the "Seoul Medical Group Expedited Relief Motion") to shorten the Debtors' time to assume or reject the Seoul Medical Group Capitated Physician Group Services Agreement. On June 26, 2019, the Debtors [Docket Nos. 2627, 2632] and SGM [Docket No. 2625] filed oppositions to the Seoul Medical Group Expedited Relief Motion to which Seoul Medical Group filed separate reply briefs [Docket Nos. 2667, 2668]. The parties continued the hearings on the Seoul Medical Group Expedited Relief Motion to allow SGM and Seoul Medical Group to continue negotiations. *See* Docket Nos. 2706, 2859, 2860, 2863

M. Debtors' Adversary Proceedings

On January 3, 2019, SVMC and SFMC filed an adversary proceeding against Local Initiative Health Authority for Los Angeles dba L.A. Care Health Plan ("L.A. Care"). *See* Adv. Pro. No. 2:19-ap-01002-ER, Docket No. 1. In the Complaint, SVMC and SFMC brought claims for breach of contract, turnover, unjust enrichment, and violations of the automatic stay based on L.A. Care's failure to pay for services provided to L.A. Care members or paying less than the amounts owed for such services. *See id.* SVMC claimed damages in an amount not less than \$4,320,335.32, of which \$1,895,994.64 constituted systematic underpayments. *See id.* SFMC claimed damages in an amount not less than \$21,054,689.63, of which \$12,502,651.97 constituted systematic underpayments. *See id.* On April 15, 2019, the Bankruptcy Court entered an order staying the adversary proceeding pending completion of arbitration. *See id.*, Docket No. 43.

On February 5, 2019, VHS, SVMC and SFMC filed an adversary proceeding against Heritage Provider Network and an amended complaint was filed on March 11, 2019. *See* Adv. Pro. No. 2:19-ap-01042-ER, Docket Nos. 1, 13. In the Amended Complaint, the Debtor Plaintiffs seek to recover not less than \$4.1 million from defendant for amounts the Debtors allege were improperly deducted by defendant from amounts owing under certain fee for service and capitation

1 agreements. *See id.*, Docket No. 13. On April 12, 2019, defendant filed an answer and affirmative
2 defenses and denied Plaintiffs were entitled to any recovery. *See id.*, Docket No. 22. The parties
3 have requested that the matter be assigned to mediation and are in the process of setting a mutually
4 agreeable mediation date between October 28, 2019 and November 15, 2019. *See id.*, Docket Nos.
5 27, 33, 34. The adversary proceeding is set for trial starting the week of February 24, 2020. *See*
6 *id.*, Docket No. 31.

7 **N. Committee's Adversary Proceedings**

8 On June 13, 2019, the Committee filed adversary proceedings against U.S. Bank (Adv. Pro.
9 No. 2-19-ap-01165-ER) and UMB Bank (Adv. Pro. No. 2-19-ap-01166-ER). In both adversary
10 proceedings, the Committee seeks a determination that the applicable Trustee does not have a
11 perfected security interest in deposit accounts, future Quality Assurance Payments and certain other
12 assets. Both Defendants' dates to answer or otherwise plead have been extended by stipulation and
13 the matters are both set for mediation in September 2019. Both adversary proceedings are currently
14 set for trial beginning January 27, 2020.

15 **V.**

16 **PLAN SUMMARY**

17 The following is a summary of the key provisions of the Plan.

18 **A. Administrative Expense and Priority Claims**

19 In accordance with § 1123(a)(1), the following Claims are not classified and are excluded
20 from the Classes set forth in Section 3 hereof and shall receive the treatment discussed below:

21 **1. Administrative Claims**

22 Except to the extent that the Debtors (or the Liquidating Trust) and a Holder of an Allowed
23 Administrative Claim agree to less favorable treatment, a Holder of an Allowed Administrative
24 Claim (other than a Professional Claim, which shall be subject to Section 2.2 of the Plan) shall
25 receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such
26 Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim
27 either (a) on the Effective Date, (b) if the Allowed Administrative Claim is based on liabilities
28 incurred by the Debtors in the ordinary course of their businesses after the Petition Date, in the

1 ordinary course of business in accordance with the terms and conditions of the particular transaction
2 giving rise to such Allowed Administrative Claim, without any further action by the Holder of such
3 Allowed Administrative Claim, or (c) on such other date as agreed between the Debtors (or the
4 Post-Effective Date Debtors) and such Holder of an Allowed Administrative Claim.

5 **2. Professional Claims**

6 All Professionals seeking an award by the Bankruptcy Court of a Professional Claim (other
7 than the Ordinary Course Professionals) shall file their respective final applications for allowance
8 of compensation for services rendered and reimbursement of expenses incurred by the date that is
9 sixty (60) days after the Effective Date, and shall receive, in full satisfaction of such Claim, Cash
10 in an amount equal to 100% of such Allowed Professional Claim promptly after entry of an order
11 of the Bankruptcy Court allowing such Claim or upon such other terms as may be mutually agreed-
12 upon between the Holder of such Professional Claim and the Debtors. Objections to any final
13 applications covering Professional Claims must be filed and served on the Post-Effective Date
14 Debtors, the Liquidating Trustee, and the requesting Professional no later than ninety (90) days
15 after the Effective Date (unless otherwise agreed by the requesting Professional).

16 **3. Statutory Fees**

17 All fees required to be paid by 28 U.S.C. § 1930(a)(6) and any interest thereon (“U.S.
18 Trustee Fees”) shall be paid by the Liquidating Trustee in the ordinary course of business until the
19 closing, dismissal or conversion of these Chapter 11 Cases to another chapter of the Bankruptcy
20 Code. Any unpaid U.S. Trustee Fees that accrued before the Effective Date shall be paid no later
21 than thirty (30) days after the Effective Date.

22 **4. Priority Tax Claims**

23 Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable
24 treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction
25 of such Allowed Priority Tax Claim, at the option of the Debtors or the Liquidating Trustee, as
26 applicable: (a) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon
27 thereafter as is reasonably practicable, the later of (i) the Effective Date, to the extent such Claim
28 is an Allowed Priority Tax Claim on the Effective Date, and (ii) the first Business Day after the

1 date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed
2 Priority Tax Claim; or (b) equal annual Cash payments in an aggregate amount equal to the amount
3 of such Allowed Priority Tax Claim, together with interest at the applicable rate pursuant to § 511,
4 over a period not exceeding five (5) years from and after the Petition Date; provided, however, the
5 Debtors and the Liquidating Trustee, as applicable, reserve the right to prepay all or a portion of
6 any such amounts at any time under this option at their discretion.

7 **5. Administrative DIP Lender Claims**

8 Holders of Allowed DIP Lender Claims shall be paid in full in cash on the Effective Date,
9 with such payments to be distributed to the DIP Agent for the ratable benefit of the Holders of DIP
10 Lender Claims.

11 **B. Classification of Claims**

12 **1. Classification in General**

13 A Claim is placed in a particular Class for all purposes, including voting, confirmation, and
14 distribution under the Plan and under §§ 1122 and 1123(a)(1); provided that a Claim is placed in a
15 particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent
16 that such Claim is an Allowed Claim in that Class and such Allowed Claim has not been satisfied,
17 released, or otherwise settled prior to the Effective Date.

18 **2. Grouping of Debtors for Deemed Substantive Consolidation**

19 Consistent with the deemed substantive consolidation of the Debtors, as set forth more fully
20 in Section 7.1 of the Plan, the Plan groups the Debtors together for purposes of describing treatment
21 under the Plan, confirmation of the Plan, and making distributions in accordance with the Plan with
22 respect to Claims against and Interests in the Debtors under the Plan. Accordingly, pursuant to the
23 Plan, the Assets of the Debtors and their Estates, and the Claims against and Interests in the Debtors,
24 will be treated as if the Debtors and their Estates are substantively consolidated on the Effective
25 Date. Notwithstanding the foregoing, such groupings shall not affect any Debtor's status as a
26 separate legal entity, change the organizational structure of the Debtors' business enterprise,
27 constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of
28

any legal entities, or cause the transfer of any Assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities after the Effective Date.

3. Summary of Classification.

The following table designates the Classes of Claims against each of the Debtors and specifies which of those Classes are (a) Not Impaired by the Plan, (b) Impaired by the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional Claims, Statutory Fees, Priority Tax Claims, and Administrative DIP Lender Claims, have not been classified. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have holders of Claims in a particular Class or Classes, and such Classes shall be treated as set forth in Section 3.5 of the Plan.

<i>All Debtors</i>			
Class	Designation	Impairment	Entitled to Vote
1A	Other Priority Claims	Not Impaired	No (deemed to accept)
1B	Secured PACE Tax Financing Claims	Not Impaired	No (deemed to accept)
2	Secured 2005 Revenue Bond Claims	Impaired	Yes
3	Secured 2015 Notes Claims	Impaired	Yes
4	Secured Series 2017 Revenue Note Claims	Impaired	Yes
5	Secured MOB I Financing Claims	Impaired	Yes
6	Secured MOB II Financing Claims	Impaired	Yes
7	Secured Mechanics Lien Claims	Impaired	Yes
8	PBGC Claims	Impaired	Yes
9	RPHE Claims	Impaired	Yes
10	General Unsecured Claims	Impaired	Yes
11	Convenience Claims	Impaired	Yes
12	Insured Claims	Impaired	Yes
13	2016 Data Breach Claims	Impaired	Yes
14	Subordinated General Unsecured Claims	Impaired	No (deemed to reject)
15	Interests	Impaired	No (deemed to reject)

4. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Liquidating Trust, with respect to any Unimpaired Claims, including legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

5. Elimination of Vacant Classes

Any Class of Claims that, as of the commencement of the Confirmation Hearing, does not have at least one (1) Holder of a Claim in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

C. Treatment of Claims

In full and final satisfaction of all of the Claims against the Debtors (except with respect to Unclassified Claims that are satisfied as noted above), the Claims shall receive the treatment described below. Except to the extent expressly provided in Section 4 of the Plan, the timing of distributions is addressed in Section 8.3 of the Plan. A chart summarizing the current asserted Claims in each class and the current estimate of the amount of Claims that will ultimately become Allowed Claims is set forth below, although the ultimate amount of Claims which become Allowed Claims could be higher or lower than the estimates below:

Summary of Classification				
Class	Designation	Asserted Claims (Per KCC)		Estimated Allowed Claims
1A	Priority Non-Tax Claims (1)	\$	155,384,184	\$ 4,000,000
1B	Secured PACE Tax Financing Claims	\$	43,013,555	\$ 40,000,000
2	Secured 2005 Revenue Bond Claims	\$	261,897,375	\$ 259,445,000
3	Secured 2015 Notes Claims	\$	161,041,177	\$ 160,000,000
4	Secured Series 2017 Revenue Note Claims	\$	42,253,750	\$ 42,000,000
5	Secured MOB I Financing Claims	\$	46,363,096	\$ 46,363,096
6	Secured MOB II Financing Claims	\$	20,061,919	\$ 20,061,919
7	Secured Mechanics Lien Claims	\$	2,187,017	\$ 2,187,017
8	PBGC Claims (2)	\$	364,912,587	\$ []
9	RPHE Claims (2)	\$	353,102,772	\$ []
10	General Unsecured Claims	\$	5,831,000,000	\$ 710,000,000
11	Convenience Claims		N/A	\$ 50,000,000
12	Insured Claims		N/A	N/A
13	2016 Data Breach Claims		N/A	N/A
14	Subordinated General Unsecured Claims		N/A	N/A
15	Interests		N/A	N/A

(1) Excludes PBGC, RPHE, Trade and Tax claims

(2) Asserted claim includes priority and general unsecured claims

1. Class 1A: Priority Non-Tax Claims

- a. *Classification.* Class 1A consists of Priority Non-Tax Claims.
- b. *Treatment.* Except to the extent that a Holder of a Priority Non-Tax Claim agrees to a less favorable treatment of such Claim, each such Holder shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the later of the Effective Date and the date that is fourteen (14) Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, in each case, or as soon as reasonably practicable thereafter.
- c. *Voting.* Class 1A is Unimpaired. Holders of Priority Non-Tax Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

2. Class 1B: Secured PACE Tax Financing Claims

- a. *Classification.* Class 1B consists of the Secured PACE Financing Claims.
- b. *Treatment.* Each Allowed Secured PACE Tax Financing Claim shall be assumed pursuant to the SGM Sale and shall not receive any distributions under the Plan.
- c. *Voting.* Class 1B is Unimpaired. Holders of Secured PACE Tax Financing Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

3. Class 2: Secured 2005 Revenue Bond Claims

- a. *Classification.* Class 2 consists of the Secured 2005 Series A, G and H Revenue Bonds Claims against each Obligated Group Member.
- b. *Treatment.* The Secured Series A, G and H Revenue Bonds Claims shall be paid cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$259,445,000, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2005 Revenue Bond Indentures, excluding any interest at the default rate, the Tax Rate, or make whole premium, and (ii) accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2005 Revenue Bonds Trustee and the Master Trustee, pursuant to the Final DIP Order through and including the Effective Date, less (a) any amounts held by the Master Trustee and/or the 2005 Revenue Bonds Trustee in a (i) principal or revenue account, (ii) debt service or redemption reserve, or (iii) an escrow or expense reserve account, (b) principal payments since the Petition Date made by the 2005 Revenue Bonds Trustee to Holders of 2005 Revenue Bonds, and (c) any amounts remitted to the Master Trustee and/or 2005 Revenue Bonds Trustee, prior to the Effective Date on account of the Remediation Order. No beneficial Holder of any Secured Series A, G and

H Revenue Bonds Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such Holder by the 2005 Revenue Bonds Trustee.

c. *Subordination.* Class 2 shall be permitted to retain the Class 2 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2005 Revenue Bonds Trustee in the amounts and manner provided herein are sufficient to, and upon transmission by the 2005 Revenue Bonds Trustee to the Holders of the Secured 2005 Revenue Bonds Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2005 Series A, G, and H Revenue Bonds for all purposes.

d. *Voting.* Class 2 is Impaired. The beneficial Holders of the Secured 2005 Series 2005 A, G and H Revenue Bond Claims are entitled to vote to accept or reject the Plan.

4. Class 3: Secured 2015 Notes Claims

a. *Classification.* Class 3 consists of the Secured 2015 Notes Claims against each Obligated Group Member.

b. *Treatment.* The Secured 2015 Revenue Notes Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$160,000,000, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2015 Revenue Note Indentures for each of 2015 Revenue Notes Series A, B, C and D, excluding any interest at a default rate or any redemption or other premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2015 Notes Trustee and the Master Trustee, pursuant to the Final DIP Order through and including the Effective Date, less any amounts held by the Master Trustee and/or the 2015 Notes Trustee in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2015 Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2015 Notes Trustee.

c. *Subordination.* Class 3 shall be permitted to retain the Class 3 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2015 Notes Trustee in the amounts and manner provided

herein are sufficient to, and upon transmission by the 2015 Notes Trustee to the Holders of the Secured 2015 Revenue Notes Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2015 Revenue Notes for all purposes.

- d. *Voting.* Class 3 is Impaired, and the beneficial Holders of Secured 2015 Revenue Notes Claims are entitled to vote to accept or reject the Plan.

5. Class 4: Secured 2017 Revenue Note Claims

- a. *Classification.* Class 4 consists of the Secured 2017 Revenue Note Claims.

- b. *Treatment.* The Secured 2017 Revenue Note Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$42,000,000, plus (i) any accrued, but unpaid postpetition interest, if any, at the rate specified in the 2017 Revenue Note Indentures, excluding any interest at a default rate, make whole premium or redemption premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2017 Notes Trustee and the Master Trustee pursuant to the Final DIP Order through and including the Effective Date, less any amounts held by the Master Trustee and/or the 2017 Notes Trustee in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2017 Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2017 Notes Trustee.

- c. *Subordination.* Class 4 shall be permitted to retain the Class 4 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2017 Notes Trustee in the amounts and manner provided herein are sufficient to, and upon transmission by the 2017 Notes Trustee to the Holders of the Secured 2017 Revenue Notes Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2017 Revenue Notes for all purposes.

- d. *Voting.* Class 4 is Impaired. The beneficial Holders of Secured 2017 Revenue Note Claims are entitled to vote to accept or reject the Plan.

6. Class 5: Secured MOB I Financing Claims

- a. *Classification.* Class 5 consists of the MOB I Financing Claims.

- b. *Treatment.* The Secured MOB I Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$46,363,095.90, plus (i) accrued but unpaid postpetition interest, if any, at the rate specified in the MOB I

Loan Agreement, excluding any interest at the default rate, or make whole premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing LLC, pursuant to the Final DIP Order through and including the Effective Date.

- c. *Voting.* Class 5 is Impaired. Holders of MOB I Financing Claims are entitled to vote to accept or reject the Plan.

7. Class 6: Secured MOB II Financing Claims

- a. *Classification.* Class 6 consists of the Secured MOB II Financing Claims.
- b. *Treatment.* The Secured MOB II Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$20,061,919.48, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the MOB II Loan Agreements, excluding any interest at the default rate, or make whole premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing II LLC, pursuant to the Final DIP Order through and including the Effective Date.
- c. *Voting.* Class 6 is Impaired. Holders of Secured MOB II Financing Claims are entitled to vote to accept or reject the Plan.

8. Class 7: Secured Mechanics Lien Claims

- a. *Classification.* Class 7 consists of the Secured Mechanics Lien Claims.
- b. *Treatment.* Each Allowed Secured Mechanics Lien Claim shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of the Allowed Claim, plus (i) accrued but unpaid postpetition interest at the appropriate contract rate, if any, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses permitted by contract.
- c. *Voting.* Class 7 is Impaired. Holders of Secured Mechanics Lien Claims are entitled to vote to accept or reject the Plan.

9. Class 8: PBGC Claims

- a. *Classification.* Class 8 consists of the PBGC Claims against all Debtors.
- b. *Treatment.* On the Effective Date, the PBGC shall be the Holder of a Claim in an amount equal to 100% of a single Allowed General Unsecured Claim in the aggregate amount of [\$_____]. On the Effective Date, or as soon as reasonably practicable thereafter, the PBGC shall receive Trust Beneficial Interests and become a Trust Beneficiary, in satisfaction of its Allowed Class 8 Claim. Except as may be expressly provided in a PBGC Settlement, the PBGC's Trust Beneficial Interests shall be in full and final satisfaction of such Allowed Claim. The foregoing treatment is intended to compensate the PBGC for the impact of the proposed deemed substantive consolidation

under the Plan.⁵ The Debtors will attempt to reach an agreement with the PBGC concerning the treatment of the PBGC Claim.

- c. *Voting.* Class 8 is Impaired. Holders of PBGC Claims are entitled to vote to accept or reject the Plan.

10. Class 9: RPHE Claims

- a. *Classification.* Class 9 consists of the RPHE Claims against all Debtors.
- b. *Treatment.* On the Effective Date, the RPHE shall be the Holder of a Claim in an amount equal to 100% of a single Allowed General Unsecured Claim in the aggregate amount of [\$_____]. On the Effective Date, or as soon as reasonably practicable thereafter, the RPHE shall receive Trust Beneficial Interests and become a Trust Beneficiary in full and final satisfaction of its Allowed Class 9 Claim. The foregoing treatment is intended to compensate the RPHE for the impact of the proposed deemed substantive consolidation under the Plan. The Debtors will attempt to reach an agreement with the RPHE concerning the treatment of the RPHE Claim.
- c. *Voting.* Class 9 is Impaired. Holders of RPHE Claims are entitled to vote to accept or reject the Plan.

11. Class 10: General Unsecured Claims

- a. *Classification.* Class 10 consists of the General Unsecured Claims against all Debtors.
- b. *Treatment.* As soon as practicable after the Effective Date or as soon thereafter as the claim shall have become an Allowed Claim, each holder of an Allowed General Unsecured Claim shall receive a Trust Beneficial Interest and become a Trust Beneficiary in full and final satisfaction of its Allowed Class 10 Claim, except to the extent that such Holder agrees (a) to become a Convenience Claim, (b) to a less favorable treatment of such Claim, or (c) such Claim has been paid before the Effective Date.
- c. *Voting.* Class 10 is Impaired. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

12. Class 11: Convenience Claims

- a. *Classification.* Class 11 consists of the Convenience Claims.
- b. *Treatment.* Each Holder of an Allowed Convenience Claim, or an Allowed General Unsecured Claim that has been voluntarily reduced and converted to an Allowed Convenience Claim, shall receive on the Effective Date or as soon thereafter as practical after the Claim has become an Allowed Convenience Claim, in full and final satisfaction of such Allowed Claim,

⁵ The Debtors are in negotiations with the PBGC regarding the amount and classification of its claims. The Debtors intend to amend the Disclosure Statement and Plan after further negotiations with respect to the PBGC and RPHE.

Cash in an amount equal to four percent (4%) of its Allowed Convenience Claim.

- c. *Voting.* Class 11 is Impaired. Holders of Convenience Claims are entitled to vote to accept or reject the Plan.

13. Class 12: Insured Claims*Classification.* Class 12 consists of Allowed Insured Claims.

- b. *Treatment.* Each Insured Claim shall be deemed objected to and disputed and shall be resolved in accordance with this Section, notwithstanding any other Plan provision.

Except to the extent that a Holder of an Insured Claim agrees to different treatment, or unless otherwise provided by an order of the Bankruptcy Court directing such Holder's participation in any alternative dispute resolution process, on the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Insured Claim shall receive, on account of its Insured Claim, relief from the automatic stay under § 362 and the injunctions provided under the Plan for the sole and limited purpose of permitting such Holder to seek its recovery, if any, as determined and Allowed by an order or judgment by a court of competent jurisdiction or under a settlement or compromise of such Holder's Insured Claim from the applicable and available Insurance Policies maintained by or for the benefit of any of the Debtors. A Holder's recovery of insurance proceeds under the applicable Insurance Policy(ies) shall be the sole and exclusive recovery on an Insured Claim. Any settlement of an Insured Claim within a self-insured retention or deductible must be approved by the Liquidating Trustee.

Any amount of an Allowed Insurance Claim within a deductible or self-insured retention shall be paid by the applicable insurance to the Claim Holder and such insurer shall have a General Unsecured Claim (or Secured Claim, if it holds collateral) for the amount of the deductible or retention paid, provided that it has timely filed an otherwise not objectionable proof of claim encompassing such amounts. For purposes of retentions and deductibles in any Insurance Policy, the Debtors are insolvent and unable to advance or indemnify any loss, claim, damage, settlement or judgment of Debtors within the applicable retention or deductible amount. Notwithstanding any other provision of this Section, Old Republic Insurance Company shall be entitled to all accommodations that it requested in connection with renewal of Debtors' workers' compensation policy, as approved by order of the Bankruptcy Court [Docket No. 2803].

- c. *Voting.* Class 12 is Impaired. Holders of Insured Claims are entitled to vote to accept or reject the Plan. Unless otherwise ordered by the Bankruptcy Court, each Holder of a Class 12 Insured Claim shall have a \$1.00 vote for each filed Insured Claim.

14. Class 13: 2016 Data Breach Claims

- a. *Classification.* Class 13 consists of Allowed 2016 Data Breach Claims.

b. *Treatment.* Each holder of an Allowed 2016 Data Breach Claim shall receive access to credit monitoring services at the sole cost of the Debtors for a period of two (2) years following the Effective Date.

c. *Voting.* Class 13 is Impaired. Holders of Allowed 2016 Data Breach Claims are entitled to vote to accept or reject the Plan.

15. Class 14: Subordinated General Unsecured Claims

a. *Classification.* Class 14 Claims consists of Subordinated General Unsecured Claims.

b. *Treatment.* Holders of Allowed Subordinated General Unsecured Claims shall not receive any recovery from the Debtors on or after the Effective Date.

c. *Voting.* Class 14 is Impaired. Holders of Subordinated General Unsecured Claims are deemed to reject the Plan and are not entitled to vote.

16. Class 15: Interests

a. *Classification.* Class 15 consists of Allowed Interests against any Debtor.

b. *Treatment.* Holders of Allowed Interests shall not receive any recovery from the Debtors under the Plan.

c. *Voting.* Class 15 is Impaired. The holders of Interests are deemed to reject the Plan and are not entitled to vote.

VI.

MEANS OF EFFECTUATION AND IMPLEMENTATION OF THE PLAN

The key means to effectuation and implementation of the Plan are summarized below, and set forth in more detail in the Plan and the Liquidating Trust Agreement.

A. Conditions to Effective Date. The following are conditions precedent to the Effective Date:

(a) The Confirmation Order shall become a Final Order;

(b) The SGM Sale shall have closed;

(c) The Debtors shall have sufficient Cash to satisfy the Unclassified Claims and the Secured Claims that are payable on the Effective Date;

(d) The Debtors shall have sufficient Cash to fund the Liquidating Trust Reserve;

(e) All documents, instruments and agreements provided for under or necessary to implement the Plan (including without limitation, the Interim Agreements, the Transition Services Agreement and the Liquidating Trust Agreement) shall have been executed and delivered by the parties thereto, unless such execution or delivery shall have been waived by the parties benefited thereby.

The Debtors may waive the conditions to effectiveness of the Plan, set forth in Section 12.2 of the Plan, without leave of the Bankruptcy Court and without any formal action other than proceeding with confirmation of the Plan and filing a notice of confirmation with the Bankruptcy Court. To the extent that the Debtors are unable to satisfy the conditions to the effectiveness of the Plan set forth in Section 12 of the Plan, the Debtors reserve the right to amend the Plan at such time (in accordance with the terms of the Plan) to address such inability.

B. Deemed Substantive Consolidation

Section 7.1 of the Plan requests that each of the Debtors' Estates be "deemed" substantively consolidated for the purposes set forth in the Plan described above. Certain facts supporting deemed substantive consolidation are set forth below. This Disclosure Statement provides adequate information regarding the Debtors' request to treat their Estates substantively consolidated; however, the Debtors will not seek approval of deemed substantive consolidation at the hearing to approve this Disclosure Statement. A discussion setting forth the bases for deemed substantive consolidation of the Debtors' Estates is set forth in Section XIV hereof.

The deemed substantive consolidation effected pursuant to the Plan shall not affect, without limitation, (i) the Debtors', the Post-Effective Date Debtors', or the Liquidation Trust's defenses to any Claim or Cause of Action, including the ability to assert any counterclaim, provided that the Liquidating Trust shall neither assert nor preserve Intercompany Claims, except to the extent necessary to preserve claims and defenses against third parties other than the Debtors; (ii) the Debtors', the Post-Effective Date Debtors', or the Liquidation Trust's setoff or recoupment rights; (iii) requirements for any third party to establish mutuality prior to deemed substantive consolidation in order to assert a right of setoff against the Debtors, the Post-Effective Date Debtors, or the Liquidation Trust; (iv) distributions to the Debtors, the Estates, the Post-Effective

1 Date Debtors, or the Liquidation Trust out of any Insurance Policies or proceeds of such policies;
2 (v) distributions to the Debtors, the Estates, the Post-Effective Date Debtors, or the Liquidation
3 Trust from any governmental programs, including, but not limited to, Medicare, and Medi-Cal
4 including any fee for service payments and any payments under the Quality Assurance Fee
5 program; (vi) the applicability and enforceability of any government issued licenses, including, but
6 not limited to, the Hospital Licenses, or (vii) any Avoidance Action or any other Cause of Action
7 held by the Debtors arising under §§ 541 through 550, or state laws of similar effect, against any
8 third party other than the other Debtors, except to the extent any such actions are expressly waived
9 or settled pursuant to the Plan.

10 **C. Post-Effective Date Governance of Certain Entities**

11 The Sale-Leaseback Debtors and SCC Debtors shall continue to exist after the Effective
12 Date of the Plan (i) with the Sale-Leaseback Debtors existing until the expiration of the Interim
13 Agreements so that they may engage in the transition tasks set forth in Section 5.6 of the Plan,
14 (ii) with the SCC Debtors existing until all Quality Assurance Payments are collected, and (iii) with
15 a Responsible Officer, to be identified in the Plan Supplement, will be responsible for the Sale-
16 Leaseback Debtors and the SCC Debtors as discussed in Section 5.8 of the Plan. The primary
17 transaction task (i) for the Sale-Leaseback Debtors involves the Interim Agreements, and (ii) for
18 the SCC Debtors involves remitting Quality Assurance Payments received after the Effective Date
19 to the Liquidating Trust.

20 **1. Post-Effective Date Board of Directors**

21 On the Effective Date, the board members of VHS shall resign and the Post-Effective
22 Date Board of Directors of VHS will be appointed. The members that make up the Post-Effective
23 Date Board of Directors shall also serve and remain as the members of each of the subsidiary
24 boards and any other boards required to be in existence. The Post-Effective Date Board of
25 Directors shall (i) fulfill its duties and obligations under the bylaws and state and federal law and
26 (ii) appoint and oversee the Responsible Officer, consistent with the terms of the Plan. The Post-
27 Effective Date Board of Directors is further discussed in Section 5.8 of the Plan.
28

2. Post-Effective Date Committee

Pursuant to Section 7.10 of the Plan, on the Effective Date, the Committee shall be dissolved (except with respect to any then pending litigation or contested matter to which the Committee is a party and any appeals filed regarding confirmation of the Plan) and the Post-Effective Date Committee shall be appointed. The members that shall serve on the Post-Effective Date Committee shall be selected by the Committee and shall be disclosed in a Plan Supplement. The Post-Effective Date Committee shall have duties in accordance with the Plan and the Liquidating Trust Agreement to: (i) consult and coordinate with the Liquidating Trustee as to the administration of the Liquidating Trust and the Liquidating Trust Assets, including, without limitation, consulting on the Operating Budget and the Liquidating Budget; and (ii) consult and coordinate with the Responsible Officer.

3. Liquidating Trust

As set forth in Section 6 and elsewhere in the Plan and in the Liquidating Trust Agreement, a Liquidating Trust is being established on the Effective Date of the Plan, which will hold and prosecute Causes of Action (including Avoidance Actions) and other Liquidating Trust Assets being contributed to the Liquidating Trust Assets. Allowed Claims in Class 8 (PBGC), Class 9 (RPHE), and Class 10 (General Unsecured Claims) will receive Trust Beneficial Interests, which shall be entitled to receive periodic distribution of net proceeds received by the Liquidating Trust, as set forth in the Plan and the Liquidating Trust Agreement. The Liquidating Trust shall have an initial duration of five (5) years (subject to possible extension).

The primary purpose of the Liquidating Trust shall be the liquidation and distribution of its assets, in accordance with Treasury Regulation (defined below) section 301.7701-4(d). The primary functions of the Liquidating Trust are as follows: (i) to liquidate, sell, or dispose of the Trust Assets; (ii) to cause all net proceeds of the Trust Assets, including proceeds of Causes of Action on behalf of the Trust to be deposited into the Trust; (iii) to initiate actions to resolve any remaining issues regard the allowance and payment of Claims including, as necessary, initiation and/or participation in proceedings before the Court; (iv) to take such actions as are necessary or useful to maximize the value of the Trust; and (v) to make the payments and distributions to

1 Holders of Allowed Claims, including Trust Beneficiaries, as required by the Plan.

2 The Liquidating Trustee shall have the other powers and duties set forth in the Plan and
3 the Liquidating Trust Agreement. Certain tax and securities law considerations related to the
4 Trust Beneficial Interests in the Liquidating Trust are discussed below in this Disclosure
5 Statement.

6 **4. Insurance Captive**

7 VHS, in its capacity as a Post-Effective Date Debtor, and/or the Liquidating Trustee shall
8 take such action as reasonably necessary and advisable to effectuate the sale, disposition or other
9 administration of the issued and outstanding equity interest in and assets of Marillac.⁶ The net cash
10 proceeds of such sale, disposition or other administration, if any, to the Liquidating Trust shall be
11 used to pay Holders of Claims, as set forth in the Plan and the Liquidating Trust Agreement or as
12 otherwise agreed pursuant to a Creditor Settlement Agreement.

13 **5. Coordination Between Post-Effective Date Debtors and the Liquidating Trust**

14 Notwithstanding anything herein to the contrary, in furtherance of the purposes of the
15 Liquidating Trust, at the request of the Liquidating Trustee, the Post-Effective Date Debtors
16 (including, without limitation, the Responsible Officer and the Post-Effective Date Debtors'
17 employees, agents and/or professionals) shall be authorized to provide assistance and services to,
18 or otherwise act on behalf of, the Liquidating Trustee in the performance of the Liquidating
19 Trustee's duties under the Plan and the Liquidating Trust Agreement. Without limitation on the
20 foregoing, the Post-Effective Date Debtors shall be authorized to assist in the reconciliation and
21 administration of claims, and assist in the liquidation and/or collection of Liquidating Trust Assets
22 (including, without limitation, litigation claims). The Liquidating Trustee shall oversee all such
23 services provided on behalf of the Liquidating Trustee.

24
25
26
27 ⁶ The Plan will modify this provision in the event VHS sells or otherwise disposes of the issued
28 and outstanding shares in Marillac prior to the Effective Date.

6. Dissolution of Certain Non-Debtor Entities on the Effective Date

The following non-debtor entities shall be deemed dissolved under applicable state law as of the Effective Date pursuant to Section 5.2 of the Plan:

- De Paul Ventures - San Jose ASC, LLC
- Sports Medicine Management, Inc.
- St. Vincent de Paul Ethics Corporation
- V Holdings MOB, LLC
- Robert F. Kennedy Medical Center
- Robert F. Kennedy Medical Center Foundation

These entities have no material assets or operations.

7. Termination of Responsibilities of the Patient Care Ombudsman

On the SGM Sale closing date, the duties and responsibilities of the Patient Care Ombudsman shall be terminated and the Patient Care Ombudsman shall be discharged from his duties as Patient Care Ombudsman and shall not be required to file any further reports or perform any additional duties as Patient Care Ombudsman. No person or entity may seek discovery in any form, including, but not limited to, by motion, subpoena, notice of deposition or request or demand for production of documents, from the Patient Care Ombudsman or his agents, professionals, employees, other representatives, designees or assigns (collectively, with the Patient Care Ombudsman, the “Ombudsman Parties”) with respect to any matters arising from or relating in any way to the performance of the duties of the Patient Care Ombudsman in these Chapter 11 Cases, including, but not limited to, pleadings, reports or other writings filed by the Patient Care Ombudsman in connection with these Chapter 11 Cases. Nothing herein shall in any way limit or otherwise affect the obligations of the Patient Care Ombudsman under confidentiality agreements, if any, between the Patient Care Ombudsman and any other person or entity or shall in any way limit or otherwise affect the Patient Care Ombudsman’s obligation, under §§ 332(c) and 333(c)(1) or other applicable law or Bankruptcy Court Orders, to maintain patient information, including patient records, as confidential, and no such information shall be released by the Patient Care Ombudsman without further order of the Bankruptcy Court.

8. Retention and Payment of Professionals Post-Effective Date

The Post-Effective Date Debtors, the Post-Effective Date Committee and the Liquidating Trust

1 may retain and pay professionals in connection with their respective roles. Such retentions and
2 payments shall not be subject to Bankruptcy Court approval or fee applications.

3 **9. Creditor Settlement Agreements**

4 Prior to or in connection with the Confirmation Hearing, there are expected to be settlements
5 with creditors and other parties. Such settlements will be filed either as part of a Plan Supplement
6 or a separate pleading, which may be filed for expedited hearing at or before the Confirmation
7 Hearing.

8 **VII.**

9 **DISTRIBUTIONS**

10 **A. Funding for the Distributions to Creditors**

11 The funding for distributions shall primarily be from the net proceeds from the SCC Sale
12 already received and the anticipated net proceeds from the closing of the SGM Sale, as well as receipt
13 of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action
14 including Avoidance Actions to be pursued by the Liquidating Trust.

15 **B. Distribution Mechanisms**

16 The Liquidating Trust shall be charged with making distributions under the Plan with
17 respect to all Allowed Claims as set forth in Section 8 of the Plan. Unless otherwise provided in
18 the Plan, all distributions on account of Allowed Claims, other than the General Unsecured Claims,
19 shall be made as soon as practicable on or after the Effective Date. Distributions on account of
20 Allowed Claims in Classes 8, 9 and 10 shall be made exclusively on the basis of Trust Beneficial
21 Interests at least annually, provided, however, that distributions need not be made to the extent
22 there is no Cash in one or more reserve accounts to distribute or if the Liquidating Trustee
23 determines that it is reasonably necessary to retain Cash in one or more reserve accounts to maintain
24 the value of the Liquidating Trust Assets or to meet any claims or contingent liabilities against the
25 Liquidating Trust, taking into account the available Cash in the Unsecured Claims Fund and the
26 costs and expenses of each such distribution. Distributions are subject to withholding and setoff.

27 **C. Unsecured Claims Fund**

28 Sections 7.8 and 7.9 of the Plan provides for the establishment of one or more accounts or

1 reserves of Cash established by the Liquidating Trustee for payment of all Allowed Unsecured
2 Claims on or after the Effective Date. As Disputed Unsecured Claims are resolved and become
3 Allowed, Cash in the Disputed Unsecured Claim Reserve shall be transferred into the unreserved
4 portion of the Unsecured Claims Fund and made available for distribution to the Holders of such
5 newly Allowed Unsecured Claims in an amount of their Pro Rata Share in accordance with the
6 Plan.

7 **D. Claims Administration**

8 Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as
9 otherwise expressly provided herein, the Liquidating Trustee, in consultation with the Post-
10 Effective Date Committee, shall have the exclusive right to file, prosecute, resolve and otherwise
11 deal with objections to Claims. The Liquidating Trustee shall serve a copy of each Claim objection
12 upon the holder of the Claim to which the objection is made. Objections with respect to all Claims
13 shall be made as soon as reasonably practical but in no event later than the Claims Objection
14 Deadline. If the Liquidating Trustee wishes to extend the Claims Objection Deadline, it may do so
15 pursuant to a motion on notice to the Post-Effective Date Committee, which may be approved
16 without a hearing. The Claims Objection Deadline means the First Business Day that is later of (a)
17 two hundred ten (210) days after the Effective Date, or (b) such other later date as the Bankruptcy
18 Court may establish upon a motion by the Liquidation Trustee in accordance with the Plan.

19 Section 10 of the Plan sets forth the mechanisms for treatment of Claims which are subject
20 to dispute pending their Allowance or Disallowance. The following Claims shall be automatically
21 Disallowed and expunged, without the need for filing any objections thereto, and shall not be
22 entitled to any distributions under the Plan: (a) Claims for which no Proof of Claim was filed by
23 the applicable Bar Date even though such Claims were listed on the Schedules as disputed,
24 contingent, or unliquidated; and (b) Claims covered by § 502(d) to the extent that the holder of such
25 Claim has not been paid the amount or turned over the property for which such holder is liable
26 under §§ 522(i), 542, 543, 550, or 553, in accordance with § 502(d).

E. Preservation of Insurance

Nothing in the Plan shall diminish, impair or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover (a) Claims by any Debtor, or (b) Claims against any Debtor or covered Persons thereunder.

F. Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Agreements to which any Debtor is a party shall be deemed rejected as of the Effective Date, except for those Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, (c) are specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed, provided, however, that the Debtors reserve the right to amend the Plan Supplement at any time on or before thirty (30) days after the Effective Date to modify the Schedule of Assumed Contracts to include or delete any Executory Agreements. If the party to an Executory Agreement listed to be assumed in the Schedule of Assumed Contracts wishes to object to the proposed assumption (including with respect to the cure amounts), it shall do so within thirty (30) days from the service of the Schedule of Assumed Contracts. Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as otherwise provided for in the Debtors' notice of rejection) no later than thirty (30) days after the Effective Date. Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

G. Causes of Action Including Avoidance Actions

Nothing contained in the Plan shall be deemed a waiver or relinquishment of any claims or Causes of Action of the Debtors that are not specifically waived or relinquished by the Plan, which shall vest in the Liquidating Trust, subject to any existing valid and perfected security interest or lien in such Causes of Action. The Causes of Action preserved under the Plan include, without limitation, the pending adversary proceedings discussed above and claims, rights or other causes of action:

(a) against vendors, suppliers of goods or services (including attorneys, accountants, consultants, physicians or other professional service providers), utilities, contract counterparties, and other parties for, including but not limited to: (A) services rendered; (B) over- and under-payments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, setoff or recoupment; (C) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors; (D) wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (E) indemnification and/or warranty claims; or (F) turnover causes of action arising under §§ 542 or 543;

(b) against landlords or lessors, including, without limitation, for erroneous charges, overpayments, returns of security deposits, indemnification, or for environmental claims;

(c) arising against current or former tenants or lessees, including, without limitation, for non-payment of rent, damages, and holdover proceedings;

(d) arising from damage to Debtors' property;

(e) relating to claims, rights, or other causes of action the Debtors may have to interplead third parties in actions commenced against any of the Debtors;

(f) for collection of a debt owed to any of the Debtors;

(g) against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters;

(h) relating to pending litigation, including, without limitation, the suits, administrative proceedings, executions, garnishments, and attachments listed in Attachment 4a to each of the Debtors' Statements of Financial Affairs;

(i) arising from claims against health plans;

(j) that constitute Avoidance Actions;

(k) arising under or relating to any and/or all asset purchase agreements and related sale documents (including, without limitation, any leases) entered into during these Chapter 11 Cases, including, but not limited to, enforcement of such agreements by the Debtors' Estates and/or breaches of any and/or all such agreements by the applicable non-Debtor parties (including,

1 without limitation, the purchasers of the Debtors' assets under such agreements and any and all
2 principals and/or guarantors of the obligations under or relating to such agreements); and

3 (l) relating to the Operating Assets.

4 The Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and
5 the Post-Effective Date Debtors shall have, retain, reserve and be entitled to assert all such claims,
6 rights of setoff and other legal or equitable defenses that the Debtors had immediately prior to the
7 Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors'
8 legal and equitable rights respecting any claim that is not specifically waived or relinquished by the
9 Plan may be asserted by the Liquidating Trustee and the Post-Effective Date Committee on their
10 behalf after the Effective Date to the same extent as if the Chapter 11 Cases had not been
11 commenced. On and after the Effective Date, in accordance with § 1123(b) and the terms of the
12 Plan, the Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and the
13 Post-Effective Date Debtors shall retain and have the exclusive right to prosecute, abandon, settle
14 or release any or all Causes of Action, as they deem appropriate, without the need to obtain approval
15 or any other or further relief from the Bankruptcy Court. The Post-Effective Date Committee shall
16 analyze potential Causes of Action in consultation with the Liquidating Trustee, to determine
17 whether the pursuit of these actions would be beneficial. The Liquidating Trustee shall also confer
18 and cooperate with the Post-Effective Date Committee in the prosecution and defense of all Causes
19 of Action to be brought under the Plan.

20 As set forth in the Statement of Financial Affairs filed by each Debtor, an aggregate of over
21 \$200 million in gross payments were made by all Debtors to third parties within the 90 days before
22 the Petition Date. Those third parties may assert various defenses to any adversary proceedings
23 seeking to recover those payments as preferences or fraudulent transfers. The Debtors have
24 preliminarily requested ASK LLP to conduct an analysis of the likely amount of avoidance
25 recoveries after defenses and litigation costs. The Debtors are analyzing other litigation against
26 third parties, some of which will be pursued prior to the Effective Date.

VIII.

EFFECT OF CONFIRMATION

A. Discharge

The Debtors will not receive a discharge under the Plan because the requirements of § 1141 necessary for the Debtors to receive a discharge are not present.

B. Injunctions and Stays

Existing injunctions, stays and orders in the Bankruptcy Case are generally being extended pursuant to Section 13.4 of the Plan. In addition, Section 13.6 of the Plan provides for injunctive relief as follows:

a. *General Injunction.* Except as otherwise expressly provided herein, all Persons that have held, currently hold or may hold a Claim against the Debtors are permanently enjoined on and after the Effective Date from taking any action in furtherance of such Claim or any other Cause of Action released and discharged under the Plan, including, without limitation, the following actions against any Released Party: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action or other proceeding with respect to a Claim; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the Liquidating Trust with respect to a Claim; or (e) commencing, conducting or continuing any proceeding that does not conform to or comply with or is contradictory to the provisions of the Plan; provided, however, that nothing in this injunction shall (i) limit the Holder of an Insured Claim from receiving the treatment set forth in Class 12; or (ii) preclude the Holders of Claims against the Debtors from enforcing any obligations of the Debtors, the Post-Effective Date Debtors, the Liquidating Trust, the Responsible Officer, or the Liquidating Trustee under the Plan and the contracts, instruments, releases and other agreements delivered in connection herewith, including, without limitation, the Confirmation Order, or any other order of the Bankruptcy Court in the Chapter 11 Cases. By accepting a distribution made pursuant to the Plan, each Holder of an Allowed Claim shall be deemed to have specifically consented to the injunctions set forth in this Section.

b. *Other Injunctions.* The Responsible Officer, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, the Post-Effective Date Board of Directors, or the Liquidating Trust and their respective members, directors, officers, agents, attorneys, advisors or

employees shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Responsible Officer, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except those acts found by Final Order to be arising out of its or their willful misconduct, gross negligence, fraud, and/or criminal conduct, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of the Responsible Officer, the Post-Effective Date Board of Directors, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except for any actions or inactions found by Final Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct. Any indemnification claim of the Responsible Officer, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee and the other parties entitled to indemnification under this subsection shall be satisfied from either (i) the Liquidating Trust Assets (with respect to all claims, other than those claims related to the Operating Assets), or (ii) the Operating Assets (with respect to all claims related to the Operating Assets). The parties subject to this Section shall be entitled to rely, in good faith, on the advice of retained professionals, if any.

C. Releases

Section 13.5 of the Plan contains the following releases and related provisions, which are an integral part of the Plan:

- a. *Releases.* As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Debtors arising from or related to the Debtors' pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature except for as provided in the Plan or the Confirmation Order.
- b. *Limitations of Claims Against the Liquidating Trust.* As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Liquidating Trust any other or further Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, relating to the Debtors or any Interest in the Debtors based upon any acts, omissions or liabilities, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date.
- c. *Debtors' Releases.* Pursuant to § 1123(b), and except as otherwise specifically provided in the Plan, for good and valuable consideration,

including the service of the Released Parties to facilitate the expeditious liquidation of the Debtors and the consummation of the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharge by the Debtors and their Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen, or unforeseen, existing or herein after arising in law, equity, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Chapter 11 Cases, the transactions or events giving rise to any Claim that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims before or during the Chapter 11 Cases, the marketing and the sale of Assets of the Debtors, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents, other than a Claim against a Released Party arising out of the gross negligence or willful misconduct of any such person or entity.

WAIVER OF LIMITATIONS ON RELEASES. THE LAWS OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542) PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS 13.5 (a)-(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

D. Exculpations

To the maximum extent permitted by applicable law, each Released Party and Bond and Notes Trustee shall not have or incur any liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the marketing and the sale of Assets of the Debtors, the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, or the property to be distributed under the Plan), or each Released Party's or Bond and Notes Trustee's exercise or discharge of any powers and duties set forth in the Plan, except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each Released Party

1 and Bond and Notes Trustee shall be entitled to rely upon the advice of counsel with respect to their
2 duties and responsibilities under the Plan. Without limitation of the foregoing, each such Released
3 Party and Bond and Notes Trustee shall be released and exculpated from any and all Causes of
4 Action that any Person is entitled to assert in its own right or on behalf of any other Person, based
5 in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in
6 any way relating to the subject matter of Section 13.7 of the Plan.

7 **E. Termination of All Employee, Retiree and Workers Compensation Benefits**

8 All ongoing employee benefits, retiree benefits and workers' compensation benefits will be
9 deemed rejected pursuant to § 365 as of the Effective Date.

10 **F. U.S. Trustee Quarterly Fees and Post-Confirmation Status Report**

11 All fees payable under 28 U.S.C. § 1930(a)(6) shall be paid by each Debtor in the amounts
12 and at the times such fees may become due up to and including the Effective Date. The Liquidating
13 Trust shall pay all fees payable by each Debtor under 28 U.S.C. § 1930(a)(6) until the Chapter 11
14 Cases are closed, dismissed or converted; provided, however, that the Sale-Leaseback Debtors will
15 pay all fees payable under 28 U.S.C. § 1930(a)(6) in their respective Chapter 11 Cases in
16 accordance with the Operating Budget and until the expiration of the Interim Agreements. Upon
17 the Effective Date, the Liquidating Trust and the Post-Effective Date Debtors shall be relieved from
18 the duty to make the reports and summaries required under Bankruptcy Rule 2015(a).
19 Notwithstanding the foregoing, the Liquidating Trust and Post-Effective Date Debtors shall file
20 and serve the status reports required by Local Bankruptcy Rule 3020-1(b) at such times and for
21 such period as may be set forth in the Confirmation Order.

22 **G. Retention of Jurisdiction**

23 Unless otherwise provided in the Plan or the Confirmation Order, on and after the Effective
24 Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or
25 related to the Chapter 11 Cases. Without limiting the foregoing, the Bankruptcy Court shall retain
26 jurisdiction to:

27 (a) allow, disallow determine, liquidate, classify, estimate, or establish the priority or
28 secured or unsecured status of any Claim, including the resolution of any request for payment of
any Administrative Claim and the resolution of any objections to the allowance or priority of

1 Claims, and the resolution of any claim objections brought by the Debtors or by the Liquidating
2 Trustee on behalf of the Liquidating Trust;

3 (b) resolve any matters related to the assumption, assumption and assignment, or
4 rejection of any Executory Agreement to which a Debtor(s) is a party and to hear, determine and,
5 if necessary, liquidate, any Claims arising from, or cure amounts related to, such assumption or
6 rejection;

7 (c) determine any motion, adversary proceeding, application, contested matter, and
8 other litigated matter pending on or commenced after the Effective Date, including, without
9 limitation, any and all Causes of Action preserved under the Plan commenced prior to, on, or after
10 the Effective Date;

11 (d) ensure that distributions to holders of Allowed Claims are accomplished in
12 accordance with the Plan;

13 (e) hear and determine matters relating to claims with respect to the Debtors' director
14 and officer insurance;

15 (f) enter, implement or enforce such orders as may be appropriate in the event that the
16 Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

17 (g) issue injunctions, enter and implement other orders, and take such other actions as
18 may be necessary or appropriate to restrain interference by any Person with the consummation,
19 implementation or enforcement of the Plan, the Confirmation Order or any other order of the
20 Bankruptcy Court, including, without limitation, any actions relating to the Nonprofit Status of the
21 Post-Effective Date Debtors;

22 (h) resolve a dispute with respect to and/or otherwise appoint a replacement of the
23 Responsible Officer or the Liquidating Trustee, or replacement members of the Post-Effective Date
24 Committee;

25 (i) hear and determine any application to modify the Plan in accordance with § 1127,
26 to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure
27 Statement, any contract, instrument, release, or other agreement or document created in connection
28 therewith, or any order of the Bankruptcy Court, including the Confirmation Order, in such a
manner as may be necessary to carry out the purposes and effects thereof;

(j) hear and determine all applications under §§ 330, 331, and 503(b) for awards of
compensation for services rendered and reimbursement of expenses incurred prior to the Effective
Date;

(k) hear and determine disputes arising in connection with the interpretation,
implementation, obligation or enforcement of the Plan, the Confirmation Order, any transactions
or payments contemplated in the Plan, or any agreement, instrument, or other document governing
or relating to any of the foregoing;

(l) take any action and issue such orders as may be necessary to construe, enforce,
implement, execute and consummate the Plan, including all contracts, instruments, releases, and

1 other agreements or documents created in connection therewith, or to maintain the integrity of the
2 Plan following consummation;

3 (m) determine such other matters and for such other purposes as may be provided in the
4 Plan and/or the Confirmation Order;

5 (n) hear and determine matters concerning state, local, and federal taxes in accordance
6 with §§ 346, 505, and 1146, including without limitation, (i) any requests for expedited
7 determinations under § 505(b) filed, or to be filed, with respect to tax returns for any and all taxable
8 periods ending after the Petition Date through, and including, the date of final distribution under
9 the Plan, and (ii) any other matters relating to the Nonprofit Status of the Post-Effective Date
10 Debtors;

11 (o) hear and determine any other matters related hereto and not inconsistent with the
12 Bankruptcy Code and Title 28 of the United States Code;

13 (p) authorize recovery of all assets of any of the Debtors and property of the applicable
14 Debtor's Estate, wherever located;

15 (q) consider any and all claims against each Released Party involving or relating to the
16 administration of the Chapter 11 Cases, any rulings, orders, or decisions in the Chapter 11 Cases
17 or any aspects of the Debtors' Chapter 11 Cases and the events leading up to the commencement
18 of the Chapter 11 Cases, including the decision to commence the Chapter 11 Cases, the
19 development and implementation of the Plan, the decisions and actions taken prior to or during the
20 Chapter 11 Cases and any asserted claims based upon or related to prepetition obligations of the
21 Debtors for the purpose of determining whether such claims belong to the Estates or third parties.
22 In the event it is determined that any such claims belong to third parties, then, subject to any
23 applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive
24 jurisdiction with respect to any such litigation, subject to any determination by the Bankruptcy
25 Court to abstain and consider whether such litigation should more appropriately proceed in another
26 forum;

27 (r) hear and resolve any disputes regarding the reserves required hereunder, including
28 without limitation, disputes regarding the amounts of such reserves or the amount, allocation and
timing of any releases of such reserved funds; and

(s) enter final decrees closing the Chapter 11 Cases.

IX.

TAX CONSEQUENCES OF THE PLAN

CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of possible
tax consequences is intended solely for the purpose of alerting readers about possible tax issues the

1 Plan may present to these estates. The Debtors CANNOT and DO NOT represent that the tax
2 consequences contained below are the only tax consequences of the Plan because the Tax Code
3 embodies many complicated rules which make it difficult to state completely and accurately all of
4 the tax implications of any action.

5 **X.**

6 **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

7 **A. Generally**

8 The following discussion summarizes certain federal⁷ income tax consequences of the
9 implementation of the Plan to the Debtors and to U.S. Holders (as defined below) of Claims. The
10 following summary does not address the federal income tax consequences to holders whose Claims
11 are unimpaired or otherwise entitled to payment in full in Cash under the Plan, or to holders of
12 Claims or Interests who are deemed to reject the Plan.

13 The following summary is based on the Internal Revenue Code of 1986, as amended (the
14 “IRC”), existing and proposed Treasury regulations promulgated thereunder (the “Treasury
15 Regulations”), judicial decisions, and published administrative rules and pronouncements of the
16 Internal Revenue Service (the “IRS”), all as in effect on the date hereof. Changes or new
17 interpretations of these rules may have retroactive effect and could significantly affect the federal
18 income tax consequences described below. In December 2017, the federal government enacted
19 broad tax legislation that included significant changes to the taxation of business entities (including
20 entities exempt from taxation under section 501(c)(3) of the IRC) affecting, among other things,
21 the treatment of net operating losses and limitations on the deductibility of “business interest.”
22 Some aspects of this new law are not clear, and, as a result, we cannot assure you that such change
23 in law does not impact the tax considerations that we describe in this summary.

24 The federal income tax consequences of the Plan are complex and are subject to significant
25 uncertainties. The Debtors have not requested an opinion of counsel with respect to any of the tax
26 aspects of the Plan. In addition, the Debtors have not requested a ruling from the IRS concerning

27 ⁷ All references to “federal” taxes refer to tax obligations imposed by the United States of
28 America.

1 the federal income tax consequences of the Plan, and the consummation of the Plan is not
2 conditioned upon the issuance of any such ruling. Thus, no assurance can be given as to the
3 interpretation that the IRS or a court of law will adopt.

4 This summary does not address state, local or non-United States income or other tax
5 consequences of the Plan, nor does it address the federal income tax consequences of any
6 transaction that may be entered into prior to, concurrently with or subsequent to the Plan (regardless
7 of whether any such transaction is undertaken in connection with the Plan). In addition, this
8 summary does not purport to address the federal income tax consequences of the Plan to special
9 classes of taxpayers (such as former citizens or long-term residents of the United States pursuant
10 to sections 877 or 877A of the IRC, governmental entities, broker-dealers, banks, mutual funds,
11 insurance companies, financial institutions, thrifts, small business investment companies, regulated
12 investment companies, real estate investment trusts, tax-exempt entities other than the Debtors, as
13 applicable, persons whose functional currency is not the U.S. dollar or persons holding a Claim as
14 part of a hedging, straddle, conversion or constructive sale transaction or other integrated
15 investments, persons subject to section 451(b) of the IRC, traders in securities that elect to use a
16 mark-to-market method of accounting for their security holding, pass-through entities (or
17 arrangements classified as pass-through entities) or investors in pass-through entities).
18 **Accordingly, the following summary is for informational purposes only and is not a substitute**
19 **for careful tax planning and professional advice based upon the particular circumstances**
20 **pertaining to a holder of a Claim or Interest.**

21 As used in this section, the term “U.S. Holder” means a beneficial owner of a Claim (as
22 determined for federal income tax purposes) that is: (a) a citizen or an individual resident of the
23 United States; (b) a corporation (or an entity taxable as a corporation for federal income tax
24 purposes) created or organized in or under the laws of the United States or any political subdivision
25 of the United States; (c) an estate the income of which is subject to federal income taxation
26 regardless of its source; or (d) a trust which (i) is subject to the primary supervision of a court within
27 the United States and the control of a United States fiduciary as described in section 7701(a)(30)(E)
28

1 of the IRC or (ii) has properly elected under applicable Treasury Regulations to be treated as a
2 United States person.

3 **B. Certain Tax Consequences to the Debtors**

4 **1. Generally**

5 Each Debtor is a nonprofit corporation that is exempt from federal income taxation under
6 section 501(c)(3) of the IRC. It is intended that nothing in the Plan shall adversely affect, or be
7 interpreted inconsistently with, the tax-exempt status of Post-Effective Date Debtors, and the Plan
8 provides that each Post-Effective Date Debtors will retain its tax-exempt status to the same extent
9 such status existed immediately prior to the Petition Date. Accordingly, the Debtors do not expect
10 the implementation of the Plan to have any adverse federal income tax consequences to the tax-
11 exempt status of Post-Effective Date Debtors. If the tax-exempt status of a Post-Effective Date
12 Debtors were to terminate, the Post-Effective Date Debtors would be subject to tax on its income,
13 which would reduce the amount of distributions payable to the Liquidating Trust. This summary
14 assumes that that the Debtors are and will continue to be exempt from federal income tax under
15 section 501 of the IRC.

16 Organizations that are otherwise exempt from federal income tax under section 501 of the
17 IRC are nevertheless subject to tax on their “unrelated business taxable income” (“UBTI”). UBTI
18 is generally defined as gross income from any unrelated trade or business regularly carried on by a
19 tax-exempt entity less any deductions attributable thereto. An unrelated trade or business consists
20 of any trade or business the conduct of which is not substantially related to the organization’s
21 exempt purpose or function.

22 UBTI includes unrelated debt-financed income (“UDFI”). UDFI includes income derived
23 from debt-financed property during the taxable year and may include income derived from a sale
24 or other disposition of debt-financed property if there was acquisition indebtedness outstanding
25 with respect to such property during the 12-month period ending with the date of sale or other
26 disposition. Acquisition indebtedness generally includes any debt incurred directly or indirectly to
27 purchase such property. Thus, to the extent that a tax-exempt directly or indirectly (including
28 through an investment in a partnership or other entity (or arrangement) which is treated as a pass-

1 through entity for federal income tax purposes) has income from a trade or business, or earns
2 income in respect of certain leveraged investments, a tax-exempt partner's allocable share of such
3 income generally will be treated as UBTI.

4 If the Debtors retain their tax-exempt status and any of their assets are regarded as UDFI
5 (which generally would not include property substantially all the use of which is substantially
6 related to the exercise or performance by Post-Effective Date Debtors of the purpose or function
7 constituting the basis for its tax-exempt status), Post-Effective Date Debtors may be subject to tax
8 on a percentage of the income (including gain) derived from such assets.

9 **2. Gain or Loss on Sale or Exchange**

10 Under the IRC, a taxpayer must recognize and include in gross income gain on the sale or
11 exchange of assets equal to the excess of the amount realized therefrom over the adjusted basis of
12 the assets. The transfer of assets, in payment and discharge of recourse indebtedness is treated as
13 a sale or exchange of such assets.

14 Each Debtor is exempt from U.S. federal income taxation under section 501(c)(3) of the
15 IRC. Gain realized and recognized in a transfer of assets in payment and discharge of recourse
16 indebtedness would be exempt from U.S. federal income taxation.

17 Each Debtor is also subject to tax on UBTI. Gain on the sale of assets other than property
18 includable in inventory or held primarily for sale to customers in the ordinary course of business is
19 excluded from UBTI under the IRC. Gain on the sale of assets includable in inventory or held
20 primarily for sale to customers is included in UBTI, and is subject to tax.

21 In addition, gain on the sale or exchange of debt-financed property is included in UDFI, and
22 so includable in UBTI, and subject to tax.

23 **3. Cancellation of Debt Income**

24 Under the IRC, a taxpayer generally must include in gross income the amount of any
25 cancellation of indebtedness ("COD") income recognized during the taxable year. COD income
26 generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum
27 of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any
28 other property transferred by the debtor in satisfaction of such discharged indebtedness (including

1 stock). COD income also includes any interest that has been previously accrued and deducted but
2 remains unpaid at the time the indebtedness is discharged.

3 The IRC permits a debtor in bankruptcy to exclude its COD income from gross income if
4 the discharge occurs in a bankruptcy case (“Bankruptcy Exception”) or to the extent that the debtor
5 is insolvent at the time of the discharge (“Insolvency Exception”), either of which should apply to
6 exclude any COD income from taxation in these Chapter 11 Cases.

7 The same analysis applies to UBTI and UDFI. Income excluded from gross income under
8 the Bankruptcy Exception or Insolvency Exception for income tax purposes is also excluded from
9 gross income for UBTI and UDFI purposes. Accordingly, either the Bankruptcy Exception or the
10 Insolvency Exception should apply to exclude any UBTI or UDFI from taxation.

11 **C. Certain Tax Consequences to the U.S. Holders of Claims**

12 **1. Gain or Loss**

13 In general, each U.S. Holder of a Claim will recognize gain or loss equal to the difference,
14 if any, between (i) the “amount realized” by such holder in satisfaction of its Claim (other than
15 amounts, if any, paid in respect of any Claim for accrued but unpaid interest and other than any
16 amounts treated as imputed interest as further described below), and (ii) such holder’s adjusted tax
17 basis in its Claim (other than any Claim for accrued but unpaid interest). A U.S. Holder’s “amount
18 realized” generally will equal the sum of Cash (including, for the avoidance of doubt Cash received,
19 if any, in lieu of credit monitoring services) and fair market value of the undivided interest in the
20 Liquidating Trust Assets received by such holder. Pursuant to an IRS Announcement, the value of
21 the receipt of credit monitoring services at the sole cost of the Debtors shall not be included in the
22 gross income of such recipients. For a discussion of the federal income tax consequences to U.S.
23 Holders of any Claim for accrued but unpaid interest, see below. A U.S. Holder’s tax basis in a
24 Claim should generally equal the amount advanced to the applicable Debtor(s) or an amount
25 included in income as a result of provision of goods or services to the applicable Debtor(s), except
26 to the extent that a bad debt loss had been previously taken.

27 As discussed below (*see* “Tax Treatment of the Liquidating Trust and U.S. Holders of
28 Beneficial Interests”), the Liquidating Trust is intended to be treated as a “grantor trust” for federal

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1 income tax purposes, of which the holders of Allowed Claims, whether Allowed on or after the
2 Effective Date, are the grantors. Accordingly, each holder of an Allowed Claim is intended to be
3 treated and, pursuant to the Plan and the Liquidating Trust Agreement, is required to report for
4 federal income tax purposes, as directly receiving, and as a direct owner of, its respective share of
5 the Liquidating Trust Assets, except as otherwise discussed below (*see* “Tax Treatment of the
6 Liquidating Trust and U.S. Holders of Beneficial Interests”). Pursuant to the Plan and Liquidating
7 Trust Agreement, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust
8 Assets, and all parties must consistently use such valuation for all federal income tax purposes.

9 It is possible that a U.S. Holder of an Allowed Claim may be treated for tax purposes as
10 receiving additional distributions subsequent to the Effective Date as a result of (i) additional
11 contributions made by Post-Effective Date Debtors to the Liquidating Trust and/or (ii) any
12 subsequently disallowed Disputed Claims or unclaimed distributions. In that event, the U.S. Holder
13 may be treated as having received additional amounts in respect of its Allowed Claim, and the
14 imputed interest provisions of the IRC may apply to treat a portion of such later distributions to a
15 U.S. Holder as imputed interest. In addition, it is possible that any loss realized by a U.S. Holder
16 in satisfaction of an Allowed Claim may be deferred until all subsequent distributions are
17 determinable.

18 Except as otherwise noted above, after the Effective Date, any amount a U.S. Holder of an
19 Allowed Claim receives as a distribution from the Liquidating Trust in respect of its beneficial
20 interest in the Liquidating Trust should not be included, for federal income tax purposes, in the
21 holder’s amount realized in respect of its Allowed Claim since such holder would already be
22 regarded for federal income tax purposes as owning the underlying assets (and would already have
23 realized any associated income). *See* “Tax Treatment of the Liquidating Trust and U.S. Holders of
24 Beneficial Interests” *infra*.

25 Where gain or loss is recognized by a U.S. Holder in respect of its Allowed Claim, the
26 character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income
27 or loss will be determined by a number of factors, including, among others, the nature and origin
28 of the Claim, the tax status of the U.S. Holder, whether the Claim constitutes a capital asset in the

1 hands of the U.S. Holder and how long it has been held, and whether and to what extent the U.S.
2 Holder had previously claimed a bad debt deduction in respect of such Claim. A U.S. Holder that
3 purchased its Claim from a prior holder at a market discount may be subject to the market discount
4 rules of the IRC. Under those rules, assuming that such holder has made no election to amortize
5 the market discount into income on a current basis with respect to any market discount instrument,
6 any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) generally would
7 be characterized as ordinary income to the extent of the accrued market discount on such Claim as
8 of the date of the exchange.

9 **2. Distributions in Discharge of Accrued Interest or OID**

10 Pursuant to the Plan, all distributions in respect of any Claim will be allocated first to the
11 principal amount of such Claim, as determined for U.S. federal income tax purposes, and thereafter,
12 to the remaining portion of such Claim (including the interest portion thereof), if any. Current
13 federal income tax law is unclear on this point, and no assurance can be given that the IRS will not
14 challenge the Debtors' position. Holders of Claims are urged to consult their own tax advisors
15 regarding the particular federal income tax consequences to them of the treatment of accrued but
16 unpaid interest or original issue discount ("OID"), as well as the character of any loss claimed with
17 respect to accrued but unpaid interest previously included in gross income.

18 In general, to the extent that any distribution to a U.S. Holder of a Claim is received in
19 satisfaction of interest or OID accrued or amortized during the time such holder held the Claim,
20 such amount will, unless exempt pursuant to special rules under the IRC, be taxable to such holder
21 as interest income (if not previously included in such holder's gross income). Conversely, a U.S.
22 Holder will generally recognize a deductible ordinary loss to the extent of any Claim for accrued
23 interest that previously was included in its gross income and that is not paid in full. However, the
24 treatment of unpaid OID that was previously included in income is less clear. The IRS has privately
25 ruled that a holder of a debt obligation in an otherwise tax-free exchange could not claim a current
26 deduction with respect to any unpaid OID. Accordingly, it is possible that, by analogy, a holder of
27 a Claim in a taxable exchange would be required to recognize a capital loss, rather than an ordinary
28 loss, with respect to any previously included OID that is not paid in full. Holders are urged to

1 consult their tax advisors regarding the allocation of consideration and the deductibility of accrued
2 but unpaid interest or OID for federal income tax purposes.

3 **3. Tax Treatment of the Liquidating Trust and U.S. Holders of Beneficial** 4 **Interests**

5 Upon the Effective Date, the Liquidating Trust will be established for the benefit of the
6 holders of Allowed Unsecured Claims, whether Allowed on or after the Effective Date.

7 The Liquidating Trust is intended to qualify as a liquidating trust for U.S. federal income
8 tax purposes. In general, a liquidating trust is not a separate taxable entity, but rather is treated for
9 federal income tax purposes as a “grantor trust” (*i.e.*, a pass-through entity), such that the holders
10 of beneficial interests therein are treated as owning an undivided interest in the assets of the trust.
11 However, merely establishing a trust as a liquidating trust does not ensure that it will be treated as
12 a grantor trust for federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B.
13 684 (“Rev. Proc. 94-45”), set forth the general criteria for obtaining an IRS ruling as to the grantor
14 trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured
15 with the intention of complying with such general criteria. Pursuant to the Plan and Liquidating
16 Trust Agreement, and in conformity with Rev. Proc. 94-45, all parties are required to treat, for
17 federal income tax purposes, the Liquidating Trust (except in respect of any Liquidating Trust
18 Assets allocable to Disputed Claims) as a grantor trust of which the beneficiaries of the Liquidating
19 Trust are the owners and grantors. The discussion herein assumes that the Liquidating Trust will
20 be so respected for federal income tax purposes. However, no ruling has been requested from the
21 IRS, and no opinion of counsel has been requested concerning the tax status of the Liquidating
22 Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a
23 contrary position. Were the IRS to successfully challenge the trust classification (including because
24 Post-Effective Date Debtors have the continuing obligation to make additional contributions to the
25 Liquidating Trust), the federal income tax consequences to the Liquidating Trust and the U.S.
26 Holders of Claims may vary significantly from those discussed herein, including the potential for
27 an entity level tax on any income of the Liquidating Trust. Holders of Allowed Claims are urged
28 to consult with their tax advisors regarding potential alternative characterizations.

a. General Tax Reporting by the Liquidating Trustee and Beneficiaries of the Liquidating Trust

For all federal income tax purposes, all parties must treat each transfer of Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Plan.

Pursuant to the Plan and Liquidating Trust Agreement, each transfer of Liquidating Trust Assets (other than any assets allocable to Disputed Claims) to the Liquidating Trust is treated, for federal income tax purposes, as (i) a transfer of such assets directly to the holders of Claims that constitute beneficiaries of the Liquidating Trust in partial satisfaction of their Claims (with each beneficiary of the Liquidating Trust receiving an undivided interest in such assets in accordance with their economic interests in such assets), followed by (ii) the transfer by the beneficiaries of the Liquidating Trust to the Liquidating Trust of such assets in exchange for the beneficial interests in the Liquidating Trust. Accordingly, all parties must treat the Liquidating Trust as a grantor trust, of which the beneficiaries of the Liquidating Trust are the owners and grantors, and treat the beneficiaries of the Liquidating Trust as the direct owners of an undivided interest in Liquidating Trust Assets (other than any assets allocable to Disputed Claims), consistent with their economic interests therein, for all federal income tax purposes. The economic interests of U.S. Holders of Unsecured Claims will be determined with respect to their interest in the Unsecured Claims Fund (other than any assets allocable to the reserve for Disputed Unsecured Claims). It is unclear whether a U.S. Holder of an Unsecured Claim will be required to treat cash distributed from the Disputed Claims Reserve to the Unsecured Claims Fund (other than assets allocated to the reserve for Disputed Unsecured Claims) (x) as an additional “amount realized” with respect to its Claim, thereby resulting in additional gain (or reduced loss) on its Claim at such time, or (y) an “amount realized” with respect to its interest in the Liquidating Trust.

Pursuant to the Plan and Liquidating Trust Agreement, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust Assets. All parties must consistently use such valuation for all federal income tax purposes.

Allocations of the Liquidating Trust’s taxable income (other than income attributable to assets in the Disputed Claims Reserve or reserve for Disputed Unsecured Claims) among the

1 beneficiaries of the Liquidating Trust shall be determined by reference to the manner in which an
2 amount of Cash equal to such taxable income would be distributed (without regard to any
3 restrictions on distributions) if, immediately prior to such deemed distribution, the Liquidating
4 Trust had distributed all of its other assets (valued at their tax book value and other than assets
5 allocable to Disputed Claims) to the beneficiaries of the Liquidating Trust, in each case up to the
6 tax book value of the assets treated as contributed by such beneficiaries of the Liquidating Trust,
7 adjusted for prior taxable income and loss and taking into account all prior and concurrent
8 distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be
9 allocated by reference to the manner in which an economic loss would be borne immediately after
10 a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value (or tax
11 basis) of the Liquidating Trust Assets for this purpose shall equal their fair market value on the date
12 such assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting
13 principles prescribed by the IRC, applicable Treasury regulations, and other applicable
14 administrative and judicial authorities and pronouncements.

15 Taxable income or loss allocated to a beneficiary of the Liquidating Trust will be treated as
16 income or loss with respect to such beneficiary's undivided interest in the Liquidating Trust Assets,
17 and not as income or loss with respect to its prior Allowed Claim. The character of any income
18 and the character and ability to use any loss will depend on the particular situation of the beneficiary
19 of the Liquidating Trust.

20 The federal income tax obligations of a beneficiary of the Liquidating Trust are not
21 dependent on the Liquidating Trust distributing any Cash or other proceeds. Therefore, a
22 beneficiary of the Liquidating Trust may incur a federal income tax liability with respect to its
23 allocable share of Liquidating Trust income even if the Liquidating Trust does not make a
24 concurrent distribution to the beneficiary of the Liquidating Trust. In general, other than in respect
25 of Liquidating Trust Assets allocable to Disputed Claims, a beneficiary of the Liquidating Trust
26 should not be separately taxable on a distribution from the Liquidating Trust since the beneficiary
27 of the Liquidating Trust already is regarded for federal income tax purposes as owning the
28

1 underlying assets (and was taxed at the time the income was earned or received by the Liquidating
2 Trust).

3 The Liquidating Trustee will file with the IRS returns for the Liquidating Trust as a grantor
4 trust pursuant to Treasury Regulation section 1.671-4(a). The Liquidating Trustee also shall
5 annually send to each beneficiary of the Liquidating Trust a separate statement setting forth the
6 holder's share of items of income, gain, loss, deduction, or credit and will instruct all of the
7 beneficiaries of the Liquidating Trust to report such items on their federal income tax returns or to
8 forward the appropriate information to such beneficiary's underlying beneficial holders with
9 instructions to report such items on their U.S. federal income tax returns.

10 b. Tax Treatment of the Disputed Claims Reserve and Reserve for Disputed
11 Unsecured Claims

12 The Liquidating Trustee shall (x) treat the Disputed Claims Reserve and the reserve for
13 Disputed Unsecured Claims as "disputed ownership funds" governed by Treasury Regulation
14 section 1.468B-9 by timely making an election, and (y) to the extent permitted by applicable law,
15 report consistently with the foregoing for state and local income tax purposes.

16 The Disputed Claims Reserve and the reserve for Disputed Unsecured Claims will be
17 subject to tax annually on a separate entity basis on any net income earned with respect to the
18 Liquidating Trust Assets allocable thereto. A disputed ownership fund is taxed in a manner similar
19 to either a corporation or a "qualified settlement fund," within the meaning of applicable Treasury
20 Regulations, depending on the nature of the assets transferred to it. It is expected that the Disputed
21 Claims Reserve and the reserve for Disputed Unsecured Claims will be taxed as qualified settlement
22 funds (taxable at the maximum rate applicable to trusts and estates, currently 37%) because all of
23 the assets transferred to them should be treated as passive assets. All distributions from either the
24 Disputed Claims Reserve or the reserve for Disputed Unsecured Claims to U.S. Holders of Allowed
25 Claims (which distributions will be net of the related expenses of the reserve) will be treated as
26 received by such holders in respect of their Claims as if distributed by the Debtors. All parties will
27 be required to report for tax purposes consistently with the foregoing.
28

Holders of Allowed Claims should consult their tax advisors with respect to the U.S. federal income tax consequences of becoming a beneficiary of the Liquidating Trust.

D. Information Reporting and Withholding

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding obligations (including employment tax withholding, if any). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then-applicable rate (currently 24%). Backup withholding generally applies if the holder: (i) fails to furnish its social security number or other taxpayer identification number (“TIN”); (ii) furnishes an incorrect TIN; (iii) fails properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is such holder’s correct number and that such holder is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, applicable Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among others, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holders’ federal income tax returns.

E. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY

1 VARY DEPENDING ON A HOLDER’S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY,
2 HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE
3 FEDERAL, STATE, LOCAL AND NON-UNITED STATES INCOME AND OTHER TAX
4 CONSEQUENCES OF THE PLAN.

5 **XI.**

6 **SECURITIES LAW DISCUSSION RELATED TO TRUST BENEFICIAL INTERESTS**

7 The Trust Beneficial Interests are not expected to be deemed “securities” within the
8 meaning of the federal securities laws, including the Securities Act of 1933 (the “1933 Act”), and
9 the distribution of the Trust Beneficial Interests will not be registered under the 1933 Act. The
10 Liquidating Trust will not be registered or reporting under either the Securities Exchange Act of
11 1934 (the “1934 Act”) or under the Investment Company Act of 1940 (the “1940 Act”). The
12 Liquidating Trust Agreement provides that the Trust Beneficial Interests may not be assigned or
13 otherwise transferred by any holder other than: (i) to any relative, spouse or relative of the spouse
14 of such holder; (ii) by will or pursuant to the laws of descent and distribution; and (iii) upon the
15 dissolution of such holder in accordance with the operation of law; provided, that any such transfer
16 will not be effective until and unless the Liquidating Trustee receives written notice of such transfer.
17 No beneficiary may subdivide beneficial interests in the Liquidating Trust except as set forth in the
18 prior sentence.

19 There is not expected to be any trading market created in Trust Beneficial Interests, and the
20 Trust Beneficial Interests will have extremely limited or no liquidity. Pursuing Causes of Action
21 in the Liquidating Trust and liquidating assets placed in the Liquidating Trust may take several
22 years, and distributions, if any, from the Liquidating Trust will be over time.

23 The Trust Beneficial Interests are not expected to be deemed “securities” within the
24 meaning of the federal securities laws, however, if they were to be deemed securities, we believe
25 that the distribution of the Trust Beneficial Interests to holders will be exempt from registration
26 under § 1145. Similarly, in the unlikely event that the Trust Beneficial Interests are deemed
27 “securities”, we believe that the Trust Beneficial Interests will not be required to be registered under
28 Section 12(g) of the 1934 Act because we expect that there will be no more than 2,000 total holders

1 of such interest and no more than 500 of such holders who do not qualify as “accredited investors”
2 within the meaning of the 1933 Act. In addition, as noted above, there is effectively no secondary
3 market or any trading market for the interest, and they will not be listed on any stock exchange or
4 tradable on any other trading system or platform. We understand that the assets themselves of the
5 trust are also not likely to be deemed “securities” within the meaning of the federal securities laws.
6 However, in the unlikely event that any assets of the trusts would be securities, we believe that no
7 more than 40% of the assets would be deemed securities, and, if so, the trust would not be deemed
8 an “investment company” under Section 3(a)(1)(C) of the 1940 Act. In the extremely unlikely
9 event that 40% or more of the trust’s assets would be deemed securities, we believe that the trust
10 would not be required to register as an “investment company” in reliance on Section 7(b) of the
11 1940 Act in as much as the trusts’ activities are and will be incidental to its dissolution.

12 The holders of the Trust Beneficial Interest under the Plan are expected to be the PBGC,
13 RPHE and General Unsecured Creditors with Claims which ultimately are allowed above the
14 threshold for Convenience Class treatment.

15 XII.

16 CONFIRMATION REQUIREMENTS AND PROCEDURES

17 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
18 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
19 CONFIRMING A CHAPTER 11 PLAN IS VERY COMPLEX. The following discussion is
20 intended solely for the purpose of alerting readers about basic confirmation issues, which they may
21 wish to consider, as well as certain deadlines for filing claims. The Debtors CANNOT and DO
22 NOT represent that the discussion contained below is a complete summary of the law on this topic.

23 Many requirements must be met before the Court can confirm a plan. Some of the
24 requirements include that the plan must be proposed in good faith, acceptance of the plan, whether
25 the plan pays creditors at least as much as creditors would receive in a chapter 7 liquidation, and
26 whether the plan is feasible. These requirements are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan, but, as explained below, not everyone is entitled to vote to accept or reject the Plan.

B. Who May Vote to Accept or Reject the Plan

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

C. What Is an Allowed Claim or Interest

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest files an objection to the claim or interest. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THESE CASES ON ACCOUNT OF PREPETITION CLAIMS WAS APRIL 1, 2019. A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtors' schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

D. What Is an Impaired Claim or Interest

As noted above, an allowed claim or interest has the right to vote only if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they are owed.

The Debtors believe that members of classes 2 through 13 are impaired and are entitled to vote to accept or reject the Plan. Parties who dispute the Debtors' characterization of their claim

1 or interest as being impaired or unimpaired may file an objection to the Plan contending that the
2 Debtors have incorrectly characterized the class.

3 **E. Who Is Not Entitled to Vote**

4 The following four types of claims are not entitled to vote: (1) claims that have been
5 disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to §§ 507(a)(2),
6 (a)(3), and (a)(8); and (4) claims in classes that do not receive or retain any value under the Plan
7 (Classes 14 and 15). Claims in unimpaired classes are not entitled to vote because such classes are
8 deemed to have accepted the Plan. Claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and
9 (a)(8) are not entitled to vote because such claims are not placed in classes and they are required to
10 receive certain treatment specified by the Bankruptcy Code. Claims in classes that do not receive
11 or retain any value under the Plan do not vote because such classes are deemed to have rejected the
12 Plan. EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL
13 HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

14 **F. Who Can Vote in More Than One Class**

15 A creditor whose claim has been allowed in part as a secured claim and in part as an
16 unsecured claim is entitled to accept or reject the Plan in both capacities by casting one ballot for
17 the secured part of the claim and another ballot for the unsecured claim.

18 **G. Votes Necessary to Confirm the Plan**

19 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
20 class has accepted the Plan without counting the votes of any insiders within that class, and (2) all
21 impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by
22 “cramdown” on non-accepting classes, as discussed below.

23 **H. Votes Necessary for a Class to Accept the Plan**

24 A class of claims is considered to have accepted the Plan when more than one-half (1/2) in
25 number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on the
26 plan, voted in favor of the plan. A class of interests is considered to have “accepted” a plan when
27 at least two-thirds (2/3) in amount of the interest-holders of such class which actually voted on the
28 plan, voted to accept the plan.

I. Treatment of Non-Accepting Classes

As noted above, even if all impaired classes do not accept the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner required by the Bankruptcy Code. The process by which non-accepting classes are forced to be bound by the terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed down” on non-accepting classes of claims or interests if it meets all consensual requirements except the voting requirements of § 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan as referred to in § 1129(b) and applicable case law.

J. Request for Confirmation Despite Non-Acceptance by Impaired Class(es)

The Debtors will ask the Bankruptcy Court to confirm the Plan by cramdown on any and all impaired classes that do not vote to accept the Plan. However, it must be noted that the Debtors are, in large part, nonprofits, and, therefore, the applicability of the “absolute priority rule” is unclear. Some courts seemingly have concluded that the structural limitations of nonprofits render the absolute priority rule categorically inapplicable without the need for a fact-specific analysis of the ownership structure at issue. *See, e.g., In re Henry Mayo Newhall Mem’l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (“[T]he Hospital’s nonprofit status puts creditors in an unusually disadvantaged negotiating position because they are not able to assert the Bankruptcy Code’s absolute priority rule to block unacceptable plans”); *In re Independence Vill., Inc.*, 52 B.R. 715, 726 (Bankr. E.D. Mich. 1985) (“[The debtor] is a non-profit corporation. It has no shareholders, hence there are no interests inferior to the unsecured creditors. Thus there should be little difficulty with the absolute priority rule”) (citations omitted).

K. Liquidation Analysis

Another confirmation requirement is the “Best Interest Test”, which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the Plan property of a value not less than the amount that such holder

1 would receive or retain if the Debtors were forced to liquidate under chapter 7 of the Bankruptcy
2 Code.

3 First, it is not at all clear that this test applies in the bankruptcy of a nonprofit company.
4 The best interest test protects creditors by setting a baseline of distributions that a proposed plan
5 must provide to them. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy Code and
6 state law may preclude or restrict the forced sale of a nonprofit's assets. 11 U.S.C. §§ 1112(c), 303.
7 For example, under § 1112(c), a nonprofit's creditors cannot force a nonprofit to convert its chapter
8 11 case to a chapter 7, nor under § 303 can they file an involuntary petition against a nonprofit.
9 Similarly, state statute impose stringent requirements on the transfer or sale of a nonprofit debtor's
10 assets, *see, e.g.*, CAL. CORP. CODE §§ 5913, 7913, 9633 5, and the involuntary dissolution of a
11 nonprofit, *see, e.g.*, CAL. CORP. CODE §§ 6510-6519, 8510-8519, 9680. Accordingly, it is not at all
12 clear that the best-interest test applies because of the above described prohibitions on forcing a
13 nonprofit to liquidate its assets.

14 However, assuming that the best interests test applies to nonprofits, in a chapter 7 case, the
15 debtor's assets are usually sold by a chapter 7 trustee. Secured creditors are paid first from the
16 sales proceeds of properties on which the secured creditor has a lien. Administrative claims are
17 paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their
18 rights to priority. Unsecured creditors with the same priority share in proportion to the amount of
19 their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest
20 holders receive the balance that remains after all creditors are paid, if any.

21 For the Court to be able to confirm the Plan, the Court must find that all creditors and
22 interest holders who do not accept the Plan will receive at least as much under the Plan as such
23 holders would receive under a chapter 7 liquidation of the Debtors. The Debtors maintain that this
24 requirement is clearly met. Simply put, in the event of a conversion of the Chapter 11 Cases to
25 chapter 7, one or more chapter 7 trustees who are completely unfamiliar with the vast complexities
26 of these cases would be placed in charge, and would presumably hire new professionals who are
27 equally unfamiliar with the vast complexities of these cases. The result of all of that would be in
28 the incurrence of an extraordinary amount of additional professional fees incurred by professionals

1 who would need to familiarize themselves with these cases, all of which is avoided by the current
2 professionals, who are skilled and already intimately familiar with these cases, continuing with
3 their current roles. Presumably the treatment of creditors in the context of chapter 7 liquidations
4 would be the same as they are under the Plan. Through the significant cost savings of the confirmed
5 Plan as compared to conversion to chapter 7, holders of allowed claims will receive more under the
6 Plan than they would receive in converted chapter 7 bankruptcies (and certainly at least as much
7 under the Plan).

8 The advantages of finishing a liquidation in chapter 11 are not just “common knowledge”
9 among professionals. Experts have also concluded that conversion to chapter 7 offers few
10 advantages over liquidation in chapter 11: cases where the case converted from chapter 11 to
11 chapter 7 take significantly longer to resolve than a “pure” chapter 11 liquidation, requires similar,
12 if not greater, fees, and in the end provides creditors with statistically lower recovery rates—often
13 zero—than a comparable Chapter 11 procedure. *See* Arturo Bris, Ivo Welch and Ning Zhu, *The*
14 *Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, 61(3) THE
15 JOURNAL OF FINANCE 1253-1303 (Feb. 2006). As discussed in more detail in the Liquidation
16 Analysis attached as Exhibit A hereto, the Debtors have satisfied the “best interest of creditors test”
17 with respect to members of class who do not vote to accept the Plan. The Debtors submit that the
18 Plan provides fair and equitable treatment of all classes of creditors and the greatest feasible
19 recovery to all creditors.

20 **L. Feasibility**

21 Another requirement for confirmation involves the feasibility of the Plan, which means that
22 confirmation of the Plan is not likely to be followed by the liquidation, or the need for further
23 financial reorganization, of the Post-Effective Date Debtors.

24 There are at least two important aspects of a feasibility analysis. The first aspect considers
25 whether the Debtors will have enough cash on hand on the Effective Date to pay all the claims and
26 expenses which are entitled to be paid on such date. Since the Debtors already have enough cash
27 on hand to pay all the claims and expenses which are entitled to be paid on the Effective Date, this
28 first aspect of Plan feasibility has clearly been satisfied. The second aspect considers whether the

1 Post-Effective Date Debtors will have enough cash over the life of the Plan to make the required
2 Plan payments. Since the Plan is a liquidating Plan, where all Estate funds will be distributed to
3 holders of allowed claims, this second aspect of Plan feasibility has, by definition, been satisfied.

4 XIII.

5 RISK FACTORS REGARDING THE PLAN

6 Since the Plan is a liquidating Plan, the funds of the Debtors' Estates will be distributed to
7 holders of allowed claims, there is no traditional "risk" to the ability of the Debtors to perform
8 under the Plan. However, given the large number of uncertainties at this time, including (i) the
9 closing of the SGM Sale, (ii) the manner in which disputed Class 10 Claims will be resolved, and
10 (iii) the amount of net proceeds on Causes of Action which the Liquidating Trust will ultimately
11 recover, it is not possible for the Debtors to provide any reliable estimate at this time as to the
12 expected ultimate recovery of for Unsecured Claims.

13 The Plan is conditioned on the SGM Sale closing in Section 12.2 of the Plan, and the Plan
14 will not be feasible if the SGM Sale does not close because the sale proceeds are needed to fund
15 the Plan. Of particular note, the SGM Sale has not yet been approved by the Attorney General who
16 is currently reviewing the SGM Sale. If the Attorney General approves the SGM Sale with
17 conditions substantially similar to those set forth in Schedule 8.6, the Debtors anticipate the SGM
18 sale will close. If the conditions are not substantially similar to Schedule 8.6 and SGM will not
19 close based on those conditions, the Debtors will file a motion requesting the Court enforce the
20 order and the original conditions under § 363. If the SGM Sale does not close, it would have other
21 ramifications in these Cases. Among others, the Plan would need to be modified. Additionally,
22 while the Debtors cannot predict every scenario, it is likely the Debtors may need to close SVMC
23 and Seton due to their ongoing operating losses, which may result in them being sold as real estate
24 for redevelopment rather than a health care. For SFMC, it is more likely that it would be sold to
25 SGM, pursuant to an asset purchase agreement, or to an alternative buyer. There can be no
26 assurance that the Debtors can obtain extended access to cash collateral to provide the additional
27 liquidity or that an alternative source of financing would be available to fund operations at SFMC
28 until an alternative deal could be negotiated and closed. Any such financing may be on different

1 and more expensive and onerous terms. Any alternative sale transaction may also be subject to
2 approval by the Attorney General who may raise similar concerns about approving any alternative
3 transaction or buyer. Were any of the Hospitals to be closed instead of sold as a going concern, the
4 sales proceeds in a liquidation of the Hospitals would be many millions of dollars less than under
5 the SGM Sale, collection of receivables and fees may be reduced and delayed and there would also
6 be substantial additional claims, including, without limitation, additional rejection damage claims,
7 employee severance claims and other claims which are no longer being assumed or paid by SGM
8 as buyer. Employees would also lose their jobs and the community and patients would lose access
9 to a conveniently located safety net health care provider.

10 XIV.

11 **DEEMED SUBSTANTIVE CONSOLIDATION**

12 The Plan provides for the “deemed” substantive consolidation of the Debtors. This
13 Disclosure Statements sets forth (i) the legal requirements to establish deemed substantive
14 consolidation, and (ii) the factual bases supporting the Debtors’ request for deemed substantive
15 consolidation. As set forth in the Plan, this Disclosure Statement and the Plan shall be deemed a
16 motion requesting that the Bankruptcy Court approve the deemed substantive consolidation
17 contemplated by the Plan at the Confirmation Hearing, unless otherwise separately scheduled.
18 Objections to the proposed deemed substantive consolidation must be made in writing on or before
19 the deadline to object to confirmation of the Plan, or such other date as may be fixed by the
20 Bankruptcy Court. The Bankruptcy Court will schedule a hearing with respect to timely filed
21 objections, which the Bankruptcy Court may schedule contemporaneously with the Confirmation
22 Hearing. The Debtors reserve all rights with respect to such objections, including, but not limited
23 to, the right to further supplement the facts and legal analysis in support of deemed substantive
24 consolidation as set forth in this Disclosure Statement or the Plan.

25 If the Bankruptcy Court determines that deemed substantive consolidation of any given
26 Debtor is not appropriate, then the Debtors may request that the Bankruptcy Court otherwise
27 confirm the Plan and approve the treatment of, and distributions to, the different Classes under the
28 Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Debtors reserve their rights (i) to

1 seek confirmation of the Plan without implementing deemed substantive consolidation of any given
2 Debtor, and, in the Debtors' reasonable discretion, to request that the Bankruptcy Court approve
3 the treatment of and distributions to any given Class under the Plan on an adjusted, Debtor-by-
4 Debtor basis; and (ii) to seek to substantively consolidate all Debtors into VHS if all Impaired
5 Classes entitled to vote on the Plan vote to accept the Plan.

6 As will be set forth in more detail in the Debtors' brief in support of confirmation of the
7 Plan, the Debtors believe deemed substantive consolidation is appropriate here.

8 **A. The Effect of Deemed Substantive Consolidation**

9 Substantive consolidation refers to the consolidation of the assets and liabilities of different
10 legal entities "so that the assets and liabilities are dealt with as if the assets were held by, and the
11 liabilities were owed by, a single legal entity." 1 COLLIER ON BANKRUPTCY MANUAL,
12 ¶ 105.09[1][a] (2019). "The primary purpose of substantive consolidation 'is to ensure the
13 equitable treatment of all creditors.'" *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000) (quoting *In*
14 *re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988)); *see also Bonham*, 229 F.3d
15 at 765 ("fairness to creditors" is the "sole aim" of substantive consolidation) (citations omitted).
16 However, "[t]he requirement to 'benefit all creditors' does not mean each and every creditor but
17 rather the creditor body as a whole." *In re Owners Management Services LLC Trustee Corps.*, 530
18 B.R. 711, 739 (Bankr. C.D. Cal. 2015).

19 Upon entry of a substantive consolidation order, the "consolidated assets create a single
20 fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-
21 company claims are extinguished; and, the creditors of the consolidated entities are combined for
22 purposes of voting on reorganization plans." *Bonham*, 229 F.3d at 764 (citing *Augie/Restivo Baking*
23 *Co., Ltd.*, 860 F.3d at 518).

24 "Deemed consolidation" is a court-developed alternative to substantive consolidation. The
25 primary distinction between the two is that, unlike substantive consolidation, the deemed
26 consolidation alternative will "not result in the merger of or the transfer or commingling of any
27 assets of the Debtors . . . [which] will continue to be owned by the respective Debtors." *In re Owens*
28 *Corning*, 419 F.3d 195, 202 (3d Cir. 2005) (quotations omitted). Simply put, substantive

1 consolidation actually combines debtors' assets and liabilities in a singular entity whereas deemed
2 consolidation merely treats the assets and liabilities as if they were pooled without actually merging
3 the debtor entities.

4 Here, as set forth below, deemed consolidation for creditor distribution purposes is
5 appropriate to avoid the impact consolidation of the legal entities may have on matters such as
6 licensing and the proposed sale-leaseback of certain Hospital assets post-confirmation, as set forth
7 in the SGM APA.

8 **B. The Facts of the Chapter 11 Cases Satisfy Each Independent Basis for Deemed**
9 **Substantive Consolidation**

10 Courts developed the deemed consolidation analysis, which is not otherwise set forth in the
11 Bankruptcy Code. *See Bonham*, 229 F.3d at 764 ("Although substantive consolidation was not
12 codified . . . courts, as well as the bankruptcy rules, recognize its validity and have ordered
13 substantive consolidation subsequent to the enactment of the Bankruptcy Code."). In the Ninth
14 Circuit, courts conduct the deemed substantive consolidation analysis on a "case-by-case" basis
15 following "a searching review of the record." *Bonham*, 229 F.3d at 765 (citation omitted). The
16 Ninth Circuit's case-by-case substantive consolidation analysis focuses on two, independent
17 factors. First, whether creditors dealt with the entities as a single economic unit, and did not rely
18 on their separate identity in extending credit. *See id.* at 766. Second, whether the affairs of the
19 debtor are so entangled that consolidation will benefit all creditors. *See id.* Additionally,
20 bankruptcy courts have identified a third, un-enumerated factor that goes to the heart of the
21 substantive consolidation analysis—whether the equities of the case demonstrate that substantive
22 consolidation is reasonable under the circumstances. *See, e.g., In re Bashas' Inc.*, 437 B.R. 874
23 (Bankr. D. Ariz. 2010).

24 The deemed substantive consolidation test is disjunctive, thus, the Debtors need only
25 demonstrate one of these factors. *See Bonham*, 229 F.3d at 766 ("The presence of *either* factor is
26 a sufficient basis to order substantive consolidation.") (emphasis added). As set forth below, the
27 facts of these Chapter 11 Cases meet each of these factors, and demonstrate that the Debtors are
28 entitled to the deemed substantive contemplated by the Plan.

1 **1. Creditors Dealt with the Debtors as a Single, Economic Unit.**

2 a. The Conditions Addressed the Debtors as a Single Economic Unit.

3 The Conditions imposed by the Attorney General applied structural and operational
4 limitations on the Debtors collectively as the Verity Health System. The Conditions were
5 developed and imposed on the Verity Health System collectively in such a manner that required
6 the Debtors to integrate financially. The Conditions required the Hospitals to remain general acute
7 care hospitals, and specified the number of beds that each Hospital had to maintain for particular
8 services. As discussed above, compliance with these stringent limitations caused extreme financial
9 hardship for the Hospitals individually. As a result, the profitable Hospitals were required to
10 subsidize the cash losses of the other Hospitals within the Verity Health System. Compliance with
11 the Conditions was only possible due to the Hospitals integration in the Verity Health System.

12 As significant, the Conditions approved governance changes that centralized management
13 and provided that the Debtors operate as one integrated health system—the Verity Health System.
14 In a letter regarding the Proposed Change in Governance and Control of Daughters of Charity
15 Health System, dated December 3, 2015, the Attorney General conditionally consented to a
16 proposed change in governance and control of “the Daughters of Charity Health System” rather
17 than any one Hospital. The October 2015 report prepared by MDS Consulting in connection with
18 the BlueMountain Transaction likewise addressed VHS and its affiliates as one entity, Verity
19 Health System. After the Conditions were imposed, the bylaws of VHS and each of the subsidiary
20 boards vested ultimate authority over major decisions to the VHS board. Indeed, following the
21 BlueMountain Transaction, the VHS board made major decisions that impacted the Hospitals and
22 all of the affiliated entities. Many other decisions were made at the health system-level.

23 b. The Debtors Obtained Secured Financing as a Single Economic Unit.

24 The Debtors’ secured lenders dealt with the Debtors as a single economic unit. Thus, this
25 factor is satisfied even if the Debtors never claimed to be a singular entity. *See, e.g., In re Abeinsa*
26 *Hldg., Inc.*, 562 B.R. 265, 280-81 (Bankr. D. Del. 2016) (finding creditor expectations were
27 satisfied by partial substantive consolidation where, among other things, “[t]he lenders under these
28 credit agreements received combined financial reports from the Debtors as to all obligors that were

1 parties to the applicable credit agreements, and calculated financial covenant compliance based on
2 the assets and liabilities of those entities”).

3 A substantial amount of the Debtors’ prepetition secured debt relates to loan and bond
4 obligations on which multiple debtors are obligated. Specifically, VHS, SFMC, SVMC, SMC,
5 OCH, and SLRH (collectively, the “Obligated Group Members”) entered into the 2005 Series A,
6 G and H Revenue Bonds, the 2015 Revenue Notes, and the 2017 Revenue Notes (collectively, the
7 “Obligated Bonds”).

8 The Obligated Bonds imposed joint and several liability on the Obligated Group Members,
9 and the terms of the Obligated Bonds only addressed the rights and obligations of the Obligated
10 Group members collectively, rather than on a Hospital-by-Hospital basis. Specifically, the loan
11 documents, with respect to the 2015 Revenue Notes and the 2017 Revenue Notes, provide for
12 “unfettered use of the funds loaned with respect to any of” the Obligated Group Members.
13 Moreover, the Master Trust covenants for Obligated Bond borrowings are Obligated Group-
14 oriented and are not Hospital-specific. The bond indentures for each series of Obligated Bonds are
15 identical for each Hospital and are always Obligated Group-based, rather than Hospital-based.

16 The terms of the postpetition adequate protection offered to the Obligated Bonds are no
17 different. The adequate protection approved by the Bankruptcy Court clearly contemplates the
18 continued joint and several nature of the relief as follows:

- 19 • adequate protection liens are joint and several as to the Obligated Group;
- 20 • adequate protection liens are subordinated and joint and several as to VMF and
21 Holdings;
- 22 • adequate protection superpriority claims are joint and several as to the Obligated
23 Group; and
- 24 • adequate protection superpriority claims are joint and several as to VMF and
25 Holdings, but subordinated to the McKesson Claim, the Secured MOB I Financing
26 Claim, and Secured MOB II Financing Claim.

27 Additionally, the Secured MOB I Financing Claim and Secured MOB II Financing Claim were
28 granted joint and several adequate protection liens and superpriority claims subordinated only to

the Obligated Bonds, with respect to the Obligated Group Members, and McKesson, with respect to VMF.

c. The Debtors Negotiated Major Contracts and Agreements as a Single Economic Unit.

Starting in 2015, after the BlueMountain Transaction, major contracts and agreements were negotiated or entered-into on a system-wide basis, such that counterparties dealt with the Verity Health System as a single economic unit. The Debtors received benefits by negotiating collectively, such as better terms or pricing, which resulted from the greater economies of scale of the Verity Health System. In light of these benefits, the Debtors standardized system-level contracting that normalized pricing for contracts (including physician-related contracts) across all Hospitals. The Debtors' critical system-wide contracts and negotiations include:

- group purchasing order contracts;
- collective bargaining agreements;
- other contracts;
- payor contracts;
- IT systems contracts; and
- health insurance and retirement benefits.

The restructuring that resulted from the BlueMountain Transaction further centralized the Debtors' purchasing functions. VBS, VHS, and VMF, for example, functioned as cost centers for the Debtors' system-wide operations. These cost-center Debtors did not generate revenue independently, and, as a result, are unable to repay obligations without transferring value from the Hospital Debtors. In light of the restructuring, separate-entity plans would likely be contrary to the expectations of creditors that viewed their agreements with cost-center Debtors as backed by the Verity Health System.

2. The Debtors' Affairs Are So Entangled That Consolidation Will Benefit All Creditors.

At first blush, the Debtors maintained the hallmarks of separate entities. The Debtors maintained separate boards for each entity, separate books and records, tracked intercompany

1 transactions, and maintained separate bank accounts, as set forth in the Cash Management Motion.
2 However, a more thorough analysis of the Debtors' finances and operations reveals significant
3 interconnectivity, which would prove costly and time-consuming to unwind at the expense of
4 recoveries in these Chapter 11 Cases. Accordingly, the interests of creditors are best served by
5 deemed substantive consolidation.

6 "Consolidation under the second factor, entanglement of the debtor's affairs, is justified
7 only where 'the time and expense necessary even to attempt to unscramble them [is] so substantial
8 as to threaten the realization of any net assets for all the creditors' or where no accurate
9 identification and allocation of assets is possible." *Bonham*, 229 F.3d at 766 (citing *Augie/Restivo*
10 *Baking Co., Ltd.*, 860 F.2d at 519). For example, in *SK Foods, LP*, the bankruptcy court found that
11 "substantive consolidation will benefit creditors by avoiding the cost (assuming it is even possible)
12 of trying to determine the proper characterization of intercompany transfers in order to ascertain
13 who owes what to whom." *In re SK Foods, LP*, 499 B.R. 809, 827 (Bankr. E.D. Cal. 2013).

14 Here, there are also significant facts related to entangled affairs among the Debtors that
15 weigh in favor of substantive consolidation. The Debtors engaged in the following complex,
16 prepetition intercompany transfers (not always booked as intercompany transfers), combined
17 accounting, valuation issues, and collective management that would prove difficult and costly to
18 creditors to unwind or reconcile:

- 19 • VMF was historically supported by near-weekly funding from other Debtors. However,
20 these contributions are booked as direct net asset contributions rather than intercompany
21 loans. Further, the Debtors that provided funding to VMF have varied over time based
22 on cash availability.
- 23 • The Restructuring Agreement provided \$100 million of net asset funding to VHS;
24 however, beginning June 2016, \$74 million of this funding was transferred to Holdings
25 (a non-Obligated Group Member), and booked as a direct net asset contribution rather
26 than an intercompany loan.

- Members of the Obligated Group transferred real estate collateral to Holdings (a non-Obligated Group member) to be used as collateral for the MOB Financings; however, this was not booked as an intercompany transfer.
- The initial capitalization of Holdings is understated given that the transferred property was based on book value. The book value of transferred assets in FY2016 was \$21.8 million, but the FY2017 MOB I Loan Agreement provided for \$46.2 million in financing based upon appraisals for the same asset transfers.
- Although, the Hospitals generally used their own, separate bank accounts, the intercompany transfer activity is significant. From July 2015 to June 2018, booked intercompany transfers exceeded \$1.1 billion. Further, the transfers booked as “net asset transfers” exceeded \$589.1 million for the same period.
- Management and decision-making was centralized following the BlueMountain Transaction. For example, BlueMountain replaced pre-transaction boards at each hospital with Blue Mountain nominees. Additionally, outside consultants were retained at the system-level and strategic plans were also focused at the system-level since the BlueMountain Transaction.
- Since the BlueMountain Transaction, decisions to hire physicians and determine contract terms are made jointly by the VHS Chief Medical Officer and individual Hospital chief executive officers.
- Hospitals benefitted individually from the system-level contracts. For example, SFMC’s profitability is based on periodic Quality Assurance Payments. These Quality Assurance Payments are not only a result of the patient population, but also (i) the system-negotiated contracts which are incorporated in the Quality Assurance Payment formula, and (ii) consultants engaged by the Verity Health System to optimize Quality Assurance Payments for all of the Hospitals.
- SFMC’s capital improvements (i.e., the construction of the new patient tower) were financed by tax exempt financings undertaken on a joint and several basis among members of the Obligated Group. This burden shared by the other members of the

Obligated Group compensated SFMC for the system's use of excess Quality Assurance Payment entitlements.

Unwinding the transactions to prepare separate-Debtor plans would require time and allocations and assumptions. By way of example, prepetition and postpetition allocations by the estates may be subject to challenge as follows:

- Purchase price allocations are inconsistent with the actual value of certain Debtors' assets. For example, SCC attributed value from the MOB Financings to SLRH and none to Holdings. SGM also attributes value from the MOB Financings to the Hospitals and none to Holdings.
- Allocation of DIP Financing proceeds among the Debtors will be challenging because the current allocation fails to account for the "net asset transfers" to VMF, reimbursement claims constitute potential adequate protection claims of the obligated bonds and MOB Financings, and the current allocation fails to track asset sale proceeds to the detriment of 2005 Series A, G and H Revenue Bonds.
- Professional fees must also be allocated among the Debtors if the Debtors cases are not consolidated. This task would require, for each time entry, an analysis of which Debtor, or Debtors, benefitted from the particular services. Although laborious, such an analysis directly impacts creditors if the cases are not consolidated given that Professional Claims receive priority treatment.
- The system-wide changes that took effect since 2015 severely limit any assumptions based on the Debtors' historic operations. The changes were significant and took place during the relatively short, three-year period between the BlueMountain Transaction and the Petition Date. The Debtors capital structure also changed significantly during the same time—the Debtors incurred liabilities in excess of \$400 million related to capital investments, the 2015 Revenue Notes and 2017 Revenue Notes, the MOB Financings, the Unsecured Notes, and deferred fees under the Management Agreement.

- The staggered timing of the SCC Sale and the SGM Sale compound the allocation challenges with respect to the Debtors' postpetition liabilities, particularly given that certain Debtors continue to operate in some capacity post-closing.

Moreover, different asset valuation or liability allocation assumptions will lead to different results in both asset allocations among Debtors and balances available for distributions to unsecured creditors. Given that the analysis necessarily requires substantial judgment, these assumptions would present a basis for objection and conjecture from creditors attacking the Debtors' separate plans. Preserving funds in the Estates and avoiding litigation costs maximizes value and weighs in favor of substantive consolidation under the circumstances in these Chapter 11 Cases.

XV.

POST-CONFIRMATION ISSUES

A. Modification of the Plan

The Debtors reserve the right to modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan if the Debtors modify the Plan before confirmation. The Debtors may also seek to modify the Plan at any time after confirmation of the Plan if (i) the Plan has not been substantially consummated, and (ii) the Court authorizes the proposed modifications after notice and a hearing.

B. Post-Confirmation Status Reports

Until final decrees closing the Debtors' chapter 11 cases are entered, the Reorganized Debtors shall file quarterly status reports with the Court explaining what progress has been made toward consummation of the confirmed Plan.

C. Post-Confirmation Conversion or Dismissal

A creditor or any other party in interest may bring a motion to convert or dismiss these cases under § 1112(b) after the Plan is confirmed if there is a default in performing the Plan. If the Court orders these Chapter 11 Cases converted to chapter 7 after the Plan is confirmed, then all property that had been property of these chapter 11 estates, and that has not been disbursed pursuant to the Plan, will revert in the chapter 7 estates, and the automatic stay will be reimposed upon the reverted property, but only to the extent that relief from stay was not previously authorized by the Court

1 during these cases. The Plan Confirmation Order may also be revoked under very limited
2 circumstances. The Court may revoke the Plan Confirmation Order if it was procured by fraud and
3 if a party in interest brings an adversary proceeding to revoke confirmation within 180 days after
4 the entry of the Plan Confirmation Order.

5 **D. Final Decree**

6 Once the Estates have been fully administered as referred to in Bankruptcy Rule 3022, the
7 Reorganized Debtors shall file a motion with the Court to obtain final decrees to close these Chapter
8 11 Cases. The Reorganized Debtors shall be responsible for the timely payment of all fees incurred
9 pursuant to 28 U.S.C. § 1930(a)(6).

10 Dated: September 3, 2019

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11 By: /s/ Tania M. Moyron
12 TANIA M. MOYRON

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14 Attorneys for Debtors
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EXHIBIT 59

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Debtors In Possession

7
8 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

9 In re

10 VERITY HEALTH SYSTEM OF
11 CALIFORNIA, INC., *et al.*,

12 Debtors and Debtors In
Possession.

13 ☒ Affects All Debtors

- 14 ☐ Affects Verity Health System of
California, Inc.
15 ☐ Affects O'Connor Hospital
16 ☐ Affects Saint Louise Regional Hospital
17 ☐ Affects St. Francis Medical Center
18 ☐ Affects St. Vincent Medical Center
19 ☐ Affects Seton Medical Center
20 ☐ Affects O'Connor Hospital Foundation
21 ☐ Affects Saint Louise Regional Hospital
Foundation
22 ☐ Affects St. Francis Medical Center of
Lynwood Foundation
23 ☐ Affects St. Vincent Foundation
24 ☐ Affects St. Vincent Dialysis Center, Inc.
25 ☐ Affects Seton Medical Center
Foundation
26 ☐ Affects Verity Business Services
27 ☐ Affects Verity Medical Foundation
28 ☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**DEBTORS' NOTICE OF MOTION AND MOTION FOR THE
ENTRY OF (I) AN ORDER (1) APPROVING FORM OF ASSET
PURCHASE AGREEMENT FOR STALKING HORSE BIDDER
AND FOR PROSPECTIVE OVERBIDDERS; (2) APPROVING
AUCTION SALE FORMAT, BIDDING PROCEDURES AND
STALKING HORSE BID PROTECTIONS; (3) APPROVING FORM
OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES; (4)
SCHEDULING A COURT HEARING TO CONSIDER APPROVAL
OF THE SALE TO THE HIGHEST BIDDER; AND (5)
APPROVING PROCEDURES RELATED TO THE ASSUMPTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF
PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND
ENCUMBRANCES; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing:

Date: [TBD]

Time: [TBD]

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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1 **PLEASE TAKE NOTICE** that at the above referenced date, time and location, Verity
2 Health System of California, Inc., a California nonprofit public benefit corporation and the
3 Debtor herein (“Verity”), and the above-referenced affiliated debtors, the debtors and debtors in
4 possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), will
5 move (the “Motion”), pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code,
6 11 U.S.C. §§ 101, *et seq.*, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of
7 Bankruptcy Procedure and Rules 6004-1(b) and 9013-1 of the Local Bankruptcy Rules of the
8 United States Bankruptcy Court for the Central District of California (“LBR”), for the entry of:

9 I. An order (the “Bidding Procedures Order”):

- 10 (1) approving the form of the Asset Purchase Agreement, dated January 8, 2018 (the
11 “Stalking Horse APA”) between (i) Verity, Verity Holdings, LLC, a California
12 limited liability company (“Verity Holdings”), St. Francis Medical Center, a
13 California nonprofit public benefit corporation (“St. Francis Medical Center”), St.
14 Vincent Medical Center, a California nonprofit public benefit corporation (“St.
15 Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California nonprofit
16 public benefit corporation (“St. Vincent Dialysis Center”) and Seton Medical
17 Center, a California nonprofit public benefit corporation (“Seton Medical Center”),
18 on the one hand; and (ii) Strategic Global Management, Inc., a California
19 corporation (“the “Stalking Horse Purchaser”), on the other hand, a true and
20 correct copy of which is attached as **Exhibit A** hereto; pertaining to a sale of
21 substantially all assets of St. Francis Medical Center, St. Vincent Medical Center,
22 St. Vincent Dialysis Center and Seton Medical Center (the “Purchased Assets”) to
23 be used by (a) the Stalking Horse Purchaser as the stalking horse bidder for the
24 Purchased Assets, and (b) any prospective overbidders (each an “Overbidder” and
25 collectively, the “Overbidders”) who seek to participate in a hoped for auction sale
26 (“Auction”) of the Purchased Assets;

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- (2) approving the format, bidding procedures, and stalking horse bid protections (the “Bidding Procedures”), relating to the proposed Auction described below and in the attached Memorandum of Points and Authorities (the “Memorandum”);
 - (3) approving the form of notice to be provided by the Debtors to their creditors and to be provided by the Debtors’ investment banker to prospective Overbidders;
 - (4) scheduling the Auction for April 8, 2019 and April 9, 2019, and a hearing (the “Sale Hearing”) on April 17, 2019, at 10:00 a.m. (subject to the availability of the Court), before the Court to consider approval of the sale of the Purchased Assets to the highest bidder;
 - (5) establishing procedures for the assumption and assignment to the Successful Bidder (as defined below) of executory contracts and unexpired leases in connection with the Sale and approving the form and manner of notice related thereto; and
- II. An order (the “Sale Order”) authorizing the Sale to the Successful Bidder, free and clear of all claims, liens and encumbrances; and
- III. Granting related relief.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the Memorandum, the Declaration of Richard G. Adcock and the Declaration of James Moloney (to be filed prior to the hearing on the Motion), the *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8], supporting statements, arguments and representations of a counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

PLEASE TAKE FURTHER NOTICE that any party opposing or responding to the Motion must file and serve the response (“Response”), pursuant to LBR 9013-1(f), on the moving party and the United States Trustee not later than fourteen (14) days before the date designated for the hearing. A Response must be a complete written statement of all reasons in opposition

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

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

Dated: January 17, 2019

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TANIA M. MOYRON

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

Attorneys for the Chapter 11 Debtors and
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Verity Health System of California, Inc., a California nonprofit public benefit corporation and the Debtor herein (“Verity”), and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), seek entry of an order: (a) designating Strategic Global Management, Inc. (“SGM” or the “Stalking Horse Purchaser”) as the stalking-horse bidder for St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Seton Medical Center (collectively, the “Hospitals”), and related assets (collectively, the “Purchased Assets”), at a price of approximately \$610 million (\$420 million allocated to St. Francis Medical Center, \$120 million allocated to St. Vincent Medical Center and \$70 million allocated to Seton Medical Center and Seton Coastsides combined), plus payment of Cure Costs (defined below) associated with any Assumed Leases and/or Assumed Contracts (the “Cash Consideration,” and collectively, the “Stalking Horse Bid”); (b) setting bid procedures to establish guidelines for parties interesting in making an overbid; (c) scheduling an auction to be held on April 8, 2019 and April 9, 2019; and (d) scheduling a sale hearing for the Court to approve the winning bidder.

The Debtors have vigorously marketed the Purchased Assets and believe that the Stalking Horse Bid represents a fair market value for the Purchased Assets. Moreover, SGM is a buyer who will maintain the healthcare characteristics of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center, continuing patient care for the communities served by the Hospitals and healthcare providers. Nonetheless, the Debtors are hopeful that there will be an auction which may result in overbids. Based on the foregoing, and for the reasons set forth below in greater detail, the Debtors respectfully request that the Court grant the Motion.

II. JURISDICTION AND VENUE

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

III. STATEMENT OF FACTS

A. GENERAL BACKGROUND

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).¹ Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, including the Hospitals and other facilities in the state of California. *See Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8] (the “Adcock First-Day Declaration”).

3. St. Francis Medical Center (“St. Francis”) owns real property commonly known as: (i) 3630 E. Imperial Highway Lynwood, CA 90262, including the patient tower and all of the facilities thereon; (ii) 2700 E. Slauson Ave, Huntington Park, CA 90255, and the Huntington Park Medical Office Building thereon; and (iii) 5953 S. Atlantic Blvd. 5, Maywood, CA 90270, and Maywood Medical Office Building thereon. *See Adcock First-Day Declaration.*

4. St. Francis (i) operates a 384 licensed bed, general acute care hospital located at 3630 East Imperial Highway in Lynwood, California; (ii) has an emergency department with 46 licensed emergency treatment stations and is designated a Level II Trauma Center; (iii) has nine surgical operating rooms and three cardiac catheterization labs for inpatient and outpatient cardiac catheterization services; (iv) offers a comprehensive range of services, including emergency and trauma care, neonatal intensive, cardiovascular, oncology, pediatrics, behavioral health, and maternity and child services; and (v) offers various outpatient services, including ambulatory surgical services, laboratory services, imaging services, infusion therapy, nuclear medicine services, respiratory therapy, and physical therapy. Other outpatient services are provided at the following clinics: Orthopedics Clinic, Wound Care Clinic, Industrial Clinic, Lynwood Clinic,

¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended. All references to Rules are to the Federal Rules of Bankruptcy Procedure.

1 Downey Clinic , and Huntington Park Clinic. St. Francis is accredited by The Joint Commission.
2 *See* Adcock First-Day Declaration.

3 5. As of the Petition Date, St. Francis employed approximately 2,017 employees, of
4 which 1,583 are full-time, 136 are part time, and 298 are per diem. St. Francis was incorporated
5 in 1983 and is governed by a Board of Trustees. *See* Adcock First-Day Declaration.

6 6. St. Vincent Medical Center (“St. Vincent”) owns real property commonly known
7 as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities
8 located thereon; and (ii) vacant land in Salton Sea, California. St. Vincent was founded as the
9 first hospital in Los Angeles in 1856. In 1971, a new facility was constructed at St. Vincent’s
10 current location at 2131 West Third Street, Los Angeles, CA 90057. It has expanded to a 366
11 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer
12 care, total joint and spine care, and multi-organ transplant services. St. Vincent serves both local
13 residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. As a
14 provider of healthcare services for a high percentage of elderly patients, many of the St. Vincent
15 Medical Center’s services and programs are focused on the treatment of various chronic diseases.
16 *See* Adcock First-Day Declaration.

17 7. As of the Petition Date, St. Vincent employed approximately 1,099 employees, of
18 which 897 are full-time, 42 are part time and 160 are per diem. *See* Adcock First-Day
19 Declaration.

20 8. St. Vincent is the sole corporate member of the St. Vincent Dialysis Center,
21 located on the hospital’s campus. The St. Vincent Dialysis Center provides dialysis services for
22 kidney disease patients, including hemodialysis and isolated ultrafiltration treatments as part of
23 St. Vincent’s end-stage renal disease program. *See* Adcock First-Day Declaration.

24 9. Seton Medical Center (“Seton”) owns (i) real property commonly known as 1900
25 Sullivan Avenue, Daly City, CA 94015, and the hospital and the facilities thereon (the “Daly
26 Property”), and (ii) an employee parking lot on the Daly Property. Seton Medical Center was
27 originally founded as Mary’s Help Hospital by the Daughters of Charity of St. Vincent De Paul in
28 1893. The original facility was destroyed in the San Francisco Earthquake of 1906, and by 1912,

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1 Mary's Help Hospital reopened a new facility in San Francisco. In 1965, the hospital was moved
2 to its current location at 1900 Sullivan Avenue in Daly City. The hospital was renamed Seton
3 Medical Center in 1983, is currently licensed for 357 beds and serves residents from San
4 Francisco and San Mateo areas. Seton has an emergency department with 18 licensed treatment
5 stations. It also has 13 surgical operating rooms and three cardiac catheterization labs. Of the
6 hospital's 83 licensed skilled nursing beds, 39 are in suspense, and the remaining 44 beds are
7 utilized as subacute care beds. Additionally, the hospital has 24 licensed acute psychiatric beds
8 which have been placed in suspense. The hospital has a broad spectrum of medical services,
9 including cancer, cardiac, emergency, surgical, rehabilitation, respiratory, orthopedic, and sub-
10 acute care. The hospital is accredited by The Joint Commission. Seton Medical Center and Seton
11 Coastside share a consolidated license. *See* Adcock First-Day Declaration.

12 10. Seton also operates Seton Medical Center Coastside ("Seton Coastside") located at
13 600 Marine Blvd, Moss Beach, CA 94038. Seton Coastside was founded as Moss Beach
14 Rehabilitation Hospital in 1970. In 1980, the City of Half Moon Bay acquired ownership of the
15 hospital and signed an agreement for Daughters of Charity to manage operations of the hospital
16 and rename it St. Catherine's Hospital. In 1993, St. Catherine's Hospital became Seton Coastside
17 when it became integrated with Seton Medical Center. Today, Seton Coastside is licensed for 116
18 skilled nursing beds and five general, acute-care beds. Seton Coastside also operates the only 24-
19 hour "standby" Emergency Department along the 55-mile stretch between Santa Cruz and Daly
20 City. Under a consolidated license, Seton Medical Center and Seton Coastside share the same
21 Board of Directors, executive leadership team, charity care policies, and union collective
22 bargaining agreements. *See* Adcock First-Day Declaration.

23 11. As of the Petition Date, Seton Medical Center and Seton Coastside employed
24 approximately 1,340 employees, of which 516 are full-time, 551 are part time and 273 are per
25 diem. *See* Adcock First-Day Declaration.

26 12. Verity Holdings, LLC ("Holdings") is a direct subsidiary of its sole member VHS
27 and was created in 2016 to hold and finance VHS' interests in four medical office buildings
28 whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the

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1 VHS Hospitals. Holdings' real estate portfolio includes more than 15 properties. Holdings is the
2 borrower on approximately \$66.2 Million of non-recourse financing secured by separate deeds of
3 trust and revenue and accounts pledges, including the rents on each medical office building. *See*
4 Adcock First-Day Declaration.

5 13. Previously, the Hospitals were owned by the Daughters of Charity Healthcare
6 System ("DCHS"). Despite continuous efforts to improve operations, operating losses continued
7 to plague the health system due to, among other things, mounting labor costs, low reimbursement
8 rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for its
9 hospitals. *See* Adcock First-Day Declaration.

10 14. In early 2014, DCHS announced that they were beginning a process to evaluate
11 strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their
12 hospital system, including the Hospitals, and, in October of 2014, they entered into an agreement
13 with Prime Healthcare Services and Prime Healthcare Foundation (collectively, "Prime") to sell
14 the health system. However, to keep the hospitals open, DCHS needed to borrow \$125 Million to
15 mitigate immediate cash needs during the sales process; in other words, to allow DCHS to
16 continue to operate until the sale could be consummated. In early 2015, the California Attorney
17 General consented to the sale to Prime, subject to conditions on that sale that were so onerous that
18 Prime terminated the transaction. *See* Adcock First-Day Declaration.

19 15. In 2015, DCHS again marketed their health system for sale, and, again, focused on
20 offers that maintained the health system as a whole, and assumed all the obligations. In July
21 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC
22 ("BlueMountain"), a private investment firm, to recapitalize its operations and transition
23 leadership of the health system in the restructured Verity Health System (the "BlueMountain
24 Transaction").

25 16. In connection with the BlueMountain Transaction, BlueMountain agreed to make a
26 capital infusion of \$100 Million to the health system, arrange loans for another \$160 Million to
27 the health system, and manage operations of the health system, with an option to buy the health
28 system at a future time. In addition, the parties entered into a System Restructuring and Support

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1 Agreement (the “Restructuring Agreement”), DCHS’s name was changed to Verity Health
2 System.

3 17. On December 3, 2015, the California Attorney General approved the
4 BlueMountain Transaction, subject to conditions. Despite BlueMountain’s infusion of cash and
5 retention of various consultants and experts to assist in improving cash flow and operations, the
6 health system did not prosper.

7 18. In July 2017, NantWorks, LLC (“NantWorks”) acquired a controlling stake in
8 Integrity Healthcare, LLC. NantWorks brought in a new CEO, CFO, and COO. NantWorks
9 loaned another \$148 Million to the Debtors.

10 19. Despite the infusion of capital and new management, it became apparent that the
11 problems facing the Verity Health System were too large to solve without a formal court
12 supervised restructuring. Thus, despite VHS’ great efforts to revitalize its Hospitals and
13 improvements in performance and cash flow, the legacy burden of more than a billion dollars of
14 bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining
15 agreements or payor contracts, the continuing need for significant capital expenditures for seismic
16 obligations and aging infrastructure, and the general headwinds facing the hospital industry, made
17 success impossible. Losses continue to amount to approximately \$175 Million annually on a cash
18 flow basis.

19 20. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
20 sell their assets. In June 2018, the Debtor engaged Cain Brothers, a division of KeyBanc Capital
21 Markets (“Cain”), to identify potential buyers of some or all of the Verity hospitals and related
22 assets and commenced discussions with those potential buyer.

23 **B. FACTS RELEVANT TO MOTION**

24 21. Cain prepared a Confidential Investment Memorandum (the “CIM”) and organized
25 an online data site to share information with potentially buyers and contacted over 110 strategic
26 and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction
27 regarding the Debtors.

28 22. By August 2018, as a result of its ongoing and broad marketing process, Cain had

received 11 Indications of Interest (“IOI”), and postpetition Cain continued to develop potential sales. The Debtors, in consultation with Cain and its other advisors, selected SGM’s offer from one or more stalking horse bidder(s) to acquire the Purchased Assets through a sale under § 363.

23. Additional background facts on the Debtors, including an overview of the Debtors’ business, information on the Debtors’ capital structure and additional events leading up to these chapter 11 cases, are contained in the First-Day Declaration.

24. On September 14, 2018, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Official Committee”) in these chapter 11 Cases. [Docket No. 197].

C. BIDDING PROCEDURES

25. As indicated above, a true and correct copy of the Stalking Horse APA, entered into between certain Debtors (Verity, Verity Holdings, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center) and the Stalking Horse Purchaser, is attached hereto as **Exhibit A**. The bidding procedures (the “Bidding Procedures”) are referenced, in part, in Article 6 of the Stalking Horse APA and set forth in a separate scheduled attached thereto.

26. Set forth below are the Bidding Procedures to be employed in connection with the sale of (i) the Purchased Assets, and (ii) the assets not otherwise enumerated in the Stalking Horse APA but associated with the ownership or operation of the Hospitals (the “Other Assets”).

a. Provisions Governing Qualifications of Bidders

27. Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following to the Debtors:

- a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or and/or the Other Assets or otherwise participating in connection with such bid; and
- b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit

of any purchaser of the Purchased Assets and/or the Other Assets; without limiting the foregoing, each such confidentiality agreement shall contain standard non-solicitation provisions.

28. A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors,² and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

b. Due Diligence

29. The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

c. Provisions Governing Qualified Bids

30. A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid,” and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical

² As such term is defined in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (the “Final DIP Order”) [Docket No. 409].

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Center, and Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;³

- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-up Bidder, the time specified in paragraph 44 below;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$21,350,000.00); (ii) the amount of the expense reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee and the Expense Reimbursement, the "Minimum Qualified Bid");

³ For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

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- j) if the bid is a partial bid (the “Partial Bid”),⁴ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a “Partial Bid Auction Qualified Bid”). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers’ responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii) Purchased Assets and/or Other Assets, subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;
- l) it contains sufficient information concerning the Qualified Bidder’s ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it;
- m) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets and/or Other Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets and/or Other Assets or the completeness of any information provided in connection therewith or with the relevant Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to (a) 20% of purchase price for bids under \$5 million; (b) for bids greater than \$5 million and less than \$100 million, the greater of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the “Good Faith Deposit”), which Good Faith Deposit shall, be forfeited if such bidder is the Successful Bidder and breaches its obligation to close; and (ii) if the

⁴ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

1 Qualified Bid is a bid made by a secured creditor of the Debtors (a “Credit Bid
2 Bidder”) who intends to make a credit bid (each, a “Credit Bid Bidder”), evidence of
3 (a) the basis for and property covered by such Credit Bid Bidder’s secured claim,
4 (b) the amount of such Credit Bid Bidder’s claim that is secured by the property in
5 question, (c) whether it is the senior secured claim on the property (x) prepetition
6 and (y) as of the date of the request to be a Qualified Bidder, as well as (d)
7 evidence of the resolution of any Challenge to such Credit Bid Bidder’s secured
8 claim within the meaning of the Final DIP Order.

- 6 p) it contains a detailed description of how the Qualified Bidder intends to treat
7 current employees of the Debtors;
8 r) it identifies the person(s) and their title(s) who will attend the relevant Auction,
9 and confirms that such person(s) have authority to make binding Overbids (defined
10 below) at such Auction
11 s) it contains such other information reasonably requested by the Debtors; and
12 t) it is received prior to the Bid Deadline.

12 31. The Debtors, in consultation with the Consultation Parties (who shall receive
13 copies of the Purchase Agreements relating to any bids cast pursuant to these Bidding Procedures
14 as soon as reasonably practicable), may qualify any bid that meets the foregoing requirements as
15 a Qualified Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a
16 Qualified Bidder and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in
17 connection with the Bidding Process, the Auctions, and the Sale.

18 32. The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser, all
19 Qualified Bidders and the Notice Parties in writing as to whether or not any bids constitute
20 Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such
21 Qualified Bidder’s bid constitutes a Qualified Bid) and provide copies of the Purchase
22 Agreements relating any such Qualified Bid to the Consultation Parties, the Stalking Horse
23 Purchaser and such Qualified Bidders, and the Notice Parties on the earlier of (1) the date that any
24 bid other than the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days
25 prior to the Partial Bid Auction.

26 **d. Bid Deadline**

27 33. In order to be eligible to participate in the Auction, a Qualified Bidder that desires
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1 to make a bid will deliver written copies of its bid to the following parties (collectively, the
2 “Notice Parties”): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite
3 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the
4 Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California
5 Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney
6 (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley
7 & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A.
8 Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee:
9 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111
10 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel
11 to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90
12 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore
13 (clark.whitmore@maslon.com)), so as to be received by the Notice Parties not later than March
14 29, 2019, at 4:00 p.m. (prevailing Pacific Time) for partial bids (the “Partial Bid Deadline”) or
15 April 3, 2019, at 4:00 p.m. (prevailing Pacific Time) for full bids (the “Bid Deadline”).

16 **e. Credit Bidding**

17 34. Any party with a valid, properly perfected security interest in any of the Purchased
18 Assets and/or Other Assets (which is not subject to a pending Challenge within the meaning of
19 the Final DIP Order) may credit bid for such Purchased Assets and/or Other Assets in connection
20 with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the
21 Debtors for cause; provided, however, that any party seeking to credit bid may not credit bid
22 unless such bid provides that all secured creditors with security interests on such Purchased
23 Assets and/or Other Assets that are senior to such junior security interest are to be paid in cash in
24 connection with such junior creditor’s bid. Any credit bids made by secured creditors shall not
25 impair or otherwise affect the Stalking Horse Purchaser’s entitlement to the benefits of the
26 Bidding Procedures and related protections granted under the Bidding Procedures Order.

27 **f. Evaluation of Competing Bids**

28 35. A Qualified Bid will be valued based upon several factors including, without

1 limitation: (i) the amount of such bid; (ii) the risks and timing associated with consummating such
2 bid; (iii) any proposed revisions to the form of Stalking Horse APA; and (iv) any other factors
3 deemed relevant by the Debtors in their reasonable discretion, in consultation with the
4 Consultation Parties, including the amount of cash included in the bid.

5 **g. No Qualified Bids**

6 36. If the Debtors do not receive any Qualified Bids other than the Stalking Horse
7 APA, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the
8 Successful Bidder for the Purchased Assets. If the Debtors receive one or more qualified Partial
9 Bid Auction Qualified Bids and, after the Partial Bid Auction contemplated by paragraphs 37 and
10 38 below (and Section H in the Bidding Procedures Schedule 6.1(b)(3) annexed to the Stalking
11 Horse APA), the Debtors will determine, in consultation with the Consultation Parties, if there are
12 any Partial Bidders that will not be qualified to participate at the Full Bid Auction

13 **h. Auction Process**

14 37. If the Debtors receive one or more Partial Bid Auction Qualified Bids as set forth
15 above, the Debtors will conduct separate auctions of each asset or combinations thereof (each, a
16 “Partial Bid Auction”). Any Partial Bidder holding a Partial Bid Auction Qualified Bid shall be
17 entitled to bid on any assets in any Partial Bid Auction(s). The procedures below for the Full Bid
18 Auction shall apply to the Partial Bid Auction, except as where otherwise indicated. The Debtors
19 will conduct the Partial Bid Auction(s), which shall be transcribed, on April 8, 2019 at 10:00 a.m.
20 (prevailing Pacific Time) at the offices of Dentons US LLP, 601 South Figueroa Street, Suite
21 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all
22 entities entitled to attend the Auction.

23 38. The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation
24 with the Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to
25 participate at the Full Bid Auction, including (without limitation) the highest and best bids for
26 each asset (the “Winning Partial Bids”) shall be permitted to participate in the Full Bid Auction
27 (as defined below) of the Purchased Assets and/or the Other Assets, except that:
28

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- (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking Horse APA, there will be a Full Bid Auction (as defined below) and (1) the Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities, or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA at Section 6.26 (b)(2);
- (b) If the Partial Bids do not include all four APA Facilities, and if there are no other Qualified Full Bids, then Seller, in its discretion, after consultation with the Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1) to have no Full Bid Auction and the Stalking Horse Purchaser will purchase the four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the “Remaining Facility”), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

39. If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other Assets), the Debtors will conduct a full bid auction of the Purchased Assets and/or the Other Assets (the “Full Bid Auction”), which shall be transcribed, on April 9, 2019 (the “Full Bid Auction Date”), at 10:00 a.m. (prevailing Pacific Time), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Full Bid Auction shall be conducted in accordance with the following procedures:

- a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their respective advisors, and other parties who request and receive authority to attend the auction in advance from the Debtors may attend the Auction;
- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;

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- 1 c) each Qualified Bidder shall be required to confirm that it has not engaged in any
- 2 collusion with respect to the bidding or the sale;
- 3 d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to
- 4 be present for all Subsequent Bids (defined herein) at the relevant Auction and the
- 5 actual identity of each Qualified Bidder will be disclosed on the record at the
- 6 relevant Auction; provided that all Qualified Bidders wishing to attend the relevant
- 7 Auction must have at least one individual representative with authority to bind
- 8 such Qualified Bidder attending the relevant Auction in person;
- 9 e) the Debtors, after consultation with the Consultation Parties, and the Stalking
- 10 Horse Purchaser, may employ and announce at the relevant Auction additional
- 11 procedural rules that are (i) reasonable under the circumstances for conducting the
- 12 relevant Auction, (ii) in the best interest of the Debtors' estates; provided,
- 13 however, that rules (i) are disclosed to the Stalking Horse Purchaser and each
- 14 Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the
- 15 Bid Protections, the Stalking Horse APA, the Bankruptcy Code, or any order of
- 16 the Court entered in connection herewith;
- 17 f) bidding at the relevant Auction will begin with a bid determined by the Debtors
- 18 after consulting with the Consultation Parties as being the then highest and best bid
- 19 which will be announced by the Debtors prior to the commencement of the
- 20 Auction (the "Baseline Bid"). The Auction will continue in bidding increments to
- 21 be determined in the discretion of the Debtors, in consultation with the
- 22 Consultation Parties (each a "Overbid"), and all material terms of each Overbid
- 23 shall be fully disclosed to all other Qualified Bidders who submitted Qualified
- 24 Bids and are in attendance at the Auction (including, without limitation, Winning
- 25 Partial Bids), as well as to the Notice Parties;
- 26 g) the initial Overbid, if any, shall provide for total consideration to Debtors with a
- 27 value that exceeds the value of the consideration under the Baseline Bid by an
- 28 incremental amount. Additional consideration in excess of the amount set forth in
- the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a
- Qualified Bidder (including, without limitation, with respect to any Winning
- Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not
- subject to a Challenge within the meaning the Final DIP Order) on any of the
- Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of
- such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other
- restrictions set forth herein; and
- h) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms
- and conditions set forth herein, elect to bid for the Purchased Assets as described
- in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and
- any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more
- of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s),
- in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means
- of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with
- its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent
- of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such

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assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets subject to augmenting its Good Faith Deposit, as necessary, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

i. Selection of Successful Bid

40. Prior to the conclusion of the relevant Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bids submitted at the relevant Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the relevant Auction shall be subject to approval by the Court. If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the Back-Up Bidder in accordance with by paragraphs 37 and 38 above (and Section H in the Bidding Procedures Schedule 6.1(b)(3) annexed to the Stalking Horse APA), then such party or parties, prior to the Full Bid Auction, shall increase its Good Faith Deposit in the amount set forth in above in paragraph 30, subsection (o), or as determined by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties are bidding on all four APA Facilities, the deposit

1 will be no less than \$30,000,000. If selected as the Successful Bidder or the Back-Up Bidder at
2 the conclusion of the Full Bid Auction, each of the Successful Bidder and the Back-Up Bidder
3 shall, within forty-eight (48) hours, increase its Good Faith Deposit to the sum of five percent
4 (5%) of the Successful Bid or Back-Up Bid, as applicable. If the Successful Bidder fails to
5 increase the Good Faith Deposit within forty-eight (48) hours of the Auction conclusion date (the
6 “Final Deposit”), then (1) the Successful Bidder forfeits its Good Faith Deposit, and (2) the
7 Successful Bid is nullified (i.e., the Back-Up Bidder becomes the Successful Bidder in the
8 amount of its last bid).

9 41. Unless otherwise agreed to by the Debtors and the Successful Bidder, within two
10 (2) business days after the conclusion of the relevant Auction, the Successful Bidder shall
11 complete and execute all agreements, contracts, instruments, and other documents evidencing and
12 containing the terms and conditions upon which the Successful Bid was made. Within forty-eight
13 (48) hours following the conclusion of the relevant Auction, the Debtors shall file a notice
14 identifying the Successful Bidder(s) and Back-Up Bidders with the Court and shall serve such
15 notice by fax, email, or if neither is available, by overnight mail to all counterparties whose
16 contracts are to be assumed and assigned.

17 42. The Debtors will sell the Purchased Assets and (to extent included in an Overbid)
18 the Other Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the
19 approval of such Successful Bid by the Court at the Sale Hearing and satisfaction of any other
20 closing conditions set forth in the Successful Bidder’s Purchase Agreement.

21 **j. Return of Deposits**

22 43. All deposits shall be returned to each bidder not selected by the Debtors as the
23 Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days
24 following the conclusion of the Auction.

25 **k. Back-Up Bidder**

26 44. If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next
27 highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their
28 business judgment, in consultation with the Consultation Parties, at the relevant Auction shall be

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1 required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and
2 irrevocable for thirty (30) business days after the entry of the Sale Order (the “Thirty-Day
3 Period”). If during the Thirty-Day Period, the Successful Bidder fails to consummate the
4 approved sale because of a breach or failure to perform on the part of such Successful Bidder, the
5 Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be
6 authorized, but not required, to consummate the sale with the Back-Up Bidder without further
7 order of the Court provided that the Back-Up Bidder shall thereafter keep such bid open and
8 irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further, however,
9 that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be authorized and
10 required to consummate the sale to the Stalking Horse Purchaser. If, after the Thirty-Day Period,
11 the Successful Bidder has failed to consummate the approved sale, the Back-Up Bidder may
12 elect, at its discretion, to remain as the Back-Up Bidder until (a) the sale closes, (b) the Successful
13 Bidder defaults, or (c) the Back-Up Bidder elects to terminate its participation as Back-Up
14 Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful Bidder fails to
15 consummate the approved sale because of a breach or failure to perform on the part of such
16 Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the Back-Up
17 Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder APA and
18 the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will be no re-
19 opening of the auction.

20 **I. Break-Up Fee**

21 45. In recognition of this expenditure of time, energy, and resources, the Debtors have
22 agreed that if the Stalking Horse Purchaser is not the Successful Bidder as to the Purchased
23 Assets, the Debtors will pay the Stalking Horse Purchaser at closing of the sale of the Purchased
24 Assets an amount in cash equal to three and a half percent (3.5%) of the Cash Consideration
25 (\$21,350,000.00), plus reimbursement of reasonably documented reasonable costs and expenses
26 in an amount not to exceed \$2,000,000.00. The Break-Up Fee shall be payable at closing of the
27 sale from the sale proceeds.

28 46. If the Stalking Horse APA is terminated because the Stalking Horse Purchaser is

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1 not selected as the Successful Bidder or the Back-Up Bidder at Auction (or the Stalking Horse
2 Purchaser is selected as the Back-Up Bidder but the sale of the Purchased Assets is consummated
3 and closed with another entity), the Debtors shall pay to the Stalking Horse Purchaser the Break-
4 Up Fee by wire transfer of immediately available funds immediately upon, and contemporaneous
5 with, the closing of the sale of the Purchased Assets from the first cash proceeds thereof. The
6 Break-Up Fee shall constitute an administrative expense claim with priority under § 507(a) in
7 favor of the Stalking Horse Purchaser.

8 47. The Debtors acknowledge that the provision of the Break-Up Fee is an integral
9 part of the Stalking Horse APA and are a material and necessary inducement for the Stalking
10 Horse Purchaser to enter into the Stalking Horse APA and to consummate the transactions
11 contemplated therein. In the event that the payment of the Breakup Fee (including any costs of
12 collection) becomes due and payable to the Stalking Horse Purchaser, and such amounts are
13 actually paid to the Stalking Horse Purchaser, such amounts will constitute liquidated damages
14 (and not a penalty). In light of the difficulty of accurately determining actual damages with
15 respect to the foregoing, the right to any such payment of the Breakup Fee (and any related
16 collection costs) and the return of the Deposit to the Stalking Horse Purchaser constitute a
17 reasonable estimate of the damages that will compensate the Stalking Horse Purchaser in the
18 circumstances in which such fees and reimbursements are payable for the efforts and resources
19 expended and the opportunities foregone while negotiating the Stalking Horse APA and in
20 reliance on the Stalking Horse APA and on the expectation of the consummation of the
21 transactions contemplated therein. The Debtors believe that the entry into this Stalking Horse
22 APA provides value to the Debtors' estates and bankruptcy cases by, among other things,
23 inducing other Qualified Bidders to submit higher or better offers for the Purchased Assets.

24 **m. Sale Hearing**

25 48. The Debtors will seek entry of the Sale Order, at the Sale Hearing on April 17,
26 2019, at 10:00 a.m. (or at another date and time convenient to the Court), to approve and
27 authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in
28 accordance with the Bidding Procedures.

49. At the Sale Hearing, the Debtors will seek Court approval of the Sale to the Successful Bidder (or, in the event the Successful Bidder fails to close, the Back-Up Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to § 363, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets (and to the extent included in the Successful Bid, the Other Assets prior to the Sale), including the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and Leases pursuant to § 365. The Debtors will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of the Purchased Assets and/or the Other Assets.

n. Reservation.

50. The Debtors reserve the right, as they may determine in their discretion and in accordance with their business judgment to be in the best interest of their estates, in consultation with their professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers submit their sealed, highest and best offer for the Purchased Assets and/or the Other Assets; (ii) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iv) impose additional terms and conditions with respect to all Potential Bidders; (v) extend the deadlines set forth herein; (vi) continue or cancel an Auction and/or Sale Hearing in open court without further notice; and (vii) implement additional procedural rules that the Debtors determine, in their reasonable business judgment and in consultation with the Consultation Parties will better promote the goals of the bidding process; provided that such modifications are disclosed to each Qualified Bidder participating in the Auction; provided, however, and notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter, extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth herein or in the Stalking Horse APA.

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D. NOTICE PROCEDURES

51. The Debtors propose that any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must: (i) be in writing; (ii) comply with the Rules and the LBR; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court at 255 East Temple St. (Attn: Judge E. Robles), Los Angeles, CA 90012, together with proof of service, on or before the Sale Objection Deadline set forth in the Bidding Procedures Order; and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Debtors request that the objecting party be barred from objecting to the Sale and not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party. The Debtors also request that the Court approve the form of the Procedures Notice, substantially in the form of Exhibit 3 to the Bidding Procedures Order. The Debtors will serve a copy of the Procedures Notice on the Notice Parties and all parties which the Debtors are required to serve pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132] (the “Procedures Notice Parties”).

52. The Debtors propose to file with the Court and serve the Procedures Notice within one (1) business day following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: Tania M. Moyron, 601 S. Figueroa St., Suite 2500, Los Angeles, CA 90017 or by emailing tania.moyron@dentons.com or calling (213) 623-9300.

53. The Debtors submit that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction and Sale, and Sale Hearing to the Debtors’ creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Purchased Assets. Based on the foregoing, the Debtors respectfully request that

1 this Court approve these proposed notice procedures.

2 **E. PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF ASSIGNED**
3 **CONTRACTS AND LEASES**

4 54. As noted above, the Debtors will seek to assume and assign certain contracts and
5 leases to be identified in the Purchase Agreement(s) (collectively, the “Assumed Executory
6 Contracts”).

7 55. At least initially, the Assumed Executory Contracts will be those contracts and
8 leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the
9 Purchased Assets. The Successful Bidder(s) may choose to exclude (or to add) certain contracts
10 or leases to the list of Assumed Executory Contracts, subject to further notice.

11 56. In the interim, the Debtors will file with the Court and serve the cure notice,
12 substantially in the form of Exhibit 4 (the “Cure Notice”) to the Bidding Procedures Order, (along
13 with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts. The
14 Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which
15 any objection to the assumption and assignment of Assumed Executory Contracts (including the
16 Cure Amount (defined below)) must be filed and served. The Cure Notice also will identify the
17 amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory
18 Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To
19 the extent there is a contract subsequently added to the list of contracts to be assumed by the
20 Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the
21 Auction, this Motion constitutes a separate motion to assume and assign that contract to the
22 Successful Bidder pursuant to § 365; each such contract will be listed in the Successful Bidder’s
23 Purchase Agreement, and will be given a separate Cure Notice filed and served by overnight
24 delivery within five (5) business days of the conclusion of the Auction and announcement of the
25 Successful Bidder.

26 57. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not
27 constitute or be deemed a determination or admission by the Debtors and their estates or any
28 other party in interest that such contract, lease, or other agreement is, in fact, an executory

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1 contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights
2 with respect thereto shall be reserved.

3 58. If a Contract or Lease is assumed and assigned pursuant to Court Order, then
4 unless the Assumed Executory Contract counterparty properly files and serves an objection to the
5 Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined
6 below), the Assumed Executory Contract counterparty will receive at the time of the Closing of
7 the sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure
8 Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract, the
9 Debtors propose that such objection must set forth a specific default in the executory contract or
10 unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified
11 by the Debtors in the Cure Notice, and set forth any reason why the counterparty believes the
12 executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

13 59. If any counterparty objects for any reason to the assumption and assignment of an
14 Assumed Executory Contract (including to a Cure Amount) (an “Assumption Objection”), the
15 Debtors propose that the counterparty must file the objection and serve it so as to be actually
16 received on or before the Assumption Objection Deadline established in the Bidding Procedures
17 Order, provided, however, as to any Successful Bidder who is not the Stalking Horse Purchaser,
18 any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of
19 the Assumed Executory Contract solely with respect to the Successful Bidder’s ability to provide
20 adequate assurance of future performance under the Assumed Executory Contract. After receipt
21 of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure
22 Amount or otherwise resolve the objection with the counterparty. In the event that the Debtors
23 and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise
24 make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure
25 Amount, the Debtors shall segregate from the sale proceeds any disputed Cure Amounts pending
26 the resolution of any such Cure Amount disputes by the Court or mutual agreement of the parties.

27 60. The Successful Bidder shall be responsible for satisfying any requirements
28 regarding adequate assurance of future performance that may be imposed under §365(b) in

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connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement. The Debtors propose that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to § 365(b) at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

61. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to § 365(k).

F. THE PRIMARY TERMS OF THE STALKING HORSE APA

62. The Stalking Horse APA contemplates the sale of the Purchased Assets to the Stalking Horse Bidder, subject to higher or better bids, on the following material terms:⁵

Stalking Horse APA Provision	Summary Description
APA Parties	Verity Health System of California, Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center (" <u>Sellers</u> "). Strategic Global Management, Inc. (" <u>Purchaser</u> ").
Consideration APA § 1.1	Six Hundred Ten Million Dollars (\$610,000,000), which shall be allocated as follows: Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center and Seventy Million Dollars (\$70,000,000) to Seton Medical Center for Seton Medical Center and Seton Coastsides, plus assumption of the Assumed Liabilities, <u>provided</u> , that if the California Attorney General's approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastsides Hospital remain open as a skilled nursing facility, then an amount to be determined by

⁵ The summary of the terms contained in this Motion highlights some of the material terms of the Stalking Horse APA. This summary is qualified in its entirety by reference to the provisions of the Stalking Horse APA. In the event of any inconsistencies between the provisions of the Stalking Horse APA and the summary set forth herein, the terms of the Stalking Horse APA shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Stalking Horse APA.

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Stalking Horse APA Provision	Summary Description
	Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton; plus payment of Cure Costs associated with any Assumed Leases and/or Assumed Contracts.
QAF Adjustment APA § 1.1(c), 1.1(d)	At Closing, Sellers shall credit against the cash consideration, the amount by which payments received by Sellers under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “Net QAF Reduction Amount”), or Purchaser shall pay Sellers (as an increase to the cash consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “Net QAF Increase Amount”).
Assets; Avoidance Actions APA § 1.7	In each case, solely to the extent used primarily in the conduct of the Business, “Assets” shall mean (a) all of the tangible personal property owned by such Seller and used by such Seller in the operation of the Hospital of such Seller, or in the case of St. Vincent Dialysis Center, the operation of its dialysis business, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements; (b) all of such Seller’s rights, to the extent assignable or transferable, in and to all Licenses; (c) all of such Seller’s right, title and interest in and to the Owned Real Property and all of such Seller’s interest, to the extent assignable or transferable, in and to the Assumed Leases; (d) all of such Seller’s right, title and interest in and to any and all Assumed Contracts; (e) all claims, rights, interests and proceeds with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time, <u>except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases</u> ; (f) all Inventory; (g) all Prepays; (h) all operating manuals, files and computer software, including all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications and medical and administrative libraries; (i) all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation; (j) all Measure B trauma funding received after the Signing Date; (k) all Accounts Receivable; (l) all rights, claims and causes of action of such Seller arising out of the Accounts Receivable acquired by Purchase; (m) all regulatory settlements, rebates, adjustments, refunds or group appeals; (n) all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets; (o) all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement; (p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date; (q) all warranties in favor of the Hospitals or Sellers; (r) certain intellectual property rights, as further described in the Transition Services

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Stalking Horse APA Provision	Summary Description
	Agreement; (s) all goodwill; (t) all rights and interest in the telephone and facsimile numbers and uniform resource locaters; (u) all Medicare and Medi-Cal provider agreements and lockbox accounts identified on Schedule 1.7(u) to the Stalking Horse APA; (v) all documents, records, correspondence, work papers and other documents, other than patient records, relating to the Accounts Receivable; (w) the Purchased Verity Holdings Assets; (x) except for the Excluded Assets, any other asset owned by the Seller; (y) all of Seton's interest in and to the PACE Obligations; and (z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).
Excluded Assets APA § 1.8	"Excluded Assets" include cash, cash equivalents and investments; all Seller Plans and the assets of all Seller Plans; all contracts and leases that are not Assumed Contracts or Assumed Leases; inventory and assets disposed of by any Seller in the ordinary course of business after the Signing Date but prior to the Effective Time; all claims, counterclaims, and causes of action of each Seller or each Seller's bankruptcy estate; (except as otherwise provided) all insurance policies and contracts and coverages obtained by any Seller or listing a Seller as insured party, a beneficiary or loss payee; all Utility Deposits; all bank accounts of each Seller (except as otherwise provided); all tax refunds of each Seller; all QAF IV and QAF V payments actually received prior to the Signing Date.
Assumed Obligations APA § 1.9	"Assumed Obligations" include all Assumed Contracts and Assumed Leases and all liabilities and obligations arising thereunder on and after the Effective Time, including any related Cure Costs; all liabilities and obligations arising out of or relating to any act, omission, event, or occurrence connected with the use, ownership, or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time; all unpaid real and personal property taxes that are attributable to the Assets after the Effective Time, subject to prorations; and all liabilities and obligations arising on or following the Effective Time relating to utilities being furnished to the Assets, subject to prorations and all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii).
Excluded Liabilities APA § 1.10	Purchaser shall not assume or become responsible for any duties, obligations, or liabilities of any Seller other than the Assumed Obligations.
Assumption of Transferred Contracts and Assignment APA § 1.11	Not later than seven (7) days prior to the date of the Auction (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser, and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the " <u>Rejected Contracts</u> "). Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser are entered, and (y)

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Stalking Horse APA Provision	Summary Description
	<p>rejecting the Rejected Contracts are entered. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.</p> <p>At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.</p>
<p>Good Faith Deposit APA § 1.2</p>	<p>Purchaser has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000.00) (the “<u>Deposit</u>”) by wire transfers to an account designated by Sellers. The Deposit shall be non-refundable in all events, except in the event Purchaser is not the winning bidder at the Auction, in the event Purchaser terminates the Stalking Horse APA if a stay of the sale order has not been vacated on or before 180 days following issuance of such stay, or in the event Purchaser has terminated the Stalking Horse APA pursuant to Section 9.1 (other than Section 9.1(b)). Upon Closing, the Deposit will be credited against the Purchase Price.</p>
<p>Closing Date APA § 1.3</p>	<p>The Closing Date shall occur within ten (10) business days following the satisfaction or waiver of the conditions precedent to Closing set forth in in Articles 7 and 8 of the Stalking Horse APA.</p>
<p>Employment Provisions APA § 5.3</p>	<p>Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all employees (the “<u>Hospital Employees</u>”) who, immediately prior to the Effective Time are: (i) employees of either Seller; (ii) employees of any affiliate of either Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of either Seller and are listed on Schedule 5.3.</p> <p>Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “<u>Hired Employees</u>.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.</p>
<p>Payment of Cure Costs APA § 5.8</p>	<p>Purchaser, upon assumption, shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code.</p>
<p>Break-Up Fee and Minimum Bid APA § 6.1</p>	<p>Any full overbids must be in a minimum amount of Six Hundred Ten Million Dollars (\$610,000,000.00), plus Cure Costs and the Break-Up Fee, and accompanied by a deposit in the form of cash or a cashier’s check in the amount of Thirty Million Dollars (\$30,000,000.00).</p> <p>The “<u>Break-Up Fee</u>” shall mean a breakup fee in the amount totaling three and</p>

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Stalking Horse APA Provision	Summary Description
	<p>a half percent (3.5%) of the Cash Consideration (or \$21,350,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00; provided, however, that in the event that the Purchaser is successful in acquiring some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i) of the Stalking Horse APA.</p> <p>The Break-Up Fee will be subject to Bankruptcy Court approval and shall be deemed to be an allowed expense of the kind specified in § 503(b) of the Bankruptcy Code to be paid solely from the proceeds of an alternate transaction, pursuant to the Sale Order. Purchaser shall be allowed to credit bid the Break-Up Fee in any overbids that Purchaser may elect to make with respect to the Assets.</p>
<p>Requested Findings as to Good Faith, APA § 6.1</p>	<p>Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to § 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.</p>
<p>Buyer's Termination Rights APA § 9.1</p>	<p>The Stalking Horse APA may be terminated by Purchaser if it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to the Stalking Horse APA, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under Section 9.1(c) on or prior to January 8, 2019, by Purchaser if a material breach of the Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser and by Purchaser or Sellers or if the Closing has not occurred on or before December 31, 2019.</p> <p>The Stalking Horse APA may also be terminated by Purchaser if satisfaction of any condition in Article 8 has not occurred by December 31, 2019 or becomes impossible and Purchaser has not waived such condition in writing.</p> <p>The Stalking Horse APA may also be terminated by Purchaser if the Bankruptcy Court enters an order dismissing the Bankruptcy Case or fails to approve the sale of the Assets to Purchaser.</p>

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Stalking Horse APA Provision	Summary Description
Record Retention APA § 10.2	<p>From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the “<u>Document Retention Period</u>”), Purchaser shall keep and preserve all medical records, patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets.</p> <p>After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents, Purchaser shall provide written notice to Sellers of Purchaser’s intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal.</p>
Limitation on Liability APA § 11.1	<p>If Purchaser commits any material default under the APA, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under the APA.</p>

IV. ARGUMENT

A. APPROVAL OF THE BIDDING PROCEDURES IS APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES AND STAKEHOLDERS.

Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [.]” 11 U.S.C. § 363(b)(1). Section 105(a) provides in pertinent part that “[t]he Court may issue any order, process or judgment that is necessary and appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Rules”) govern the scope of the notice to be provided in the event a debtor elects to sell property of the estate under § 363.

With respect to the procedures to be adopted in conducting a sale outside the ordinary course of a debtor’s business, Rule 6004 provides only that such sale may be by private sale or public auction, and requires only that the debtor provide an itemized list of the property sold together with the prices received upon consummation of the sale. Fed. R. Bankr. P. 6004(f). LBR 6004-1 provides, in pertinent part, as follows:

(b) **Motion for Order Establishing Procedures for the Sale of Estate Property.**

(2) Contents of Notice [of a Sale Procedure Motion]. The notice must describe the proposed bidding procedures and include a copy of the

proposed purchase agreement. If the purchase agreement is not available, the moving party must describe the terms of the sale proposed, when a copy of the actual agreement will be filed with the court, and from whom it may be obtained. The notice must describe the marketing efforts undertaken and the anticipated marketing plan, or explain why no marketing is required. [...]

(3) Service of the Notice and Motion. The moving party must serve the motion and notice of the motion and hearing by personal delivery, messenger, telephone, fax, or email to the parties to whom notice of the motion is required to be given by the FRBP or by these rules, any other party that is likely to be adversely affected by the granting of the motion, and the United States trustee. The notice of hearing must state that any response in opposition to the motion must be filed and served at least 1 day prior to the hearing, unless otherwise ordered by the court. [...]

(6) Break-Up Fees. If a break-up fee or other form of overbid protection is requested in the Sale Procedure Motion, the request must be supported by evidence establishing: (A) That such a fee is likely to enhance the ultimate sale price; and (B) The reasonableness of the fee. [...]

LBR 6004-1(b).

Neither the Bankruptcy Code nor the Rules contain specific provisions with respect to the procedures to be employed by a debtor in conducting a public or private sale. Nonetheless, as one court has stated, “[i]t is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [debtors’] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). Additionally, courts have long recognized the need for competitive bidding at hearings; “[c]ompetitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is ‘to maximize bidding, not restrict it.’” *Id.*; see also *Burtch v. Ganz (In re Mushroom Transp. Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor’s fiduciary duties included maximizing and protecting the value of the estate’s assets); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (“[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand.”). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor’s estate and, therefore, are appropriate. See *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl.*

1 *Energy, Inc.*), 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote
2 competitive bidding provide benefit to debtor's estate); *Official Comm. of Subordinated*
3 *Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y.
4 1992) (such sale procedures "encourage bidding and to maximize the value of the Assets").

5 Here, the Bidding Procedures are designed to promote the paramount goal of any
6 proposed sale of property of the Debtors' estates: maximizing the value of sale proceeds received
7 by the estates. The Bidding Procedures provide for an orderly and appropriately competitive
8 process through which interested parties may submit offers to purchase the Purchased Assets
9 and/or the Other Assets. Specifically, the Debtors, with the assistance of their advisors, have
10 structured the Bidding Procedures to promote active bidding by interested parties and to confirm
11 the highest or otherwise best offer reasonably available for the Purchased Assets and/or the Other
12 Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a
13 fair and transparent manner that will encourage participation by financially capable bidders with
14 demonstrated ability to consummate a timely Sale. Accordingly, the Bidding Procedures should
15 be approved because, under the circumstances, they are reasonable, appropriate and in the best
16 interests of the Debtors, their estates, creditors, and all parties in interest.

17 **B. THE BREAK-UP FEE HAS A SOUND BUSINESS PURPOSE AND IS**
18 **NECESSARY TO PRESERVE THE VALUE OF THE DEBTORS' ESTATES.**

19 The Debtors submit that the Break-Up Fee is a normal and oftentimes necessary
20 component of sales outside the ordinary course of business under § 363 of the Bankruptcy Code.
21 In particular, such a protection encourages a potential purchaser to invest the requisite time,
22 money, and effort to conduct due diligence and sale negotiations with a debtor despite the
23 inherent risks and uncertainties of the chapter 11 process. *See, e.g., Integrated Resources*, 147
24 B.R. at 660 (noting that fees may be legitimately necessary to convince a "white knight" to offer
25 an initial bid, for the expenses such bidder incurs and the risks such bidder faces by having its
26 offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr.
27 N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid
28 for fear that their first bid will be shopped around for a higher bid from another bidder who would

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1 capitalize on the initial bidder's . . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5
2 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses
3 are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which
4 attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y.
5 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight
6 to enter the bidding by providing some form of compensation for the risks it is undertaking")
7 (citations omitted).

8 A proposed bidding incentive, such as the Break-Up Fee, should be approved when it is in
9 the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995);
10 *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp*
11 *Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding
12 incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy,*
13 *Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though
14 bidding incentives are measured against a business judgment standard in non-bankruptcy
15 transactions the administrative expense provisions of § 503(b) govern in the bankruptcy context).

16 In evaluating the appropriateness of a break-up fee, the appropriate question for the Court
17 to consider is "whether the break-up fee served any of three possible useful functions: (1) to
18 attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other
19 bidders to follow; or (3) to attract additional bidders." *In re Integrated Resources, Inc.*, 147 B.R.
20 at 662 (where the Court heard testimony that the average breakup fee in the industry is 3.3%).
21 Break-up fees in the same general range as the Break-Up Fee have been routinely approved in the
22 context of bankruptcy sales. *See In re CXM, Inc.*, 307 B.R. 94, 103–04 (Bankr. N.D. Ill. 2004)
23 (court approved break-up fee in amount equal to the actual expenses that the stalking horse
24 incurred in connection with its bid to buy the Sale Assets, subject to a maximum cap of \$200,000,
25 which equaled 3% of the cash purchase price); *In re Women First Healthcare, Inc.*, 332 B.R. 115,
26 118 (Bankr. D. Del. 2005) (court approved break-up fee that equaled 4.7% percent of the
27 purchase price; *In re Dan River, Inc.*, No. 04-10990 (Banker. N.D. Ga. Dec. 17, 2004) (court
28 approved break-up fee equal to 5.3% of the cash purchase price); *In re Lake Burton Dev., LLC*,

2010 WL 5563622, *43 (Bankr. N.D. Ga. Mar. 18, 2010) (court approved break-up fee equal to 4.75% of cash purchase price); *In re Case Engineered Lumber, Inc.*, No. 09–22499 (Bankr. N.D.Ga. Sept. 1, 2009)(J. Brizendine) (approving break-up fee equal to 3.5% of the cash purchase price); *In re Tama Beef Packing Inc.*, 321 B.R. 469, 498 (8th Cir. BAP 2005) (noting that the bankruptcy court correctly concluded that break-up fees are “usually limited to one to four percent of the purchase price”). Notably, this Court has also approved break-up fees within the range of the Break-Up Fee. *See In re Verity Health System of California, Inc.*, No. 18-20151 (Bankr. C.D. Cal. Oct. 30, 2018) (J. Robles) (approving break-up fee equal to 4% of the cash purchase price); *In re T Asset Acquisition Company, LLC*, No. 09-31853 (Bankr. C.D. Cal. Jan. 28, 2010) (J. Robles) (approving break-up fee equal to 3% of the cash purchase price).

The Debtors submit that all of the bidding procedures the Debtors are seeking to have the Court approve, including the proposed Break-Up Fee to the Stalking Horse Purchaser, satisfies all three of the useful functions set forth above: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; and (3) to attract additional bidders. The proposed break-up fee of 3.5% of the purchase price is well within the percentage parameters that have been approved by many other courts. Thus, the Debtors believe that the proposed Break-Up Fee is fair and reasonably compensates the Stalking Horse Purchaser for taking actions that will benefit the Debtors’ estates. The Break-Up Fee compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Stalking Horse APA on an expedited timeline.

Additionally, the Debtors do not believe that the Break-Up Fee will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser will increase the likelihood that the best possible price for the Purchased Assets will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Stalking Horse APA as a platform for negotiations and modifications in the context of a competitive bidding process.

Finally, the Break-Up Fee will be paid only if, among other things, the Debtors enter into a transaction for the Purchased Assets with a bidder other than the Stalking Horse Purchaser.

1 Accordingly, no Break-Up Fee will be paid unless a higher and better offer is achieved and
2 consummated. In sum, the Break-Up Fee is reasonable under the circumstances and will enable
3 the Debtors to maximize the value for the Purchased Assets while limiting any chilling effect in
4 the sale process.

5 **C. THE PROCEDURE FOR ASSUMPTION AND ASSIGNMENT OF CERTAIN**
6 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES IS APPROPRIATE**

7 Section 365(a) provides that, subject to the court’s approval, a trustee “may assume or
8 reject any executory contracts or unexpired leases of the debtor.” 11 U.S.C. § 365(a). Upon
9 finding that a trustee has exercised its sound business judgment in determining to assume an
10 executory contract or unexpired lease, courts should approve the assumption under § 365(a). *See*
11 *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also*
12 *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099
13 (2d Cir. 1993).

14 Pursuant to § 365(f)(2), a trustee may assign an executory contract or unexpired lease of
15 nonresidential real property if:

- 16 (A) the trustee assumes such contract or lease in accordance with the provisions of this
17 section; and
18 (B) adequate assurance of future performance by the assignee of such contract or lease
19 is provided, whether or not there has been a default in such contract or lease.

20 11 U.S.C. § 365(f)(2).

21 The meaning of “adequate assurance of future performance” depends on the facts and
22 circumstances of each case, and should be given “practical, pragmatic construction.” *See Carlisle*
23 *Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see*
24 *also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of
25 future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re*
26 *Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single
27 solution will satisfy every case, the required assurance will fall considerably short of an absolute
28 guarantee of performance.”).

1 Among other things, adequate assurance may be given by demonstrating the assignee's
2 financial health and experience in managing the type of enterprise or property assigned. *In re*
3 *Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future
4 performance is present when prospective assignee of lease has financial resources and expressed
5 willingness to devote sufficient funding to business to give it strong likelihood of succeeding;
6 chief determinant of adequate assurance is whether rent will be paid).

7 The Debtors and the Successful Bidder will present evidence at the Sale Hearing to prove
8 the financial credibility, willingness, and ability of the Successful Bidder to perform under the
9 contracts or leases. The Court and other interested parties therefore will have the opportunity to
10 evaluate the ability of any Successful Bidder to provide adequate assurance of future performance
11 under the contracts or leases, as required by § 365(b)(1)(C).

12 In addition, the Debtors submit that the cure procedures set forth herein are appropriate,
13 reasonably calculated to provide notice to any affected party, and afford the affected party to
14 opportunity to exercise any rights affected by the Motion, and consistent with § 365. To the
15 extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be
16 cured pursuant to the Successful Bidder's Purchase Agreement. Except as otherwise limited by §
17 365 of the Bankruptcy Code, any provision in the Assumed Executory Contracts that would
18 restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable
19 pursuant to § 365(f)(1) of the Bankruptcy Code.

20 Accordingly, the Debtors submit that the cure procedures for effectuating the assumption
21 and assignment of the Assumed Executory Contracts as set forth herein are appropriate and
22 should be approved.

23 **D. APPROVAL OF THE SALE IS WARRANTED UNDER § 363**

24 As discussed above, § 363(b)(1) of the Bankruptcy Code provides that a debtor "after
25 notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,
26 property of the estate." 11 U.S.C. § 363(b)(1).

i. The Sale of the Assets is Authorized by § 363 as a Sound Exercise of the Debtors' Business Judgment

In accordance with Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors have determined that the Sale of the Purchased Assets and/or the Other Assets by public auction will enable it to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtors' creditors. In particular, the Stalking Horse APA is the result of comprehensive arms' length negotiations for the Sale of the Purchased Assets and/or the Other Assets and the Sale pursuant to the terms of the Stalking Horse APA, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtors' creditors than would be provided by any other existing alternative. The Debtors similarly have determined in their business judgment that a sale of the Purchased Assets and/or the Other Assets through a competitive, public auction is the best way to maximize the value of those assets.

Sections 363 provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although § 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 BR. 169, 176 (D. Del. 1991); *see also Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of

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1 the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of
2 bankruptcy law that the. . . [trustee’s] duty with respect to such sales is to obtain the highest price
3 or greatest overall benefit possible for the estate.”) (*quoting In re Atlanta Packaging Prods., Inc.*,
4 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s
5 estate, court approval of a debtor’s decision to sell should only be withheld if the debtor’s
6 judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy
7 Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex.
8 2005); *In re Lajijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005); *In re WPRV-TV, Inc.*, 143 B.R.
9 315, 319 (D.P.R. 1991) (“The trustee has ample discretion to administer the estate, including
10 authority to conduct public or private sales of estate property. Courts have much discretion on
11 whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial
12 deference.”).

13 Applying § 363, the proposed Sale of the Purchased Assets and/or the Other Assets should
14 be approved. As set forth above, the Debtors have determined that the best method of maximizing
15 the recovery of the Debtors’ creditors would be through the Sale of the Purchased Assets. As
16 assurance of value, bids will be tested through the Auction consistent with the requirements of the
17 Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the
18 Court. Consequently, the fairness and reasonableness of the consideration to be paid by the
19 Successful Bidder ultimately will be demonstrated by adequate “market exposure” and an open
20 and fair auction process—the best means, under the circumstances, for establishing whether a fair
21 and reasonable price is being paid.

22 In addition to the Debtors’ prior marketing efforts, the Debtors’ investment banker has
23 been contacting potential interested parties and has assembled a data room which is available
24 upon the execution of an appropriate confidentiality agreement. There is a limited universe of
25 potential acquirers of the Purchased Assets, and the Debtors and their advisors have been in
26 active discussions with many of these potential purchasers.

1 **ii. The Sale of the Debtors' Assets Free and Clear of Liens and Other Interests is**
2 **Authorized by § 363(f) of the Bankruptcy Code**

3 The Debtors further submit that it is appropriate to sell the Purchased Assets free and clear
4 of liens pursuant to § 363(f), with any such liens attaching to the sale proceeds of the Purchased
5 Assets to the extent applicable. Section 363(f) authorizes a trustee to sell assets free and clear of
6 liens, claims, interests and encumbrances if:

- 7 (1) applicable nonbankruptcy law permits the sale of such property free and clear of
8 such interests;
9 (2) such entity consents;
10 (3) such interest is a lien and the price at which such property is to be sold is greater
11 than the value of all liens on such property;
12 (4) such interest is in bona fide dispute; or
13 (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
14 money satisfaction of such interest.

15 11 U.S.C. § 363(f).

16 This provision is supplemented by § 105(a), which provides that “[t]he Court may issue
17 any order, process or judgment that is necessary or appropriate to carry out the provisions of [the
18 Bankruptcy Code].” 11 U.S.C. § 105(a).

19 Because § 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any
20 one of its five requirements will suffice to permit the sale of the Debtor's Assets “free and clear”
21 of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr.
22 S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest
23 concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph,*
24 *Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Michigan Employment Sec. Comm'n v.*
25 *Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991)
26 (stating that § 363(f) is written in the disjunctive; holding that the court may approve the sale
27 “free and clear” provided at least one of the subsections of § 363(f) is met).

28 The Debtors believe that at least one of the tests of § 363(f) of the Bankruptcy Code is
satisfied with respect to the transfer of the Purchased Assets and/or the Other Assets pursuant to

1 the Stalking Horse APA. Additionally, at least § 363(f)(2) will be met in connection with the
2 transactions proposed under the Purchase Agreement because each of the parties holding liens on
3 the Purchased Assets and/or the Other Assets will consent or, absent any objection to this motion,
4 will be deemed to have consented to the Sale. Any lienholder also will be adequately protected
5 by having its liens, if any, in each instance against the Debtors or their estates, attach to the sale
6 proceeds ultimately attributable to the Purchased Assets and/or the Other Assets in which such
7 creditor alleges an interest, in the same order of priority, with the same validity, force and effect
8 that such creditor had prior to the Sale, subject to any claims and defenses the Debtors may
9 possess with respect thereto. Accordingly, § 363(f) authorizes the transfer and conveyance of the
10 Purchased Assets free and clear of any such claims, interests, liabilities, or liens.

11 Although § 363(f) provides for the sale of assets “free and clear of any interests,” the term
12 “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v.*
13 *DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). Courts have interpreted “any
14 interest” expansively to include not only in rem interests in property, but also other obligations
15 that are “connected to or arise from the property being sold” or that could “potentially travel with
16 the property being sold.” *In re Gardens Regional Hospital and Medical Center, Inc.*, 567 B.R.
17 820, 825 (Bankr. C.D. Cal. 2017) (California Attorney General imposed conditions are an
18 “interest in property” that can be stripped off the assets through a sale under § 363); *In re La*
19 *Paloma Generating, Co.*, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017) (holding that
20 emission surrender obligations created by California regulations and statutes and enforced by the
21 California Air Resources Board are an interest in property which can be cut off by a § 363 sale)
22 *See also In re Trans World Airlines, Inc.*, 322 F.3d 283, 285, 288 (3d Cir. 2001) (holding that
23 plaintiff’s interests in travel vouchers that were issued to settle employment discrimination are an
24 interest under § 363 because they arise from the property being sold); *PBBPC, Inc. v. OPK*
25 *Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860, 867-870 (1st Cir. B.A.P. 2013) (holding that
26 debtor’s assets could be sold free and clear of Commonwealth of Massachusetts’s right to treat a
27 purchaser of substantially all of the assets of chapter 11 debtor as a “successor employer” to
28 which debtor’s experience rating could be imputed to determine purchaser’s unemployment

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1 insurance contribution); *In re ARSN Liquidating Corp. Inc.*, 2017 WL 279472, *5 (Bankr. D.N.H.
2 Jan. 20, 2017) (Nat'l Council on Compensation Ins. violated sale order by imputing debtor's
3 workers' compensation experience rating to buyer in setting buyer's workers' compensation
4 experience rating); *In re Vista Marketing Group Ltd.*, 557 B.R. 630, 635-39 (Bankr. N.D. Ill.
5 2016) (free and clear language in sale order prevented a state sanitary district from asserting claim
6 against asset purchaser for connection fee surcharge that was calculated based entirely on debtor's
7 use of the district's sewer facilities); *United Mine Workers of Am. Combined Benefit Fund v.*
8 *Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016) (sale under § 363 cuts off Coal Act
9 obligations despite language in Act imposing successor liability on buyer); *In re Christ Hospital*,
10 502 B.R. 158, 76-79 (Bankr. D.N.J. 2013) (section 363 sales cut off tort claims against purchaser
11 of nonprofit hospital); *In re Tougher Indus.*, 2013 WL 1276501 at **6-9 (Bankr. N.D.N.Y. Mar.
12 27, 2013) (holding that debtor's assets could be sold free and clear of New York State
13 Department of Labor's right to use the debtor's experience rating to access the buyer's tax
14 liability as successor to the debtor); *In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 702-03
15 (S.D.N.Y 2012) ("Section 363(f) can be used to sell property free and clear of claims that could
16 otherwise be assertable against the buyer of the assets under the common law doctrine of
17 successor liability"); *WBO P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBO P'ship)*, 189
18 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (holding that Commonwealth of Virginia's right to
19 recapture depreciation is an "interest" as that term is used in § 363(f))

20 In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the
21 Third Circuit specifically addressed the scope of the term "any interest." The Third Circuit
22 observed that while some courts have "narrowly interpreted that phrase to mean only in rem
23 interests in property," the trend in modern cases is towards "a more expansive reading of
24 'interests in property' which 'encompasses other obligations that may flow from ownership of the
25 property.'" *Id.* at 289 (citing 3 Collier on Bankruptcy, ¶ 363.06[1] (L. King, 15th rev. ed. 1988)).
26 As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, the scope of § 363(f) is
27 not limited to *in rem* interests. 99 F.3d 573, 581-582 (4th Cir. 1996) (holding that coal mine
28 operators could sell their assets free and clear of their obligations to a benefits plan and fund

1 under the Coal Act). Thus, debtors “could sell their assets under § 363(f) free and clear of
2 successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at
3 258 (citing *Leckie*, 99 F.3d at 582).

4 Courts have consistently held that a buyer of a debtor’s assets pursuant to a § 363 sale
5 takes such assets free from successor liability resulting from pre-existing claims. *See The Ninth*
6 *Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996)
7 (stating that a bankruptcy court has the power to sell assets free and clear of any interest that
8 could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v.*
9 *Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988)
10 (channeling of claims to proceeds consistent with intent of sale free and clear under § 363(f)). The
11 purpose of an order purporting to authorize the transfer of assets free and clear of all “interests”
12 would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against
13 the purchaser arising from the Debtors’ pre-sale conduct. Under § 363(f), the purchaser is
14 entitled to know that the Purchased Assets and/or the Other Assets are not infected with latent
15 claims that will be asserted against the purchaser after the proposed transaction is completed.
16 Accordingly, consistent with the above-cited case law, the order approving the Sale should state
17 that the Successful Bidder is not liable as a successor under any theory of successor liability, for
18 claims that encumber or relate to the Purchased Assets and/or the Other Assets.

19 **iii. The Successful Bidder Should be Afforded All Protections Under § 363(m) as**
20 **A Good Faith Purchaser**

21 Section 363(m) protects a good-faith purchaser’s interest in property purchased from the
22 debtor’s estate notwithstanding that the sale conducted under § 363(b) is later reversed or
23 modified on appeal. Specifically, § 363(m) states that:

24 The reversal or modification on appeal of an authorization under
25 [section 363(b)] . . . does not affect the validity of a sale . . . to an entity
26 that purchased . . . such property in good faith, whether or not such entity
27 knew of the pendency of the appeal, unless such authorization and such
28 sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) “codifies Congress’s strong preference for finality and
efficiency” in bankruptcy proceedings. *In re Energytec, Inc.* 739 F.3d 215, 218-19 (5th Cir.

2013). The Ninth Circuit has repeatedly held that, under § 363(m), “[w]hen a sale of assets is made to a good faith purchaser, it may not be modified or set aside unless the sale was stayed pending appeal.” *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 576 (9th Cir. 1998) ; *In re Ewell*, 958 F.2d 276, 282 (9th Cir. 1992) (“Because the Buyer was a good faith purchaser, under 11 U.S.C. § 363(m) the sale may not be modified or set aside on appeal unless the sale was stayed pending appeal.”); *Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.)*, 846 F.2d 1170, 1172 (9th Cir. 1988) (“Finality in bankruptcy has become the dominant rationale for our decisions [...]”).

The selection of the Successful Bidder will be the product of arms’ length, good faith negotiations in an anticipated competitive purchasing process. The Debtors intend to request at the Sale Hearing a finding that the Successful Bidder is a good faith purchaser entitled to the protections of § 363(m).

E. RELIEF FROM THE 14-DAY WAITING PERIOD UNDER RULES 6004(H) AND 6006(D) IS APPROPRIATE

Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Order be effective immediately by providing that the 14-day stays under Rules 6004(h) and 6006(d) are waived.

The purpose of Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *Collier on Bankruptcy*, ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, *Collier* provides that if an objection is filed and overruled, and the objecting

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1 party informs the court of its intent to appeal, the stay may be reduced to the amount of time
2 actually necessary to file such appeal. *Id.*

3 The Debtors hereby request that the Court waive the 14-day stay periods under Rules
4 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay
5 period to the minimum amount of time needed by the objecting party to file its appeal.

6 **F. THE APPLICABLE REQUIREMENTS OF LBR 6004-1 HAVE BEEN SATISFIED**

7 Here all of the applicable requirements of LBR 6004-1(b) pertaining to the Motion and the
8 request therein to approve the Bidding Procedures have been satisfied. First, as required by LBR
9 6004-1(b)(2), the Notice of Motion describes the proposed Bidding Procedures and includes a
10 copy of the Stalking Horse APA. Second, as required by LBR 6004-1(b)(2), the Notice of the Bid
11 Procedures Motion and this Memorandum describe marketing efforts undertaken and the
12 anticipated marketing of the Purchased Assets through the deadline for prospective Overbidders
13 to submit bids for the Auction. Third, the Debtors provided notice of the Notice of Motion,
14 Motion, and this Memorandum pursuant to LBR 6004-1(b)(3) and the *Order Granting*
15 *Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132]. Therefore,
16 the Debtors submit that service of the Notice of Motion, Motion, and this Memorandum by such
17 means was adequate and appropriate.

18 **V. CONCLUSION**

19 **WHEREFORE**, the Debtors respectfully request that the Court enter an order: (i)
20 granting the relief requested herein; and (ii) granting such other and further relief as the Court
21 may deem proper.

22 Dated: January 17, 2019

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SAMUEL R. MAIZEL
TANIA M. MOYRON

24 By /s/ Tania M. Moyron
25 Tania M. Moyron

26 Attorneys for the Chapter 11 Debtors and
27 Debtors In Possession
28

EXHIBIT A

ASSET PURCHASE AGREEMENT

By and Among

Verity Health System of California, Inc., Verity Holdings, LLC,

**St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc.,
Seton Medical Center**

and

Strategic Global Management, Inc.

Dated January 8, 2019

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the 8th day of January, 2019 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), St. Francis Medical Center, a California nonprofit public benefit corporation (“**St. Francis**”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“**St. Vincent**”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“**St. Vincent Dialysis**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” and together with St. Francis Medical Center, St. Vincent Medical Center and St. Vincent Dialysis, collectively, the “**Hospital Sellers**”) (Verity, Verity Holdings, St. Francis, St. Vincent, St. Vincent Dialysis and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and Strategic Global Management, Inc., a California corporation (“**Purchaser**”).

RECITALS:

A. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis (collectively, the “**St. Francis Hospital**”).

B. St. Vincent engages in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent (collectively, the “**St. Vincent Hospital**”).

C. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Hospital**”) and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Coastside Hospital**”) and together with the St. Francis Medical Center Hospital, the St. Vincent Medical Center Hospital and the Seton Hospital, the “**Hospitals**”; the business of the operation of the Hospitals is referred to herein as the “**Businesses**”).

D. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Sellers and used with respect to the Businesses, for the consideration and upon the terms and conditions contained in this Agreement.

E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastside Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

be credited against the Purchase Price. Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally-insured financial institution mutually acceptable to Purchaser and Sellers. In addition, on the Signing Date, Purchaser shall deliver to Sellers executed letters from its financing sources, in form and substance satisfactory to Sellers in their discretion.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) promptly but no later than ten (10) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by each Seller, with respect to the Assets;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3, together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.5 favorable original certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below);

1.4.8 a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Businesses, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

1.4.9 acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date, and

1.4.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing. At or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 favorable original certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.7 the Assumption Agreement, duly executed by Purchaser;

1.5.8 the License Agreement referenced in Section 1.7(q);

1.5.9 the Transition Services Agreement; and

1.5.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments, other than the PACE Special Assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by any Seller, pay to such Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Sellers shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but uncollected as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

to the operation of the Hospital of such Hospital Seller that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

(e) other than the Excluded Settlements and Actions (defined below), all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by such Seller or such Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases and other items described in Section 1.8(h);

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Hospital of such Seller or (ii) used in the operation of the Hospital of such Seller (the “**Inventory**”) except as set forth in Section 1.8(e);

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and prepaid taxes) and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Hospital of such Hospital Seller (the “**Prepays**”);

(h) to the extent assignable or transferrable, all of the following that are not proprietary to such Seller and/or owned by or proprietary to such Hospital Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Hospital of such Hospital Seller, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by such Hospital Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Sellers and used by Sellers with respect to the operations of the Hospitals;

(j) all Measure B trauma funding received after the Signing Date to be paid related to service periods ending on or after the Signing Date (pro rated between Purchaser and Sellers for any such payments covering service periods which include days both before and after the Signing Date based upon the number of days in the relevant payment period before the Signing Date (for the account of Sellers) and after the Signing Date (for the account of Purchaser));

(k) Except for as stated in Section 1.7(j), all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation,

accounts, notes or other amounts receivable, disproportionate share payments and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(l) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the Accounts Receivable acquired by Purchaser at the Closing;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

(r) the right to use the names “St. Francis Medical Center”, “St. Vincent Medical Center”, “Seton Medical Center” and “Seton Medical Center Coastside”, including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Sellers and the names of the Hospitals, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Businesses, the completion of the

Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

(b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;

(c) all contracts that are not Assumed Contracts;

(d) all leases that are not Assumed Leases;

(e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;

(f) assets owned and provided by vendors of services or goods to the Hospital of such Hospital Seller;

(g) all of such Seller's organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;

(h) all claims, counterclaims and causes of action of such Seller or such Seller's bankruptcy estate (including parties acting for or on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of such Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;

(i) other than casualty insurance proceeds described in Section 1.7(m), all insurance policies and contracts and coverages obtained by such Seller or listing such Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;

(j) all deposits made with any entity that provides utilities to the Hospital (the **"Utility Deposits"**);

(k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

(l) all non-transferrable unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(m) all other bank accounts of such Sellers not listed on **Schedule 1.7(u)**;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services);

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(h) or 1.8(y) (together with the items identified in Section 1.8(h) and 1.8(y), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Signing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties; and

(cc) any assets identified in Schedule 1.8(cc).

1.9 Assumed Obligations. On the Closing Date, each Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of such Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of such Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of such Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time;

(d) all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii);

(e) all liabilities and obligations of such Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of such Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) all liabilities or obligations provided for in Section 5.3;

(j) any obligations or liabilities Purchaser may desire or need to assume in order to have the Certifications/Licenses/Permits identified on Schedule 1.7(b) reissued to Purchaser, as well as any liabilities or obligations associated with Sellers' Medicare and Medi-Cal provider agreements, but only to the extent assumed by Purchaser, and any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

(k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the "**Excluded Liabilities**"), and each Seller shall remain fully and solely responsible for all of such Seller's debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively "**Evaluated Contracts**"). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "**Rejected Contracts**"); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date and as of the last day of the Final Diligence Period, except as would not have a material adverse effect upon the Hospitals, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title) and 2.14 (Legal Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by such Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of such Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

2.3 Organization and Good Standing; No Violation.

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller’s articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in material breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2018; (ii) unaudited income statements of the Sellers for the twelve-month periods ended June 30, 2018; (iii) the audited consolidated income statements of Sellers for the years ended 2016 and 2017; and (iv) the unaudited consolidated balance sheet of Sellers as of June 30, 2018.

(b) the income statements contained in the Historical Financial Statements present, fairly in all material respects the results of the operations of the Sellers as of and for the periods covered therein and, except as set forth on Schedule 2.13(b), the balance sheets contained in the Historical Financial Statements (i) are true, complete and correct in all material respects; (ii) present, fairly in all material respects the financial condition of the Sellers as of the dates indicated thereon; and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

2.14 Legal Proceedings. Except as set forth on Schedule 2.14, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers' claims and noticing agent's website at <http://www.kccclcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospitals or the Hospitals by Sellers before any governmental authority. Except as set forth on Schedule 2.14, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospitals or the other Assets or the Hospitals and are in substantial compliance with respect to each such government order.

2.15 Employee Benefits. Schedule 2.15(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee pension benefit plan" as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Seller with respect to the operation of the Hospital, in which any employee of Seller participates in his capacity as such (collectively, the "**Seller Plans**").

2.16 Personnel. Schedule 2.16 sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and scheduled bonus, and the accrued paid time off pay of all employees of Sellers (including employees of the Hospitals and employees of Verity and Verity Holdings) immediately prior to December 21, 2018, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Sellers's policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "**Hospital Employees**") and indicating whether the Hospital Employee is full- time or part-time. Sellers shall have the right to update to Schedule 2.16(a) to reflect changes in employment status or new hires and terminations occurring after December 21, 2018 by providing a revised schedule to Purchase no later than five (5) Business Days before the date scheduled for the Closing.Insurance. Schedule 2.17 contains a list of all material insurance maintained by Sellers with respect to the Assets and the Businesses, as of the Signing Date.

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller's Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers' representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

to Sellers, with a concurrent management agreement entered into at that time upon terms mutually agreeable to the parties in their reasonable business judgment. The Sale Leaseback Agreement and Interim Management Agreement will terminate at the Closing when the Purchaser is issued the Licenses necessary to operate the Hospitals directly (namely, the Hospital Licenses and pharmacy permits).

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller’s and such Seller’s affiliates’ post-Closing administration of such Seller’s and such Seller’s affiliates’ pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets. As soon as practicable after the Closing Date, Purchaser shall deliver to each Seller or such Seller’s designee any Excluded Assets of such Seller found at the

Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the "**Sales Procedures Motion**"), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement ("**Overbid**") to another purchaser ("**Overbidder**") unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the "**Alternate Transaction**") and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.5%) of the Cash Consideration (\$21,350,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the "**Break-Up Fee**"); provided, however, that in the event that

the Purchaser is successful as to some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets not actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i), as compared to the Assets which were the subject of this Agreement.; and

(3) The Break-Up Fee shall be deemed to be an allowed expense of the kind specified in Section 503(b) of the Bankruptcy Code to be paid solely from the proceeds of the Alternate Transaction, pursuant to the Sale Order. The Break-Up Fee shall not be paid if the Alternate Transaction was pursued due to a material breach by the Purchaser or the Purchaser's failure or refusal to consummate the transaction after the satisfaction or waiver of all closing conditions.

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

If Sellers fails to obtain Bankruptcy Court approval for the Sales Procedures Motion by no later than four weeks after the end of the Final Diligence Period, Purchaser shall have the right to terminate this Agreement, without recourse or liability, and Seller shall immediately thereafter return to Purchaser the Deposit and any interest earned thereon.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "**Sale Order**" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(d) Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before

45 days from the date of the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations. Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement which are not as set forth on Schedule 8.6 (the "**Additional Conditions**"), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order finding that

the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions. If Sellers obtain such an order, from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order to determine, in Purchaser’s sole and absolute discretion, and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement. If Purchaser determines not to proceed, Purchaser shall have the right to terminate this Agreement and receive the return of its Good Faith Deposit.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the

breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

10.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "**Document Retention Period**"), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**"), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records

with respect to time periods prior to the Effective Time (including, without limitation, access to records of patients treated at the Hospital prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospital, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Hospital in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Sellers. Such documents and other materials shall be, at Sellers' option, either (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Hospital on and after the Effective Time.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Sellers or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Sellers after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Closing of Financials. Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the "**Post-Effective Time CFO**") to cooperate with Sellers' representatives in

order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers' estate.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

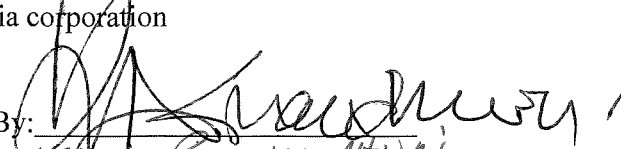
12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**STRATEGIC GLOBAL
MANAGEMENT, INC.,**
a California corporation

Signature By: 

Print Name: KAL P. CHAUDHURI

Title: CHAIRMAN & CEO

Date: JANUARY 9, 2019

SELLERS:

ST. FRANCIS MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____

Print Name: _____

Title: _____

Date: _____

ST. VINCENT MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____

Print Name: _____

Title: _____

Date: _____

**ST. VINCENT DIALYSIS CENTER,
INC.**

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

SETON MEDICAL CENTER,

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

VERITY HOLDINGS, LLC,

a California limited liability company

Signature By:_____

Print Name:_____

Title:_____

Date:_____

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC.,**

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

SCHEDULE 6.1(b)(3)

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be employed in connection with the sale of (i) the assets (the “Purchased Assets”) enumerated in the Stalking Horse APA (as defined below), including, but not limited to, St Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center (including Seton Coastside) (collectively, the “APA Facilities”); and (ii) assets not otherwise enumerated in the APA, but associated with the ownership or operation of the APA Facilities and available for purchase (the “Other Assets”), in connection with the chapter 11 cases pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), jointly administered as case number 2:18-bk-20151-ER, in the form to be approved by the Bankruptcy Court, by Order dated _____, 2019 (the “Bidding Procedures Order”).

The Debtors entered into that certain Asset Purchase Agreement, dated January 8, 2019 between the Debtors, on the one hand, and Strategic Global Management, Inc., a California corporation (the “Stalking Horse Purchaser”) on the other hand, pursuant to which the Stalking Horse Purchaser shall acquire the Purchased Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse APA”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the *Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Hearing to Consider Approval of the Sale to the Highest Bidder, (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the “Sale Motion”) or the Bidding Procedures Order.

I. ASSETS TO BE SOLD

The Debtors seek to complete a sale of substantially all assets of APA Facilities, including both the Purchased Assets and the Other Assets (the “Sale”). The Stalking Horse APA will serve as the “stalking-horse” bid for the Purchased Assets.

II. THE BIDDING PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets and/or the Other Assets, they intend to hold a sale process for the Purchased Assets and/or the Other Assets pursuant to the procedures and on the timeline proposed herein.

¹ Unless otherwise defined, all capitalized terms shall have the meanings ascribed to them in the Stalking Horse APA.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following to the Debtors:

- a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or and/or the Other Assets or otherwise participating in connection with such bid; and
- b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Purchased Assets and/or the Other Assets; without limiting the foregoing, each such confidentiality agreement shall contain standard non-solicitation provisions.

A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors, and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

B. Due Diligence

The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid,” and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical

Center, Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;²

- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-Up Bidder, the time specified in Section II (K) below;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$21,350,000.00); (ii) the amount of the Expense Reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee and the Expense Reimbursement, the "Minimum Qualified Bid");

² For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

- j) if the bid is a partial bid (the “Partial Bid”),³ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a “Partial Bid Auction Qualified Bid”). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers’ responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii) Purchased Assets and/or Other Assets, subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;
- l) it contains sufficient information concerning the Qualified Bidder’s ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it;
- m) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets and/or Other Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets and/or Other Assets or the completeness of any information provided in connection therewith or with the relevant Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to: (a) 20% of purchase price for bids under \$5 million; (b) for bids greater than \$5 million and less than \$100 million, the greater of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the “Good Faith Deposit”), which Good Faith Deposit shall, be forfeited if such bidder

³ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

is the Successful Bidder and breaches its obligation to close; and (ii) if the Qualified Bid is a bid made by a secured creditor of the Debtors (a “Credit Bid Bidder”) who intends to make a credit bid (each, a “Credit Bid Bid”), evidence of (a) the basis for and property covered by such Credit Bid Bidder’s secured claim, (b) the amount of such Credit Bid Bidder’s claim that is secured by the property in question, (c) whether it is the senior secured claim on the property (x) prepetition and (y) as of the date of the request to be a Qualified Bidder, as well as (d) evidence of the resolution of any Challenge to such Credit Bid Bidder’s secured claim within the meaning of the Final DIP Order.

- p) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
- r) it identifies the person(s) and their title(s) who will attend the relevant Auction, and confirms that such person(s) have authority to make binding Overbids (defined below) at such Auction
- s) it contains such other information reasonably requested by the Debtors; and
- t) it is received prior to the Bid Deadline.

The Debtors, in consultation with the Consultation Parties (who shall receive copies of the Purchase Agreements relating to any bids cast pursuant to these Bidding Procedures as soon as reasonably practicable), may qualify any bid that meets the foregoing requirements as a Qualified Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auctions, and the Sale.

The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser, all Qualified Bidders and the Notice Parties in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder’s bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating any such Qualified Bid to the Consultation Parties, the Stalking Horse Purchaser and such Qualified Bidders, and the Notice Parties on the earlier of: (1) the date that any bid other than the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days prior to the Partial Bid Auction.

D. Bid Deadline

In order to be eligible to participate in the Auction, a Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (taniamoyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,

P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)), so as to be received by the Notice Parties not later than March 29, 2019, at 4:00 p.m. (prevailing Pacific Time) for partial bids (the “Partial Bid Deadline”) or April 3, 2019, at 4:00 p.m. (prevailing Pacific Time) for full bids (the “Bid Deadline”).

E. Credit Bidding

Any party with a valid, properly perfected security interest in any of the Purchased Assets and/or Other Assets (which is not subject to a pending Challenge within the meaning of the Final DIP Order) may credit bid for such Purchased Assets and/or Other Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Debtors for cause; provided, however, that any party seeking to credit bid may not credit bid unless such bid provides that all secured creditors with security interests on such Purchased Assets and/or Other Assets that are senior to such junior security interest are to be paid in cash in connection with such junior creditor’s bid. Any credit bids made by secured creditors shall not impair or otherwise affect the Stalking Horse Purchaser’s entitlement to the benefits of the Bidding Procedures and related protections granted under the Bidding Procedures Order.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation: (i) the amount of such bid; (ii) the risks and timing associated with consummating such bid; (iii) any proposed revisions to the form of Stalking Horse APA; and (iv) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with the Consultation Parties, including the amount of cash included in the bid.

G. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse APA, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Purchased Assets. If the Debtors receive one or more qualified Partial Bid Auction Qualified Bids and, after the Partial Bid Auction contemplated by Section (H) of these Bidding Procedures, the Debtors will determine, in consultation with the Consultation Parties, if there are any Partial Bidders that will not be qualified to participate at the Full Bid Auction

H. Auction Process

If the Debtors receive one or more Partial Bid Auction Qualified Bids as set forth above, the Debtors will conduct separate auctions of each asset or combinations thereof (each, a “Partial Bid Auction”). Any Partial Bidder holding a Partial Bid Auction Qualified Bid shall be entitled to bid on any assets in any Partial Bid Auction(s). The procedures below for the Full Bid Auction shall apply to the Partial Bid Auction, except as where otherwise indicated. The Debtors will conduct the Partial Bid Auction(s), which shall be transcribed, on April 8, 2019 at 10:00 a.m. (prevailing Pacific Time) at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los

Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation with the Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to participate at the Full Bid Auction, including (without limitation) the highest and best bids for each asset (the “Winning Partial Bids”), shall be permitted to participate in the Full Bid Auction (as defined below) of the Purchased Assets and/or the Other Assets; except that:

- (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking Horse APA, there will be a Full Bid Auction (as defined below) and (1) the Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities, or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA at Section 6.26 (b)(2);
- (b) If the Partial Bids do not include all four APA Facilities, and if there are no other Qualified Full Bids, then Seller, in its discretion, after consultation with the Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1) to have no Full Bid Auction, and the Stalking Horse Purchaser will purchase the four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the “Remaining Facility”), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other Assets), the Debtors will conduct a full bid auction of the Purchased Assets and/or the Other Assets (the “Full Bid Auction”), which shall be transcribed, on April 9, 2019 (the “Full Bid Auction Date”), at 10:00 a.m. (prevailing Pacific Time), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Full Bid Auction shall be conducted in accordance with the following procedures:

- a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their

respective advisors, and other parties who request and receive authority to attend the auction in advance from the Debtors may attend the Auction;

- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the relevant Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the relevant Auction; provided that all Qualified Bidders wishing to attend the relevant Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the relevant Auction in person;
- e) the Debtors, after consultation with the Consultation Parties and the Stalking Horse Purchaser, may employ and announce at the relevant Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the relevant Auction, (ii) in the best interest of the Debtors' estates; provided, however, that rules (i) are disclosed to the Stalking Horse Purchaser and each Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the Bid Protections, the Stalking Horse APA, the Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) bidding at the relevant Auction will begin with a bid determined by the Debtors after consulting with the Consultation Parties as being the then highest and best bid which will be announced by the Debtors prior to the commencement of the Auction (the "Baseline Bid"). The Auction will continue in bidding increments to be determined in the discretion of the Debtors, in consultation with the Consultation Parties (each a "Overbid"), and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Qualified Bids and are in attendance at the Auction (including, without limitation, Winning Partial Bids), as well as to the Notice Parties;
- g) the initial Overbid, if any, shall provide for total consideration to Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount. Additional consideration in excess of the amount set forth in the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder (including, without limitation, with respect to any Winning Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not subject to a Challenge within the meaning the Final DIP Order) on any of the Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other restrictions set forth herein; and

- i) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms and conditions set forth herein, elect to bid for the Purchased Assets as described in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s), in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets subject to augmenting its Good Faith Deposit, as necessary, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

I. Selection of Successful Bid

Prior to the conclusion of the relevant Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bids submitted at the relevant Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the relevant Auction shall be subject to approval by the Court.

If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the Back-Up Bidder in accordance with Section H above, then such party or parties, prior to the Full Bid Auction, shall increase its Good Faith Deposit in the amount set forth in Section II(C)(o), or as determined by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties are bidding on all four APA Facilities, the deposit will be no less than \$30,000,000.

If selected as the Successful Bidder or the Back-Up Bidder at the conclusion of the Full Bid Auction, each of the Successful Bidder and the Back-Up Bidder shall, within forty-eight (48) hours, increase its Good Faith Deposit to the sum of five percent (5%) of the Successful Bid or Back-Up Bid, as applicable. If the Successful Bidder fails to increase the Good Faith Deposit within forty-eight (48) hours of the Auction conclusion date (the “Final Deposit”), then (1) the Successful Bidder forfeits its Good Faith Deposit, and (2) the Successful Bid is nullified (i.e., the Back-Up Bidder becomes the Successful Bidder in the amount of its last bid).

Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) business days after the conclusion of the relevant Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within forty-eight (48) hours following the conclusion of the relevant Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and Back-Up Bidders with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtors will sell the Purchased Assets and (to extent included in an Overbid) the Other Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing and satisfaction of any other closing conditions set forth in the Successful Bidder’s Purchase Agreement.

J. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days following the conclusion of the Auction.

K. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their business judgment, in consultation with the Consultation Parties, at the relevant Auction shall be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and irrevocable for thirty (30) business days after the entry of the Sale Order (the “Thirty-Day Period”). If during the Thirty-Day Period, the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court provided that the Back-Up Bidder shall thereafter keep such bid open and irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further, however, that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be authorized and required to consummate the sale to the Stalking Horse Purchaser.

If, after the Thirty-Day Period, the Successful Bidder has failed to consummate the approved sale, the Back-Up Bidder may elect, at its discretion, to remain as the Back-Up Bidder until (a) the sale closes, (b) the Successful Bidder defaults, or (c) the Back-Up Bidder elects to terminate its

participation as Back-Up Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the Back-Up Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder APA and the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will be no re-opening of the auction.

L. Break-Up Fee

In recognition of this expenditure of time, energy, and resources, the Debtors have agreed that if the Stalking Horse Purchaser is not the Successful Bidder as to the Purchased Assets, the Debtors will pay the Stalking Horse Purchaser at closing of the sale of the Purchased Assets the Break-Up Fee and the Expense Reimbursement as set forth in the Stalking Horse APA.

III. Sale Hearing

The Debtors will seek entry of the Sale Order, at the Sale Hearing on April 17, 2019, at 10:00 a.m. (or at another date and time convenient to the Court), to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in accordance with the Bidding Procedures. The Debtors may submit and present such additional evidence, as they may deem necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of the Purchased Assets."

IV. Sale Order

The Sale Order will provide Court approval of (i) the Sale to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances, pursuant to 11 U.S.C. § 363, with the proceeds of the Sale deposited in accordance with Paragraph 4 of the Final DIP Order, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale, including, without limitation, the liens and security interests of the DIP Lender and each of the Prepetition Secured Creditors under the relevant agreements, applicable law and the Final DIP Order, and (ii) the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and Leases pursuant to 11 U.S.C. § 365.

VII. Reservation

The Debtors reserve the right, as they may determine in their discretion and in accordance with their business judgment to be in the best interest of their estates, in consultation with their professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers submit their sealed, highest and best offer for the Purchased Assets and/or the Other Assets; (ii) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iv)

impose additional terms and conditions with respect to all Potential Bidders; (v) extend the deadlines set forth herein; (vi) continue or cancel an Auction and/or Sale Hearing in open court without further notice; and (vii) implement additional procedural rules that the Debtors determine, in their reasonable business judgment and in consultation with the Consultation Parties will better promote the goals of the bidding process; provided that such modifications are disclosed to each Qualified Bidder participating in the Auction; provided, however, and notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter, extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth herein or in the Stalking Horse APA.

SCHEDULES 1.4.3 TO 11.3(b) TO BE SUBMITTED

EXHIBIT 3

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

In Re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et. al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

) Lead Case No.: 2:18-bk-20151-ER
) Jointly Administered With:
) Case No. 2:18-bk-20162-ER
) Case No. 2:18-bk-20163-ER
) Case No. 2:18-bk-20164-ER
) Case No. 2:18-bk-20165-ER
) Case No. 2:18-bk-20166-ER
) Case No. 2:18-bk-20167-ER
) Case No. 2:18-bk-20168-ER
) Case No. 2:18-bk-20169-ER
) Case No. 2:18-bk-20170-ER
) Case No. 2:18-bk-20171-ER
) Case No. 2:18-bk-20172-ER
) Case No. 2:18-bk-20173-ER
) Case No. 2:18-bk-20175-ER
) Case No. 2:18-bk-20176-ER
) Case No. 2:18-bk-20177-ER
) Case No. 2:18-bk-20178-ER
) Case No. 2:18-bk-20179-ER
) Case No. 2:18-bk-20180-ER
) Case No. 2:18-bk-20181-ER

**OPPOSITION BY CALIFORNIA NURSES
TO DEBTORS' EMERGENCY MOTION
FOR AUTHORIZATION TO CLOSE
ST. VINCENT MEDICAL CENTER**

[Dkt No. 3906]

Hearing Date: January 8, 2020
Time: 10:00 AM
Place: Courtroom 1568
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012
The Hon. Ernest M. Robles



I. INTRODUCTION

The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors” or “Verity”), submits this Opposition to Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center [Docket No. 3906] on the basis that it cannot be reconciled with the California Health and Safety Code notification requirements regarding health facility and emergency room closures and places human life at an unnecessary risk.

II. ARGUMENT

1. Debtors’ Timeline for Closing St. Vincent Medical Center Blatantly Violates Applicable California Notice Requirements Regarding Cessation of Medical Facilities and Emergency Departments.

California has strict laws regarding advance notifications that must be provided to both the public and state and local agencies prior to closure of a medical facility. First, California Health and Safety Code section 1255.1(a) requires that any hospital which provides emergency medical services must provide 90 days advance notice of the elimination of such services to “the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.” Additionally, section 1255.1(b) requires the hospital to provide 90 days advance notice to residents of the community.¹ Debtors’ plan to

¹ The complete text of Cal. Health & Safety Code section 1255.1 is provided below:

(a) Any hospital that provides emergency medical services under Section 1255 shall, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.

1 eliminate emergency services within three days of an order from this Court [Docket No. 3906,
2 p. 19] does not even operate within the realm of compliance.

3 Second, Cal. Health & Safety Code section 1255.25(a)(1) requires that the public
4 receive 30 days advance notice of the closure of any healthcare facility including “a notice
5 posted at the entrance to all affected facilities and a notice to the department and the board of
6 supervisors of the county in which the health facility is located.”² Additionally, section
7 1255.25(b)(2) requires hospitals to provide Medi-Cal and Medicare patients with advance
8 notice of the closure and information on the nearest available facilities which serve these types
9 of patients so that they may have time to transition to adequate substitute care.³ These
10 protections for indigent or elderly patients are especially important given Debtors’ commitment
11 to serving the sick and poor [Docket No. 3906, p. 12] and its charitable mission have caused it
12 to treat many patients receiving insurance through Medicare and Medi-Cal. [Docket No. 8, pp.

13
14 (b) In addition to the notice required by subdivision (a), the hospital shall, within
15 the time limits specified in subdivision (a), provide public notice of the intended
16 change in a manner that is likely to reach a significant number of residents of the
17 community serviced by that facility.

18 ² The complete text of Cal. Health & Safety Code section 1255.25(a)(1) is provided
19 below:

20 (a) (1) Not less than 30 days prior to closing a health facility, as defined in
21 subdivision (a) or (b) of Section 1250, or eliminating a supplemental service, as
22 defined in Section 70067 of Chapter 1 of Division 5 of Title 22 of the California
23 Code of Regulations, the facility shall provide public notice of the proposed
24 closure or elimination of the supplemental service, including a notice posted at the
25 entrance to all affected facilities and a notice to the department and the board of
26 supervisors of the county in which the health facility is located.

27 ³The complete text of Cal. Health & Safety Code section 1255.25(b)(2) is provided below:

28 (b) The notice required by paragraph (1) or (2) of subdivision (a) shall include all
of the following:

...

(2) A description of the three nearest available comparable services in the
community. If the health facility closing these services serves Medi-Cal or
Medicare patients, this health facility shall specify if the providers of the nearest
available comparable services serve these patients.

6, 24.] While it is difficult to discern from Debtors' pleading which Saint Vincent Medical Center ("SVMC") services will conclude when, it is apparent that several services will cease prior to the provision of thirty days notice [Docket No. 19, p. 19 (e.g., the dialysis unit will be closed within 21 days of an order from this Court).]

Debtors have shown no efforts to comply with either of these two obviously applicable provisions, nor did they even allude to them in the Emergency Motion. These notification requirements are not simply pro forma mandates, but serve a vital role in helping communities, especially underserved communities such as the one surrounding SVMC, prepare for the devastating loss of an essential service. [See *Exhibit 1*, Letter from California State Senator Maria Elena Durazo and Assemblymember Wendy Carillo who represent constituents in the area served by SVMC (observing that the loss of SVMC will be devastating for the district and that the required public notice is crucial because it will "give our constituents time to figure out where patients should be going to receive care in the area, ensure workers are not left unemployed, and perhaps find a way to retain some healthcare services.".)]⁴ Nor do these provisions make exceptions for hospitals in bankruptcy.

Furthermore, given that Debtors were aware on November 18, 2019, that Strategic Global Management ("SGM") lacked the financing to close its operations, its failure to begin the process of notifying the public and state and local authorities in a timely manner is inexcusable. [Docket No. 3901, ¶ 86]. Additionally, at least by the end of September 2019, Debtors represented to this Court that the likely outcome of SGM not closing the sale was that SVMC could not remain open. [Docket No. 3188, p. 33 ("If the SGM Sale does not close, the most likely outcome is that at least three of the Hospitals will have to close.")]. Thus, once Debtors knew that SGM lacked financing to close they should have begun the process of notifying the appropriate entities since closure was imminent.

⁴ A true and correct copy of the above-described letter dated January 7, 2020 signed by Maria Elena Durazo, California State Senator, District 24 and Wendy Carillo, California State Assemblymember, District 51 is attached as Exhibit 1. CNA personally received this letter from Ms. Durazo and Ms. Carillo on January 7, 2020.

Moreover, to the extent that Debtors' delayed notification to the public was due to concerns that SVMC's staff would quit en masse once they were aware of the impending closure of their worksite, this argument is without merit. The State Legislature has spoken in favor of advance notification for all concerned parties to protect patient safety and made no exception for staffing concerns. SVMC has a responsibility to staff its operations during this notice period and just as it was able to retain key employees during this bankruptcy through offering incentives via the Key Employee Retention Plan and Key Employee Incentive Plan, it also may offer incentives to encourage necessary staff to maintain employment with SVMC during the notification period. Additionally, just as hospitals staff their facilities with personnel from temporary companies (i.e. nursing registries) during a strike or other labor shortage so too could Debtors maintain their operations by short-term contracts with registry nurses during the notice period as necessary.

Finally, unlike in *Gardens Regional* in which this Court found that debtors would need to obtain additional DIP financing to continue to operate the hospital, there is no such assertion in the Chadwick Declaration or otherwise in the Emergency Motion that additional financing would be necessary to continue to main operations at the hospital during the required notice period. Case No. 2:16-bk-17463-ER, Docket No. 633 (Bankr. C.D. Cal. Jan. 20, 2017). Instead the Chadwick Declaration contains vague assertions that the "operating losses are significant and unsustainable." [Docket No. 3906, p. 33, ¶ 8]. This statement, however true, does not excuse Debtors from complying with state law especially given that they could have at least partially complied had they started providing notice when they were aware that SGM lacked the financing to close on November 18.

2. In Similar Circumstances Bankruptcy Courts Have Enjoined Hospitals From Closing Due to Failure to Comply With State Notification Requirements.

California is not unique in having common-sense statues which require advance notification to state agencies and the public prior to closing hospitals and this issue is not new to bankruptcy proceedings. In *Norris Square Civic Ass'n v. Saint Mary Hospital*, the Eastern

1 District of Pennsylvania Bankruptcy Court granted an injunction to prevent the closure of an
2 emergency department when the hospital failed to comply with the state's requirement that
3 hospitals provide 90 days notice prior to closing an emergency department. 86 B.R. 393, 400
4 (Bankr. E.D. Pa. 1988). This Pennsylvania requirement is nearly identical to Cal. Health &
5 Safety Code section 1255.1 discussed above. The court explicitly ordered the hospital at issue
6 to comply with the state regulation:

7
8 Given our doubt that the state regulation did not also prohibit any
9 curtailment of other services until 90 days after the dispatch of the notice
10 has passed, we believe that the most conservative relief which we can
11 provide is to prevent any further restrictions on admissions through the ER
12 and the obstetrics department of the hospital . . . *Id.*

13 Likewise, this Court should also deny the Emergency Motion because it contemplates
14 closing an emergency department within three days after this Court grants its motion which
15 would be 87 days short of compliance with state mandates (assuming Debtors provide proper
16 notice once a court order is issued). Furthermore, the court in *Norris Square Civic Ass'n*
17 specifically held that bankruptcy courts are empowered to enforce state law in their
18 proceedings and that especially with regard to health facility closures, hospitals must comply
19 with federal, state and local laws:

20 Moreover, the entire field of health care is one which has caused
21 bankruptcy courts to take otherwise most unusual acts in the public
22 interest, as in *In re An Unknown Group of Cases Seeking to be Filed*, 79
23 B.R. 651 (Bankr.E.D.Va.1987), where the court *sua sponte* refused to
24 accept for filing a group of Chapter 7 petitions emanating from health care
25 companies, on the ground that these filings would endanger continued
26 health care to certain nursing homes and hospital emergency rooms.

27 We therefore have no hesitancy in concluding that, in effecting its plan to
28 close its facility, the Debtor must comply with all applicable federal, state,
and local laws.

Id. at 398.

1 California bankruptcy courts have similarly held in analogous proceedings that the
2 bankruptcy code cannot shield a furniture retailer conducting a going-out-of-business sale in
3 violation of state consumer protection laws. *In re White Crane Trading Co.*, 170 B.R. 694, 702
4 (Bankr. Cal. E.D. 1994) (“The Congress has thus required that every debtor in possession and
5 bankruptcy trustee manage and operate the debtor's property and business in compliance with
6 state laws -- good, bad, and indifferent -- that apply outside of bankruptcy.”). The state interest
7 in protecting the public is much greater in the case of a hospital closure than a going-out-
8 business sale for a furniture store. It cannot be that consumers of a bankrupt furniture store
9 have more protections than patients in an emergency room.

10
11 Moreover, with the exception of *Gardens Regional Hospital* which is distinguishable
12 from the instant situation as noted above, the cases cited by Debtors in their Emergency Motion
13 for the permissibility of hospital closures were all shut down pursuant to “closure plans”
14 approved by and developed in consultation with the New York Department of Health pursuant
15 to applicable state law, not the independent judgement of the debtors at issue. [Docket No.
16 3906, p. 27.] *In re Saint Vincents Catholic Med. Ctrs. Of N.Y.*, 445 B.R. 264, 267 Case No. 10-
17 11963 (Bankr. S.D. N.Y. 2011) (“[T]he Debtors submitted a plan of closure . . . to the
18 Department of Health. Shortly thereafter, the Debtors began to shut down the Hospital under
19 the supervision of the Department of Health and other state regulatory authorities.”); *In re St.*
20 *Vincents Catholic Med. Ctrs.*, 2007 Bankr. Lexis 3006, *61, Case No. 05-14945 (Bankr.
21 S.D.N.Y. August 29, 2007) (“St. Clair and other SVCMC staff were responsible for obtaining
22 Department of Health and canonical authority to close the Hospital.”)

23
24 **2. Due to the High Volume of ER Visits that St. Vincent Medical Center**
25 **Receives and Its Longstanding Position in the Community,**
26 **More Transition Time is Required in Order to Safeguard Human Life.**

27 Based on SVCMC’s most recent filing with the California Office of Statewide Health
28 Planning and Development, SVCMC has over thirty thousand emergency department (ED) visits

1 a year (approximately 83 per day).⁵ (*See* Exhibit 2, p. 3.) Of those thirty thousand visits,
2 twelve thousand fell in the highest risk category of “severe with threat.” (*Id.*) Given that
3 SVMC has been a part of the community since 1856 [Docket No. 3906, p. 13] and receives a
4 high number of emergency visits, the public would be put at risk if the ED was closed down
5 before it received adequate advance notice.

6 Debtor’s plan to shut the ED down within three days after the entrance of an order
7 granting the Emergency Motion [Docket 3906, p. 19] leaves many questions and concerns
8 unanswered. First, even if ambulances are placed on diversion status as Debtors propose, many
9 residents of the community will still inevitably drive to SVMC emergency room for care
10 (especially if they lack the time to wait for an ambulance and it is unlikely that the community
11 will be aware of the closure within three days of the entrance of the order Debtors’ seek).
12 Therefore, it stands to reason that driving to a shuttered emergency room could have
13 detrimental consequences in an emergency. Moreover, Debtors presented no evidence that the
14 local Emergency Medical Services (“EMS”) department are aware of the closure and have had
15 time to plan for diverting patients on a permanent basis from SVMC to other hospitals. Indeed,
16 the Emergency Motion states that Debtors do not even plan to notify the local EMS that SVMC
17 is going on diversion status until one day after the requested order is entered. [Docket 3906, p.
18 19]. Nor is there any evidence that the other area hospitals are equipped to handle patients who
19 would otherwise be treated at SVMC on such short notice.

20 These unnecessary risks to human life of prematurely closing an emergency room are
21 the very hazards Cal. Health & Safety Code section 1255.1 is intended to protect against.
22 Debtors’ expedited plan to close SVMC, however well-intentioned, simply does not take into
23

24 ⁵ Attached to this pleading as Exhibit 2 is a true and correct copy of SVMC’s Annual Utilization
25 Report filed on February 13, 2018. The undersigned downloaded this report on January 6,
26 2020 from the following website:
27 https://alirts.oshpd.ca.gov/crudUtilReport.aspx?pMode=2&pSID=101365&pFID=201&pSYear=2017&pFType=hosp&pSTypeID=87&pSName=2017_hosp
28

1 account the realities of closing an ED which has been a part of the community for close to two
2 centuries and the lead time local EMS and hospitals will need to accommodate such changes.

3
4 **4. Compliance with the State Mandated Notice Periods Also Provides a**
5 **Window for Potential Buyers to Come Forward.**

6 CNA is in agreement with Debtors that the closure of SVMC is a “last, tragic resort.”
7 [Docket No. 3906, p. 24]. Accordingly, compliance with Sections 1255.1 and 1255.25 serve
8 the dual purpose of allowing one last chance for any hospital operators to come forward to
9 acquire SVMC as either a package with other remaining hospitals or by itself now that the
10 public is aware that SGM is not going to close the sale and the likely outcome is that SVMC
11 will close. Given the harsh consequences of SVMC’s closure on the community this is not an
12 act which should be taken hastily. Indeed, it appears there is at least minimal renewed interest
13 in the SVMC as evidenced by the fact that Cain Brothers received a call from a potential buyer
14 on January 6, 2020, interested in purchasing SVMC as a going concern. [Docket No. 3906, p.
15 36.] On the other hand, once the Hospital is closed the likelihood that a buyer will come
16 forward to operate SVMC as a hospital diminishes further due to the costs associated with
17 reopening it. Thus, to preserve the possibility that another buyer may come forward following
18 the disappointing news that SGM cannot close the sale, CNA urges this Court to delay the
19 closure of SVMC until it provides the required state-mandated notices.

20 **III. CONCLUSION**

21 For all the reasons stated above, the Debtors request that the Court grant the requested
22 relief.

23
24 Dated: January 7, 2020

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

25
26 By 

Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
California Nurses Association, 155 Grand Avenue, Oakland CA 94612

A true and correct copy of the foregoing document entitled (*specify*): Opposition by California Nurses Association To Debtors' Emergency Motion For Authorization To Close St. Vincent Medical Center

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/07/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Please see Attachment.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 01/07/2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles, U.S. Bankruptcy Court, Roybal Federal Building
255 E. Temple Street, Suite 1560/Courtroom 1568, Los Angeles CA 90012 (via Overnight Mail)

☒ Service information continued on attached page

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

01/07/2020
Date

Rob Craven
Printed Name

/s/ Rob Craven
Signature

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- Neal L Wolf nwolf@hansonbridgett.com; calendarclerk@hansonbridgett.com; lchappell@hansonbridgett.com
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- Andrew J Ziaja aziaja@leonardcarder.com; sgroff@leonardcarder.com;
msimons@leonardcarder.com; lbadar@leonardcarder.com
- Rose Zimmerman rzimmerman@dalycity.org

Exhibit 1

Exhibit 1

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

California Legislature

January 7, 2020

The Honorable Ernest M. Robles
United States Bankruptcy Court, United States Bankruptcy Judge
Central District of California, Los Angeles Division
Roybal Federal Building, Courtroom 1568
255 East Temple Street
Los Angeles, CA 90012

Dear Honorable Robles:

We write regarding the proposed closure of St. Vincent Medical Center in Los Angeles, which is owned by Verity Health System.

As you may be aware, Section 1255.1 of the California Health and Safety Code requires any hospital that provides emergency medical services to notify the public as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services. Section 1255.25 of the California Health and Safety Code also requires public notice not less than 30 days prior to the proposed closure of a health facility or the elimination of a supplemental service.

As the elected representatives for State Senate District 24 and Assembly District 51 which represents St. Vincent and the surrounding community, we implore you to protect public notice of hospital closures under the law.

This tragic loss of crucial healthcare services is already devastating for our district. St. Vincent provides health care to a large number of Medi-Cal patients, the undocumented, and low income folks in Los Angeles who will struggle to access care without this facility. California's legally required public notice is crucial because it gives our constituents time to figure out where patients should be going to receive care in the area, ensure workers are not left unemployed, and perhaps find a way to retain some healthcare services.

Your courtroom should not become an avenue for this company to break the law. We urge the court to require Verity Health System to follow the Health and Safety Code and respect California's statutorily required public notice timelines.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria Elena Durazo".

The Honorable Maria Elena Durazo
California State Senator, District 24

A handwritten signature in blue ink, appearing to read "Wendy Carrillo".

The Honorable Wendy Carrillo
California State Assemblymember, District 51

Exhibit 2

Exhibit 2

[California Home](#)**ALIRTS Links**[ALIRTS Help](#)[ALIRTS Home](#)[Login](#)[Advanced Search](#)[LFIS Home](#)[View/Edit Report](#)☐ My CA ☒ ALIRTS[Printer Friendly Version](#)**Annual Utilization Report of Hospitals**

Facility Name: ST. VINCENT MEDICAL CENTER
OSHPD ID: 106190762 **Report Status:** Submitted
License Category: General Acute Care Hospital **Report Year:** 2017

Table of Contents

Click on any of the links listed below to view the corresponding section.

[Section 1 - General Information](#)[Section 2 - Hospital Description](#)[Section 3 - Inpatient Services](#)[Section 4 - Emergency Department Services \(EDS\)](#)[Section 5 - Surgery and Related Services](#)[Section 6 - Major Capital Expenditures](#)**Section 1 - General Information**

1. Facility Name:	ST. VINCENT MEDICAL CENTER
2. OSHPD ID Number:	106190762
3. Street Address:	2131 WEST 3RD STREET
4. City:	LOS ANGELES
5. Zip:	90057
6. Facility Phone No.:	(213) 484 - 7111 ext.
7. Administrator Name:	Margaret Pfeiffer
9. Was this hospital in operation at any time during the year?	Yes
10. Operation Open From:	1/1/2017
11. Operation Open To:	12/31/2017
12. Name of Parent Corporation:	Verity Health System
13. Corporate Business Address:	203 Redwood Shores Parkway, Suite 800
14. City:	Redwood City
15. State:	CA
16. Zip:	94065 -
17. Person Completing Report:	Sumer Sharma
18. Report Preparer's Phone No.:	213-484-7054
19. Fax No.:	213-484-7678
30. Submitted by:	ssharma
31. Submitted Date and Time:	2/13/2018 3:32:40 PM

Section 2 - Hospital Description**LICENSE CATEGORY (TYPE) (Completed by OSHPD.)**

Line No.		(1)
1.	License Category:	General Acute Care Hospital

LICENSEE TYPE OF CONTROL

Line No.		(1)
5.	Select the category that best describes the licensee type of control of your hospital (the type of organization that owns the license) from the list below:	Non-profit Corporation (incl. Church-related)

PRINCIPAL SERVICE TYPE

Line No.		(1)
25.	Select the category that best describes the type of service provided to the majority of your patients. (The type or service is usually consistent with majority of, or mix of reported patient days.)	General Medical / Surgical

Section 3 - Inpatient Services**INPATIENT BED UTILIZATION - DO NOT INCLUDE NORMAL NEWBORNS IN BED UTILIZATION DATA**

Line No.	Bed Classification and Bed Designation	(1) Licensed Beds as of 12/31	(2) Licensed Bed Days	(3) Hospital Discharges (including deaths)	(4) Intra-hospital Transfers	(5) Patient (Census) Days
	GAC Bed Designations					
1.	Medical / Surgical (include GYN)	253	92,345	9,943		50,345
2.	Perinatal (exclude Newborn / GYN)	0	0	0		0
3.	Pediatric	0	0	0		0
4.	Intensive Care	67	24,455	309	905	2,545
5.	Coronary Care	0	0	0	0	0

Line No.	Desc	Exhibit 2	Page 3 of 7
6.	Acute Respiratory Care	0	0
7.	Burn	0	0
8.	Intensive Care Newborn Nursery	0	0
9.	Rehabilitation Center	19	6,935
15.	Subtotal - GAC	339	123,735
16.	Chemical Dependency Recovery Hospital	0	0
17.	Acute Psychiatric	0	0
18.	Skilled Nursing	27	9,855
19.	Intermediate Care	0	0
20.	Intermediate Care / Developmentally Disabled	0	0
25.	Total (Sum of lines 15 thru 20)	366	133,590

Chemical Dependency Recovery Services In Licensed GAC and Acute Psychiatric Beds*

Line No.	Bed Classification	(1) Licensed Beds	(3) Hospital Discharges	(5) Patient (Census) Days
30.	GAC - Chemical Dep Recovery Services	0	0	0
31.	Acute Psych - Chemical Dep Recovery Svcs	0	0	0

* The licensed services data for these CDRS are to be included in lines 1 through 25 above.

Newborn Nursery Information

Line No.		(1) Nursery Bassinets	(3) *Nursery Infants	(5) Nursery Days
35.	Newborn Nursery	0	0	0

* Nursery Infants are the "normal" newborn nursery equivalent to discharges from licensed beds.

Skilled Nursing Swing Beds (Completed by OSHPD.)

Line No.		(1)
40.	Number of licensed General Acute Care beds approved for Skilled Nursing Care:	0

Complete lines 43 through 70 only if your hospital has licensed Acute Psychiatric or PHF beds. Include Chemical Dependency Recovery Services provided in licensed Acute Psychiatric beds.

Acute Psychiatric Patients By Unit on December 31

Line No.		(1) Number of Patients
43.	Locked	0
44.	Open	0
45.	Acute Psychiatric Total*	0

Acute Psychiatric Patients By Age Category on December 31

Line No.		(1) Number of Patients
46.	0 - 17 Years	0
47.	18 - 64 Years	0
49.	65 Years and Older	0
50.	Acute Psychiatric Total*	0

Acute Psychiatric Patients By Primary Payer on December 31

Line No.		(1) Number of Patients
51.	Medicare - Traditional	0
52.	Medicare - Managed Care	0
53.	Medi-Cal - Traditional	0
54.	Medi-Cal - Managed Care	0
55.	County Indigent Programs	0
56.	Other Third Parties - Traditional	0
57.	Other Third Parties - Managed Care	0
58.	Short-Doyle (includes Short-Doyle Medi-Cal)	0
59.	Other Indigent	0
64.	Other Payers	0
65.	Acute Psychiatric Total*	0

* Acute Psychiatric Total on lines 45, 50 and 65 must agree.

Short Doyle Contract Services

Line No.		(1)
70.	During the reporting period, did you provide any acute psychiatric care under a Short-Doyle contract?	No

Inpatient Hospice Program

Line No.		(1)
71.	Did your hospital offer an inpatient hospice program during the report period?	No

If 'yes' on line 71, what type of bed classification is used for this service? (Check all that apply.)

Line No.	Bed Classification	(1)
72.	General Acute Care	No
73.	Skilled Nursing (SN)	No
74.	Intermediate Care (IC)	No

PALLIATIVE CARE PROGRAM

Line No.		
80.	Did your hospital have an inpatient palliative care program during the report period?	No

PALLIATIVE CARE PROGRAM - An interdisciplinary team that sees patient, identifies needs, makes treatment recommendations, facilitates patient and/or family decision making, and/or directly provides palliative care for patients with serious illness and their families.

If 'yes' on line 80, Please answer the questions below.

Line No.		(1)
81.	How many Advanced Practice Nurses(APN)Registered Nurses(RN) are on the inpatient palliative care team?	0
82.	How many of these APN/RNs are board certified by the National Board for Certification for Hospice and Palliative Nursing?	0
83.	How many Physicians are on the inpatient palliative care team?	0
84.	How many of these Physicians are board certified by the American Board of Medical Specialties?	0
85.	How many Social Workers are on the inpatient palliative care team?	0
86.	How many of these Social Workers hold an Advanced Certified Hospice and Palliative Social Worker credential from the National Association of Social Worker?	0
87.	How many Chaplains are on the inpatient palliative care team?	0

*Staffing data should only reflect inpatient palliative care team.

Line No.		(1)
90.	Did your hospital have outpatient palliative care services during the report period?	No

Section 4 - Emergency Department Services (EDS)

EMSA Trauma Center Designation on December 31

(Completed by OSHPD from EMSA data.)

Line No.	(1) Designation	(2) Pediatric
1.		

Licensed Emergency Department Level

(Completed by OSHPD from DHS Data.)

Line No.	(1) January 1	(2) December 31
2.	Basic	Basic

Services Available on Premises

(Check all that apply.)

Line No.	Services Available	(1) 24 Hour	(2) On-Call
11.	Anesthesiologist	No	Yes
12.	Laboratory Services	Yes	No
13.	Operating Room	No	Yes
14.	Pharmacist	Yes	No
15.	Physician	Yes	No
16.	Psychiatric ER	No	Yes
17.	Radiology Services	Yes	No

Emergency Department Services

Line No.	EDS Visit Type	CPT Codes	(1) Visits not Resulting in Admission*	(2) Admitted from ED (Enter Total Only if Details not Available)	(3) Total ED Traffic (1) + (2)
21.	Minor	99281	374	0	
22.	Low/Moderate	99282	2,447	0	
23.	Moderate	99283	8,269	0	
24.	Severe without threat	99284	6,472	469	
25.	Severe with threat	99285	5,419	7,018	
30.	TOTAL		22,981	7,487	30,468

* DO NOT INCLUDE patients who register but left without being seen, employee physicals and scheduled Clinic-type visits.

Emergency Medical Treatment Stations on December 31

Line No.		(1)
35.	Enter the number of emergency medical treatment stations.	8

Treatment Station - A specific place within the emergency department adequate to treat one patient at a time. Do not count holding or observation beds.

Non-Emergency (Clinic) Visits Seen in Emergency Department

Line No.		(1)
40.	Enter the number of non-emergency (clinic) visits seen in ED.	0

Emergency Registrations, But Patient Leaves Without Being Seen*

Line No.		(1)
45.	Enter the number of EDS registrations that did NOT result in treatment.	164

* Include patients who arrived at ED, but did not register and left without being seen (if available)

Emergency Department Ambulance Diversion Hours		
Line No.		(1)
50.	Were there periods when the ED was unable to receive any and all ambulance patients during the year and as a result ambulances were diverted to other hospitals? If 'yes' fill out lines 51 through 62 below. Count only those hours in which the ED was unavailable TO ALL PATIENTS (see instructions).	Yes

Number of Ambulance Diversion Hours that occurred at Emergency Department

Line No.	Month	(1) Hours
51.	January	75
52.	February	3
53.	March	1
54.	April	11
55.	May	2
56.	June	13
57.	July	0
58.	August	1
59.	September	1
60.	October	1
61.	November	1
62.	December	34
65.	Total Hours	143

Section 5 - Surgery and Related Services

Surgical Services

Line No.	Surgical Services	(1) Surgical Operations	(2) Operating Room Minutes
1.	Inpatient	2,758	527,253
2.	Outpatient	3,460	363,678

Operating Rooms On December 31

Line No.	Operating Room Type	(1) Number
7.	Inpatient Only	0
8.	Outpatient Only	0
9.	Inpatient and Outpatient	18
10.	Total Operating Rooms	18

Ambulatory Surgical Program

Line No.		(1)
15.	Did your hospital have an organized ambulatory surgical program?	No

Live Births

Line No.		(1) Number
20.	Total Live Births (Count multiple births separately)*	0
21.	Live Births with Birth Weight Less Than 2500 grams (5 lbs. 8 oz.)	0
22.	Live Births with Birth Weight Less Than 1500 grams (3 lbs. 5 oz)	0

* TOTAL LIVE BIRTHS on line 20 should approximate the number of Perinatal discharges shown in Section 3, line 2, column 3. Include LDR or LDRP births and C-Section deliveries.

Alternate Birthing (Outpatient) Center Information

Line No.		(1)
31.	Did your hospital have an approved alternate birthing (outpatient) program?	No
32.	Was your alternate setting was approved as LDR	No
33.	Was your alternate setting was approved as LDRP	No

Other Live Birth Data

Line No.		(1) Number
36.	How many of the live births reported on line 20 occurred in your alternative (outpatient) setting? Do not include C-Section deliveries.	0
37.	How many of the live births reported on line 20 were C-Section deliveries?	0

Licensed Cardiology and Cardiovascular Surgery Services (Completed by OSHPD.)

Line No.	(1) Licensure
41.	Cardiovascular Surgery Services

Note: Complete lines 42 to 85 if licensed for Cardiovascular Surgery Services.
Complete lines 55 to 85 if licensed for Cardiac Catheterization only.

Licensed Cardiovascular Operating Rooms

Line No.		(1)
42.	Number of operating rooms licensed to perform cardiovascular surgery on December 31.	2

Cardiovascular Surgical Operations (with and without the HEART/LUNG MACHINE*)

Line	(1)	(2)
------	-----	-----

No.	Desc	Cardiac Coronary Bypass USED*	Cardiac Coronary Bypass NOT USED
43.	Pediatric	0	0
44.	Adult	63	26
45.	Total Cardiovascular Surgical Operations	63	26

* Also referred to as Extracorporeal Bypass or "on-the-pump" (heart/lung machine).

Coronary Artery Bypass Graft (CABG) Surgeries*

Line No.		(1)
50.	Number of Coronary Artery Bypass Graft (CABG) surgeries performed.	68

* Subset of cardiovascular surgeries reported on line 45 above.

Cardiac Catheterization Lab Rooms

Line No.		(1)
55.	Number of rooms equipped to perform cardiac catheterizations on December 31.	4

Cardiac Catheterization Visits

Line No.		(1) Diagnostic	(2) Therapeutic
56.	Pediatric - Inpatient	0	0
57.	Pediatric - Outpatient	0	0
58.	Adult - Inpatient	181	361
59.	Adult - Outpatient	192	577
60.	Total Cardiac Catheterization Visits	373	938

Distribution of Procedures Performed in Catheterization Laboratory

Line No.		(1) Procedures
65.	Diagnostic Cardiac Catheterization Procedures (LHC, R & LHC)	746
66.	Myocardial Biopsy	0
71.	Permanent Pacemaker Implantation	95
711.	Other Permanent Pacemaker Procedures (Generator or Lead Replacement)	47
712.	Implantable Cardioverter Defibrillator (ICD) Implantation	61
713.	Other ICD Procedures (Generator or Lead Replacement)	20
72.	Percutaneous Coronary Intervention (PCI) - WITH Stent	306
73.	Percutaneous Coronary Intervention (PCI) - WITHOUT Stent	26
74.	Atherectomy (PTCRA - rotablator, DCA, laser, other ablation, etc.)	6
75.	Thrombolytic Agents (Intracoronary only)	0
76.	Percutaneous Transluminal Balloon Valvuloplasty (PTBV)	0
77.	Diagnostic Electrophysiology	83
78.	Catheter Ablation Procedures(SVT,VT,AF)	81
79.	Peripheral Vascular Angiography	13
80.	Peripheral Vascular Interventional Procedures	18
81.	Carotid Stenting Procedures	0
82.	Intra-Aortic Balloon Pump Insertion	14
83.	Catheter-based Ventricular Assist Device Insertion	0
84.	All other catheterization procedures performed in the lab	396
85.	Total Catheterization Procedures	1,912

Percutaneous Transluminal Balloon Valvuloplasty(PTBV) is very rarely done in these times. Those that are done are generally on pediatric patients.

AICD procedures are frequently done in the cath lab and are very similar to permanent pacemaker implants.

NOTE: Do Not Include Any Of The Following As A Cardiac Catheterization:

- Defibrillation
- Temporary Pacemaker Insertion
- Cardioversion
- Pericardiocentesis

Section 6 - Major Capital Expenditures

Section 127285(3) of the Health and Safety Code requires each hospital to report "acquisitions of diagnostic or therapeutic equipment during the reporting period with a value in excess of five hundred thousand dollars (\$500,000)."

Diagnostic and Therapeutic Equipment Acquired During The Report Period

Line No.		(1)
1.	Did your hospital acquire any diagnostic or therapeutic equipment that had a value in excess of \$500,000? (If 'Yes', fill out lines 2 through 11, as necessary, below.)	Yes

Diagnostic and Therapeutic Equipment Detail

Line No.	(1) Description of Equipment	(2) Value	(3) Date of Acquisition MM/DD/YYYY	(4) Means of Acquisition
2.	Stryker Endoscopy	\$692,000	2/1/2017	Lease
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				

Building Projects Commenced During Report Period Costing Over \$1,000,000

Section 127285(4) of the Health and Safety Code requires each hospital to report the "commencement of projects during the reporting period that require a capital expenditure for the facility or clinic in excess of one million dollars (\$1,000,000)."

Line No.	(1)
25.	Did your hospital commence any building projects during the report period which will require an aggregate capital expenditure exceeding \$1,000,000? (If "Yes", fill out lines 26 through 30, as necessary, below.) No

Detail of Capital Expenditures

Line No.	(1) Description of Project	(2) Projected Total Capital Expenditure	(3) OSHDP Project No. (if applicable)
26.			
27.			
28.			
29.			
30.			

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EXHIBIT 4

KYRSTEN B. SKOGSTAD (SBN 281583)
NICOLE J. DARO (SBN 276948)
CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT
155 Grand Avenue
Oakland, CA 94612
(510) 273-2200 (telephone)
(510) 663-4822 (facsimile)
kskogstad@calnurses.org
ndaro@calnurses.org

Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re	)	Case No.: 2:18-bk-20151-ER
)	
)	
	)	CHAPTER 11
)	
VERITY HEALTH SYSTEM OF	)	NOTICE OF APPEARANCE AND
CALIFORNIA, INC.,	)	REQUEST FOR SPECIAL NOTICE AND
	)	INCLUSION ON MAILING LIST
Debtor.)	
)	
)	
)	
)	

PLEASE TAKE NOTICE that the undersigned attorneys enter their notice of appearance in the above-entitled case on behalf of creditor California Nurses Association (“CNA”) and give this notice of appearance and request of all matters that must be noticed to creditors, the Trustee, the Debtors, or other parties in interest, and further request notice of Limited Notice Proceedings. For purposes of notice and service, the following address shall be used:



Kyrsten B. Skogstad, Esq.
Nicole J. Daro, Esq.
CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT
155 Grand Avenue
Oakland, CA 94612
(510) 273-2200 (telephone)
(510) 663-4822 (facsimile)
Electronic Mail: kskogstad@calnurses.org
ndaro@calnurses.org

This request includes the type of notice referred to in Bankruptcy Rules 2002(i) and 3017(a), 4001, 9007 and Section 1109 of the Bankruptcy Code, and also includes without limitation, all schedules, notices of any orders, applications, complaints, answers, demands, replies, hearings, motions, petitions, pleadings, disclosure statements, plans, requests, memoranda or briefs in support of any of the foregoing, and any other documents brought before the court in this case, whether formal or informal, whether written or oral, and whether transmitted or conveyed by mail delivery, telephone, facsimile transmission or otherwise.

Dated: September 17, 2018

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By s/ Kyrsten B. Skogstad
Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

EXHIBIT 5

PETER C. ANDERSON
UNITED STATES TRUSTEE
JILL M. STURTEVANT, State Bar No. 089395
ASSISTANT UNITED STATES TRUSTEE
HATTY YIP, State Bar No. 246487
ALVIN PAN MAR, State Bar No. 151482
TRIAL ATTORNEY
OFFICE OF THE UNITED STATES TRUSTEE
915 Wilshire Blvd., Suite 1850
Los Angeles, California 90017
(213) 894-1507 telephone
(213) 894-2603 facsimile
Email: hatty.yip@usdoj.gov

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:) Lead Case No.: 2:18-bk-20151-ER

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC. *et al.*,**

Debtor(s).

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

Debtors and Debtors In Possession

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

Chapter 11 Cases

**NOTICE OF APPOINTMENT AND
APPOINTMENT OF COMMITTEE OF
CREDITORS HOLDING UNSECURED
CLAIMS**



182015118091700000000036

1 Pursuant to 11 U.S.C. Section 1102(a), the undersigned hereby appoints the following nine
2 (9) Creditors to serve on the Committee of Creditors holding unsecured claims:

3 SEE ATTACHED EXHIBIT A

4 DATED: September 17, 2018

Respectfully submitted,
PETER C. ANDERSON
UNITED STATES TRUSTEE

6 

7 By: Peter C. Anderson
8 United States Trustee

EXHIBIT A

EXHIBIT A

EXHIBIT "A"

Aetna Life Insurance Company
Attn: Paul Weller, Head of Provider Litigation
1425 Union Meeting Road, Mail Stop U23S
Blue Bell, PA 19422
Telephone: (215) 775-0788
Email: pdweller@aetna.com

Allscripts Healthcare, LLC
c/o Greg Bianchi
10 Glenlake Parkway, Suite 500
Atlanta, GA 30328
Telephone: (404) 847-5901

California Nurses Association (CNA)
Attn: Krysten Skogstad, In-House Counsel
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Email: kskogstad@calnurses.org

Iris Lara
c/o Trisha Monesi
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Los Angeles, CA 90067
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Email: trisha.monesi@capstonelawyers.com

Medline Industries, Inc.
Three Lakes Drive
Northfield, IL 60093
Telephone: (262) 367-7501 x 2252
Email: sreed@medline.com

Pension Benefit Guaranty Corporation ("PBGC")
Attn: Michael Strollo and Emily Lesniewski
1200 K Street, NW
Washington, DC 20005
Telephone: (202) 326-4000 ext 4907, 6137
Email: strollo.michael.pbgc.gov

SEIU United Healthcare Workers West
Attn: David Miller
560 Thomas L Berkeley Way
Oakland, CA 94612-1602
Telephone: (510) 251-1250
Email: dmiller@seiu-uhw.org

1 Sodexo Operations, LLC, a Delaware Limited Liability Company Sodexo CTM LLC
2 Attn: Brad Hamman
3 283 Cranes Roost Blvd, Ste 260
4 Altamonte Springs, FL 32701
5 Telephone: (407) 339-3230, ext 35204
6 Email: Brad.Hamman@sodexo.com

7 St. Vincent IPA Medical Corporation
8 c/o Mark Neubauer, Esq. and Donald Kirk, Esq.
9 Carlton Fields Jordan Burt, LLP
10 2000 Avenue of the Stars, Suite 530N
11 Los Angeles, CA 90067-4707
12 Telephone: (310) 843-6310 or (813) 229-4334
13 Email: dkirk@carltonfields.com
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF APPOINTMENT AND APPOINTMENT OF COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **9/17/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED LIST

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (date) **9/17/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED LIST

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **9/17/18**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

JUDGE'S COPY: [Pursuant to the UST's agreement with the U.S. Bankruptcy Court, Judge's Courtesy Copy was mailed via Federal Express overnight mail to the following address] U.S. Bankruptcy Court, 255 E. Temple St., Room 940, Los Angeles, CA 90012, Attn: Mail Room Clerk—Judges Copies

☐ Service information continued on attached page

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

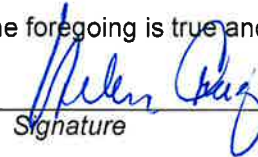
9/17/18

Helen Cruz

Date

Printed Name

Signature



1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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- Gary F Torrell gft@vrmlaw.com
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- Jason Wallach jwallach@ghplaw.com, g33404@notify.cincompass.com
- Kenneth K Wang kenneth.wang@doj.ca.gov, Jennifer.Kim@doj.ca.gov;susan.lincoln@doj.ca.gov;yesenia.caro@doj.ca.gov
- Latonia Williams lwilliams@goodwin.com, bankruptcy@goodwin.com
- Hatty K Yip hatty.yip@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

- DEBTOR: Verity Health System of California, Inc., 2040 E. Mariposa Avenue, El Segundo, CA 90245
- DEBTOR'S ATTY: Samuel R Maizel, Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017
- MANUAL: Sam J Alberts, DENTONS US LLP, 1900 K Street NW, Washington, DC 20006
- MANUAL: Alicia Berry, California Attorney General, 300 South Spring St Ste 1702, Los Angeles, CA 90013
- MANUAL: Daniel S Bleck, Mintz, Levin, et al, One Financial Center, Boston, MA 02111
- MANUAL: Nathan F Coco, McDermott Will & Emery, 444 West Lake Street, Chicago, IL 60606-0029
- MANUAL: Ian A Hammel, Mintz Levin Cohn Ferris Glovsky & Popeo, One Financial Center, Boston, MA 02111
- MANUAL: Donald R Kirk, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000 Tampa, FL 33607-5780
- MANUAL: Claude D Montgomery, DENTONS US LLP, 1221 AVENUE OF THE AMERICAS, New York, NY 10020-1001
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- MANUAL: John Ryan Yant, Carlton Fields Jordan Burt, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607-5780

50TH LARGEST UNSECURED CREDITORS:

- Waheed Wahidi, et al., c/o Law office of Kevin T Barnes, 1635 Pontius Ave., 2nd Fl., Los Angeles, CA 90025, Attn: Kevin T. Barnes
- Verity Health System Retirement Plan A, c/o John Hancock Retirement Plan Services, 690 Canton St., Westwood, MA 02090, Attn: Dawn Florio
- Retirement Plan for Hospital Employees, c/o Board of Trustees Retirement Plan For Hospital Employees Retirement Plan Office, P.O. Box 2949, San Francisco, CA 94126-2949, Attn: Larry Reid
- Department of Health Care Services (DHCS), c/o Department of Health Care Services, Mail Stop 1101, 1501 Capital Ave., Ste. 71.2048, Sacramento, CA 95814-5005, Attn: Brian Clausse
- Aetna Life Insurance Company, c/o Aetna Legal Department, 1425 Union Meeting Rd., Blue Bell, PA 19422, Attn: Paul Weller
- Ivonne Engelman, c/o One Wilshire Blvd., Ste. 2200, Los Angeles, CA 90017, Attn: Renee L. Campbell
- Iris Lara, Tanya Lara, Jarmaine Jonhs, c/o Mahoney Law Group, 249 E. Ocean Blvd., Ste. 814, Long Beach, CA 90802, Attn: Kevin Mahoney Treana Allen – Mahoney
- Josefina Robles, 2600 Michelson Dr., Ste. 1700, Irvine, CA 92612, Attn: Yolanda M. Medina
- Diane Nguyen, c/o Otkupman Law Firm, 28632 Roadside Dr., Ste. 203, Agoura Hills, CA 91301, attn.: Roman Otkupman
- Allscripts Healthcare LLC, 305 Church at N. Hill St., Raleigh, NC 27609, Attn: John Sage
- Medline Industries, Inc., Three Lakes Dr., Northfield, IL 60093, Attn: Mike Ogden
- Sodexo (Biomed Services), c/o Hunton Andrews Kurth, 50 California St., Ste. 1700, San Francisco, CA 94111, Attn: Susan Joo
- Heritage Provider Network (Regal Medical Group), 8510 Balboa Blvd., Ste. 150, Northridge, CA 91325, Attn: Lloyd Wilensky
- Premier Healthcare Solutions, Inc., 5882 Collections Center Dr., Chicago, IL 60693, Attn: Mike Morrelli
- McKesson Corporation, PO Box 98347, Chicago, IL 60693-8347, Attn: Tonoa Jordan
- Centers for Medicare & Medicaid Services, U.S. Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244, Attn: CMS Baltimore Headquarters
- Zimmer USA, 310 Interlocken Parkway, Ste. 120, Broomfield, CO 80021, Attn: Bart Hess
- Microsoft Licensing Gp, c/o BofA, 1950 N Stemmons Fwy. #5010 LB #842467, Dallas, TX 75207, Attn: Jason Baxley
- Medtronic USA Inc., 710 Medtronic Pkwy. NE, Minneapolis, MN 55432-5604, Attn: Samir Choksi
- Anthem Blue Cross, 21555 Oxnard St., 8th Fl., Woodland Hills, CA 91367, Attn: Nicole Brown

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

- Anthem Blue Cross, 2121 N. California Blvd., 7th Fl., Los Angeles, CA 94596, Attn: Frank Bird, VP
- Workday, Inc., 6230 Stoneridge Mall Rd., Pleasanton, CA 94588, Attn: Mark Overfelt
- Boston Scientific, 47201 Lakeview Blvd., Fremont, CA 94537-5120, Attn: Mykkia Cameron
- Stryker Corporation, Stryker Global Headquarters, 2825 Airview Blvd., Kalamazoo, MI 49002, Attn: Rick Kalinowski
- Stationary Engineers Local 39 Trust - Defined Benefit Plan, PO Box 1737, San Ramon, CA 94583
- Stationary Engineers Local 39 Trust - Defined Benefit Plan, 7180 Koll Center Pkwy., Ste. 200, Pleasanton, CA 94566, Attn: Mark Gong
- Cardinal Health, 7000 Cardinal Pl., Dublin, OH 43017, Attn: Jeff Reid
- St. Vincent Independent Physicians Assoc., c/o Carlton Fields Jordan Burt, LLP, 2000 Ave. of the Stars, Ste. 530 N. Tower, Los Angeles, CA 90067, Attn: Mark Neubauer
- Swinerton Builders, 2880 Lakeside Dr., Ste. 300, Santa Clara, CA 95054, Attn: Chris Morris
- UnitedHealthcare, UnitedHealthcare Customer Service, PO Box 29675, Hot Springs, AR 71903-9802, Attn: Luz Cabral
- Depuy Synthes, 4500 Riverside Dr., Palm Beach Gardens, FL 33410, Attn: Patty Pagett, Nathan Turk, Brendon Smith
- Appicare Medical Management, LLC, 18 Centerpointe Dr., La Palma, CA 90623, Attn: Richard Greene CFO
- Los Angeles County Tax Collector, 500 W. Temple St., Los Angeles, CA 90012
- Blue Shield, 3300 Zinfandel Dr., Rancho Cordova, CA 95670, Attn: Tracy Barnes
- CDW Government Inc., 75 Remittance Dr., Ste. 1515, Chicago, IL 60675, Attn: Matt Digate
- Stanford Hospital and Clinics, 300 Pasteur Dr., MC 5540, Stanford, CA 94305, Attn: Hoi Yeung
- Care 1st Health Plan, 601 Potero Grande Dr., Monterey Park, CA 91755, Attn: Delores Olague
- RightSourcing Inc., RightSourcing Headquarters, 9 Executive Circle, Ste. 290, Irvine, CA 92614, Attn: Christie Hayes
- On Site Program Manager
- EOS Healthcare, 700 Longwater Dr., Norwell, MA 02061, Attn: Tod Dillon
- Smith Nephew Inc., P.O. Box 933782, Atlanta, GA 31193-3782, Attn: Keith Salaya
- American Red Cross, P.O. Box 73563, Chicago, IL 60673-7563, Attn: Michael Gregory
- Compspec, 425 E. Colorado St., #410, Glendale, CA 91205, Attn: Shellie Murph-Miller
- Sports, Orthopedic & Rehabilitation Associates, 500 Arguello St., Ste. 100, Redwood City, CA 94068, Attn: Customer Support
- FTG Builders Inc., 2975 Scott Blvd., Ste. 100, Santa Clara, CA 95054, Attn: Rodney Terra, Jr.
- Johnson & Johnson Health Care Systems, Inc., 425 Hoes Ln., Piscataway, NJ 08854, Attn: Vickey Corbett
- Cochlear Americas, c/o Cochlear Corp., 400 Inverness Dr. South, Ste. 400, Englewood, CO 80112, Attn: Brooke Phillips
- Mike Fayfel, 1180 S. Beverly Dr., Ste. 610, Los Angeles, CA 90035, Attn: Craig Ackerman, Tilajef Ackerman
- Touchpoint Support Services, 400 N. Ridge Rd., Sandy Springs, GA 30350, Attn: Todd Head
- Abbott Laboratories (formerly St. Jude), 3200 Lakeside Dr., Santa Clara, CA 95054, Attn: Karen Davidson
- Baxter Healthcare, 1 Baxter Pkwy., Deerfield, IL 60015, Attn: Paige Stuebe
- UHS Universal Hospital Services Inc., 6625 W. 78th St., Ste. 300, Minneapolis, MN 55439
- Pension Benefit Guaranty Corp., Office of the General Counsel, 1200 K St., NW, Washington, DC 20005, Attn: Judith Starr

EXHIBIT 6

108503415\V-3

I, Richard G. Adcock, hereby state and declare as follows:

1. I am the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). I became the Debtors’ Chief Executive Officer effective January 2018. Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the not-for-profit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas and is dedicated to health and healing. In this role, I was responsible for leading Sanford Health’s growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan, Sanford Foundation (a philanthropic fundraising foundation), Sanford Frontiers (a commercial and real estate company), Profile by Sanford (a scientific weight loss program), and Sanford World Clinic (which operates clinics in multiple countries).

4. From 2012 to 2017, I served as the President of Sanford Frontiers and was responsible for starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for leading strategic, operational and financial aspects within Sanford Clinic. From 2004 to 2006, I served as Director of Clinical Operations at Sanford

1 Children's Specialty Clinic and was responsible for leading the Pediatric Subspecialty Physician
2 program and the clinical practice through all facets of the operation.

3 5. Prior to Sanford Health, I served as the Director of Engineering and Six Sigma
4 Master Black Belt at GE Medical Systems, and before that I was the Vice President of Research
5 and Development and the Co-Owner/Founder of Micro Medical Systems. I have a bachelor of
6 science in business administration and a masters of business administration in healthcare
7 management.

8 6. On the date hereof (the "Petition Date"), VHS and certain of its subsidiaries
9 (collectively, the "Debtors" or "Verity") filed voluntary petitions for relief under Chapter 11 of
10 Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy
11 Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court"). I am
12 knowledgeable and familiar with the Debtors' day-to-day operations, business and financial
13 affairs, and the circumstances leading to the commencement of these chapter 11 cases (the
14 "Chapter 11 Cases").

15 7. Except as otherwise indicated herein, this Declaration is based upon my personal
16 knowledge, my review of relevant documents, information provided to me by employees of the
17 Debtors and Integrity Healthcare, LLC ("Integrity") or the Debtors' legal and financial advisors,
18 or my opinion based upon my experience, knowledge, and information concerning the Debtors'
19 operations and the healthcare industry. If called upon to testify, I would testify competently to the
20 facts set forth in this Declaration.

21 8. I make this declaration for the purpose of apprising the Court and parties in
22 interest of the circumstances that compelled the commencement of these Chapter 11 Cases and in
23 support of the First-Day Motions (as defined below).

24 9. To enable the Debtors to minimize the adverse effects of the commencement of
25 these Chapter 11 Cases on their business, the Debtors have requested various types of relief in a
26 number of applications and motions (each a "First Day Motion," and, collectively, the "First Day
27 Motions"). The First-Day Motions seek relief intended to maintain the Debtors' business
28 operations; to preserve value for the Debtors, its stakeholders, and parties in interest; and, most

1 importantly, to protect the health and wellbeing of the patients who are being treated at the
2 Hospitals (defined below) operated by the Debtors and the employees of the Debtors. Each First
3 Day Motion is crucial to the Debtors' reorganization efforts and to the health and wellbeing of the
4 patients. Any capitalized term not expressly defined herein shall have the meaning ascribed to
5 that term in the relevant First-Day Motion.

6 10. Section I provides an overview of the Debtors and these Chapter 11 Cases.
7 Section II describes the Debtors' businesses. Section III describes the circumstances that
8 compelled the commencement of the Chapter 11 Cases. Section IV describes the Debtors'
9 corporate and capital structure. Section V describes the Debtors' sales efforts. Section VI
10 provides a summary of the First-Day Pleadings and factual bases for the relief requested therein.

11 I. OVERVIEW¹

12 11. Debtor VHS, a California nonprofit public benefit corporation, is the sole
13 corporate member of the following five Debtor California nonprofit public benefit corporations
14 that operate six acute care hospitals, O'Connor Hospital, Saint Louise Regional Hospital, St.
15 Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical
16 Center Coastsides (collectively, the "Hospitals") and other facilities in the state of California.
17 Seton Medical Center and Seton Medical Center Coastsides operate under one consolidated acute
18 care license.

19 12. VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health
20 System") operate as a nonprofit health care system in the state of California, with approximately
21 1,680 inpatient beds, six active emergency rooms, a trauma center, and a host of medical
22 specialties, including tertiary and quaternary care. The scope of the services provided by the
23 Verity Health System (defined below) is exemplified by the fact that in 2017, the Hospitals
24 provided medical services to over 50,000 inpatients and approximately 480,000 outpatients.

25 13. The VHS affiliated entities, including the Debtors, are as follows:

- 26 • O'Connor Hospital
- 27 • Saint Louise Regional Hospital

28 ¹ Capitalized terms used but not defined in this overview section shall have the meanings assigned to them below.

- St. Francis Medical Center
- St. Vincent Medical Center
- Seton Medical Center, including
- Seton Medical Center Coastside campus
- Verity Business Services
- Marillac Insurance Company, Ltd.
- O'Connor Hospital Foundation
- Saint Louise Regional Hospital Foundation
- St. Francis Medical Center of Lynwood Foundation
- St. Vincent Medical Center Foundation
- Seton Medical Center Foundation
- St. Vincent de Paul Ethics Corporation
- St. Vincent Dialysis Center
- De Paul Ventures, LLC
- De Paul Ventures San Jose Dialysis, LLC
- De Paul Ventures San Jose ASC, LLC
- Verity Medical Foundation
- Verity Holdings, LLC

14. Verity Medical Foundation (“VMF”), incorporated in 2011, is a medical foundation, exempt from licensure under California Health & Safety Code § 1206(l). VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. With more than 100 primary care and specialty physicians, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Debtor Hospitals. VMF holds long-term professional services agreements with the following medical groups: (a) Verity Medical Group; (b) All Care Medical Group, Inc.; (c) CFL Children's Medical Associates, Inc.; (d) Hunt Spine Institute, Inc.; (e) San Jose Medical Clinic, Inc., D/B/A San Jose Medical Group; and (f) Sports, Orthopedic And Rehabilitation Associates.

15. Verity Holdings LLC (“Holdings”), a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance Verity’s interests in six medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the VHS Hospitals. Holdings’ real estate portfolio includes over 30 properties, as more fully described below.

16. Saint Louise Regional Hospital Foundation, St. Francis Medical Center Foundation, St. Vincent Medical Center Foundation, Seton Medical Center Foundation, and

O'Connor Medical Center Foundation handle fundraising and grant-making programs for each of their respective Debtor Hospitals.

17. As of August 30, 2018, the Debtors' facilities had approximately 850 patients, and are currently at approximately 50% occupancy.

18. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. Approximately 74% of these employees are represented by collective bargaining units. Specifically, 72% of the Debtors' Employees – approximately 5,331 Employees in total – are represented through California Nurses Associations ("CNA"), Service Employees International Union ("SEIU"), National Union Healthcare Workers ("NUHW") and United Nurses Association of California/Union of Health Care Professionals ("UNAC").

19. As part of the mission of Verity Health System to serve the community, VHS provides care to patients even though they may lack adequate insurance or may participate in programs that do not pay full charges.

20. All of the Debtors' Hospitals are licensed as general acute care hospitals by the California Department of Public Health, certified to participate in the Medicare and Medicaid programs, and managed by VHS.

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

22. St. Francis Medical Center owns real property commonly known as: (i) 3630 E. Imperial Highway Lynwood, CA 90262, including the patient tower and all of the facilities thereon; (ii) 2700 E. Slauson Ave, Huntington Park, CA 90255, and the Huntington Park Medical Office Building thereon; and (iii) 5953 S. Atlantic Blvd. 5, Maywood, CA 90270, and Maywood Medical Office Building thereon.

23. St. Vincent Medical Center owns real property commonly known as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities located thereon; and (ii) vacant land in Salton Sea, California.

24. Saint Vincent Medical Foundation owns: (i) a fractional timeshare of a condominium commonly known as 2600 Avenida Del Presidente, San Clemente, CA 92672; and (ii) Lot 10 of Block 572 of Rio Grande Estates, Unit 25, Valencia, NM.

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

26. Saint Louise Regional Hospital owns real property commonly known as: (i) 9400 No Name Uno, Gilroy, CA 95020, and the hospital and helipad thereon; and (ii) 705 Las Animas Road, Gilroy, CA 95020.

27. Seton Medical Center owns (i) real property commonly known as 1900 Sullivan Avenue, Daly City, CA 94015, and the Hospital and the facilities thereon (the "Daly Property"), and (ii) an employee parking lot on the Daly Property.

II. The Debtors' Businesses

A. The Debtors' Current Business Operations.

28. A description of VHS, each Hospital and its respective subsidiaries and affiliates is described below, all of which are jointly-administered Debtors in these cases.

29. **Verity Health Systems.** As set forth above, VHS is a nonprofit regional healthcare system headquartered in El Segundo, California. VHS was originally established by the Daughters of Charity of St. Vincent de Paul, Province of the West, to support the mission of the Catholic Church through a commitment to the sick and poor. VHS operates six hospitals in California.

30. **Verity Business Services.** VHS operates Verity Business Services ("VBS"), a nonprofit public benefit corporation. VBS provides support services to Verity and its affiliated hospitals including accounting, finance, patient financial services, supply chain management, and purchasing services for the entire health system.

31. **Verity Medical Foundation.** As set forth above, VMF operates clinics and contracts with physicians to provide high quality, compassionate, patient-centered care to

1 individuals and families throughout California. With more than 100 primary care and specialty
2 physicians, VMF offers medical, surgical and related healthcare services for people of all ages at
3 community-based, multi-specialty clinics conveniently located in areas served by the Hospitals.

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

10 33. **O'Connor Foundation.** O'Connor Foundation was incorporated in 1983 and is
11 governed by a Board of Trustees. Charitable donations and endowments help fund the acquisition
12 of new equipment, the expansion of O'Connor Hospitals' facilities, healthcare services, and
13 community outreach programs. O'Connor Hospital is the sole corporate member of O'Connor
14 Foundation. As of May 31, 2018, O'Connor Hospital Foundation had a balance of \$1,123,644.15
15 in temporarily restricted assets and a balance of approximately \$334,802.20 in permanently
16 restricted assets for the purpose of funding the cardiac catheterization lab capital, wound care
17 services, surgical services, and various other programs.

18 34. **St. Vincent Medical Center.** St. Vincent Medical Center was founded as the first
19 hospital in Los Angeles in 1856. In 1971, a new facility was constructed at the Hospital's current
20 location at 2131 West Third Street, Los Angeles, CA 90057. The hospital has expanded to a 366
21 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer
22 care, total joint and spine care, and multi-organ transplant services. The Hospital serves both local
23 residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. As a
24 provider of healthcare services for a high percentage of elderly patients, many of the hospital's
25 services and programs are focused on the treatment of various chronic diseases.

26 35. **St. Vincent Foundation.** St. Vincent Foundation was incorporated in 1989 as a
27 nonprofit public benefit corporation. Charitable donations and endowments raised by St. Vincent
28 Foundation help fund the acquisition of new equipment, the expansion of the Hospital's facilities,

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 healthcare services, and community outreach programs. St. Vincent Foundation raises funds
2 through grants, special events, and individual donors. St. Vincent is governed by a Board of
3 Trustees, and St. Vincent Medical Center is the sole corporate member of the Foundation. St.
4 Vincent, as well as St. Vincent Foundation, holds donor-restricted funds. As of May 31, 2018, St.
5 Vincent Foundation had a balance of approximately \$1,590,149.89 in temporarily restricted assets
6 and a balance of approximately \$136,159 in board designated temporarily restricted assets for the
7 purpose of funding programs such as bone mineral density research, transportation for low-
8 income patients, the organ transplantation program, and oncology research and treatment.

9 36. **St. Vincent Dialysis Center.** St. Vincent Medical Center is the sole corporate
10 member of the St. Vincent Dialysis Center, located on the Hospital's campus. The St. Vincent
11 Dialysis Center provides dialysis services for kidney disease patients, including hemodialysis and
12 isolated ultrafiltration treatments as part of the Hospital's end-stage renal disease program.

13 37. **St. Francis.** St. Francis Medical Center was established in 1945 and gained
14 sponsorship from Daughters of Charity, Province of the West, in 1981. The hospital provides
15 comprehensive healthcare services and operates one of the busiest emergency trauma centers in
16 Los Angeles County. The Hospital serves 1.2 million residents of Southeast Los Angeles, located
17 in the communities of Lynwood, South Gate, Downey, Huntington Park, Bell Gardens,
18 Maywood, and Compton. As a provider of healthcare services for many Medi-Cal and uninsured
19 patients, the hospital receives significant Disproportionate Share Hospital funding. St. Francis
20 operates a 384 licensed bed, general acute care hospital located at 3630 East Imperial Highway in
21 Lynwood, California. The hospital has an emergency department with 46 licensed emergency
22 treatment stations and is designated a Level II Trauma Center. It also has nine surgical operating
23 rooms and three cardiac catheterization labs for inpatient and outpatient cardiac catheterization
24 services. The hospital offers a comprehensive range of services, including emergency and trauma
25 care, neonatal intensive, cardiovascular, oncology, pediatrics, behavioral health, and maternity
26 and child services. In addition to the inpatient programs and services, the Hospital also offers
27 various outpatient services, including ambulatory surgical services, laboratory services, imaging
28 services, infusion therapy, nuclear medicine services, respiratory therapy, and physical therapy.

Other outpatient services are provided at the following clinics: Orthopedics Clinic, Wound Care Clinic, Industrial Clinic, Lynwood Clinic, Downey Clinic , and Huntington Park Clinic. The Hospital is accredited by The Joint Commission.

38. **St. Francis Medical Center Foundation.** St. Francis Medical Center is the sole corporate member of St. Francis Medical Center Foundation. St. Francis Medical Center Foundation was incorporated in 1983 as a nonprofit public benefit corporation and is governed by a volunteer Board of Trustees. Charitable donations and endowments help fund the acquisition of new equipment, the expansion of the Hospital's facilities, healthcare services, and community outreach programs. St. Francis Foundation raises funds through grants, special events, and individual donors. As of May 31, 2018, St. Francis Foundation had a balance of \$656,118.24 in temporarily restricted assets for the purpose of funding programs such as the Children's Counseling Center, nurse education, and the annual Women's Luncheon in support of mammogram equipment. The Foundation also funds Health Benefit Resource Center, Healthy Communities Initiative, and Trauma Recovery.

39. **Seton Medical Center.** Seton Medical Center was originally founded as Mary's Help Hospital by the Daughters of Charity of St. Vincent De Paul in 1893. The original facility was destroyed in the San Francisco Earthquake of 1906, and by 1912, Mary's Help Hospital reopened a new facility in San Francisco. In 1965, the hospital was moved to its current location at 1900 Sullivan Avenue in Daly City. The hospital was renamed Seton Medical Center in 1983, is currently licensed for 357 beds and serves residents from San Francisco and San Mateo areas. Seton Medical Center has an emergency department with 18 licensed treatment stations. It also has 13 surgical operating rooms and three cardiac catheterization labs. Of the Hospital's 83 licensed skilled nursing beds, 39 are in suspense, and the remaining 44 beds are utilized as sub-acute care beds. Additionally, the hospital has 24 licensed acute psychiatric beds which have been placed in suspense. The hospital has a broad spectrum of medical services, including cancer, cardiac, emergency, surgical, rehabilitation, respiratory, orthopedic, and sub-acute care. The hospital is accredited by The Joint Commission. Seton Medical Center and Seton Coastside share a consolidated license.

1 40. **Seton Coastside.** Seton Coastside was founded as Moss Beach Rehabilitation
2 Hospital in 1970. In 1980, the City of Half Moon Bay acquired ownership of the hospital and
3 signed an agreement for Daughters of Charity to manage operations of the hospital and rename it
4 St. Catherine’s Hospital. In 1993, St. Catherine’s Hospital became Seton Coastside as it became
5 integrated with Seton Medical Center. Today, Seton Coastside is licensed for 116 skilled nursing
6 beds and five general, acute-care beds. Seton Coastside also operates the only 24-hour “standby”
7 Emergency Department along the 55-mile stretch between Santa Cruz and Daly City. Under a
8 consolidated license, Seton Medical Center and Seton Coastside share the same Board of
9 Directors, executive leadership team, charity care policies, and union collective bargaining
10 agreements.

11 41. **Seton Foundation.** Seton Foundation, governed by a Board of Trustees, raises
12 funds through grants, special events and individual donors. Charitable donations and endowments
13 raised by Seton Foundation help fund the acquisition of new equipment and the expansion of
14 facilities at the Seton Medical Center and Seton Coastside. Seton is the sole corporate member of
15 the Seton Foundation. As of May 31, 2018, Seton Foundation had a balance of \$2,693,778.66
16 million in temporary restricted assets and a balance of \$ 2,717,591 million in permanently
17 restricted assets for the purpose of funding programs such as oncology, the San Francisco Heart
18 & Vascular Institute, and women and delivery services.

19 42. **Saint Louise Hospital.** Saint Louise Hospital opened in 1989 in the Morgan Hill
20 area of Santa Clara County. In December 1999, the Daughters of Charity of St. Vincent de Paul
21 relocated the hospital to Gilroy and renamed it Saint Louise Regional Hospital. Today, the
22 Hospital’s 93-bed facility and 24-hour emergency department provide services to the residents of
23 southern Santa Clara County, including Morgan Hill, San Martin, and Gilroy. Saint Louise
24 Regional Hospital operates a 93 licensed bed, general acute care hospital located at 9400 No
25 Name Uno, Gilroy, California 95020. The Hospital has an emergency department with eight
26 licensed emergency treatment stations. The Hospital also has five surgical operating rooms for
27 inpatient and outpatient surgical procedures. Ten of the Hospital’s 21 licensed skilled nursing
28

1 beds are in suspense. The Hospital provides comprehensive healthcare services including cancer,
2 emergency, rehabilitation, and surgical care. The Hospital is accredited by The Joint Commission.

3 43. Saint Louise Regional Hospital owns and operates the De Paul Urgent Care
4 Center. The De Paul Urgent Care Center is located in Morgan Hill, and offers patients non-
5 emergency medical services seven days a week. The De Paul Urgent Care Center treats non-life
6 threatening cases, such as minor injuries and lacerations, strep throat, sinus infections, rashes,
7 nausea, vomiting, colds, flu, and fever.

8 44. **Saint Louise Foundation.** Saint Louise Foundation, governed by a Board of
9 Trustees, raises funds through grants, special events, and individual donors. Charitable donations
10 and endowments raised by Saint Louise Foundation help fund the acquisition of new equipment
11 and the expansion of the Hospital's facilities. Saint Louise is the sole corporate member of Saint
12 Louise Foundation. As of May 31, 2018, Saint Louise Regional Hospital Foundation had a
13 balance of approximately \$561,486.86 in temporarily restricted assets.

14 45. **De Paul Ventures, LLC.** De Paul Ventures, LLC is a wholly-owned and operated
15 holding company of Verity that was formed in August 2010 for the purpose of investing in a
16 freestanding surgery center and other healthcare entities.

17 46. **DePaul Ventures - San Jose Dialysis, LLC.** In April, 2013, DePaul Ventures,
18 LLC, formed DePaul Ventures - San Jose Dialysis, LLC ("Dialysis"). Dialysis is a general and
19 limited partner of Priday Dialysis, LLC, a healthcare center specializing in end-stage renal disease
20 treatment. Dialysis shares an interest in Priday Dialysis with Total Renal Care, Inc., which is a
21 subsidiary of DaVita.

22 47. **Verity Holdings, LLC.** As set forth above, Holdings is a direct subsidiary of its
23 sole member VHS and was created in 2016 to hold and finance Verity's interests in six medical
24 office buildings whose tenants are primarily physicians, medical groups, healthcare providers,
25 and certain of the VHS Hospitals. Holdings' real estate portfolio includes over 30 properties,
26 including, but not limited to, apartment buildings, parking lots, and condominiums. Holdings is
27 the borrower on approximately \$66.2 million of non-recourse financing secured by separate deeds
28 of trust and revenue and accounts pledges, including the rents on each medical office building

(collectively “MOB Financing”).

48. **Non-Debtor VHS Entities.** The Debtors’ have an interest in the entities described below that are not filing chapter 11.

49. Marillac Insurance Company, LTD. (“Marillac”), a wholly-owned subsidiary of VHS, was incorporated in the Cayman Islands on December 9, 2003, as an exempted company and was granted an Unrestricted Class “B” Insurer’s License effective December 15, 2003, which it holds subject to the provisions of the Insurance Law of the Cayman Islands. On November 1, 2012, The Insurance Law, 2010 (the “Law”) became effective. Under such law, Class B licenses were changed from “restricted” and “unrestricted,” as they had been described in previous revisions of the law, into three separate classes “(i),” “(ii)” and “(iii).” Insurers writing at least 95% of net premiums with their related business (in this case VHS) fell into Class B(i). The Company was granted a Class B(i) license, effective April 2, 2015. Marillac provides insurance coverage to VHS and its affiliates.

50. St. Vincent De Paul Ethics Corporation does not hold any assets and is a nondebtor entity. St. Francis Medical Center is its sole corporate member.

51. VHoldings MOB, LLC (“VHoldings”) is currently an inactive subsidiary of VHS and has no assets or obligations. It was created as a “special purpose entity” for a proposed financing that did not materialize. As part of the proposed transaction structure, four additional LLCs were established in which, VHoldings was the sole member of each. The four additional LLCs were dissolved on January 23, 2017.

52. De Paul Ventures – San Jose ASC, LLC (“San Jose ASC”), was formed in February 2011, by De Paul Ventures, LLC (which is a filing entity), and owns a 25% interest as a limited partner in a partnership with Physician Surgery Services, dba Advanced Surgery Center, a freestanding surgery center in San Jose. San Jose ASC’s only asset is a sale contract, pursuant to which it receives payments of \$125,000 every other month. Postpetition, San Jose ASC will continue to forward to VHS the \$125,000 received every other month. Once all payments are received, the Debtors will dissolve San Jose.

53. Robert F. Kennedy Medical Center is a nonprofit public benefit corporation that

1 operated a 229-bed general acute care hospital and served residents in Hawthorne, California,
2 until December 31, 2004. Robert F. Kennedy Medical Center Foundation is a nonprofit public
3 benefit corporation that raised funds for the Robert F. Kennedy Medical Center.

4 54. O'Connor Health Center I is a California limited partnership, formed in January
5 1996 ("OCH1"). O'Connor Hospital is a limited partner in OCH1 and the general partner is
6 OCH Forest 1, LP. OCH1 owns certain real property at 455 O'Connor Drive, San Jose,
7 California. Such property is leased by O'Connor Hospital.

8 55. Sports Medical Management, Inc. has no assets or obligations.

9 **B. Integrity's Management of Debtors.**

10 56. As set forth above, Integrity was formed in 2015 to carry out the management
11 services under the Management Agreement, for which Integrity is paid a monthly management
12 fee. Through June 30, 2017, Integrity was wholly owned by BlueMountain. In July 2017,
13 NantWorks, LLC ("NantWorks"), acquired a majority stake in Integrity from BlueMountain.
14 There were no significant changes to the terms of the Restructuring Agreement or the California
15 Attorney General requirements as a result of this transaction.

16 57. On a monthly basis, VHS records management fee expense and makes payments
17 to Integrity associated with the management services received under the Management Agreement.
18 During the initial fiscal year which ended June, 2016, the monthly management fee was
19 determined based on a specified percentage of trailing 12 month operating revenues for VHS.
20 Such management fees are adjusted each succeeding fiscal year based on changes in the
21 consumer price index. VHS defers payment for a portion of management fees based on its days'
22 cash on hand over the most recent 90 day period. All deferred management fees accrue interest at
23 2.82% per annum to the extent such amounts are not paid in the fiscal year that services are
24 received. Such deferred management fees are contingently payable based on the terms of the
25 Management Agreement, which include annual calculations of excess cash on hand.

26 **C. Verity's Employees.**

27 58. As set forth above, altogether, the Debtors employ approximately 7,385 employees
28 (the "Employees") – 6,907 excluding VMF and 478 under VMF. Almost three-quarters of the

Debtors' Employees – approximately 5,488 Employees in total – are represented through CNA, SEIU, California Licensed Vocational Nurses' Association, and The International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO.

59. For W-2 tax and payroll purposes, the Debtors are divided into eight employers:

(a) VHS, which covers the Systems Office and the Philanthropic Foundations, and as of the Petition Date employed approximately 294 employees, of which 289 are full-time, 3 are part time and 2 are employed on a per diem basis;

(b) Verity Business Services, which as of the Petition Date employed approximately 307 employees, of which 285 are full-time, 11 are part time and 11 are per diem;

(c) O'Connor Hospital, which as of the Petition Date employed approximately 1,370 employees, of which 586 are full-time, 441 are part time and 343 are per diem;

(d) Saint Louise Regional Hospital, which as of the Petition Date employed approximately 480 employees, of which 153 are full-time, 159 are part time and 168 are per diem;

(e) St. Francis Medical Center, which as of the Petition Date employed approximately 2,017 employees, of which 1,583 are full-time, 136 are part time and 298 are per diem;

(f) St. Vincent Medical Center, which as of the Petition Date employed approximately 1,099 employees, of which 897 are full-time, 42 are part time and 160 are per diem;

(g) Seton Medical Center, which includes Seton Medical Center Coastsides, and as of the Petition Date employed approximately 1,340 employees, of which 516 are full-time, 551 are part time and 273 are per diem; and

(h) VMF, which as of the Petition Date employed approximately 478 employees, of which 424 are full-time, 15 are part-time and 39 are per diem.

60. The Debtors' Employees are represented by the following unions with the respective contractual obligations: (i) SEIU-UHW (Non-Nursing Service Employees) at St. Francis Medical Center, St. Vincent Medical Center, O'Connor Medical Center, Saint Louise Regional Hospital; (ii) SEIU-UHW (Non-Nursing Service Employees) at Verity Medical Foundation; (iii) NUHW (Non-Nursing Service Employees) at Verity Medical Foundation; (iv) NUHW (Non-Nursing Service Employees) at Seton Medical Center, Seton Medical Center Coastsides; (v) CAN (Nurses) St.

Vincent, O'Connor, St. Louise, Seton, Seton Coastside; (vi) UNAC (Nurses) at St. Francis; (vii) CLVNA (Licensed Vocational Nurses) (O'Connor); (viii) Local 20 (Clinical Laboratory Scientists) O'Connor, St. Louise, Seton; (ix) Local 39 (Stationary and Bio-medical Engineers) and O'Connor, St. Louise, Seton.

D. Pension and Other Postretirement Benefit Plans.

61. VHS maintains two single employer defined benefit pension plans and participates in two multi-employer defined benefit pension plans. The defined benefit pension plans have been frozen for all employees, except members of the CNA at certain facilities. Defined benefit pension plan benefits are generally based on age, years of service, and employee compensation. In addition, VHS and VMF maintain several defined contribution retirement plans for employees.

62. The significant multiemployer defined benefit pension plan is the Retirement Plan for Hospital Employees ("RPHE"). The VHS entities that participate in the RPHE are Seton Medical Center, Seton Medical Center Coastside, O'Connor Hospital, Saint Louise Regional Hospital, and Verity Business Services. The RPHE is frozen as to these facilities, other than with respect to CNA members at O'Connor Hospital, Saint Louise Regional Hospital and Seton Medical Center. Benefits under the RPHE are generally based on years of service and employee compensation. Contributions to the RPHE are based on actuarially determined amounts by the RPHE Board of Trustees to meet benefits to be paid to plan participants and satisfy IRS funding requirements. VHS recorded benefit expenses of approximately \$20.46 million and \$17.22 million in cash contributions to the RPHE for the fiscal years ended June 30, 2017 and 2016, respectively. The VHS contributions accounted for approximately 43% and 40% of total contributions made to the RPHE for the fiscal years ending June 30, 2017 and 2016, respectively. Of the estimated remaining \$4.79 million for 2018 and expected \$12.68 million for 2019, VHS contributions to RPHE, approximately \$3.15 million and \$7.63 million, respectively, is for make-up of underfunded amounts that arose prior to VHS' acquisition from the Daughters of Charity Health System ("DCHS"). As of July 31, 2018, there were no unpaid contribution installment obligations owed by VHS to the RPHE.

63. In addition to the RPHE, Verity assumed in the Daughters of Charity restructuring

1 certain obligations under a multiemployer plan commonly referred to as Stationary Engineers
2 Local 39 Pension Plan (the “Local 39 Plan”). As of July 31, 2018, there were no unpaid
3 contributions due on the Local 39 Plan.

4 64. VHS maintains two single-employer defined benefit pension plans (the “Verity A
5 & B Plans”). VHS personnel at St. Francis Medical Center, St. Vincent Medical Center,
6 O’Connor Hospital, Saint Louise Regional Hospital, and the VHS system office are eligible to
7 participate in these plans. However, only CNA members continue to earn new benefits under the
8 Verity Plan A; the Verity Plan B is completely frozen with no ongoing benefit accruals. VHS
9 contributed approximately \$41.68 million and \$9.92 million during the fiscal years ended June
10 30, 2017 and 2016, respectively. Of the estimated remaining \$10.12 million for 2018 and
11 expected \$35.53 million for 2019 VHS contributions to Verity Plan A, approximately \$8.10
12 million and \$28.05 million, respectively, is for make-up of underfunded amounts that arose prior
13 to VHS’ acquisition from the Daughters of Charity. As of July 31, 2018, there were no unpaid
14 contribution installment obligations owed by VHS to the Verity A & B Plans.

15 65. VHS and VMF also maintain several active defined contribution retirement plans
16 for eligible employees; eligibility for and benefits under the defined contribution retirement plans
17 vary according to facility, union status, and employee classification/hire date. These defined
18 contribution plans include the Verity Health System Supplemental Retirement Plan (TSA), the
19 Verity Health System Supplemental Retirement Plan (401(a)), the Verity Health System
20 Retirement Account (RPA), the Verity Medical Foundation 401(k) Plan, the Verity Medical
21 Foundation Management Bargaining Unit Employees 401(k) Plan for represented employees and
22 the Verity Health System Executive Long-Term Savings Plan (457(b)) Plan for nonrepresented
23 employees. These defined contribution plans are funded from employee and/or employer
24 contributions generally on a payroll by payroll basis. In addition to the above active defined
25 contribution plans, there are several small, frozen ancillary retirement plans. During the fiscal
26 years ended June 30, 2017 and 2016, the employer’s contribution expense for defined
27 contribution plans was approximately \$18.48 million and \$21.75 million respectively. As of July
28 31, 2018, there were no unpaid employer contributions owed on any of these defined contribution

plans other than unpaid contributions for current and recent payroll cycles consistent with ordinary administrative practices.

66. VHS also maintains an early retiree health insurance program (the Postretirement Healthcare Plan), which provides medical benefits to eligible retirees from early retirement to age 65 only. The postretirement health care benefits are determined based on age and years of service. Certain employees at O'Connor Hospital, St. Louise Regional Hospital, Seton Medical Center, and Seton Medical Center Coastsides are eligible to participate in this plan. The Postretirement Healthcare Plan is an unfunded plan. VHS contributed \$50,000 and \$58,000 to the Postretirement Healthcare Plan during the fiscal years ended June 30

E. Insurance Policies

67. The Debtors maintain various insurance policies issued by several insurance carriers (collectively, the "Insurance Carriers"). Collectively, these policies provide for coverage for, among other things: storage tank liability, commercial property, workers' compensation and employers liability, commercial automobile, helipad liability & non-owned aircraft liability, sexual misconduct and molestation liability, D&O liability, general liability, and professional liability (collectively, the "Insurance Policies").²

68. Significant insurance is issued to the Debtors by its captive insurer Marillac. VHS is the sole owner of Marillac. The policies issued by Marillac cover professional and general liability (both at the primary and excess level) and additional excess coverage as to automobile liability, heliport and non-owned aircraft liability, employer's liability and certain other general liability. Marillac also issued a Deductible Liability Protection Policy which provides coverage for the deductible obligations on the Debtors' workers' compensation policy issued by Old Republic Insurance Company ("Old Republic").

69. Most of the Debtors' Insurance Policies will expire between September 5, 2018 and July 1, 2019. The Debtors have begun negotiating renewals, extensions and/or entries into new insurance policies with respect to the expiring Insurance Policies.

² The Insurance Policies include six (6) CA DHS patient Trust Bonds, which have an annual premium in the aggregate of \$1,100 that was paid in full in December 2017 and will not come due for renewal until December 2018.

70. In certain instances, the Debtors pay premiums for their Insurance Policies in full at the beginning of the policy and in other instances in quarterly installments. The total annual premium due for Insurance Policies is approximately \$18,647,036. Of that amount, the Debtors pay \$2,637,071 at the time of inception, and the remaining \$16,009,965 is paid in quarterly installments. As of the Petition Date, there are no outstanding unpaid premiums due. The total amount of annual insurance premiums which will come due postpetition is \$10,043,085.

a. Self-Insured Retentions

71. The Debtors maintain self-insured retentions of \$250,000 per claim under their D&O liability coverage, \$350,000 per claim under their employment practices coverage, \$50,000 per claim under their fiduciary liability coverage, \$100,000 per claim under their crime coverage, and \$50,000 per claim under their sexual misconduct and molestation liability coverage (the “Self-Insured Retentions” or “SIRs”). A SIR is a loss amount that the insured is obligated to pay before the insurer’s coverage obligation is triggered.

72. The Debtors’ Self-Insured Retentions are administered so that the Debtors pay directly for the losses under each policy as they are incurred up to the amounts of the Self-Insured Retentions. Such SIRs due prepetition have been paid. For the last year, no SIR amounts have been due for (a) the D&O liability coverage, (b) the employment practices coverage, (c) the fiduciary liability coverage, and (d) the crime coverage. There have also been no SIR amounts incurred under the sexual misconduct and molestation liability policy last year.

b. Deductibles

73. The Debtors maintain a workers’ compensation insurance policy with Old Republic with a \$500,000 deductible for each claim. Old Republic provides coverage under the policy up to \$1 million for each claim. On average, the monthly invoice amounts for deductibles (including ALAE) incurred under the workers’ compensation policy is between \$400,000 and \$650,000, which are timely paid by Marillac under the Deductible Liability Protection Policy.

74. The deductibles included in the Debtors’ other Insurance Policies are:

- Storage Tank Liability - ACE American Insurance Company (Chubb) - \$5,000 per Storage Tank Incident;

- Storage Tank Liability - Tokio Marine Specialty Insurance Company (Philadelphia) - \$25,000 per Confirmed Release;
- Commercial Property - American Guarantee and Liability Insurance Company (Zurich) - \$100,000 Basic Policy Deductible;
- Commercial Automobile - National Union Fire Insurance Company of Pittsburg, PA (AIG) - \$1,000 Comprehensive, \$1,000 Collision;
- Helipad Liability & Non-Owned Aircraft Liability - StarNet Insurance Company (Berkley Aviation) - \$1,000 Physical Damage per Occurrence; and
- General Liability - Chubb - \$10,000 per Occurrence.

75. The Debtors expect their prepetition deductible obligations, other than those deductibles owed under the workers' compensation policy (which are paid by Marillac, a non-debtor), to be minimal.

c. Letter of Credit

76. The Debtors provide a \$34,087,296 letter of credit to Old Republic as security for all of the Debtors' obligations, as required under their workers' compensation policy. Marillac is the account party on the letter of credit, and the letter of credit is fully secured by Marillac's assets - \$34,087,296 of liquid securities. Pursuant to the Program Agreement Endorsement to the workers' compensation policy, Old Republic may draw upon the letter of credit to reimburse Old Republic for payment of the Debtors' deductible obligations or for payment of other obligations of the Debtors under the workers' compensation policy, if not paid by Marillac. Old Republic may also draw down the \$34,087,296 letter of credit in full upon the Debtors' insolvency or filing of a bankruptcy petition.

77. The Debtors expect that Marillac will continue to honor its policy to insure the Debtors' obligations under the workers' compensation policy, and that Old Republic will not be harmed by the Debtors' chapter 11 filing.

d. Claims Administration Agreements

78. The Debtors have entered into administrative services contracts with Sedgwick Claims Management Services, Inc. ("Sedgwick"), for administration of claims submitted under

1 the Debtors' workers' compensation policy as well as their professional and general liability
2 policy.

3 79. The Debtors pay Sedgwick an annual estimated fee of \$702,000 which is paid in
4 quarterly installments of \$175,000 for services provided by Sedgwick under the Debtor's
5 workers' compensation policy. The actual fees owed to Sedgwick are based on the staffing
6 necessary for Sedgwick to provide claims services and are calculated by taking the actual
7 program salaries, bonuses and temporary expenses multiplied by the salary multiplier. Sedgwick
8 will periodically provide an accounting to determine the actual fees incurred. The Debtors are
9 entitled to a credit if the amount of actual fees owed to Sedgwick are less than the estimated fees
10 paid. On the other hand, Sedgwick bills the Debtors for the additional actual fee owed if the
11 actual fee amount is higher than the estimated fees.

12 80. With respect to administration of their professional and general liability policy, the
13 Debtors pay Sedgwick \$3,545 per claim and suit file, \$1,825 per Potentially Compensable Event
14 ("PCE") where an investigation has been requested, \$275 for a PCE where an investigation has
15 not been requested pursuant to this agreement. Fees are paid monthly as files are assigned to
16 Sedgwick by the Debtors. Debtors also pay Sedgwick a program management fee of \$1,250 each
17 month.

18 **F. Recent Financial Results.**

19 81. As of June 30, 2018, Verity's consolidated unaudited financial statements reflected
20 total assets of approximately \$847 million and total liabilities of approximately \$1,278 billion.

21 **III. The Need For Chapter 11 Relief And The Events Leading To The Commencement**
22 **Of These Chapter 11 Cases**

23 **A. Historical Challenges.**

24 82. The Hospitals and VMF were originally owned and operated by the Daughters of
25 Charity of St. Vincent de Paul, Province of the West (the "Daughters of Charity"), to support the
26 mission of the Catholic Church through a commitment to the sick and poor. The Daughters of
27 Charity began their healthcare mission in California in 1858 with the opening of Los Angeles
28 Infirmary, now known as St. Vincent Medical Center. The Daughters of Charity expanded its

1 hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to
2 ill, poverty-stricken individuals for more than 150 years.

3 83. In March 1995, the Daughters of Charity merged with Catholic Healthcare West
4 (“CHW”). In June 2001, the Daughters of Charity Health System (“DCHS”) was formed. In
5 October 2001, the Daughters of Charity withdrew from CHW. In 2002, DCHS commenced
6 operations and was the sole corporate member of the Hospitals, which at that time were
7 California nonprofit religious corporations.

8 84. Between 1995 and 2015, the Daughters of Charity and DCHS struggled to find a
9 solution to continuing operating losses, either through a sale of some or all of the hospitals or a
10 merger with a more financially sound partner. All these efforts failed. During these efforts,
11 however, the health system’s losses continued to mount. In 2005, DCHS issued \$364 million in
12 bonds to refinance existing debt and to fund future capital expenditures. Three years later, in
13 2008, they issued another \$143 million in bonds to refinance existing debt.

14 85. Between 2012 and 2014, DCHS participated in an affiliation with Ascension
15 Health Alliance (“Ascension”) in an effort to create greater operating efficiencies. Ascension is
16 the largest Catholic health system in the world and the largest non-profit health system in the
17 United States with facilities in 23 states and the District of Columbia. The affiliation between
18 DCHS and Ascension failed.

19 86. Despite continuous efforts to improve operations, operating losses continued to
20 plague the health system due to, among other things, mounting labor costs, low reimbursement
21 rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for
22 O’Connor Hospital, St. Louise Regional Hospital, Seton Medical Center and Seton Medical
23 Center Coastsides. In 2013, to avoid failing debt covenants, the Daughters of Charity Foundation,
24 an organization separate and distinct from DCHS, donated \$130 million to DCHS to allow it to
25 retire the 2008 Bonds in the total amount of \$143.7 million.

26 87. In early 2014, DCHS announced that they were beginning a process to evaluate
27 strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their
28 health system and, in October of 2014, they entered into an agreement with Prime Healthcare

Services and Prime Healthcare Foundation (collectively, “Prime”) to sell the health system. However, to keep the hospitals open, DCHS, needed to borrow another \$125 million to mitigate immediate cash needs during the sale process; in other words, to allow DCHS to continue to operate until the sale could be consummated. Notably, DCHS’ goal in the transaction was to basically maintain the status quo; their guiding principles for the sale included protecting existing pensions, repaying all their bond debt, continuation of all collective bargaining agreements, maintenance of existing contracts for patient services, and obtaining promises for substantial capital expenditures. In early 2015, the California Attorney General consented to the sale to Prime, subject to conditions on that sale that were so onerous that Prime terminated the transaction.

88. In 2015, DCHS again marketed their health system for sale, and, again, focused on offers that maintained the health system as a whole, and assumed all the obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”).

89. In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of \$100 million to the hospital system, arrange loans for another \$160 million to the health system, and manage operations of the health system, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”), DCHS’s name was changed to Verity Health System, and Integrity was formed to carry out the management services under a new management agreement.

90. DCHS requested the California Attorney General’s consent to enter into the Restructuring Agreement and the BlueMountain Transaction. According to report prepared by MDS Consulting, an expert consulting firm retained to prepare healthcare impact reports for the AG, DCHS outlined the following reasons why the BlueMountain Transaction was either necessary or desirable:

- The current structure and sponsorship of DHCS was no longer plausible as a result of cash flow projections and dire financial conditions.
- In July and August of 2014, DCHS obtained a short-term financing bridge loan in the amount of \$125 million to mitigate the immediate cash needs for an estimated period of time long enough to allow for the transaction to close. Repayment of the funds was due on December 15, 2015, at which time if the full amount was not repaid, DCHS would be at risk of defaulting on both their 2014 and 2005 Revenue Bonds.
- Without bankruptcy protection or additional financial support, DHCS could not continue hospital operations if there is a default.

91. On December 3, 2015, the California Attorney General approved the BlueMountain Transaction, subject to conditions. The Attorney General conditions were imposed for periods ranging from 5 to 15 years. Generally, the terms of conditions (collectively, the “Conditions”) included: (1) limits on transfers of control; (2) maintenance of specific health services and specific bed counts; (3) required participation in Medicare and Medi-Cal programs; (4) required levels of community benefit programs; (5) required levels of charity care; (6) maintenance of certain county payor contracts; (7) requirements for local governing boards; (8) requirements for medical staff compliance; and (9) an annual attestation of compliance with the AG conditions.

92. Under the Restructuring Agreement, VHS, O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center and Seton Medical Center Coastsides, all of whom are members of the Obligated Group (as defined below), were converted from religious corporations to public benefit corporations.

93. Despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system did not prosper.

94. In July 2017, NantWorks, LLC acquired a controlling stake in Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another \$148 million to the Debtors.

95. Despite the infusion of capital and new management, it became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring. Thus, despite VHS’ great efforts to revitalize its Hospitals and improvements in performance and cash flow, the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining

1 agreements or payor contracts, the continuing need for significant capital expenditures for seismic
2 obligations and aging infrastructure, and the general headwinds facing the hospital industry, make
3 success impossible. Losses continue to amount to approximately \$175 million annually on a cash
4 flow basis.

5 96. Based on the foregoing, and while VHS has made improvements to the existing
6 system, the Debtors have commenced these chapter 11 cases to protect the original legacy of the
7 Daughters of Charity to the maximum extent possible by retiring debt incurred over the past 18
8 years and freeing the hospital facilities and work force to continue to operate as hospitals under
9 new ownership and leadership without the accumulated crisis of the past. To do that requires the
10 bankruptcy court supervised sale of some or all of the hospitals and related facilities, and the
11 comprehensive resolution of the Debtors financial obligations through a court approved plan of
12 reorganization.

13 97. The goals of the Debtors' restructuring are to maintain the Debtors' business
14 operations; preserve the going-concern value of the Debtors' businesses, its stakeholders, and
15 parties in interest; and, most importantly, to protect the health and wellbeing of the patients who
16 are treated at the Hospitals and the jobs of the Debtors' approximately 7,000 employees.

17 **B. Current Fiscal Crisis.**

18 98. As described above, the fiscal crisis is the confluence of various factors and
19 historical challenges. Below are a few of the most significant and expected funding requirements
20 in the immediate future.

21 **a. *Payor Rates.***

22 99. Verity is paid below market rates through its payor contracts with health plans.
23 Verity's contracts are 20-43% below market. These below market rates would make it difficult
24 for any hospital to break even. Summarized below is illustrative data, highlighting Verity's rates
25 as a percentage of Medicare relative to the market rates.

26 ///

27 ///

Managed Care Rates Expressed as a Percent of Medicare Rates (Combined Inpatient and Outpatient)

	BlueCross			BlueShield			United		
	Verity	Market	% Difference	Verity	Market	% Difference	Verity	Market	% Difference
SFMC	193%	223%	-15%	193%	226%	-17%	198%	237%	-20%
SVMC	139%	206%	-48%	156%	202%	-29%	139%	195%	-40%
OCH	164%	237%	-44%	229%	244%	-6%	151%	242%	-60%
SMC	207%	252%	-22%	235%	254%	-8%	228%	262%	-15%
SLRH	202%	280%	-38%	204%	280%	-37%	159%	289%	-82%
Average			-34%			-20%			-43%

b. Labor Rates.

100. Payroll costs in the last twelve months have increased nearly \$65,000,000 partially related to Verity's union contracts (~5% increases year over year forward).

c. Pension Obligations.

101. Under the Pension Plans (as defined above), there are expected pension funding requirements in the next year of over \$66 million. Only ~\$20M relates to current year costs. In other words, most is funding the underfunded status of the plans.

d. IT Investment.

102. VHS' system requires IT investment in the amount of nearly \$50 million over the next year alone. There is outdated electronic health records and enterprise resource planning (i.e., human resources, supply chain management, inventory management, etc.). Further, VHS needs significant upgrades to its IT assets in order to modernize its Hospitals and remain able to continue providing quality patient care services. For example, VHS needs to (i) immediately replace its outdated local area and wireless networking equipment with modern equipment to enable reliable access by all VHS system users (estimated cost \$15 million over a one-year implementation period), (ii) replace VHS' obsolete clinical systems — including its medical record systems and financial systems — in order to provide up-to-date patient records, improved clinical planning, care management, and better charge control (estimated cost \$220 million over a period of two years), and (iii) replace and upgrade such other information technology hardware and software, including for imaging clinics, that are necessary for operating a full range of healthcare services.

1 ***e. Seismic and Energy Requirements.***

2 103. The Verity system requires seismic and energy expenditures of over \$150 million
3 over the next few years. By way of example, there are significant improvements (including
4 demolition of certain buildings) required by 2020 to St. Vincent Medical Center, Seton
5 Medical Center, and O'Connor Medical Center. There are additional improvement required by
6 2030 to St. Vincent, Seton Medical Center, O'Connor Medical Center, and St. Louise Regional
7 Hospital. These seismic improvement deadlines are part of the conditions imposed by the
8 Attorney General in the BlueMountain Transaction, as well as mandated by the California Office
9 of Statewide Health Planning and Development (OSHPD).

10 ***f. Medical Equipment.***

11 104. The Verity system requires over \$100 million in medical equipment expenditures
12 over a period of several years.

13 **C. Working Capital Shortages.**

14 105. The Debtors, like other hospitals serving similar communities, rely on HQAF,
15 DSH and other government support to help bridge the gap between what they get reimbursed by
16 Medicare and Medi-Cal and their cost of providing care. The Hospital Quality Assurance Fee
17 (HQAF), established in 2010, provides funding for supplemental payments to California hospitals
18 that serve Medi-Cal and uninsured patients. The program has been very successful, providing
19 billions of dollars in supplemental payments to California hospitals. The Medicare and Medi-cal
20 programs also provide funding to hospitals that treat indigent patients through the
21 Disproportionate Share Hospital (DSH) programs, under which facilities are able to receive at
22 least partial compensation. Under the Patient Protection and Affordable Care Act of 2010 (ACA,
23 P.L. 111-148, as amended), Congress would have reduced federal DSH allotments beginning in
24 2014, to account for the decrease in uncompensated care anticipated under health insurance
25 coverage expansion. However, several pieces of legislation have been enacted since 2010 have
26 since delayed the ACA's Medicaid DSH reduction schedule. Unfortunately, both HQAF and
27 DSH have proven difficult to rely on, as payments are reduced and delayed.

28 106. Relying on the HQAF payments has led to working capital shortages due to delays

1 in approval and receiving less than expected amounts. For example:

- 2 • *14-Month Delay*: QAF 5 FFS (service period 1/1/17 –6/30/19) was not approved until
3 Dec. 2017 and the Debtors did not start receiving payments until the end of Feb. 2018 (14-
month delay);
- 4 • *Potential 24 Month Delay*: QAF 5 HMO is likely not going to be approved until the end
5 of 2018 (potentially a 24-month delay on receiving funds);
- 6 • *Receiving less than Expected*: through the first 4 cycles of QAF 5 FFS, the Debtors have
7 received anywhere from 69.2-93.9% of expected payments.

7 **D. Attorney General Requirements.**

8 107. As set forth above, as part of approving the Restructuring Agreement, the AG
9 placed certain operational restrictions on VHS and each of the Hospitals, which include certain
10 minimum annual requirements for charity care, community benefits, and capital expenditures
11 among other mandates. Taken separately, most of these conditions would not have contributed to
12 the Debtors' failure to thrive. However, the cumulative effect of the conditions was to lock the
13 Debtors into a failing business model, dictating both minute details of business operations, as well
14 as denying the Debtors the ability to repurpose facilities. For example, SMC could better serve
15 the community by operating as a much-needed long-term post-acute care facility, rather than as
16 one of the many acute care hospitals in a saturated service area.

17 108. The AG's conditions also compelled the expenditure of millions of dollars to
18 provide charity care even though the number of uninsured people in California has steadily
19 decreased since passage of the Affordable Care Act. Also, as a result of a shortfall in the fiscal
20 year 2017 charity care requirement for certain hospitals, VHS was required to make an additional
21 contribution to the Retirement Plans of \$7,619,000 in October 2017.

22 109. The AG's conditions denied the Debtor the benefits of the marketplace. For
23 example, the conditions required Verity to enter into contracts with certain entities. Because
24 those entities were well aware of the AG's requirement that Verity contract with them or be in
25 default, Verity had no bargaining power with those entities or payors.

26 **E. Increased Cap Volumes.**

27 110. The Debtors have capitation contracts with health plans. Capitation is a flat
28 periodic payment per enrollee paid to a healthcare provider; it is the sole reimbursement for

1 providing services to a defined population. Under capitation, fixed payments are made to
2 providers regardless of the volume of services rendered, so providers like the Debtors bear the
3 risk that the costs of providing service, including opportunity costs (profits), might exceed the
4 capitation payment. Capitation completely reverses the actions that providers must take to ensure
5 financial success; under capitation, the keys to profitability are to work more efficiently and
6 decrease volume. The Debtors have seen a significant increase in volume from capitated
7 populations and therefore are bearing the loss from that increased volume.

8 **IV. Corporate And Capital Structure**

9 **A. Corporate Structure.**

10 111. As set forth above, VHS is a California nonprofit public benefit corporation and
11 the sole member of O'Connor Hospital, St. Francis Medical Center, St. Vincent Medical Center,
12 Seton Medical Center, Verity Business Services, Verity Medical Foundation, Verity Holdings,
13 LLC, and DePaul Ventures, LLC.

14 112. As set forth above, each Debtor Hospital is the sole member of the Debtor
15 nonprofit public benefit corporation that handles its fundraising and grant-making programs: St.
16 Francis Medical Center Foundation, St. Vincent Foundation, Seton Medical Center Foundation,
17 Saint Louise Regional Hospital Foundation, and O'Connor Hospital Foundation (collectively, the
18 "Philanthropic Foundations").

19 113. St. Vincent Medical Center is the sole Member of St. Vincent Dialysis Center, Inc.

20 114. VHS is the sole member of DePaul Ventures, LLC. DePaul Ventures, LLC, is the
21 sole Member of DePaul Ventures-San Jose ASC, LLC, and of DePaul Ventures-San Jose
22 Dialysis, LLC.

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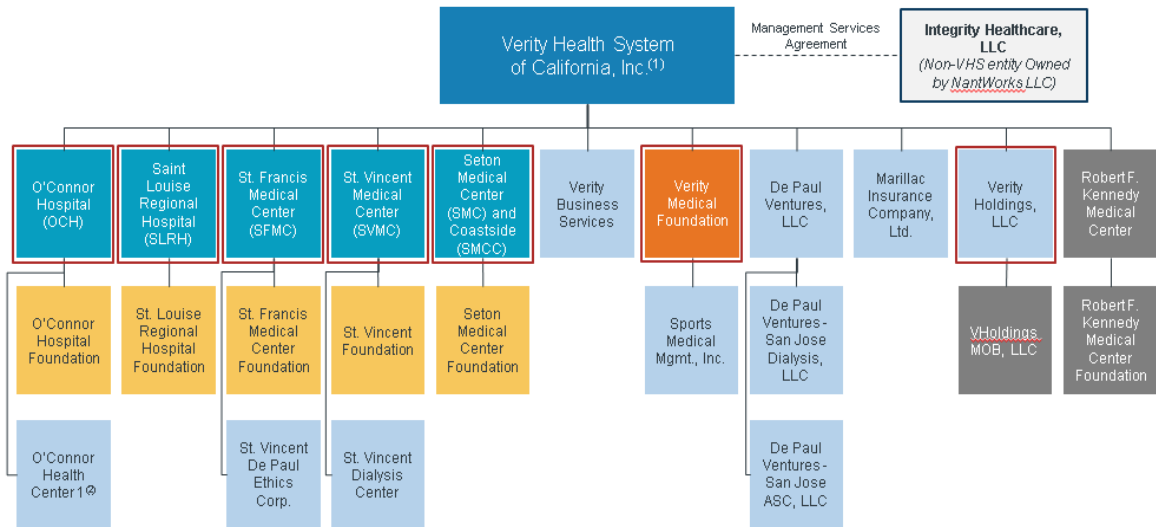
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115. The following graphic depicts Verity's prepetition organizational structure:



116. Each Debtor entity has its own management and governance structure. Under the leadership of the Daughters of Charity, each Hospital operated independently except that all employees were under the same pension plans. After the transition of operations and leadership to VHS, there has been a systemizing of operations, so that functions that were being performed at each of the Debtors are being transitioned and performed by VHS and being standardized, such as pharmacy operations, credentialing, IT, case management, etc.

117. As set forth above, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by Verity hospitals. The following graphic depicts VMF's structure that is comprised of, among other things, professional service agreements with seven medical groups that provide physicians to VMF's clinics:

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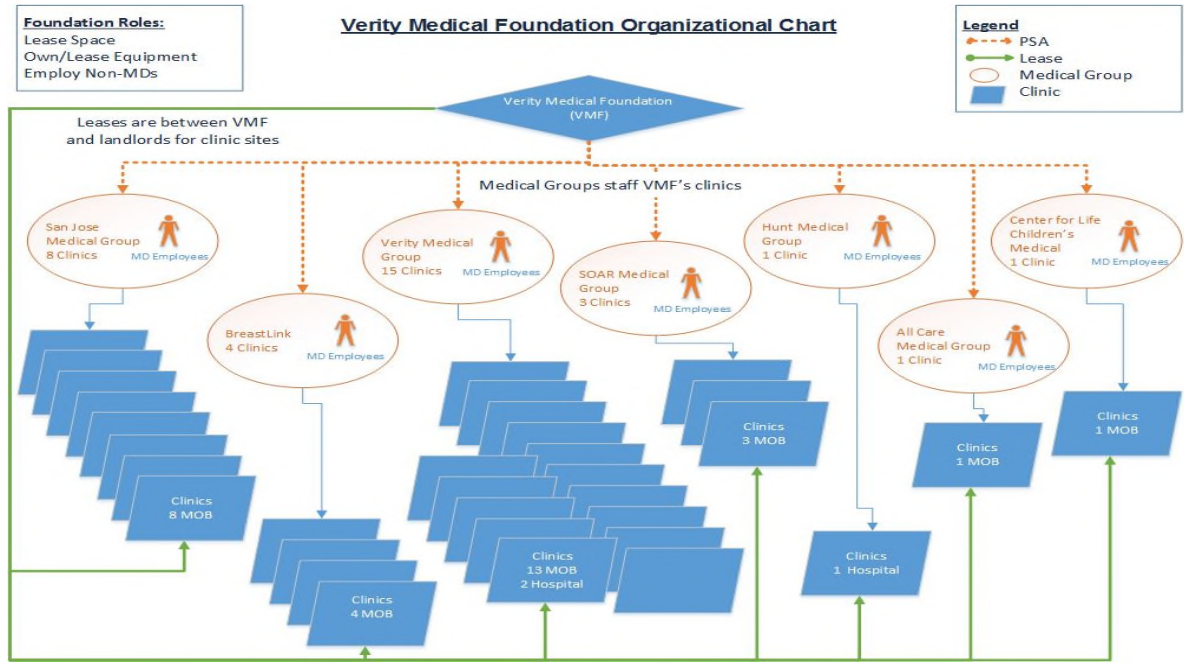
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118. As stated above, I am the CEO. The remainder of the senior management follows:

Name	Position
Chief Financial Officer	Anita Chou
Chief Operating Officer	Anthony Armada
Chief Medical Officer	Tirso del Junco, Jr. M.D.

119. VHS is governed by a 7-member Board (the "VHS Board of Directors"), the membership of which follows:

Name	Position
Dr. Ernest Agatstein	Director
James Barber	Director
Terry Belmont	Secretary
Jack Krouskup	Chairman
Charles B. Patton	Director
Christobel Selecky	Director
Andrew Pines	Vice Chair

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120. Verity Holdings, LLC, De Paul Ventures, LLC, and De Paul - San Jose Dialysis, LLC, are all limited liability companies that do not have Boards of Directors. The sole Member of Verity Holdings, LLC, and De Paul Ventures, LLC, is VHS. The sole member of De Paul Ventures - San Jose Dialysis, LLC, is De Paul Ventures, LLC. I am the President and Eleanor Ramirez and Art Huber were appointed Vice Presidents of Verity Holdings, LLC, on November 17, 2017. I am the managing member for De Paul Ventures, LLC. Dr. Tirso del Junco, Jr., is the managing member for De Paul Ventures - San Jose Dialysis, LLC.

B. Capital Structure.

121. As more fully set forth in the declaration of Anita Chou in support of the Debtors' *Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108*, VHS, Verity Business Services ("VBS"), the Hospitals, and one operating division are jointly obligated parties on approximately \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million outstanding tax exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities Development Authority (the "2005 Bonds"), which loaned the bond proceeds to VHS to provide funds for capital improvements and to refinance certain tax exempt bonds previously issued in 2001 by the DCHS, a religious not-for-profit enterprise and VHS's reorganization predecessor; and (b) \$202 million outstanding tax exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California Public Finance Authority, which loaned the proceeds to VHS to provide working capital (the "Working Capital Notes"). Wells Fargo Bank, N.A. ("Wells Fargo") is the Bond Trustee and UMB Bank National Association ("UMB Bank") is the successor Master Trustee and for the prepetition secured 2005 Bonds. U.S. Bank, National Association ("U.S. Bank") is the Note Trustee and also the Collateral Agent for the Working Capital Notes.

122. Except for the taxable Series 2015C Working Capital Notes, the 2005 Bonds and the Working Capital notes are all tax exempt, meaning interest on the bonds is not taxable to the holders so long as the issuer maintains its qualified tax exempt status and the proceeds of the

bonds were used for the tax exempt purposes for which they were originally intended. The Series 2005 A Bonds are comprised four term bonds maturing on July 1, 2024, 2030 and 2035 bearing interest at 5.75% (Series 2005A-2024), (Series 2005A-2030), (Series 2005A-2035) and one maturing July 1, 2039 bearing interest at 5.50% (Series 2005A-2039). The Series 2005G term bond matures on July 1, 2022 and bears interest at 5.50%. The Series 2005H- term bond matures on July 1, 2025 and bears interest at 5.75%. The Working Capital Notes mature on June 10, 2019 (Series 2015A, Series 2015B, Series 2015C and Series 2015D) and on December 10, 2020 (Series 2017A, 2017B). Series 2015A and B and Series 2017 and 2017B bear interest at 7.25%, while the Series 2015D carries an 8.75% interest rate and Series 2015C accrues interest at 9.5%.

123. As set forth above, Holdings, a direct subsidiary of its sole member Verity, was created in 2016 to hold and finance Verity's interests in six medical office buildings whose tenants are primarily physician and other practicing medical groups and certain of the Verity Hospitals. Holdings is the borrower on approximately of \$66 million on two series of non-recourse financing secured by separate deeds of trust, revenue and accounts pledges, including lease rents on each medical buildings (collectively "MOB Financing"). The MOB Financings bear interest at a variable interest rate based on equal to One Month LIBOR plus a spread of 5.0% with a floor of 6.23%. The secured lenders for the MOB Financings are affiliates of NantWorks, LLC, which is an affiliate of Integrity.

124. During May 2017, the California Statewide Communities Development Authority issued \$20 million of limited obligation tax exempt bonds, pursuant to the CaliforniaFIRST Clean Fund Program in five series all with the same maturity date of September 2, 2047 (the "Clean Fund Bonds") as the conduit issuer for the benefit and obligation of Verity. The purpose of the bond funding was to assist with clean energy construction efforts of the Seaton Medical Center and are secured by Seton Medical Center's voluntary agreement to special tax assessments by Daley City. No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National Association ("WTNA") is the Trustee holding the construction funds, and a pre funded capitalized interest fund and is the collateral agent for collection of the special tax assessments for use in paying interest and principal on the Clean Fund Bonds. Interest on the Clean Fund Bonds

1 accrues at 6.4%. The special assessment runs for a period which is the shorter of 30 years or the
2 early full defeasement of the Clean Fund Bonds.

3 125. Also in September 2017, the California Statewide Communities Development
4 Authority issued a single series \$20 million of limited obligation tax exempt bonds pursuant to
5 the CaliforniaFIRST Program for the purpose of assisting with clean energy and seismic
6 improvement construction at Seton Medical Center (“NR2 Petros Bonds”). The NR2 Petros
7 Bonds also mature on September 2, 2047, but carry an interest rate of 6.45%. The NR2 Petros
8 Bonds are also California tax exempt and are secured by a special Daly City tax assessment on
9 Seton Medical Center property. No other Debtor is liable for repayment of the NR2 Petros
10 Bonds. The special assessment runs for a period which is the shorter of 30 years or the early full
11 defeasement of the NR2 Petros Bonds. WTNA is the Trustee holding the seismic improvement
12 funds, as well as a pre-funded interest payment fund.

13 126. NantCapital also provided \$40 million of unsecured debt financing for Verity as
14 reflected in two \$20 million unsecured notes (the “Unsecured Notes”). The Unsecured Notes are
15 balloon notes with interest and principal payable at maturity in 2020 and carry annual
16 compounded interest rates of 7.25%.

17 **C. Unsecured Debt.**

18 127. The Debtors have approximately \$500 million in total unsecured debt, including
19 disputed, unliquidated or contingent claims, which are comprised of claims made by vendors of
20 goods and services, cost report payables, pension obligations, management fees, and incurred but
21 not reported third party claims.

22 **V. Sale Efforts**

23 128. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
24 sell their assets. In June 2018, the Debtor engaged Cain Brothers, a division of KeyBanc Capital
25 Markets (“Cain”), to identify potential buyers of some or all of the Verity hospitals and related
26 assets and commenced discussions with those potential buyer.

27 129. Cain prepared a Confidential Investment Memorandum (the “CIM”) and organized
28 an online data site to share information with potentially buyers and contacted over 110 strategic

1 and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction
2 regarding the Debtors and has advanced significantly towards achieving sales.

3 130. In August 2018, as a result of its ongoing and broad marketing process, Cain has
4 received 11 Indications of Interest (“IOI”) to date, and expects to receive additional proposals on
5 or near the end of August. Shortly after the Petition Date, the Debtors, in consultation with Cain
6 and its other advisors, anticipate selecting an offer from one or more stalking horse bidder(s) to
7 acquire some or substantially all of the Debtors’ assets through a sale under § 363 of the
8 Bankruptcy Code.

9 **V. First-Day Pleadings**

10 131. The Debtors request that the relief described below in the First-Day Motions be
11 granted, as each request constitutes a critical element in achieving the successful restructuring of
12 the Debtors for the benefit of its patients, creditors and the communities they serve.

13 **A. Administrative Motions.**

14 132. In the *Motion of Debtors for Entry of an Order Directing the Joint Administration*
15 *of their Related Chapter 11 Cases* (the “Joint Administration Motion”), the Debtors request entry
16 of an order directing joint administration of these chapter 11 cases for procedural purposes
17 pursuant to Bankruptcy Rule 1015(b) and that the Court maintain one file and one docket for all
18 of the chapter 11 cases under the lead case, Verity Health System of California, Inc.

19 133. Joint administration of the chapter 11 cases will provide significant administrative
20 efficiencies without harming the substantive rights of any party in interest. Many of the motions,
21 hearings and orders that will be filed in the chapter 11 cases almost certainly will affect each of
22 the Debtors. The entry of an order directing joint administration of the chapter 11 cases will
23 reduce fees and costs by avoiding duplicative filings, objections, notices, and hearings, and will
24 allow all parties in interest to monitor the chapter 11 cases with greater ease and efficiency. The
25 relief requested in the Joint Administration Motion is in the best interests of the Debtors’ estates,
26 their creditors, and all other parties in interest and will enable the Debtors to continue to operate
27 their businesses in chapter 11 with the least disruption.

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134. In the *Ex Parte Motion For Entry Of Order Extending Time To File Schedules Of Assets And Liabilities, Schedules Of Executory Contracts And Unexpired Leases, And Statements Of Financial Affairs* (the “Schedules and SOFA Motion”), as set forth in the declaration of Anita M. Chou, the Debtors request entry of an order granting additional time to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs. As a consequence of the size and complexity of the Debtors’ business operations, the number of creditors likely to be involved in these chapter 11 cases, the numerous critical operational matters that the Debtors’ management and employees must address, a 30-day extension (without prejudice to further extensions) is necessary and appropriate.

135. In the *Debtors’ Emergency Motion (A) Approving the Debtors Filing a Consolidated List of Fifty Largest General Unsecured Creditors For All Cases; (B) Approving The Debtors Filing A Consolidated Master Mailing Matrix For All Cases; and (C) Permitting the Debtors’ Claims And Noticing Agent To Maintain The Master Mailing Matrix*, the Debtors seek entry of an order approving each Debtor having filed in its respective case: a consolidated list of the fifty largest general unsecured creditors for all eighteen Debtors and a consolidated Master Mailing Matrix for all 17 Debtors; and permitting the Debtor’s claims and Noticing Agent (Kurtzman Carson Consultants) to maintain and update the Master Mailing Matrix. There are 17 entities that are Debtors in these chapter 11 cases. As of the Petition Date, the Debtors estimate that they have over \$1 billion in liabilities and they have over 20,000-40,000 potential creditors and parties in interest (on a consolidated basis) in these chapter 11 cases. Many of the Debtors’ creditors overlap. As such, requiring the Debtors to prepare individual Top 20 Lists of Creditors and individual Mailing Matrixes for each Debtor would be an exceptionally burdensome task and would greatly increase the risk and recurrence of error of information already on computer systems maintained by the Debtors or their agents.

B. Operational Motions Requesting Immediate Relief.

136. The Debtors intend to ask for immediate relief with respect to the following First Day Pleadings and, therefore, will present these motions at the First Day Hearing.

1 a. ***Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing***
2 ***The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash***
3 ***Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant***
 To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108 (the “Cash Collateral/DIP Motion”).

4 137. By way of the Cash Collateral/DIP Motion, and as set forth in the Declaration of
5 Anita M. Chou (the “Chou Declaration”), Chief Financial Officer of VHS (“Chou Decl.”), in
6 support of the Cash Collateral/DIP Motion, the Debtors move, on an emergency basis, for entry
7 of an interim order (substantially in the form attached as Exhibit “A” to the Chou Declaration, the
8 “Interim Order”) and a final order (the “Final Order” and together with the Interim Order, the
9 “DIP Orders”) (i) (a) authorizing the Debtors to enter into a senior secured, superpriority debtor
10 in possession financing facility with Ally Bank, a subsidiary of Ally Financial, Inc., (the “DIP
11 Lender”), in an (a) interim amount not to exceed \$30,000,000 and only as needed to avoid
12 immediate and irreparable harm, and (b) after a final hearing, amount up to \$185,000,000 (as
13 amended, modified or otherwise in effect from time to time, the “DIP Facility”), substantially on
14 the terms set forth in the Chou Declaration and the Debtors In Possession Facility Agreement,
15 attached as Exhibit “1” to the proposed Interim Order (as amended, supplemented, or otherwise
16 modified and in effect from time to time, the “DIP Facility Agreement,” and together with all
17 other agreements, documents, notes, certificates, and instruments executed and/or delivered with,
18 to or in favor of the DIP Lender, (the “DIP Financing Agreements”), and (b) granting the DIP
19 Liens and the DIP Superpriority Claims (in each case, as defined below); (ii) authorizing the
20 interim use of Cash Collateral (as defined below) on the terms set forth in the Interim Order; (iii)
21 granting “adequate protection” to UMB Bank, N.A., as successor Master Trustee for the
22 Prepetition Secured Revenue Bonds, Series 2005 A, G and H (“2005 Bonds”), U.S. Bank
23 National Association (“U.S. Bank”), as the Collateral Agent and Note Trustee for the Series 2015
24 A, B, C, and D and the Series 2017 A and B Revenue Notes (collectively, the “Working Capital
25 Notes”) and MOB Financing LLC and MOB Financing II LLC as holders of security interests in
26 Verity Holdings prepetition accounts, including rents arising from the prepetition MOB Financing
27 (described below) in the form of Adequate Protection Payments and Replacement Liens, each as
28 defined in the Chou Decl.; (iv) modifying the automatic stay as imposed by section 362 of the

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1 Bankruptcy Code to the extent necessary to implement and effectuate the terms of the DIP
2 Facility and the DIP Orders; and (v) scheduling an interim hearing to approve the proposed
3 Interim Order and a final hearing with respect to the relief requested herein (the “Final Hearing”).

4 138. Each Debtor has all requisite corporate power and authority to execute and deliver
5 the DIP Financing Agreements to which it is a party and to perform its obligations thereunder.

6 139. Absent granting emergency access to the Debtors’ cash collateral, the Debtors will
7 not be able to make payroll or meet other obligations critical to the maintenance of safe facilities
8 and the delivery of effective acute care services for its patients and staff during the week ending
9 September 7, 2018. Absent emergency access to postpetition financing, the Debtors will lose
10 vendor support for critical postpetition deliveries of goods and services further burdening the
11 Debtors use of cash. Absent entry of an interim order granting the requested relief, the very
12 existence of the Hospitals will be threatened and the ability of the Hospitals to survive as long
13 term going concerns, whether or not owned by the Debtors, will be irreparably harmed.

14 ***b. Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors***
15 ***To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee***
16 ***Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The***
17 ***Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors***
Relating To The Foregoing; Memorandum Of Points And Authorities In Support Thereof (the
“Wage Motion”).

18 140. By the Wage Motion, the Debtors move the Court for entry of an order
19 (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages and salaries,
20 and (b) pay and honor employee benefits and other workforce obligations (including remitting
21 withholding obligations, maintaining workers’ compensation and benefits programs, paying
22 related administration obligations, making contributions to retirement plans, and paying
23 reimbursable employee expenses) (collectively, the “Employee Obligations”); and (ii) authorizing
24 and directing the applicable bank to pay all checks and electronic payment requests made by the
25 Debtors relating to the foregoing.

26 141. Wages. The Employees are paid their wages and salaries (the “Wages”)
27 bi-weekly, in arrears, either five or six days after the end of every 14-day pay period, through
28 direct deposit or by check. The Debtors’ average bi-weekly gross payroll is approximately

1 \$25,394,994, which includes approximately \$463,907 for executive payroll, \$3,726,816 for
2 withholding obligations (relating to various taxes, claims and other obligations) and \$208,476 for
3 retirement plan contribution matching. Under a bifurcated, constant pay cycle, Employees were
4 last paid on August 24 and 30, 2018. The next routine payroll dates covering all Employees'
5 accrued and unpaid prepetition Wages are scheduled for September 7, 13 and 14, 2018, and
6 expected to include approximately \$15,353,375 that is attributable to prepetition Wages (the
7 "Requested Prepetition Payroll"), which the Debtors seek authority to pay by the Wage Motion.
8 The Debtors do not believe payments of Wages to any individual Employee will exceed the
9 \$12,850 cap under § 507(a).

10 142. Withholding and Union Obligations. In the ordinary course of their business, the
11 Debtors routinely withhold from the Wages certain amounts that the Debtors are required to
12 transmit to third parties for purposes such as Social Security and Medicare, federal and state or
13 local income taxes, contributions to the Debtors' benefit plans, savings and retirement plan
14 contributions, union claims, garnishment, child support or other similar obligations pursuant to
15 court order or law (collectively, the "Withholding Obligations"). The Debtors owe approximately
16 \$3,726,816 for Withholding Obligations in connection with the Requested Prepetition Payroll,
17 which the Debtors seek authority to pay by the Wage Motion. The Debtors are also required to
18 make certain Union-specific contributions, which are currently accrued and unpaid in the amount
19 of \$85,089 on account of prepetition Wages, which the Debtors seek authority to pay by the Wage
20 Motion.

21 143. Bonuses. Certain Employees are eligible to receive sign-on, retention and
22 incentive bonuses. Payout opportunity is based on Employee position, title and location (i.e.,
23 Hospital or Systems Office). The Debtors do not, by the Wage Motion, seek permission to pay
24 any bonuses to continuing Employees but do seek the authority, in the Debtors' discretion, to pay
25 the Employees for contractually agreed bonuses that accrued within the 180 days prior to the
26 Petition Date when their services with the Debtors are terminated so long as the total of the
27 payments already then made for prepetition Employee Obligations and the bonuses does not
28 exceed the statutory limit for priority claims of \$12,850.

144. Reimbursement Obligations. The Debtors customarily reimburse Employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtors. Such expenses typically include, but are not limited to, business-related travel expenses (including mileage), business meals, relocation allowances, tuition reimbursement, and other items specified in the CBAs. Based on historical experience, the Debtors anticipate that, as of the Petition Date, the Debtors owe an estimated \$30,200 in Reimbursement Obligations to their Employees, which they seek authority to pay by the Wage Motion. The Debtors further seek to continue to pay Reimbursement Obligations incurred postpetition in the ordinary course of the Debtors' business.

145. Paid Time Off and Extended Sick Leave. Full-time and part-time Employees become eligible to receive employment benefits beginning the first of the month following 30 days of employment (when they become "Eligible Employees"). *Per diem* Employees are not Eligible Employees. The Debtors provide Eligible Employees with Paid Time Off ("PTO") and Extended Sick Leave ("ESL"), which are accrued annually and in increasing rates over successive years. PTO is time off due to vacation, holiday, personal or incidental sick time. ESL kicks in (a) immediately where the Eligible Employee is admitted for surgery, (b) after a 3-day waiting period for a workers' compensation injury, and (c) after a 7-day waiting period if workers' compensation is not implicated. As of the Petition Date, the Debtors are carrying approximately \$36.6 million on their books for 789,942 hours of accrued and unused PTO. Eligible Employees are permitted to cash out their unused PTO on one or two occasions during the year depending on the relevant Hospital or CBA. As of the Petition Date, the Debtors are carrying approximately \$17.5 million on their books for 372,000 hours of accrued and unused ESL. Some CBAs permit Eligible Employees to cash out a portion of their unused ESL at retirement. By the Wage Motion, the Debtors seek authority to honor their existing PTO and ESL policies to the extent it would permit continuing Employees to use their prepetition accrued leave in the ordinary course of business, and going forward. The Debtors are not, by the Wage Motion, seeking permission to cash out any accrued and unused PTO or ESL of continuing Employees but do seek the authority, in the Debtors' discretion, to pay the Employees for unused PTO and/or ESL, as permitted per

1 Hospital policy and relevant CBA terms, that accrued within the 180 days prior to the Petition
2 Date so long as the total of the payments for prepetition Employee Obligations does not exceed
3 the statutory limit for priority claims of \$12,850.

4 146. Health Benefits. The Debtors offer Eligible Employees the opportunity to
5 participate in a number of insurance and benefit programs, including, among other things, medical,
6 dental and vision plans, life insurance, short-term and long-term disability insurance, workers'
7 compensation, retirement plans and other insurance plans and benefits. As of the Petition Date,
8 the Debtors owed (a) approximately \$3,162,816 to Healthnow as third-party administrator on
9 account of accrued and unpaid prepetition claims against the self-insured medical plans; (b)
10 approximately \$48,060 to Cigna and Delta Dental for accrued and unpaid prepetition claims
11 against the self-insured dental plans; (c) approximately \$60,150 to VSP for accrued and unpaid
12 prepetition claims on account of the self-insured vision plans. By the Wage Motion, the Debtors
13 seek authority to pay these prepetition claims. The Debtors believe that they are current on the
14 administration fees and premiums related to the health plans to pay their portion of any premiums
15 or administration fees for the health plans that accrued and remain unpaid as of the Petition Date,
16 and to turn over to Blue Shield of California any amounts sufficient to satisfy the portion of the
17 accrued and unpaid prepetition premiums to be paid by the Employees in connection with the
18 payment of the Wages and Withholding Obligations. By the Wage Motion, the Debtors also seek
19 authority to continue to pay, in their discretion and in the ordinary course of their business, the
20 administration fees, premiums for and claims under the health plans incurred postpetition. The
21 Debtors further seek, by the Wage Motion, to continue to perform any obligations under
22 Continuation Health Coverage (COBRA) in respect to former employees.

23 147. Life, Disability and Workers' Compensation. The Debtors offer Eligible
24 Employees premium-based group life insurance and accidental death and dismemberment
25 insurance ("AD&D") through UNUM; premium based short term ("STD") and long term
26 disability coverage ("LTD") through Cigna; workers' compensation insurance through Old
27 Republic Insurance; and an employee assistance program through Optum. The Debtors are also
28 are obligated to Cigna on account of claims under the Federal Medical Leave Act (FMLA) and

1 California Family Rights Act (CFRA). The Debtors believe that they are current on all the above
2 mentioned insurance policies and claims obligations. To the extent they are not, however, the
3 Debtors seek authority, by the Wage Motion, in their discretion, to pay any accrued and unpaid
4 prepetition premiums and related charges and to continue these benefits postpetition and to
5 deliver the Employees' portion of any accrued and unpaid prepetition premiums to the
6 corresponding administrators.

7 148. Retirement Plans. As described in further detail above, the Debtors offer eligible
8 Employees the opportunity to participate in various retirement plans, including defined benefit
9 plans and defined contribution plans. By the Wage Motion, the Debtors seek authority to pay
10 their matching contributions that accrued and remain unpaid as of the Petition Date for the
11 retirement plans and to deliver the Employee contributions in connection with the payment of
12 Wages and Withholding Obligations described above. The Debtors also seek authority, by the
13 Wage Motion, to continue to pay, in their discretion and in the ordinary course of their business,
14 matching contributions for the retirement plans incurred postpetition.

15 149. Miscellaneous Plans. The Debtors also offer their eligible Employees the
16 opportunity to participate in a "Cafeteria Plan" through Alliant Choice Plus, which includes
17 voluntary critical care insurance, pet insurance, auto and home insurance. The healthcare
18 reimbursement account and dependent care reimbursement account are administered through
19 Healthnow, and long-term care is administered through UNUM. All of these programs are 100%
20 funded by the Employees and are paid for through payroll deductions. By the Wage Motion, the
21 Debtors request authority to continue to honor these programs, in their discretion, and to continue
22 distributing to third-parties the payments for these programs in connection with the payment of
23 Wages and Withholding Obligations as described above, including the distributions of payments
24 that are for prepetition amounts due.

25 150. The Debtors believe that substantially all of its Employees rely exclusively on
26 their compensation to pay their daily living expenses. Also, the Employee Benefit Programs are a
27 critical component of the Employees' total compensation package. It is imperative to the
28 accomplishment of the Debtors' goals in this case that the Debtors minimize any adverse impact

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of the chapter 11 filing on the Debtors' workforce, patients, operations, and orderly administration of these Cases. Any disruption to payment of the payroll in the ordinary course, or to the continued implementation of employee programs in the Debtors' discretion, would adversely affect the Debtors' goals in this case because such events are likely to cause some employees to terminate their employment with the Debtors, will cause employees to be distracted from their duties to care for the patients, and will hurt employee morale at a particularly sensitive time for all employees. Failure to honor the Employee Obligations could have severe repercussions on the Debtors' ability to preserve its assets and administer its estate, to the detriment of all constituencies. Accordingly, as set forth in the Wage Motion, the Debtors request authority to continue paying the Employees and administering the Employee Benefit Programs and any obligations related to the foregoing (subject to the Budget and any applicable payment caps) in the ordinary course of business.

c. Emergency Motion Of Debtors For Authority To: (1) Continue Using Existing Cash Management System, Bank Accounts And Business Forms; (2) Implement Changes To The Cash Management System In The Ordinary Course Of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority For Postpetition Intercompany Claims; And (5) Obtain Related Relief; Memorandum Of Points And Authorities In Support Thereof (the "Cash Management Motion").

151. By the Cash Management Motion, the Debtors move the Court for the entry of an order authorizing them, subject to the terms of the DIP Orders and DIP Financing Agreements to: (1) continue to use their cash management system, including the continued maintenance of their existing bank accounts (three of which include passive investing) and business forms; (2) implement changes to their cash management system in the ordinary course of business, including opening new or closing existing bank accounts; (3) continue to perform under and honor intercompany transactions in the ordinary course of business, in their business judgment and at their sole discretion; (4) provide administrative expense priority for postpetition intercompany claims, all as set forth in more detail below; and (5) obtain related relief.

152. The Debtors further request, by the Cash Management Motion, that the Court authorize the financial institutions at which the Debtors maintain various bank accounts to (a) continue to maintain, service and administer the Debtors' bank accounts, and (b) debit the bank

1 accounts in the ordinary course of business on account of (i) wire transfers or checks drawn on
2 the bank accounts, or (ii) undisputed service charges owed to the banks for maintenance of the
3 Debtors' cash management system, if any.

4 153. The Debtors currently have 63 accounts (the "Accounts") with five commercial
5 banks and one investment bank (collectively the "Banks"). The Debtors request authority to
6 continue utilizing the Accounts, subject to the terms of the DIP Orders and DIP Financing
7 Agreements. Requiring the Debtors to close certain of the Accounts and open new ones will
8 disrupt the Debtors' cash flow – and, ultimately, impact patient care – because (i) the depositors
9 (some of which are governmental agencies) will not respond quickly to the change and will likely
10 continue to send deposits to the original deposit account, and (ii) the Debtors have certain
11 obligations (including for debt, pension and defined contribution) that they pay exclusively by
12 electronic funds transfer and changes to the payment accounts have the potential of slowing down
13 these crucial payments. Closing the Accounts will also increase the work of the Debtors'
14 accounting personnel, who are already dealing with the many and varied issues related to these
15 Cases. Closing the Accounts and opening new ones under the circumstances described in the
16 corresponding Memorandum of Points and Authorities would needlessly cost the Debtors time
17 and money at a time when they are trying to conserve both, and would result in no discernible
18 benefit to the Debtors' bankruptcy estates.

19 154. The Debtors also request in the Cash Management Motion authority to continue
20 using their business forms without the designation "Debtors in Possession" on them *for a limited*
21 *time*. The Debtors' forms are either electronically printed or can be electronically altered. The
22 Debtors seek the authority of this Court to utilize their electronically generated forms without the
23 "Debtors in Possession" designation until the adjustments to the software can be initiated and
24 existing stock is exhausted.

25 155. Subject to the DIP Orders and DIP Financing Agreements, by the Cash
26 Management Motion, the Debtors request that the Court authorize them to continue using their
27 cash management system in connection with the continued use of Accounts and continued use of
28

1 the Debtors' business forms; in furtherance thereof, the Debtors further request that the Court
2 authorize and direct the Banks to continue honoring the Debtors' transactions.

3 ***d. Emergency Motion Of Debtors For Order (A) Prohibiting Utilities From***
4 ***Altering, Refusing, Or Discontinuing Service And (B) Determining Adequate Assurance Of***
5 ***Payment For Future Utility Services (the "Utilities Motion").***

6 156. By the Utilities Motion, the Debtors move the Court for the entry of an order
7 authorizing them to (i) prohibiting utilities (collectively, the "Utility Companies" and
8 individually, a "Utility Company") from altering, refusing, or discontinuing service without
9 further order of the Court; and (ii) determining adequate assurance of payment for future utility
10 services. The Debtors receive essential utility services from several Utility Companies.
11 Furthermore, the Debtors seek a determination that: (i) a deposit made by the Debtors to each
12 Utility Company in an amount equal to the average monthly invoice for prepetition services
13 provided to the Debtors by such Utility Company (the "Deposit"); (ii) the ability of any Utility
14 Company to obtain an initial hearing on the adequacy of the Deposit; and (iii) the ability of any
15 Utility Company to obtain an expedited hearing regarding further adequate assurance if the
16 Debtors fail to cure a post-petition payment default within twenty (20) days after written notice of
17 such default, constitute adequate assurance of payment for future utility services.

18 157. As life-saving medical service providers, the Debtors are situated in a vulnerable
19 position—without the continual flow of vital services of Utility Companies, the mission of the
20 Debtors' business would unravel, irreparably harming the Debtors and their patients who seek
21 medical care in the hospitals, medical centers, and clinics operated by the Debtors. Thus, I believe
22 that in order to ensure the timely and proper care of the patients and maintain ongoing business
23 operations, it is imperative the Debtors are able to rely on a consistent supply of these services.

24 158. Specifically, uninterrupted electricity, gas, telephone, and similar services are
25 essential to the Debtors' provision of medical services to the Debtors' patients. Any interruption,
26 however brief, to utility services to the Debtors' business will result in a serious disruption of the
27 Debtors' business operations and dramatically affect patient care. Therefore, I believe that it is
28 critical that the Court prohibit the Utility Companies from altering, refusing or discontinuing
service to the Debtors without further order of this Court. The Deposit for each of the Utility

Companies, coupled with the streamlined mechanism for requesting further adequate assurance will provide adequate assurance of payment to the Utility Companies as well as safeguard the Debtors' continuing operations.

159. The Debtors are current on payment to the Utility Companies. Further, the Debtors have sufficient cash to pay their postpetition utility bills as they come due and have specifically budgeted for such payments in the Debtors' operating budget submitted in connection with the Debtors' Cash Collateral Motion.

e. Debtors' Emergency Motion For Entry Of An Order Authorizing Debtors To Honor Prepetition Obligations To Critical Vendors (the "Critical Vendors Motion").

160. By the Critical Vendors Motion, the Debtors move the Court for the entry of an order authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims, up to \$20 million (the "Critical Vendor Cap"), with (i) an interim amount of up to \$5 Million, and (ii) an additional amount of up to \$15 Million, of their most critical vendors, in the Debtors' discretion and in the ordinary course of the Debtors' business, pursuant to a carefully-designed Protocol (defined below) overseen by a core, centralized team consisting of senior members of Debtors' management and professional advisors, and subject to the terms and conditions. The Debtors will suffer irreparable harm without the relief requested in Critical Vendors Motion.

161. As life-saving medical service providers, the Debtors are situated in a vulnerable position in that their entire mission would immediately unravel, irreparably harming the Debtors and their patients without the continual flow of vital medical services, medical supplies, medical equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, admission department staff, as well as non-medical services, information technology support, and/or benefits.

162. Additionally, local, state, and federal law places certain compliance requirements on the Debtors. For example, as the operator of hospitals licensed under California state law and certified to participate in the Medicare and Medicaid programs, the Debtors must comply with all

hospital licensing and certification requirements, including those found in the Health and Safety Code and in Title 22 of the California Code of Regulations, as well as the applicable Medicare conditions of participation and corresponding Medicaid requirements. In addition to complying with these overarching requirements, the Debtors must monitor and comply with all of the other licensing and operational requirements that apply to the different service lines and programs offered by the hospitals, including, for example, those applicable to the hospital pharmacies and laboratories. These extensive, comprehensive requirements can only be fulfilled through continued, uninterrupted access to various goods and services. Thus, in order to ensure the timely and proper care of the patients and maintain ongoing business operations, it is imperative the Debtors are able to rely on a consistent, quality supply of various physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, admission department staff, as well as certain medical supplies, medical equipment, and services provided by vendors, suppliers and/or service-providers that are “critical” to the Debtors’ businesses (the “Critical Vendors”).

163. The Debtors’ Critical Vendors include the following categories of providers: (i) uncompensated care contract physicians and on-call coverage physicians (collectively, the “Uncompensated Care and On-Call Coverage Physicians”); (ii) medical directors (the “Medical Directors”); (iii) medical staff officers and leadership positions (“Medical Leadership”); (iv) physicians providing teaching services (“Physician Educators”); (v) medical services providers (the “Medical Services Providers”); (vi) medical supplies and medical equipment providers (collectively, the “Medical Supplies and Equipment Providers”); (vii) medical staffing agencies and hospital-based services providers (collectively, the “Clinical Staffing”); (viii) non-medical services providers (the “Non-Medical Services Providers”); (ix) information technology services providers (the “IT Services Providers”); and (x) various employee benefits providers (the “Benefits Providers”).

1 164. The Debtors require the use of various physicians, the Uncompensated Care and
2 On-Call Coverage Physicians, who provide care to patients who lack the ability to compensate the
3 Debtors for their medical treatment (individually, “Uncompensated Care Contract Physicians”)
4 and the physicians who provide on-call services to cover the Debtors’ daily on-call needs
5 (individually, “On-Call Coverage Physicians”), all in order to ensure patient care. The
6 Uncompensated Care Contract Physicians routinely provide the following vital services: (i)
7 Emergency Room coverage; (ii) surgical procedures for any Patient who is uninsured or
8 underinsured; (iii) psychiatry; and (iv) cardiac services. The On-Call Coverage Physicians make
9 themselves available to the Debtors for certain periods of time to ensure that a specialist is
10 available at all times for emergency situations, including such emergent conditions as cardiac
11 arrest and immediate trauma. The On-Call Coverage Physicians routinely provide the following
12 areas of expertise: (i) urology; (ii) general surgery; (iii) orthopedics; (iv) cardiology; (v)
13 neurosurgery; (vi) thoracic surgery; (vii) cardiac surgery; (viii) radiation oncology; (ix)
14 neurology, (x) psychiatry; (xi) nephrology; (xii) gastroenterology; (xiii) pediatric surgery; and
15 (xiv) obstetrics.

16 165. Due to the strong economy and the tight labor market for professionals with
17 expertise, Uncompensated Care and On-Call Coverage Physicians have a vast array of working
18 opportunities available to them, and to the extent the Debtors are unable to ensure payment for
19 prepetition claims, these Uncompensated Care and On-Call Coverage Physicians will work at
20 other hospitals, resulting in a devastating impact on patient care and irreparable harm to the
21 smooth transition into chapter 11 and preservation and maximization of value for the benefit of
22 the Debtors’ creditors.

23 166. Further, the Debtors require the use of various physicians who serve as Medical
24 Directors. As Medical Directors, it is their responsibility to ensure the hospital runs smoothly and
25 efficiently and according to local, state, and federal mandates in order to ensure patient care.
26 These Medical Directors supervise and coordinate the On-Call Coverage Physicians, provide vital
27 operating and administrative services, such as (i) the Long Term & Sub-Acute Unit; (ii)
28 Advanced Wound Care; (iii) the Comprehensive Spine Care Program; (iv) the Stroke Program;

(v) Cardiac & Pulmonary Rehabilitation; (vi) Oncology; (vii) Non-Invasive Cardiology; (viii) Radiation Therapy; (ix) the Intensive Care Unit and Neonatal Intensive Care Unit; (x) the Antimicrobial Stewardship Program; (xi) Interventional Neurology; (xii) the Bioethics Program; (xiii) the Catherization Laboratory; (xiv) the Skilled Nursing Facility, the Stroke Program; (xv) Thoracic Surgery; (xvi) the Dialysis Center; and (xvii) Nuclear Medicine and Vascular Laboratory. They also are vital for program quality, oversight, and risk management. There are approximately 60 physicians serving as Medical Directors. Similar to the Uncompensated Care and On-Call Coverage Physicians. I believe they also are vital for program quality, oversight, and risk management. There are approximately 68 physicians serving as Medical Directors.

167. Similar to the Uncompensated Care and On-Call Coverage Physicians, and due to the strong economy and the low labor market for professionals with expertise, Medical Directors are in demand and have a vast array of working opportunities available to them. To the extent the Debtors are unable to ensure payment for prepetition claims to Medical Directors, these Medical Directors will work at other hospitals, resulting in a devastating impact on patient care and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

168. Debtors require the use of various physicians who serve as medical staff officers and in other leadership positions, as required by each Hospital's accreditation with The Joint Commission (the "TJC"). Medical Leadership includes the Chiefs of Staff and all Department Chairs required by each of the Debtors' Medical Staff Bylaws, and by Title 22, including physician oversight for cardiology, pulmonary, laboratory, stroke, and ST-elevation myocardial infarction departments. The Chief Medical Officers are essential to ensure quality and risk oversight. Without these physicians, who I believe can easily find competitive opportunities elsewhere, the Debtors' day-to-day programs will cease to function, resulting in a significant impact on patient care and other irreparable harm to the Debtors' Chapter 11 Cases.

169. The Debtors require the use of various physicians, the Physician Educators, who provide teaching services in the Debtors' graduate medical education (the "GME") program, a legal requirement with which the Debtors must comply. The GME program simultaneously

1 provides: (i) training for interns, residents, and fellows until they become independent and
2 licensed practitioners; and (ii) access to healthcare for elderly and impoverished patients.
3 Physician Educators are in high demand because the State of California mandates that every
4 teaching hospital support the efforts to provide access to high quality healthcare to its most
5 vulnerable population. To maintain Level 2 Trauma status, the Debtors must maintain the GME
6 program. Therefore, the Physician Educators are vital to maintaining the Debtors' teaching
7 hospital status and affording access to healthcare, both of which are key to the Debtors' Patient
8 care, ongoing operations, and/or potential sale of its assets for the benefit of its creditors and the
9 Estates.

10 170. Debtors require the use of various Medical Services Providers, including, but not
11 limited to, those who provide services such as surgical anesthesia coverage, organ harvesting and
12 organ matching services, medical equipment sanitization, diagnostic interventional cardiology
13 services, interventional neuroradiology, imaging services, advanced wound care, pathology and
14 laboratory services, dialysis services, lithotripsy services, sterile compounding services,
15 rehabilitation staffing and management services, subacute management services, psychiatric
16 management services, hospitalist services, intensivist program services, medical screening
17 services, and medical instrument repair services. These services are vital to the Debtors' day-to-
18 day operations, in particular with regard to Patient care, and the Debtor will suffer immediate
19 irreparable harm should the Court not grant the Debtors' request to include the Medical Services
20 Providers as Critical Vendors.

21 171. Debtors require the use of various medical supplies and medical equipment from
22 the Medical Supplies and Equipment Providers, including, but not limited to, blood and plasma,
23 heart valves, coronary intervention products, defibrillators, laparoscopic and minimally invasive
24 surgical supplies, neurosurgical supplies and neurology devices, other surgical medical products,
25 bone substitute biologics, regenerative vascular grafts, vaccinations and other pharmaceuticals,
26 nuclear medicines, medical gases, anesthesia medical equipment, laboratory medical supplies,
27 radiation equipment, gastrointestinal supplies, cochlear implants, orthopedic implants, spinal
28 implants, intraocular lenses and ophthalmology supplies, sterilization equipment and products,

1 and fetal monitoring systems. Equipment includes medical equipment rentals, biomedical repair
2 tools and equipment, patient beds and stretchers, vital sign monitoring, infusion pumps,
3 medication supply stations, gastro-intestinal lab equipment, cardiac catheterization lab equipment,
4 operating room equipment, imaging equipment, laboratory equipment, pharmacy dispensing
5 equipment, and transplant program equipment. The medical supplies and medical equipment the
6 Debtors receive from the Medical Supplies and Equipment Providers are vital to the Debtors'
7 day-to-day operations, to maintain Patient care, and the Debtors will suffer immediate irreparable
8 harm should the Court not grant the Debtors' request to include the Medical Supplies and
9 Equipment Providers as Critical Vendors.

10 172. The Debtors also require the Clinical Staffing, which are various medical groups,
11 staffing agencies, and other hospital-based services providers, to meet critical thresholds of
12 physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as,
13 imaging technicians, surgical technicians, sterile processing technicians and interim
14 clinical/management staff, coders, and admission department staff servicing patients in
15 emergency and non-emergency room situations. The provision of physicians, nurses, professional
16 technicians such as, imaging technicians, surgical technicians, sterile processing technicians and
17 interim clinical/management staff, coders, and admission department staff is vital to service the
18 Debtors' six active emergency rooms, trauma center, and the multiple medical specialty units
19 providing tertiary and quaternary care.

20 173. Additionally, regarding the provision of nurses, the staffing supplementation is
21 essential because: (1) California has a mandatory statutory nurse to patient ratio, and so the
22 Debtors are required by law to meet certain ratios in order to operate on a daily basis; and (2) it is
23 difficult to recruit experienced staff—as opposed to recent graduates—for short-term
24 assignments. Indeed, these staffing agencies provide the requisite “registry” nurses who take short
25 single-day assignments and “traveler” nurses who take longer-term assignments to fill in during
26 busier seasons—*e.g.*, flu season—and understaffed periods—*e.g.*, during nurses strikes of
27 represented nurses—where the Debtors may not otherwise have sufficient numbers of nurses
28 between their core and per diem nurses.

174. Moreover, many of the Clinical Staffing who provide physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff to the Debtors will not staff the Debtors' business if there is any interruption or delay in the payment of the amounts due to them. Given the Debtors' reliance on the medical services provided by the Clinical Staffing to provide Patient care and otherwise fulfill the Debtors' daily medical services needs, and the fact that the Clinical Staffing can simply shift their services to a medical services company, it is crucial that the Debtors be authorized to pay any prepetition amounts due to the Clinical Staffing as Critical Vendors in the ordinary course of business.

175. The Debtors require use of Non-Medical Services Providers, including, but not limited to, those who provide services such as payroll tax services, financial audit services, billing services, cost reporting services, revenue cycle management services, consulting and education services for various required national, state, and local accreditations and mandates, environmental services, record retention services, building maintenance services, medical equipment maintenance services, management services, and other similar services, as well as to seismic contractors. Seismic contractors are designers, engineers, suppliers and constructors who are engaged in the statutory work of retrofitting hospital structures to meet the SB1953 and subsequent amendments that are required to be completed by December 31, 2019. Delay of the projects will cause the Debtors to miss the regulated deadlines, risking the Debtors' California Department of Public Health license and suspension of such. These non-medical services are vital to the Debtors' day-to-day operations, particular with regard to Patient care, and the Debtor's ability to comply with regulatory requirements set by the State of California legislature, and the Debtor will suffer immediate irreparable harm should the Court not grant the Debtors' request to include the Non-Medical Services Providers as Critical Vendors.

176. The Debtors require use of various IT Services Providers who provide information technology services, including, but not limited to, those who provide services such as diagnostic technology, interoperability between devices, risk management and software services, revenue

1 cycle management billing software and services, teleradiology services, customer relationship
2 management, networking solutions services, multi-function copiers, voice over internet protocol
3 system services, hosting services for applications, and point of care data management system
4 services. Critical patient care systems such as electronic health record systems and enterprise
5 resource planning systems must be maintained to ensure continuity and Patient care. I believe
6 these information technology services are vital to the Debtors' day-to-day operations, in particular
7 with regard to Patient care, and the Debtor will suffer immediate irreparable harm should the
8 Court not grant the Debtors' request to include the IT Services Providers as Critical Vendors.

9 177. The Debtors require certain Benefits Providers because the Debtors have
10 incentivized their employees to continue working through the continuation of company-
11 subsidized benefits, such as workers compensation, medical, dental, vision, short term and long
12 term care, leave of absence, and life insurance. If the Debtors are not permitted to pay any
13 prepetition premium amounts due to these Benefits Providers, the employees' insurance coverage
14 will be jeopardized and the employees will likely seek employment elsewhere. Specifically, I
15 believe any disruption to payment of the employee benefits in the ordinary course (and in the
16 Debtors' discretion), would adversely affect the Debtors' goals in this Case because such events
17 are likely to cause some employees to terminate their employment with the Debtors, will cause all
18 employees to be distracted from their duties to care for the patients and the operations of the
19 hospitals, and will inevitably hurt employee morale at a particularly sensitive time for all
20 employees, resulting in severe repercussions on the Debtors' ability to provide Patient care, and
21 to preserve their assets and administer the Estates, to the detriment of all constituencies. Since the
22 Debtors do not have the ability to quickly or cost-effectively replace their employees who provide
23 vital medical and non-medical services on a daily basis, it is critical that the Debtors be allowed
24 to continue these benefits in order to retain their employees and maintain their business
25 operations to preserve the full value of their assets for the benefit of their creditors. Therefore, the
26 Court should include Benefits Providers as Critical Vendors.

27 178. I, along with the Debtors, am mindful of the Debtors' fiduciary obligations to seek
28 to preserve and maximize the value of their Bankruptcy Estate. To that end, the Debtors and their

advisors have engaged in an intense process of reviewing and analyzing the Debtors' books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business relationships—which, if lost, could materially harm the Debtors' patients, the Debtors' businesses, reduce their enterprise value, and/or impair their restructuring process—all in an effort to identify only those most critical vendors using their business judgment (the "Protocol"). Such Protocol is on-going; however, the amounts proposed to be paid to the Critical Vendors are already provided for in the Debtors' operating budget submitted in connection with the Debtors' Cash Collateral Motion.

179. Indeed, during the Protocol process, the Debtors and I have deemed certain vendors as critical because each of these Critical Vendors meets the following criteria: (a) the vendor is essential to patient care, supports maintaining the Debtors' business in full compliance with California's Title XII requirements for operating general acute care hospitals in the state of California, and allows the Debtors to maintain their business postpetition until reorganization and/or sale of the Debtors' assets for the benefit of creditors; (b) the vendor is indispensable for providing vital goods or services, replacing said vendor would be prohibitively expensive, or said vendor is otherwise critical to prevent the diversion of management and key personnel to solicit other vendors to provide comparable goods or services and to prevent other unnecessary distraction during the extensive transitional period; (c) the vendor holds an unpaid prepetition claim for the provision of goods or services; (d) the vendor will refuse to deliver goods or provide services without payment of the prepetition claim and the automatic stay imposed by section 362(a) will be inadequate to address the issue; (e) cash on delivery is unlikely to provide the requisite incentive for the vendor to continue providing goods or services; (f) the Debtors lack a long-term contractual relationship with the vendor that would oblige the vendor to continue the prepetition relationship, and the Debtors are otherwise without adequate leverage to compel performance on commercially reasonable terms; and (g) the Debtors will suffer immediate and irreparable harm if the vendor is not specially incentivized to continue providing goods or services. The Debtors will use commercially reasonable efforts to require the vendor to sign a

1 postpetition agreement with normalized terms and conditions that contractually bind the vendor to
2 continue providing goods and services postpetition.

3 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
4 inquiry, the foregoing is true and correct.

5 Executed this 31st of August 2018, at Los Angeles, California.

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7
8 
Richard G. Adcock

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EXHIBIT 7

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In
Possession.

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

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

Hon. Judge Ernest M. Robles

**DEBTORS' OMNIBUS MOTION FOR APPROVAL
OF 1) SETTLEMENT AGREEMENTS WITH LABOR
UNIONS, 2) ASSUMPTION AND ASSIGNMENT OF
MODIFIED COLLECTIVE BARGAINING
AGREEMENTS TO SGM, 3) TERMINATION OF
RETIREE HEALTHCARE BENEFITS AND 4)
RELATED RELIEF
DECLARATION OF RICHARD G. ADCOCK IN
SUPPORT THEREOF**

Hearing:

Date: December 4, 2019

Time: 10:00 am

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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PLEASE TAKE NOTICE that, at the above-referenced date, time and location, Verity Health System of California, Inc., a California nonprofit benefit corporation and a debtor herein, and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), will move (the “Motion”), pursuant to §§ 105, 363, 365, and 1113 and 1114 of the Bankruptcy Code,¹ and Rules 6006, 9007, 9014 and 9019 for the entry of an order approving settlement agreements (collectively, the “Settlement Agreements”) with those labor unions who are parties to the remaining prepetition collective bargaining agreements (“CBAs”) that cover represented employees at the Debtors’ remaining hospital facilities, which will be modified, assumed and assigned effective upon the Closing² of the Sale of such assets to Strategic Global Management (together, with is applicable affiliates, “SGM”), along with resolution of other issues, including the *nunc pro tunc* termination of retiree healthcare benefits utilized by approximately eleven (11) individuals, ten (10) of whom are represented by unions and one non-represented individual, and for related relief. More specifically, the Debtors seek approval of the following:

- the “CNA Settlement Agreement” (attached hereto as **Exhibit 1**) between the Debtors and the California Nurses Association (“CNA”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a (i) modified CNA/VHS Master Agreement between CNA and Debtors St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”), effective December 22, 2016-December 21, 2020,³ (ii) modified SVMC Local Contract 2016-2020 between CNA and SVMC , effective December 22, 2016 to December

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

² All capitalized terms not defined herein have the meaning ascribed to them in the *Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale is Free and Clear of Conditions Materially Different than those Approved by the Court; (III) Finding that the Attorney General Abused His Discretion in Imposing Conditions on that Sale and (IV) Granting Related Relief; Memorandum of Points and Authorities and Declaration in Support Thereof* [Docket No. 3188].

³ The Modified CBAs (as defined in the Motion) are not attached to the Motion because they are SGM’s confidential, proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will make the Modified CBAs available to proper requesting parties.

21, 2020, and (iii) modified SMC Local Contract 2016-2020 between CNA and SMC effective December 22, 2016-December 21, 2020;

- the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining Agreement between Local 20 and SMC, effective May 1, 2017-April 30, 2020;
- the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to NUHW effective upon Closing, of a modified Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside, effective November 1, 2016-October 31, 2019;
- the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between the Debtors SVMC and St. Francis Medical Center (“SFMC”) and the Service Employees International Union, United Healthcare Workers-West (“SEIU”), which, in turn, seeks, *inter alia*, the assumption and assignment to SEIU effective upon Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC, effective May 1, 2017-April 30, 2020;
- the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between the SFMC and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,” and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a modified Labor Management Collective Bargaining Agreement effective from December 29, 2017 to December 29, 2021;
- under the CNA Settlement Agreement, the NUHW Settlement Agreement, and the Local 20 Settlement Agreement, and by request contained in the Motion, the termination *nunc pro tunc* to the date of the Settlement Agreements of all “retiree

benefits,” as defined under § 1114, related to current and future retirees; and will provide to the 11 current retirees who are receiving actual retiree health care benefits (under the program that permits retirees who elect within a set period of time, a supplement to continue Debtor-provided healthcare) a one-time payment in the amount equal to the value of those payment supplements in the amount set forth on the schedule attached hereto as **Exhibit 6**;⁴ and

- discrete issues between the Debtors and the respective Unions.

PLEASE TAKE FURTHER NOTICE that this relief is required because: (a) the Debtors are liquidating their assets in chapter 11 and, will, at the end of the process, no longer operate their hospitals; (b) SGM has been approved as buyer of the Debtors’ remaining hospitals [Docket No. 2306] and; (c) as of the Closing, the Debtors will no longer employ the employees currently represented by the Unions at those hospitals. After the Closing, the Debtors have no justifiable reason to be bound by the terms of the CBAs or to incur further obligations under them, which, unless modified or terminated, will add additional and undue financial burden on the estates and otherwise harm the Debtors’ reorganization.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the attached *Declaration of Richard G. Adcock*, filed concurrently herewith, the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the *Declaration of James M. Moloney In Support of The Debtors Memorandum. In Support of Entry of an Order: (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens and Encumbrances; (B) Authorizing The Assumption and Assignment Of Designated Executory Contracts And Unexpired Leases; and (C) Granting Related Relief*, [Docket No. 2220]; the supporting statements, arguments and representations of counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

⁴ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first names identified so applicable retirees may identify themselves.

1 **PLEASE TAKE FURTHER NOTICE** that this Motion will be heard on December 4,
2 2019, at 10:00 a.m., Pacific Time.

3 **PLEASE TAKE FURTHER NOTICE** that any party opposing or responding to the
4 Motion must file and serve the response (“Response”) on the moving party and the United States
5 Trustee. A Response must be a complete written statement of all reasons in opposition thereto or
6 in support, declarations and copies of all evidence on which the responding party intends to rely,
7 and any responding memorandum of points and authorities.

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

11
12 Dated: November 13, 2019

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TANIA M. MOYRON
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13
14 By /s/ Tania M. Moyron
Tania M. Moyron

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16 Attorneys for the Chapter 11 Debtors and
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Verity Health System Of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”) move, pursuant to §§ 105, 363, 365, and 1113 and 1114 of the Bankruptcy Code¹ and Rules 6006, 9007, 9014 and 9019, for the entry of an order (i) approving settlement agreements (collectively, the “Settlement Agreements”) between the Debtors and those labor unions who are parties to prepetition collective bargaining agreements (“CBAs”), which will be modified, assumed and assigned effective upon the Closing² of the Sale to Strategic Global Management, Inc. (“SGM”), and (ii) approving related relief including the *nunc pro tunc* termination of retiree healthcare benefits utilized by for approximately eleven (11) individuals represented by certain of these unions and one non-union represented individual (collectively, the “Current Retirees” and each individually a “Current Retiree”).

More specifically, the Debtors seek approval of the following agreements and related relief applicable to the CBAs that is conditioned upon the Closing of the Sale to SGM under that Asset Purchase Agreement [Docket No. 2305] dated January 8, 2019 (the “APA”):

- the “CNA Settlement Agreement” (attached hereto as **Exhibit 1**) between SVMC/SMC and the California Nurses Association (“CNA”), which, in turn, seeks, inter alia, approval of the assumption and assignment to SGM effective upon Closing of the (i) modified CNAMaster Agreement between CNA and SVMC/SMC, effective December 22, 2016 to December 21, 2020 (the “CNA Master CBA”),³ (ii) modified SVMC Local Contract 2016-2020

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

² All capitalized terms not defined herein have the meaning ascribed to them in the *Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding that the Sale is Free and Clear of Conditions Materially Different than those Approved by the Court; (III) Finding that the Attorney General Abused His Discretion in Imposing Conditions on that Sale and (IV) Granting Related Relief; Memorandum of Points and Authorities and Declaration in Support Thereof* [Docket No. 3188] unless otherwise noted.

³ e Modified CBAs (as defined *infra*) are not attached to the Motion because they are SGM’s confidential, proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will make the Modified CBAs available to proper requesting parties.

1 between CNA and St. Vincent Medical Center (“SVMC”) effective December 22, 2016 to
2 December 21, 2020 (the “CNA SVMC CBA”), and (iii) modified SMC Local Contract 2016-2020
3 between CNA and Seton Medical Center (“SMC”) effective December 22, 2016-December 21,
4 2020 (the “CNA SMC CBA,” referred to along with the CNA Master CBA and the CNA SVMC
5 CBA as the “CNA CBAs”);

6 • the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC
7 and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, inter alia, approval of the
8 assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining
9 Agreement between Local 20 and SMC, effective May 1, 2017 to April 30, 2020 (the “Local 20
10 CBA”);

11 • the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC
12 and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, inter alia,
13 approval of the assumption and assignment to NUHW effective upon Closing, of a modified
14 Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside (“SC”), effective
15 November 1, 2016 to October 31, 2019 (the “NUHW CBA”);

16 • the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between
17 SVMC/SFMC and the Service Employees International Union, United Healthcare Workers-West
18 (“SEIU”), which, in turn, seeks, inter alia, the assumption and assignment to SEIU effective upon
19 Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC,
20 effective May 1, 2017 to April 30, 2020 (the “SEIU CBA”);

21 • the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between SFMC
22 and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,”
23 and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks,
24 inter alia, approval of the assumption and assignment to SGM effective upon Closing of a modified
25 Labor Management Collective Bargaining Agreement effective from December 29, 2017 to
26 December 29, 2021 (the “UNAC CBA”);

27 • under the CNA Settlement Agreement, the NUHW Settlement Agreement, and the
28 Local 20 Settlement Agreement, and by request contained in the Motion, the *termination nunc pro*

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1 *tunc* to the date of the Settlement Agreements of all “retiree benefits,” as defined under § 1114
2 which, in this case includes the program that permits retirees who elect, within a set period of time,
3 a supplement to purchase Debtor-provided healthcare (the “Retiree Healthcare Program”); and will
4 provide to the 11 current retirees who are receiving benefits under the Retiree Healthcare Program
5 (the “Retiree Health Benefits”) a one-time payment equal to the value of those payment
6 supplements in the amount set forth on the schedule attached hereto as **Exhibit 6**;⁴ and

- 7 • discrete issues between the Debtors and the respective Unions.

8 The requested relief is required because (a) the Debtors are selling their assets in chapter
9 11, and will, at the end of the process, no longer operate hospitals, (b) after a thorough marketing
10 process (the “Marketing Process”), no bidder (other than SGM) emerged seeking to acquire the
11 cumulative assets of SMC, SC, SVMC, SFMC, and St. Vincent Dialysis Center (together, the
12 “Hospitals”), (c) as of the Closing, the Debtors will no longer employ the employees currently
13 represented by the Unions at the Hospitals (though SGM will provisionally employ qualified
14 employees as of the Closing Date according to § 5.3 of the APA), (d) the Debtors need to settle and
15 terminate their retiree benefit liability to confirm a plan, and (e) acting through the process codified
16 in §§ 1113 and 1114 and Rule 9019 and structured under §§ 4.7 and 5.11 of the APA, the parties
17 have entered into a reasonable compromise to preserve going-forward unionized jobs, compensate
18 employees and preserve and maximize estate assets.

19 Relief is justified under §§ 105, 363, 365, 1113 and 1114 and Rule 9019. Without this
20 relief, the Debtors’ employees, the SGM Sale, and the prospect of confirming a successful Plan of
21 Liquidation [Docket No. 2993] (the “Plan”) will be imperiled. Congress passed §§ 1113 and 1114
22 to allow for unions and debtors to expediently collectively bargain for modifications to a CBA, and
23 the Debtors and the Unions (in conjunction with SGM) have fulfilled this goal.

24 For these and other reasons addressed below, the Court should grant all of the relief
25 requested in the Motion.

26
27
28 ⁴ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first names
identified so applicable retirees may identify themselves.

II. JURISDICTION AND VENUE

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

III. STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of Debtor California nonprofit public benefit corporations that operate four acute care hospitals, including SFMC, SMC and SVMC and other facilities in the state of California. *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* at 4, ¶ 11 (the “First-Day Declaration”) [Docket No. 8].

3. The Debtors incorporate the First-Day Declaration for further general background, including the description of the Hospitals’ history and operations. First Day Declaration at ¶¶ 11-55.

B. The CBAs And The Represented Employees

4. The Local 20 CBA covers 31 active employees for SMC and one retired employee from O’Connor Regional Hospital (“OCH”)⁵ (with the employees as the “Local 20 Represented Employees”). The Local 20 Represented Employees are and were predominantly Clinical Laboratory Scientists who work primarily in the hospital laboratory.

5. The CNA CBAs cover 792 active employees at SVMC and SMC and eight retired employees from SMC, OCH and SLRH (the “CNA Represented Employees”). The CNA Represented Employees are and were registered nurses.

⁵ Although the assets of OCH have been sold to Santa Clara County under a prior Bankruptcy Case sale, Current Retirees who were employed at OCH while it was operating continue to receive Retiree Health Benefits.

1 6. The UNAC CBA covers 817 active employees for SMC (the “UNAC Represented
2 Employees”). The UNAC Represented Employees are and were registered nurses.

3 7. The SEIU CBA covers active 1,331 active employees for SVMC and SFMC (the
4 “SEIU Represented Employees”). The SEIU Represented Employees are and were comprised of
5 service workers including but not limited to environmental services aides, certified nurse assistants,
6 unit coordinators, and technical workers, including but not limited to radiological technician and
7 pharmacy technicians.

8 8. The NUHW CBA covers active 731 active employees and 1 retired employee for
9 SMC and Seton Medical Center Coastside (the “NUHW Represented Employees”) (together, with
10 the Local 20 Represented Employees, the CNA Represented Employees, the UNAC Represented
11 Employees, the SEIU Represented Employees, the “Represented Employees.” The NUHW
12 Represented Employees are and were comprised of technicians, such as radiological technician,
13 pharmacy technicians, and service workers such as, environmental service aides, dietary aides,
14 cooks, clinical staff such licensed vocational nurse, certified nursing aides and administrative
15 workers such unit secretaries and clerks.

16 9. On the Petition Date, the Debtors filed their *Emergency Motion Of Debtors For*
17 *Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries,*
18 *And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing*
19 *And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By*
20 *The Debtors Relating To The Foregoing; Memorandum Of Points And Authorities In Support*
21 *Thereof* [Docket No. 26] (the “Wage Motion”) seeking an order to pay priority employee claims
22 and to pay employees in the ordinary course of business for post-petition work.

23 10. On October 22, 2018, the Court granted the Wage Motion in its *Final Order*
24 *Granting the [Debtors’] Emergency Motion of Debtors for Entry of Order: (I) Authorizing the*
25 *Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee*
26 *Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank*
27 *to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing*
28 [Docket No. 612], concurrently issued the *Memorandum of Decision (1) Overruling Objections to*

1 *the (A) Prepetition Wages Motion and (B) Financing Motions and (2) Denying Motion for*
2 *Reconsideration of the Final Financing Order [Docket No. 614] (together, the “Wage Order”),*
3 *and ordered the payment of priority and administrative wage and benefit claims, including for*
4 *Represented Employees. The Court “denied without prejudice” union claimants’ ability to request,*
5 *by motion, that (contested as to classification) underfunded pre-petition pension liabilities be paid*
6 *as administrative claims by the Debtors. Id.*

7 11. In connection with the previous sale of assets to Santa Clara County, the Debtors
8 obtained final orders [Docket Nos. 1575, 1576, 1577 and 1578] (the “SCC Rejection Orders”)
9 modifying and rejecting (the “SCC Rejection”) CBAs with Local 20, CNA, and SEIU covering
10 OCH and St. Louise Regional Hospital (“SLRH”) upon the closing of sale of these assets to Santa
11 Clara County (“SCC,” and the “SCC Sale,” respectively); *see also* Docket No. 1541 (tentative
12 decision/memorandum for SCC Rejection Orders) (the “Prior 1113 Decision”).⁶

13 **C. The Retiree Benefits**

14 12. There are 11 Current Retirees, 10 represented by Unions and one Current Retiree
15 who is not represented and who are receiving Retiree Healthcare Benefits under the Retiree
16 Healthcare Program. *See* Exhibit 6.

17 **D. The Unions’ Proofs Of Claim**

18 13. CNA has filed eleven proofs of claim in these cases: (claim nos. 6233, 6247, 6249,
19 6250, 6251, 6336, 6340, 6342, 6350, 6359 and 7847) against the Debtors (the “CNA Claim”). The
20 CNA Claim seeks pre-petition pension contributions, severance payments, grievances and rejection
21 damages.

22 14. Local 20 has filed a proof of claim in these cases (claim no. 5169) (the “Local 20
23 Claim”) against VHS. The Local 20 Claim seeks paid time off (“PTO”), extended sick leave,

24 _____
25 ⁶ The SCC Rejection Orders approved the SCC Rejection through the two mechanisms: (i) a contested full rejection
26 and termination of collective bargaining agreement terms with CNA and SEIU for their collective bargaining
27 agreements covering OCH and SLRH [Docket Nos. 1577; 1578] and approval of two stipulations between the Debtors
28 and Local 20 and the Debtors and the California Licensed Vocational Nurses Association (“CLVNA”) [Docket Nos.
1575; 15776] entered into under § 1113(2) (the “SCC Stipulations”). In the SCC Stipulations, the parties agreed to the
rejection of the collective bargaining agreements with OCH and SLRH, reserved rights regarding the filing of claims
and objections to same, agreed that allowed Paid Time Off (“PTO”) would be treated as administrative expenses or
unsecured claims depending on its accrual date, and agreed that employees not re-hired by SCC would be entitled to
severance.

1 severance payments, and retiree benefits.

2 15. NUHW has not filed any proof of claim in these cases.

3 16. SEIU has filed fourteen proofs of claims in these cases: (claim nos. 4718, 4719,
4 4722, 4723, 4725, 4726, 5117, 5137, 5140, 5150, 5160, 5158, 6186, 6221) against the Debtors (the
5 “SEIU Claim”). The SEIU Claim seeks, *et. al.*, pre-petition pension contributions, severance
6 payments, grievances and rejection damages.

7 17. UNAC has filed fourteen proofs of claims in these cases (claim nos. 5911, 5912,
8 5913, 5917, 5918, 5920, 5925, 5927, 5928, 5931, 5932, 5933, 5934 and 5936) against the Debtors
9 (together, the “UNAC Claim”) (together the CNA Claim, Local 20 Claim, and the SEIU Claim are
10 referred to as the “Proofs of Claims”). The UNAC Claim seeks, *et. al.*, pre-petition pension
11 contributions, severance payments, grievances and rejection damages.

12 **E. The Debtors’ Pre-SGM Sale Efforts and Sale to SCC**

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

17 19. Cain prepared a Confidential Investment Memorandum and organized an online
18 data site to share information with potential buyers and contacted over 110 strategic and financial
19 buyers beginning in July 2018 to solicit their interest in exploring a transaction regarding the
20 Debtors and has advanced significantly towards achieving sales. First-Day Declaration, at 34-35 ¶
21 129; Moloney Declaration at ¶ 4.

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

25 21. From the Petition Date, the Debtors’ objective has been to sell substantially all of
26 its assets as going concerns to maximize recovery to creditors while maintaining healthcare in their
27 communities. First-Day Declaration at 25, ¶ 96

28 22. On December 27, 2018, the Court entered the *Order (A) Authorizing the Sale of*

1 *Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims,*
2 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
3 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving
4 a sale of OCH, SLRH through the SCC Sale.

5 23. The SCC Sale closed on February 28, 2019. After payment of certain cure costs,
6 closing costs and other items, the net remaining proceeds were approximately \$184.38 million,
7 which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the
8 "Post-Closing Escrow") by First American Title Insurance Company, the escrow agent. The Post-
9 Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors'
10 post-closing obligations and expires in February 2020.

11 **F. The SGM Sale Process And SGM APA**

12 24. On January 17, 2019, the Debtors filed a motion [Docket No. 1279]⁷ seeking entry
13 of an order (the "Bidding Procedures Motion"): (a) establishing SGM as the stalking horse bidder
14 for the Purchased Assets (as defined in the APA), including SFMC, SVMC and SMC; (b) approving
15 the form of the APA with SGM as a stalking horse bidder for this transaction; (c) setting bid
16 procedures to establish guidelines for parties interesting in making an overbid; (d) setting an auction
17 to be held if necessary; and (e) setting a hearing for the Court to approve the winning bidder.

18 25. The APA was the result of extensive negotiations between the Debtors and SGM.
19 Moloney Declaration at ¶ 7. SGM submitted a stalking-horse bid for \$610 million (\$420 million
20 allocated to St. Francis Medical Center, \$120 million allocated to St. Vincent Medical Center and
21 \$70 million allocated to Seton Medical Center and Seton Coastsides combined), plus payments of
22 cure costs, as set forth therein. *See generally*, APA.

23 26. The Debtors sought approval of the APA because, among other things, (i) SGM's
24 bid represented fair market value, and (ii) SGM would maintain the healthcare characteristics of

25
26 ⁷ Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder
27 and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid
28 Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To
Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of
Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and
Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof.

the Debtors' Hospitals and continue patient care for the communities served by the Hospitals. First-Day Declaration at 25, ¶ 97 ("The goals of the Debtors' restructuring are to maintain the Debtors' business operations; preserve the going-concern value of the Debtors' businesses, its stakeholders, and parties in interest; and, most importantly, to protect the health and wellbeing of the patients who are treated at the Hospitals and the jobs of the Debtors' approximately 7,000 employees.").

27. On February 19, 2019, the Court granted the Bidding Procedures Motion (the "Bidding Procedures Order") [Docket No. 1572].

28. Under the APA, SGM agreed to the following terms with respect to hiring employees:

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the "**Hospital Employees**") who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the "**Hired Employees**." All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

APA at § 5.3(a) & (b) (with § 5.3 of the APA as the "Hiring Clause"). The Hiring Clause is subject in all respects to any other terms and conditions of the APA.

29. The APA also provided that SGM and the Debtors would work with the Unions to effectuate a transfer of CBAs with modifications sought by SGM:

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4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonable requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonable withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, obligation under this Agreement. In addition, Sellers may, in their direction, seek to reject any or all of the collective bargaining agreement(s).

APA at §§ 4.7 and 5.11 (together, the "APA CBA Provisions").

30. Pursuant to the requirement of the Bidding Procedures Order, the Debtors continued

1 to market the Hospitals and related assets through Cain. Cain vigilantly monitored interest and
2 continued to communicate with parties that had expressed interest and that Cain had identified as
3 potential bidders, either as partial or aggregate bidders. Moloney Declaration at 1-3. However, no
4 Potential Bidder expressed interest in assuming in whole or in part, the CBAs. Moloney
5 Declaration at ¶ 13. As a result, no auction was conducted, and SGM was accepted as the winning
6 bidder. Docket No. 2035.

7 31. On May 2, 2019 the Bankruptcy Court entered an order approving the Sale to SGM.
8 Docket No. 2306.

9 **G. The Union § 1113 CBA Modification And § 1114 Retiree Healthcare Benefit**
10 **Termination Process**

11 32. After approval of the SGM Sale, the Debtors, SGM and Unions negotiated the
12 ultimate terms of the Settlement Agreements (the “Negotiations”) through a series of meetings and
13 exchanges with the Unions (the “Meetings”). The process began on February 1, 2019, when the
14 Debtors delivered to each of the Unions a proposal under § 1113 and, as applicable, § 1114
15 (collectively, the “First Proposals”).⁸ The First Proposals noted that SGM was amenable to
16 assuming existing CBAs, provided they were modified to comport with similar collective
17 bargaining arrangements that covered other facilities owned and operated by SGM. The First
18 Proposals further represented that the Debtors “stood ready” to discuss with the Unions any
19 counter-proposal and that the Debtors were “open to receive and consider all comments, concerns
20 and any counterproposals from [the Unions]” and told the Unions that “if you desire any specific,
21 relevant information, do not hesitate to ask for it.” None of the Unions submitted counter-proposals
22 to the Debtors. Declaration of Richard G. Adcock (“Adcock Declaration”) at ¶ 9.

23 33. After conducting discussions with SGM as to what it wished to modify with respect
24 to the CBAs, the Debtors and SGM then began to directly engage each of the Unions and provide
25 each Union with amended proposals, including proposed modified CBAs in redline form
26 (collectively, the “Amended Proposals”). *Id.* Specifically,

27 a. On or about July 11, 2019, and July 15, 2019, the Debtors and SGM met with CNA

28 ⁸ The Debtors will make the written copies of the First Proposals, as well as the Amended Proposals (as defined, *infra*)
to any proper requesting party.

- 1 and presented the applicable Amended Proposal, which included proposed redline
2 changes to the CNA CBAs. *Id.* at ¶ 9(a).
- 3 b. On or about July 19, 2019, the Debtors and SGM met with Local 20 and presented
4 the applicable Amended Proposal, which included proposed redline changes to the
5 Local 20 CBA. *Id.* at ¶ 9(b).
- 6 c. On or about July 25, 2019, the Debtors and SGM met with SEIU and presented the
7 applicable Amended Proposal, which included a proposed redline to the SEIU CBA.
8 *Id.* at ¶ 9(c).
- 9 d. On or about July 25, 2019, the Debtors and SGM met with UNAC and presented the
10 applicable Amended Proposal, which included a proposed redline to the UNAC
11 CBA. *Id.* at ¶ 9(d).
- 12 e. On or about July 25, 2019, the Debtors' counsel met with NUHW and presented the
13 applicable Amended Proposal, which included a proposed redline to NUHW CBA.
14 *Id.* at ¶ 9(e).
- 15 34. Thereafter, the Debtors continued to travel to and attend Meetings with the Unions
16 regarding the Amended Proposals and going-forward CBA terms with SGM, including:
- 17 f. with respect to UNAC, on August 2, 23, and 29, 2019, *Id.* at ¶ 10(a);
18 g. with respect to CNA, on August 7, 8, 20, 21, 2019, and September 5, 2019, *Id.* at ¶
19 10(b);
20 h. with respect to SEIU, on July 30, 2019, August 13, 2019, August 30, 2019 and
21 September 9, 2019, *Id.* at ¶ 10(c);
22 i. with respect to NUHW, on August 14 and 24, 2019 and September 10 and 15, 2019
23 *Id.* at ¶ 10(d); and
24 j. with respect to Local 20, on August 15, 2019. *Id.* at ¶ 10(e).
- 25 35. The in-person Meetings were also supplemented by substantial negotiations over
26 phone and by email, which culminated in the Debtors and the Unions executing the Settlement
27 Agreements attached hereto. *Id.* at ¶ 11.
28

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H. The Settlement Agreements

36. Each Settlement Agreement incorporates modified versions of the applicable Unions' CBA or CBAs (the "Modified CBAs," or, individually each a "Modified CBA") which are to be modified under § 1113 and, as applicable § 1114 (the "Modification"). Through the Motion, the Debtors agree to assume and assign the CBA or CBAs (as modified under the Modified CBAs) to SGM (the "Assumption and Assignment"), which the Unions agree to not oppose (which process is defined in the Settlement Agreements and herein as the "Agreed Outcome").⁹ The parties reached the Settlement Agreement so that the SGM Sale is economically viable for SGM and the Debtors, while also providing just treatment for the Debtors' employees, including the Represented Employees. *See* Adcock Declaration at ¶ 12.

37. As a part of the Agreed Outcome, the Unions preserve their rights and remedies against SGM in connection with post-Closing operations, with SGM solely responsible for all post-closing obligations under the Modified CBAs.¹⁰

38. Likewise, under the Settlement Agreements, the Debtors: (a) will not have any liability or obligation to perform under the CBAs or Modified CBAs with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any Union claims that may be expressly preserved under the Settlement Agreements; and (c) shall in no way be liable for or otherwise responsible for any nonperformance or violation by SGM or any of its affiliates arising at any time.¹¹

39. The Settlement Agreements provide the following treatment of Unions claims:

- a. an allowed claim for PTO for each employee who is not offered a job with SGM's applicable acquiring and operating entity (the "Operator"), will be granted, under the "accrual method" (meaning the amount earned (in this case as to PTO) and yet unpaid or used: 1) on or after August 31, 2018, will be granted administrative status; 2) between March 4, 2018 to August 30, 2018, will be granted priority claim status

⁹ Settlement Agreements at § 3. The Settlement Agreements are substantially similar. For avoidance of doubt, the Settlement Agreement used for "Settlement Agreements at [##]" cites herein is the CNA Settlement Agreement. When there is such a citation, all Settlement Agreements will contain such a term.

¹⁰ Settlement Agreements at §§ 3; 4.

¹¹ Settlement Agreements at § 6.

b. an allowed claim for severance for each employee who is not offered a job by the Operator no later than the Closing, will be calculated under the “accrual method.” The administrative and priority claim portions will be paid within 30 business days of the Effective Date,¹³ provided further, that payment of severance to an employee is contingent on that employee executing a written general release;¹⁴

d. any grievance claim of an employee not settled as of the Effective Date will be treated in accordance with the treatment of claims and administrative expenses under the terms of the Plan. The parties agree to work with the Operator in the event that the remedy is or includes reinstatement of the employee post-Closing (the Unions' claims and rights expressly preserved in the Settlement Agreement relating to the CBAs are the "Preserved Claims");¹⁶ and

¹² Settlement Agreements at § 7(a).

¹³ Defined in the Plan as “a day, as determined by the Debtors, that is a Business Day as soon as reasonably practicable after all conditions to the Effective Date specified in Section 12.2 hereof have been satisfied or waived.”

¹⁴ Settlement Agreements at §§ 7(b).

¹⁵ Settlement Agreements at § 7(d).

¹⁶ Settlement Agreements at § 7(c).

¹⁷ Settlement Agreements at § 7(f).

40. The Settlement Agreements are conditioned upon the Closing, with a purchase price that is not materially less than APA's purchase price.¹⁸

41. The Unions agreed to withdraw any outstanding applicable information requests.¹⁹

42. In the applicable Settlement Agreements, the parties have also agreed under § 1114 with respect to the Retiree Health Benefits, that:

a. Subject to this subparagraph (c), the Unions agreed that the CBAs are to be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;²⁰

b. The Unions agreed to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114;²¹ and

c. The Debtors agreed to seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Health Benefit, (the "Lump Sum Payment") (subparagraphs a-c are the "1114 Agreements").²²

43. The Unions agreed not to oppose the "to not oppose the prompt Closing of the [SGM] Sale"²³ and to support "any Plan of the Debtors that does not contradict the material terms of this Agreement."²⁴

44. The CNA and SEIU Settlement Agreements include provisions allowing their employees who were not hired by SCC to obtain severance, giving them the same treatment that the Local 20 and CLVNA employees received in the SCC Stipulations.²⁵

45. CNA and SEIU also agreed to affirmatively support the SGM Sale in writing to the AG, and did so by writing letters in support of the SGM Sale in the context of the AG's pending review of the SGM Sale under California law.²⁶

¹⁸ Settlement Agreements at § 12.

¹⁹ Settlement Agreements at § 14.

²⁰ Settlement Agreement at § 8(a).

²¹ Settlement Agreement at § 8(b).

²² Settlement Agreements at § 8(c).

²³ Settlement Agreements at § 15.

²⁴ Settlement Agreements at § 11.

²⁵ Settlement Agreements at § 7(b).

²⁶ Settlement Agreements at § 15.

I. Related Relief for the One Non-Union Current Retiree Who Receives Retiree Health Care Benefits

46. The Debtors will also pay the only Current Retiree not represented by one of the Unions the value of their retiree benefits in cash under the same methodology provided to the Union-represented Current Retirees. The amount to be paid is reflected on Exhibit 6. Adcock Declaration at ¶ 13.

J. The Plan

47. On September 3, 2019, the Debtors filed their Plan and their related disclosure statement. *See Debtors' Chapter 11 Plan of Liquidation* [Docket No. 2993]; *Disclosure Statement Describing Debtors' Chapter 11 Plan of Liquidation* [Docket No. 2994] (the "Disclosure Statement"). The Plan states that "Prior to the Effective Date [of the Plan (the "Effective Date,")] the Debtors expect to receive approval for either the consensual or, pursuant to § 1113, the nonconsensual modification, assignment and/or termination of collective bargaining agreements." Plan at ¶ 15.2.

48. On September 11, 2019, the Court entered an order extending the exclusive period that the Debtors can file and solicit votes on a plan to October 25, 2019 and solicit acceptances to December 24, 2019. Docket No. 3039. On October 25, 2019, the Debtors filed a motion [Docket No. 3417] seeking to extend these deadlines, respectively, to December 31, 2019 and February 29, 2020.

IV. ARGUMENT

A. The Settlement Agreement Should Be Approved Under §§ 365, 1113 And 1114

In *PTC Alliance Corp., et. al.*, Case No. 09-13395-CSS ("PTC") (Bankr. D. Del.), the Bankruptcy Court for the District of Delaware approved a transaction between the debtor, a union and a buyer for the modification and assumption of a CBA *solely under the auspices of §§ 365 (for the assumption and the assignment), 1114 (to resolve retiree benefits) and 1113 (for the remaining relief)*. The debtor modified collective bargaining agreements as requested by a buyer and agreed to by the union, and then assumed and assigned the collective bargaining agreements upon the closing of a previously approved sale. The modifications included a new wage scale, new

1 bonus structure, the termination of the pension plan, and with a one-time lump sum payment made
2 to a 401(k) plan. *PTC*, Docket No. 869 (order attached as **Exhibit 7-A**, with a sample approved
3 modification agreement, *PTC*, Docket No. 847-1 attached as **Exhibit 7-B**). The modification was
4 achieved through written memorandums of understanding that the previous clauses of the CBAs
5 would continue to be binding on the purchaser, except as modified in the memorandum. *Id.* (the
6 union, buyer and debtor “hereby agree to a new [collective bargaining agreement] which ... shall
7 become effective conditioned upon and on the date of the closing of the sale [and] will be identical
8 to the current labor agreement ... except for appropriate changes in dates and the changes set forth
9 below [then listing modifications]”).

10 Following the example of the successfully approved *PTC* transaction, the Debtors request
11 that this Court implement the Settlement Agreements under §§ 365, 1113 and 1114, effective upon
12 the Closing.

13 a. **§§ 1113 and 1114 Grant the Court with Authority to Approve the Settlement**
14 **Agreements And Related Relief**

15 The Debtors move to implement the Modification and applicable portions of the Settlement
16 Agreements under §§ 1113 and § 1114, because, as courts recognize, these statutes (interpreted
17 interchangeably due to their overlapping language and standards)²⁷ allow mutually agreed
18 modification of CBAs, and “consistent with [the statutes] the parties [the debtor and a union] should
19 have every opportunity to come to an agreement themselves.” *In re Nw. Airlines Corp.*, 346 B.R.
20 307, 315 (Bankr. S.D.N.Y. 2006) (authorizing debtor to institute new terms and conditions of
21 employment as in proposal union had previously agreed to unless debtor and union agreed to
22 alternative deal within two weeks). As explained by another Bankruptcy Court in this District, §
23 1113 (and § 1114) codified an “expedited form of collective bargaining” to allow unions and
24 debtors to enter into settlements in distressed situations with a primary goal to “to protect the
25 existence of collective bargaining agreements in chapter 11 cases.” *In re Certified Air Techs., Inc.*,
26 300 B.R. 355, 361 (Bankr. C.D. Cal. 2003) (citations omitted). Here, the parties have engaged in

27 *In re Walter Energy, Inc.*, 911 F.3d 1121, 1129 n. 8, 39 (11th Cir. 2018), (“As we mentioned above Congress modeled § 1114 on § 1113, see *supra* note 8, so cases interpreting § 1113 are relevant to our understanding of § 1114.”).

1 the vigorous, expedited collective bargaining that §§ 1113 and 1114 was designed to engender and
2 have arrived at the equitable and necessary Modified CBAs and the Settlement Agreements.

3 **b. No Party other than the Debtors, the Unions or SGM has Standing to Object**
4 **to the CBA Modifications**

5 Sections 1113(d)(1) and 1114(k)(1) proscribe that only “interested parties” may participate
6 and appear at a hearing on a motion under the statutes. *In re UAL Corp.*, 408 F.3d 847, 849 (7th
7 Cir. 2005). Precedent holds that this group is limited to the unions, the debtor(s) and guarantors.
8 The §§ 1113/1114 process is not an open inquiry for third parties to pick at a transaction, because
9 the statutes are “designed to provide additional procedural requirements for the **rejection or**
10 **modification** of collective bargaining agreements [and] supersedes and supplements the provisions
11 in § 365.” *Massachusetts Air Conditioning & Heating Corp. v. McCoy*, 196 B.R. 659, 663 (D.
12 Mass. 1996). Congress placed special consideration on protecting collective bargaining and gave
13 debtors and unions the exclusive power to come to a consensual agreement to be approved on a
14 highly expedited basis, without third-party procedural interference. *Cf.* 11 U.S.C. § 1113(d)(2)
15 (court must rule 30 days after hearing or relief is deemed granted); § 1114(k)(2) (court must rule
16 90 days after hearing or relief is deemed granted).

17 For instance, in the leading Seventh Circuit *In re UAL* decision, third parties sought to
18 participate in § 1113 litigation because of their “concern that [the debtor] and the union may reach
19 a compromise” that would adversely affect them. 408 F.3d at 849. The Seventh Circuit denied
20 their participation:

21 The term “interested party” in Section 1113 “is most naturally read
22 to mean ‘party to the collective bargaining agreement’ or a guarantor
23 of that contract... the union acts as the employees' representative;
24 without the limitation, **every retiree would receive separate notice**
25 **and an opportunity to be heard; tax collectors, unsecured creditors**
26 **that might gain if the debtor altered its obligations to labor—the**
27 **list would go on and on” ... It is not hard to see the reasoning for**
28 **such a rule in the Section 1113 context ... a court [should not] hand**
...groups a potential veto over the ability for a debtor to enter into a
new collective bargaining agreement.

In re AMR Corp., 477 B.R. 384, 452 (Bankr. S.D.N.Y. 2012) (emphasis added) (following and
explaining *In re UAL Corp.*, 408 F.3d at 849). As further explained by the Seventh Circuit in a

1 follow-up decision, “[p]arties to a contract are always free to modify their contract without
2 considering the views of third parties, and [the debtor] and [the union] were the only parties to the
3 collective bargaining agreement ... [and, as] only “interested parties” may participate in a [§ 1113]
4 hearing on the debtor's proposal [under] 11 U.S.C. § 1113(d)(1), [this] means only the parties to
5 the agreement or a guarantor of it.” *In re UAL Corp.*, 468 F.3d 456, 459 (7th Cir. 2006)”
6 (emphasis added).

7 Here, the Debtors and the Unions are in agreement as to the Modification and the Settlement
8 Agreements, and no other party has standing to object.²⁸ The Court should approve the
9 Modification because the Unions and the Debtors have fulfilled the policy goal of §§ 1113 and
10 1114 of expediently entering into the new Modified CBAs during a bankruptcy.

11 **c. The Debtors have met the Test for Modification under §§ 1113 and 1114**

12 The Prior 1113 Decision described the test for modification or rejection of a CBA, as
13 originally articulated in *In re Am. Provision Co.*, 44 B.R. 907, 910 (Bankr. D. Minn. 1984), for
14 rejection of a CBA (the “1113/1114 Test”). This test applies to both §§ 1113 and 1114, because
15 “the statutory requirements for modification of retiree benefits are...substantially the same as the
16 requirements for rejection of collective bargaining agreements, [and] courts routinely analyze
17 motions for relief under Sections 1113 and 1114 simultaneously.” *United Mine Workers of Am.*
18 *1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603, 608 (N.D. Ala. 2016), aff’d sub
19 nom. *In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018) (citations omitted).

20 This 1113/1114 Test contains the following factors: (1) the debtors make a proposal; (2) the
21 proposal is based on the most complete and reliable information available at the time of the
22 proposal; (3) the proposed modifications or rejection are necessary to permit reorganization of the
23 debtor; (4) the modifications assure that all creditors, the debtors, and all other affected parties are
24 treated fairly and equitably; (5) the debtors provide the union relevant information as is necessary
25 to evaluate the proposal; (6) the debtors meet at reasonable times with the union between the time
26 of the proposal and the time of the hearing; (7) the debtors negotiate with the union in good faith at

27
28

²⁸ SGM, as assignee, would have standing as a de facto guarantor, but SGM has agreed to the relevant relief.

1 these meetings; (8) the union has refused to accept such proposal without good cause; and (9) the
2 balance of equities clearly favors the relief.

3 Here, the Unions have agreed in the Settlement Agreements that the Debtors have met
4 factors (1), (5) & (6) and (7),²⁹ which are procedural factors that apply to meetings, discussions and
5 the adequacy of information sharing between a debtor and a union. Factor (8) is rendered moot
6 because the Unions have not “refused” the Amended Proposals, they have accepted them.

7 The Debtors will therefore analyze the remaining four substantive factors: (2) (proposal
8 made on good information); (3) (proposal necessary for cases); (4) (parties treated fairly); and (9)
9 (balance of equities favor relief) which concern the substantive effects of the Modification.

10 **d. The Amended Proposals were based on the Most Complete and Reliable**
11 **Information Available**

12 To satisfy this factor, “the debtor is simply required to gather the most complete information
13 available at the time and to base its proposal on the information it considers reliable.” *In re*
14 *Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010). Here, the Debtors—unable to operate
15 the Hospitals without bankruptcy protection—made Amended Proposals (and Unions accepted
16 them) because the Marketing Process demonstrated that SGM is the only willing system buyer (and
17 offered the highest and best bid). SGM will not assume the CBAs without the Modification is
18 because the CBAs are not currently economically viable for the Hospitals. Prior 1113 Decision at
19 26 (“The unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs
20 is simply too great to permit the Hospitals to continue to sustainably operate.”).

21 The Proposals were based on current, complete and reliable information because the
22 Proposals were made shortly after SGM became the stalking horse bidder and then amended after
23 the Negotiations produced a result that treats labor and the claim fairly and allow the Hospitals to
24 become economically sustainable in the long-term instead of “kicking the can” for CBA issues.

25 **e. The Amended Proposals are Necessary to Permit a Successful Plan**
26 **Confirmation.**

27
28 ²⁹ All the Settlement Agreements contain provisions acknowledging that (i) the Debtors made a proposal (at 3), (ii) the
Unions do not have any outstanding informational requests (at ¶ 14), (iii) the Debtors met with the Unions to negotiate
and reached the Settlement Agreements (at 2-3) and (iv) the Debtors negotiated in good faith (at 2).

1 This Court has found that, “within the context of this [Verity] case, the term ‘necessary to
2 permit the reorganization of the debtor’ is best interpreted to mean ‘necessary to permit the Debtors
3 to confirm a liquidating plan.’” Prior 1113 Decision at 23. The Court explained:

4 This interpretation aligns most closely with the manner in which the
5 Debtors are prosecuting this case. ***From the outset, the Debtors have***
6 ***stated their intent to sell the six hospitals that they operate as going***
7 ***concerns, and use the proceeds from the sales to fund a plan of***
8 ***liquidation.*** This process is well underway. The Court has already
approved the sale of two of the Debtors’ hospitals to Santa Clara, and
recently approved bidding procedures pertaining to the auction of the
remaining four hospitals.

9 *Id.* (emphasis added). The Court then adopted the testimony of the Debtors’ CEO that explicitly
10 stated the closing of successful and timely sales of the Hospitals were necessary for the
11 confirmation of a liquidating plan:

12 Selling the hospitals on a going concern basis is necessary to
13 maximize proceeds to the estate. The Debtors’ operational
difficulties and mounting losses require that the hospitals be sold
14 quickly. In [the First-Day Declaration], the Debtors’ CEO Richard
Adcock testified that the hospital system was losing \$175 million
15 annually on a cash flow basis ...

16 *Id.* at 24 (citing First Day Declaration at ¶ 95) (“[T]he Debtors have commenced these chapter 11
17 cases to protect the original legacy of the Daughters of Charity to the maximum extent possible by
18 retiring debt incurred over the past 18 years and freeing the hospital facilities and work force to
19 continue to operate as hospitals under new ownership and leadership without the accumulated crisis
20 of the past. **To do that requires the bankruptcy court supervised sale of some or all of the**
21 **hospitals and related facilities.**”) (emphasis added)). The Court correctly found that, without the
22 orderly and “quick” sales of the hospitals, there would be no efficient and fair way for a distribution
23 to the various creditors in this case—lenders, vendors, employees etc. *Id.*

24 Here, the Negotiations, Meetings and the §§ 1113 and 1114 process produced a consensual,
25 productive result—the Debtors, the Unions and SGM negotiated a structure for the CBAs to remain,
26 but modified them to reflect economic reality, and agreed to similar terms this Court previously
27 approved in the SCC Stipulation regarding the Unions’ claim treatment. As the parties recognized,
28 with no bidder willing to assume the CBAs in full as-is, and with SGM only willing to accept

1 assignment of the Modified CBAs, the Settlement Agreements' terms are necessary. *In re Walter*
2 *Energy, Inc.*, 542 B.R. 859, 893-94 (Bankr. N.D. Ala. 2015)³⁰ ("if the sale(s) consummate and the
3 [businesses] are sold as a going-concern, Debtors' employees have the best chance of future
4 employment"); *In re Nat'l Forge Co.*, 289 B.R. at 810–11.

5 Relief is also necessary to limit the Debtors' potential liability and expenses. As the Court
6 found in the SCC Rejection, unchecked, the CBAs in this case would expose the Debtors to
7 "substantial" administrative claims from unions for an enterprise that the Debtors would neither be
8 operating nor wish to be operating, with the total of these administrative claims in excess of the
9 estimated funds available to pay *all* administrative claims. *Id.* at 24-25 (citing *Declaration of David*
10 *Galfus* [Docket 1507]);³¹ *see also In re Chicago Const. Specialties, Inc.*, 510 B.R. 205, 217-18
11 (Bankr. N.D. Ill. 2014). Waiting to reject as a part of a confirmed plan, when such plan
12 confirmation process may be protracted and the intermediate period results in accrual of
13 administrative obligations, would not be in the best interest of the Debtors' estate as a whole.")
14 (citations omitted). This Court summarized the immediate "necessity" best in its Prior 1113
15 Decision (at 26):

16 Here, the Debtors are in the process of selling the Hospitals ... and
17 will no longer operate the Hospitals once the sale has closed. As was
18 the case in *Chicago Const.*, it makes little sense to require the Debtors
to remain bound by CBAs that pertain to assets which they will no
longer operate.

19 **f. The Modification and Settlement Agreement Treat all Creditors, the Debtors,**
20 **and all of the Affected Parties Fairly and Equitably, and the Balance of the**
21 **Equities Favors the Requested Relief.**

22 This Court, in finding that the SCC Rejection treated parties fairly, found:

23 In sum, prior to seeking bankruptcy relief, the Debtors diligently
24 attempted to put their operations on a sound financial footing. **The**
25 **unfortunate but undeniable reality is that the legacy cost**
26 **structure imposed by the CBAs is simply too great to permit the**
27 **Hospitals to continue to sustainably operate.** This reality was
28 confirmed by the recent sales process ... Many parties have been
required to make sacrifices to permit continued operations of the

³⁰ (aff'd sub nom. *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (N.D. Ala. 2016) and aff'd sub nom. *United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016)).

³¹ The Debtors incorporate this Declaration by reference herein.

Hospitals. Under these circumstances, the proposed rejection and/or modification of the CBAs is fair and equitable.

Prior 1113 Decision at 26-27 (emphasis added). The Court also cited precedent that, in a sale context, this factor does not require that unions are paid in full or that all employees are re-hired or re-represented, and instead the inquiry is whether the debtor is placing a disproportionate burden on non-represented employees. *Id.* (citing *Walter Energy*, 542 B.R. at 892); *see also In re Nat'l Forge Co.*, 289 B.R. at 811.

The Settlement Agreements place no disproportionate burden on the Represented Employees or anyone else. Like the previously approved SCC Stipulation, the Settlement Agreements, in consideration for the Unions' cooperation and waivers, allow the Preserved Claims but disallow other claims that otherwise have no basis, especially if the CBAs had been rejected. *In re Nw. Airlines Corp.*, 483 F.3d 160, 169–72 (2d Cir. 2007) (emphasis added) (citing *In re Blue Diamond Coal Co.*, 147 B.R. 720, 732-34 (Bankr. E.D Tenn. 1992), *aff'd* 160 B.R. 574, 576–77 (E.D.Tenn.1993) (denying rejection damages after a § 1113 rejection) (“The only conclusion this court can reach is that ***a claim for damages alleged to have resulted from the rejection of a collective bargaining agreement under § 1113 cannot be premised on § 365(g) nor can the claim be asserted pursuant to § 502(g)*** ... inasmuch as the Union is not a ‘creditor’ nor does it hold a claim otherwise allowable under § 502, it is not entitled to assert a claim for damages alleged to have resulted from the rejection of the [CBA].”) (emphasis added)); *In re AMR Corp.*, 523 B.R. 415, 422–23 (S.D.N.Y. 2014), *aff'd*, 622 Fed. Appx. 64 (2d Cir. 2015). Further, the Debtors' proposal to eliminate other general and rejection damages also was fair and equitable as it was consistent with the Bankruptcy Code for a rejected CBA. *See In re Chicago Constr. Specialties, Inc.*, 510 B.R. at 222 (“[T]he Debtor's proposal to reject the CBA simply treats CBA claims [as they would be liquidated and disposed of under the Bankruptcy Code].”).³² The Settlement Agreements also provide waivers of any and all “cure claims” that might otherwise said to exist based upon a technical assumption of the CBAs.

³² The Debtors take no position on the ultimate recovery or rights of the Unions or the Represented Employees to these claims.

1 Further, the APA includes the Provisional Hiring Clause for SGM to provisionally employ
2 substantially all qualifying Represented Employees (who will then be covered under the Modified
3 CBAs). *In re Nat'l Forge Co.*, 289 B.R. 803 at 808–09 (“where, as here, the evidence establishes
4 that it is likely that some of the employees ‘may be employed by the successful buyer’ this supports
5 a finding of fair treatment to employees”); *see also In re Walter Energy, Inc.*, 542 B.R. at 867 (“The
6 record . . . indicate[s] the proposed going concern sale is the best chance for selling the [businesses]
7 and to provide potential future employment for the Debtors’ represented employees.”).³³

8 **g. The 1114 Agreements and Lump Sum Payments are Necessary, Fair and**
9 **Equitable.**

10 Further, the 1114 Agreements and the Lump Sum Payment are fair and equitable because
11 they provide the Retirees the present value of their health benefits. By paying cash in full, the
12 Debtors do not prejudice the Retirees and act in accord with Congress’ intent in protecting
13 vulnerable retirees by giving them enhanced rights above unsecured creditors, such as requiring
14 that a debtor either resolve the retirees’ liability under § 1114 or continue to pay retiree benefits
15 after confirmation of a plan, *see* § 1129(a)(13)) and encouraging reorganizations by allowing
16 debtors to formulate plans and unburden themselves of long-term financial obligations. *In re Tower*
17 *Auto., Inc.*, 342 B.R. 158, 162 (Bankr. S.D.N.Y. 2006) (“the statute requires the parties to attempt
18 to come to an agreement on terms. General unsecured creditors have no such specific protection in
19 Chapter 11, either with respect to the process of bargaining or the substantive provisions of a plan
20 [and] unless the Court approves a modification in accordance with § 1114 standards and
21 procedures, a plan must provide for the continuation of retiree benefits for the duration of the period
22 the debtor has obligated itself to provide such benefits” at an unmodified level . . . the Court has no
23 reason not to endorse a settlement that satisfies the Debtors’ principal goal, saving cash, while
24 affording significant protection for the rights that Congress required be preserved for the retirees.”)
25 (citations omitted); *see also In re Garfinckels, Inc.*, 124 B.R. 3, 4–5 (Bankr. D.D.C. 1991) (“There
26 is nothing in § 1114 that would prohibit modification, pursuant to an agreement being reached
27

28 ³³ Further, the Debtors intend to honor the CBAs, in full, up to and until the Closing for post-petition liabilities accrued
until the Settlement Agreement becomes effective, under the Wage Order.

1 under § 1114(e)(1)(B) or a motion being granted under § 1114(g), from applying to those benefits
2 that have arisen before the agreement is reached or the motion has been granted.”).³⁴

3 **h. The Settlement Agreements will Allow the Hospitals to Continue to Operate**
4 **and Employ Represented Employees**

5 The Settlement Agreements are necessary to keep the Hospitals operating into the future
6 with Represented Employees. The results of the Marketing Process, with no third parties willing
7 to assume the CBAs “as is,” and the Debtors’ inability to operate the Hospitals outside of these
8 Cases, are not within the Debtors’ (or the Unions’) control. Neither a debtor, nor a union, may
9 “base its rejection of its only suitor[’s] [conditions] on a speculative white knight with greater
10 riches.” *In re Karykeion, Inc.*, 435 B.R. at 678. Here, SGM has made the best offer for the Hospitals
11 that will allow the Hospitals to remain open to continue their mission of providing high-quality
12 patient care, offer payment to creditors, and offer provisional the continued unionization and
13 employment of the bulk of the Represented Employees. The SGM Sale is the best possible option
14 for the Represented Employees, the Hospitals, and the communities they serve—and the Sale
15 hinges on the § 1113 and § 1114 relief the Debtors seek herein.

16 **i. Section 365 Permits the Assumption and Assignment**

17 As approved in *PTC*, immediately after the agreed Modification (complete with the
18 abrogation of existing liabilities under the CBAs (except for the Preserved Claims)) occurs, the
19 Debtors move for the Assumption and the Assignment of the Modified CBAs to SGM under § 365.

20 Section 365 applies to the Assumption and Assignment because “given the ambiguity in §
21 1113, § 365(b) ... governs the procedure for assumption [and assignment] of a CBA [and] in
22 comparable settings, the courts have so held.” *In re Family Snacks, Inc.*, 257 B.R. 884, 900 (B.A.P.
23 8th Cir. 2001) (following *Massachusetts Air Conditioning & Heating Corp.*, 196 B.R. at 663; *Am.*
24 *Flint Glass Workers Union v. Anchor Resolution Corp.*, 197 F.3d 76, 82 (3d Cir. 1999) (citing *Wien*
25 *Air Alaska, Inc. v. Bachner*, 865 F.2d 1106, 1111 n. 5 (9th Cir. 1989)). Also, the Debtors have

26 ³⁴ Section 1114’s provision that a committee of retirees may sometimes be appointed (§ 1114(d)) is obviated because
27 eleven out of twelve of the Retirees are represented by unions who have agreed to be their authorized representative,
28 leaving an effective “committee of one,” of the remaining retiree who is being paid in full and in cash. See 11 U.S.C.
§ 1114(b)(1), (c) (labor union acts as authorized representative of retirees unless affirmatively opting out); see also *In*
re N. Am. Royalties, Inc., 276 B.R. 860, 862 (Bankr. E.D. Tenn. 2002) (the union may remain the authorized
representative even if it represents current employees and retirees).

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1 previously assumed and assigned contracts that have been modified. *See Order Granting Motion*
2 *to Approve Compromise under Rule 9019* [Docket No. 2461, May 29, 2019] (approving
3 modification of agreements with Premier, Inc. and assumption and assignment therein).

4 “The propriety of a decision to assume or reject an unexpired [contract] (*i.e.*, whether the
5 motion to assume/reject should be approved by the court) normally is determined under the
6 deferential ‘business judgment’ test.” *In re Hertz*, 536 B.R. 434, 442 (Bankr. C.D. Cal. 2015)
7 (citing *In re Pomona Valley Med. Grp. Inc.*, 476 F.3d 665, 670 (9th Cir.2007)). “The court must
8 presume that the debtor [is acting] ‘prudently, on an informed basis, in good faith, and in the honest
9 belief that the action taken was in the best interests of the bankruptcy estate.’ The court should
10 approve the debtor’s decision unless it is ‘manifestly unreasonable that it could not be based on
11 sound business judgment, but only on bad faith, or whim or caprice.’ The primary question to
12 guide the court in deciding whether a debtor has properly exercised its business judgment is
13 ‘whether rejection would benefit the general unsecured creditors.’” *Id.* (citations omitted).

14 Here, the Debtors move for the Assumption and the Assignment (and the Settlement
15 Agreements as a whole) in good faith for the benefit of unsecured creditors (as discussed in detail,
16 *supra*). Without the Assumption and Assignment, the Sale would be imperiled or delayed, the
17 Debtors would risk losing the benefit of having \$610 million in hand, and, instead, would be
18 hampered with unwanted CBAs and illiquid assets.

19 **i. The Unions’ Consent is Dispositive**

20 The Unions have agreed that the Debtors have met § 365(b)(1)’s requirements that a debtor
21 “cure any existing defaults under such agreements ... and provide adequate assurance of future
22 performance under the contract or lease” under 11 U.S.C. § 365(b)(1) through the total
23 consideration of the Settlement Agreements. *In re Bowman*, 194 B.R. 227, 230 (Bankr. D. Ariz.
24 1995); *In re AEG Acquisition Corp.*, 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), *aff’d*, 161 B.R. 50
25 (B.A.P. 9th Cir. 1993). This obviates the need for any further analysis. As the only parties with
26 standing in this inquiry, the Unions’ consent is dispositive. *In re ANC Rental Corp., Inc.*, 277 B.R.
27 226, 231 (Bankr. D. Del. 2002) (third party did not have standing in § 365 inquiry) (“Section 365
28 is designed to protect the rights of parties with whom debtors have contractual relationships.”).

1 **ii. The Debtors have Met § 365(b)(1)’s Requirements**

2 The Debtors have cured priority and post-petition obligations by their Wage Order
3 payments. Regarding any alleged pre-petition arrears, the Modification, to the extent it does not
4 “cure amounts” through the Unions’ agreement, rejects and replaces the Debtors CBAs with the
5 Modified CBAs and therefore abrogates any pre-petition “rejection” damages. *Nw. Airlines Corp.*,
6 483 F.3d at 169–72 (2d Cir. 2007). So, any and all cure issues are satisfied, either through the
7 consideration given through the Settlement Agreement or the legal power of § 1113.

8 Regarding the second prong of § 365—adequate assurance of future performance—SGM
9 meets this requirement of providing an adequate assurance of future performance under the
10 Modified CBAs because it is a large, sophisticated healthcare company, with a \$610 million cash
11 investment, an obligation to provisionally hire all the Represented Employees, who dedicated
12 months to re-negotiating the Modified CBAs, and who was approved by this Court as an able-
13 steward and of the Hospitals going-forward.

14 **B. The Debtors Have Satisfied § 363 and Rule 9019**

15 Though the Debtors urge the Court to apply § 1113 and § 1114 as umbrella statutes for their
16 entire deal with the Unions (as Congress intended), § 363(b), § 363(c) and Rule 9019 also support
17 the requested relief. *See In re Leslie Fay Companies, Inc.*, 168 B.R. 294, 301 (Bankr. S.D.N.Y.
18 1994) (finding that Rule 9019 would apply to a debtor’s decision to enter into new post-petition
19 CBA where transaction settled all liability by and between union and debtor). Therefore, the
20 Debtors move for approval of the Settlement Agreement under § 363(b), 363(c) and Rule 9019 as
21 well as under §§ 1113, 1114 and 365. This analysis is made simpler because the requirements for
22 approval under § 363 and Rule 9019 are highly complementary with the above-discussed
23 1113/1114 Test.

24 **a. The Debtors have Satisfied Section 363(b) and 363(c)**

25 Under § 363(b), the Court considers (i) whether the transaction is “is in the best interest of
26 the estates and is “fair and reasonable” (*cf.* 1113/1114 Test factors (3) (necessary for
27 reorganization) and (9) (balance of equities in favor)) and (ii) whether it has been given “adequate
28 marketing,” and “that it has been negotiated and proposed in good faith, and that the [counter-

1 party] is proceeding in good faith” in an “arms-length” transaction.” *In re Wilde Horse Enterprises,*
2 *Inc.*, 136 B.R. 830, 841–42 (Bankr. C.D. Cal. 1991) (collecting cases). Regarding the latter
3 requirement, the above-discussed evidence establishes that the parties proceeded in good-faith and
4 certainly remained arms-length in the Negotiations.

5 Likewise, the Court should apply § 363(c) to the underlying terms of the Modified CBAs
6 by and between the Debtors and the Unions, and defer to the Debtors’ business judgment. Courts
7 have determined that large corporate debtors, including hospital debtors, commonly enter into
8 collective bargaining agreements and are entitled to business judgment deference as to their terms.
9 *See In re Fairmont Gen. Hosp., Inc.*, 510 B.R. 783, 787–88 (Bankr. N.D. W.Va. 2014).

10 As to the balance of the analysis under § 363(b) and (c), the Debtors incorporate their above
11 1113/1114 Test analysis (and, to the extent necessary, their § 365 analysis) that they proceeded in
12 good faith and have negotiated a fair, equitable and necessary set of transactions in the Settlement
13 Agreements for moving under § 363(b) for the Settlement Agreements.

14 **b. The Debtors have Satisfied Rule 9019**

15 Under Rule 9019(a), “compromises are favored because they minimize costly litigation and
16 further parties’ interests in expediting the administration of the bankruptcy estate” and the Court
17 only needs to find that the settlement was negotiated in good faith and is reasonable, fair, and
18 equitable by utilizing the following factors:

- 19
- 20 • the complexity of the litigation involved, and the expense, inconvenience, and delay
necessarily attending it and the probability of success in the litigation;
 - 21 • the difficulties, if any, to be encountered in the matter of collection;
 - 22 • the paramount interest of the creditors and a proper deference to their reasonable
23 views in the premises.

24 *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Sabine Oil & Gas Corp.*, 555
25 B.R. 180, 256 (Bankr. S.D.N.Y. 2016).

26 As to the “paramount interest of the creditors” factor, the Debtors incorporate their above
27 analysis that the Settlement Agreements are in the best and paramount interests of the creditors
28

(under the 1113/1114 Test, that the transaction is “necessary,” is in the “best interest” of the estate is “fair” to all parties and that the balance of equities favor it).

Further, the “difficulty of collection factor” is not relevant here, as the Debtors are the ones settling claims from the Unions and are not receiving cash consideration. However, the Debtors note that, without the Settlement Agreements, it would be much more difficult to “collect” the hundreds of millions of dollars of consideration from the Sale. This leaves the first listed *A&C* factor: “The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it and the probability of success in the litigation,” for consideration for Rule 9019 approval.

“The purpose of a compromise agreement [under Rule 9019] is to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested ... claims.” *In re A & C Properties*, 784 F.2d 1377, 1380-81. Accordingly, in approving a settlement agreement, the Court need not conduct an exhaustive investigation of the claims sought to be compromised. *See United States v. Alaska Nat’l Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). A court should not substitute its own judgment for the judgment of the debtor in possession. *Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984). A court, in reviewing a proposed settlement, is not to decide the numerous questions of law and fact but rather to canvass the issues to determine whether the settlement falls below the lowest point in the range of reasonableness. *In re Tribune Co.*, 464 B.R. 126, 158 (Bankr. D. Del. 2011) (“the settlement need only be above the “lowest point in the range of reasonableness”); *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); The court should not conduct a “mini-trial” on the merits of the issues. *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849 (9th Cir. 1976).

The Settlement Agreements primarily dispose of two major pieces of litigation with five separate Unions: (1) §§ 1113/1114 litigation over modification or rejection of the CBA and Retiree Benefits and (2) litigation over the validity and amounts of the Unions’ claims.

As to the contesting unions in the SCC Sale, the SCC Rejection was an arduous, months-long undertaking involving novel § 1113 questions. Sections 1113 and 1114 are highly complex,

1 factually intensive statute, made particularly difficult to analyze in a liquidation context. *See In re*
2 *Rufener Const., Inc.*, 53 F.3d 1064, 1067 (9th Cir. 1995) (“the procedural requirements imposed by
3 § 1113 appear ill-suited to a liquidation proceeding”). The Debtors would be required to meet nine-
4 factors, marshal substantial evidence and rebut and reply to the Unions’ legal arguments under an
5 expedited, contested setting. Further, if contested, a pivotal part of the Settlement Agreements —
6 the permanent modification of the CBAs through § 1113—does not appear to have been addressed
7 by a published Ninth Circuit case when a union has not consented. The Settlement Agreements
8 avoid the potential labor unrest and disruption to the Debtors during the sensitive pre-Closing
9 period that might be occasioned by a forced contract abrogation, and the obvious loss of value
10 arising therefrom. The Settlement Agreements not only fulfill the express Congressional goals of
11 compromise and “expedited collective bargaining,” they also resolve any uncertainty of potentially
12 “sharply contested” §§ 1113 and 1114 process over the CBAs. *In re A & C Properties*, 784 F.2d
13 at 1380-81.

14 Further, the Settlement Agreements streamline and settle key aspects of the Unions claims
15 and Proofs of Claims and the Debtors liability for severance for re-hired employees and PTO. It
16 allows the Unions the benefit of continuing to assert claims for pending grievances and arbitration,
17 but also allows the Debtors and successors to contest these claims—allowing truly aggrieved
18 employees their “day in court” while allowing unmerited grievances to be ultimately dismissed
19 without interfering with the confirmation of the Plan. They also preclude any general “cure” or
20 rejection claims or other claims that the Unions could assert from the Sale and resolve retiree
21 benefits before the Plan process. *See* 11 U.S.C. § 1129(a)(13) (not allowing plan to dispose of
22 retiree benefits unless it pays them in full).

23 Given the complexity of this potential litigation, interposed with the fact that the Debtors
24 are in the largest healthcare case currently in the country, attorneys’ fees and costs (which would
25 most likely run well into the six figures for each side) and attorneys and professionals investment
26 in time and attention (and away from Plan and SGM Sale issues) to bring this matter to full fruition
27 would be high compared to the total gain and exposure. *In re Lawrence & Eraisquin, Inc.*, 124
28 B.R. 37, 39 (Bankr. N.D. Ohio 1990) (approving Rule 9019 settlement where “[i]f all the issues

1 which have been raised in this case were to be litigated by the Trustee, the litigation would be time
2 consuming, burdensome, somewhat risky, and would quite possibly cost the estate more than it
3 would generate for the payment of unsecured creditors.”); *In re Partsearch Techs., Inc.*, 453 B.R.
4 84, 105 (Bankr. S.D.N.Y. 2011) (approving Rule 9019 agreement where “the risks of litigation here
5 appear to be significant because of the substantial time and expense required to conduct a trial.”).
6 The Debtors have now filed their Disclosure Statement and Plan and wish to focus on making the
7 Effective Date effective instead of protracted labor litigation that can be avoided through a fair
8 compromise.

9 The Modified CBAs, the Proposal and all aspects of the Settlement Agreement result from
10 the arm’s length, protracted, and hard fought negotiations. The Debtors mediated the negotiations
11 between SGM and the Unions and arrived at the Modification for the Debtors to pass on their
12 Hospitals to SGM with an increased market competitiveness, while maintaining the loyalty and
13 morale of their employees and further settled liability and obtained other benefits for the Debtors
14 (such as CNA and SEIU writing to the AG to support the SGM Sale). The parties are entitled to
15 deference in their decisions. *In re Walsh Const., Inc.*, 669 F.2d at 1328; *In re Blair*, 538 F.2d 849;
16 *see also In re Yellowstone Mountain Club, LLC*, 460 B.R. 254, 265 (Bankr. D. Mont. 2011) (*citing*
17 *A& C Properties*, 784 F.2d 1381) (“rather than an exhaustive investigation or a mini-trial on the
18 merits, this court need only find that the settlement was negotiated in good faith and is reasonable,
19 fair and equitable”); *In re Adelphia Communications Corp.*, 327 B.R. 143, 163 (Bankr. S.D.N.Y.
20 2005), adhered to on reconsideration, 327 B.R. 175 (Bankr. S.D.N.Y. 2005) (approving settlement
21 of claims where debtor was to pay \$715 million even where court found there “there [was] quite a
22 high probability that [the debtor] would ultimately prevail on at least some of its claims,” because
23 “that litigation” had already “been hotly contested [through] numerous legal and factual defenses”
24 by the counterparty against the debtors’ claims and where debtors were not likely to “win quickly,”
25 given the “complexities of [the] situation,” and concluding that “even a successful outcome in such
26 litigation likely would take substantial time [and the] the [s]ettlement [a]greements eliminate these
27 risks.”); *In re MF Glob. Inc.*, 466 B.R. 244, 251 (Bankr. S.D.N.Y. 2012) (approving under Rule
28 9019 where “the [s]ettlement [a]greement will resolve all claims between the Parties related to the

1 Property and will save the costs of further litigation [and was the] result of arms-length negotiations
2 and good-faith dealings among the Parties.”).

3 The Settlement Agreements represent the type of rational, negotiated solutions that Rule
4 9019 encourages, and the Court should approve it. *See generally Protective Comm. for Indep.*
5 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 434, 88 S. Ct. 1157, 1168, 20
6 L. Ed. 2d 1 (1968) (“Litigation and delay are always the alternative to settlement, and whether that
7 alternative is worth pursuing necessarily depends upon a reasoned judgment as to the probable
8 outcome of litigation.”).

9 **V. CONCLUSION**

10 Based upon the foregoing, the Debtors respectfully request that the Court enter an order
11 granting the relief requested herein (i) granting and approving the Settlement Agreements as
12 attached as **Exhibits 1-5** so that, effective upon the Closing, (a) the Modification occurs, with (b)
13 the Modified CBAs then assumed and assigned through the Assumption and Assignment to SGM
14 (c) the other terms of the Settlement Agreement are given effect and (ii) for such other and further
15 relief as the Court may deem proper.

16 Dated: November 13, 2019

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

19 By /s/ Tania M. Moyron
Tania M. Moyron

20 Attorneys for the Chapter 11 Debtors and
21 Debtors In Possession

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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Executive Officer ("CEO") of Verity Health System of California, Inc. ("VHS"). I became VHS' CEO effective January 2018. Prior thereto, I served as VHS' Chief Operating Officer ("COO") beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of VHS and its above-captioned affiliates who have also filed for bankruptcy protection (collectively the "Debtors," and each a "Debtor") as well as those affiliated entities that are not in bankruptcy. I submit this Declaration in support of the *Debtors' Omnibus Motion for Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* (the "Motion").³⁵

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

3. True and correct copies of the following documents are attached to the Motion as follows:

- the "CNA Settlement Agreement" (attached hereto as **Exhibit 1**) between the Debtors and the California Nurses Association ("CNA"), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a (i) modified CNA/VHS Master Agreement between CNA and Debtors St. Vincent Medical Center ("SVMC") and Seton Medical Center ("SMC"), effective December 22, 2016-December 21, 2020,³⁶ (ii) modified SVMC Local Contract

³⁵ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

³⁶ Modified CBAs (as defined in the Motion) are not attached to the Motion because they are SGM's confidential, proprietary information and trade secrets. Upon request and execution of a confidentiality agreement, the Debtors will make the Modified CBAs available to proper requesting parties.

2016-2020 between CNA and SVMC , effective December 22, 2016 to December 21, 2020, and (iii) modified SMC Local Contract 2016-2020 between CNA and SMC effective December 22, 2016-December 21, 2020;

- the “Local 20 Settlement Agreement” (attached hereto as **Exhibit 2**), between SMC and IFPTE AFL-CIO CLC, Local 20 (“Local 20”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing, of a modified Collective Bargaining Agreement between Local 20 and SMC, effective May 1, 2017-April 30, 2020;
- the “NUHW Settlement Agreement,” (attached hereto as **Exhibit 3**), between SMC and the National Union of Healthcare Workers (“NUHW”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to NUHW effective upon Closing, of a modified Collective Bargaining Agreement between NUHW and SMC and SMC-Coastside, effective November 1, 2016-October 31, 2019;
- the “SEIU Settlement Agreement” (attached hereto as **Exhibit 4**), between the Debtors SVMC and St. Francis Medical Center (“SFMC”) and the Service Employees International Union, United Healthcare Workers-West (“SEIU”), which, in turn, seeks, *inter alia*, the assumption and assignment to SEIU effective upon Closing of a modified Collective Bargaining Agreement between SEIU and SFMC and SVMC, effective May 1, 2017-April 30, 2020;
- the “UNAC Settlement Agreement” (attached hereto as **Exhibit 5**), between SFMC and the United Nurses Associations of California/Union of Health Care Professionals (“UNAC,” and referred to along with CNA Local 20, NUHW and SEIU as the “Unions”), which, in turn, seeks, *inter alia*, approval of the assumption and assignment to SGM effective upon Closing of a modified Labor Management Collective Bargaining Agreement effective from December 29, 2017 to December 29, 2021;
- the schedule regarding the 11 current retirees who are receiving actual retiree health care benefits (under the program that permits retirees who elect within a set period

1 of time, a supplement to continue Debtor-provided healthcare) and the one-time
2 payment in the amount equal to the value of those payment, which is attached as
3 **Exhibit 6.**³⁷

4 **a. The CBAs And The Represented Employees**

5 4. The Local 20 CBA covers 31 active employees for SMC and one retired employee
6 from O'Connor Regional Hospital ("OCH")³⁸ (with the employees as the "Local 20 Represented
7 Employees"). The Local 20 Represented Employees are and were predominantly Clinical
8 Laboratory Scientists who work primarily in the hospital laboratory.

9 5. The CNA CBAs cover 792 active employees at SVMC and SMC and eight retired
10 employees from SMC, OCH and SLRH (the "CNA Represented Employees"). The CNA
11 Represented Employees are and were registered nurses.

12 6. The UNAC CBA covers 817 active employees for SMC (the "UNAC Represented
13 Employees"). The UNAC Represented Employees are and were registered nurses.

14 7. The SEIU CBA covers active 1,331 active employees for SVMC and SFMC (the
15 "SEIU Represented Employees"). The SEIU Represented Employees are and were comprised of
16 service workers including but not limited to environmental services aides, certified nurse assistants,
17 unit coordinators, and technical workers, including but not limited to radiological technician and
18 pharmacy technicians.

19 8. The NUHW CBA covers active 731 active employees and 1 retired employee for
20 SMC and Seton Medical Center Coastside (the "NUHW Represented Employees") (together, with
21 the Local 20 Represented Employees, the CNA Represented Employees, the UNAC Represented
22 Employees, the SEIU Represented Employees, the "Represented Employees." The NUHW
23 Represented Employees are and were comprised of technicians, such as radiological technician,
24 pharmacy technicians, and service workers such as, environmental service aides, dietary aides,
25 cooks, clinical staff such licensed vocational nurse, certified nursing aides and administrative
26

27 ³⁷ Initials, rather than complete last names of the individuals have been provided for privacy purposes, with first
names identified so applicable retirees may identify themselves.

28 ³⁸ Although the assets of OCH have been sold to Santa Clara County under a prior Bankruptcy Case sale, Current
Retirees who were employed at OCH while it was operating continue to receive Retiree Health Benefits.

workers such unit secretaries and clerks.

b. The Union § 1113 CBA Modification And § 1114 Retiree Healthcare Benefit Termination Process

9. After approval of the SGM Sale, but pending completion of AG Review, the Debtors, SGM and Unions negotiated the ultimate terms of the Settlement Agreements (the “Negotiations”) through a series of meetings and exchanges with the Unions (the “Meetings”). The process began on February 1, 2019, when the Debtors delivered to each of the Unions a proposal under § 1113 and, as applicable, § 1114 (collectively, the “First Proposals”).³⁹ The First Proposals noted that SGM was amenable to assuming existing CBAs, provided they were modified to comport with similar collective bargaining arrangements that covered other facilities owned and operated by SGM. The First Proposals further represented that the Debtors “stood ready” to discuss with the Unions any counter-proposal and that the Debtors were “open to receive and consider all comments, concerns and any counterproposals from [the Unions]” and told the Unions that “if you desire any specific, relevant information, do not hesitate to ask for it.” None of the Unions submitted counter-proposals to the Debtors. After conducting discussions with SGM as to what it wished to modify with respect to the CBAs, the Debtors and SGM then began to directly engage each of the Unions and provide each Union with amended proposals, including proposed modified CBAs in redline form (collectively, the “Amended Proposals”). Specifically,

- a. On or about July 11, 2019 and July 15, 2019, the Debtors and SGM met with CNA and presented the applicable Amended Proposal, which included proposed redline changes to the CNA CBAs.
- b. On or about July 19, 2019, the Debtors and SGM met with Local 20 and presented the applicable Amended Proposal, which included proposed redline changes to the Local 20 CBA.
- c. On or about July 25, 2019, the Debtors and SGM met with SEIU and presented the applicable Amended Proposal, which included a proposed redline to the SEIU CBA.
- d. On or about July 25, 2019, the Debtors and SGM met with UNAC and presented the

³⁹ The Debtors will make the written copies of the First Proposals, as well as the Amended Proposals (as defined, *infra*) to any proper requesting party.

1 applicable Amended Proposal, which included a proposed redline to the UNAC
2 CBA.

3 e. On or about July 25, 2019, the Debtors' counsel met with NUHW and presented the
4 applicable Amended Proposal, which included a proposed redline to NUHW CBA.
5 *Id.* at

6 10. Thereafter, the Debtors continued to travel to and attend Meetings with the Unions
7 regarding the Amended Proposals and going-forward CBA terms with SGM, including:

8 f. with respect to UNAC, on August 2, 23, and 29, 2019;

9 g. with respect to CNA, on August 7, 8, 20, 21, 2019, and September 5, 2019;

10 h. with respect to SEIU, on July 30, 2019, August 13, 2019, August 30, 2019 and
11 September 9, 2019;

12 i. with respect to NUHW, on August 14 and 24, 2019 and September 10 and 15, 2019;
13 and

14 j. with respect to Local 20, on August 15, 2019.

15 11. The in-person Meetings were also supplemented by substantial negotiations over
16 phone and by email, which culminated in the Debtors and the Unions executing the Settlement
17 Agreements attached hereto.

18 **C. The Settlement Agreements**

19 12. Each Settlement Agreement incorporates modified versions of the applicable
20 Unions' CBA or CBAs (the "Modified CBAs") which are to be modified under § 1113 and, as
21 applicable § 1114 (the "Modification"). Through the Motion, the Debtors agree to assume and
22 assign the CBA or CBAs (as modified under the Modified CBAs) to SGM (the "Assumption and
23 Assignment"), which the Unions agree to not oppose (which process is defined in the Settlement
24 Agreements and herein as the "Agreed Outcome").⁴⁰ The parties reached the Settlement
25 Agreement so that the SGM Sale is economically viable for SGM and the Debtors, while also
26 providing just treatment for the Debtors' employees, including the Represented Employees.

27 _____
28 ⁴⁰ Settlement Agreements at § 3. The Settlement Agreements are substantially similar. For avoidance of doubt, the
Settlement Agreement used for "Settlement Agreements at [##]" cites herein is the CNA Settlement Agreement. When
there is such a citation, all Settlement Agreements will contain such a term.

D. Related Relief for the One Non-Union Current Retiree Who Receives Retiree Health Care Benefits

13. The Debtors will also pay the only Current Retiree not represented by one of the Unions the value of their retiree benefits in cash under the same methodology provided to the Union-represented Current Retirees. The amount to be paid is reflected on Exhibit 6.

14. The Debtors have determined in their business judgment that the relief sought in the Motion is in the best interests of the Estates. To the extent that the Motion settles matters that the Debtors could litigate, the Debtors believe that settlement under the terms sought in the Motion is in the best interest of their estates in lieu of the expensive, unproductive and uncertain litigation that would ensue without relief. The Debtors have now filed their Disclosure Statement and Plan and wish to focus on making the Effective Date effective instead of protracted labor litigation that can be avoided through a fair compromise

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

Executed this 13 day of November, 2019, at Los Angeles, California.

By: [TO BE SUBMITTED]

RICHARD G. ADCOCK

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT 1

Settlement Agreement

On this 19th day of September, 2019 (the “Settlement Date”), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the “Debtors,” and individually a “Debtor”), on the one hand, and the California Nurses Association (“CNA”) (collectively, the “Parties”), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the “Agreement”):

Recitals

WHEREAS, on August 31, 2018 (the “Petition Date”), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, CNA and St. Vincent Medical Center are parties to a certain SVMC Local Contract 2016-2020 effective December 22, 2016-December 21, 2020 (the “SVMC CBA”), CNA and Seton Medical Center are parties a certain SMC Local Contract 2016-2020 effective December 22, 2016-December 21, 2020 (the “SMC CBA”) and CNA and St. Vincent Medical Center, Seton Medical Center and other Debtors are parties to a certain CNA/VHS Master Agreement effective December 22, 2016 – December 21, 2020 (the “Master CBA,” and referred to with the SVMC CBA and SMC CBA as the “CBAs” and each individually a “CBA”);

WHEREAS, the Debtors previously obtained a final order rejecting their collective bargaining agreements with CNA covering O’Connor Hospital and St. Louise Regional Hospital (the “SCC Rejection”) upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the “SCC Closing”) and also modifying the Master CBA in the *Order Granting Debtors’ Motion Under Section 1113 Of The Bankruptcy Code To (A) Reject And Terminate The Terms Of California Nurses Association’s Collective Bargaining Agreements With Saint Louise Regional Hospital And O’Connor Hospital And (B) To Modify Related Provisions In A Certain Master Agreement Upon The Closing Of The Sale Of Hospitals To Santa Clara County* [Docket No. 1578] (the “SCC CBA Order”).

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (1) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The*

Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof [Docket No. 1279] (the “Remaining Hospitals Sale Motion”), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, (“SVDC”), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside (“SMC,” and referred to collectively with SFMC, SVMC and SVDC as the “Remaining Hospitals”) under a Stalking Horse Asset Purchase Agreement (the “APA”) between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation (“Verity”), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the “Sellers”) and Strategic Global Management, Inc., a California Corporation (“SGM”);

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the “Sale”) Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the “California AG”), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, CNA has filed a proof of claim (collectively, along with any and all amendments, the (“POC”) in the Bankruptcy Cases against the Debtors, which has been designated as claim number #5169;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBAs desired by SGM and to otherwise consensually resolve issues and claims of CNA;

WHEREAS, on February 1, 2019, the Debtors sent to CNA a proposal under §§ 1113/1114 to modify the CBAs and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented CNA with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBAs acceptable to SGM and CNA; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and CNA have met and negotiated on several occasions about modifying the CBAs and the Debtors and CNA have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBAs shall be modified in the form attached hereto as **Exhibit 1** (the “Modified CBAs”) under §§ 1113/1114 of the Bankruptcy Code (the “Modification”).
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBAs (as modified under the Modified CBAs) to SGM (the “Assumption and Assignment”).
3. CNA agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the “Agreed Outcome”) (b) support, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) CNA rights and remedies against SGM in connection with x) post-Closing operations at SMC and SVMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties’ rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBAs.
5. Upon Closing, the CBAs (as modified under the Modified CBAs) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBAs or Modified CBAs with respect to post-Closing activity; (b) shall in no way be liable

ii) notwithstanding anything to the contrary contained in or caused by the SCC CBA Order, each employee who was not offered employment by SCC by the SCC Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the SCC Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the SCC Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Bankruptcy Plan Effective Date, provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to CNA and the Debtors;

c. Grievance Claims:

i) Any grievance claim of an employee being represented by CNA that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with SGM in the event that the remedy is or includes reinstatement of the employee after the Closing;

ii) Kris Suzuki, who is a member of CNA, settled a termination-based grievance claim in June 2018 with one or more of the Debtors in the amount of \$70,000, and received \$25,000 of that amount prepetition, will receive an allowed priority claim under §507(a)(4) in the amount of \$12,850 and a general unsecured claim in the amount of \$27,150; and

The claims in i) and ii) will be treated in the same manner as severance claims in paragraph 7(b) above.

d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by CNA will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will

be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- f. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) CNA does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and CNA maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.

8. With respect to Retiree Health Benefits:

- a. Subject to subparagraph (c), CNA agrees that the CBAs shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
- b. CNA agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
- c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on **Exhibit 2**.

9. As between CNA and the Debtors, to the extent there is any conflict between this Agreement and the CBAs or the Modified CBAs, this Agreement shall control.

10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.

11. CNA agrees to support any Plan of the Debtors that does not contradict the material terms of this Agreement.

12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. CNA hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. CNA agrees to support the prompt Closing of the Sale, including sending to California AG as copy of the letter attached hereto as **Exhibit 3**.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by CNA.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

CNA

By: 

The Debtors

By: 

EXHIBIT 2

Settlement Agreement

On this 19 day of September, 2019 (the “Settlement Date”), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the “Debtors,” and individually a “Debtor”), on the one hand, and IFPTE AFL-CIO CLC, Local 20 (“Local 20”) (collectively, the “Parties”), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the “Agreement”):

Recitals

WHEREAS, Local 20 and Seton Medical Center are parties to a certain *Collective Bargaining Agreement*, effective May 1, 2017 - April 30, 2020 (the “CBA”);

WHEREAS, on August 31, 2018 (the “Petition Date”), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No. 1279] (the “Remaining Hospitals Sale Motion”), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, (“SVDC”), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside (“SMC,” and referred to collectively with SFMC, SVMC and SVDC as the “Remaining Hospitals”) under a Stalking Horse Asset Purchase Agreement (the “APA”) between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation (“Verity”), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the “Sellers”) and Strategic Global Management, Inc., a California Corporation (“SGM”);

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, Local 20 has filed a proof of claim (collectively, along with any and all amendments, the ("POC") in the Bankruptcy Cases, which has been designated as claim number #5169;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of Local 20;

WHEREAS, on February 1, 2019, the Debtors sent to Local 20 a proposal under §§ 1113/1114 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented Local 20 with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and Local 20;

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and Local 20 have met and negotiated on several occasions about modifying the CBA and the Debtors and Local 20 have otherwise exchanged proposals to resolve the other issues between the Parties; and

WHEREAS, Debtors and Local 20 have tentatively agreed upon a Modified CBA subject to ratification by the bargaining unit.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, and ratification, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under §§ 1113/1114 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. Local 20 agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome") (b) not to oppose, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) Local 20 rights and remedies against SGM in connection with x) post-Closing operations at SMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any Local 20 claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: Each employee who is not offered a job with SGM, including KPC Global Medical Center of San Mateo County, LLC ("GMCSMC"), will be

allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);

- b. Severance: Each employee who is not offered employment with SGM, including GMCSMC no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to Local 20 and the Debtors;
- c. Grievance Claims: Any grievance claim of an employee being represented by Local 20 that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSMC in the event that the remedy is or includes reinstatement of the employee after the Closing;
- d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by Local 20 will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts

earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) Local 20 does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and Local 20 maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.

8. With respect to Retiree Health Benefits:

- a. Subject to subparagraph (c), Local 20 agrees that the CBA shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
- b. Local 20 agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
- c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on Exhibit 2.

9. As between Local 20 and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control. However, the Modified CBA is subject to ratification vote by the bargaining unit which shall be held on or before the end of September 2019.

10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.

11. Local 20 agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.
12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. Local 20 hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. Local 20 agrees to not oppose the prompt Closing of the Sale.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by Local 20.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

Local 20

By: 

The Debtors

By: 

EXHIBIT 3

Settlement Agreement

On this 16th day of September, 2019 (the "Settlement Date"), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and the National Union of Healthcare Workers ("NUHW") (collectively, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, NUHW and Seton Medical Center and Seton Medical Center-Coastside are parties to a certain Collective Bargaining Agreement, effective November 1, 2016 to October 31, 2019 (the "CBA");

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No. 1279] (the "Remaining Hospitals Sale Motion"), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation ("SFMC"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("SVMC"), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, ("SVDC"), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside ("SMC," and referred to collectively with SFMC, SVMC and SVDC as the "Remaining Hospitals") under a Stalking Horse Asset Purchase Agreement (the "APA") between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation ("Verity"), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the "Sellers") and Strategic Global Management, Inc., a California Corporation ("SGM");

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, NUHW has filed no proofs of claim in the Bankruptcy Cases;

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of NUHW;

WHEREAS, on February 1, 2019, the Debtors sent to NUHW a proposal under §§ 1113/1114 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented NUHW with an amended §§ 1113/1114 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and NUHW; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and NUHW have met and negotiated on several occasions about modifying the CBA and the Debtors and NUHW have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under §§ 1113/1114 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. NUHW agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome") (b) not to oppose, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) NUHW rights and remedies against SGM in connection with x) post-Closing operations at SMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any NUHW claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: each employee who is not offered a job with SGM, including KPC Global Medical Center of San Mateo County, LLC ("GMCSMC"), will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the "accrual method;" meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of

\$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018, will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee's last paycheck (upon the Closing);

- b. Severance: each employee who is not offered employment by KPC, including GMCSMC no later than the date of Closing, will be allowed a claim for severance calculated under the "accrual method"—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee's retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the "Bankruptcy Plan Effective Date"), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to NUHW and the Debtors;
- c. Grievance Claims: Any grievance claim of an employee being represented by NUHW that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSMC in the event that the remedy is or includes reinstatement of the employee after the Closing;
- d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by NUHW will be calculated under the "accrual method," meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess

granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) NUHW does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and NUHW maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.

8. With respect to Retiree Health Benefits:

- a. Subject to subparagraph (c), NUHW agrees that the CBA shall be deemed automatically modified to immediately terminate and discontinue the Retiree Health Benefit under § 1114;
- b. NUHW agrees to further support the termination and discontinuation of the Retiree Health Benefit with respect to all current and former employees, including any relief sought under or in accordance with § 1114; and
- c. The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Retiree Health Benefit, in the amount set forth on Exhibit 2.

9. As between NUHW and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.

10. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.

11. NUHW agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.

12. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
13. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
14. NUHW hereby withdraws any outstanding information requests that relate to this Agreement or the §§ 1113/1114 process.
15. NUHW agrees to not oppose the prompt Closing of the Sale.
16. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by NUHW.
17. The terms of this Agreement supersede any prior agreement(s) between the Parties.
18. Any modification of this Agreement must be in writing and approved by both Parties.
19. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

NUHW

By:  9/12/19

The Debtors

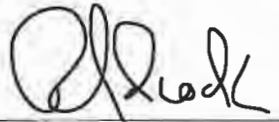
By: 

EXHIBIT 4

Settlement Agreement

On this 17th day of September, 2019 (the "Settlement Date"), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and the Service Employees International Union - United Healthcare Workers West ("SEIU-UHW") (collectively, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, the Debtors previously obtained a final order modifying the CBA to reject the terms of the CBA covering O'Connor Hospital and St. Louise Regional Hospital upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the "SCC Closing") in the SCC CBA Order;

WHEREAS, SEIU-UHW and St. Francis Medical Center and St. Vincent Medical Center currently are parties to a Collective Bargaining Agreement effective November 1, 2018 - October 31, 2021 (the "CBA"), which was modified by the *Order Granting Debtors' Motion Under § 1113 Of The Bankruptcy Code To Modify, Reject And Terminate The Terms Of Service Employee International Union-United Healthcare Workers-West's Collective Bargaining Agreements With Certain Debtors Upon The Closing Of The Sale Of Hospitals To Santa Clara County* [Docket No. 1577] that, *inter alia*, removed O'Connor Hospital and Saint Louise Regional Hospital as parties thereto (the "SCC CBA Order");

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No.

1279] (the “Remaining Hospitals Sale Motion”), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation (“SFMC”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“SVMC”), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, (“SVDC”), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside (“SMC,” and referred to collectively with SFMC, SVMC and SVDC as the “Remaining Hospitals”) under a Stalking Horse Asset Purchase Agreement (the “APA”) between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation (“Verity”), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the “Sellers”) and Strategic Global Management, Inc., a California Corporation (“SGM”);

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the “Sale”) Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the “California AG”), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, SEIU-UHW has filed proofs of claim (collectively, along with any and all amendments, the “POCs”) in the Bankruptcy Cases against the Debtors, which have been designated with the following claims numbers: #4725, #5160, #6186 and #6221 (Verity Medical Foundation), #4723 and #5117 (Verity Health System of California, Inc.), #4722 and #5140 (St. Vincent Medical Center), #4719 and #5137 (St. Louise Regional Hospital), #4726 and #5150 (St. Francis Medical Center), #5158 and #4718 (O’Connor Hospital);

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of SEIU-UHW;

WHEREAS, on February 1, 2019, the Debtors sent to SEIU-UHW a proposal under § 1113 to modify the CBA and to resolve other issues;

WHEREAS, on or about July 25, 2019, the Debtors presented SEIU-UHW with an amended § 1113 proposal and, along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and SEIU-UHW; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and SEIU-UHW have met and negotiated on several occasions about modifying the CBA and the Debtors and SEIU-UHW have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the “Modified CBA”) under § 1113 of the Bankruptcy Code (the “Modification”).
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the “Assumption and Assignment”).
3. SEIU-UHW agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the “Agreed Outcome”) (b) support, as lawful and as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) SEIU-UHW rights and remedies against SGM in connection with x) post-Closing operations at SFMC and SVMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties’ rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.

5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any “cure” obligations independent of any SEIU-UHW claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.
7. In further resolution, the following claims shall be allowed and receive the following treatment:
 - a. PTO: each employee who is not offered a job with SGM, including Global Medical Center of Downtown Los Angeles, LLC (“GMCDLA”) or Global Medical Center of South Los Angeles County, LLC (“GMCSLA”), will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018 ,will be given general unsecured claim status. PTO replacement for cancelled hours, required as part of the Full-Guarantee Article 11, shall go back into the PTO bank as of the date used to replace cancellation. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’ last paycheck (upon the Closing);
 - b. Severance:
 - i) each employee who is not offered employment by SGM, including GMCDLA or GMCSLA, no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted

general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to SEIU-UHW and the Debtors;

ii) notwithstanding anything to the contrary contained in or caused by the SCC CBA Order, each employee who was not offered employment by SCC by the SCC Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the SCC Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the SCC Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Bankruptcy Plan Effective Date, provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to SEIU-UHW and the Debtors;

- c. Grievance Claims: Any grievance claim of an employee or group of employees being represented by SEIU-UHW that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law;
- d. Dmitry Zudzianau is owed a total of \$27,156.99 for previously-issued and uncashed checks for work performed during the period of March 4, 2018 to the Petition Date. Any amount remaining under the §507(a)(4) claim priority cap of \$12,850 for Dmitry Zudzianau will be granted priority claim status with the balance granted general unsecured claim status. These claims will be treated in the same manner as severance claims in paragraph 7(b) above; and

- e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) SEIU-UHW does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and SEIU-UHW maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses.
8. As between SEIU-UHW and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.
9. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
10. SEIU-UHW agrees to support any provision of the Plan of the Debtors that deals with the material terms of this Agreement and does not contradict this Agreement.
11. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
12. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.
13. SEIU-UHW hereby withdraws any outstanding information requests that relate to this Agreement or the § 1113 process.
14. SEIU-UHW agrees to support the prompt Closing of the Sale, including sending to the California AG a copy of the attached hereto as **Exhibit 2**.
15. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by SEIU-UHW.
16. The terms of this Agreement supersede any prior agreement(s) between the Parties.

17. Any modification of this Agreement must be in writing and approved by both Parties.
18. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

SEIU-UHW

By: 
Emily P. Rich

The Debtors

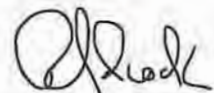
By: 

EXHIBIT 5

Settlement Agreement

On this 19th day of September, 2019 (the "Settlement Date"), and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc., Seton Medical Center (including the campus known as Seton Medical Center-Coastside), St. Vincent Medical Center, St. Francis Medical Center and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and St. Francis Registered Nurses Association, United Nurses Associations of California/Union of Health Care Professionals, NUHHCE AFSCME AFL-CIO (collectively "UNAC"), (collectively, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

Recitals

WHEREAS, UNAC and one or more of the Debtors are parties to a certain *Labor Management Collective Bargaining Agreement* effective from December 29, 2017 to December 29, 2021 (the "CBA");

WHEREAS, on August 31, 2018 (the "Petition Date"), each of the Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Cases") in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), and since that date, all Debtors have been operating as debtors in possession;

WHEREAS, on January 17, 2019, the Debtors filed a *Notice Of Motion For The Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement For Stalking Horse Bidder and For Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice To Be Provided To Interested Parties; (4) Scheduling A Court Hearing To Consider Approval of The Sale To The Highest Bidder; and (5) Approving Procedures Related To The Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing The Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support Thereof* [Docket No. 1279] (the "Remaining Hospitals Sale Motion"), which sought, among other things, to sell the assets of St. Francis Medical Center, a California nonprofit public benefit corporation ("SFMC"), St. Vincent Medical Center, a California nonprofit public benefit corporation ("SVMC"), St. Vincent Dialysis Center, a California nonprofit public benefit corporation, ("SVDC"), Seton Medical Center, a California nonprofit public benefit corporation, including Seton Coastside ("SMC," and referred to collectively with SFMC, SVMC and SVDC as the "Remaining Hospitals") under a Stalking Horse Asset Purchase Agreement (the "APA") between Verity Health Care System of California, Inc., a California nonprofit public benefit corporation ("Verity"), Verity Holdings, LLC, a California limited liability company, SFMC, SVMC, SVDC, and SMC (collectively, the "Sellers") and Strategic Global Management, Inc., a California Corporation (along with all affiliates, "SGM");

WHEREAS, on May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306];

WHEREAS, under the terms of the APA, SGM agreed to participate in union negotiations related to any specific collective bargaining agreement;

WHEREAS, the Debtors have agreed to use commercially reasonable efforts to initiate discussions with SGM and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. *See* APA § 5.11;

WHEREAS, SGM and the Debtors seek to effectuate the sale (the "Sale") Closing (used herein as that term is defined in the APA) after the review of the transaction by the Attorney General of California (the "California AG"), by October 14, 2019, or as soon thereafter as possible, consistent with the terms and conditions of the APA;

WHEREAS, upon the Closing, the Debtors will no longer operate or employ anyone at the Remaining Hospitals;

WHEREAS, UNAC has filed proofs of claim (collectively, along with any and all amendments, the "POCs") in the Bankruptcy Cases against the Debtors, which have been designated with the following claims numbers: #5911 (Verity Business Services), #5912 (Verity Medical Foundation), #5913 (Verity Health System of California, Inc.), #5915 (St. Vincent Foundation), #5917 (De Paul Ventures, LLC), #5918 (O'Connor Hospital), #5920 (Verity Holdings, LLC), #5925 (O'Connor Hospital Foundation), #5926 (Seton Medical Center Foundation), #5927 (Saint Louise Regional Hospital Foundation), #5928 (St. Francis Medical Center), #5931 (St. Francis Medical Center of Lynwood Foundation), #5932 (De Paul Ventures - San Jose Dialysis, LLC), #5933 (St. Vincent Medical Center), #5934 (Seton Medical Center), and #5936 (St. Louise Regional Hospital);

WHEREAS, the Debtors have, in good faith, sought to facilitate the modifications to the CBA desired by SGM and to otherwise consensually resolve issues and claims of UNAC;

WHEREAS, on February 1, 2019, the Debtors sent to UNAC a document that the Debtors aver constitutes a proposal under § 1113 to modify the CBA and to resolves other issues; UNAC, however, disputes the proposal constitutes a proper § 1113 proposal;

WHEREAS, on or about July 25, 2019, the Debtors presented UNAC with a § 1113 proposal which the Debtors aver constituted an amendment to the § 1113 proposal it delivered on February 1, 2019 and UNAC avers constitutes the first § 1113 proposal and,

along with SGM, began the process of negotiating changes to terms of the CBA acceptable to SGM and UNAC; and

WHEREAS, beginning on July 25, 2019 and through the Settlement Date, the Debtors, SGM, and UNAC have met and negotiated on several occasions about modifying the CBA and the Debtors and UNAC have otherwise exchanged proposals to resolve the other issues between the Parties.

NOW THEREFORE, the Parties agree as follows:

Terms

1. Effective and conditioned upon the Closing, the CBA shall be modified in the form attached hereto as **Exhibit 1** (the "Modified CBA") under § 1113 of the Bankruptcy Code (the "Modification").
2. Effective and conditioned upon the Closing, the Debtors will assume and assign the CBA (as modified under the Modified CBA) to SGM (the "Assumption and Assignment").
3. UNAC agrees to (a) accept i) the Modification, ii) the Assumption and Assignment and iii) the terms of the foregoing (collectively, the "Agreed Outcome"); (b) not to oppose, as commercially reasonable, motions or plans filed by the Debtors in the Bankruptcy Cases, seeking approval of the Agreed Outcome; provided, however, that nothing in this Agreement is intended to affect A) UNAC rights and remedies against SGM in connection with x) post-Closing operations at SFMC, including, but not limited to, interaction with the California AG, and y) adequate assurance of future performance by SGM; and B) the Parties' rights to seek enforcement of the terms of this Agreement from the Bankruptcy Court.
4. Upon Closing, SGM will become solely responsible for performance of all post-Closing obligations arising under the Modified CBA.
5. Upon Closing, the CBA (as modified under the Modified CBA) will be deemed to be automatically assigned to SGM in full.
6. The Debtors: (a) will not have any liability or obligation to perform under the CBA or Modified CBA with respect to post-Closing activity; (b) shall in no way be liable for or otherwise responsible for any "cure" obligations independent of any UNAC claims that may be expressly preserved under this Agreement; and (c) and shall in no way be liable for or otherwise for any nonperformance or violation by SGM or any of its affiliates arising at any time.

7. In further resolution, the following claims shall be allowed and receive the following treatment:

a. PTO: each employee who is not offered a job with KPC Global Medical Center of South Los Angeles, LLC (“GMCSLA”) will be allowed in the Bankruptcy Cases a claim for unused and unpaid PTO calculated under the “accrual method;” meaning PTO earned and yet unpaid or used 1) on or after the Petition Date, will be granted administrative status, 2) between March 4, 2018 to the Petition Date, will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee) with any excess granted general unsecured claim status and; 3) prior to March 4, 2018, will be given general unsecured claim status. The administrative and priority claim portions of an allowed PTO claim will be paid with the employee’s last paycheck (upon the Closing);

b. Severance: each employee who is not offered employment by GMCSLA no later than the date of Closing, will be allowed a claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by a Debtor to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the Effective Date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to UNAC and the Debtors;

c. Grievance Claims: Any grievance claim of an employee being represented by UNAC that is not settled as of the Bankruptcy Plan Effective Date will be treated in accordance with the Plan or otherwise in accordance with bankruptcy law. The parties agree to work with GMCSLA in the event that the remedy is or includes reinstatement of the employee after the Closing;

d. Educational Claims. Any allowed unpaid claim for reimbursement of educational expenses of employee represented by UNAC will be calculated under the “accrual method,” meaning that such claim will be calculated on *per diem* basis from the date of retention to the earlier of the date of termination or the date of Closing and treated as follows: 1) amounts earned on or after the Petition Date

through the date of termination or the Closing (whichever is earlier) earned will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will be granted priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of Bankruptcy Plan Effective Date; and

e. All other prepetition claims, prepetition priority claims and administrative expenses and claims arising from the Petition Date to the Settlement Date not enumerated in subparagraphs a) through d) above are deemed waived; *provided further*, 1) UNAC does not waive the right to assert any unpaid administrative expenses that arise from the Settlement Date to the Closing and the Debtors maintain the right to oppose such administrative expenses; 2) the Debtors maintain the right to seek estimation from the Bankruptcy Court of any claims and administrative expenses for voting or distribution purposes and UNAC maintains the right to oppose such estimation; and 3) the Parties agree that the Bankruptcy Court retains jurisdiction to determine the allowance, priority and treatment of all claims and administrative expenses (post-arbitral or otherwise); and 4) with respect to wages, health care flexible spending accounts, mileage or other non-pension, non-severance and non-educational claims, the Debtors will, prior to the Closing, represent and warrant that all such claims will receive treatment in the same manner as for Severance pursuant to Section 7(b), *supra*. For the avoidance of doubt, the Debtors' health care plans and programs related to UNAC-represented employees will be terminated effective upon the Closing.

8. As between UNAC and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.
9. Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.
10. UNAC agrees to not oppose any Plan of the Debtors that does not contradict the material terms of this Agreement.
11. Terms of this Agreement shall be null and void in the event that 1) the Sale does not close, or 2) the Sale closes for a purchase price that is materially less than the contracted amount in the APA.
12. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.

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13. UNAC hereby withdraws any outstanding information requests that relate to this Agreement or the § 1113 process.
14. UNAC agrees to not oppose the prompt Closing of the Sale.
15. The effectiveness of this Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by UNAC.
16. The terms of this Agreement supersede any prior agreement(s) between the Parties.
17. Any modification of this Agreement must be in writing and approved by both Parties.
18. By executing below, each Party represents that it has the requisite authority to enter into an implement all terms of this Agreement.

For UNAC

Dated: 9/19/19

By: Joseph Guzynski
Joseph Guzynski
UNAC/UHCP Executive Director

Dated: 9/19/2019

DocuSigned by:
By: Ana Bergeron
77318524387343A
Ana Bergeron
SFRNA President

Dated: 9/19/19

By: Jessica Ludd
Jessica Ludd
UNAC/UHCP General Counsel

Dated: 9/19/2019

DocuSigned by:
By: Sandra Marques
Sandra Marques
UNAC/UHCP Staff Representative

DocuSign Envelope ID: 16F8A14B-8E61-494F-AF9D-3C3B1BD5A07B

For the Debtors

By:  _____

EXHIBIT 6

Qualified Bridge Retiree Information							Premium Data ^{1,2}																										
Union / NR	QBR Full Name	Date of Retirement	Date of Birth	Plan Description	Date of Age 65	Assignment End Date ³	Total	2019 QBR	Verity	%	Total	2020 QBR	VHS	Total	2021 QBR	VHS	Total	2022 QBR	VHS	Total	2023 QBR	VHS	Total	2024 QBR	VHS	Months to Assignment End ⁴	Total	Projected Cost QBR	VHS				
O'Connor Hospital CNA	Lisa B.	8/20/2018	6/5/1956	Medical EPO North	6/5/2021	5/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	23	\$18,532.94	\$4,633.12	\$13,899.82				
O'Connor Hospital CNA	Kathryn B.	2/5/2017	1/25/1959	Medical EPO North	1/25/2024	1/31/2024	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	55	\$44,317.90	\$11,079.20	\$33,238.70				
O'Connor Hospital CNA	Olga H.	6/13/2017	5/23/1956	Medical EPO North	5/23/2021	5/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	23	\$18,532.94	\$4,633.12	\$13,899.82				
O'Connor Hospital CNA	Kathleen R.	9/21/2018	3/24/1956	Medical EPO North	3/24/2021	3/31/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	21	\$16,921.38	\$4,230.24	\$12,691.14				
O'Connor Hospital CNA	Judith T.	6/4/2018	9/10/1955	Medical EPO North	9/10/2020	9/1/2020	\$805.78	\$402.89	\$402.89	50%	\$805.78	\$402.89	\$402.89												15	\$12,086.70	\$6,043.35	\$6,043.35					
O'Connor Hospital Non-Rep	Sue M.	8/2/2018	4/2/1955	MEDICAL PPO North	4/2/2020	3/31/2020	\$855.74	\$213.93	\$641.81	25%	\$855.74	\$213.93	\$641.81												9	\$7,701.66	\$1,925.37	\$5,776.29					
O'Connor Hospital Local 20 Thrpy+	Thu N.	1/8/2017	11/22/1955	Medical EPO North	11/22/2020	11/30/2020	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34												17	\$13,698.26	\$3,424.48	\$10,273.78					
Seton Medical Center CNA	Yolanda M.	5/1/2018	8/5/1957	MEDICAL BSPPO	8/5/2022	7/31/2022	\$1,215.14	\$303.78	\$911.36	25%	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	\$1,215.14	\$303.78	\$911.36	37	\$44,960.18	\$11,239.86	\$33,720.32				
St. Louise Regional Hospital CNA	Diane T.	5/1/2018	2/18/1957	Medical EPO North	2/18/2022	2/28/2022	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	32	\$25,784.96	\$6,446.08	\$19,338.88				
O'Connor Hospital CNA	Joanne W.	2/1/2019	4/8/1956	Medical EPO North	4/8/2021	4/1/2021	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	\$805.78	\$201.44	\$604.34	22	\$17,727.16	\$4,431.68	\$13,295.48				
Seton Medical Center NUHW	Mary G.	12/31/2018	4/5/1955	Medical EPO North	4/5/2020	3/31/2020	\$805.78	\$201.44	\$604.34	25%	\$805.78	\$201.44	\$604.34												9	\$7,252.02	\$1,812.96	\$5,439.06					
																										Total Cost	\$227,516	\$59,899	\$167,617				
																										Total PEPM	\$865.08	\$227.75	\$637.33				
																														Total Cost	\$227,516	\$59,899	\$167,617
																														Total PEPM	\$865.08	\$227.75	\$637.33

¹ This is not COBRA
² Rates are based on COBRA equivalent rates for QBR Only coverage
³ Assignment end date is to age 65
⁴ Months to end date calculated from 7/1/2019

EXHIBIT 7-A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	Case No. 09-13395 (CSS)
PTC ALLIANCE CORP., <i>et al.</i> , ¹	)	Jointly Administered
)	
_____ Debtors.	)	Re: Docket No. 847

**ORDER PURSUANT TO 11 U.S.C. §§ 365, 1113, AND 1114 AUTHORIZING THE
(I) MODIFICATION, ASSUMPTION AND ASSIGNMENT OF COLLECTIVE
BARGAINING AGREEMENTS AT ALLIANCE, OHIO AND DARLINGTON,
PENNSYLVANIA AND (II) TERMINATION OF CLOSING AGREEMENTS
AT MONACA, PENNSYLVANIA AND CHICAGO HEIGHTS, ILLINOIS**

Upon consideration of the Motion of the Debtors, PTC Alliance Corp., *et al.*, pursuant to 11 U.S.C. §§ 365, 1113, and 1114 for an Order Authorizing the (I) Modification, Assumption and Assignment of Collective Bargaining Agreements at Alliance, Ohio and Darlington, Pennsylvania and (II) Termination of Closing Agreements at Monaca, Pennsylvania and Chicago Heights, Illinois (the “Motion”),² and it appearing that: (i) appropriate notice of the Motion has been given; (ii) the Court has jurisdiction to consider the relief requested pursuant to 28 U.S.C. §§ 157 and 1334; and (iii) it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and creditors, and after due deliberation and good and sufficient cause appearing, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers are: PTC Alliance Corp. (2395), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090; Alliance Tubular Products Co. (7185), with a principal executive office located at 640 Keystone Street, Alliance, OH 44601; PACD Acquisition LLC (3405), with a principal executive office located at 4400 West 3rd, Beaver Falls, PA 15010; Enduro Industries, Inc. (4669), with a principal executive office located at 2001 Orchard Avenue, Hannibal, MO 64031; PTC Tubular Products LLC (9342), with a principal executive office located at 23041 E. 800 North Road, Fairbury, IL 61739-8824; Mid-West Mfg. Co. (0660), with a principal executive office located at 475 East 16th Street, Chicago Heights, IL 60411; and PT/VW Corporation (9385), with a principal executive office located at 6051 Wallace Road Ext., Suite 200, Wexford, PA 15090.

² Capitalized terms used but not defined herein shall have the same meanings given to them in the Motion.

1. The Motion be, and hereby is, GRANTED.
2. Any objections to the Motion, including any relief requested therein, are hereby denied and overruled with prejudice.
3. Pursuant to 11 U.S.C §§ 1113 and 1114, the Debtors are hereby authorized to modify the terms of the Alliance Agreement in accordance with the Alliance MOA effective as of the closing of the Proposed Sale.
4. Pursuant to 11 U.S.C. § 365, the Debtors are hereby authorized to assume and to assign the Alliance Agreement as modified by, and in accordance with, the Alliance MOA to Acquisition Co., effective as of the closing of the Proposed Sale.
5. Pursuant to 11 U.S.C §§ 1113 and 1114, the Debtors are hereby authorized to modify the terms of the Darlington Agreement in accordance with the Darlington MOAs effective as of the closing of the Proposed Sale.
6. Pursuant to 11 U.S.C. § 365, the Debtors are hereby authorized to assume and to assign the Darlington Agreement as modified by, and in accordance with, the Darlington MOAs to Acquisition Co., effective as of the closing of the Proposed Sale.
7. Pursuant to 11 U.S.C. §§ 1113 and 1114, the Debtors are hereby authorized to terminate the Mid-West Closing Agreement in accordance with the Mid-West MOA effective as of the closing of the Proposed Sale.
8. Pursuant to 11 U.S.C. §§ 1113 and 1114, the Debtors are hereby authorized to terminate the Monaca Closing Agreement in accordance with the Monaca MOA effective as of the closing of the Proposed Sale.
9. The Monaca Closing Agreement and the Mid-West Closing Agreement are not being assumed by the Debtors or assigned to Acquisition Co. as part of the Proposed

Sale. Accordingly, Acquisition Co. will have no liability or obligation under either of such Closing Agreements, including without limitation any obligations or liabilities relating to pensions or retiree health benefits; provided, however, nothing herein shall release the Company of (i) its obligations to provide continuing benefit insurance coverage to retirees and their dependents, in accordance with the MOAs and Closing MOAs, until the VEBA becomes operational but in no event will coverage extend beyond December 31, 2010, and (ii) its obligations to make contributions to the VEBA as set forth in the MOAs and Closing MOAs.

10. The Debtors' 1113/1114 Motions, filed at Docket Nos. 693 and 733, shall be, and hereby are, withdrawn.

11. The Debtors are hereby authorized and empowered to take such steps as may be necessary to implement and effect the terms and requirements of this Order.

Dated: 8/11/10


CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 7-B

EXHIBIT A

***July 17, 2010 Company-USW & USW Local 3059-01
Memorandum of Understanding ("MOA")***

**Between
ALLIANCE TUBULAR PRODUCTS CO.
(Alliance, OH Plant)**

**And
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED, INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-
CIO, CLC On Behalf of Its Local 3059-01**

Alliance Tubular Products, Co. ("Company") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO CLC, on behalf of itself and its Local Union No. 3059-01 (collectively called "Union" or "USW"), hereby agree to a new four (4) year Company-Union labor agreement which shall expire at 12:01 am on July 28, 2014, with the new labor agreement to become effective conditioned upon and on the date of the closing of the sale referred to in Paragraph 16 below. This new labor agreement will be identical to the current labor agreement, dated and effective November 28, 2007, except for appropriate changes in dates and the changes set forth below:

1. **SECTION I -- Paragraph 3.** Amend existing language as follows to replace "the chauffeur" with "janitors" as a bargaining unit exclusion, but permit the three displaced janitors six months to successfully bid into other jobs and shifts, take a modified bump, or be placed in the labor gang after the time frame listed above has expired, whichever is applicable, and consistent with the November 28, 2007 labor agreement, and they will receive the greater of the hourly rates of those jobs.

3. The term "employee" as used in this Agreement will include all production and maintenance employees employed at the Company's Alliance, Ohio Plant, excluding clerical employees, timekeepers, guards, janitors, and nurses, and all supervisory employees at or above the rank of foreman.

2. **SECTION IV – Wages – and Appendix A.** Amend existing Section IV base tables and Appendix A tables to reduce, across-the-board, all current and new employee straight time hourly wages by five percent (5%). In addition to any scheduled wage increases, the Company will restore those wage cuts, as rounded off to the nearest whole cent, as follows, during the new labor agreement:

<u>Effective Date</u>	<u>Percent Restored</u>
1st Anniversary of Effective Date of this MOA	Two Point Five Percent (2.5%)

2nd Anniversary of Two Point Five Percent (2.5%)
Effective Date of this MOA

3. **SECTION XIII -- Vacations -- Paragraph 1.** Amend existing language as follows to require an employee to work at least one (1) day in a calendar year to be eligible for vacation in that year, to lower the percentage of pay periods for eligibility from fifty percent (50%) to thirty percent (30%), and to permit an employee who fails to receive earnings in thirty percent (30%) of the pay periods to receive up to one (1) week of vacation if such employee would otherwise be entitled to that amount by seniority:

1. *Eligibility.* To be eligible for a vacation in any calendar year during the term of this Agreement, the employee must:

- a. Have one (1) year or more of continuous service;
- b. Work in that calendar year;
- c. Have received earnings in at least thirty percent (30%) of the pay periods in the preceding calendar year; except that, in the case of an employee who completes one (1) year of continuous service in the current calendar year, s/he will have received earnings in at least thirty percent (30%) of the pay periods during the twelve (12) months following the date of his or her original employment; and, further, except that an employee who received earnings in less than thirty percent (30%) of the pay periods during such twelve (12) month period will receive one (1) week of vacation so long as s/he is entitled to at least one (1) week according to his or her Plant seniority record, and provided, in determining vacation eligibility under this paragraph an employee who incurred a compensable disability in the preceding calendar year and did not receive earnings in one or more pay periods in that year because of such disability, will have the number of such pay periods included with the number of pay periods in which s/he received earnings for the year in which such disability occurred. The continuous service record of each employee will be governed by his or her Plant seniority record; and
- d. Once an employee has become eligible for vacation benefits, the employee will not subsequently lose the right to vacation pay by reason of the employee's death, resignation, discharge, break in service, or termination of this Agreement.

4. **SECTION XIV -- Seniority -- New Paragraph 6.** Add the following language as new Paragraph 6 to increase Company flexibility to make needed temporary transfers and renumber the remaining paragraphs of this Section, including renumbering any internal references within those renumbered paragraphs for accuracy:

6. The Union recognizes the Company's need to maintain uninterrupted production, therefore, in the event of an emergency or unforeseen daily absence, the Company will attempt to fill the vacancy through APPENDIX B, TEMPORARY ASSIGNMENT language first contained in the November 28, 2007 labor agreement. If, after exhausting the language listed above, the vacancy cannot be filled, the Company may fill the vacancy by using the most junior qualified employee from that shift.

5. **SECTION XXIII – Severance Allowance – Side Letter Agreement.** Retain existing Section XXIII, Severance Allowance. The Company and Union will execute a side letter which provides that there will be no claim for severance pay in connection with a transaction in which the Company satisfies its obligations under Appendix P, Successorship.

6. **SECTION XXVII – Complete Agreement – New Section XXVII.** Add the following language as new Section XXVII – Complete Agreement and renumber remaining sections:

1. This Agreement shall be considered a new labor agreement between the Company and the Union with respect to the wages, hours, and working conditions of all employees.

2. No modification of this Agreement will be effective unless signed by authorized officials of the Company and Union.

7. **SECTION XXVI – Termination Date.** Replace “October 2, 2011” with the new expiration date of “July 28, 2014.”

8. **Insurance and Pension Benefits Appendix-- New Appendix AA – Welfare Benefits Plans.** Pre-October 1, 2007 employees will, so long as they remain in the insurance plan in effect on January 1, 2010, pay monthly the following amounts:

Single:	\$120
Employee +1:	\$130
Employee +2	\$140
Employee +3	\$150

In addition, based upon proof of alternative coverage, any such employee may opt out of this existing Company-provided plan, and any employee who does will receive, in exchange, ten percent (10%) of the then prevailing individual coverage COBRA group insurance rate from the Company.

9. **Insurance and Benefit Appendix – Pensions & 401(k) Plan – New Appendix BB – 401(k) Plans.** Replace the “Pensions” and “Voluntary 401(k) plan” portions of the unlettered appendix to the existing Alliance labor agreement with the attached new Appendix BB containing 401(k) plans for existing employees and future hires, with the understanding and agreement that the Union will not oppose the termination of the existing pension plan, and,

further, that the specified 401(k) plans will be the sole and exclusive retirement plans provided by the Company to employees after the new labor agreement becomes effective.

10. **Appendices S & X -- TUBE Share Program & New Incentive Program Add-On to Appendix S or X.** Continue existing Appendices S and X, the existing TUBE Share Program following the assumption of the labor agreement described in Paragraph 16 until changed by Company-Union agreement on a replacement plan or an arbitrator's decision on a replacement plan, as stated below. During the first three (3) months following the assumption of the labor agreement described in Paragraph 16, the Company and Union will meet and attempt to reach agreement on a replacement incentive program designed to award incentive earnings equivalent to an average hourly target rate of two dollars (\$2.00) for achieving reasonably based group profitability, productivity, quality, quantity, tonnage, and other reasonable business milestones, to be distributed among actively employed employees in proportion to the hours each employee worked during the incentive time period. During this same three (3) month period, because of the possibility that the parties may fail to reach agreement on a replacement incentive program and the need for an expedited arbitration award to confirm the new program, the Company and Union will select an impartial arbitrator with an industrial engineering background and/or demonstrated experience in plant manufacturing incentive bonus plans and arrange an arbitration hearing for a date as close as practicable to the end of the initial three (3) month period.

Any agreed replacement program will become effective at or before the end of the initial three (3) month period, as the parties agree. If no agreement is reached by the end of those three (3) months, however, the alternate Company and Union versions of the new program will be grieved and appealed immediately to arbitration, as provided elsewhere in this Agreement. Within one (1) week following the arbitration hearing, and no later than two (2) months after the close of the initial three (3) month period, unless otherwise agreed, the previously selected Arbitrator will decide whether the Company or Union plan is the more reasonable, realistic program, on the basis of all relevant facts, by choosing only between the final versions of the two complete programs offered to each other by the Company and Union at or prior to the end of the initial three (3) month period. The Arbitrator's decision will be a simple award, with no written decision, that simply selects one plan over the other, without any modification of the plan selected.

This language will be added to existing Appendix S or X.

11. **APPENDIX P – Memorandum of Understanding Regarding Successorship – New Appendix P.** Replace existing Appendix P with the attached new Appendix P.

12. **New Appendix CC – Patient Protection and Affordable Care Act.** Add the attached new Appendix CC to the new labor agreement.

13. **New Appendix DD.** Add the attached appendix as new Appendix DD to the new labor agreement. In exchange for the payment specified in new Appendix DD, the Company will have no further obligation to provide any existing or future retirees with Company-provided

retiree medical or other insurance coverage (also called "OPEB," short for Other Post-Employment Benefits).

14. **Investment Commitment – New Appendix EE.** Add the attached new Appendix EE to the new labor agreement.

15. **Transferred Employees – Exhibit 1.** The Company will take the actions specified in the attached Exhibit 1, conditioned upon the sale and on the effective date of the sale referred to in Paragraph 16 below.

16. **Labor Agreement Assumption.** This MOA will become effective on the closing of the sale by the Company of its assets to BD PTC Acquisitions, Inc. ("Buyer"), which is an entity created by Black Diamond Capital Management LLC for the purpose of acquiring the Company's assets. The Union, on its own behalf and on behalf of its members, agrees to the assignment by the Company and the assumption of the new labor agreement by the Buyer on the effective date of the acquisition of the Alliance plant assets, with the Buyer to be fully responsible for all obligations arising under the new labor agreement after that date, and with the Company to be fully responsible for any such obligations arising on or prior to that date.

17. **Bankruptcy Court Approval.** The Company has filed a petition pursuant to Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court in Wilmington, Delaware at Case No. 09-13395 (CSS). Following ratification of this MOA, as stated below, the Company shall promptly file a motion with the Bankruptcy Court in this matter to approve this MOA and shall furnish the Union with a draft of such motion prior to filing. Further, upon entry of an order approving the MOA, the Company will withdraw, with prejudice, its motion filed under Sections 1113 and 1114 of the Bankruptcy Code, 11 U.S.C. 1113, 1114 with respect to the Alliance employees and retirees and Mid-West retirees.

18. **Grievance Settlements.** Subject to Bankruptcy Court approval of this MOA as addressed in Paragraph 17, with regard to the Drummond and vacation eligibility grievances, the Company will take all necessary steps to make the payments specified here. In the Drummond case, the Company will pay its portion of the Arbitrator's fee/expense statement and the Arbitrator-directed payment to Mr. Drummond. In the vacation eligibility grievances, the settlements will be on a non-precedent setting basis, and payment of denied 2009 and 2010 vacation pay will be made directly to the surviving spouse of the employee who died during 2009 and to employees who failed to receive 2009 and/ or 2010 vacation.

19. **Closing Bonuses.** Provided that this MOA, in its entirety, is ratified by the Local 3059-01 membership on or before July ___, 2010, and it otherwise becomes effective as stated here, a lump sum bonus of two thousand dollars (\$2000.00), less authorized or legally required deductions, will be paid on the payday following the closing of the transaction described in Paragraph 16, and a second lump sum bonus of one thousand dollars (\$1000.00), less authorized or legally required deductions, will be paid on the payday following the first year anniversary of such closing, to every employee accruing seniority as of the closing date for the first bonus and the first year anniversary for the second bonus.

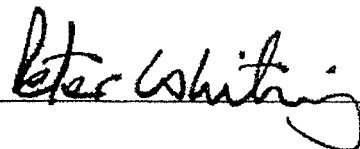
20. **Printing.** The Company will print, as soon as practicable after the Effective Date of this MOA, pocket-sized copies of an amended and restated collective bargaining agreement reflecting the terms and conditions set forth in this MOA.

21. **Other Proposals.** Except for matters agreed upon in this MOA, the Company and Union have withdrawn all other bargaining proposals.

This MOA has been tentatively agreed between the Company and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("International Union"), and its affiliated Local 3059-01, by and through the International and the USW Local 3059-01 bargaining committee officials whose signatures appear below. The International Union and the USW Local 3059-01 bargaining committee have agreed to unanimously recommend ratification of this MOA to the membership of USW Local 3059-01 in connection with the transaction described in paragraph 16 of this MOA. As addressed above, this MOA is subject to and will become effective only after (x) ratification by the Local 3059-01 membership, (y) the closing of the transaction described in Paragraph 16, and (z) entry of an order of the Bankruptcy Court approving this MOA.

UNITED STEEL, PAPER AND FORESTRY, ALLIANCE TUBULAR PRODUCTS, CO.
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC

By 

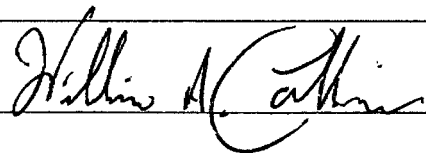
By 

BARGAINING COMMITTEE OF LOCAL
UNION NO. 3059-01 OF THE UNITED
STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION

By _____



By _____



APPENDIX P

MEMORANDUM OF UNDERSTANDING REGARDING SUCCESSORSHIP

1. In the case of a sale of the stock of PTC Alliance Corp., PTC Alliance Corp. will ensure that any such buyer is made aware of the contractual obligations of its subsidiary, Alliance Tubular Products Company ("Alliance Tubular"), to continue to honor the labor agreement between Alliance Tubular and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied, Industrial and Service Workers International Union, and its affiliated Local 3059-01 ("Union"), for the remaining lifetime of the Agreement.

2. In the case of an asset sale, the Company agrees that it will not sell, convey, assign or otherwise transfer, using any form of transaction, any Plant or significant part thereof covered by this Agreement (any of the foregoing, a Sale) to any other party (Buyer), unless the following conditions have been satisfied prior to the closing date of the Sale:

- a. the Buyer shall have entered into an agreement with the Union recognizing it as the bargaining representative for the Employees working at the plant(s) to be sold; and the Buyer shall have entered into an agreement with the Union establishing the terms and conditions of employment to be effective as of the closing date of the Sale; or
- b. the Buyer shall have assumed the Agreement.

3. This Section shall not apply to any transactions solely between the Company and any of its affiliates, or to a public offering of registered securities.

APPENDIX AA

WELFARE BENEFITS PLANS

A. *In General*

1. Effective upon signing this Agreement and for the duration of this Agreement, the parties agree on the following Welfare Benefit Plans for the employees under this Agreement. These Welfare Benefit Plans include group health, dental, vision and life insurance coverage as summarized below. The Company will determine the insurance carrier, if any, for the benefits shown below and any carrier changed by the Company will continue to provide these benefits during this Agreement. To the extent an inconsistency arises between language in this Appendix and the underlying insurance contract with regard to claim notification and/or processing procedures only, however, the terms of the applicable insurance contract will prevail.

2. The Company will maintain three Welfare Benefit Plans. All employees shall be entitled to a single monthly credit of \$62.50. Employee contributions for these plans will remain unchanged for the duration of this Agreement.

3. Pre-October 1, 2007 hires shall be eligible to participate in the Welfare Benefit Plan in effect at the Alliance facility as of January 1, 2010. So long as an employee remains in this plan, the employee shall pay the following amounts monthly:

Single:	\$120
Employee +1:	\$130
Employee +2:	\$140
Employee +3:	\$150

4. The Company shall maintain a 90/10 and an 80/20 plan for all Post-October 1, 2007 hires and for those Pre-October 1, 2007 hires who elect to participate in such plan. The election by a Pre-October 1, 2007 hire to participate in the 90/10 plan or 80/20 plan can be made on any enrollment date, however, once such an election is made, that election shall be binding for the duration of this Agreement and the employee may not move back to the plan in existence on January 1, 2010.

5. Except as otherwise required by laws such as the Family and Medical Leave Act of 1993 ("FMLA"), the Company's obligation to pay for the insurance coverage outlined below for employees whose active employment ceases temporarily or permanently (except for a quit, retirement, death, or discharge for cause) will terminate as follows:

YEARS OF SERVICE	INSURANCE END DATE
Less than 2 years	End of calendar month in which employment ends
2 but less than 10 years	End of sixth (6th) calendar month after employment ends
10 or more years	End of twelfth (12th) calendar month after employment ends

In the event of a quit, retirement, death, or discharge for cause, the Company's obligation will cease as of the end of the calendar month in which employment terminates, irrespective of the employee's years of service.

To the extent required by law, however, after the Company's insurance payment obligation terminates, an employee will have the opportunity to continue group insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") by prepaying the portion of the monthly premiums established by the Company consistent with COBRA.

6. During the term of this Agreement, federal and/or state laws may be passed to require the Company to provide certain medical or other related benefits for its employees, benefits that may duplicate or overlap similar benefits to be provided by this Agreement. If this happens, and to the extent these laws do not permit the Company to credit cost and benefits under this Agreement against those required by law, upon providing the Union with documentation of such additional costs to the Union's satisfaction, the Company may reduce the duplicated benefits to be provided by this Agreement without violating this Agreement to avoid any actual, practical, or otherwise unreasonable duplication of cost or benefits.

B. Benefits

1. Sickness & Accident Benefit.

The Sickness & Accident Weekly Benefit under the Program of Insurance Benefits (PIB) will be \$350 per week for disabilities.

2. Life Insurance Benefit.

The Life Insurance provisions will be as follows:

Life insurance coverage for active employees will be \$30,000.

3. Medical Plans.

(a) **Eligibility.** After working 720 hours, any employee will be eligible to participate in the health, dental and vision plans in effect and summarized at the end of this Appendix during this Collective Bargaining Agreement. The employee will have a choice of either Option I or Option II in connection with health and dental benefits.

(b) **Company Contribution.** Any employee who elects to participate in the medical plans will receive a Company contribution of \$62.50 per month towards the cost of their medical benefits.

(4) Summary of Medical, Dental, and Vision Plans for 90/10 and 80/20 Plans.

(i) Summary of PPO Benefits – Option I

With your PPO, or Preferred Provider Organization, if you receive services from a provider who is in the PPO network, you'll receive the highest level of benefits. If you receive services from a provider who is not in the PPO network, you'll receive the lower level of benefits. In either case, you coordinate your own care. There is no requirement to select a Primary Care Physician (PCP) to coordinate your care. Below are specific benefit levels that apply during your benefit period.

PTC Alliance

Option I

Benefit	Network	Out-of-Network
Benefit Period	Calendar Year	
Deductible (per benefit period)		
Individual	\$200	\$600
Family	\$600	\$1,800
Plan Payment Level -- Based on the provider's reasonable charge (PRC)	90% until out-of-pocket maximum is met; then 100%	70% until out-of-pocket maximum is met; then 100%
Out of Pocket Maximums		
Individual	\$600	\$1,800
Family	\$1,800	\$3,600
Lifetime Maximum (per person)	\$1,000,000	
Primary Care Physician Office Visits	100% after \$20 copayment	70% after deductible
Specialist Office Visits	100% after \$25 copayment	70% after deductible
Preventive Care		
Adult		
Routine physical exams	100% after \$20 copayment	Not Covered
Adult Immunizations	90%	70% after deductible
Routine gynecological exams	100% after \$20 copayment	70% after deductible

Benefit	Network	Out-of-Network
Annual Pap Test	90%	70% after deductible
Annual Mammogram	90%	70% after deductible
<i>Pediatric</i>		
Routine physical exams	100% after \$20 copayment	70% after deductible
Pediatric Immunizations	90%	Not Covered
Emergency Room Service	90% after \$50 copayment (waived if admitted) (copayment of \$30 for Instacare or other ER alternative instead of ER)	
Spinal Manipulations	90%	70% after deductible
	Limit: 13 visits/benefit period	
Physical Medicine	90%	70% after deductible
Speech Therapy	90%	70% after deductible
Occupational Therapy	90%	70% after deductible
Allergy Extracts and Injections	90%	70% after deductible
Ambulance	90% deductible does not apply	
Assisted Fertilization Procedures	Not Covered	
Dental Services Related to Accidental Injury	90%	70% after deductible
Diabetes Treatment	90%	70% after deductible
Diagnostic Services (including routine)	90%	70% after deductible
<i>Advanced Imaging</i> (MRI, CAT Scan PET Scan, etc.)		
<i>Basic Diagnostic Services</i> (standard imaging, diagnostic medical, lab/pathology, allergy testing)	90%	70% after deductible
Durable Medical Equipment, Orthotics and Prosthetics	90%	70% after deductible
Enteral Formulae	90%	70% after deductible
Home Infusion Therapy	90%	70% after deductible
Home Health Care	90%	70% after deductible
	Limit 100 visits/benefit period	
Hospice	90%	70% after deductible
Hospital Services		
Inpatient	90%	\$250 inpatient copayment then 70% after deductible
Outpatient	90%	70% after deductible
Infertility Counseling, Testing and Treatment (for medical conditions only)	90%	70% after deductible

Benefit	Network	Out-of-Network
Maternity Services		
Inpatient	90%	70% after deductible
Initial Visit	100% after \$20 Copayment	70% after deductible
Delivery	90%	70% after deductible
Medical Expenses	90%	70% after deductible
Surgical Expenses		
Facility	90%	70% after deductible
Professional	90%	70% after deductible
Mental Health		
Inpatient	90%	\$250 inpatient copayment then 70% after deductible
	Limit: 30 days/benefits period: 90 days/lifetime	
Outpatient	100% after \$20 copayment	70% after deductible
	Limit: 60 visits/benefit period	
Private Duty Nursing (excludes inpatient)	90%	70% after deductible
Respiratory Therapy	90%	70% after deductible
Skilled Nursing Facility Care	90%	70% after deductible
	Limit 100 days/benefit period	
Substance Abuse		
Inpatient Detoxification	90%	70% after deductible
	Limit: 7 days/admission: 1 admission/lifetime	
Inpatient Rehabilitation	90%	\$250 inpatient copayment then 70% after deductible
	Limit: 30 days/benefit period	
	Lifetime limit \$10,000 - 1 time admission/lifetime	
Outpatient	100% after \$20 copayment	70% after deductible
	Limit: 60 visits/benefit period	
Therapy Services (Cardiac Rehab, Infusion Therapy and Dialysis)	90%	70% after deductible
Transplant Services	90%	70% after deductible
Precertification Requirements	Performed by Member Penalty for Failure to Per-Certify: \$300 per confinement	
Premier Prescription Drug Program	Retail Drugs \$10 generic copayment \$20 brand formulary copayment \$40 copayment brand non-formulary copayment \$100 specialty copayment Mandatory Generic 30-day Supply Maintenance Drugs through Mail Order \$20 generic copayment \$40 brand formulary copayment \$80 copayment brand non-formulary copayment	

Benefit	Network	Out-of-Network
	\$200 specialty copayment Mandatory Generic 90-day Supply	

(ii) *Summary of PPO Benefits -- Option II*

With your PPO, or Preferred Provider Organization, if you receive services from a provider who is in the PPO network, you'll receive the highest level of benefits. If you receive services from a provider who is not in the PPO network, you'll receive the lower level of benefits. In either case, you coordinate your own care. There is no requirement to select a Primary Care Physician (PCP) to coordinate your care. Below are specific benefit levels that apply during your benefit period.

PTC Alliance

Option II

Benefit	Network	Out-of-Network
Benefit Period	Calendar Year	
Deductible (per benefit period)		
Individual	\$300	\$900
Family	\$900	\$2,700
Plan Payment Level -- Based on the provider's reasonable charge (PRC)	80% until out-of-pocket maximum is met; then 100%	60% until out-of-pocket maximum is met; then 100%
Out of Pocket Maximums		
Individual	\$900	\$2,700
Family	\$2,700	\$5,400
Lifetime Maximum (per person)	\$1,000,000	
Primary Care Physician Office Visits	100% after \$20 copayment	60% after deductible
Specialist Office Visits	100% after \$25 copayment	60% after deductible
Preventive Care		
Adult		
Routine physical exams	100% after \$20 copayment	Not Covered
Adult Immunizations	80%	60% after deductible
Routine gynecological exams	100% after \$20 copayment	60% after deductible
Annual Pap Test	80%	60% after deductible
Annual Mammogram	80%	60% after deductible
Pediatric		
Routine physical exams	100% after \$20 copayment	60% after deductible
Pediatric Immunizations	80%	Not Covered
Emergency Room Service	80% after \$50 copayment (waived if admitted) (copayment of	

Benefit	Network	Out-of-Network
	\$30 for Instacare or other ER alternative instead of ER)	
Spinal Manipulations	80%	60% after deductible
	Limit: 13 visits/benefit period	
Physical Medicine	80%	60% after deductible
Speech Therapy	80%	60% after deductible
Occupational Therapy	80%	60% after deductible
Allergy Extracts and Injections	80%	60% after deductible
Ambulance	80% deductible does not apply	
Assisted Fertilization Procedures	Not Covered	
Dental Services Related to Accidental Injury	80%	60% after deductible
Diabetes Treatment	80%	60% after deductible
Diagnostic Services (including routine) Advanced Imaging (MRI, CAT Scan PET Scan, etc.)	80%	60% after deductible
Basic Diagnostic Services (standard imaging, diagnostic medical, lab/pathology, allergy testing)	80%	60% after deductible
Durable Medical Equipment, Orthotics and Prosthetics	80%	60% after deductible
Enteral Formulae	80%	60% after deductible
Home Infusion Therapy	80%	60% after deductible
Home Health Care	80%	60% after deductible
	Limit 100 visits/benefit period	
Hospice	80%	60% after deductible
Hospital Services		
Inpatient	80%	\$250 inpatient copayment then 60% after deductible
Outpatient	80%	60% after deductible
Infertility Counseling, Testing and Treatment (for medical conditions only)	80%	60% after deductible
Maternity Services		
Inpatient	80%	60% after deductible
Initial Visit	100% after \$20 Copayment	60% after deductible
Delivery	80%	60% after deductible
Medical Expenses	80%	60% after deductible
Surgical Expenses		
Facility	80%	60% after deductible

Benefit	Network	Out-of-Network
Professional	80%	60% after deductible
Mental Health Inpatient	80%	\$250 inpatient copayment then 60% after deductible
	Limit: 30 days/benefits period: 90 days/lifetime	
Outpatient	100% after \$20 copayment	60% after deductible
	Limit: 60 visits/benefit period	
Private Duty Nursing (excludes inpatient)	80%	60% after deductible
Respiratory Therapy	80%	60% after deductible
Skilled Nursing Facility Care	80%	60% after deductible
	Limit 100 days/benefit period	
Substance Abuse Inpatient Detoxification	80%	60% after deductible
	Limit: 7 days/admission: 1 admission/lifetime	
Inpatient Rehabilitation	80%	\$250 inpatient copayment then 60% after deductible
	Limit: 30 days/benefit period	
	Lifetime limit \$10,000 - 1 time admission/lifetime	
Outpatient	100% after \$20 copayment	60% after deductible
	Limit: 60 visits/benefit period	
Therapy Services (Cardiac Rehab, Infusion Therapy and Dialysis)	80%	60% after deductible
Transplant Services	80%	60% after deductible
Precertification Requirements	Performed by Member Penalty for Failure to Per-Certify: \$300 per confinement	
Premier Prescription Drug Program	Retail Drugs	
	\$10 generic copayment	
	\$20 brand formulary copayment	
	\$40 copayment brand non-formulary copayment	
	\$100 specialty copayment	
	Mandatory Generic	
	30-day Supply	
	Maintenance Drugs through Mail Order	
	\$20 generic copayment	
	\$40 brand formulary copayment	
	\$80 copayment brand non-formulary copayment	
	\$200 specialty copayment	
	Mandatory Generic	
	90-day Supply	

(iii). **Dental Plan
Comparison Chart**

Benefits currently available through Guardian Life Dental	Option 1		Option 2	
	Preferred Provider	Non- preferred Provider	Preferred Provider	Non- preferred Provider
Annual Deductable				
Individual	\$50	\$75	\$50	\$75
Family Maximum	\$150	\$225	\$150	\$225
Calendar Year Maximum	\$1,000		\$1,200	
Preventative/Diagnostic Services	100%-no deductible	100%-no deductible	100%-no deductible	100%-no deductible
Cleanings (limit 2 per year)				
Fluoride Treatment (1 per year under age 19)				
Oral Exams (limit 2 per year)				
Full mouth x-rays (one set in 60 months)				
Bitewing x-rays (adults-1/year; children 2/year)				
Minor Restorative Services	90%-no deductible	90%-no deductible	1st year- 70% after deductible	1st year- 70% after deductible
			2nd year- 80% after deductible	2nd year- 80% after deductible
Fillings, Extractions, Palliative Treatment				
Sealants (under the age of 14)				
Denture Repair (once in 38 months)				
Periodontics Scaling (4 treatments/period)				
Space Maintainers (covered to age 19)				
Major Services	Not Covered		1st year- 50% after deductible	1st year- 50% after deductible
Periodontics, Endodontics, Bridges			2nd year- 60% after	2nd year- 60% after

			deductible	deductible
Crowns, Inlays/Veneers, Onlays				
Oral Surgery, Anesthesia				
Replacement of Crowns, Inlays, Onlays (once every 5 years)				
Root Canal (one per tooth)				
Denture adjustment (min 8 months after installation)				
Denture reline & rebase (once every 36 months)				
ORTHODONTIA	Not Covered		50% - no deductible	50% - no deductible
Limited to children under 19				
Lifetime Maximum			\$1,500	

(iv) Vision Benefits

Benefits currently available through Vision Benefits of America (VBA)

Exams	12 months	
Lenses	12 months	
Frames	24 months	
Benefits	In Network	Out of Network
Exams		
Eye Exams	100% after %5 co-pay	\$35
Lenses		
Single	100% after %5 co-pay	\$30
Bifocal	100% after %5 co-pay	\$40
Trifocal	100% after %5 co-pay	\$60
Lenticular	100% after %5 co-pay	\$80
Frames	100% within the program's \$40 wholesale allowance	\$40
	(approximately \$80 - \$120 retail)	

Contact Lenses		
In Lieu of Glasses	\$100	\$100
Medically Required	UCR**	\$250
** Usual, Customary and Reasonable		
***Cost of the Exam is included in the Contact Lense Allowance		

You can call VBA at 1-800-432-4966 to initiate your vision benefits

(v) Costs of Medical, Dental and Vision Benefits

Medical 90-10 Option 80-20 Option

Employee	\$50	\$25
Employee + 1	\$100	\$50
Employee + 2 or more	\$140	\$70

Dental Option 1 Option 2

Employee	\$12.10	\$22.84
Employee + 1	\$23.45	\$44.51
Employee + 2 or more	\$44.79	\$81.25

Vision

Employee	\$4.70
Employee + 1	\$8.35
Employee + 2 or more	\$11.35

* * * * *

APPENDIX BB

401(k) PLANS

I. 401(k) Plan for Employees Hired Prior to October 1, 2007

A. For employees hired prior to October 1, 2007, instead of a pension plan, the Company will continue its 401(k) Plan with the following elements:

- Payroll deduction
- Multiple investment options
- A contribution level up to the maximum allowed by federal law
- All contributions will be pre-tax
- Quarterly statements showing account levels
- Provisions to allow investment among the funds in 1% increments
- Provisions for changing investment directions, i.e., moving money from one fund to another or changing the direction of future investments

B. For such employees, the Company will contribute \$1.30 per hour for each hour worked during this Agreement. For purposes of this Appendix, "hours worked" shall mean hours worked (including straight time and overtime hours); vacation and holiday hours at the rate of eight (8) hours for each holiday or day of vacation; hours on Union business; and hours, at the rate of eight (8) hours for each day while receiving workers' compensation or sickness & accident benefits based on the number of days absent from work while receiving such benefits.

II. 401(k) Plan for Employees hired on or after October 1, 2007

A. Overview. The Company will make a 401(k) payroll deduction Savings Plan available to all actively employed bargaining unit employees. This will be the sole retirement plan of the Company. The Company does not sponsor a pension plan. The full Plan is contained in the Summary Plan Description Booklet dated January 1, 2007. Plan design, eligibility requirements, form design, vesting provisions, content, investment and all other provisions will be established at the discretion of the Company and be subject to change by the Company. The Plan design established by the Company will continue to contain the following major provisions:

- Payroll deduction
- Multiple investment options
- A contribution level up to the maximum allowed by federal law
- All contributions will be pre-tax

- Quarterly statements showing account levels
- Provisions to allow investment among the funds in 1% increments
- Provisions for changing investment directions, i.e., moving money from one fund to another or changing the direction of future investments

The Company will provide instruction to those employees interested in participating in the 401(k) Savings Plan.

B. Plan Details.

(1) After thirty (30) calendar days of uninterrupted employment, employees will be eligible to participate in the 401(k) Plan, as may be amended by the Company from time to time.

(2) If such employees make elective deferrals of 2% or more to the 401(k) Plan, they will be eligible to receive a matching contribution equal to 25% of the first 6% of their elective deferral amount ("Employer Matching Contributions").

(3) Employer Matching Contributions will be subject to a six-year graded vesting schedule. Your service with Alliance Tubular Products, LLC prior to the Effective Date of this Agreement will not be taken into account for purposes of determining your eligibility for, or the amount of, any contribution under the Plan. However, such prior service will be taken into account for the limited purpose of determining the extent to which you are vested in any Employer Matching Contributions made in regard to elective contributions that you make after the Effective Date of this Agreement. Investment options offered under the 401(k) Plan will be determined from time to time by the Plan Administrator.

III. Company Lump Sum Contributions into 401(k) Plans under I & II

Within sixty (60) days after the closing described in Paragraph 16, the Company will make the contributions specified below into the 401(k) account for each employee accruing seniority under the Agreement as of its effective date. The contributions will be paid in an amount which is the product of fifty dollars (\$50.00) multiplied by the sum of (x) each year of an employee's age and (y) his or her completed years of Company service as of June 30, 2010, with service dating from the later of either his or her hire date with the Company or the date of most recent rehire. For purposes of clarity, the lump sum contribution schedule follows:

Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment	Age + Service	Lump Sum Payment
22	\$1,100	43	\$2,150	64	\$3,200	85	\$4,250
23	\$1,150	44	\$2,200	65	\$3,250	86	\$4,300
24	\$1,200	45	\$2,250	66	\$3,300	87	\$4,350
25	\$1,250	46	\$2,300	67	\$3,350	88	\$4,400
26	\$1,300	47	\$2,350	68	\$3,400	89	\$4,450
27	\$1,350	48	\$2,400	69	\$3,450	90	\$4,500
28	\$1,400	49	\$2,450	70	\$3,500	91	\$4,550
29	\$1,450	50	\$2,500	71	\$3,550	92	\$4,600
30	\$1,500	51	\$2,550	72	\$3,600	93	\$4,650
31	\$1,550	52	\$2,600	73	\$3,650	94	\$4,700
32	\$1,600	53	\$2,650	74	\$3,700	95	\$4,750
33	\$1,650	54	\$2,700	75	\$3,750	96	\$4,800
34	\$1,700	55	\$2,750	76	\$3,800	97	\$4,850
35	\$1,750	56	\$2,800	77	\$3,850	98	\$4,900
36	\$1,800	57	\$2,850	78	\$3,900	99	\$4,950
37	\$1,850	58	\$2,900	79	\$3,950	100	\$5,000
38	\$1,900	59	\$2,950	80	\$4,000	101	\$5,050
39	\$1,950	60	\$3,000	81	\$4,050	102	\$5,100
40	\$2,000	61	\$3,050	82	\$4,100	103	\$5,150
41	\$2,050	62	\$3,100	83	\$4,150	104	\$5,200
42	\$2,100	63	\$3,150	84	\$4,200	105	\$5,250

Examples	
Age 35, Service 12	\$2,350
Age 47, Service 19	\$3,300
Age 54, Service 15	\$3,400
Age 60, Service 30	\$4,500
Age 25, Service 4	\$1,450

In addition to the above-specified lump sum contributions, and within the same time frame as these lump sum contributions, the Company will make a one-time only payment of one million three hundred and seventy-five thousand dollars (\$1,375,000.00), to be allocated on the basis of service as of June 30, 2010 (as reflected above). At the employee's election, an employee's allocation may be contributed into the employees' individual 401(k) accounts or paid directly to them in cash (less any authorized or legally required deductions) in a manner to be determined prior to the effective date of this MOA. Each individual employee's 401(k) account will belong solely and exclusively to him or her and the Company shall have no current or future claim to any monies contributed to an employee's account.

The amount of any and all contributions set forth in this Agreement shall be immediately vested in the employee's account notwithstanding any provisions of the 401(k) plan to the contrary.

APPENDIX CC

PATIENT PROTECTION AND AFFORDABLE CARE ACT

To the extent and in the event that the federal Patient Protection and Affordable Care Act ("PPACA") provides the Company with choices or other options in administering the PPACA-- including plan design changes that might offset cost increases to the Company and/or resulting from any modifications to the plan required by PPACA- the Company will negotiate in good faith over any such choices or options prior to their implementation.

If, after bargaining, the Company and Union fail to reach agreement and the Company unilaterally implements changes to its plan, the USW retains the right to grieve and immediately appeal to arbitration the reasonableness of the Company's plan changes.

APPENDIX DD

At Company expense-including the fees and expenses of the legal and other professionals retained in connection with the establishment of the VEBA (Voluntary Employee Beneficiary Association)-- and subject to the approvals and recommendations of its accountants, the Company will establish a jointly administered, tax-qualified VEBA and will provide a total of \$6,000,000 in three (3) lump sums (\$3,000,000 on the establishment of the VEBA, \$1,500,000 on the first anniversary of the closing described in Paragraph 16, and \$1,500,000 on its second anniversary) for OPEB (Other Post-Employment Benefits) for existing and future retirees and their eligible dependants at Alliance and Darlington, including individuals covered by the Monaca and Mid -West closing agreements. Deducted from the initial \$3,000,000 payment will be the Company's cost of providing continuing benefit insurance coverage to retirees and their dependents until the VEBA becomes operational but in no event will such coverage extend beyond December 31, 2010. The VEBA itself will be responsible for all expenses and all its administrative and other costs when and after it becomes operational.

The Union concurs that the Company will have no obligation to pay any amounts toward OPEB or into the VEBA beyond what is specified herein.

The obligations addressed above will become due upon the effective date of each of the Darlington and Alliance Memoranda of Agreement ("MOAs"), but shall be paid upon the establishment of the VEBA. Upon ratification of the MOAs, sub-accounts will be established within the VEBA such that 67.9% of the assets shall be allocated to the Darlington, Monaca and Mid-West existing and future retirees and dependents and 32.1% of the assets shall be allocated to the Alliance existing and future retirees and dependents. All contributions to the VEBA and expenses and administrative costs of the VEBA shall be apportioned between the sub-accounts to reflect this allocation.

In the event that either the Darlington or Alliance bargaining unit fails to ratify the respective MOA, the parties shall agree, based upon reasonable actuarial standards, as to the allocation of contributions to the existing and future retirees and dependents of the ratifying bargaining unit and the retirees and dependents of Monaca and Mid-West. In the event that the parties are unable to agree to such allocation, the matter shall be submitted to binding arbitration on an expedited basis.

Any Alliance employee who retires sixty (60) or more days after the effective date of this MOA shall not participate in the VEBA. An Alliance employee who retires within sixty (60) days of the effective date of this MOA may elect his share of the lump sum distribution of the \$1,375,000.00 under Appendix BB or to participate in the VEBA and the amount he would otherwise have received will be contributed to the Alliance sub-account of the VEBA.

The Company, at its option, can appoint, as its trustee(s), non-employees as trustees and/or one or more corporate trustees such as a bank.

APPENDIX EE

INVESTMENT COMMITMENT

1. During this Agreement, the Company agrees to maintain the competitive status of the Alliance facility, taking into consideration factors affecting the Company and its facility, provided, however, that final decisions on such expenditures will be made in the sole discretion of the Board of Directors.
2. The Union agrees to contribute to the competitiveness of the facilities and work with the Company to maintain the competitive nature of the facilities.

Exhibit 1 – Employee Transition Matters

1. Each current Alliance Tubular Products Co. (called “PTC” for ease of reference) bargaining unit employee accruing continuous service under a collective bargaining agreement as of the Closing Date will thereupon become an employee of Buyer as defined in Paragraph 16 (“Transferred Employee”) regardless of whether s/he is actively at work or absent from work whether due to layoff, disability or any other inactive status recognized under the collective bargaining agreements with PTC, although those absent from work will continue in their respective status under the Buyer/USW CBA until their circumstances change.
2. With respect to any employee of PTC who was discharged prior to the Closing Date and who is actively pursuing a grievance concerning such discharge, Buyer shall, at its option, either (a) employ the dischargee as a Transferred Employee, placing him or her in accordance with the CBA, and taking no further action concerning such discharge; or (b) succeed to the position of PTC concerning such discharge, it being understood that such discharge shall be taken up and resolved pursuant to the grievance and arbitration procedure set forth in the Buyer/USW CBA. Buyer shall advise the USW within 15-days of the Closing Date as to which of the two options it will elect.
3. Buyer shall conduct no pre-hire or other drug testing of Transferred Employees in connection with its acquisition of the assets of PTC.
4. For all purposes under the Buyer/USW CBA, each Transferred Employee will be credited as of the Effective Date with all basic labor agreement service s/he accrued at PTC and its predecessors.
5. Buyer shall assume all liabilities for 2010 vacation, as well as for vacation accrued for 2011. Each vacation day taken by a Transferred Employee prior to the Closing Date shall be counted as a vacation day under the Buyer/USW CBA.
6. Each Transferred Employee absent from work due to disability who is receiving sickness and accident (or similar) benefits will be entitled to receive sickness and accident (or similar) benefits from Buyer for any remaining period of entitlement at the benefit level under the Buyer/USW CBA.
7. Buyer shall assume liabilities for Transferred Employees absent from work as of the Closing Date due to disability who are receiving workers compensation benefits. Upon qualifying under the criteria of the Buyer/USW CBA for return to active employment, the Transferred Employees covered by this paragraph shall be placed in active employment or otherwise in accordance with their seniority.
8. A Transferred Employee on layoff as of the Closing Date shall be subject to recall in accordance with their seniority and applicable provisions of the Buyer/USW CBA.

9. Each Transferred Employee absent from work as of the Closing Date due to Family and Medical Leave, Union leave, military leave, or other form of leave of a type recognized by the Buyer/USW CBA will be entitled to the same treatment from Buyer for the balance of such leave and upon its expiration as provided for under the Buyer/USW CBA.

EXHIBIT 8

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FILED & ENTERED

DEC 27 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO SANTA CLARA COUNTY FREE
AND CLEAR OF LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS;
(B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: December 19, 2018

Time: 10:00 am

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

☒ Affects All Debtors

☐ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

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This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 365], filed by Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

At the previous hearing on the Motion on October 31, 2018 (the “Bidding Procedures Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) the Federal Communications Commission (“FCC”) [Docket No. 437]; (ii) the United States Department of Health and Human Services (“HHS”) [Docket No. 447, 562, and 613]; (iii) the California Attorney General (“CAG”) [Docket No. 463, 599, 605, 608, and 619]; (iv) entities who are parties to or benefit from various collective bargaining agreements with the Debtors [Docket No. 450, 458, 460, 465, and 597]; (v) the Pension Benefit Guaranty Corporation (“PBGC”) [Docket No. 439]; (vi) the Retirement Plan for Hospital Employees [Docket No. 460]; (vii) OCH Forest 1 [Docket Nos. 452 and 561]; (viii) Premier and Infor [Doc. Nos. 444, 561, and 592]; and (ix) the MOB Financing Entities [Docket No. 500]. The Debtors filed an omnibus reply to the majority of the objections [Docket No. 561], and separate replies to the HHS [Docket No. 562], and the CAG [Docket No. 560] objections. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the

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

1 “Bidding Procedures Order”) [Docket No. 724]. Any additional objections that were filed and
2 overruled at the Bidding Procedures Hearing are not listed herein.

3 The Court, having reviewed the Memorandum [Docket No. 1041] and the notice of errata
4 related thereto [Docket No. 1050], the Declarations of Richard Adcock [Docket Nos. 8 and 393],
5 James Moloney [Docket Nos. 394 and 1041] and Jeffrey Smith [Docket No. 1044] in support of
6 the Motion, the *Notice to Counterparties to Executory Contracts and Unexpired Leases of the*
7 *Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to*
8 *Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be*
9 *Assumed and Assigned* [Docket No. 998], the *Notice That No Auction Shall Be Held* [Docket No.
10 1005], the response by the CAG [Docket No. 1066], the *Amended Notice of Contracts Designated*
11 *by Santa Clara County for Assumption and Assignment* [Docket No. 1110], the objections filed
12 by various counter-parties to certain contracts and leases [Docket Nos. 882, 889, 904-05, 913-14,
13 919, 920-21, 923, 928-29, 931, 933, 946, 970, 986, 1016, 1018, 1043, 1046, 1057-59, 1062,
14 1068-69, 1070-71, 1080, 1085, 1088-89, 1091-96, 1120-21], as set forth on **Exhibit “A”** attached
15 to the *Notice Of Filing Listing Objections To Proposed Cure Amounts And Assumption And*
16 *Assignment Of Certain Unexpired Executory Contracts And Unexpired Leases* (the “Cure
17 Objections”) [Docket No. 1145], the California Department of Health Care Services (“DHCS”)
18 [Docket No. 906], and the California Nurses Association and Stationary Engineers Local 39
19 [Docket Nos. 1057-1062, 1067-1071], the Premature Objections and any withdrawals thereof
20 [Docket Nos. 1090 and 1100], the statements, arguments and representations of the parties made
21 at the Sale Hearing; and the entire record of these cases; and the Court, having determined that
22 the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors
23 and their shareholders, and that the legal and factual bases set forth in the Motion and presented at
24 the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in
25 the *Memorandum of Decision Overruling Objections of the California Attorney General to the*
26 *Debtor’s Sale Motion* [Docket No. 1146]; ~~Court’s tentative ruling [Docket No. ____], the Order~~
27 ~~Providing Notice Of The Court’s Intent To Authorize The Debtors To Sell Hospitals Free And~~
28

~~Clear Of The 2015 Conditions Asserted By The California Attorney General [Docket No. 1125],~~
~~and the responses thereto [Docket Nos. 1136-37, 1139-41];~~ and all objections to the Motion, if
any, having been withdrawn or overruled; and after due deliberation and sufficient good cause
appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the
Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the
Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)
(2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court
pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the
Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1)
and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and
(iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court,
the Debtors have provided proper, timely, adequate and sufficient notice with respect to the
following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and
the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase
Agreement, dated October 1, 2018, a copy of which is attached as Exhibit "A" to Docket No. 365
(the "APA"); (ii) the Sale Hearing; (iii) the *Notice That No Auction Shall Be Held*; and (iv) the
assumption and assignment of the executory contracts and unexpired leases and proposed cure
amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and
no further notice of the Motion, the relief requested therein or the Sale Hearing is required. The
Debtors have also complied with all obligations to provide notice of the Auction, the Sale

² The findings and conclusions set forth herein constitute the Court's findings of fact and
conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule
9014. To the extent that any of the following findings of fact constitute conclusions of law, they
are adopted as such. To the extent that any of the following conclusions of law constitute
findings of fact, they are adopted as such.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Hearing, the proposed sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. Arm's Length Transaction. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtors and the County of Santa Clara, a political subdivision of the State of California ("SCC"), as Purchaser under the APA without collusion, in good faith and through an arm's length bargaining process. Neither SCC nor any of its affiliates or representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the Debtors, SCC, or their respective representatives engaged in any conduct that would cause or permit the APA, any of the other Transaction Documents or the Transaction to be avoided under § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the APA and the other Transaction Documents, including, without limitation, the consideration provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be assessed against SCC or any other party, as set forth in § 363(n). The consideration provided by SCC is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws of the United States, including the State of California.

E. Good Faith Purchaser. SCC has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) SCC, in proposing and proceeding with the Transaction in accordance with the APA, recognized that the Debtors were free to deal with other interested parties; (ii) SCC agreed to provisions in the APA that would enable the Debtors to accept a higher and better offer; (iii) SCC complied with all of the provisions in the Bidding Procedures Order applicable to SCC; (iv) all payments to be made by SCC and other agreements entered into or to be entered into between SCC and the Debtors in connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA and related Transaction Documents were conducted in good faith and constituted an arm's length transaction;

(vi) SCC did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SCC is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction or SCC's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents will be a legal, valid, and effective transfer and sale of the Purchased Assets and will vest in SCC, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections

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1 of § 363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by
2 having their respective Encumbrances attach to the Debtors' interests in the proceeds of the sale
3 of the Purchased Assets under the APA (subject to any Challenge within the meaning of the Final
4 DIP Order that has been, or may be, timely filed), and any related documents or instruments
5 delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the
6 extent and manner herein provided.

7 H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause
8 to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in
9 consummating the Transaction, and it is in the best interests of the Debtors and their estates to
10 consummate the Transaction within the timeline set forth in the Motion and the APA. The Court
11 finds that there is no just reason for delay in the implementation of this Order, and expressly
12 directs entry of judgment as set forth in this Order.

13 I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have
14 demonstrated that it is an exercise of their sound business judgment to assume and assign to SCC
15 the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below)
16 and to the extent subsequently identified by SCC pursuant to paragraph 16 below, the
17 Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently
18 Identified Designated Contracts and the Subsequently Identified Contracts are collectively
19 referred to herein as the "Designated Contracts") in connection with the consummation of the
20 Transaction, and the assumption and assignment of the Designated Contracts is in the best
21 interests of the Debtors and their estates.

22 J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the
23 APA, the Debtors (i.e., O'Connor Hospital ("OCH") and Saint Louise Regional Hospital
24 ("SLRH")) will have cured, unless otherwise ordered, any and all defaults existing on or prior to
25 the Closing under any of the Designated Contracts, within the meaning of § 365(b)(1)(A), by
26 payment of the amounts and in the manner set forth below. SCC has provided or will provide
27 adequate assurance of future performance of and under the Designated Contracts within the
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1 meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide
2 assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the
3 Designated Contracts to be assumed by the Debtors and assigned to SCC under the APA shall be
4 assigned and transferred to, and remain in full force and effect for the benefit of, SCC
5 notwithstanding any provision in such Designated Contracts prohibiting their assignment or
6 transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts
7 has incurred any actual pecuniary loss resulting from a default on or prior to the Closing under
8 any of the Designated Contracts within the meaning of § 365(b)(1)(B). Pursuant to § 365(f), the
9 Designated Contracts to be assumed by the Debtors and assigned to SCC at the Closing shall be
10 assigned and transferred to, and remain in full force and effect for the benefit of, SCC
11 notwithstanding any provision in such contracts or other restrictions prohibiting their assignment
12 or transfer.

13 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors have
14 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
15 OCH and SLRH to reject all of their executory contracts and unexpired leases, excluding (i)
16 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
17 addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or
18 health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is
19 a party or sponsor, which matters shall be scheduled for determination as provided in paragraph
20 33 below. Each such executory contract rejection is subject only to the conditions set forth in
21 paragraphs 18, 31, and 32. The Debtors shall file an appropriate motion to reject such contracts,
22 covered by this paragraph K, prior to Closing and shall request therein that the rejection be
23 effective as of the Closing or as otherwise appropriate.

24 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
25 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
26 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
27 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
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1 better offer to purchase the Purchased Assets. No other Qualified Bid (as defined in the Bidding
2 Procedures Order) was received by the Partial Bid Deadline or the Bid Deadline (as defined in the
3 Bidding Procedures Order). Accordingly, on December 7, 2018, the Debtors filed the *Notice*
4 *That No Auction Shall Be Held*. The transfer and sale of the Purchased Assets to SCC on the
5 terms set forth in the APA constitutes the highest or otherwise best offer for the Purchased Assets
6 and will provide a greater recovery for the Debtors' estates than would be provided by any other
7 available alternative. The Debtors' determination, in consultation with the Official Committee of
8 Unsecured Creditors (the "Committee") and the Prepetition Secured Creditors (as defined in the
9 Final DIP Order defined below), that the APA constitutes the highest or best offer for the
10 Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

11 M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased
12 Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it
13 does not propose to (i) impair or restructure existing debt of, or equity or membership interests in,
14 the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the
15 Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or
16 (iv) classify claims or equity or membership interests.

17 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at
18 the Sale Hearing establish just cause for the relief granted herein.

19 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

20 1. The relief requested in the Motion is GRANTED and APPROVED in all respects
21 to the extent provided herein.

22 2. All objections with regard to the relief sought in the Motion that have not been
23 withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including
24 any reservation of rights included in such objections, are overruled on the merits with prejudice.
25 To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the
26 terms of this Sale Order shall prevail.
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3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to SCC on the terms set forth in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in Section 1.1 of the APA) upon the terms set forth in the APA, including, without limitation, assuming and assigning to SCC the Designated Contracts. The Debtors and SCC shall have the right to make any mutually agreeable, non-material changes to the APA, which shall be in writing signed by both parties, without further order of the Court provided, that after reasonable notice, the Committee, the DIP Agent (as defined in the Final DIP Order defined below), and the Prepetition Secured Creditors, do not object to such changes. Any timely objection by the aforementioned parties to any agreed non-material changes to the APA may be resolved by the Court on shortened notice.

4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid, enforceable and effective transfer and sale of the Purchased Assets to SCC free and clear of all Encumbrances, as further set forth in the APA and this Sale Order; and (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the Purchased Assets, all counterparties to the Designated Contracts and all other persons and entities.

5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,

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effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force, extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition Secured Creditors, as applicable, pursuant to that certain *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the “Final DIP Order”); and (ii) be subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors’ rights, title and interest in and to the Purchased Assets to SCC. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of

1 such Purchased Assets either to (a) the Debtors before the Closing or (b) to SCC or its designee
2 upon the Closing.

3 8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall
4 be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and
5 upon consummation of the Transaction, including, without limitation, payment of the Purchase
6 Price to the Debtors, vest SCC with all right, title, and interest in the Purchased Assets, free and
7 clear of all Encumbrances. Upon closing of the Transaction, SCC shall take title to and
8 possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the
9 APA. The transfer of the Purchased Assets from the Debtors to SCC constitutes a transfer for
10 reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the
11 State of California.

12 9. Following the Closing, no holder of any Encumbrance against the Debtors or upon
13 the Purchased Assets shall interfere with SCC's respective rights in, title to or use and enjoyment
14 of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from
15 taking any action that would adversely affect or interfere with the ability of the Debtors to sell
16 and transfer the Purchased Assets to SCC, including the assumption and assignment of the
17 Designated Contracts.

18 10. SCC shall not be deemed, as a result of any action taken in connection with, or as a
19 result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a
20 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their
21 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,
22 doctrine or theory of successor liability, or any theory or basis of liability regardless of source of
23 origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere
24 continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed
25 Liabilities, SCC is not assuming any of the Debtors' debts.

26 11. This Sale Order (i) shall be effective as a determination that, on Closing, all
27 Encumbrances existing against the Purchased Assets before the Closing have been
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1 unconditionally released, discharged and terminated, and that the transfers and conveyances
2 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all
3 persons and entities. If, following a reasonable written request made by the Debtors, any person
4 or entity that has filed financing statements or other documents or agreements evidencing any
5 Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or
6 in connection with Closing, in proper form for filing and executed by the appropriate parties,
7 termination statements, instruments of satisfaction, releases of all Encumbrances which the
8 person or entity has with respect to the Purchased Assets, then SCC and/or the Debtors are hereby
9 authorized to execute and file such statements, instruments, releases and other documents on
10 behalf of the person or entity with respect to such Purchased Assets. For the avoidance of doubt,
11 such statements, instruments, releases and other documents shall not impair Encumbrances that
12 attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may
13 be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
14 paragraphs 5 and 13 hereof.

15 12. In accordance with the APA, concurrently with the Closing, SCC shall pay that
16 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
17 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in
18 Section 1.1.1 of the APA. Any direct expenses of the Sale shall be disclosed by Debtors to the
19 DIP Agent, the Prepetition Secured Creditors, and the Committee in advance of the Closing.

20 13. The terms and conditions of the Final DIP Order shall apply with respect to the
21 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
22 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

23 (a) the Debtors shall direct SCC and any post-closing escrow agent appointed pursuant to
24 the terms of the APA to remit all Sale Proceeds to be received by the Debtors at Closing or
25 thereafter in cash, to deposit such Sale Proceeds in separate accounts labeled "Santa Clara Sale
26 Proceeds Account," in the name of each Debtor that is a Seller within the meaning of the APA
27 (each such hereafter referred to as "Escrow Deposit Account");
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(b) in giving direction to SCC pursuant to sub-paragraph (a), above, the Debtors shall exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of rights in paragraph 4 of the Final DIP Order and footnote 5 of Exhibit 1 of the Bidding Procedures Order); provided further that nothing in this paragraph shall waive or limit any rights the Committee may have in connection with the confirmation of a proposed chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee;

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon.

1 14. Concurrently with the Closing or as soon thereafter as is possible, and in
2 accordance with the APA, the Debtors (i.e., the Hospital Debtors defined in the APA) shall pay
3 out of the Sale Proceeds to the counter-parties to the Designated Contracts the cure amounts set
4 forth in the *Debtors' Notice to Counterparties to Executory Contracts and Unexpired Leases of*
5 *the Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to*
6 *Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be*
7 *Assumed and Assigned* [Docket No. 998], the *Amended Notice of Contracts Designated by Santa*
8 *Clara County for Assumption and Assignment* [Docket No. 1110] (collectively, the "Cure
9 Notices"), or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties
10 thereto or ordered by this Court after a continued hearing on the Cure Objections (the
11 "Designated Cure Amounts").

12 15. To the extent that any of the contracts and/or leases, which give rise to the
13 Designated Cure Amounts and are set forth in the *Amended Notice of Contracts Designated by*
14 *Santa Clara County for Assumption and Assignment* [Docket No. 1110] (the "Currently Identified
15 Designated Contracts") are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SCC, and SCC shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. In the event that the Court ultimately determines that any
21 such counter-parties to the Currently Identified Designated Contracts (the "Currently Identified
22 Designated Contract Counter-Parties") have an allowed claim against the Debtors which exceeds
23 the Designated Cure Amounts, the difference will be paid by the Debtors out of the Sale Proceeds
24 and shall not be the responsibility of SCC. The Court shall resolve any and all disputes which
25 may arise between the Debtors, SCC and any of the Currently Identified Designated Contract
26 Counter-Parties over whether the Currently Identified Designated Contracts are executory
27 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
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Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the Designated Cure Amounts.

16. All of the Currently Identified Designated Contracts, to the extent they are executory contracts or unexpired leases, shall be part of the Designated Contracts that will be assumed by the Debtors and assigned to SCC at the Closing. In the event that SCC elects to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated Contracts (the "Subsequently Identified Designated Contracts"), the Debtors shall (i) file a notice with the Court, by January 23, 2019, identifying all such Subsequently Identified Designated Contracts and their respective cure amounts, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and assigned to SCC at the Closing, with the Debtors to be obligated to pay all cure amounts owing to such Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties thereto, or ordered by the Court in accordance with paragraph 36 below (the "Additional Cure Amounts").

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SCC, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (all counterparties to the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts collectively, the "Contract Counter-Parties"). At the Closing, the Debtors shall pay out of the Sale Proceeds (i) to the Designated Cure Amounts identified in paragraph 14 above, and (ii) the Additional Cure Amounts. Payment by the Debtors of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to "cure" all "defaults" with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The payment by the Debtors shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual

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pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SCC, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SCC shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts by the Debtors, neither the Debtors nor SCC shall have any further liabilities to any Contract Counter-Parties, other than SCC's obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SCC with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, the Debtors shall be liable for the payment of all cure costs with respect to the Designated Contracts as may be required under § 365(b)(1). SCC shall not be liable for the payment of any cure costs with respect to the Designated Contracts as may be required under § 365(b)(1) or for the payment of any liabilities or obligations arising from or related to (a) such Designated Contracts on or prior to the Closing of the Transaction, (b) any executory contracts which the Debtors intend to reject by appropriate motion at a later date and which are not being assumed and assigned to SCC as part of the Transaction, (c) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, or (d) any collective bargaining agreement, pension plan, or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor.

18. The Debtors intend to reject, pursuant to § 365(a), all executory contracts to which OCH and SLRH are a party, excluding (i) Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor. The Debtors shall file an appropriate motion to reject such contracts prior to Closing. Notwithstanding the prior statement, Closing is conditioned upon the rejection, termination and/or modification of all applicable CBAs

1 related to OCH and SLRH, pursuant to § 1113 or as otherwise agreed to between the Debtors, the
2 respective unions, and as approved by the Court.

3 19. All of the Contract Counter-Parties are forever barred, estopped, and permanently
4 enjoined from (i) raising or asserting against the Debtors or SCC, or any of their property, any
5 assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment,
6 arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of
7 the consummation of the Transaction contemplated by the APA, including, without limitation, the
8 Transaction and the assumption and assignment of the Designated Contracts, including any asserted
9 breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or
10 any purported written or oral modification to the Designated Contracts and (ii) asserting against SCC
11 any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of
12 the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed
13 Obligations.

14 20. Any provisions in any Designated Contracts that prohibit or condition the assignment
15 of such Designated Contract or allow the counterparty to such Designated Contract to terminate,
16 recapture, impose any penalty, condition on renewal or extension or modify any term or condition
17 upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions
18 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
19 Designated Contract to SCC in accordance with the APA, pursuant to § 363(f). **Notwithstanding the**
20 **foregoing, the rights of Contract Counter-Parties to assert that a Designated Contract may not be**
21 **assumed and assigned absent consent, on the ground that such Designated Contract pertains to the**
22 **licensing of intellectual property, are preserved, and any such objections may be asserted in accordance**
23 **with the procedures set forth in paragraphs 34, 35, and 36; provided, however, that any Contract**
24 **Counter-Party that has failed to object within the deadlines set forth in the applicable Cure Notice is**
25 **now forever barred from asserting its objection.**

26 21. The terms and provisions of this Sale Order, as well as the rights granted under the
27 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
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reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding any such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern. The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the cases and the entry of any other order that may be entered in the cases, including any order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

22. The Transaction contemplated by the APA and other Transaction Documents are undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy Code. SCC is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased Assets to SCC. The APA and the Transactions contemplated thereby cannot be avoided under § 363(n).

23. The failure to specifically include any particular provision of the APA or the other Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective

1 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
2 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

3 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
4 Debtors to the extent necessary, without further order of this Court, to (i) allow SCC to deliver any
5 notice provided for in the APA and Transaction Documents and (ii) allow SCC to take any and all
6 actions permitted under the APA and Transaction Documents in accordance with the terms and
7 conditions thereof.

8 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
9 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
10 shall govern.

11 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
12 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
13 (i) hear and determine all disputes between the Debtors and/or SCC, as the case may be, and any other
14 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
15 assignment thereof by the Debtors to SCC and any dispute between SCC and the Debtors as to their
16 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
17 delivery of the Purchased Assets to SCC free and clear of Encumbrances; (iii) compel the delivery of
18 the Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement,
19 and enforce the provisions of this Sale Order; and (v) protect SCC against (A) claims made related to
20 any of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious
21 liability (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or
22 (C) any Encumbrances asserted on or against SCC or the Purchased Assets.

23 28. Following the date of entry of this Sale Order, the Debtors and SCC are authorized to
24 make changes to the APA without the need for any further order of the Court provided that all such
25 changes have been approved in writing by the Debtors, SCC, the Committee, the DIP Agent, and
26 Prepetition Secured Creditors. Any other changes to the APA or this Sale Order require a further order
27 of the Court, after reasonable notice under the circumstances and a hearing.
28

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29. Notwithstanding any other provision of this Sale Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

30. To the extent the Purchased Assets contain records of the Verity Health System Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension Plans") or employment records of participants of the Pension Plans, the SCC shall store, and preserve any such records until the PBGC has completed its investigation regarding the Pension Plans and shall make such documents available to the PBGC for inspection and copying. Such records include, but are not limited to, any Pension Plan governing documents, actuarial documents, and employment records (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan Documents that are not Purchased Assets for not less than twelve (12) months after Closing and shall make such documents available to the PBGC for inspection and copying.

31. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements or (b) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to

1 Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between
2 the Debtors and the DHCS or a Court order resolving the DHCS's objections.

3 32. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of
4 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
5 Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer
6 of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental
7 objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the
8 issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the
9 Medicare Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties'
10 rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to
11 Medicare Provider Agreements until and unless there is a Court order approving a settlement between
12 the Debtors and the HHS or a Court order resolving the HHS's objections.

13 33. The Debtors must have resolution of the collective bargaining agreements (the
14 "CBAs") that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to SCC
15 closing on the proposed Sale pursuant to the APA. The hearing on the Debtors' motion(s) with respect
16 to the rejection and/or modification of such CBAs (the "CBA Motions") will occur on January 30,
17 2019, at 10:00 a.m. (Pacific Time). Debtors shall file the CBA Motions by no later than January 2,
18 2019. Any objection to the CBA Motions shall be filed on January 16, 2019, and any reply shall be
19 filed on January 23, 2019.

20 34. A continued hearing on the Cure Objections shall be held on January 30, 2019, at 10:00
21 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than Friday,
22 January 18, 2019, the Debtors shall file a notice containing a list of (a) the Cure Objections that have
23 been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure
24 Objections for which Court intervention is required, the following briefing schedule shall apply: ~~(2)~~
25 (1) the Debtors' opposition to each outstanding Cure Objection shall be submitted by no later than
26 Friday, January 18, 2019; and ~~(3)~~ (2) the counterparties' reply in support of its Cure Objections shall be
27 submitted by no later than Friday, January 25, 2019. Nothing in this Sale Order constitutes a finding or
28

determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtors and the contract counterparty or further order of the Court.

35. As to any executory contracts or unexpired leases that were listed on the Initial Designated Contract List, but not listed on any prior Cure Notices, any counterparty thereto may file an objection to the cure amount or assumption thereof by January 11, 2019, and all other provisions in paragraph 34 shall apply to resolution thereof.

36. As to Subsequently Identified Designated Contracts, (i) the Debtors shall file a notice with the Court, by January 23, 2019, identifying all Subsequently Identified Designated Contracts and provide service thereof in accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated Contracts were not listed on any of the prior Cure Notices, counterparties subject to contracts who object to assumption and/or the proposed cure amounts must file an objection no later than January 30, 2019, and any reply shall be filed on February 6, 2019. **The request by Medical Office Building of California LLC for an extension of the January 30, 2019 objection deadline in the event that its lease is designated as a Subsequently Identified Designated Contract is overruled.** To the extent that a negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently Identified Designated Contracts shall be adjudicated on February 13, 2018, **at 10:00 a.m. (Pacific Time)**, where the Court shall resolve any and all disputed issues related to the objection.

37. The Committee's and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31-36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31-36 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

1 **IT IS SO ORDERED.**

2 ###

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24 Date: December 27, 2018

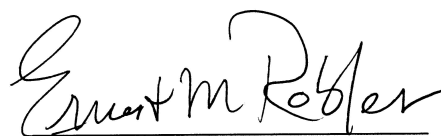
23 
Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 9

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**DEBTORS' NOTICE OF MOTION AND MOTION FOR THE
ENTRY OF (I) AN ORDER (1) APPROVING FORM OF ASSET
PURCHASE AGREEMENT FOR STALKING HORSE BIDDER
AND FOR PROSPECTIVE OVERBIDDERS; (2) APPROVING
AUCTION SALE FORMAT, BIDDING PROCEDURES AND
STALKING HORSE BID PROTECTIONS; (3) APPROVING FORM
OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES; (4)
SCHEDULING A COURT HEARING TO CONSIDER APPROVAL
OF THE SALE TO THE HIGHEST BIDDER; AND (5)
APPROVING PROCEDURES RELATED TO THE ASSUMPTION
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED
LEASES; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF
PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND
ENCUMBRANCES; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing:

Date: [TBD]

Time: [TBD]

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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1 **PLEASE TAKE NOTICE** that at the above referenced date, time and location, Verity
2 Health System of California, Inc., a California nonprofit public benefit corporation and the
3 Debtor herein (“Verity”), and the above-referenced affiliated debtors, the debtors and debtors in
4 possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), will
5 move (the “Motion”), pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code,
6 11 U.S.C. §§ 101, *et seq.*, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of
7 Bankruptcy Procedure and Rules 6004-1(b) and 9013-1 of the Local Bankruptcy Rules of the
8 United States Bankruptcy Court for the Central District of California (“LBR”), for the entry of:

9 I. An order (the “Bidding Procedures Order”):

- 10 (1) approving the form of the Asset Purchase Agreement, dated January 8, 2018 (the
11 “Stalking Horse APA”) between (i) Verity, Verity Holdings, LLC, a California
12 limited liability company (“Verity Holdings”), St. Francis Medical Center, a
13 California nonprofit public benefit corporation (“St. Francis Medical Center”), St.
14 Vincent Medical Center, a California nonprofit public benefit corporation (“St.
15 Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California nonprofit
16 public benefit corporation (“St. Vincent Dialysis Center”) and Seton Medical
17 Center, a California nonprofit public benefit corporation (“Seton Medical Center”),
18 on the one hand; and (ii) Strategic Global Management, Inc., a California
19 corporation (“the “Stalking Horse Purchaser”), on the other hand, a true and
20 correct copy of which is attached as **Exhibit A** hereto; pertaining to a sale of
21 substantially all assets of St. Francis Medical Center, St. Vincent Medical Center,
22 St. Vincent Dialysis Center and Seton Medical Center (the “Purchased Assets”) to
23 be used by (a) the Stalking Horse Purchaser as the stalking horse bidder for the
24 Purchased Assets, and (b) any prospective overbidders (each an “Overbidder” and
25 collectively, the “Overbidders”) who seek to participate in a hoped for auction sale
26 (“Auction”) of the Purchased Assets;

- (2) approving the format, bidding procedures, and stalking horse bid protections (the “Bidding Procedures”), relating to the proposed Auction described below and in the attached Memorandum of Points and Authorities (the “Memorandum”);
 - (3) approving the form of notice to be provided by the Debtors to their creditors and to be provided by the Debtors’ investment banker to prospective Overbidders;
 - (4) scheduling the Auction for April 8, 2019 and April 9, 2019, and a hearing (the “Sale Hearing”) on April 17, 2019, at 10:00 a.m. (subject to the availability of the Court), before the Court to consider approval of the sale of the Purchased Assets to the highest bidder;
 - (5) establishing procedures for the assumption and assignment to the Successful Bidder (as defined below) of executory contracts and unexpired leases in connection with the Sale and approving the form and manner of notice related thereto; and
- II. An order (the “Sale Order”) authorizing the Sale to the Successful Bidder, free and clear of all claims, liens and encumbrances; and
- III. Granting related relief.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the Memorandum, the Declaration of Richard G. Adcock and the Declaration of James Moloney (to be filed prior to the hearing on the Motion), the *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8], supporting statements, arguments and representations of a counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

PLEASE TAKE FURTHER NOTICE that any party opposing or responding to the Motion must file and serve the response (“Response”), pursuant to LBR 9013-1(f), on the moving party and the United States Trustee not later than fourteen (14) days before the date designated for the hearing. A Response must be a complete written statement of all reasons in opposition

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

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

Dated: January 17, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

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

Attorneys for the Chapter 11 Debtors and
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Verity Health System of California, Inc., a California nonprofit public benefit corporation and the Debtor herein (“Verity”), and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), seek entry of an order: (a) designating Strategic Global Management, Inc. (“SGM” or the “Stalking Horse Purchaser”) as the stalking-horse bidder for St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Seton Medical Center (collectively, the “Hospitals”), and related assets (collectively, the “Purchased Assets”), at a price of approximately \$610 million (\$420 million allocated to St. Francis Medical Center, \$120 million allocated to St. Vincent Medical Center and \$70 million allocated to Seton Medical Center and Seton Coastsides combined), plus payment of Cure Costs (defined below) associated with any Assumed Leases and/or Assumed Contracts (the “Cash Consideration,” and collectively, the “Stalking Horse Bid”); (b) setting bid procedures to establish guidelines for parties interested in making an overbid; (c) scheduling an auction to be held on April 8, 2019 and April 9, 2019; and (d) scheduling a sale hearing for the Court to approve the winning bidder.

The Debtors have vigorously marketed the Purchased Assets and believe that the Stalking Horse Bid represents a fair market value for the Purchased Assets. Moreover, SGM is a buyer who will maintain the healthcare characteristics of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center, continuing patient care for the communities served by the Hospitals and healthcare providers. Nonetheless, the Debtors are hopeful that there will be an auction which may result in overbids. Based on the foregoing, and for the reasons set forth below in greater detail, the Debtors respectfully request that the Court grant the Motion.

II. JURISDICTION AND VENUE

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

III. STATEMENT OF FACTS

A. GENERAL BACKGROUND

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).¹ Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, including the Hospitals and other facilities in the state of California. *See Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8] (the “Adcock First-Day Declaration”).

3. St. Francis Medical Center (“St. Francis”) owns real property commonly known as: (i) 3630 E. Imperial Highway Lynwood, CA 90262, including the patient tower and all of the facilities thereon; (ii) 2700 E. Slauson Ave, Huntington Park, CA 90255, and the Huntington Park Medical Office Building thereon; and (iii) 5953 S. Atlantic Blvd. 5, Maywood, CA 90270, and Maywood Medical Office Building thereon. *See Adcock First-Day Declaration.*

4. St. Francis (i) operates a 384 licensed bed, general acute care hospital located at 3630 East Imperial Highway in Lynwood, California; (ii) has an emergency department with 46 licensed emergency treatment stations and is designated a Level II Trauma Center; (iii) has nine surgical operating rooms and three cardiac catheterization labs for inpatient and outpatient cardiac catheterization services; (iv) offers a comprehensive range of services, including emergency and trauma care, neonatal intensive, cardiovascular, oncology, pediatrics, behavioral health, and maternity and child services; and (v) offers various outpatient services, including ambulatory surgical services, laboratory services, imaging services, infusion therapy, nuclear medicine services, respiratory therapy, and physical therapy. Other outpatient services are provided at the following clinics: Orthopedics Clinic, Wound Care Clinic, Industrial Clinic, Lynwood Clinic,

¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended. All references to Rules are to the Federal Rules of Bankruptcy Procedure.

1 Downey Clinic , and Huntington Park Clinic. St. Francis is accredited by The Joint Commission.
2 *See* Adcock First-Day Declaration.

3 5. As of the Petition Date, St. Francis employed approximately 2,017 employees, of
4 which 1,583 are full-time, 136 are part time, and 298 are per diem. St. Francis was incorporated
5 in 1983 and is governed by a Board of Trustees. *See* Adcock First-Day Declaration.

6 6. St. Vincent Medical Center (“St. Vincent”) owns real property commonly known
7 as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities
8 located thereon; and (ii) vacant land in Salton Sea, California. St. Vincent was founded as the
9 first hospital in Los Angeles in 1856. In 1971, a new facility was constructed at St. Vincent’s
10 current location at 2131 West Third Street, Los Angeles, CA 90057. It has expanded to a 366
11 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer
12 care, total joint and spine care, and multi-organ transplant services. St. Vincent serves both local
13 residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. As a
14 provider of healthcare services for a high percentage of elderly patients, many of the St. Vincent
15 Medical Center’s services and programs are focused on the treatment of various chronic diseases.
16 *See* Adcock First-Day Declaration.

17 7. As of the Petition Date, St. Vincent employed approximately 1,099 employees, of
18 which 897 are full-time, 42 are part time and 160 are per diem. *See* Adcock First-Day
19 Declaration.

20 8. St. Vincent is the sole corporate member of the St. Vincent Dialysis Center,
21 located on the hospital’s campus. The St. Vincent Dialysis Center provides dialysis services for
22 kidney disease patients, including hemodialysis and isolated ultrafiltration treatments as part of
23 St. Vincent’s end-stage renal disease program. *See* Adcock First-Day Declaration.

24 9. Seton Medical Center (“Seton”) owns (i) real property commonly known as 1900
25 Sullivan Avenue, Daly City, CA 94015, and the hospital and the facilities thereon (the “Daly
26 Property”), and (ii) an employee parking lot on the Daly Property. Seton Medical Center was
27 originally founded as Mary’s Help Hospital by the Daughters of Charity of St. Vincent De Paul in
28 1893. The original facility was destroyed in the San Francisco Earthquake of 1906, and by 1912,

Mary's Help Hospital reopened a new facility in San Francisco. In 1965, the hospital was moved to its current location at 1900 Sullivan Avenue in Daly City. The hospital was renamed Seton Medical Center in 1983, is currently licensed for 357 beds and serves residents from San Francisco and San Mateo areas. Seton has an emergency department with 18 licensed treatment stations. It also has 13 surgical operating rooms and three cardiac catheterization labs. Of the hospital's 83 licensed skilled nursing beds, 39 are in suspense, and the remaining 44 beds are utilized as subacute care beds. Additionally, the hospital has 24 licensed acute psychiatric beds which have been placed in suspense. The hospital has a broad spectrum of medical services, including cancer, cardiac, emergency, surgical, rehabilitation, respiratory, orthopedic, and sub-acute care. The hospital is accredited by The Joint Commission. Seton Medical Center and Seton Coastsides share a consolidated license. *See* Adcock First-Day Declaration.

10. Seton also operates Seton Medical Center Coastsides ("Seton Coastsides") located at 600 Marine Blvd, Moss Beach, CA 94038. Seton Coastsides was founded as Moss Beach Rehabilitation Hospital in 1970. In 1980, the City of Half Moon Bay acquired ownership of the hospital and signed an agreement for Daughters of Charity to manage operations of the hospital and rename it St. Catherine's Hospital. In 1993, St. Catherine's Hospital became Seton Coastsides when it became integrated with Seton Medical Center. Today, Seton Coastsides is licensed for 116 skilled nursing beds and five general, acute-care beds. Seton Coastsides also operates the only 24-hour "standby" Emergency Department along the 55-mile stretch between Santa Cruz and Daly City. Under a consolidated license, Seton Medical Center and Seton Coastsides share the same Board of Directors, executive leadership team, charity care policies, and union collective bargaining agreements. *See* Adcock First-Day Declaration.

11. As of the Petition Date, Seton Medical Center and Seton Coastsides employed approximately 1,340 employees, of which 516 are full-time, 551 are part time and 273 are per diem. *See* Adcock First-Day Declaration.

12. Verity Holdings, LLC ("Holdings") is a direct subsidiary of its sole member VHS and was created in 2016 to hold and finance VHS' interests in four medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the

1 VHS Hospitals. Holdings' real estate portfolio includes more than 15 properties. Holdings is the
2 borrower on approximately \$66.2 Million of non-recourse financing secured by separate deeds of
3 trust and revenue and accounts pledges, including the rents on each medical office building. *See*
4 Adcock First-Day Declaration.

5 13. Previously, the Hospitals were owned by the Daughters of Charity Healthcare
6 System ("DCHS"). Despite continuous efforts to improve operations, operating losses continued
7 to plague the health system due to, among other things, mounting labor costs, low reimbursement
8 rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for its
9 hospitals. *See* Adcock First-Day Declaration.

10 14. In early 2014, DCHS announced that they were beginning a process to evaluate
11 strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their
12 hospital system, including the Hospitals, and, in October of 2014, they entered into an agreement
13 with Prime Healthcare Services and Prime Healthcare Foundation (collectively, "Prime") to sell
14 the health system. However, to keep the hospitals open, DCHS needed to borrow \$125 Million to
15 mitigate immediate cash needs during the sales process; in other words, to allow DCHS to
16 continue to operate until the sale could be consummated. In early 2015, the California Attorney
17 General consented to the sale to Prime, subject to conditions on that sale that were so onerous that
18 Prime terminated the transaction. *See* Adcock First-Day Declaration.

19 15. In 2015, DCHS again marketed their health system for sale, and, again, focused on
20 offers that maintained the health system as a whole, and assumed all the obligations. In July
21 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC
22 ("BlueMountain"), a private investment firm, to recapitalize its operations and transition
23 leadership of the health system in the restructured Verity Health System (the "BlueMountain
24 Transaction").

25 16. In connection with the BlueMountain Transaction, BlueMountain agreed to make a
26 capital infusion of \$100 Million to the health system, arrange loans for another \$160 Million to
27 the health system, and manage operations of the health system, with an option to buy the health
28 system at a future time. In addition, the parties entered into a System Restructuring and Support

1 Agreement (the “Restructuring Agreement”), DCHS’s name was changed to Verity Health
2 System.

3 17. On December 3, 2015, the California Attorney General approved the
4 BlueMountain Transaction, subject to conditions. Despite BlueMountain’s infusion of cash and
5 retention of various consultants and experts to assist in improving cash flow and operations, the
6 health system did not prosper.

7 18. In July 2017, NantWorks, LLC (“NantWorks”) acquired a controlling stake in
8 Integrity Healthcare, LLC. NantWorks brought in a new CEO, CFO, and COO. NantWorks
9 loaned another \$148 Million to the Debtors.

10 19. Despite the infusion of capital and new management, it became apparent that the
11 problems facing the Verity Health System were too large to solve without a formal court
12 supervised restructuring. Thus, despite VHS’ great efforts to revitalize its Hospitals and
13 improvements in performance and cash flow, the legacy burden of more than a billion dollars of
14 bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining
15 agreements or payor contracts, the continuing need for significant capital expenditures for seismic
16 obligations and aging infrastructure, and the general headwinds facing the hospital industry, made
17 success impossible. Losses continue to amount to approximately \$175 Million annually on a cash
18 flow basis.

19 20. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
20 sell their assets. In June 2018, the Debtor engaged Cain Brothers, a division of KeyBanc Capital
21 Markets (“Cain”), to identify potential buyers of some or all of the Verity hospitals and related
22 assets and commenced discussions with those potential buyer.

23 **B. FACTS RELEVANT TO MOTION**

24 21. Cain prepared a Confidential Investment Memorandum (the “CIM”) and organized
25 an online data site to share information with potentially buyers and contacted over 110 strategic
26 and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction
27 regarding the Debtors.

28 22. By August 2018, as a result of its ongoing and broad marketing process, Cain had

received 11 Indications of Interest (“IOI”), and postpetition Cain continued to develop potential sales. The Debtors, in consultation with Cain and its other advisors, selected SGM’s offer from one or more stalking horse bidder(s) to acquire the Purchased Assets through a sale under § 363.

23. Additional background facts on the Debtors, including an overview of the Debtors’ business, information on the Debtors’ capital structure and additional events leading up to these chapter 11 cases, are contained in the First-Day Declaration.

24. On September 14, 2018, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Official Committee”) in these chapter 11 Cases. [Docket No. 197].

C. BIDDING PROCEDURES

25. As indicated above, a true and correct copy of the Stalking Horse APA, entered into between certain Debtors (Verity, Verity Holdings, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center) and the Stalking Horse Purchaser, is attached hereto as **Exhibit A**. The bidding procedures (the “Bidding Procedures”) are referenced, in part, in Article 6 of the Stalking Horse APA and set forth in a separate scheduled attached thereto.

26. Set forth below are the Bidding Procedures to be employed in connection with the sale of (i) the Purchased Assets, and (ii) the assets not otherwise enumerated in the Stalking Horse APA but associated with the ownership or operation of the Hospitals (the “Other Assets”).

a. Provisions Governing Qualifications of Bidders

27. Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following to the Debtors:

- a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or and/or the Other Assets or otherwise participating in connection with such bid; and
- b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit

of any purchaser of the Purchased Assets and/or the Other Assets; without limiting the foregoing, each such confidentiality agreement shall contain standard non-solicitation provisions.

28. A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors,² and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

b. Due Diligence

29. The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

c. Provisions Governing Qualified Bids

30. A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid,” and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical

² As such term is defined in the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (the “Final DIP Order”) [Docket No. 409].

Center, and Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;³

- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-up Bidder, the time specified in paragraph 44 below;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$21,350,000.00); (ii) the amount of the expense reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee and the Expense Reimbursement, the "Minimum Qualified Bid");

³ For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

- j) if the bid is a partial bid (the “Partial Bid”),⁴ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a “Partial Bid Auction Qualified Bid”). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers’ responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii) Purchased Assets and/or Other Assets, subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;
- l) it contains sufficient information concerning the Qualified Bidder’s ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it;
- m) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets and/or Other Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets and/or Other Assets or the completeness of any information provided in connection therewith or with the relevant Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to (a) 20% of purchase price for bids under \$5 million; (b) for bids greater than \$5 million and less than \$100 million, the greater of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the “Good Faith Deposit”), which Good Faith Deposit shall, be forfeited if such bidder is the Successful Bidder and breaches its obligation to close; and (ii) if the

⁴ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

1 Qualified Bid is a bid made by a secured creditor of the Debtors (a “Credit Bid
2 Bidder”) who intends to make a credit bid (each, a “Credit Bid Bidder”), evidence of
3 (a) the basis for and property covered by such Credit Bid Bidder’s secured claim,
4 (b) the amount of such Credit Bid Bidder’s claim that is secured by the property in
5 question, (c) whether it is the senior secured claim on the property (x) prepetition
6 and (y) as of the date of the request to be a Qualified Bidder, as well as (d)
7 evidence of the resolution of any Challenge to such Credit Bid Bidder’s secured
8 claim within the meaning of the Final DIP Order.

- 9
- 10 p) it contains a detailed description of how the Qualified Bidder intends to treat
11 current employees of the Debtors;
- 12 r) it identifies the person(s) and their title(s) who will attend the relevant Auction,
13 and confirms that such person(s) have authority to make binding Overbids (defined
14 below) at such Auction
- 15 s) it contains such other information reasonably requested by the Debtors; and
- 16 t) it is received prior to the Bid Deadline.

17

18 31. The Debtors, in consultation with the Consultation Parties (who shall receive
19 copies of the Purchase Agreements relating to any bids cast pursuant to these Bidding Procedures
20 as soon as reasonably practicable), may qualify any bid that meets the foregoing requirements as
21 a Qualified Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a
22 Qualified Bidder and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in
23 connection with the Bidding Process, the Auctions, and the Sale.

24

25 32. The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser, all
26 Qualified Bidders and the Notice Parties in writing as to whether or not any bids constitute
27 Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such
28 Qualified Bidder’s bid constitutes a Qualified Bid) and provide copies of the Purchase
Agreements relating any such Qualified Bid to the Consultation Parties, the Stalking Horse
Purchaser and such Qualified Bidders, and the Notice Parties on the earlier of (1) the date that any
bid other than the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days
prior to the Partial Bid Auction.

29

30 **d. Bid Deadline**

31 33. In order to be eligible to participate in the Auction, a Qualified Bidder that desires

to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)), so as to be received by the Notice Parties not later than March 29, 2019, at 4:00 p.m. (prevailing Pacific Time) for partial bids (the “Partial Bid Deadline”) or April 3, 2019, at 4:00 p.m. (prevailing Pacific Time) for full bids (the “Bid Deadline”).

e. Credit Bidding

34. Any party with a valid, properly perfected security interest in any of the Purchased Assets and/or Other Assets (which is not subject to a pending Challenge within the meaning of the Final DIP Order) may credit bid for such Purchased Assets and/or Other Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Debtors for cause; provided, however, that any party seeking to credit bid may not credit bid unless such bid provides that all secured creditors with security interests on such Purchased Assets and/or Other Assets that are senior to such junior security interest are to be paid in cash in connection with such junior creditor’s bid. Any credit bids made by secured creditors shall not impair or otherwise affect the Stalking Horse Purchaser’s entitlement to the benefits of the Bidding Procedures and related protections granted under the Bidding Procedures Order.

f. Evaluation of Competing Bids

35. A Qualified Bid will be valued based upon several factors including, without

1 limitation: (i) the amount of such bid; (ii) the risks and timing associated with consummating such
2 bid; (iii) any proposed revisions to the form of Stalking Horse APA; and (iv) any other factors
3 deemed relevant by the Debtors in their reasonable discretion, in consultation with the
4 Consultation Parties, including the amount of cash included in the bid.

5 **g. No Qualified Bids**

6 36. If the Debtors do not receive any Qualified Bids other than the Stalking Horse
7 APA, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the
8 Successful Bidder for the Purchased Assets. If the Debtors receive one or more qualified Partial
9 Bid Auction Qualified Bids and, after the Partial Bid Auction contemplated by paragraphs 37 and
10 38 below (and Section H in the Bidding Procedures Schedule 6.1(b)(3) annexed to the Stalking
11 Horse APA), the Debtors will determine, in consultation with the Consultation Parties, if there are
12 any Partial Bidders that will not be qualified to participate at the Full Bid Auction

13 **h. Auction Process**

14 37. If the Debtors receive one or more Partial Bid Auction Qualified Bids as set forth
15 above, the Debtors will conduct separate auctions of each asset or combinations thereof (each, a
16 “Partial Bid Auction”). Any Partial Bidder holding a Partial Bid Auction Qualified Bid shall be
17 entitled to bid on any assets in any Partial Bid Auction(s). The procedures below for the Full Bid
18 Auction shall apply to the Partial Bid Auction, except as where otherwise indicated. The Debtors
19 will conduct the Partial Bid Auction(s), which shall be transcribed, on April 8, 2019 at 10:00 a.m.
20 (prevailing Pacific Time) at the offices of Dentons US LLP, 601 South Figueroa Street, Suite
21 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all
22 entities entitled to attend the Auction.

23 38. The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation
24 with the Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to
25 participate at the Full Bid Auction, including (without limitation) the highest and best bids for
26 each asset (the “Winning Partial Bids”) shall be permitted to participate in the Full Bid Auction
27 (as defined below) of the Purchased Assets and/or the Other Assets, except that:
28

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- (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking Horse APA, there will be a Full Bid Auction (as defined below) and (1) the Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities, or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA at Section 6.26 (b)(2);
- (b) If the Partial Bids do not include all four APA Facilities, and if there are no other Qualified Full Bids, then Seller, in its discretion, after consultation with the Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1) to have no Full Bid Auction and the Stalking Horse Purchaser will purchase the four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the "Remaining Facility"), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

39. If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other Assets), the Debtors will conduct a full bid auction of the Purchased Assets and/or the Other Assets (the "Full Bid Auction"), which shall be transcribed, on April 9, 2019 (the "Full Bid Auction Date"), at 10:00 a.m. (prevailing Pacific Time), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Full Bid Auction shall be conducted in accordance with the following procedures:

- a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their respective advisors, and other parties who request and receive authority to attend the auction in advance from the Debtors may attend the Auction;
- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;

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- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the relevant Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the relevant Auction; provided that all Qualified Bidders wishing to attend the relevant Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the relevant Auction in person;
- e) the Debtors, after consultation with the Consultation Parties, and the Stalking Horse Purchaser, may employ and announce at the relevant Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the relevant Auction, (ii) in the best interest of the Debtors' estates; provided, however, that rules (i) are disclosed to the Stalking Horse Purchaser and each Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the Bid Protections, the Stalking Horse APA, the Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) bidding at the relevant Auction will begin with a bid determined by the Debtors after consulting with the Consultation Parties as being the then highest and best bid which will be announced by the Debtors prior to the commencement of the Auction (the "Baseline Bid"). The Auction will continue in bidding increments to be determined in the discretion of the Debtors, in consultation with the Consultation Parties (each a "Overbid"), and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Qualified Bids and are in attendance at the Auction (including, without limitation, Winning Partial Bids), as well as to the Notice Parties;
- g) the initial Overbid, if any, shall provide for total consideration to Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount. Additional consideration in excess of the amount set forth in the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder (including, without limitation, with respect to any Winning Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not subject to a Challenge within the meaning the Final DIP Order) on any of the Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other restrictions set forth herein; and
- h) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms and conditions set forth herein, elect to bid for the Purchased Assets as described in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s), in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such

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assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets subject to augmenting its Good Faith Deposit, as necessary, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

i. Selection of Successful Bid

40. Prior to the conclusion of the relevant Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bids submitted at the relevant Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the relevant Auction shall be subject to approval by the Court. If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the Back-Up Bidder in accordance with by paragraphs 37 and 38 above (and Section H in the Bidding Procedures Schedule 6.1(b)(3) annexed to the Stalking Horse APA), then such party or parties, prior to the Full Bid Auction, shall increase its Good Faith Deposit in the amount set forth in above in paragraph 30, subsection (o), or as determined by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties are bidding on all four APA Facilities, the deposit

1 will be no less than \$30,000,000. If selected as the Successful Bidder or the Back-Up Bidder at
2 the conclusion of the Full Bid Auction, each of the Successful Bidder and the Back-Up Bidder
3 shall, within forty-eight (48) hours, increase its Good Faith Deposit to the sum of five percent
4 (5%) of the Successful Bid or Back-Up Bid, as applicable. If the Successful Bidder fails to
5 increase the Good Faith Deposit within forty-eight (48) hours of the Auction conclusion date (the
6 “Final Deposit”), then (1) the Successful Bidder forfeits its Good Faith Deposit, and (2) the
7 Successful Bid is nullified (i.e., the Back-Up Bidder becomes the Successful Bidder in the
8 amount of its last bid).

9 41. Unless otherwise agreed to by the Debtors and the Successful Bidder, within two
10 (2) business days after the conclusion of the relevant Auction, the Successful Bidder shall
11 complete and execute all agreements, contracts, instruments, and other documents evidencing and
12 containing the terms and conditions upon which the Successful Bid was made. Within forty-eight
13 (48) hours following the conclusion of the relevant Auction, the Debtors shall file a notice
14 identifying the Successful Bidder(s) and Back-Up Bidders with the Court and shall serve such
15 notice by fax, email, or if neither is available, by overnight mail to all counterparties whose
16 contracts are to be assumed and assigned.

17 42. The Debtors will sell the Purchased Assets and (to extent included in an Overbid)
18 the Other Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the
19 approval of such Successful Bid by the Court at the Sale Hearing and satisfaction of any other
20 closing conditions set forth in the Successful Bidder’s Purchase Agreement.

21 **j. Return of Deposits**

22 43. All deposits shall be returned to each bidder not selected by the Debtors as the
23 Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days
24 following the conclusion of the Auction.

25 **k. Back-Up Bidder**

26 44. If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next
27 highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their
28 business judgment, in consultation with the Consultation Parties, at the relevant Auction shall be

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1 required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and
2 irrevocable for thirty (30) business days after the entry of the Sale Order (the “Thirty-Day
3 Period”). If during the Thirty-Day Period, the Successful Bidder fails to consummate the
4 approved sale because of a breach or failure to perform on the part of such Successful Bidder, the
5 Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be
6 authorized, but not required, to consummate the sale with the Back-Up Bidder without further
7 order of the Court provided that the Back-Up Bidder shall thereafter keep such bid open and
8 irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further, however,
9 that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be authorized and
10 required to consummate the sale to the Stalking Horse Purchaser. If, after the Thirty-Day Period,
11 the Successful Bidder has failed to consummate the approved sale, the Back-Up Bidder may
12 elect, at its discretion, to remain as the Back-Up Bidder until (a) the sale closes, (b) the Successful
13 Bidder defaults, or (c) the Back-Up Bidder elects to terminate its participation as Back-Up
14 Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful Bidder fails to
15 consummate the approved sale because of a breach or failure to perform on the part of such
16 Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the Back-Up
17 Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder APA and
18 the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will be no re-
19 opening of the auction.

20 **I. Break-Up Fee**

21 45. In recognition of this expenditure of time, energy, and resources, the Debtors have
22 agreed that if the Stalking Horse Purchaser is not the Successful Bidder as to the Purchased
23 Assets, the Debtors will pay the Stalking Horse Purchaser at closing of the sale of the Purchased
24 Assets an amount in cash equal to three and a half percent (3.5%) of the Cash Consideration
25 (\$21,350,000.00), plus reimbursement of reasonably documented reasonable costs and expenses
26 in an amount not to exceed \$2,000,000.00. The Break-Up Fee shall be payable at closing of the
27 sale from the sale proceeds.

28 46. If the Stalking Horse APA is terminated because the Stalking Horse Purchaser is

1 not selected as the Successful Bidder or the Back-Up Bidder at Auction (or the Stalking Horse
2 Purchaser is selected as the Back-Up Bidder but the sale of the Purchased Assets is consummated
3 and closed with another entity), the Debtors shall pay to the Stalking Horse Purchaser the Break-
4 Up Fee by wire transfer of immediately available funds immediately upon, and contemporaneous
5 with, the closing of the sale of the Purchased Assets from the first cash proceeds thereof. The
6 Break-Up Fee shall constitute an administrative expense claim with priority under § 507(a) in
7 favor of the Stalking Horse Purchaser.

8 47. The Debtors acknowledge that the provision of the Break-Up Fee is an integral
9 part of the Stalking Horse APA and are a material and necessary inducement for the Stalking
10 Horse Purchaser to enter into the Stalking Horse APA and to consummate the transactions
11 contemplated therein. In the event that the payment of the Breakup Fee (including any costs of
12 collection) becomes due and payable to the Stalking Horse Purchaser, and such amounts are
13 actually paid to the Stalking Horse Purchaser, such amounts will constitute liquidated damages
14 (and not a penalty). In light of the difficulty of accurately determining actual damages with
15 respect to the foregoing, the right to any such payment of the Breakup Fee (and any related
16 collection costs) and the return of the Deposit to the Stalking Horse Purchaser constitute a
17 reasonable estimate of the damages that will compensate the Stalking Horse Purchaser in the
18 circumstances in which such fees and reimbursements are payable for the efforts and resources
19 expended and the opportunities foregone while negotiating the Stalking Horse APA and in
20 reliance on the Stalking Horse APA and on the expectation of the consummation of the
21 transactions contemplated therein. The Debtors believe that the entry into this Stalking Horse
22 APA provides value to the Debtors' estates and bankruptcy cases by, among other things,
23 inducing other Qualified Bidders to submit higher or better offers for the Purchased Assets.

24 **m. Sale Hearing**

25 48. The Debtors will seek entry of the Sale Order, at the Sale Hearing on April 17,
26 2019, at 10:00 a.m. (or at another date and time convenient to the Court), to approve and
27 authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in
28 accordance with the Bidding Procedures.

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49. At the Sale Hearing, the Debtors will seek Court approval of the Sale to the Successful Bidder (or, in the event the Successful Bidder fails to close, the Back-Up Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to § 363, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets (and to the extent included in the Successful Bid, the Other Assets prior to the Sale), including the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and Leases pursuant to § 365. The Debtors will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of the Purchased Assets and/or the Other Assets.

n. Reservation.

50. The Debtors reserve the right, as they may determine in their discretion and in accordance with their business judgment to be in the best interest of their estates, in consultation with their professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers submit their sealed, highest and best offer for the Purchased Assets and/or the Other Assets; (ii) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iv) impose additional terms and conditions with respect to all Potential Bidders; (v) extend the deadlines set forth herein; (vi) continue or cancel an Auction and/or Sale Hearing in open court without further notice; and (vii) implement additional procedural rules that the Debtors determine, in their reasonable business judgment and in consultation with the Consultation Parties will better promote the goals of the bidding process; provided that such modifications are disclosed to each Qualified Bidder participating in the Auction; provided, however, and notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter, extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth herein or in the Stalking Horse APA.

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D. NOTICE PROCEDURES

51. The Debtors propose that any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must: (i) be in writing; (ii) comply with the Rules and the LBR; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court at 255 East Temple St. (Attn: Judge E. Robles), Los Angeles, CA 90012, together with proof of service, on or before the Sale Objection Deadline set forth in the Bidding Procedures Order; and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Debtors request that the objecting party be barred from objecting to the Sale and not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party. The Debtors also request that the Court approve the form of the Procedures Notice, substantially in the form of Exhibit 3 to the Bidding Procedures Order. The Debtors will serve a copy of the Procedures Notice on the Notice Parties and all parties which the Debtors are required to serve pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132] (the “Procedures Notice Parties”).

52. The Debtors propose to file with the Court and serve the Procedures Notice within one (1) business day following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: Tania M. Moyron, 601 S. Figueroa St., Suite 2500, Los Angeles, CA 90017 or by emailing tania.moyron@dentons.com or calling (213) 623-9300.

53. The Debtors submit that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction and Sale, and Sale Hearing to the Debtors’ creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Purchased Assets. Based on the foregoing, the Debtors respectfully request that

1 this Court approve these proposed notice procedures.

2 **E. PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF ASSIGNED**
3 **CONTRACTS AND LEASES**

4 54. As noted above, the Debtors will seek to assume and assign certain contracts and
5 leases to be identified in the Purchase Agreement(s) (collectively, the “Assumed Executory
6 Contracts”).

7 55. At least initially, the Assumed Executory Contracts will be those contracts and
8 leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the
9 Purchased Assets. The Successful Bidder(s) may choose to exclude (or to add) certain contracts
10 or leases to the list of Assumed Executory Contracts, subject to further notice.

11 56. In the interim, the Debtors will file with the Court and serve the cure notice,
12 substantially in the form of Exhibit 4 (the “Cure Notice”) to the Bidding Procedures Order, (along
13 with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts. The
14 Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which
15 any objection to the assumption and assignment of Assumed Executory Contracts (including the
16 Cure Amount (defined below)) must be filed and served. The Cure Notice also will identify the
17 amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory
18 Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To
19 the extent there is a contract subsequently added to the list of contracts to be assumed by the
20 Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the
21 Auction, this Motion constitutes a separate motion to assume and assign that contract to the
22 Successful Bidder pursuant to § 365; each such contract will be listed in the Successful Bidder’s
23 Purchase Agreement, and will be given a separate Cure Notice filed and served by overnight
24 delivery within five (5) business days of the conclusion of the Auction and announcement of the
25 Successful Bidder.

26 57. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not
27 constitute or be deemed a determination or admission by the Debtors and their estates or any
28 other party in interest that such contract, lease, or other agreement is, in fact, an executory

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1 contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights
2 with respect thereto shall be reserved.

3 58. If a Contract or Lease is assumed and assigned pursuant to Court Order, then
4 unless the Assumed Executory Contract counterparty properly files and serves an objection to the
5 Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined
6 below), the Assumed Executory Contract counterparty will receive at the time of the Closing of
7 the sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure
8 Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract, the
9 Debtors propose that such objection must set forth a specific default in the executory contract or
10 unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified
11 by the Debtors in the Cure Notice, and set forth any reason why the counterparty believes the
12 executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

13 59. If any counterparty objects for any reason to the assumption and assignment of an
14 Assumed Executory Contract (including to a Cure Amount) (an “Assumption Objection”), the
15 Debtors propose that the counterparty must file the objection and serve it so as to be actually
16 received on or before the Assumption Objection Deadline established in the Bidding Procedures
17 Order, provided, however, as to any Successful Bidder who is not the Stalking Horse Purchaser,
18 any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of
19 the Assumed Executory Contract solely with respect to the Successful Bidder’s ability to provide
20 adequate assurance of future performance under the Assumed Executory Contract. After receipt
21 of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure
22 Amount or otherwise resolve the objection with the counterparty. In the event that the Debtors
23 and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise
24 make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure
25 Amount, the Debtors shall segregate from the sale proceeds any disputed Cure Amounts pending
26 the resolution of any such Cure Amount disputes by the Court or mutual agreement of the parties.

27 60. The Successful Bidder shall be responsible for satisfying any requirements
28 regarding adequate assurance of future performance that may be imposed under §365(b) in

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connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement. The Debtors propose that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to § 365(b) at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

61. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to § 365(k).

F. THE PRIMARY TERMS OF THE STALKING HORSE APA

62. The Stalking Horse APA contemplates the sale of the Purchased Assets to the Stalking Horse Bidder, subject to higher or better bids, on the following material terms:⁵

Stalking Horse APA Provision	Summary Description
APA Parties	Verity Health System of California, Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center (" <u>Sellers</u> "). Strategic Global Management, Inc. (" <u>Purchaser</u> ").
Consideration APA § 1.1	Six Hundred Ten Million Dollars (\$610,000,000), which shall be allocated as follows: Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center and Seventy Million Dollars (\$70,000,000) to Seton Medical Center for Seton Medical Center and Seton Coastside, plus assumption of the Assumed Liabilities, <u>provided</u> , that if the California Attorney General's approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by

⁵ The summary of the terms contained in this Motion highlights some of the material terms of the Stalking Horse APA. This summary is qualified in its entirety by reference to the provisions of the Stalking Horse APA. In the event of any inconsistencies between the provisions of the Stalking Horse APA and the summary set forth herein, the terms of the Stalking Horse APA shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Stalking Horse APA.

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Stalking Horse APA Provision	Summary Description
	Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton; plus payment of Cure Costs associated with any Assumed Leases and/or Assumed Contracts.
QAF Adjustment APA § 1.1(c), 1.1(d)	At Closing, Sellers shall credit against the cash consideration, the amount by which payments received by Sellers under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “Net QAF Reduction Amount”), or Purchaser shall pay Sellers (as an increase to the cash consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “Net QAF Increase Amount”).
Assets; Avoidance Actions APA § 1.7	In each case, solely to the extent used primarily in the conduct of the Business, “Assets” shall mean (a) all of the tangible personal property owned by such Seller and used by such Seller in the operation of the Hospital of such Seller, or in the case of St. Vincent Dialysis Center, the operation of its dialysis business, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements; (b) all of such Seller’s rights, to the extent assignable or transferable, in and to all Licenses; (c) all of such Seller’s right, title and interest in and to the Owned Real Property and all of such Seller’s interest, to the extent assignable or transferable, in and to the Assumed Leases; (d) all of such Seller’s right, title and interest in and to any and all Assumed Contracts; (e) all claims, rights, interests and proceeds with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time, <u>except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases</u> ; (f) all Inventory; (g) all Prepays; (h) all operating manuals, files and computer software, including all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications and medical and administrative libraries; (i) all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation; (j) all Measure B trauma funding received after the Signing Date; (k) all Accounts Receivable; (l) all rights, claims and causes of action of such Seller arising out of the Accounts Receivable acquired by Purchase; (m) all regulatory settlements, rebates, adjustments, refunds or group appeals; (n) all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets; (o) all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement; (p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date; (q) all warranties in favor of the Hospitals or Sellers; (r) certain intellectual property rights, as further described in the Transition Services

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Stalking Horse APA Provision	Summary Description
	Agreement; (s) all goodwill; (t) all rights and interest in the telephone and facsimile numbers and uniform resource locaters; (u) all Medicare and Medi-Cal provider agreements and lockbox accounts identified on Schedule 1.7(u) to the Stalking Horse APA; (v) all documents, records, correspondence, work papers and other documents, other than patient records, relating to the Accounts Receivable; (w) the Purchased Verity Holdings Assets; (x) except for the Excluded Assets, any other asset owned by the Seller; (y) all of Seton's interest in and to the PACE Obligations; and (z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).
Excluded Assets APA § 1.8	"Excluded Assets" include cash, cash equivalents and investments; all Seller Plans and the assets of all Seller Plans; all contracts and leases that are not Assumed Contracts or Assumed Leases; inventory and assets disposed of by any Seller in the ordinary course of business after the Signing Date but prior to the Effective Time; all claims, counterclaims, and causes of action of each Seller or each Seller's bankruptcy estate; (except as otherwise provided) all insurance policies and contracts and coverages obtained by any Seller or listing a Seller as insured party, a beneficiary or loss payee; all Utility Deposits; all bank accounts of each Seller (except as otherwise provided); all tax refunds of each Seller; all QAF IV and QAF V payments actually received prior to the Signing Date.
Assumed Obligations APA § 1.9	"Assumed Obligations" include all Assumed Contracts and Assumed Leases and all liabilities and obligations arising thereunder on and after the Effective Time, including any related Cure Costs; all liabilities and obligations arising out of or relating to any act, omission, event, or occurrence connected with the use, ownership, or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time; all unpaid real and personal property taxes that are attributable to the Assets after the Effective Time, subject to prorations; and all liabilities and obligations arising on or following the Effective Time relating to utilities being furnished to the Assets, subject to prorations and all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii).
Excluded Liabilities APA § 1.10	Purchaser shall not assume or become responsible for any duties, obligations, or liabilities of any Seller other than the Assumed Obligations.
Assumption of Transferred Contracts and Assignment APA § 1.11	Not later than seven (7) days prior to the date of the Auction (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser, and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the " <u>Rejected Contracts</u> "). Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser are entered, and (y)

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Stalking Horse APA Provision	Summary Description
	<p>rejecting the Rejected Contracts are entered. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.</p> <p>At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.</p>
Good Faith Deposit APA § 1.2	<p>Purchaser has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000.00) (the “<u>Deposit</u>”) by wire transfers to an account designated by Sellers. The Deposit shall be non-refundable in all events, except in the event Purchaser is not the winning bidder at the Auction, in the event Purchaser terminates the Stalking Horse APA if a stay of the sale order has not been vacated on or before 180 days following issuance of such stay, or in the event Purchaser has terminated the Stalking Horse APA pursuant to Section 9.1 (other than Section 9.1(b)). Upon Closing, the Deposit will be credited against the Purchase Price.</p>
Closing Date APA § 1.3	<p>The Closing Date shall occur within ten (10) business days following the satisfaction or waiver of the conditions precedent to Closing set forth in in Articles 7 and 8 of the Stalking Horse APA.</p>
Employment Provisions APA § 5.3	<p>Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all employees (the “<u>Hospital Employees</u>”) who, immediately prior to the Effective Time are: (i) employees of either Seller; (ii) employees of any affiliate of either Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of either Seller and are listed on Schedule 5.3.</p> <p>Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “<u>Hired Employees</u>.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.</p>
Payment of Cure Costs APA § 5.8	<p>Purchaser, upon assumption, shall pay the Cure Costs for each Assumed Contract and Assumed Lease so that each such Assumed Contract and Assumed Lease may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code.</p>
Break-Up Fee and Minimum Bid APA § 6.1	<p>Any full overbids must be in a minimum amount of Six Hundred Ten Million Dollars (\$610,000,000.00), plus Cure Costs and the Break-Up Fee, and accompanied by a deposit in the form of cash or a cashier’s check in the amount of Thirty Million Dollars (\$30,000,000.00).</p> <p>The “<u>Break-Up Fee</u>” shall mean a breakup fee in the amount totaling three and</p>

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Stalking Horse APA Provision	Summary Description
	<p>a half percent (3.5%) of the Cash Consideration (or \$21,350,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00; provided, however, that in the event that the Purchaser is successful in acquiring some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i) of the Stalking Horse APA.</p> <p>The Break-Up Fee will be subject to Bankruptcy Court approval and shall be deemed to be an allowed expense of the kind specified in § 503(b) of the Bankruptcy Code to be paid solely from the proceeds of an alternate transaction, pursuant to the Sale Order. Purchaser shall be allowed to credit bid the Break-Up Fee in any overbids that Purchaser may elect to make with respect to the Assets.</p>
<p>Requested Findings as to Good Faith, APA § 6.1</p>	<p>Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to § 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.</p>
<p>Buyer's Termination Rights APA § 9.1</p>	<p>The Stalking Horse APA may be terminated by Purchaser if it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to the Stalking Horse APA, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under Section 9.1(c) on or prior to January 8, 2019, by Purchaser if a material breach of the Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser and by Purchaser or Sellers or if the Closing has not occurred on or before December 31, 2019.</p> <p>The Stalking Horse APA may also be terminated by Purchaser if satisfaction of any condition in Article 8 has not occurred by December 31, 2019 or becomes impossible and Purchaser has not waived such condition in writing.</p> <p>The Stalking Horse APA may also be terminated by Purchaser if the Bankruptcy Court enters an order dismissing the Bankruptcy Case or fails to approve the sale of the Assets to Purchaser.</p>

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Stalking Horse APA Provision	Summary Description
Record Retention APA § 10.2	<p>From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the “<u>Document Retention Period</u>”), Purchaser shall keep and preserve all medical records, patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets.</p> <p>After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents, Purchaser shall provide written notice to Sellers of Purchaser’s intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal.</p>
Limitation on Liability APA § 11.1	<p>If Purchaser commits any material default under the APA, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under the APA.</p>

IV. ARGUMENT

A. APPROVAL OF THE BIDDING PROCEDURES IS APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES AND STAKEHOLDERS.

Section 363(b)(1) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [.]” 11 U.S.C. § 363(b)(1). Section 105(a) provides in pertinent part that “[t]he Court may issue any order, process or judgment that is necessary and appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Rules”) govern the scope of the notice to be provided in the event a debtor elects to sell property of the estate under § 363.

With respect to the procedures to be adopted in conducting a sale outside the ordinary course of a debtor’s business, Rule 6004 provides only that such sale may be by private sale or public auction, and requires only that the debtor provide an itemized list of the property sold together with the prices received upon consummation of the sale. Fed. R. Bankr. P. 6004(f). LBR 6004-1 provides, in pertinent part, as follows:

(b) **Motion for Order Establishing Procedures for the Sale of Estate Property.**

(2) Contents of Notice [of a Sale Procedure Motion]. The notice must describe the proposed bidding procedures and include a copy of the

proposed purchase agreement. If the purchase agreement is not available, the moving party must describe the terms of the sale proposed, when a copy of the actual agreement will be filed with the court, and from whom it may be obtained. The notice must describe the marketing efforts undertaken and the anticipated marketing plan, or explain why no marketing is required. [...]

LBR 6004-1(b).

1 *Energy, Inc.*), 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote
2 competitive bidding provide benefit to debtor's estate); *Official Comm. of Subordinated*
3 *Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y.
4 1992) (such sale procedures "encourage bidding and to maximize the value of the Assets").

5 Here, the Bidding Procedures are designed to promote the paramount goal of any
6 proposed sale of property of the Debtors' estates: maximizing the value of sale proceeds received
7 by the estates. The Bidding Procedures provide for an orderly and appropriately competitive
8 process through which interested parties may submit offers to purchase the Purchased Assets
9 and/or the Other Assets. Specifically, the Debtors, with the assistance of their advisors, have
10 structured the Bidding Procedures to promote active bidding by interested parties and to confirm
11 the highest or otherwise best offer reasonably available for the Purchased Assets and/or the Other
12 Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a
13 fair and transparent manner that will encourage participation by financially capable bidders with
14 demonstrated ability to consummate a timely Sale. Accordingly, the Bidding Procedures should
15 be approved because, under the circumstances, they are reasonable, appropriate and in the best
16 interests of the Debtors, their estates, creditors, and all parties in interest.

17 **B. THE BREAK-UP FEE HAS A SOUND BUSINESS PURPOSE AND IS**
18 **NECESSARY TO PRESERVE THE VALUE OF THE DEBTORS' ESTATES.**

19 The Debtors submit that the Break-Up Fee is a normal and oftentimes necessary
20 component of sales outside the ordinary course of business under § 363 of the Bankruptcy Code.
21 In particular, such a protection encourages a potential purchaser to invest the requisite time,
22 money, and effort to conduct due diligence and sale negotiations with a debtor despite the
23 inherent risks and uncertainties of the chapter 11 process. *See, e.g., Integrated Resources*, 147
24 B.R. at 660 (noting that fees may be legitimately necessary to convince a "white knight" to offer
25 an initial bid, for the expenses such bidder incurs and the risks such bidder faces by having its
26 offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr.
27 N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid
28 for fear that their first bid will be shopped around for a higher bid from another bidder who would

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1 capitalize on the initial bidder's . . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5
2 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses
3 are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which
4 attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y.
5 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight
6 to enter the bidding by providing some form of compensation for the risks it is undertaking")
7 (citations omitted).

8 A proposed bidding incentive, such as the Break-Up Fee, should be approved when it is in
9 the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995);
10 *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp*
11 *Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding
12 incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy,*
13 *Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though
14 bidding incentives are measured against a business judgment standard in non-bankruptcy
15 transactions the administrative expense provisions of § 503(b) govern in the bankruptcy context).

16 In evaluating the appropriateness of a break-up fee, the appropriate question for the Court
17 to consider is "whether the break-up fee served any of three possible useful functions: (1) to
18 attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other
19 bidders to follow; or (3) to attract additional bidders." *In re Integrated Resources, Inc.*, 147 B.R.
20 at 662 (where the Court heard testimony that the average breakup fee in the industry is 3.3%).
21 Break-up fees in the same general range as the Break-Up Fee have been routinely approved in the
22 context of bankruptcy sales. *See In re CXM, Inc.*, 307 B.R. 94, 103–04 (Bankr. N.D. Ill. 2004)
23 (court approved break-up fee in amount equal to the actual expenses that the stalking horse
24 incurred in connection with its bid to buy the Sale Assets, subject to a maximum cap of \$200,000,
25 which equaled 3% of the cash purchase price); *In re Women First Healthcare, Inc.*, 332 B.R. 115,
26 118 (Bankr. D. Del. 2005) (court approved break-up fee that equaled 4.7% percent of the
27 purchase price; *In re Dan River, Inc.*, No. 04-10990 (Banker. N.D. Ga. Dec. 17, 2004) (court
28 approved break-up fee equal to 5.3% of the cash purchase price); *In re Lake Burton Dev., LLC*,

2010 WL 5563622, *43 (Bankr. N.D. Ga. Mar. 18, 2010) (court approved break-up fee equal to 4.75% of cash purchase price); *In re Case Engineered Lumber, Inc.*, No. 09-22499 (Bankr. N.D.Ga. Sept. 1, 2009)(J. Brizendine) (approving break-up fee equal to 3.5% of the cash purchase price); *In re Tama Beef Packing Inc.*, 321 B.R. 469, 498 (8th Cir. BAP 2005) (noting that the bankruptcy court correctly concluded that break-up fees are “usually limited to one to four percent of the purchase price”). Notably, this Court has also approved break-up fees within the range of the Break-Up Fee. *See In re Verity Health System of California, Inc.*, No. 18-20151 (Bankr. C.D. Cal. Oct. 30, 2018) (J. Robles) (approving break-up fee equal to 4% of the cash purchase price); *In re T Asset Acquisition Company, LLC*, No. 09-31853 (Bankr. C.D. Cal. Jan. 28, 2010) (J. Robles) (approving break-up fee equal to 3% of the cash purchase price).

The Debtors submit that all of the bidding procedures the Debtors are seeking to have the Court approve, including the proposed Break-Up Fee to the Stalking Horse Purchaser, satisfies all three of the useful functions set forth above: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; and (3) to attract additional bidders. The proposed break-up fee of 3.5% of the purchase price is well within the percentage parameters that have been approved by many other courts. Thus, the Debtors believe that the proposed Break-Up Fee is fair and reasonably compensates the Stalking Horse Purchaser for taking actions that will benefit the Debtors’ estates. The Break-Up Fee compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Stalking Horse APA on an expedited timeline.

Additionally, the Debtors do not believe that the Break-Up Fee will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser will increase the likelihood that the best possible price for the Purchased Assets will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Stalking Horse APA as a platform for negotiations and modifications in the context of a competitive bidding process.

Finally, the Break-Up Fee will be paid only if, among other things, the Debtors enter into a transaction for the Purchased Assets with a bidder other than the Stalking Horse Purchaser.

1 Accordingly, no Break-Up Fee will be paid unless a higher and better offer is achieved and
2 consummated. In sum, the Break-Up Fee is reasonable under the circumstances and will enable
3 the Debtors to maximize the value for the Purchased Assets while limiting any chilling effect in
4 the sale process.

5 **C. THE PROCEDURE FOR ASSUMPTION AND ASSIGNMENT OF CERTAIN**
6 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES IS APPROPRIATE**

7 Section 365(a) provides that, subject to the court’s approval, a trustee “may assume or
8 reject any executory contracts or unexpired leases of the debtor.” 11 U.S.C. § 365(a). Upon
9 finding that a trustee has exercised its sound business judgment in determining to assume an
10 executory contract or unexpired lease, courts should approve the assumption under § 365(a). *See*
11 *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also*
12 *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099
13 (2d Cir. 1993).

14 Pursuant to § 365(f)(2), a trustee may assign an executory contract or unexpired lease of
15 nonresidential real property if:

- 16 (A) the trustee assumes such contract or lease in accordance with the provisions of this
17 section; and
18 (B) adequate assurance of future performance by the assignee of such contract or lease
19 is provided, whether or not there has been a default in such contract or lease.

20 11 U.S.C. § 365(f)(2).

21 The meaning of “adequate assurance of future performance” depends on the facts and
22 circumstances of each case, and should be given “practical, pragmatic construction.” *See Carlisle*
23 *Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see*
24 *also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of
25 future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re*
26 *Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single
27 solution will satisfy every case, the required assurance will fall considerably short of an absolute
28 guarantee of performance.”).

1 Among other things, adequate assurance may be given by demonstrating the assignee's
2 financial health and experience in managing the type of enterprise or property assigned. *In re*
3 *Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future
4 performance is present when prospective assignee of lease has financial resources and expressed
5 willingness to devote sufficient funding to business to give it strong likelihood of succeeding;
6 chief determinant of adequate assurance is whether rent will be paid).

7 The Debtors and the Successful Bidder will present evidence at the Sale Hearing to prove
8 the financial credibility, willingness, and ability of the Successful Bidder to perform under the
9 contracts or leases. The Court and other interested parties therefore will have the opportunity to
10 evaluate the ability of any Successful Bidder to provide adequate assurance of future performance
11 under the contracts or leases, as required by § 365(b)(1)(C).

12 In addition, the Debtors submit that the cure procedures set forth herein are appropriate,
13 reasonably calculated to provide notice to any affected party, and afford the affected party to
14 opportunity to exercise any rights affected by the Motion, and consistent with § 365. To the
15 extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be
16 cured pursuant to the Successful Bidder's Purchase Agreement. Except as otherwise limited by §
17 365 of the Bankruptcy Code, any provision in the Assumed Executory Contracts that would
18 restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable
19 pursuant to § 365(f)(1) of the Bankruptcy Code.

20 Accordingly, the Debtors submit that the cure procedures for effectuating the assumption
21 and assignment of the Assumed Executory Contracts as set forth herein are appropriate and
22 should be approved.

23 **D. APPROVAL OF THE SALE IS WARRANTED UNDER § 363**

24 As discussed above, § 363(b)(1) of the Bankruptcy Code provides that a debtor "after
25 notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,
26 property of the estate." 11 U.S.C. § 363(b)(1).

i. The Sale of the Assets is Authorized by § 363 as a Sound Exercise of the Debtors' Business Judgment

In accordance with Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtors have determined that the Sale of the Purchased Assets and/or the Other Assets by public auction will enable it to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtors' creditors. In particular, the Stalking Horse APA is the result of comprehensive arms' length negotiations for the Sale of the Purchased Assets and/or the Other Assets and the Sale pursuant to the terms of the Stalking Horse APA, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtors' creditors than would be provided by any other existing alternative. The Debtors similarly have determined in their business judgment that a sale of the Purchased Assets and/or the Other Assets through a competitive, public auction is the best way to maximize the value of those assets.

Sections 363 provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although § 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 BR. 169, 176 (D. Del. 1991); *see also Official Comm. of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of

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the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (*quoting In re Atlanta Packaging Prods., Inc.*, 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate, court approval of a debtor’s decision to sell should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991) (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

Applying § 363, the proposed Sale of the Purchased Assets and/or the Other Assets should be approved. As set forth above, the Debtors have determined that the best method of maximizing the recovery of the Debtors’ creditors would be through the Sale of the Purchased Assets. As assurance of value, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate “market exposure” and an open and fair auction process—the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

In addition to the Debtors’ prior marketing efforts, the Debtors’ investment banker has been contacting potential interested parties and has assembled a data room which is available upon the execution of an appropriate confidentiality agreement. There is a limited universe of potential acquirers of the Purchased Assets, and the Debtors and their advisors have been in active discussions with many of these potential purchasers.

ii. **The Sale of the Debtors' Assets Free and Clear of Liens and Other Interests is Authorized by § 363(f) of the Bankruptcy Code**

The Debtors further submit that it is appropriate to sell the Purchased Assets free and clear of liens pursuant to § 363(f), with any such liens attaching to the sale proceeds of the Purchased Assets to the extent applicable. Section 363(f) authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

This provision is supplemented by § 105(a), which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

Because § 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Debtor's Assets “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992) (“Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that § 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of § 363(f) is met).

The Debtors believe that at least one of the tests of § 363(f) of the Bankruptcy Code is satisfied with respect to the transfer of the Purchased Assets and/or the Other Assets pursuant to

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1 the Stalking Horse APA. Additionally, at least § 363(f)(2) will be met in connection with the
2 transactions proposed under the Purchase Agreement because each of the parties holding liens on
3 the Purchased Assets and/or the Other Assets will consent or, absent any objection to this motion,
4 will be deemed to have consented to the Sale. Any lienholder also will be adequately protected
5 by having its liens, if any, in each instance against the Debtors or their estates, attach to the sale
6 proceeds ultimately attributable to the Purchased Assets and/or the Other Assets in which such
7 creditor alleges an interest, in the same order of priority, with the same validity, force and effect
8 that such creditor had prior to the Sale, subject to any claims and defenses the Debtors may
9 possess with respect thereto. Accordingly, § 363(f) authorizes the transfer and conveyance of the
10 Purchased Assets free and clear of any such claims, interests, liabilities, or liens.

11 Although § 363(f) provides for the sale of assets “free and clear of any interests,” the term
12 “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v.*
13 *DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). Courts have interpreted “any
14 interest” expansively to include not only in rem interests in property, but also other obligations
15 that are “connected to or arise from the property being sold” or that could “potentially travel with
16 the property being sold.” *In re Gardens Regional Hospital and Medical Center, Inc.*, 567 B.R.
17 820, 825 (Bankr. C.D. Cal. 2017) (California Attorney General imposed conditions are an
18 “interest in property” that can be stripped off the assets through a sale under § 363); *In re La*
19 *Paloma Generating, Co.*, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017) (holding that
20 emission surrender obligations created by California regulations and statutes and enforced by the
21 California Air Resources Board are an interest in property which can be cut off by a § 363 sale)
22 *See also In re Trans World Airlines, Inc.*, 322 F.3d 283, 285, 288 (3d Cir. 2001) (holding that
23 plaintiff’s interests in travel vouchers that were issued to settle employment discrimination are an
24 interest under § 363 because they arise from the property being sold); *PBBPC, Inc. v. OPK*
25 *Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860, 867-870 (1st Cir. B.A.P. 2013) (holding that
26 debtor’s assets could be sold free and clear of Commonwealth of Massachusetts’s right to treat a
27 purchaser of substantially all of the assets of chapter 11 debtor as a “successor employer” to
28 which debtor’s experience rating could be imputed to determine purchaser’s unemployment

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1 insurance contribution); *In re ARSN Liquidating Corp. Inc.*, 2017 WL 279472, *5 (Bankr. D.N.H.
2 Jan. 20, 2017) (Nat'l Council on Compensation Ins. violated sale order by imputing debtor's
3 workers' compensation experience rating to buyer in setting buyer's workers' compensation
4 experience rating); *In re Vista Marketing Group Ltd.*, 557 B.R. 630, 635-39 (Bankr. N.D. Ill.
5 2016) (free and clear language in sale order prevented a state sanitary district from asserting claim
6 against asset purchaser for connection fee surcharge that was calculated based entirely on debtor's
7 use of the district's sewer facilities); *United Mine Workers of Am. Combined Benefit Fund v.*
8 *Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016) (sale under § 363 cuts off Coal Act
9 obligations despite language in Act imposing successor liability on buyer); *In re Christ Hospital*,
10 502 B.R. 158, 76-79 (Bankr. D.N.J. 2013) (section 363 sales cut off tort claims against purchaser
11 of nonprofit hospital); *In re Tougher Indus.*, 2013 WL 1276501 at **6-9 (Bankr. N.D.N.Y. Mar.
12 27, 2013) (holding that debtor's assets could be sold free and clear of New York State
13 Department of Labor's right to use the debtor's experience rating to access the buyer's tax
14 liability as successor to the debtor); *In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 702-03
15 (S.D.N.Y 2012) ("Section 363(f) can be used to sell property free and clear of claims that could
16 otherwise be assertable against the buyer of the assets under the common law doctrine of
17 successor liability"); *WBO P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBO P'ship)*, 189
18 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (holding that Commonwealth of Virginia's right to
19 recapture depreciation is an "interest" as that term is used in § 363(f))

20 In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the
21 Third Circuit specifically addressed the scope of the term "any interest." The Third Circuit
22 observed that while some courts have "narrowly interpreted that phrase to mean only in rem
23 interests in property," the trend in modern cases is towards "a more expansive reading of
24 'interests in property' which 'encompasses other obligations that may flow from ownership of the
25 property.'" *Id.* at 289 (citing 3 Collier on Bankruptcy, ¶ 363.06[1] (L. King, 15th rev. ed. 1988)).
26 As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, the scope of § 363(f) is
27 not limited to *in rem* interests. 99 F.3d 573, 581-582 (4th Cir. 1996) (holding that coal mine
28 operators could sell their assets free and clear of their obligations to a benefits plan and fund

1 under the Coal Act). Thus, debtors “could sell their assets under § 363(f) free and clear of
2 successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at
3 258 (citing *Leckie*, 99 F.3d at 582).

4 Courts have consistently held that a buyer of a debtor’s assets pursuant to a § 363 sale
5 takes such assets free from successor liability resulting from pre-existing claims. *See The Ninth*
6 *Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996)
7 (stating that a bankruptcy court has the power to sell assets free and clear of any interest that
8 could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v.*
9 *Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988)
10 (channeling of claims to proceeds consistent with intent of sale free and clear under § 363(f)). The
11 purpose of an order purporting to authorize the transfer of assets free and clear of all “interests”
12 would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against
13 the purchaser arising from the Debtors’ pre-sale conduct. Under § 363(f), the purchaser is
14 entitled to know that the Purchased Assets and/or the Other Assets are not infected with latent
15 claims that will be asserted against the purchaser after the proposed transaction is completed.
16 Accordingly, consistent with the above-cited case law, the order approving the Sale should state
17 that the Successful Bidder is not liable as a successor under any theory of successor liability, for
18 claims that encumber or relate to the Purchased Assets and/or the Other Assets.

19 **iii. The Successful Bidder Should be Afforded All Protections Under § 363(m) as**
20 **A Good Faith Purchaser**

21 Section 363(m) protects a good-faith purchaser’s interest in property purchased from the
22 debtor’s estate notwithstanding that the sale conducted under § 363(b) is later reversed or
23 modified on appeal. Specifically, § 363(m) states that:

24 The reversal or modification on appeal of an authorization under
25 [section 363(b)] . . . does not affect the validity of a sale . . . to an entity
26 that purchased . . . such property in good faith, whether or not such entity
27 knew of the pendency of the appeal, unless such authorization and such
28 sale were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) “codifies Congress’s strong preference for finality and
efficiency” in bankruptcy proceedings. *In re Energytec, Inc.* 739 F.3d 215, 218-19 (5th Cir.

2013). The Ninth Circuit has repeatedly held that, under § 363(m), “[w]hen a sale of assets is made to a good faith purchaser, it may not be modified or set aside unless the sale was stayed pending appeal.” *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 576 (9th Cir. 1998) ; *In re Ewell*, 958 F.2d 276, 282 (9th Cir. 1992) (“Because the Buyer was a good faith purchaser, under 11 U.S.C. § 363(m) the sale may not be modified or set aside on appeal unless the sale was stayed pending appeal.”); *Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.)*, 846 F.2d 1170, 1172 (9th Cir. 1988) (“Finality in bankruptcy has become the dominant rationale for our decisions [...]”).

The selection of the Successful Bidder will be the product of arms’ length, good faith negotiations in an anticipated competitive purchasing process. The Debtors intend to request at the Sale Hearing a finding that the Successful Bidder is a good faith purchaser entitled to the protections of § 363(m).

E. RELIEF FROM THE 14-DAY WAITING PERIOD UNDER RULES 6004(H) AND 6006(D) IS APPROPRIATE

Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Order be effective immediately by providing that the 14-day stays under Rules 6004(h) and 6006(d) are waived.

The purpose of Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *Collier on Bankruptcy*, ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, *Collier* provides that if an objection is filed and overruled, and the objecting

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1 party informs the court of its intent to appeal, the stay may be reduced to the amount of time
2 actually necessary to file such appeal. *Id.*

3 The Debtors hereby request that the Court waive the 14-day stay periods under Rules
4 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay
5 period to the minimum amount of time needed by the objecting party to file its appeal.

6 **F. THE APPLICABLE REQUIREMENTS OF LBR 6004-1 HAVE BEEN SATISFIED**

7 Here all of the applicable requirements of LBR 6004-1(b) pertaining to the Motion and the
8 request therein to approve the Bidding Procedures have been satisfied. First, as required by LBR
9 6004-1(b)(2), the Notice of Motion describes the proposed Bidding Procedures and includes a
10 copy of the Stalking Horse APA. Second, as required by LBR 6004-1(b)(2), the Notice of the Bid
11 Procedures Motion and this Memorandum describe marketing efforts undertaken and the
12 anticipated marketing of the Purchased Assets through the deadline for prospective Overbidders
13 to submit bids for the Auction. Third, the Debtors provided notice of the Notice of Motion,
14 Motion, and this Memorandum pursuant to LBR 6004-1(b)(3) and the *Order Granting*
15 *Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No. 132]. Therefore,
16 the Debtors submit that service of the Notice of Motion, Motion, and this Memorandum by such
17 means was adequate and appropriate.

18 **V. CONCLUSION**

19 **WHEREFORE**, the Debtors respectfully request that the Court enter an order: (i)
20 granting the relief requested herein; and (ii) granting such other and further relief as the Court
21 may deem proper.

22 Dated: January 17, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

24 By /s/ Tania M. Moyron
25 Tania M. Moyron

26 Attorneys for the Chapter 11 Debtors and
27 Debtors In Possession
28

EXHIBIT A

Dated January 8, 2019

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the 8th day of January, 2019 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), St. Francis Medical Center, a California nonprofit public benefit corporation (“**St. Francis**”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“**St. Vincent**”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“**St. Vincent Dialysis**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” and together with St. Francis Medical Center, St. Vincent Medical Center and St. Vincent Dialysis, collectively, the “**Hospital Sellers**”) (Verity, Verity Holdings, St. Francis, St. Vincent, St. Vincent Dialysis and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and Strategic Global Management, Inc., a California corporation (“**Purchaser**”).

RECITALS:

A. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis (collectively, the “**St. Francis Hospital**”).

B. St. Vincent engages in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent (collectively, the “**St. Vincent Hospital**”).

C. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Hospital**”) and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Coastside Hospital**”) and together with the St. Francis Medical Center Hospital, the St. Vincent Medical Center Hospital and the Seton Hospital, the “**Hospitals**”; the business of the operation of the Hospitals is referred to herein as the “**Businesses**”).

D. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Sellers and used with respect to the Businesses, for the consideration and upon the terms and conditions contained in this Agreement.

E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastside Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

be credited against the Purchase Price. Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally-insured financial institution mutually acceptable to Purchaser and Sellers. In addition, on the Signing Date, Purchaser shall deliver to Sellers executed letters from its financing sources, in form and substance satisfactory to Sellers in their discretion.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) promptly but no later than ten (10) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by each Seller, with respect to the Assets;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3, together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.5 favorable original certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below);

1.4.8 a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Businesses, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

1.4.9 acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date, and

1.4.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing. At or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 favorable original certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.7 the Assumption Agreement, duly executed by Purchaser;

1.5.8 the License Agreement referenced in Section 1.7(q);

1.5.9 the Transition Services Agreement; and

1.5.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments, other than the PACE Special Assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by any Seller, pay to such Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Sellers shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but uncollected as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

to the operation of the Hospital of such Hospital Seller that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

(e) other than the Excluded Settlements and Actions (defined below), all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by such Seller or such Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases and other items described in Section 1.8(h);

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Hospital of such Seller or (ii) used in the operation of the Hospital of such Seller (the “**Inventory**”) except as set forth in Section 1.8(e);

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and prepaid taxes) and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Hospital of such Hospital Seller (the “**Prepays**”);

(h) to the extent assignable or transferrable, all of the following that are not proprietary to such Seller and/or owned by or proprietary to such Hospital Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Hospital of such Hospital Seller, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by such Hospital Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Sellers and used by Sellers with respect to the operations of the Hospitals;

(j) all Measure B trauma funding received after the Signing Date to be paid related to service periods ending on or after the Signing Date (pro rated between Purchaser and Sellers for any such payments covering service periods which include days both before and after the Signing Date based upon the number of days in the relevant payment period before the Signing Date (for the account of Sellers) and after the Signing Date (for the account of Purchaser));

(k) Except for as stated in Section 1.7(j), all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation,

accounts, notes or other amounts receivable, disproportionate share payments and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(l) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the Accounts Receivable acquired by Purchaser at the Closing;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

(r) the right to use the names “St. Francis Medical Center”, “St. Vincent Medical Center”, “Seton Medical Center” and “Seton Medical Center Coastside”, including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Sellers and the names of the Hospitals, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Businesses, the completion of the

Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

(b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;

(c) all contracts that are not Assumed Contracts;

(d) all leases that are not Assumed Leases;

(e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;

(f) assets owned and provided by vendors of services or goods to the Hospital of such Hospital Seller;

(g) all of such Seller's organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;

(h) all claims, counterclaims and causes of action of such Seller or such Seller's bankruptcy estate (including parties acting for or on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of such Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;

(i) other than casualty insurance proceeds described in Section 1.7(m), all insurance policies and contracts and coverages obtained by such Seller or listing such Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;

(j) all deposits made with any entity that provides utilities to the Hospital (the **"Utility Deposits"**);

(k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

(l) all non-transferrable unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(m) all other bank accounts of such Sellers not listed on **Schedule 1.7(u)**;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services);

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(h) or 1.8(y) (together with the items identified in Section 1.8(h) and 1.8(y), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Signing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties; and

(cc) any assets identified in Schedule 1.8(cc).

1.9 Assumed Obligations. On the Closing Date, each Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of such Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of such Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of such Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time;

(d) all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii);

(e) all liabilities and obligations of such Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of such Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) all liabilities or obligations provided for in Section 5.3;

(j) any obligations or liabilities Purchaser may desire or need to assume in order to have the Certifications/Licenses/Permits identified on Schedule 1.7(b) reissued to Purchaser, as well as any liabilities or obligations associated with Sellers' Medicare and Medi-Cal provider agreements, but only to the extent assumed by Purchaser, and any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

(k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the "**Excluded Liabilities**"), and each Seller shall remain fully and solely responsible for all of such Seller's debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively "**Evaluated Contracts**"). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "**Rejected Contracts**"); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date and as of the last day of the Final Diligence Period, except as would not have a material adverse effect upon the Hospitals, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title) and 2.14 (Legal Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by such Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of such Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

2.3 Organization and Good Standing; No Violation.

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller’s articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in material breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2018; (ii) unaudited income statements of the Sellers for the twelve-month periods ended June 30, 2018; (iii) the audited consolidated income statements of Sellers for the years ended 2016 and 2017; and (iv) the unaudited consolidated balance sheet of Sellers as of June 30, 2018.

(b) the income statements contained in the Historical Financial Statements present, fairly in all material respects the results of the operations of the Sellers as of and for the periods covered therein and, except as set forth on Schedule 2.13(b), the balance sheets contained in the Historical Financial Statements (i) are true, complete and correct in all material respects; (ii) present, fairly in all material respects the financial condition of the Sellers as of the dates indicated thereon; and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

2.14 Legal Proceedings. Except as set forth on Schedule 2.14, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers' claims and noticing agent's website at <http://www.kccclcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospitals or the Hospitals by Sellers before any governmental authority. Except as set forth on Schedule 2.14, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospitals or the other Assets or the Hospitals and are in substantial compliance with respect to each such government order.

2.15 Employee Benefits. Schedule 2.15(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee pension benefit plan" as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Seller with respect to the operation of the Hospital, in which any employee of Seller participates in his capacity as such (collectively, the "**Seller Plans**").

2.16 Personnel. Schedule 2.16 sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and scheduled bonus, and the accrued paid time off pay of all employees of Sellers (including employees of the Hospitals and employees of Verity and Verity Holdings) immediately prior to December 21, 2018, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Sellers's policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "**Hospital Employees**") and indicating whether the Hospital Employee is full- time or part-time. Sellers shall have the right to update to Schedule 2.16(a) to reflect changes in employment status or new hires and terminations occurring after December 21, 2018 by providing a revised schedule to Purchase no later than five (5) Business Days before the date scheduled for the Closing.Insurance. Schedule 2.17 contains a list of all material insurance maintained by Sellers with respect to the Assets and the Businesses, as of the Signing Date.

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller's Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers' representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

to Sellers, with a concurrent management agreement entered into at that time upon terms mutually agreeable to the parties in their reasonable business judgment. The Sale Leaseback Agreement and Interim Management Agreement will terminate at the Closing when the Purchaser is issued the Licenses necessary to operate the Hospitals directly (namely, the Hospital Licenses and pharmacy permits).

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller’s and such Seller’s affiliates’ post-Closing administration of such Seller’s and such Seller’s affiliates’ pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets. As soon as practicable after the Closing Date, Purchaser shall deliver to each Seller or such Seller’s designee any Excluded Assets of such Seller found at the

Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the "**Sales Procedures Motion**"), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement ("**Overbid**") to another purchaser ("**Overbidder**") unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the "**Alternate Transaction**") and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.5%) of the Cash Consideration (\$21,350,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the "**Break-Up Fee**"); provided, however, that in the event that

the Purchaser is successful as to some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets not actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i), as compared to the Assets which were the subject of this Agreement.; and

(3) The Break-Up Fee shall be deemed to be an allowed expense of the kind specified in Section 503(b) of the Bankruptcy Code to be paid solely from the proceeds of the Alternate Transaction, pursuant to the Sale Order. The Break-Up Fee shall not be paid if the Alternate Transaction was pursued due to a material breach by the Purchaser or the Purchaser's failure or refusal to consummate the transaction after the satisfaction or waiver of all closing conditions.

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

If Sellers fails to obtain Bankruptcy Court approval for the Sales Procedures Motion by no later than four weeks after the end of the Final Diligence Period, Purchaser shall have the right to terminate this Agreement, without recourse or liability, and Seller shall immediately thereafter return to Purchaser the Deposit and any interest earned thereon.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "**Sale Order**" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(d) Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before

45 days from the date of the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations. Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement which are not as set forth on Schedule 8.6 (the "**Additional Conditions**"), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order finding that

the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions. If Sellers obtain such an order, from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order to determine, in Purchaser’s sole and absolute discretion, and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement. If Purchaser determines not to proceed, Purchaser shall have the right to terminate this Agreement and receive the return of its Good Faith Deposit.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the

breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

10.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "**Document Retention Period**"), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**"), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records

with respect to time periods prior to the Effective Time (including, without limitation, access to records of patients treated at the Hospital prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospital, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Hospital in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Sellers. Such documents and other materials shall be, at Sellers' option, either (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Hospital on and after the Effective Time.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Sellers or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Sellers after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Closing of Financials. Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the "**Post-Effective Time CFO**") to cooperate with Sellers' representatives in

order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers' estate.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

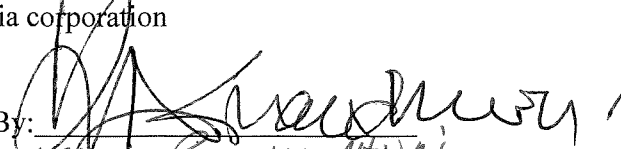
12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**STRATEGIC GLOBAL
MANAGEMENT, INC.,**
a California corporation

Signature By: 

Print Name: KAL P. CHAUDHURI

Title: CHAIRMAN & CEO

Date: JANUARY 9, 2019

SELLERS:

ST. FRANCIS MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____

Print Name: _____

Title: _____

Date: _____

ST. VINCENT MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____

Print Name: _____

Title: _____

Date: _____

**ST. VINCENT DIALYSIS CENTER,
INC.**

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SETON MEDICAL CENTER,

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

VERITY HOLDINGS, LLC,

a California limited liability company

Signature By: _____
Print Name: _____
Title: _____
Date: _____

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC.,**

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SCHEDULE 6.1(b)(3)

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be employed in connection with the sale of (i) the assets (the “Purchased Assets”) enumerated in the Stalking Horse APA (as defined below), including, but not limited to, St Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center (including Seton Coastside) (collectively, the “APA Facilities”); and (ii) assets not otherwise enumerated in the APA, but associated with the ownership or operation of the APA Facilities and available for purchase (the “Other Assets”), in connection with the chapter 11 cases pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), jointly administered as case number 2:18-bk-20151-ER, in the form to be approved by the Bankruptcy Court, by Order dated _____, 2019 (the “Bidding Procedures Order”).

The Debtors entered into that certain Asset Purchase Agreement, dated January 8, 2019 between the Debtors, on the one hand, and Strategic Global Management, Inc., a California corporation (the “Stalking Horse Purchaser”) on the other hand, pursuant to which the Stalking Horse Purchaser shall acquire the Purchased Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse APA”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the *Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Hearing to Consider Approval of the Sale to the Highest Bidder, (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the “Sale Motion”) or the Bidding Procedures Order.

I. ASSETS TO BE SOLD

The Debtors seek to complete a sale of substantially all assets of APA Facilities, including both the Purchased Assets and the Other Assets (the “Sale”). The Stalking Horse APA will serve as the “stalking-horse” bid for the Purchased Assets.

II. THE BIDDING PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets and/or the Other Assets, they intend to hold a sale process for the Purchased Assets and/or the Other Assets pursuant to the procedures and on the timeline proposed herein.

¹ Unless otherwise defined, all capitalized terms shall have the meanings ascribed to them in the Stalking Horse APA.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following to the Debtors:

- a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or and/or the Other Assets or otherwise participating in connection with such bid; and
- b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Purchased Assets and/or the Other Assets; without limiting the foregoing, each such confidentiality agreement shall contain standard non-solicitation provisions.

A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors, and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

B. Due Diligence

The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid,” and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical

Center, Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;²

- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-Up Bidder, the time specified in Section II (K) below;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$21,350,000.00); (ii) the amount of the Expense Reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee and the Expense Reimbursement, the "Minimum Qualified Bid");

² For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

- j) if the bid is a partial bid (the “Partial Bid”),³ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a “Partial Bid Auction Qualified Bid”). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers’ responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii) Purchased Assets and/or Other Assets, subject to purchase money liens or the like, the Qualified Bidder wishes to acquire and therefore pay the associated purchase money financing;
- l) it contains sufficient information concerning the Qualified Bidder’s ability to provide adequate assurance of future performance with respect to executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it;
- m) it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets and/or Other Assets prior to making its offer and that the offer is not subject to any further due diligence or the need to raise capital/financing to consummate the proposed transaction; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets and/or Other Assets or the completeness of any information provided in connection therewith or with the relevant Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form of cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to: (a) 20% of purchase price for bids under \$5 million; (b) for bids greater than \$5 million and less than \$100 million, the greater of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the “Good Faith Deposit”), which Good Faith Deposit shall, be forfeited if such bidder

³ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

is the Successful Bidder and breaches its obligation to close; and (ii) if the Qualified Bid is a bid made by a secured creditor of the Debtors (a “Credit Bid Bidder”) who intends to make a credit bid (each, a “Credit Bid Bid”), evidence of (a) the basis for and property covered by such Credit Bid Bidder’s secured claim, (b) the amount of such Credit Bid Bidder’s claim that is secured by the property in question, (c) whether it is the senior secured claim on the property (x) prepetition and (y) as of the date of the request to be a Qualified Bidder, as well as (d) evidence of the resolution of any Challenge to such Credit Bid Bidder’s secured claim within the meaning of the Final DIP Order.

- p) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtors;
- r) it identifies the person(s) and their title(s) who will attend the relevant Auction, and confirms that such person(s) have authority to make binding Overbids (defined below) at such Auction
- s) it contains such other information reasonably requested by the Debtors; and
- t) it is received prior to the Bid Deadline.

The Debtors, in consultation with the Consultation Parties (who shall receive copies of the Purchase Agreements relating to any bids cast pursuant to these Bidding Procedures as soon as reasonably practicable), may qualify any bid that meets the foregoing requirements as a Qualified Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auctions, and the Sale.

The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser, all Qualified Bidders and the Notice Parties in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder’s bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating any such Qualified Bid to the Consultation Parties, the Stalking Horse Purchaser and such Qualified Bidders, and the Notice Parties on the earlier of: (1) the date that any bid other than the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days prior to the Partial Bid Auction.

D. Bid Deadline

In order to be eligible to participate in the Auction, a Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (taniamoyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,

P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)), so as to be received by the Notice Parties not later than March 29, 2019, at 4:00 p.m. (prevailing Pacific Time) for partial bids (the “Partial Bid Deadline”) or April 3, 2019, at 4:00 p.m. (prevailing Pacific Time) for full bids (the “Bid Deadline”).

E. Credit Bidding

Any party with a valid, properly perfected security interest in any of the Purchased Assets and/or Other Assets (which is not subject to a pending Challenge within the meaning of the Final DIP Order) may credit bid for such Purchased Assets and/or Other Assets in connection with the Sale in accordance with and pursuant to § 363(k), except as otherwise limited by the Debtors for cause; provided, however, that any party seeking to credit bid may not credit bid unless such bid provides that all secured creditors with security interests on such Purchased Assets and/or Other Assets that are senior to such junior security interest are to be paid in cash in connection with such junior creditor’s bid. Any credit bids made by secured creditors shall not impair or otherwise affect the Stalking Horse Purchaser’s entitlement to the benefits of the Bidding Procedures and related protections granted under the Bidding Procedures Order.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation: (i) the amount of such bid; (ii) the risks and timing associated with consummating such bid; (iii) any proposed revisions to the form of Stalking Horse APA; and (iv) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with the Consultation Parties, including the amount of cash included in the bid.

G. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse APA, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Purchased Assets. If the Debtors receive one or more qualified Partial Bid Auction Qualified Bids and, after the Partial Bid Auction contemplated by Section (H) of these Bidding Procedures, the Debtors will determine, in consultation with the Consultation Parties, if there are any Partial Bidders that will not be qualified to participate at the Full Bid Auction

H. Auction Process

If the Debtors receive one or more Partial Bid Auction Qualified Bids as set forth above, the Debtors will conduct separate auctions of each asset or combinations thereof (each, a “Partial Bid Auction”). Any Partial Bidder holding a Partial Bid Auction Qualified Bid shall be entitled to bid on any assets in any Partial Bid Auction(s). The procedures below for the Full Bid Auction shall apply to the Partial Bid Auction, except as where otherwise indicated. The Debtors will conduct the Partial Bid Auction(s), which shall be transcribed, on April 8, 2019 at 10:00 a.m. (prevailing Pacific Time) at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los

Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation with the Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to participate at the Full Bid Auction, including (without limitation) the highest and best bids for each asset (the “Winning Partial Bids”), shall be permitted to participate in the Full Bid Auction (as defined below) of the Purchased Assets and/or the Other Assets; except that:

- (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking Horse APA, there will be a Full Bid Auction (as defined below) and (1) the Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities, or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA at Section 6.26 (b)(2);
- (b) If the Partial Bids do not include all four APA Facilities, and if there are no other Qualified Full Bids, then Seller, in its discretion, after consultation with the Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1) to have no Full Bid Auction, and the Stalking Horse Purchaser will purchase the four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the “Remaining Facility”), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other Assets), the Debtors will conduct a full bid auction of the Purchased Assets and/or the Other Assets (the “Full Bid Auction”), which shall be transcribed, on April 9, 2019 (the “Full Bid Auction Date”), at 10:00 a.m. (prevailing Pacific Time), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

The Full Bid Auction shall be conducted in accordance with the following procedures:

- a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their

respective advisors, and other parties who request and receive authority to attend the auction in advance from the Debtors may attend the Auction;

- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the relevant Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the relevant Auction; provided that all Qualified Bidders wishing to attend the relevant Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the relevant Auction in person;
- e) the Debtors, after consultation with the Consultation Parties and the Stalking Horse Purchaser, may employ and announce at the relevant Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the relevant Auction, (ii) in the best interest of the Debtors' estates; provided, however, that rules (i) are disclosed to the Stalking Horse Purchaser and each Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the Bid Protections, the Stalking Horse APA, the Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) bidding at the relevant Auction will begin with a bid determined by the Debtors after consulting with the Consultation Parties as being the then highest and best bid which will be announced by the Debtors prior to the commencement of the Auction (the "Baseline Bid"). The Auction will continue in bidding increments to be determined in the discretion of the Debtors, in consultation with the Consultation Parties (each a "Overbid"), and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Qualified Bids and are in attendance at the Auction (including, without limitation, Winning Partial Bids), as well as to the Notice Parties;
- g) the initial Overbid, if any, shall provide for total consideration to Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount. Additional consideration in excess of the amount set forth in the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder (including, without limitation, with respect to any Winning Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not subject to a Challenge within the meaning the Final DIP Order) on any of the Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other restrictions set forth herein; and

- i) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms and conditions set forth herein, elect to bid for the Purchased Assets as described in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s), in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets subject to augmenting its Good Faith Deposit, as necessary, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

I. Selection of Successful Bid

Prior to the conclusion of the relevant Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bids submitted at the relevant Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the relevant Auction shall be subject to approval by the Court.

If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the Back-Up Bidder in accordance with Section H above, then such party or parties, prior to the Full Bid Auction, shall increase its Good Faith Deposit in the amount set forth in Section II(C)(o), or as determined by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties are bidding on all four APA Facilities, the deposit will be no less than \$30,000,000.

If selected as the Successful Bidder or the Back-Up Bidder at the conclusion of the Full Bid Auction, each of the Successful Bidder and the Back-Up Bidder shall, within forty-eight (48) hours, increase its Good Faith Deposit to the sum of five percent (5%) of the Successful Bid or Back-Up Bid, as applicable. If the Successful Bidder fails to increase the Good Faith Deposit within forty-eight (48) hours of the Auction conclusion date (the “Final Deposit”), then (1) the Successful Bidder forfeits its Good Faith Deposit, and (2) the Successful Bid is nullified (i.e., the Back-Up Bidder becomes the Successful Bidder in the amount of its last bid).

Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) business days after the conclusion of the relevant Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within forty-eight (48) hours following the conclusion of the relevant Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and Back-Up Bidders with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtors will sell the Purchased Assets and (to extent included in an Overbid) the Other Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing and satisfaction of any other closing conditions set forth in the Successful Bidder’s Purchase Agreement.

J. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days following the conclusion of the Auction.

K. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid, as determined by the Debtors in the exercise of their business judgment, in consultation with the Consultation Parties, at the relevant Auction shall be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and irrevocable for thirty (30) business days after the entry of the Sale Order (the “Thirty-Day Period”). If during the Thirty-Day Period, the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court provided that the Back-Up Bidder shall thereafter keep such bid open and irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further, however, that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be authorized and required to consummate the sale to the Stalking Horse Purchaser.

If, after the Thirty-Day Period, the Successful Bidder has failed to consummate the approved sale, the Back-Up Bidder may elect, at its discretion, to remain as the Back-Up Bidder until (a) the sale closes, (b) the Successful Bidder defaults, or (c) the Back-Up Bidder elects to terminate its

participation as Back-Up Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the Back-Up Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder APA and the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will be no re-opening of the auction.

L. Break-Up Fee

In recognition of this expenditure of time, energy, and resources, the Debtors have agreed that if the Stalking Horse Purchaser is not the Successful Bidder as to the Purchased Assets, the Debtors will pay the Stalking Horse Purchaser at closing of the sale of the Purchased Assets the Break-Up Fee and the Expense Reimbursement as set forth in the Stalking Horse APA.

III. Sale Hearing

The Debtors will seek entry of the Sale Order, at the Sale Hearing on April 17, 2019, at 10:00 a.m. (or at another date and time convenient to the Court), to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in accordance with the Bidding Procedures. The Debtors may submit and present such additional evidence, as they may deem necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of the Purchased Assets."

IV. Sale Order

The Sale Order will provide Court approval of (i) the Sale to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances, pursuant to 11 U.S.C. § 363, with the proceeds of the Sale deposited in accordance with Paragraph 4 of the Final DIP Order, with all liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale, including, without limitation, the liens and security interests of the DIP Lender and each of the Prepetition Secured Creditors under the relevant agreements, applicable law and the Final DIP Order, and (ii) the assumption by the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and Leases pursuant to 11 U.S.C. § 365.

VII. Reservation

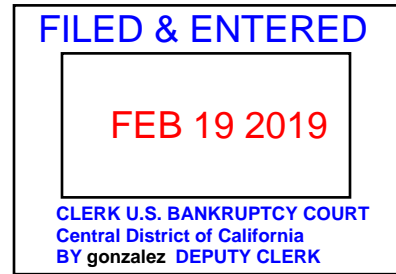
The Debtors reserve the right, as they may determine in their discretion and in accordance with their business judgment to be in the best interest of their estates, in consultation with their professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers submit their sealed, highest and best offer for the Purchased Assets and/or the Other Assets; (ii) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iv)

impose additional terms and conditions with respect to all Potential Bidders; (v) extend the deadlines set forth herein; (vi) continue or cancel an Auction and/or Sale Hearing in open court without further notice; and (vii) implement additional procedural rules that the Debtors determine, in their reasonable business judgment and in consultation with the Consultation Parties will better promote the goals of the bidding process; provided that such modifications are disclosed to each Qualified Bidder participating in the Auction; provided, however, and notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter, extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth herein or in the Stalking Horse APA.

SCHEDULES 1.4.3 TO 11.3(b) TO BE SUBMITTED

EXHIBIT 10

SAMUEL R. MAIZEL (Bar No. 189301)
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Attorneys for the Chapter 11 Debtors and
Debtors In Possession



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Ernest M. Robles

ORDER (I) APPROVING FORM OF ASSET PURCHASE AGREEMENT FOR STALKING HORSE BIDDER AND FOR PROSPECTIVE OVERBIDDERS, (2) APPROVING AUCTION SALE FORMAT, BIDDING PROCEDURES AND STALKING HORSE BID PROTECTIONS, (3) APPROVING FORM OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES, (4) SCHEDULING A COURT HEARING TO CONSIDER APPROVAL OF THE SALE TO THE HIGHEST BIDDER AND (5) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) AN ORDER (A) AUTHORIZING THE SALE OF PROPERTY FREE AND CLEAR OF ALL CLAIMS, LIENS AND ENCUMBRANCES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing:

Date: February 6, 2019

Time: 10:00 am

Location: Courtroom 1568, 255 E. Temple St., Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



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This matter coming before the Court on the motion (the “Motion”)¹ of the above-captioned debtors and debtors in possession (the “Debtors”) for the entry of an Order, as applicable, pursuant to Sections 105(a), 363, and 365 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and Rule 6004-1 and 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (“LBR”) (i)(a) approving form of asset purchase agreement for the Stalking Horse Purchaser and for prospective Overbidders (the “Stalking Horse APA”); (b) approving auction sale format, bidding procedures (the “Bidding Procedures”) and stalking horse bid protections; (c) approving the form of notice to be provided to interested parties; (d) scheduling the Auction and a court hearing to consider approval of the sale to the highest bidder; and (e) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases to the Successful Bidder; (ii) authorizing the sale of property free and clear of all claims, liens and encumbrances; and (iii) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances and properly given, and it appearing that no other or further notice need be provided; and a hearing on the proposed bid and sale procedures as detailed in the Motion having been held; and after due deliberation the Court having determined that the relief requested in the Motion with respect to proposed bid and sale procedures is in the best interests of the Debtors, their estates, and their creditors; ~~and for the reasons set forth in the Court’s tentative~~

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

~~ruling (the “Tentative Ruling”) [Doc. No. 1488], which the Court adopts as its final ruling and which is incorporated herein by reference,~~² and good and sufficient cause having been shown;

AND IT IS FURTHER FOUND AND DETERMINED THAT:³

A. The statutory and legal predicates for the relief requested in the Motion and provided for herein are Sections 105(a), 363, and 365 of Title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9013 and 9014, and Local Bankruptcy Rules 6004-1, and 9013-1.

B. In the Motion and at the hearing on the Motion, the Debtors demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

C. The Debtors’ proposed notice of the Bidding Procedures, the Auction and the hearing to approve the sale (the “Sale”) of the Assets (the “Sale Hearing”) is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

D. The Bidding Procedures substantially in the form attached hereto as Exhibit 1 are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Assets.

E. The Break-Up Fee, in the amount set forth below, (i) is reasonable and appropriate given, among other things, the size and nature of the Sale and the efforts that will have been

² Because material changes were made to the Court’s Tentative Ruling on the record at the hearing, the Court has not posted the Tentative Ruling to the CM/ECF docket.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

1 expended, and will continue to be expended, by the Stalking Horse Purchaser, and (ii) is a
2 material inducement for, and a condition of, the Stalking Horse Purchaser's entry into the
3 Stalking Horse APA.

4 F. The form of the Stalking Horse APA is fair and reasonable and provides flexibility
5 in the process to sell the Assets in a manner designed to maximize the value of the Assets.

6 G. The assumption and assignment procedures described in the Motion and provided
7 for herein (the "Assumption and Assignment Procedures") and the Cure Notice are reasonable
8 and appropriate and consistent with the provisions of Section 365 of the Bankruptcy Code and
9 Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Cure Notice have
10 been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the
11 Assumed Executory Contracts to assert an Assumption Objection.

12 H. Entry of this Order is in the best interests of the Debtors, their estates and
13 creditors, and all other parties in interest.

14 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 15 1. The Motion is **GRANTED** as set forth herein.
- 16 2. To the extent that the International Union of Operating Engineers, Stationary
17 Engineers Local 39 [Doc. No. 1355], the Service Employees International Union, United
18 Healthcare Workers West [Doc. No. 1354], the California Nurses Association [Doc. No. 1359],
19 and the United Nurses Association of California/Union of Health Care Professionals (collectively,
20 the "Unions") assert that the Debtors are required to reject the Collective Bargaining Agreements
21 prior to entering into the Stalking Horse APA, the Unions' objections are overruled.
22 Additionally, the Union's objection that the Bidding Procedures do not sufficiently incentivize
23 prospective purchasers to assume Collective Bargaining Agreements (the "CBAs") to which the
24 Unions are parties is overruled. The Court finds that requiring the Debtors to provide a precise
25
26
27
28

quantification of the value to be accorded to the assumption of liabilities arising under the CBAs would unduly impair the Debtors' flexibility in the conduct of the auction of the Debtors' assets, and would likely yield suboptimal results for all stakeholders. The Debtors must be allowed to conduct the auction in accordance with their business judgment, especially given the complexity of an auction of this type. Precise quantification of the valuation to be afforded to assumption of the CBAs would not be of material assistance to the sophisticated participants in this auction, who will be assisted by professional advisors using their own detailed financial models and projections. ~~to the Bidding Procedures are overruled as set forth in the Tentative Ruling, at Section 11 ¶ C.~~ This Order does not prevent the Unions from raising objections under § 1113 at the Sale Hearing. However, the Unions' contention that the Stalking Horse APA and the associated bidding procedures cannot be approved prior to the adjudication of § 1113 issues is without merit.

3. The objection filed by St. Vincent IPA Medical Corporation and Angeles IPA [Doc. No. 1388] is premature and may be raised at the Sale Hearing. With respect to the objection filed by Hooper Healthcare Consulting LLC ("Hooper") [Doc. No. 1397], to the extent that Hooper asserts that it is entitled to receive notification of the treatment of its Net Benefit Compensation (as that term is defined in Doc. No. 1397) prior to selection of the Successful Bidder, its objection is overruled. Hooper may raise any objections regarding its Net Benefit Compensation or the assumption and assignment of its executory contract at the Sale Hearing. Hooper's objection to the timeline proposed by the Debtors with respect to the assumption and assignment of executory contracts is overruled. ~~To the extent that Hooper The objections filed by (i) St. Vincent IPA Medical Corporation and Angeles IPA [Doc. No. 1388], and (ii) Hooper Healthcare Consulting LLC [Doc. No. 1397] are overruled for the reasons set forth in the Tentative Ruling, Section II ¶ G & J.~~

1 4. The objection filed by the Official Committee of Unsecured **Creditors (the**
2 **"Committee"**) [Docket Nos. 1399, 1401, 1402] and the *Joint Supplement to Objection and*
3 *Response to Debtors' Sale Motion* [Docket No. 1279] filed by the Committee, UMB Bank, N.A.,
4 and Wells Fargo Bank, National Association, is overruled in part and sustained in part with
5 respect to the revised Section 8.6 of the Stalking Horse APA and the Break-Up Fee, as set forth
6 below.

7
8 5. As to the objection filed by the County of San Mateo and the Health Plan of San
9 Mateo [Doc. No. 1361], the restrictions and limitations set forth in § 5.1(b) of the Stalking Horse
10 APA on communications between SGM and governmental authorities shall apply only to
11 communications regarding licensing or regulation of the Hospitals with the relevant licensing or
12 regulatory authorities. Such restrictions shall not apply to communications involving SGM (or
13 any other prospective buyers) and any governmental authority on subjects unrelated to licensing
14 or regulation by that authority.

15
16 6. The Court does not rule on the objections filed by MGH Painting Inc. [Doc. No.
17 1358], Belfor USA Group, Inc. [Doc. No. 1364], **and the** California Attorney General [Doc. No.
18 1352], ~~Centers for Medicare and Medicaid Services~~; all such objections are premature and are
19 preserved for the Sale Hearing and may be raised at that time. All objections to the relief
20 requested in the Motion that have not been withdrawn, waived or settled are overruled.

21
22 7. The objection of Cigna Healthcare of California, Inc. ("Cigna") [Doc. Nos. 1349
23 and 1459] is sustained. The Debtors shall, no later than the earlier of (i) 48 hours after the
24 conclusion of the Auction, or (ii) thirty (30) days prior to the Closing Date, provide Cigna with
25 written notice of its irrevocable decision as to whether or not the Debtors propose to assume and
26 assign any or all of the Cigna Provider Agreements as part of the Sale; provided, however, that
27 such notice shall be irrevocable only to the extent that the Successful Bidder's transaction is
28

1 approved by this Court and an order thereon becomes final and non-appealable. The Debtors shall
2 provide the same notice to UnitedHealthcare Insurance Company.

3 8. The objections filed by the U.S. Department of Health and Human Services and
4 Centers for Medicare and Medicaid Services [Doc. No. 1346] and the California Department of
5 Health Care Services [Doc. No. 1353] are continued, as resolved by stipulations [Docket Nos.
6 1458 and 1473, respectively], approved by orders entered on [Docket Nos. 1465 and 1483,
7 respectively].
8

9 9. The Bidding Procedures attached hereto as Exhibit 1 are **APPROVED**.⁴

10 10. Strategic Global Management, Inc. or an affiliate to be designated (the “Stalking
11 Horse Purchaser”) is hereby **APPROVED** to be and designated as the Stalking Horse Purchaser
12 as to the Assets, and the form of the Stalking Horse APA is hereby **APPROVED**.
13

14 11. Subject to the Bidding Procedures and approval of the Sale at the Sale Hearing, the
15 Debtors’ entry into the Stalking Horse APA (including any amendments thereto) is hereby
16 **APPROVED** subject to the following modifications:

17 (i) the following language is added to Section 6.1(b)(2): “In the event that Purchaser
18 terminates this Agreement in accordance with Section 8.6 hereof, expenses of Purchaser incurred
19 in satisfaction of Section 8.6 shall be reimbursed up to \$500,000”;

20 (ii) Section 8.6 shall be replaced by the following revised Section 8.6:

21
22 8.6 **Attorney General Provisions**. Purchaser recognizes that the
23 transactions contemplated by this Agreement may be subject to review
24 and approval of the CA AG. Purchaser agrees to close the transactions
25 contemplated by this Agreement so long as any conditions imposed by
26 the CA AG are substantially consistent with the conditions set forth, as
27 Purchaser Approved Conditions, in Schedule 8.6. In the event the CA
AG imposes conditions on the transactions contemplated by this
Agreement, or on Purchaser in connection therewith, which are
materially different than the Purchaser Approved Conditions set forth

28 ⁴ For the convenience of parties in interest, a chart listing important dates set forth in this Order is
attached hereto as Exhibit 2.

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LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to be “materially different.” If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General’s imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the

Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

(iii) in Section II, H(a), in Schedule 6.1(b)(3), annexed to the Stalking Horse APA [Docket No. 1279, at 111], the reference to Section 6.26(b)(2) is hereby corrected to Section 6.1(b)(2); and

(iv) other clarifications to the Bidding Procedures set forth in the attached Exhibit "1" are hereby deemed incorporated into Schedule 6.1(b)(3), annexed to the Stalking Horse APA [Docket No. 1279, at 111].

12. The Break-Up Fee, as modified, is **APPROVED** for the reasons stated on the record. If the Stalking Horse Purchaser is not the Successful Bidder and is not then in breach, and the Stalking Horse APA has not otherwise been terminated, the Stalking Horse Purchaser shall be paid at the closing of the Sale of the Purchased Assets (i) three and one-quarter percent (3.25%) of the Cash Consideration (\$19,825,000.00), plus (ii) reimbursement of reasonably documented reasonable costs and expenses in an amount not to exceed \$2,000,000.00. Notwithstanding anything to the contrary contained herein, upon payment of the Break-Up Fee to the Stalking Horse Purchaser, the Debtors and their representatives and affiliates, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, will be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse APA, and neither the Debtors and their representatives and

1 affiliates, on the one hand, and the Stalking Horse Purchaser and its respective representatives
2 and affiliates, on the other hand, nor any other Person, will have any other remedy or cause of
3 action under or relating to the Stalking Horse APA, including for reimbursement of any additional
4 expenses incurred by the Stalking Horse Purchaser in connection with the negotiation and
5 documentation of the Stalking Horse APA and all proceedings held in connection therewith. Any
6 Break-Up Fee shall be payable without any further order of the Bankruptcy Court.
7

8 13. The Partial Bid Deadline **shall be March 28, 2019 at 4:00 p.m. (prevailing**
9 **Pacific Time)** and the Bid Deadline shall be **April 3, 2019 at 4:00 p.m. (prevailing Pacific**
10 **Time).**

11 14. The Debtors, after consultation with the Consultation Parties (as defined in the
12 Bidding Procedures), shall have the exclusive right to determine whether a bid is a Qualified Bid
13 and shall notify Qualified Bidders whether their bids have been recognized as such as promptly as
14 practicable after a Qualified Bidder delivers all of the materials required by the Bidding
15 Procedures.
16

17 15. The Partial Bid Auction, if necessary, shall be held on **April 8, 2019 at 10:00 a.m.**
18 **(prevailing Pacific Time)** at the offices of Dentons US LLP, 601 South Figueroa Street, Suite
19 2500, Los Angeles, CA 90017, or at such other location as shall be identified in a notice filed
20 with the Bankruptcy Court at least 24 hours before the Partial Bid Auction. The Full Bid
21 Auction, if necessary, shall be held on **April 9, 2019 at 10:00 a.m. (prevailing Pacific Time)** at
22 the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017,
23 or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least
24 24 hours before the Full Bid Auction.
25

26 16. At each of the Partial Bid Auction and the Full Bid Auction, each Qualified Bidder
27 shall be required to confirm that it has not engaged in any collusion with respect to the bidding or
28

the sale, and the Auction shall be conducted openly and transcribed. Within twenty-four (24) hours following the conclusion of the Full Bid Auction, the Debtors shall file a notice identifying the Successful Bidder with the Court and shall serve such notice by fax, email, or if neither is available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

17. The Debtors, after consultation with the Consultation Parties, shall determine which offer is the highest and otherwise best offer for the Assets, giving effect to the Break-Up Fee payable to the Stalking Horse Purchaser as well as any additional liabilities or Cure Amounts to be assumed by the Stalking Horse Purchaser or another Qualified Bidder and any additional costs which may be imposed on the Debtors.

18. The Sale Hearing shall be held on **April 17, 2019 at 10:00 a.m. (prevailing Pacific Time)** before this Court, the U.S. Bankruptcy Court for the Central District of California, 255 E. Temple St., Los Angeles, California 90012. Any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a “Sale Objection”), must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 255 E. Temple St., Los Angeles, California 90012, together with proof of service, **on or before 4:00 p.m. (prevailing Pacific Time) on April 12, 2019** (the “Sale Objection Deadline”) and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon: (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the

1 Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
2 P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
3 (dsbleck@mintz.com, pricotta@mintz.com)); and (v) counsel to the Series 2015 and Series 2017
4 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis,
5 MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the “Notice
6 Parties”). If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the
7
8 objecting party may be barred from objecting to the Sale and may not be heard at the Sale
9 Hearing, and this Court may enter the Sale Order without further notice to such party.

10 19. The Sale Hearing may be adjourned from time to time without further notice to
11 creditors or parties in interest other than by announcement of the adjournment in open court on
12 the date scheduled for the Sale Hearing, and the Debtors shall have the exclusive right, in the
13 exercise of its fiduciary obligations and business judgment, and after consultation with the
14 Consultation Parties, to cancel the Sale at any time subject to the terms of this Order, in
15 accordance with the terms of this Order and the Stalking Horse APA.
16

17 20. The following forms of notice are approved: (a) the Procedures Notice, in the form
18 substantially similar to that attached hereto as Exhibit 3 and (b) the Cure Notice, in the form
19 substantially similar to that attached hereto as Exhibit 4.
20

21 20. The Debtors shall, within one (1) business day after the entry of this Order, file
22 with the Court and serve a copy of this Order and the Procedures Notice by first class mail,
23 postage prepaid, on the Notice Parties and all parties which the Debtor are require to serve
24 pursuant to LBR 6004-1(b)(3) and the *Order Granting Emergency Motion of Debtors for Order*
25 *Limiting Scope of Notice* [Dkt. No. 132].

26 21. The Debtors shall file with the Court and serve the Cure Notice (along with a copy
27 of this Motion) upon each counterparty to the Assumed Executory Contracts by no later than
28

1 **March 5, 2019**. The Cure Notice shall state the date, time and place of the Sale Hearing as well
2 as the date by which any Assumption Objection must be filed and served. The Cure Notice also
3 will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an
4 Assumed Executory Contract in order to cure any defaults that exist under such contract (the
5 “Cure Amounts”).
6

7 22. To the extent there is a contract added to the list of contracts to be assumed by the
8 Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the
9 Auction, the Motion constitutes a separate motion to assume and assign that contract to the
10 Successful Bidder pursuant to Section 365 of the Bankruptcy Code; each such contract will be
11 listed on an exhibit to the Successful Bidder’s Purchase Agreement, and shall be given a separate
12 Cure Notice filed and served by overnight delivery by the Debtors within 5 business days of the
13 conclusion of the Auction and announcement of the Successful Bidder(s).
14

15 23. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not
16 constitute or be deemed a determination or admission by the Debtors and their estates or any
17 other party in interest that such contract, lease, or other agreement is, in fact, an executory
18 contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights
19 with respect thereto shall be reserved.
20

21 24. If any counterparty to an Assumed Executory Contract wishes to file an
22 Assumption Objection, such counterparty must file and serve it so as to be actually received by
23 the Notice Parties by no later than: (i) **4:00 p.m. (prevailing Pacific Time) on March 22, 2019**,
24 (ii) such later date otherwise specified in the Cure Notice, or (iii) solely with respect to those
25 counterparties to Assumed Executory Contracts who are not served with a Cure Notice until a
26 date after March 22, 2019, seven (7) days after service by overnight mail of such Cure Notice (the
27 “Assumption Objection Deadline”), provided, however, that if any Successful Bidder is not the
28

1 Stalking Horse Purchaser, any counterparty may raise at the Sale Hearing (or any time before the
2 Sale Hearing) an objection to the assumption and assignment of the Assumed Executory Contract
3 solely with respect to such Successful Bidder's ability to provide adequate assurance of future
4 performance under the Assumed Executory Contract. The Court will make any and all
5 determinations concerning adequate assurance of future performance under the Assumed
6 Executory Contracts pursuant to Sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale
7 Hearing.

8
9 25. To the extent the Assumed Executory Contract counterparty wishes to object to the
10 Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with
11 specificity each and every asserted default in any executory contract or unexpired lease and the
12 monetary cure amount asserted by such counterparty to the extent it differs from the amount, if
13 any, specified by the Debtors in the Cure Notice.

14
15 26. Any counterparty to an Assumed Executory Contract that fails to timely file and
16 serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure
17 Amount is owed in an amount in excess of that set forth in the Cure Notice.

18
19 27. If a Contract or Lease is assumed and assigned pursuant to Court order, the
20 Assumed Executory Contract counterparty shall receive no later than three (3) business days
21 following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice. All
22 Cure Amounts will be funded in accordance with the terms and conditions of the Stalking Horse
23 APA and/or the Purchase Agreement(s), as applicable.

24
25 28. Assumption Objections (including those related to adequate assurance of future
26 performance) will be resolved by the Court at the Sale Hearing. Notwithstanding, in the event
27 that the Debtors and the counterparty cannot resolve the Cure Amount, such dispute may be
28

resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

29. The Successful Bidder(s) shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder(s) from performance of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement.

30. Except to the extent otherwise provided in a Successful Bidder's Purchase Agreement, the Debtors and their estates shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

31. All proceeds of the Sale shall be paid by the Successful Bidder(s) to the Debtors and such proceeds shall be deposited in accordance with paragraph 4 of the Final DIP Order, and all liens, claims, interests and encumbrances on the Assets sold pursuant to the Sale shall attach to the proceeds of Sale with the same force, effect, validity and priority as such liens, claims, interests and encumbrances had on such Assets prior to the Closing, subject to the liens and security interests of the DIP Lender and the Prepetition Secured Creditors under the relevant intercreditor agreements, applicable law and the Final DIP Order, as applicable.

32. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit referenced herein or with the Motion, the provisions of this Order shall control.

33. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

1 34. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062,
2 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and
3 enforceable.
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24 Date: February 19, 2019
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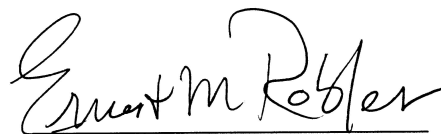

Ernest M. Robles
United States Bankruptcy Judge

Exhibit 1

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the sale of all assets of (i) the assets (the “Purchased Assets”) enumerated in the Stalking Horse APA (as defined below), including but not limited to, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center and Seton Medical Center Coastsides (collectively, the “APA Facilities”); and (ii) assets not otherwise enumerated in the APA, but associated with the ownership or operation of the APA Facilities and available for purchase (the “Other Assets”), in connection with the chapter 11 cases pending in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”), jointly administered as case number 2:18-bk-20151-ER, in the form to be approved by the Bankruptcy Court, by Order dated [____], 2019 (the “Bidding Procedures Order”).

The Debtors entered into that certain Asset Purchase Agreement, dated January 8, 2019 between the Debtors, on the one hand, and Strategic Global Management, Inc. (the “Stalking Horse Purchaser”), on the other hand, pursuant to which the Stalking Horse Purchaser shall acquire the Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse APA”). The sale transaction pursuant to the Stalking Horse APA is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the *Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 1279] (the “Sale Motion”).

I. ASSETS TO BE SOLD

The Debtors seek to complete a sale of substantially all assets of the APA Facilities, including both the Purchased Assets and the Other Assets (the “Sale”). The Stalking Horse APA will serve as the “stalking-horse” bid for the Purchased Assets.

II. THE BID PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets and/or the Other Assets, they intend to hold a sale process for the Purchased Assets and/or the Other Assets pursuant to the procedures and on the timeline proposed herein.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court or as set forth in these procedures, in order to participate in the bidding process, each person, other than the Stalking Horse Purchaser, who wishes to

participate in the bidding process must deliver, prior to the Bid Deadline (defined herein), the following Debtors:

- (a) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets and/or the Other Assets or otherwise participating in connection with such bid; and
- (b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors) in form and substance satisfactory to the Debtors and which shall inure to the benefit of any purchaser of the Purchased Assets and/or Other Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A bidder that delivers the documents and information described above and that the Debtors determine, after consultation with the Official Committee of Unsecured Creditors, the Prepetition Secured Creditors, and any other party deemed appropriate within the business judgment of the Debtors (collectively, the “Consultation Parties”) in their reasonable business judgment, is likely (based on availability of financing, experience, and other considerations) to be able to consummate the sale, will be deemed a potential bidder (“Potential Bidder”).

B. Due Diligence

The Debtors will afford any Potential Bidder such due diligence access or additional information as the Debtor, in consultation with their advisors, deem appropriate, in their reasonable discretion. The due diligence period shall extend through and including the relevant Bid Deadline; provided, however, that any bid submitted under these procedures shall be irrevocable until at least the selection of the Successful Bidder(s) (defined herein) and any Back-Up Bidder(s) (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted by a Potential Bidder will be considered a Qualified Bid (each, a “Qualified Bid”, and each such Potential Bidder thereafter a “Qualified Bidder”) only if the bid complies with all of the following requirements:

- a) it states that the applicable Qualified Bidder offers to purchase, in cash, some or all of the Purchased Assets and/or the Other Assets;
- b) it identifies with particularity the portion of the Purchased Assets and/or the Other Assets the Qualified Bidder is offering to purchase;
- c) it allocates with specificity the portion of the purchase price offered that the Qualified Bidder attributes to St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Coastside, and each of the Other Assets, respectively;⁵

⁵ For the avoidance of doubt, such allocation shall not be binding on the Debtors, their estates or any Consultation Party.

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- d) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then the offer shall remain irrevocable until the earliest of (i) the closing of the transaction with the Successful Bidder, (ii) in the case of the Successful Bidder, a termination of the Qualified Bid pursuant to the terms of the Successful Bidder Purchase Agreement and (iii) with respect to the Back-up Bidder, the date that is thirty (30) business days after entry of the Sale Order;
- e) it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal governance and shareholder approvals have been obtained prior to the bid;
- f) it sets forth each third-party, regulatory and governmental approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals and establishes a substantial likelihood that the Qualified Bidder will obtain such approvals by the stated time period;
- g) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse APA (a "Purchase Agreement"), including the purchase price for some or all of the Purchased Assets and/or the Other Assets, or both, expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse APA ("Marked Agreement");
- h) it is not subject to any financing contingency and includes written evidence of a firm ability to have the funding necessary to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination, in consultation with the Consultation Parties, as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- i) if the bid is for all of the Purchased Assets, it must have a value to the Debtors, in the Debtors' exercise of its reasonable business judgment, after consultation with its advisors and the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse APA, plus (i) the amount of the Break-Up Fee (\$19,825,000.00); (ii) the amount of the expense reimbursement (\$2,000,000.00); and (iii) \$7,000,000.00 (the "Initial Bidding Increment," and, together with the Break-Up Fee, the "Minimum Qualified Bid");
- j) if the bid is a partial bid (the "Partial Bid"),⁶ the terms of paragraph (i) immediately above shall not apply but the terms of paragraph (o) below concerning the Good Faith Deposit shall expressly apply in order to be a bid qualified to participate in the Partial Bid Auction (as defined below) (each, a "Partial Bid Auction Qualified Bid"). In the event that the Debtors aggregate Partial Bids, the Partial Bid purchasers' responsibility for the Break-Up Fee, the Expense Reimbursement, and the Initial Bidding Increment shall be reasonably allocated to each Partial Bid purchaser, and (ii) in no event shall the Stalking Horse Purchaser be entitled to more than one Break-Up Fee and/or Expense Reimbursement;
- k) it identifies with particularity which (i) executory contracts and unexpired leases the Qualified Bidder wishes the Debtors to assume and assign to it, and (ii)

⁶ A Partial Bid shall mean a bid for less than all of the Purchased Assets.

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- 1 Purchased Assets and/or Other Assets, subject to purchase money liens or the like,
2 the Qualified Bidder wishes to acquire and therefore pay the associated purchase
money financing;
- 3 l) it contains sufficient information concerning the Qualified Bidder's ability to
4 provide adequate assurance of performance with respect to executory contracts and
unexpired leases;
- 5 m) it includes an acknowledgement and representation that the Qualified Bidder: (A)
6 has had an opportunity to conduct any and all required due diligence regarding the
7 Purchased Assets and/or Other Assets prior to making its offer and that the offer is
8 not subject to any further due diligence or the need to raise capital/financing to
9 consummate the proposed transaction; (B) has relied solely upon its own
independent review, investigation and/or inspection of any documents and/or the
10 Purchased Assets and/or Other Assets in making its bid; (C) did not rely upon any
11 written or oral statements, representations, promises, warranties or guaranties
12 whatsoever, whether express or implied (by operation of law or otherwise),
regarding the Purchased Assets and/or Other Assets or the completeness of any
13 information provided in connection therewith or with the relevant Auction
(defined below), except as expressly stated in the Purchase Agreement; and (D) is
14 not entitled to any expense reimbursement, break-up fee, or similar type of
payment in connection with its bid;
- 15 o) unless it is a Credit Bid (as defined below), it is accompanied by a (i) good faith
16 deposit in the form of a wire transfer (to a bank account specified by the Debtors),
certified check or such other form of cash or cash equivalent acceptable to the
17 Debtors, payable to the order of the Debtors (or such other party as the Debtors
may determine) in an amount equal to: (a) 20% of purchase price for bids under \$5
18 million; (b) for bids greater than \$5 million and less than \$100 million, the greater
of: (i) \$1 million or (ii) 10% of purchase price; (c) for bids greater than \$100
19 million, the greater of (i) \$10 million or (ii) 5% of purchase price (collectively, the
"Good Faith Deposit"), which Good Faith Deposit shall, be forfeited if such bidder
is the Successful Bidder and breaches its obligation to close; and (ii) if the
20 Qualified Bid is a bid made by a secured creditor of the Debtors (a "Credit Bid
Bidder") who intends to make a credit bid (each, a "Credit Bid Bidder"), evidence of
(a) the basis for and property covered by such Credit Bid Bidder's secured claim,
(b) the amount of such Credit Bid Bidder's claim that is secured by the property in
21 question, (c) whether it is the senior secured claim on the property (x) prepetition
and (y) as of the date of the request to be a Qualified Bidder, as well as (d)
22 evidence of the resolution of any Challenge to such Credit Bid Bidder's secured
claim within the meaning of the Final DIP Order;
- 23 p) it contains a detailed description of how the Qualified Bidder intends to treat
24 current employees of the Debtors;
- 25 r) it identifies the person(s) and their title(s) who will attend the relevant Auction,
26 and confirms that such person(s) have authority to make binding Overbids (defined
below) at such Auction;
- 27 s) it contains such other information reasonably requested by the Debtors; and
- 28 t) it is received prior to the Bid Deadline.

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The Debtors, in consultation with the Consultation Parties (who shall receive copies of the Purchase Agreement relating to any bids cast pursuant to these Bidding Procedures as soon as reasonably practicable), may qualify any bid that meets the foregoing requirements as a Qualified Bid. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse APA is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

The Debtors shall notify the Consultation Parties, the Stalking Horse Purchaser and all Qualified Bidders and the Notice Parties in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating any such Qualified Bid to the Consultation Parties, the Stalking Horse Purchaser and such Qualified Bidders and the Notice Parties on the earlier of: (1) the date that any bid other than the Stalking Horse Bid has been deemed a Qualified Bid, or (2) two business days prior to the Partial Bid Auction.

D. Bid Deadline

A Qualified Bidder that desires to make a bid or a Partial Bid will deliver written copies of its bid or Partial Bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors' Investment Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); and (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com)), so as to be received by the Notice Parties not later than **March 28, 2019, at 4:00 p.m.** (prevailing Pacific Time), for partial bids (the "Partial Bid Deadline") or **April 3, 2019, at 4:00 p.m.** (prevailing Pacific Time), for full bids (the "Full Bid Deadline").

A list of all Qualified Bids, as well as all adequate assurance information included in such bids as required by paragraph C(l) above, will be provided to Cigna and United (through their counsel) no later than April 4, 2018, at 4:00 p.m. (prevailing Pacific Time) to allow those parties to evaluate Qualified Bidders related to adequate assurance of future performance of the Cigna and United provider agreements.

E. Credit Bidding

Any party with a valid, properly perfected security interest in any of the Assets may credit bid for the Assets in connection with the Sale pursuant to § 363(k) of the Bankruptcy Code.

Any credit bids made by secured creditors shall not impair or otherwise affect the Stalking Horse Purchaser's entitlement to the Bidding Procedures and related protections granted under the Bidding Procedures Order.

1 **F. Evaluation of Competing Bids**

2 A Qualified Bid will be valued based upon several factors including, without limitation: (i) the
3 amount of such bid; (ii) the risks and timing associated with consummating such bid; (iii) any
4 proposed revisions to the form of Stalking Horse APA; and (iv) any other factors deemed relevant
5 by the Debtors in its reasonable discretion, in consultation with the Consultation Parties,
6 including the amount of cash included in the bid.

7 **G. No Qualified Bids**

8 If the Debtors do not receive any Qualified Bids other than the Stalking Horse APA, the Debtors
9 will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder
10 for the Assets. If the Debtors receive one or more qualified Partial Bid Auction Qualified Bids
11 and, after the Partial Bid Auction, the Debtors will determine, in consultation with the
12 Consultation Parties, if there are any Partial Bidders that will not be qualified to participate at the
13 Full Bid Auction.

14 **H. Auction Process**

15 If the Debtors receive one or more Partial Bid Auction Qualified Bids, the Debtors will conduct
16 separate auctions of each asset or combinations thereof (each, a "Partial Bid Auction"). Any
17 Partial Bidder holding a Partial Bid Auction Qualified Bid shall be entitled to bid on any assets in
18 any Partial Bid Auction(s). The procedures below shall apply to the Partial Bid Auction, except
19 as where otherwise indicated. The Debtors will conduct the Partial Bid Auction(s), which shall
20 be transcribed on **April 8, 2019, at 10:00 a.m. (prevailing Pacific Time)** (the "Partial Bid
21 Auction Date"), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los
22 Angeles, California 90017, or such other location as shall be timely communicated to all entities
23 entitled to attend the Auction.

24 The Partial Bid Auction Qualified Bids determined by the Debtors, in consultation with the
25 Consultation Parties, at the Partial Bid Auction(s) (as set forth above) to be eligible to participate
26 at the Full Bid Auction, including (without limitation) the highest and best bids for each asset (the
27 "Winning Partial Bids") shall be permitted to participate in the Full Bid Auction (as defined
28 below) of the Purchased Assets and/or the Other Assets, except that:

- 29 (a) If the Partial Bids, at the conclusion of the Partial Bid Auction, include all four
30 APA Facilities and exceed, in the aggregate, the Purchase Price in the Stalking
31 Horse APA, there will be a Full Bid Auction (as defined below) and (1) the
32 Stalking Horse Purchaser may overbid in the aggregate for all four APA Facilities,
33 or (2) the Stalking Horse Purchaser may bid for less than the four APA Facilities
34 and be entitled to a pro-rata Break-Up Fee for the APA Facilities which the
35 Stalking Horse Purchaser does not acquire, as specified in the Stalking Horse APA
36 at 6.1(b)(2);
- 37 (b) If the Partial Bids do not include all four APA Facilities, and if there are no other
38 Qualified Full Bids, then Seller, in its discretion, after consultation with the
39 Consultation Parties, may choose, at the conclusion of the Partial Bid Auction, (1)
40 to have no Full Bid Auction and the Stalking Horse Purchaser will purchase the
41 four APA Facilities pursuant to the Stalking Horse APA, or (2) if the Debtor and

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Consultation Parties deem the aggregate designated Winning Partial Bid(s) to be sufficient to warrant leaving one or more APA Facilities behind (the “Remaining Facility”), the Stalking Horse Purchaser shall have the option of (i) acquiring the Remaining Facility at the allocated price in the Stalking Horse APA, (ii) overbidding one or more of the Partial Bids, or (iii) terminating the Stalking Horse APA. In either event, the Stalking Horse Purchaser shall be entitled to the Break-Up Fee for all of the APA Facilities not acquired by the Stalking Horse Purchaser.

If the Debtors receive, in addition to the Stalking Horse APA, one or more Qualified Full Bids (and/or a combination of Winning Partial Bids from the Partial Bid Auction(s) seeking, on an aggregate basis, to purchase all or substantially all of the Purchased Assets and/or the Other Assets), the Debtor will conduct a full bid auction of the Purchased Assets and/or the Other Assets (the “Full Bid Auction”), which shall be transcribed, on **April 9, 2019, at 10:00 a.m. (prevailing Pacific Time)** (the “Full Bid Auction Date”), at the offices of Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Partial Bid Auction and the Full Bid Auction shall run in accordance with the following procedures:

- a) only the Debtors, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, the U.S. Trustee, and the Consultation Parties, and their respective advisors, and other parties who request and receive authority to attend the auction in advance from the Debtors may attend the Auction;
- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the relevant Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the relevant Auction; provided that all Qualified Bidders wishing to attend the relevant Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the relevant Auction in person;
- e) the Debtors, after consultation with the Consultation Parties, the Stalking Horse Purchaser, and any other Qualified Bidders may employ and announce at the relevant Auction additional procedural rules that are (i) reasonable under the circumstances for conducting the relevant Auction, (ii) in the best interest of the Debtors’ estates; provided, however, that rules (i) are disclosed to the Stalking Horse Purchaser and each Qualified Bidder participating in the Auction, and (ii) are not inconsistent with the Bidding Procedures, the Stalking Horse APA, the Bankruptcy Code, or any order of the Court entered in connection herewith;
- f) bidding at the relevant Auction will begin with a bid determined by the Debtors after consulting with the Consultation Parties as being the then highest and best bid which will be announced by the Debtors prior to the commencement of the Auction (the “Baseline Bid”). The Auction will continue in bidding increments to be determined in the discretion of the Debtors, in consultation with the Consultation Parties (each a “Overbid”), and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders who submitted Qualified

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Bids and are in attendance at the Auction (including, without limitation, Winning Partial Bids), as well as to the Notice Parties;

g) the initial Overbid, if any, shall provide for total consideration to Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount. Additional consideration in excess of the amount set forth in the respective Baseline Bid must include: (i) cash and/or (ii) in the case of a Qualified Bidder (including, without limitation, with respect to any Winning Partial Bids) that is a Credit Bid Bidder that has a valid and perfected lien (not subject to a Challenge within the meaning the Final DIP Order) on any of the Purchased Assets and/or the Other Assets, a Credit Bid of up to the full amount of such Credit Bidder's allowed perfected lien, subject to § 363(k) and any other restrictions set forth herein; and

h) at the Full Bid Auction, the Stalking Horse Purchaser may, subject to the terms and conditions set forth herein, elect to bid for the Purchased Assets as described in the Bid Procedures Order. In the alternative, the Stalking Horse Purchaser, and any bidder with a Qualified Full Bid, (a) may elect to bid against any one or more of the Winning Partial Bidders for the assets subject to the relevant Partial Bid(s), in lieu of seeking to acquire such Purchased Assets and/or Other Assets by means of the Stalking Horse Bid or another Qualified Full Bid; and (b) if successful with its Overbids for such assets, replace the Winning Partial Bidder(s) as the proponent of the relevant Winning Partial Bids or Aggregate Winning Partial Bid as to such assets. In the event that the Stalking Horse Purchaser or another bidder so elects, and as long as the Stalking Horse Purchaser or another bidder so bids, the Winning Partial Bidders must continue to present qualified Winning Partial Bids (i.e., bids as to which the aggregate of all still pending Winning Partial Bids is greater than or equal to the then Prevailing Highest Bid) for the Purchased Assets and/or the Other Assets in each round to continue to bid as Winning Partial Bidders in the Full Bid Auction. In addition, the Debtors may elect, in their discretion, after consultation with the Consultation Parties, to allow Partial Bidders to bid for all or substantially all the Purchased Assets and/or the Other Assets, or to allow proponents of Full Bids to bid for less than all or substantially all of the Purchased Assets and/or the Other Assets in any given round of the Auction, provided that in any given round there is a Full Bid or an Aggregate Partial Bid that is superior to Prevailing Highest Bid that is then subject to acceptance by the Debtors and binding on the Stalking Horse Purchaser or another Qualified Bidder. In all events, (i) any such Overbid shall continue to comply with all of the requirements for Qualified Bids set forth in Section C of these Bidding Procedures; and (ii) the bidder submitting such a modified Qualified Bid or Qualified Partial Bid shall furnish to the Debtors and the Consultation Parties, within twenty-four (24) hours of the conclusion of the Auction, a revised Purchase Agreement and Marked Agreement showing all amendments and modifications to the Stalking Horse APA and the Sale Order.

I. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors and the Consultation Parties, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid, collectively, the "Successful Bidder"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The Successful Bid may consist of a single Qualified Bid or multiple bids.

1 The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be
2 subject to approval by the Court.

3 If selected, at the conclusion of the Partial Bid Auction, as the Winning Partial Bidder or the
4 Back-Up Bidder, then such party or parties, prior to the Full Bid Auction, shall increase its Good
5 Faith Deposit in the amount set forth in above in paragraph 30, subsection (o), or as determined
6 by the Seller in consultation with the Consultation Parties; provided, however, if a party or parties
7 are bidding on all four APA Facilities, the deposit will be no less than \$30,000,000. If selected as
8 the Successful Bidder or the Back-Up Bidder at the conclusion of the Full Bid Auction, each of
9 the Successful Bidder and the Back-Up Bidder shall, within forty-eight (48) hours, increase its
10 Good Faith Deposit to the sum of five percent (5%) of the Successful Bid or Back-Up Bid, as
11 applicable. If the Successful Bidder fails to increase the Good Faith Deposit within forty-eight
12 (48) hours of the Auction conclusion date (the "Final Deposit"), then (1) the Successful Bidder
13 forfeits its Good Faith Deposit, and (2) the Successful Bid is nullified (i.e., the Back-Up Bidder
14 becomes the Successful Bidder in the amount of its last bid).

15 Unless otherwise agreed to by the Debtors and the Successful Bidder, within two (2) business
16 days after the conclusion of the Auction, the Successful Bidder shall complete and execute all
17 agreements, contracts, instruments, and other documents evidencing and containing the terms and
18 conditions upon which the Successful Bid was made. Within twenty-four (24) hours following
19 the conclusion of the Full Bid Auction, and within forty-eight (48) hours following the conclusion
20 of the Partial Bid Auction, the Debtors shall file a notice identifying the Successful Bidder(s) and
21 Back-Up Bidders with the Court and shall serve such notice by fax, email, or if neither is
22 available, by overnight mail to all counterparties whose contracts are to be assumed and assigned.

23 The Debtors will sell the Purchased Assets and (to the extent included in an Overbid) the Other
24 Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of
25 such Successful Bid by the Court at the Sale Hearing and satisfaction of any other closing
26 conditions set forth in the Successful Bidder's Purchase Agreement.

27 **J. Return of Deposits**

28 All deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder
or the Back-Up Bidder no later than five (5) business days following the conclusion of the
Auction.

K. Back-Up Bidder

If an Auction is conducted (whether it be a Full Bid Auction or a Partial Bid Auction), the
Qualified Bidder or Qualified Bidders (including the Stalking Horse Purchaser, subject to Section
II H.(b) hereof) with the next highest or otherwise best Qualified Bid, as determined by the
Debtors in the exercise of their business judgment, at the Auction shall be required to serve as a
back-up bidder (the "Back-Up Bidder") and keep such bid open (whether it be a Partial Bid or
Full Bid) and irrevocable for thirty (30) business days after the entry of the Sale Order (the
"Thirty Day Period"). If during the Thirty-Day Period, the Successful Bidder fails to
consummate the approved sale because of a breach or failure to perform on the part of such
Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the
Debtors will be authorized, but not required, to consummate the sale with the Back-Up Bidder
without further order of the Court provided that the Back-Up Bidder shall thereafter keep such bid

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1 open and irrevocable in accordance with the terms of the Back-Up Bidder APA; provided further,
2 however, that if the Back-Up Bidder is the Stalking Horse Purchaser, the Debtors will be
3 authorized and required to consummate the sale to the Stalking Horse Purchaser in accordance
4 with the terms of the Stalking Horse APA, as such terms may (at the discretion of the Stalking
Horse Purchaser) have been modified as a result of the Full Bid Auction or the Partial Bid
Auction.

5 If, after the Thirty-Day Period, the Successful Bidder has failed to consummate the approved sale,
6 the Back-Up Bidder (including the Stalking Horse Purchaser if it has been designated the Back-
Up Bidder) may elect, in its discretion, to remain as the Back-Up Bidder until (a) the sale closes,
7 (b) the Successful Bidder defaults, or (c) the Back-Up Bidder elects to terminate its participation
8 as Back-Up Bidder. For the avoidance of doubt, after the Thirty-Day Period, if the Successful
Bidder fails to consummate the approved sale because of a breach or failure to perform on the
9 part of such Successful Bidder, the Back-Up Bidder will not be contractually obligated to be the
Back-Up Bidder, and will have the option to either (i) be entitled to terminate its Back-Up Bidder
10 APA and the return of its deposit, or (ii) remain as the Back-up Bidder, in which event, there will
be no reopening of the auction.

11 **L. Break-Up Fee**

12 In recognition of this expenditure of time, energy, and resources, the Debtors have agreed that if
13 the Stalking Horse Purchaser is not the Successful Bidder as to the Assets, the Debtors will pay
the Stalking Horse Purchaser at closing of the sale of the Assets an amount in cash equal to three
14 percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably
documented reasonable costs and expenses in an amount not to exceed \$2,000,000.00. The
15 Break-Up Fee shall be payable at closing of the sale from the sale proceeds.

16 If the Stalking Horse APA is terminated because the Stalking Horse Purchaser is not selected as
17 the Successful Bidder or the Back-Up Bidder at Auction (or the Stalking Horse Purchaser is
selected as the Back-Up Bidder but the sale of the Assets is consummated and closed with
18 another entity), the Debtors shall pay to the Stalking Horse Purchaser the Break-Up Fee by wire
transfer of immediately available funds immediately, and contemporaneous with, the closing of
19 the sale of the Assets from the first cash proceeds thereof. The Break-Up Fee shall constitute an
administrative expense claim with priority under Section 507(a) of the Bankruptcy Code in favor
20 of the Stalking Horse Purchaser.

21 **III. Sale Hearing**

22 The Debtors will seek entry of the Sale Order from the Court at the Sale Hearing to begin at
23 **10:00 a.m. Pacific Time on April 17, 2019** (or at another date and time convenient to the Court)
to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions
24 determined in accordance with the Bidding Procedures.

25 At the Sale Hearing, the Debtors will seek Court approval of the Sale to the Successful Bidder,
26 (or, in the event the Successful Bidder fails to close, the Back-Up Bidder), free and clear of all
liens, claims, interests, and encumbrances pursuant to § 363 of the Bankruptcy Code, with all
27 liens, claims, interests, and encumbrances to attach to the sale proceeds with the same validity
and in the same order of priority as they attached to the Purchased Assets (and to the extent
28 included in the Successful Bid, the Other Assets prior to the Sale), including the assumption by

1 the Debtors and assignment to the Successful Bidder of the Assumed Executory Contracts and
2 Leases pursuant to Section 365 of the Bankruptcy Code. The Debtors will submit and present
3 additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair,
4 reasonable, and in the best interest of the Debtors' estates and all interested parties, and satisfies
5 the standards necessary to approve a sale of the Purchased Assets and/or the Other Assets.

6 **IV. Reservation**

7 The Debtors reserve the right, as they may determine in their discretion and in accordance with
8 their business judgment to be in the best interest of their estates, in consultation with their
9 professionals and the Consultation Parties to: (i) modify the Bidding Procedures to discontinue
10 incremental bidding and then require that any and all bidders or potential purchasers must submit
11 their sealed, highest and best offer for the Purchased Assets and/or Other Assets; (ii) determine
12 which Qualified Bid is the highest or otherwise best bid and which is the next highest or
13 otherwise best bid; (iii) waive terms and conditions set forth herein with respect to all Potential
14 Bidders; (iv) impose additional terms and conditions with respect to all Potential Bidders; (v)
15 extend the deadlines set forth herein; (vi) continue or cancel the Auction and/or Sale Hearing in
16 open court without further notice; and (vii) implement additional procedural rules that the Debtors
17 determine, in their reasonable business judgment and in consultation with the Consultation Parties
18 will better promote the goals of the bidding process; provided that such modifications are
19 disclosed to each Qualified Bidder participating in the Auction; provided, however, and
20 notwithstanding the foregoing, these Bid Procedures shall not be modified so as to alter,
21 extinguish or modify any rights or interests of the Stalking Horse Purchaser expressly set forth
22 herein or in the Stalking Horse APA.
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Exhibit 2

(Significant Dates)

• Service of Notice of Sale Hearing:	March 1, 2019
• Service of Assumption/Cure Notice:	March 5, 2019
• Assumption/Cure Objection Deadline:	March 22, 2019 at 4:00 p.m. (Pacific Time)
• Partial Bid Deadline:	March 28, 2019 at 4:00 p.m. (Pacific Time)
• Full Bid Deadline:	April 3, 2019 at 4:00 p.m. (Pacific Time)
• Partial Bid Auction:	April 8, 2019 at 10:00 a.m. (Pacific Time)
• Full Bid Auction:	April 9, 2019 at 10:00 a.m. (Pacific Time)
• Notice of Results of Auction & Memorandum	April 10, 2019 at 10:00 a.m. (Pacific Time)
• Service of Notice of Contracts/Leases to be Assumed and Assigned:	April 11, 2019 at 10:00 a.m. (Pacific Time)
• Sale Objection Deadline:	April 12, 2019 at 4:00 p.m. (Pacific Time)
• Assumption and Assignment Objection Deadline:	April 12, 2019 at 4:00 p.m. (Pacific Time)
• Reply Deadline:	April 15, 2019 at 4:00 p.m. (Pacific Time)
• Sale Hearing:	April 17, 2019 at 10:00 a.m. (Pacific Time)

Exhibit 3

(Procedures Notice)

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

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

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Jointly Administered With:

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

**NOTICE OF SALE PROCEDURES,
AUCTION DATE, AND SALE HEARING**

PLEASE TAKE NOTICE that on January 17, 2019, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free*

1 *and Clear of All Claims, Liens and Encumbrances* (the “Motion”).⁷ The Debtors seek, among
2 other things, to sell all assets of St. Francis Medical Center, St. Vincent Medical Center, St.
3 Vincent Dialysis Center, Inc., Seton Medical Center and Seton Medical Center Coastsides (the
4 “Assets”) to the successful bidder(s) (the “Successful Bidder”), at an auction free and clear of all
liens, claims, encumbrances and other interests pursuant to Sections 363 and 365 of the
Bankruptcy Code.

5 **PLEASE TAKE FURTHER NOTICE** that, on [DATE], the Bankruptcy Court entered
6 an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the
7 “Bidding Procedures”), which set the key dates and times related to the Sale of the Assets. All
8 interested bidders should carefully read the Bidding Procedures Order and the Bidding
9 Procedures. To the extent that there are any inconsistencies between the Bidding Procedures
Order (including the Bidding Procedures) and the summary description of its terms and
conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

10 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding
11 Procedures, a partial bid auction (the “Partial Bid Auction”) to sell the Assets will be conducted
12 on **April 8, 2019, at 10:00 a.m. (prevailing Pacific Time)** at the offices of Dentons US LLP, 601
13 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or at such other location as
shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Partial
Bid Auction. Within forty-eight (48) hours of the conclusion of the Partial Bid Auction, the
Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding
15 Procedures, a full bid auction (the “Full Bid Auction”) to sell the Assets will be conducted on
16 **April 9, 2019 at 10:00 a.m. (prevailing Pacific Time)** at the offices of Dentons US LLP, 601
17 South Figueroa Street, Suite 2500, Los Angeles, California 90017, or at such other location as
18 shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Full Bid
Auction. Within twenty-four (24) hours of the conclusion of the Full Bid Auction, the Debtors
shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

19 **PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the sale of
20 the Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Ernest Robles,
21 United States Bankruptcy Judge, United States Bankruptcy Court for the Central District of
22 California, 255 E. Temple St., Los Angeles, California 90012, Courtroom 1568, on **April 17,**
23 **2019 at 10:00 a.m. (prevailing Pacific Time)**, or at such time thereafter as counsel may be heard
24 or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be
25 adjourned from time to time without further notice to creditors or parties in interest other than by
26 announcement of the adjournment in open court on the date scheduled for the Sale Hearing.
27 Objections to the Sale shall be filed with the Bankruptcy Court and served **so as to be received
no later than 4:00 p.m. (prevailing Pacific Time) on April 12, 2019** by: (i) counsel to the
Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn:
Tania M. Moyron (taniamoyron@dentons.com)); (ii) the Debtors’ Investment Banker: Cain
Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400, San Francisco,
CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to the Official
Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd Floor, Los

28 ⁷ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
Motion.

Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the “Notice Parties”); (vi) counsel to the Stalking Horse Purchaser: Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067 (Attn: Gary E. Klausner, Esq. (GEK@lnbyb.com)); and (vii) the Office of the United States Trustee (the “U.S. Trustee”): 915 Wilshire Blvd., Suite 1850, Los Angeles, California 90017 (Attn: Hatty Yip (Hatty.Yip@usdoj.gov)).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion, the Bidding Procedures Order (including all exhibits thereto), the Bidding Procedures, and the Stalking Horse APA, may make such a request in writing to Dentons US LLP, Attn: Samuel R. Maizel, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017 or by emailing samuel.maizel@dentons.com or by calling (213) 892-2910.

Dated: _ __, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By: _____

Attorneys for the Chapter 11 Debtors and
Debtors In Possession

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit 4

(Cure Notice)

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF THE DEBTORS
THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on January 17, 2019, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Notice of Motion and Motion for the Entry of (1) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory*

1 *Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free*
2 *and Clear of All Claims, Liens and Encumbrances (the “Motion”).*⁸

3 **PLEASE TAKE FURTHER NOTICE** that, on [DATE], the Court entered an Order (the
4 “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in
5 the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of
6 certain assets (the “Assets”) of the Debtors and (ii) procedures for the assumption and assignment
7 of certain of the Debtors’ executory contracts and unexpired leases.

8 **PLEASE TAKE FURTHER NOTICE** that the Motion also seeks Court approval of the
9 sale (the “Sale”) of the Assets to the Successful Bidder(s), free and clear of all liens, claims,
10 interests and encumbrances pursuant to Section 363 of the Bankruptcy Code, including the
11 assumption by the Debtors and assignment to the buyer(s) of certain executory contracts and
12 unexpired leases pursuant to Section 365 of the Bankruptcy Code (the “Executory Contracts
13 Subject to Assumption”), with such liens, claims, interests and encumbrances to attach to the
14 proceeds of the Sale with the same priority, validity and enforceability as they had prior to such
15 Sale. Within forty eight (48) hours following the conclusion of the Auction, the Debtors shall file
16 a notice identifying the Successful Bidder(s) with the Bankruptcy Court and serve such notice by
17 fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.
18 Any counterparty to an Executory Contracts Subject to Assumption that wishes to receive such
19 notice by email or fax, must provide their email address or fax number to Dentons US LLP, Attn:
20 Samuel R. Maizel by emailing samuel.maizel@dentons.com or calling (213) 892-2910 before the
21 Auction.

22 **PLEASE TAKE FURTHER NOTICE** that an evidentiary hearing (the “Sale Hearing”) to
23 approve the Sale and authorize the assumption and assignment of the Assumed Executory
24 Contracts will be held on **April 17, 2019 at 10:00 a.m. (prevailing Pacific Time)**, before the
25 United States Bankruptcy Court for the Central District of California, 255 E. Temple St., Los
26 Angeles, California 90012, Courtroom 1568. The Sale Hearing may be adjourned from time to
27 time without further notice to creditors or parties in interest other than by announcement of the
28 adjournment in open court on the date scheduled for the Sale Hearing.

29 **PLEASE TAKE FURTHER NOTICE** that, consistent with the Bidding Procedures
30 Order, the Debtors may seek to assume an executory contract or unexpired lease to which you
31 may be a party. The Executory Contracts Subject to Assumption are described on Exhibit A
32 attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the
33 amount, if any, which the Debtors assert is owed to cure any defaults existing under the Assumed
34 Executory Contract.

35 **PLEASE TAKE FURTHER NOTICE** that if you disagree with the Cure Amount
36 shown for the Executory Contract(s) Subject to Assumption on Exhibit A to which you are a
37 party, you must file in writing with the United States Bankruptcy Court for the Central District of
38 California, 255 E. Temple St., Los Angeles, California 90012, an objection on or before **March**
39 **22, 2019 at 4:00 p.m. (prevailing Pacific Time)**. Any objection must set forth the specific
40 default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease
41 is assumed and assigned pursuant to a Court order approving same, then unless you properly file

42 ⁸ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the
43 Motion.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 and serve an objection to the Cure Amount contained in this Notice, you will receive at the time
2 of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set
3 forth herein, if any. Any counterparty to an Executory Contract Subject to Assumption that fails
4 to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting
that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached
Exhibit A.

5 **PLEASE TAKE FURTHER NOTICE** that if you have any other objection to the
6 Debtors' assumption and assignment of the Executory Contract Subject to Assumption (including
7 an objection based on adequate assurance of future performance by the Stalking Horse Purchaser⁹
8 under the Assumed Executory Contract) to which you may be a party, you also must file that
objection in writing no later than **4:00 p.m. (prevailing Pacific Time) on April 12, 2019**
9 provided, however, that if any Successful Bidder is not the Stalking Horse Purchaser, any
counterparty to an Executory Contract Subject to Assumption may raise an objection to the
10 assumption and assignment of the Executory Contracts Subject to Assumption solely with respect
to such Successful Bidder's ability to provide adequate assurance of future performance under the
Assumed Executory Contract at the Sale Hearing, or any time before the Sale Hearing.

11 **PLEASE TAKE FURTHER NOTICE** that any objection you may file must be served
12 so as to be received by the following parties by the applicable objection deadline date and time:
13 (i) counsel to the Debtors: Dentons US LLP, 601 S. Figueroa Street, Suite 2500, Los Angeles, CA
90017 (Attn: Tania M. Moyron (tania.moyron@dentons.com)); (ii) the Debtors' Investment
14 Banker: Cain Brothers, a division of KeyBanc Capital Markets, 1 California Street, Suite 2400,
San Francisco, CA 94111 (Attn: James Moloney (jmoloney@cainbrothers.com)); (iii) counsel to
15 the Official Committee: Milbank, Tweed, Hadley & McCloy LLP, 2029 Century Park East, 33rd
Floor, Los Angeles, CA 90067 (Attn: Gregory A. Bray (gbray@milbank.com)); (iv) counsel to the
16 Master Trustee and Series 2005 Bond Trustee: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck and Paul Ricotta
17 (dsbleck@mintz.com, pricotta@mintz.com)); (v) counsel to the Series 2015 and Series 2017
Notes Trustee: Maslon, LLP, 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis,
18 MN 55402 (Attn: Clark Whitmore (clark.whitmore@maslon.com) (collectively, the "Notice
19 Parties"); (vi) counsel to the Stalking Horse Purchaser: Levene, Neale, Bender, Yoo & Brill
L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067 (Attn: Gary E. Klausner,
20 Esq. (GEK@lnbyb.com); and (vii) the Office of the United States Trustee (the "U.S. Trustee"): 915
Wilshire Blvd., Suite 1850, Los Angeles, California 90017 (Attn: Hatty Yip
21 (Hatty.Yip@usdoj.gov)).

22 **PLEASE TAKE FURTHER NOTICE** that the Successful Bidder shall be responsible
23 for satisfying any requirements regarding adequate assurance of future performance that may be
imposed under §§ 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in connection
24 with the proposed assignment of any Assumed Executory Contract. The Court shall make its
determinations concerning adequate assurance of future performance under the Assumed
25 Executory Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

26 **PLEASE TAKE FURTHER NOTICE** that Assumption Objections may be resolved by
27 the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

28
⁹ The Stalking Horse Purchaser is Strategic Global Management, Inc.

1 **PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in
2 the Purchase Agreement with the Successful Bidder(s), pursuant to § 365(k) of the Bankruptcy
3 Code, the Debtors and their estates shall be relieved of all liability accruing or arising after the
effective date of assumption and assignment of the Assumed Executory Contracts.

4 **PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the
5 Debtors to assume any Assumed Executory Contracts or to pay any Cure Amount.¹⁰

6 **PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE**
7 **AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE**
8 **RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.**

9 **ANY COUNTERPARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO**
10 **DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH**
11 **ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO**
12 **SUCH CURE AMOUNT.**

13 Dated: ____, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

14 By: _____

15 Attorneys for the Chapter 11 Debtors and
16 Debtors In Possession

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27 ¹⁰ “Executory Contracts Subject to Assumption” are those Contracts and Leases that the Debtors believe
28 may be assumed and assigned as part of the orderly transfer of the Assets; however, the Successful
Bidder may choose to exclude certain of the Debtors’ Contracts or Leases from the list of Assumed
Executory Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be
assumed by the Debtors.

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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Exhibit A

(Assumed Executory Contracts)

EXHIBIT 11

EXHIBIT 1

PART 1

EXHIBIT 1

PART 1

ASSET PURCHASE AGREEMENT

By and Among

Verity Health System of California, Inc., Verity Holdings, LLC,

**St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc.,
Seton Medical Center**

and

Strategic Global Management, Inc.

Dated January 8, 2019

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the 8th day of January, 2019 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), St. Francis Medical Center, a California nonprofit public benefit corporation (“**St. Francis**”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“**St. Vincent**”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“**St. Vincent Dialysis**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” and together with St. Francis Medical Center, St. Vincent Medical Center and St. Vincent Dialysis, collectively, the “**Hospital Sellers**”) (Verity, Verity Holdings, St. Francis, St. Vincent, St. Vincent Dialysis and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and Strategic Global Management, Inc., a California corporation (“**Purchaser**”).

RECITALS:

A. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis (collectively, the “**St. Francis Hospital**”).

B. St. Vincent engages in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent (collectively, the “**St. Vincent Hospital**”).

C. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Hospital**”) and (ii) the hospital known as Seton Medical Center Coastsides, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Coastsides Hospital**”) and together with the St. Francis Medical Center Hospital, the St. Vincent Medical Center Hospital and the Seton Hospital, the “**Hospitals**”; the business of the operation of the Hospitals is referred to herein as the “**Businesses**”).

D. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Sellers and used with respect to the Businesses, for the consideration and upon the terms and conditions contained in this Agreement.

E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastsides Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastsides Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

be credited against the Purchase Price. Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally-insured financial institution mutually acceptable to Purchaser and Sellers. In addition, on the Signing Date, Purchaser shall deliver to Sellers executed letters from its financing sources, in form and substance satisfactory to Sellers in their discretion.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) promptly but no later than ten (10) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by each Seller, with respect to the Assets;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3, together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.5 favorable original certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below);

1.4.8 a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Businesses, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

1.4.9 acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date, and

1.4.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing. At or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 favorable original certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.7 the Assumption Agreement, duly executed by Purchaser;

1.5.8 the License Agreement referenced in Section 1.7(q);

1.5.9 the Transition Services Agreement; and

1.5.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments, other than the PACE Special Assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by any Seller, pay to such Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Sellers shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but uncollected as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

to the operation of the Hospital of such Hospital Seller that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

(e) other than the Excluded Settlements and Actions (defined below), all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by such Seller or such Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases and other items described in Section 1.8(h);

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Hospital of such Seller or (ii) used in the operation of the Hospital of such Seller (the “**Inventory**”) except as set forth in Section 1.8(e);

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and prepaid taxes) and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Hospital of such Hospital Seller (the “**Prepays**”);

(h) to the extent assignable or transferrable, all of the following that are not proprietary to such Seller and/or owned by or proprietary to such Hospital Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Hospital of such Hospital Seller, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by such Hospital Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Sellers and used by Sellers with respect to the operations of the Hospitals;

(j) all Measure B trauma funding received after the Signing Date to be paid related to service periods ending on or after the Signing Date (pro rated between Purchaser and Sellers for any such payments covering service periods which include days both before and after the Signing Date based upon the number of days in the relevant payment period before the Signing Date (for the account of Sellers) and after the Signing Date (for the account of Purchaser));

(k) Except for as stated in Section 1.7(j), all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation,

accounts, notes or other amounts receivable, disproportionate share payments and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(l) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the Accounts Receivable acquired by Purchaser at the Closing;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

(r) the right to use the names “St. Francis Medical Center”, “St. Vincent Medical Center”, “Seton Medical Center” and “Seton Medical Center Coastside”, including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Sellers and the names of the Hospitals, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Businesses, the completion of the

Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

(b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;

(c) all contracts that are not Assumed Contracts;

(d) all leases that are not Assumed Leases;

(e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;

(f) assets owned and provided by vendors of services or goods to the Hospital of such Hospital Seller;

(g) all of such Seller's organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;

(h) all claims, counterclaims and causes of action of such Seller or such Seller's bankruptcy estate (including parties acting for or on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of such Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;

(i) other than casualty insurance proceeds described in Section 1.7(m), all insurance policies and contracts and coverages obtained by such Seller or listing such Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;

(j) all deposits made with any entity that provides utilities to the Hospital (the **"Utility Deposits"**);

(k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;

(l) all non-transferrable unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;

(m) all other bank accounts of such Sellers not listed on **Schedule 1.7(u)**;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services);

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(h) or 1.8(y) (together with the items identified in Section 1.8(h) and 1.8(y), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Signing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties; and

(cc) any assets identified in Schedule 1.8(cc).

1.9 Assumed Obligations. On the Closing Date, each Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of such Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of such Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of such Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time;

(d) all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii);

(e) all liabilities and obligations of such Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of such Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) all liabilities or obligations provided for in Section 5.3;

(j) any obligations or liabilities Purchaser may desire or need to assume in order to have the Certifications/Licenses/Permits identified on Schedule 1.7(b) reissued to Purchaser, as well as any liabilities or obligations associated with Sellers' Medicare and Medi-Cal provider agreements, but only to the extent assumed by Purchaser, and any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

(k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the "**Excluded Liabilities**"), and each Seller shall remain fully and solely responsible for all of such Seller's debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively "**Evaluated Contracts**"). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "**Rejected Contracts**"); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date and as of the last day of the Final Diligence Period, except as would not have a material adverse effect upon the Hospitals, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title) and 2.14 (Legal Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by such Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of such Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

2.3 Organization and Good Standing; No Violation.

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller’s articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in material breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2018; (ii) unaudited income statements of the Sellers for the twelve-month periods ended June 30, 2018; (iii) the audited consolidated income statements of Sellers for the years ended 2016 and 2017; and (iv) the unaudited consolidated balance sheet of Sellers as of June 30, 2018.

(b) the income statements contained in the Historical Financial Statements present, fairly in all material respects the results of the operations of the Sellers as of and for the periods covered therein and, except as set forth on Schedule 2.13(b), the balance sheets contained in the Historical Financial Statements (i) are true, complete and correct in all material respects; (ii) present, fairly in all material respects the financial condition of the Sellers as of the dates indicated thereon; and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

2.14 Legal Proceedings. Except as set forth on Schedule 2.14, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers' claims and noticing agent's website at <http://www.kccclcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospitals or the Hospitals by Sellers before any governmental authority. Except as set forth on Schedule 2.14, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospitals or the other Assets or the Hospitals and are in substantial compliance with respect to each such government order.

2.15 Employee Benefits. Schedule 2.15(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee pension benefit plan" as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Seller with respect to the operation of the Hospital, in which any employee of Seller participates in his capacity as such (collectively, the "**Seller Plans**").

2.16 Personnel. Schedule 2.16 sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and scheduled bonus, and the accrued paid time off pay of all employees of Sellers (including employees of the Hospitals and employees of Verity and Verity Holdings) immediately prior to December 21, 2018, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Sellers's policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "**Hospital Employees**") and indicating whether the Hospital Employee is full- time or part-time. Sellers shall have the right to update to Schedule 2.16(a) to reflect changes in employment status or new hires and terminations occurring after December 21, 2018 by providing a revised schedule to Purchase no later than five (5) Business Days before the date scheduled for the Closing.Insurance. Schedule 2.17 contains a list of all material insurance maintained by Sellers with respect to the Assets and the Businesses, as of the Signing Date.

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller's Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers' representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

to Sellers, with a concurrent management agreement entered into at that time upon terms mutually agreeable to the parties in their reasonable business judgment. The Sale Leaseback Agreement and Interim Management Agreement will terminate at the Closing when the Purchaser is issued the Licenses necessary to operate the Hospitals directly (namely, the Hospital Licenses and pharmacy permits).

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller’s and such Seller’s affiliates’ post-Closing administration of such Seller’s and such Seller’s affiliates’ pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets. As soon as practicable after the Closing Date, Purchaser shall deliver to each Seller or such Seller’s designee any Excluded Assets of such Seller found at the

Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the "**Sales Procedures Motion**"), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement ("**Overbid**") to another purchaser ("**Overbidder**") unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the "**Alternate Transaction**") and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the "**Break-Up Fee**"); provided, however, that in the event that

the Purchaser is successful as to some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets not actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i), as compared to the Assets which were the subject of this Agreement; in the event that Purchaser terminates this Agreement in accordance with Section 8.6 hereof, expenses of Purchaser incurred in satisfaction of Section 8.6 shall be reimbursed up to \$500,000; and

(3) The Break-Up Fee shall be deemed to be an allowed expense of the kind specified in Section 503(b) of the Bankruptcy Code to be paid solely from the proceeds of the Alternate Transaction, pursuant to the Sale Order. The Break-Up Fee shall not be paid if the Alternate Transaction was pursued due to a material breach by the Purchaser or the Purchaser's failure or refusal to consummate the transaction after the satisfaction or waiver of all closing conditions.

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

If Sellers fails to obtain Bankruptcy Court approval for the Sales Procedures Motion by no later than four weeks after the end of the Final Diligence Period, Purchaser shall have the right to terminate this Agreement, without recourse or liability, and Seller shall immediately thereafter return to Purchaser the Deposit and any interest earned thereon.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "**Sale Order**" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(d) Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to

participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before 45 days from the date of the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations. Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser

agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth, as Purchaser Approved Conditions, in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to be “materially different.” If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General’s imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein,

shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a

Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to

Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

10.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "**Document Retention Period**"), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**"), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records with respect to time periods prior to the Effective Time (including, without limitation, access to

records of patients treated at the Hospital prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospital, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Hospital in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Sellers. Such documents and other materials shall be, at Sellers' option, either (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Hospital on and after the Effective Time.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Sellers or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Sellers after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Closing of Financials. Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the "**Post-Effective Time CFO**") to cooperate with Sellers' representatives in

order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers' estate.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**STRATEGIC GLOBAL
MANAGEMENT, INC.,**
a California corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SELLERS:

ST. FRANCIS MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

ST. VINCENT MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

**ST. VINCENT DIALYSIS CENTER,
INC.**

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

SETON MEDICAL CENTER,

a California nonprofit public benefit
corporation

Signature By:_____

Print Name:_____

Title:_____

Date:_____

VERITY HOLDINGS, LLC,

a California limited liability company

Signature By:_____

Print Name:_____

Title:_____

Date:_____

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC.,**

a California nonprofit public benefit
corporation

Signature By:_____

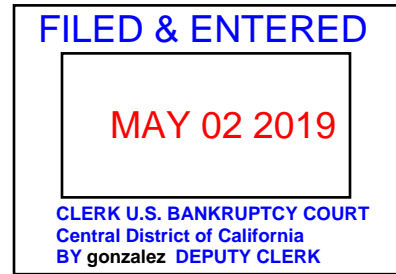
Print Name:_____

Title:_____

Date:_____

EXHIBIT 12

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
Attorneys for the Chapter 11 Debtors and
Debtors In Possession



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO STRATEGIC GLOBAL
MANAGEMENT, INC. FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: April 17, 2019
Time: 10:00 a.m.
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

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

Debtors and Debtors In Possession.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



1820151190502000000000015

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 1279], filed by Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

At the previous hearing on the Motion on February 19, 2019 (the “Bidding Procedures Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) St Vincent IPA Medical Corporation and Angeles IPA [Docket No. 1397]; (ii) the California Attorney General [Docket No. 1352]; (iii) MGH Painting Inc. [Docket No. 1358]; and (iv) Belfor USA Group, Inc. [Docket No. 1364]. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the “Bidding Procedures Order”) [Docket No. 1572]. The Bidding Procedures Order also stated that objections filed by the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services [Doc. No. 1346] and the California Department of Health Care Services [Doc. No. 1353] (the “Continued Objections”) were continued, as resolved by stipulations [Docket Nos. 1458 and 1473, respectively], approved by this Court’s orders [Docket Nos. 1465 and 1483, respectively].

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

Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 2115], the Declarations of Richard Adcock [Docket Nos. 8 and 1469] and James Moloney [Docket No. 2220] in support thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtors That May Be Assumed And Assigned* [Docket No. 1704], the *Supplemental Notice To Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be Assumed and Assigned* [Docket No. 1836], the *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 2065] (together Docket Nos. 1704, 1836 and 2065 are the “Cure Notice”), the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. For Assumption and Assignment* [Docket No. 2131] (the “Designation Notice”), the *Notice That No Auction Shall Be Held Re Debtors’ Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 2053] (the “No-Auction Notice”), the objections filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos. 1788; 1804; 1819; 1830; 1849; 1850; 1852; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-1877 1881; 1882; 1885; 1890-1892; 1904; 1926; 1930; 1933; 1940; 1946; 1948; 1949; 1953; 1954; 1965; 2058; 2066; 2108; 2113; 2144; 2146; 2148, 2150, 2157, 2161, 2162] (the “Cure Objections”), the objection by the California Department of Health Care Services (the “DHCS”) [Docket No. 1879], the *Stipulation Continuing Hearing Regarding Creditors U.S. Department of Health and Human Services and California Department of Health Care Services* [Docket No.

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2125], the *Limited Opposition of Belfor USA Group, Inc. to Debtors' Motion for an Order Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket No. 2130], the *Objection of United Healthcare Insurance Company to Debtors' Motion for Order Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, Etc.* [Docket No. 2145] filed United Healthcare Insurance Company, *SEIU-UHW's Objection and Reservation of Rights to Debtors' Sale Motion* filed by the Service Employees International Union, United Healthcare Workers-West [Docket No. 2147], the *Limited Objection and Reservation of Rights of United Nurses Associations of California to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets to the Highest Bidder]* [Docket No. 2155] filed by the United Nurses Association of California, the *Reservation of Rights of U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee and as Series 2017 Note Trustee, with Respect to Debtors' Motion for Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and For Stalking Horse Bidder and for Prospective Overbidders (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 2156] filed by U.S. Bank National Association, As Series 2015 Note Trustee and as Series 2017 Note Trustee, the *Official Committee of Unsecured Creditors Response to the Debtors' SGM Sale Motion* [Docket No. 2164], the *Reservation of Rights of California Statewide Communities Development Authority to Motion of Debtors for Approval of Sale [of Remaining Hospital Assets] to the Highest Bidder* [Docket No. 2168] filed by the California Statewide Communities Development Authority, the Premature Objections, the Continued Objections, and any withdrawals thereof, the statements, arguments and representations of the parties made at the Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and that

the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 2221]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; **and for the reasons set forth in the Court's tentative ruling [Docket No. 2221], which the Court adopts as its final ruling and which is incorporated herein by reference;** and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated January 8, 2019, a copy of which is attached as Exhibit "A" to Docket No. 1279 (the "APA"); (ii) the Sale Hearing; (iii) the No-Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

1 of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also
2 complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed
3 sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to
4 object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

5 D. Arm's Length Transaction. The APA and other documents and instruments (the
6 "Transaction Documents") related to and connected with this transaction (the "Transaction") and
7 the consummation thereof were negotiated and entered into by the Debtors and Strategic Global
8 Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith and
9 through an arm's length bargaining process. Neither SGM nor any of its affiliates or
10 representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the
11 Debtors, SGM, or their respective representatives engaged in any conduct that would cause or
12 permit the APA, any of the other Transaction Documents or the Transaction to be avoided under
13 § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the
14 APA and the other Transaction Documents, including, without limitation, the consideration
15 provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be
16 avoided, and no damages may be assessed against SGM or any other party, as set forth in §
17 363(n). The consideration provided by SGM is fair, adequate and constitutes reasonably
18 equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws
19 of the United States or any of its jurisdictions or subdivisions, including the State of California.

20 E. Good Faith Purchaser. SGM has proceeded in good faith and without collusion in
21 all respects in connection with the sale process, in that: (i) SGM, in proposing and proceeding
22 with the Transaction in accordance with the APA, recognized that the Debtors were free to deal
23 with other interested parties; (ii) SGM agreed to provisions in the APA that would enable the
24 Debtors to accept a higher and better offer; (iii) SGM complied with all of the provisions in the
25 Bidding Procedures Order applicable to SGM; (iv) all payments to be made by SGM and other
26 agreements entered into or to be entered into between SGM and the Debtors in connection with
27 the Transaction have been disclosed; (v) the negotiation and execution of the APA and related
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Transaction Documents were conducted in good faith and constituted an arm's length transaction; (vi) SGM did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SGM is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or SGM's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and, except with respect to the liens arising from the Special Assessments and the PACE Obligations (each as defined in §1.1(a)(iii) of the APA) assumed by SGM, shall vest in SGM, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or

more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections of § 363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by having their respective Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets under the APA (subject to any Challenge within the meaning of that certain *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final DIP Order") that has been, or may be, timely filed³), and any related documents or instruments delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the extent and manner herein provided.

H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in consummating the Transaction, and it is in the best interests of the Debtors and their estates to consummate the Transaction within the timeline set forth in the Motion and the APA. The Court finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth in this Order.

³ The Final DIP Order granted to the Committee standing to file the requisite pleading to challenge the validity, enforceability and amount of the Prepetition Liens (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") within ninety (90) days from the formation of the Committee (the "Challenge Deadline"). See Final DIP Order ¶ 5(e). The Committee's investigation as to the Prepetition Liens remains ongoing. The Committee and the Prepetition Secured Creditors have entered into a number of stipulations (the "Challenge Stipulations") by which the Committee has acknowledged and stipulated to the validity, enforceability and perfection of the Prepetition Liens in certain collateral identified in the Challenge Stipulations, and by which the Challenge Deadline has been extended a number of times with respect to the validity, enforceability and perfection of the Prepetition Liens in any other collateral. The Challenge Deadline with respect to any Prepetition Liens for which the Committee has not stipulated pursuant to the Challenge Stipulations as to the validity, enforceability and perfection thereof is now May 13, 2019.

I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign to SGM the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below) and to the extent subsequently identified by SGM pursuant to paragraph 16 below, the Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently Identified Designated Contracts and the Subsequently Identified Contracts are collectively referred to herein as the “Designated Contracts”) in connection with the consummation of the Transaction, and the assumption and assignment of the Designated Contracts is in the best interests of the Debtors and their estates.

J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Designated Contracts will have been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts and in the manner set forth below, unless otherwise agreed by SGM and the counterparty. SGM has provided or will provide adequate assurance of future performance of and under the Designated Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors (i.e., St. Francis Medical Center, a California nonprofit public benefit corporation (“St. Francis Medical Center”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“St. Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“St. Vincent Dialysis Center”), and Seton Medical Center, a California nonprofit public benefit corporation (“Seton Medical Center”) (collectively, the “Hospitals”), VHS, and Verity Holdings LLC, a California limited liability company (“Holdings”)), and assigned to SGM under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, SGM, notwithstanding any provision in such Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss

1 resulting from a default on or prior to the Closing under any of the Designated Contracts within
2 the meaning of § 365(b)(1)(B).

3 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors will have
4 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
5 the Hospitals to reject all of their executory contracts and unexpired leases, excluding (i)
6 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
7 addition to the Hospitals, (iii) any prepetition contract that is the subject of a Rule 9019 settlement
8 motion prior to Closing, and (vi) any collective bargaining agreement, pension plan or health and
9 welfare plan providing collectively bargained benefits to which a Hospital is a party or sponsor,
10 which matters shall be scheduled for determination as provided in paragraph 33 below. Each
11 such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31,
12 and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this
13 paragraph K, prior to Closing and shall request therein that the rejection be effective as of the
14 Closing or as otherwise appropriate.

15 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
16 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
17 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
18 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
19 better offer to purchase the Purchased Assets. Other than SGM's Stalking Horse Bid, the Debtors
20 received two Qualified Partial Bids by the Partial Bid Deadline and did not receive a Qualified
21 Full Bid (as such terms are defined by the Bidding Procedures Order). The Debtors properly
22 consulted with the Consultation Parties in selecting the SGM Stalking Horse Bid as the highest
23 and best bid and in determining that no auction should be held (as such terms are defined in the
24 Bidding Procedures Order), as set forth in their No-Auction Notice. The transfer and sale of the
25 Purchased Assets to SGM on the terms set forth in the APA constitutes the highest or otherwise
26 best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates
27 than would be provided by any other available alternative. The Debtors' determination, in
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consultation with the Consultation Parties (as defined in the Bidding Procedure Order), that the APA constitutes the highest or best offer for the Purchased Assets and to not conduct an auction constitutes a valid and sound exercise of the Debtors' business judgment.

M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity or membership interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or (iv) classify claims or equity or membership interests.

N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED and APPROVED in all respects to the extent provided herein.

2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including any reservation of rights included in such objections, are overruled on the merits with prejudice. To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the terms of this Sale Order shall prevail.

3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon

1 the terms set forth in the APA, including, without limitation, assuming and assigning to SGM the
2 Designated Contracts. The Debtors and SGM shall have the right to make any mutually
3 agreeable, non-material changes to the APA, which shall be in writing signed by both parties,
4 without further order of the Court provided, that after reasonable notice, the Official Committee
5 of Unsecured Creditors (the "Committee"), the DIP Agent (as defined in the Final DIP Order
6 defined below), and the Prepetition Secured Creditors (as defined in the Final DIP Order) do not
7 object to such changes. Any timely objection by the aforementioned parties to any agreed non-
8 material changes to the APA may be resolved by the Court on shortened notice.

9 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal,
10 valid, enforceable and effective transfer and sale of the Purchased Assets to SGM free and clear
11 of all Encumbrances, except with respect to the liens arising from the Special Assessments and
12 the PACE Obligations assumed by SGM, as further set forth in the APA and this Sale Order; and
13 (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable
14 against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor
15 thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the
16 Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the
17 Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the
18 Purchased Assets, all counterparties to the Designated Contracts and all other persons and
19 entities.

20 5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge
21 within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale
22 Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,
23 effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the
24 Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force,
25 extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any
26 Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and
27 authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition
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Secured Creditors, as applicable, pursuant to the Final DIP Order, to the extent that (i) the rights granted to the Prepetition Secured Creditors with respect to §§506(c) and 552(b) by the Final DIP Order are not limited or modified as a result of the appeal from the Final DIP Order filed by the Committee on November 29, 2019; and/or (ii) any replacement liens or security interest granted to the Prepetition Secured Creditors by the Final DIP Order are not invalidated as a result of any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors' rights, title and interest in and to the Purchased Assets to SGM. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased Assets either to (a) the Debtors before the Closing or (b) to SGM or its designee upon the Closing, and to cooperate with the Debtors and SGM in the Debtors' and SGM's fulfillment of their obligations hereunder and pursuant to the APA.

8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without limitation, payment of the Purchase

Price to the Debtors, vest SGM with all right, title, and interest in the Purchased Assets, free and clear of all Encumbrances. Upon closing of the Transaction, SGM shall take title to and possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the APA. The transfer of the Purchased Assets from the Debtors to SGM constitutes a transfer for reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of California.

9. Following the Closing, no holder of any Encumbrance against the Debtors or upon the Purchased Assets shall interfere with SGM's respective rights in, title to or use and enjoyment of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to SGM, including the assumption and assignment of the Designated Contracts.

10. SGM shall not be deemed, as a result of any action taken in connection with, or as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their estates by reason of any theory of law or equity, including, without limitation, any bulk sales law, doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed Liabilities, SGM is not assuming any of the Debtors' debts.

11. This Sale Order (i) shall be effective as a determination that, on Closing, all Encumbrances existing against the Purchased Assets before the Closing have been unconditionally released, discharged and terminated, and that the transfers and conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all persons and entities. If, following a reasonable written request made by the Debtors, any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or

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1 in connection with Closing, in proper form for filing and executed by the appropriate parties,
2 termination statements, instruments of satisfaction, releases of all Encumbrances which the
3 person or entity has with respect to the Purchased Assets, then SGM and/or the Debtors are
4 hereby authorized to execute and file such statements, instruments, releases and other documents
5 on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of
6 doubt, such statements, instruments, releases and other documents shall not impair Encumbrances
7 that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or
8 may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
9 paragraphs 5 and 13 hereof.

10 12. In accordance with the APA, concurrently with the Closing, SGM shall pay that
11 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
12 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in the
13 APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the
14 Prepetition Secured Creditors, and the Committee in advance of the Closing.

15 13. The terms and conditions of the Final DIP Order shall apply with respect to the
16 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
17 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

18 (a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale
19 Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each
20 such hereafter referred to as "Escrow Deposit Account");

21 (b) in giving direction to SGM pursuant to sub-paragraph (a), above, the Debtors shall
22 exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among
23 the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of
24 the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of
25 rights in paragraph 4 of the Final DIP Order and paragraph 31 of the Bidding Procedures Order;
26 provided further that nothing in this paragraph shall waive or limit any rights the Committee or
27 the Prepetition Secured Creditors may have in connection with the confirmation of a proposed
28

chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values and the Sale Proceeds);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee; and

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon; and

(e) for the avoidance of doubt, the rights of the Debtors, the Committee, and the Prepetition Secured Creditors as to the Sale Proceeds and any funds held in a Deposit Escrow shall be, except as set forth herein, as contemplated by Paragraph 4 of the Final DIP Order, and nothing in this Order shall be construed as altering, amending, waiving, or affecting in any way such rights. Concurrently with the Closing or as soon thereafter as is possible, and in accordance with the APA, SGM shall pay to the counter-parties to the Designated Contracts the cure amounts

1 set forth in the Cure Notice, or as otherwise agreed to by the Debtors, SGM and the applicable
2 counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections
3 (the “Designated Cure Amounts”). SGM has the right under the APA to remove any Contracts
4 from the list of Designated Contracts up to seven (7) days prior to Closing, as also set forth in the
5 *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of*
6 *Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2)*
7 *Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections*
8 [Docket No. 1865].

9 14. To the extent that any of the contracts and/or leases, which give rise to the
10 Designated Cure Amounts and are set forth in the Designation Notice and are not subsequently
11 and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding*
12 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
13 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
14 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865] (the “Currently Identified
15 Designated Contracts”) are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SGM, and SGM shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. The Court shall resolve any and all disputes which may
21 arise between the Debtors, SGM and any of the Currently Identified Designated Contract
22 Counter-Parties over whether the Currently Identified Designated Contracts are executory
23 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
24 Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the
25 Designated Cure Amounts (the “Assumption Dispute”).

26 15. In the event that the Court determines that any such counter-parties to the
27 Currently Identified Designated Contracts (the “Currently Identified Designated Contract
28

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1 Counter-Parties” and, individually, a “Currently Identified Designated Contract Counter-Party”)
2 have an allowed cure claim against the Debtors which exceeds the Designated Cure Amounts (the
3 “Excess Cure Amount”), the difference will be paid by SGM and shall not be the responsibility of
4 the Debtors as more specifically set forth below; provided, however, that unless the Court makes
5 such a determination on or before fifteen (15) days prior to Closing, and unless the Debtor, SGM
6 and the Currently Identified Designated Contract Counter-Party agree otherwise, the Currently
7 Identified Designated Contract which is the subject of such Assumption Dispute, shall be deemed
8 a rejected contract within the meaning of § 1.11(a) of the APA as of ten (10) days prior to
9 Closing, and SGM, except as provided below, shall have no obligation to assume such Currently
10 Identified Designated Contract or to pay any Cure Amount or Excess Cure Amount in connection
11 with such Currently Identified Designated Contract. To the extent an Assumption Dispute relates
12 solely to the Cure Amount, the Debtors may, with SGM’s consent, assume and assign the
13 applicable executory contract or unexpired lease at Closing and prior to the resolution of the
14 Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has
15 estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and SGM has remitted
16 such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the
17 relevant Debtor(s), or (b) SGM provides to the relevant Debtor(s) and non-Debtor counterparty a
18 separate reasonably acceptable undertaking that SGM will promptly pay the maximum disputed
19 cure amount in accordance with 11 U.S.C. § 365 (b)(1)(A) and (B) (or such smaller amount as
20 may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor
21 party and SGM). The Debtors shall pay and hereby are authorized to pay disputed cure amounts
22 from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent
23 SGM remitted to Sellers the amount required by item (a) of this paragraph of the Order.

24 16. All of the Currently Identified Designated Contracts, to the extent they are
25 executory contracts or unexpired leases and are not subsequently and timely removed by SGM
26 under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order*
27 *(1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*
28

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Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections [Docket No. 1865], or deemed a rejected contract within the meaning of § 1.11(a) of the APA pursuant to paragraph 15 above, shall be part of the Designated Contracts that will be assumed by the Debtors and assigned to SGM at the Closing. In the event that SGM elects to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated Contracts (the "Subsequently Identified Designated Contracts") and, individually, a "Subsequently Identified Designated Contract") under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections* [Docket No. 1865], SGM shall notify the Debtors of any such Subsequently Identified Designated Contracts on or before thirty days before Closing, and the Debtors shall (i) file a notice with the Court identifying all such Subsequently Identified Designated Contracts and their respective cure amounts as agreed upon between the Debtors and SGM, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and assigned to SGM at the Closing, with SGM to be obligated to pay all cure amounts owing to such Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SGM and the applicable counter-parties thereto, or ordered by the Court in accordance with paragraphs 34 and 36 below (the "Additional Cure Amounts"), so long as such amount as ordered by the Court is no greater than the amount agreed upon by SGM; and in the event the Additional Cure Amount is greater than the amount agreed upon by SGM, and SGM is not willing to pay the Additional Cure Amount, the Debtors shall not be required to pay the Additional Cure Amount(s) and the Subsequently Identified Designated Contract(s) shall be deemed a rejected contract within the meaning of § 1.11(a) of the APA pursuant to paragraph 15 above; provided, and for the avoidance of doubt, no collective bargaining agreement, pension plan or health and welfare plan providing

collectively bargained benefits to which a Hospital is a party or sponsor constitutes a Currently Identified Designated Contract or a Subsequently Identified Designated Contract for which SGM or the Debtors may be obligated to pay any cure amount.

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SGM, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (collectively, the “Contract Counter-Parties”). At the Closing, SGM shall pay the (i) Sale Proceeds, (ii) the Designated Cure Amounts identified in paragraph 13 above, (iii) the Excess Cure Amounts identified in paragraph 15 above, and (iv) the Additional Cure Amounts, subject to paragraph 15 above. Payment by SGM of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to “cure” all “defaults” with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SGM, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SGM shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts, neither the Debtors nor SGM shall have any further liabilities to any Contract Counter-Parties, other than SGM’s obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SGM with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, SGM shall not be liable for the payment of any liabilities or obligations arising from or related to (a) any executory contracts that the Debtors intend to reject by appropriate motion and which are not being assumed and assigned to SGM, (b) any multiparty contract affecting more than one Debtor in addition to one of the hospitals subject to the

Transaction, or (c) any collective bargaining agreement (“CBA”), pension plan, or health and welfare plan providing for collectively bargained for benefits to which a Hospital is a party or a sponsor, unless expressly assumed and assigned with SGM’s consent.

18. The Debtors intend, and are hereby authorized, to (A) reject, pursuant to § 365(a), all executory contracts to which one or more of the Hospitals are a party, excluding (i) Designated Contracts, and (ii) any prepetition multiparty contract affecting more than one Debtor in addition to one of the Hospitals, and, (B) reject and terminate, to the extent separately authorized by this Court, pursuant to §§ 1113, 1114, and any other applicable provision of the Bankruptcy Code, any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which one of the Hospitals is a party or sponsor and that SGM does not assume.

19. All of the Contract Counter-Parties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtors or SGM, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Designated Contracts, including any asserted breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or any purported written or oral modification to the Designated Contracts and (ii) asserting against SGM any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed Obligations.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contract or allow the counterparty to such Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions

1 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
2 Designated Contract to SGM in accordance with the APA, pursuant to § 363(f).

3 21. The terms and provisions of this Sale Order, as well as the rights granted under the
4 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
5 reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding ~~entry~~
6 ~~of any order of conversion or dismissal any such conversion, dismissal or order entry~~. Nothing
7 contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a
8 plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict
9 with or derogate from the provisions of the APA, any documents or instruments executed in
10 connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict
11 between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern.
12 The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or
13 dismissal of the cases and the entry of any other order that may be entered in the cases, including any
14 order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7;
15 (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

16 22. The Transaction contemplated by the APA and other Transaction Documents are
17 undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy
18 Code. SGM is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the
19 full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization
20 provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the
21 sale of the Purchased Assets to SGM. The APA and the Transactions contemplated thereby cannot be
22 avoided under § 363(n).

23 23. The failure to specifically include any particular provision of the APA or the other
24 Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such
25 provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other
26 Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of
27 this Sale Order are non-severable and mutually dependent.
28

1 24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. §
2 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or
3 otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective
4 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
5 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

6 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
7 Debtors to the extent necessary, without further order of this Court, to (i) allow SGM to deliver any
8 notice provided for in the APA and Transaction Documents and (ii) allow SGM to take any and all
9 actions permitted under the APA and Transaction Documents in accordance with the terms and
10 conditions thereof.

11 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
12 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
13 shall govern.

14 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
15 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
16 (i) hear and determine all disputes between the Debtors and/or SGM, as the case may be, and any other
17 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
18 assignment thereof by the Debtors to SGM and any dispute between SGM and the Debtors as to their
19 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
20 delivery of the Purchased Assets to SGM free and clear of Encumbrances, except with respect to the
21 liens arising from the Special Assessments and the PACE Obligations; (iii) compel the delivery of the
22 Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and
23 enforce the provisions of this Sale Order; and (v) protect SGM against (A) claims made related to any
24 of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability
25 (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any
26 Encumbrances asserted on or against SGM or the Purchased Assets.

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1 28. Following the date of entry of this Sale Order, the Debtors and SGM are authorized to
2 make changes to the APA and/or execute supplemental agreements implementing the transactions
3 contemplated by the APA without the need for any further order of the Court provided that all such
4 changes have been approved in writing by the Debtors, SGM, the Committee, the DIP Agent, and
5 Prepetition Secured Creditors. Any other proposed changes to the APA or this Sale Order shall require
6 a further order of the Court, after reasonable notice under the circumstances and a hearing.

7 29. Notwithstanding any other provision of this Sale Order or any other Order of this
8 Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal
9 license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory
10 approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as
11 amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take
12 any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory
13 conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are
14 fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or
15 authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

16 30. To the extent the Purchased Assets contain records of the Verity Health System
17 Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension
18 Plans") or employment records of participants of the Pension Plans, SGM shall store, and
19 preserve any such records until the Pension Benefit Guaranty Corporation ("PBGC") has
20 completed its investigation regarding the Pension Plans and shall make such documents available
21 to PBGC for inspection and copying. Such records include, but are not limited to, any Pension
22 Plan governing documents, actuarial documents, and employment records (collectively, the
23 "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan
24 Documents that are not Purchased Assets no earlier than February 28, 2020, and shall make such
25 documents available to the PBGC for inspection and copying.

26 31. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of
27 the issues regarding the transfer and/or proposed assumption and assignment or rejection of the
28

Hospitals' Medi-Cal Provider Agreements or (ii) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the DHCS or a Court order resolving the DHCS's objections.

32. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Hospitals' Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the HHS or a Court order resolving the HHS's objections.

33. In accordance with the terms of §§ 4.7 and 5.11 of the APA, the Debtors and SGM will negotiate regarding modification of applicable CBAs. To the extent the Debtors seek modification, rejection and/or termination of CBAs, they will comply with the requirements of § 1113, as applicable, and may do so before or after Closing under their discretion.

34. A continued hearing on the Cure Objections shall be held on June 5, 2019, at 10:00 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than May 22, 2019, at 4:00 p.m. (Pacific Time), the Debtors shall file a notice containing a list of (a) the Cure Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure Objections for which Court intervention is required, *pursuant to the Order*

Approving Omnibus Stipulation Continuing Hearing on Certain Objections to Notice and Supplemental Notice of Contracts Designated for Assumption and Assignment [Docket No. 2183], the deadline for the Debtors to reply to the Cure Objections shall be May 29, 2019, at 4:00 p.m. (Pacific Time). ~~the following briefing schedule shall apply: (1) the Debtors' opposition to each outstanding Cure Objection shall be submitted by no later than May 22, 2019; and (2) the counterparties' reply in support of its Cure Objections shall be submitted by no later than May 29, 2019.~~ Nothing in this Sale Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtors and the contract counterparty or further order of the Court.

35. As to any executory contracts or unexpired leases that were listed on the Initial Designated Contract List, but not listed on any prior Cure Notice, any counterparty thereto may file an objection to the cure amount or assumption thereof by May 22, 2019, and all other provisions in paragraph 34 shall apply to resolution thereof.

36. As to Subsequently Identified Designated Contracts, (i) promptly upon SGM's identifying such contract(s), the Debtors shall file a notice with the Court identifying all Subsequently Identified Designated Contracts no later than 30 days prior to Closing and provide service thereof in accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated Contracts were not listed on a Cure Notice, counterparties subject to contracts who object to assumption and/or the proposed cure amounts must file an objection no later than 14 days prior to Closing, and any reply shall be filed no later than 7 days prior to Closing. To the extent that a negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently Identified Designated Contracts shall be adjudicated by the Court, which shall resolve any and all disputed issues related to the objection(s).

37. The California Attorney General, the Debtors, the Consultation Parties (as defined in the Bid Procedures Order) and SGM, reserve all rights, arguments and defenses concerning the California Attorney General's authority, if any, to review the sale under California Corporations Code §§ 5914–5924 and California Code of Regulations on Nonprofit Hospital Transactions—Title 11,

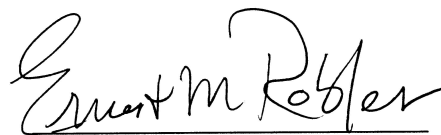
Chapter 15, § 999.5, and any conditions issued thereto. Nothing in this Sale Order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

38. The Committee and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31 to 36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31 to 37 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

IT IS SO ORDERED.

###

Date: May 2, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 13

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Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

10 In re
11 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
12 Debtors and Debtors In Possession.

- 13 ☒ Affects All Debtors
14 ☐ Affects O'Connor Hospital
15 ☐ Affects Saint Louise Regional Hospital
16 ☐ Affects St. Francis Medical Center
17 ☐ Affects St. Vincent Medical Center
18 ☐ Affects Seton Medical Center
19 ☐ Affects O'Connor Hospital Foundation
20 ☐ Affects Saint Louise Regional Hospital
Foundation
21 ☐ Affects St. Francis Medical Center of Lynwood
Foundation
22 ☐ Affects St. Vincent Foundation
23 ☐ Affects St. Vincent Dialysis Center, Inc.
24 ☐ Affects Seton Medical Center Foundation
25 ☐ Affects Verity Business Services
26 ☐ Affects Verity Medical Foundation
27 ☐ Affects Verity Holdings, LLC
28 ☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose Dialysis,
LLC

Debtors and Debtors In Possession.

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN
ORDER: (I) ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT, INC;
(II) FINDING THAT THE SALE IS FREE AND CLEAR OF
CONDITIONS MATERIALLY DIFFERENT THAN THOSE
APPROVED BY THE COURT; (III) FINDING THAT THE
ATTORNEY GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND (IV)
GRANTING RELATED RELIEF; MEMORANDUM OF POINTS
AND AUTHORITIES AND DECLARATIONS IN SUPPORT
THEREOF**

Hearing Date and Time:

Date: TBD

Time: TBD

Place: Courtroom 1568,
255 E. Temple Street
Los



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EMERGENCY MOTION

Pursuant to Rule 9075-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the “LBR”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), §§ 105, 362, 363, 525 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”),¹ and 28 U.S.C. § 1334(e), Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”), for the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] authorizing the sale (“SGM Sale”) of the Debtors’ assets to Strategic Global Management, Inc. (“SGM”); and (ii) finding that the SGM Sale is free and clear of the conditions imposed by the California Attorney General (the “Attorney General”) that are materially different (the “Additional Conditions”) than the conditions in the asset purchase agreement (the “SGM APA”) [Docket No. 2305-1]; or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Court deems just and proper. The sale order approving the SGM Sale (the “Sale Order”), the conditions issued by the Attorney General (the “2019 Conditions”), the Additional Conditions, in redline format, and the SGM APA, are attached to the annexed Memorandum of Points and Authorities (the “Memorandum”) as Exhibits “A,” “B,” “C,” and “D,” respectively. Certain correspondence between the Debtors, SGM, and the Attorney General is attached to the Memorandum as Exhibit “E.”

The Debtors request that the relief sought be granted on an emergency basis because the Debtors will suffer immediate and irreparable harm without the relief requested in this Motion. Indeed, absent relief, the Debtors’ sale to SGM of its four remaining hospitals (collectively, the “Hospitals”) will collapse, which would result in the loss of access to critical healthcare in

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underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors. Simply put, the Additional Conditions would unwind the heroic efforts of constituents who have diligently worked to maintain the Hospitals throughout these cases and spent countless hours and funds working with SGM to close the SGM Sale. Even a delay in the closing will significantly impact these Cases because the Debtors (i) are operating at a loss of approximately \$450,000 per day, imposing significant costs upon the estates and upon creditors, (ii) seek to confirm their plan of liquidation by the end of the year, and (iii) are required to meet the milestone under the cash collateral agreement that the Plan go effective in 2019 and have no alternative financing source.

The Additional Conditions threaten the SGM sale. The Additional Conditions trigger SGM's termination rights under the APA unless the Debtors obtain a supplemental order from this Court finding that the Additional Conditions are an "interest in property" for purposes of § 363(f), and that the Hospitals can be sold free and clear of the Additional Conditions without the imposition of any other conditions. *See* Exhibit "D," SGM APA, Section 8.6. SGM has repeatedly informed the Debtors and the Attorney General that the Additional Conditions are "deal killers." *See* Exhibit "E." To illustrate the magnitude of the economic impact of the Additional Conditions, two of the Additional Conditions alone would have the economic impact of increasing the effective purchase price by over 50 percent to nearly a billion dollars. The economic impact of compliance with the other Additional Conditions are in the tens of millions of dollars. In essence, the Additional Conditions would render the SGM APA and this Court's Sale Order meaningless. Such result is inconsistent with § 363, this Court's exclusive jurisdiction over property of the Debtors' estates, and fundamental purposes of the Bankruptcy Code.

The SGM APA specifically contemplates the Debtors will challenge promptly any conditions materially different from those to which SGM agreed. *See* Exhibit D, SGM APA §§

{continued from previous page}

¹ All references to "§" are to sections of the Bankruptcy Code; all references to "LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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8.6, 9.3. Failure to challenge timely the imposition of Additional Conditions may result in termination of the SGM Sale. *Id.* The Debtors and SGM met with representatives of the Attorney General regularly to encourage imposition of conditions consistent with Schedule 8.6. *See* Adcock Dec. and Levy-Biehl Dec. Further, the Debtors negotiated vigorously with additional constituencies (including the Official Committee of Unsecured Creditors, the Pension Benefit Guaranty Corporation, and labor unions) to secure their support of the SGM Sale, which were provided to the Attorney General before the 2019 Conditions were issued. Nevertheless, the Attorney General has imposed conditions on the SGM Sale inconsistent with Schedule 8.6 after taking the maximum amount of time provided by statute to review the transaction and constituent input. *See* Exhibit “B.” Given the Attorney General’s long delay in reviewing the SGM Sale, the Debtors must challenge the Additional Conditions on an expedited basis to ensure that the SGM Sale closes, the Hospitals stay open to provide essential patient care, thousands of jobs are not lost and assets of the estates are preserved.

The Attorney General will not suffer prejudice if the Court grants this Motion for expedited relief. As noted above, the Attorney General considered the 2019 Conditions for 135 days prior to their issuance on September 25, 2019. During that time, the Debtors and SGM have made abundantly clear that any departure from the conditions in Schedule 8.6 to the SGM APA would threaten the SGM Sale. *See, e.g.,* Exhibit “E.” Further, the Attorney General is amply familiar with the issues raised herein, having briefed the same in several bankruptcy cases in this District, including in the Debtors’ Cases. *See* Docket No. 463; *In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, No. 2:16-bk-17463-ER, Doc. No. 752 (Bankr. C.D. Cal. Apr. 24, 2017); *In re Victor Valley Cmty. Hosp.*, No. 8:12-bk-12896-CB, Doc. No. 1804 (Bankr. C.D. Cal. Sept. 27, 2011). Accordingly, the Debtors respectfully request that the Court grant the Motion for an emergency hearing because the proposed expedited hearing will not prejudice the Attorney General and is in the best interests of the Debtors’ estates and creditors.

I.

SUMMARY OF REQUESTED RELIEF

Concurrently herewith, the Debtors have filed a motion seeking the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] authorizing the SGM Sale; and (ii) finding that the SGM Sale is free and clear of the Additional Conditions, pursuant to §§ 105, 362, 363, and 525, and 28 U.S.C. § 1334(e); or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the 2019 Conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Court deems just and proper.

The Motion is based upon §§ 105, 362, 363, and 525, 28 U.S.C. § 1334, Bankruptcy Rule 6004, LBR 9075-1(a), California Corporations Code §§ 5914 *et seq.*, and the California Code of Regulations, title 11, § 999.5, the attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the Declarations of Richard G. Adcock (the “Adcock Decl.”), Peter Baronoff (the “Baronoff Decl.”), Peter C. Chadwick (the “Chadwick Decl.”), and Hope R. Levy-Biehl (the “Levy-Biehl Decl.”) filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, and any other admissible evidence properly brought before the Court. The Debtors request that the Court take judicial notice of all documents filed with the Court in these Cases that relate to the SGM Sale and the prior sale of the hospitals to Santa Clara County, as appropriate, in support of the Motion.

II.

RESPONSES

Any party opposing or responding to the Motion may present such response (the “Response”) at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the Motion or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to be consent to the relief requested herein.

1 III.

2 **SERVICE OF MOTION**

3 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
4 Authorities, the Adcock Decl., the Baronoff Decl., the Chadwick Decl., Levy-Biehl Decl., and any
5 notice required by the Court on: (i) the California Attorney General; (ii) the Official Committee of
6 Unsecured Creditors; (iii) the Debtors' prepetition secured creditors; (iv) SGM; (iv) the Office of
7 the United States Trustee; and (v) any other parties on the Limited Service List set forth in the
8 *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No.
9 132]. To the extent necessary, the Debtors request that the Court waive compliance with LBR
10 9075-1(a)(6) and approve service (in addition to the means of services set forth in such LBR) by
11 overnight delivery.

12 IV.

13 **RESERVATION OF RIGHTS**

14 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
15 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in
16 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
17 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
18 holder.

19 V.

20 **PRAYER**

21 WHEREFORE, for all the foregoing reasons and such additional reasons as may be
22 advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the
23 Court hold a hearing on an emergency basis to consider the Debtors request for an order (i) finding
24 that (a) the SGM Sale is free and clear of the Additional Conditions imposed by the Attorney
25 General, or alternatively, (b) the Attorney General has abused his discretion in imposing the
26 Additional Conditions, and (ii) granting such other and further relief as the Court deems just and
27 proper.

1 Dated: September 30, 2019

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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move (the “Motion”) for the entry of an order: (i) enforcing this Court’s previous order [Docket No. 2306] (the “Sale Order”) authorizing the sale (“SGM Sale”) of the Debtors’ assets to Strategic Global Management, Inc. (“SGM”); and (ii) finding that the SGM Sale is free and clear of the conditions (the “2019 Conditions”) imposed by the California Attorney General (the “Attorney General”) that are materially different (the “Additional Conditions”) than the conditions in the asset purchase agreement (the “SGM APA”) [Docket No. 2305-1], pursuant to §§ 105, 362, 363, and 525 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and 28 U.S.C. § 1334(e);¹ or, alternatively, (iii) finding that the Attorney General abused his discretion imposing the 2019 Conditions under applicable nonbankruptcy law; and (iv) granting such other and further relief as the Bankruptcy Court deems just and proper.

The Motion is based on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”), the Declarations of Richard G. Adcock (the “Adcock Decl.”), Peter Baronoff (the “Baronoff Decl.”), Peter C. Chadwick (the “Chadwick Decl.”), and Hope R. Levy-Biehl (the “Levy-Biehl Decl.”) filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, the record in the Debtors’ Cases and any other judicially noticeable facts, and other admissible evidence properly brought before the Court. The Sale Order, the 2019 Conditions, the Additional Conditions, in redline format, and the SGM APA, are attached hereto as Exhibits “A,” “B,” “C,” and “D,” respectively. Certain correspondence between the Debtors, SGM, and the Attorney General is attached hereto as Exhibit “E.”

In further support of the Motion, the Debtors respectfully state as follows:

¹ All references to “§” are to sections of the Bankruptcy Code; all references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Practice; all references to “LBR” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

I.

INTRODUCTION

Nearly five months after this Court entered the Sale Order authorizing the Debtors to sell their four remaining general acute care hospitals (the “Hospitals”) to SGM, the Attorney General issued the 2019 Conditions that effectively increase the purchase price in the SGM APA by over \$300 million. The imposition of the Additional Conditions in the 2019 Conditions would destroy the sale of the Hospitals to the only buyer willing to buy them, SGM, and would result in the loss of access to critical healthcare in underserved communities, the loss of thousands of jobs, and the loss of anticipated recoveries to creditors. The Debtors’ estates and their constituents have already borne operating losses of approximately \$450,000, per day, waiting for the Attorney General to issue his decision. Moreover, the Debtors, SGM and third parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken a significant amount of time and resources and simply cannot be undone.

The Debtors are mindful that the Hospitals have struggled for decades and that the 2015 conditions imposed by the Attorney General (the “2015 Conditions”) locked the Hospitals into financial and operational obligations that made success impossible (the Debtors lost hundreds of millions of dollars since the 2015 Conditions were imposed). Chapter 11 presented the last and only viable option to save the Hospitals. The Attorney General cannot strip the Debtors of the protections afforded by the Bankruptcy Code, which is, in essence, the impact of the 2019 Conditions if they are enforced.

In addition to the fact that the imposition of the Additional Conditions would be devastating to patients, the communities the Hospitals serve, thousands of employees and stakeholders in these cases, the Additional Conditions cannot be upheld because they contravene the Bankruptcy Code, the Court’s jurisdiction, and fundamental purposes of the Bankruptcy Code.

Specifically, the Court should enforce the Sale Order and find that that the Debtors are authorized to the sell the Hospitals without imposition of the Additional Conditions because:

- *Section 363(f) authorizes the Court to sell the Debtors’ assets free and clear of the Additional Conditions which are an “interest in property;”*

- *The Additional Conditions are an inappropriate attempt to impose successor liability on SGM because the Sale Order authorizes the assets to pass to SGM free and clear of successor liability;*
- *Section 363(d)(1) must be harmonized with § 363(f), which authorizes the Court to sell the assets free and clear of the Additional Conditions;*
- *The Attorney General's broad attempt to exercise control over the Debtors' assets contravenes the Court's exclusive jurisdiction over the Debtors' assets, pursuant to 28 U.S.C. § 1334(e);*
- *Imposition of the Additional Conditions constitutes impermissible discrimination against the Debtors and SGM under § 525(a) because the Additional Conditions are premised on the continuance of the Debtors' obligations; and*
- *The Attorney General is exceeding his authority by attempting to regulate a for profit entity.*

Additionally, and as significantly, under state law, the imposition of the Additional Conditions are a breach of the Attorney General's fiduciary obligations and an abuse of his discretion.

Based upon all of the foregoing, and for the reasons set forth in greater detail below, the Debtors urge the Court to enter an order enforcing the Sale Order and finding that sale was "free and clear" of the Additional Conditions.

II.

JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Motion seeks, in part, an order of the Court enforcing the terms of its final order approving the SGM Sale [Docket No. 2306]. The statutory predicates for this relief are §§ 363 and 105, and Bankruptcy Rule 6004. This Court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *see also In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and enforce its own orders [.]") (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002)).

The Debtors further request that the Court find that the Attorney General abused his discretion in imposing the 2019 Conditions without an evidentiary basis. The statutory predicates for such a finding are set forth in the California Corporations Code, §§ 5914 *et seq.*, and the California Code of Regulations, title 11, § 999.5. The Debtors have standing to challenge the 2019 Conditions because the Debtors’ allegations of lost business opportunity and corresponding economic harm related to the SGM Sale constitute an injury in fact. *See Prime Healthcare Services, Inc. v. Harris*, 216 F. Supp. 3d 1096, (S.D. Cal. 2016) (citing *Wedges/Ledges of Cal., Inc. v. City of Phoenix, Ariz.*, 24 F.3d 56, 60 (9th Cir. 1994)) (finding standing where plaintiff alleged that “the financially unviable conditions [the attorney general] imposed on the [Daughters of Charity Health System] transaction forced it to abandon its \$843 million bid to acquire” the hospital); *see also Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261-63 (1977) (concluding that a nonprofit developer had standing to challenge the denial of its petition for rezoning and seek injunctive and declaratory relief, despite the fact that its land-purchase contract was contingent upon securing rezoning).

III.

FACTUAL BACKGROUND

A. General Background

1. On August 31, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the commencement of their Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O’Connor Hospital (“OCH”) and Saint Louise Regional Hospital (“SLRH”), and currently operates St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, “Seton” and, together with OCH, SLRH, SFMC, and SVMC, the “Verity Hospitals”).

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

4. Additional background facts on the Debtors, including an overview of the Debtors’ business, information on the Debtors’ capital structure and additional events leading up to these chapter 11 Cases, are set forth in the First-Day Declaration.

5. On September 14, 2018, the Office of the United States Trustee appointed the Committee [Docket No. 197].

B. The Daughters of Charity and the 2015 Conditions

6. The Verity Hospitals were originally owned and operated by the Daughters of Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”), to support the mission of the Catholic Church through a commitment to the sick and poor. The Daughters of Charity began their healthcare mission in California in 1858 with the opening of Los Angeles Infirmary, now known as SVMC. The Daughters of Charity expanded its hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to ill, poverty-stricken individuals for more than 150 years.

7. In June 2001, the Daughters of Charity Health System (“DCHS”) was formed. In 2002, DCHS commenced operations and was the sole corporate member of the Verity Hospitals, which at that time were California nonprofit religious corporations.

8. Between 1995 and 2015, the Verity Hospitals incurred substantial operating losses. During that time period, Daughters of Charity and DCHS attempted to find a solution which would resolve the operating losses, either through a sale of some or all of the Verity Hospitals, or a merger with a more financially sound partner. In 2013, DCHS unsuccessfully solicited purchase offers for OCH, SLRH, and Seton.

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9. Throughout 2014, DCHS explored offers to sell the system and, in October of 2014, entered into an agreement with Prime Healthcare Services and Prime Healthcare Foundation (collectively, “Prime”) to sell the health system. A condition of such sale was approval by the Attorney General.

10. In early 2015, the Attorney General consented to the sale to Prime, but subject to certain conditions, which, in Prime’s view, were so onerous that it could not proceed with the transaction. Accordingly, Prime terminated the transaction. The history of this failed transaction and the process for Attorney General review is more fully set forth in *Prime Healthcare Services, Inc., et al. v. Harris*, 216 F. Supp. 3d 1096, 1101-06 (S.D. Cal. 2016).

11. In 2015, DCHS again marketed the health system for sale, and, again, focused on offers that maintained the system as a whole, including the assumption of all existing obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”).

12. In connection with the BlueMountain Transaction, the DCHS and its sole member, Daughters of Charity Ministry Services Corporation, certain funds managed by BlueMountain and Integrity Healthcare, LLC (a management company was formed to manage VHS for BlueMountain under a new management agreement) entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”). Under the Restructuring Agreement, VHS and the Verity Hospitals were converted from religious corporations to public benefit corporations. BlueMountain agreed to make a capital infusion of \$100 million, arrange loans for another \$160 million to the system, and manage operations, with an option to buy the health system at a future time. DCHS’ name was changed to Verity Health System.

13. On December 3, 2015, the Attorney General approved the BlueMountain Transaction, subject to the 2015 Conditions. The 2015 Conditions were imposed for periods ranging from 5 to 15 years. Generally, the terms of the 2015 Conditions included (i) transfers of control, (ii) maintenance of health services, (iii) required participation in Medicare and Medi-Cal programs, (iv) community benefit programs, (v) charity care levels, (vi) county contracts, (vii) local

governing boards, (viii) medical staff compliance, (ix) assumption of hundreds of millions of dollars of pension obligations, and (x) annual attestation of compliance.

14. In the 2015 Conditions, VHS was expressly required to make capital expenditures of at least \$180 million over 5 years, and to meet accelerated time lines for making the Verity Hospitals seismic compliant. Each hospital had specific requirements as to services that had to be maintained or even expanded. For example, SVMC was required to maintain an emergency room with eight stations, including six fast track stations, 19 acute rehab beds, and 30 ICU beds, among other things. It was also required to provide \$400,000 of charity care annually and provide community benefit programs of at least \$1 million annually. SVMC was required to maintain Medi-Cal contracts with LA Care Health Plan and various commercial plan contracts. All of the Verity Hospitals had similar obligations imposed.

15. Despite BlueMountain's infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system continued to incur losses. It soon became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring.

C. The Bankruptcy Cases

16. The Debtors commenced these Cases to protect the original legacy of the Daughters of Charity to the maximum extent possible by retiring debt incurred over the past 18 years and selling the hospital facilities to enable the continued operation of the Verity Hospitals under new ownership and leadership free from the historical losses and operational uncertainties. The Debtors' strategy contemplated a Court-supervised sale of some or all of the Verity Hospitals, and related facilities, and a comprehensive resolution of the Debtors' financial obligations through a court approved plan of reorganization.

17. In June 2018, the Debtors engaged Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), to identify potential buyers of some or all of the Verity Hospitals and related assets and commenced discussions with those potential buyers. Cain prepared a Confidential Investment Memorandum, organized an online data site to share information with potential buyers and contacted over 181 strategic and financial buyers beginning in July 2018 to solicit their interest

1 in exploring a transaction regarding the Verity Hospitals. As a result of its broad marketing
2 process, Cain received sixteen indications of interest, or other proposals, and continued to develop
3 potential sales of some or all of the Verity Hospitals.

4 18. At the commencement of the cases, the Debtors obtained court approval for a debtor
5 in possession financing facility with up to \$185 million of availability from Ally Bank subject to a
6 borrowing base (the “DIP Facility”). The DIP Facility was secured by substantially all of the
7 Debtors’ assets and also provides for super priority administrative priority status for all obligations
8 under the facility. The DIP financing enabled Debtors to operate the Verity Hospitals while they
9 continued their efforts to find a purchaser for their assets and to reach agreements with key
10 constituents. As discussed below, the Debtors have repaid their DIP financing obligations and are
11 funding operations through the consensual use of cash collateral.

12 **D. The SCC Sale**

13 19. On December 27, 2018, the Bankruptcy Court entered the *Order (A) Authorizing the*
14 *Sale of Certain of the Debtors’ Assets to Santa Clara County Free and Clear of Liens, Claims,*
15 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
16 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving a
17 sale of OCH, SLRH, and related assets, to Santa Clara County (the “SCC Sale”).

18 20. The SCC Sale closed on February 28, 2019. After payment of certain cure costs,
19 closing costs and other items, the net remaining proceeds were approximately \$184.38 million,
20 which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the
21 “Post-Closing Escrow”) by First American Title Insurance Company, the escrow agent. The Post-
22 Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors’
23 post-closing obligations and expires in February 2020.

24 21. The Attorney General vigorously opposed the SCC Sale, insisting that either the
25 2015 Conditions applied to SCC or that the SCC Sale was subject to his review. This Court
26 rejected both arguments, and overruled his objections. *See* Docket Nos. 1146, 1153. The Attorney
27 General appealed, but voluntarily dismissed the appeal after the Debtors filed a motion to dismiss
28

as moot pursuant to § 363(m). *See* Case No. 2:19-cv-00133-DMG, Docket No. 40, 41 (C.D. Cal. Feb. 1, 2019).

E. The SGM Sale

22. On January 17, 2019, the Debtors filed the Debtors' *Notice Of Motion And Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and For Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* (the "Sale and Bidding Procedures Motion") [Docket No. 1279].

23. On February 19, 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered an order approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order") [Docket No. 1572]. SGM served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. The Bidding Procedures Order also approved the SGM APA as modified therein.

24. There were two "Qualified Bidders" (as defined in the Bidding Procedures Order) for partial bids for different Hospitals (one for SVMC and one for SFMC) and no Qualified Full Bid. After consultation with the Consultation Parties as defined in the Bidding Procedures Order, the Debtors determined to not conduct either a Partial Bid of Full Bid auction, as set forth in the *Notice That No Auction Shall Be Held Re Debtors' Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens*

1 and Encumbrances [Docket No. 2053] (the “No-Auction Notice”) filed by the Debtors on April 4,
2 2019.

3 25. Accordingly, under the terms of the SGM APA and the Bidding Procedures Order,
4 no auction was held and the Debtors declared SGM as the “winning bidder” of the Hospitals. No-
5 Auction Notice at 2.

6 26. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing The Sale*
7 *Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. free And Clear Of Liens,*
8 *Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of*
9 *An Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306] (the
10 “Sale Order”), approving the SGM Sale. The closing of the SGM Sale is subject to review by the
11 Attorney General and satisfaction of certain other closing conditions. The Debtors expect the SGM
12 Sale to close in the fourth quarter of 2019.

13 27. SGM has agreed to continue to operate the Hospitals and abide by the vast majority
14 of the 2015 Conditions, as set forth in Schedule 8.6 to the SGM APA.

15 28. Section 8.6 of the SGM APA is titled: “Attorney General Provisions.” It provides
16 the following:

17 Purchaser recognizes that the transactions contemplated by this
18 Agreement may be subject to review and approval of the CA AG.
19 Purchaser agrees to close the transactions contemplated by this
20 Agreement so long as any conditions imposed by the CA AG are
21 substantially consistent with the conditions set forth, as Purchaser
22 Approved Conditions, in Schedule 8.6. In the event the CA AG
23 imposes conditions on the transactions contemplated by this
24 Agreement, or on Purchaser in connection therewith, which are
25 materially different than the Purchaser Approved Conditions set
26 forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall
27 have the opportunity to file a motion with the Bankruptcy Court
28 seeking the entry of an order (“Supplemental Sale Order”) finding
that the Additional Conditions are an “interest in property” for
purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free
and clear of the Additional Conditions without the imposition of any
other conditions, which would adversely affect the Purchaser. For
purposes of this Section 8.6, Additional Conditions which
individually or collectively impose a direct or indirect cost to
Purchaser of \$5 million, or more, shall be conclusively deemed to be
“materially different.” If Sellers determine not to seek such

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Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General's imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the "Evaluation Period") to determine, in the exercise of the Purchaser's reasonable business judgment and in consultation with Purchaser's financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller's failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the "Extended Evaluation Periods"). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser's business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, "a final, non-appealable order" shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver

of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds."

F. The Debtors and SGM Have Expended Substantial Time and Resources to Close the SGM Sale

29. As discussed above, SGM and third parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken a significant amount of time and resources and simply cannot be undone. By way of example: (i) the Debtors sent "WARN notices" to approximately 4,900 employees, pursuant to the federal Worker Adjustment and Retraining Notification Act of 1988; (ii) thousands of counterparties to executory contracts and unexpired leases, including physicians, have relied on the Sale Order and continued to provide services in reliance on the finality of that Sale Order; (iii) the Debtors and SGM have spent months facilitating an efficient close of the sale, with approximately 20 different workstreams, meeting at least weekly to ensure a smooth transition of operations; (iv) government agency personnel, including the California Department of Public Health and the Board of Pharmacy, have been diligently processing SGM's change of ownership applications for licenses and permits in reliance on the finality of the Sale Order; (v) the Debtors, SGM, and each of the Debtors' six unions spent months successfully negotiating and finalizing modified collective bargaining agreements; (vi) the medical groups affiliated with the Debtors have sent termination notices to their remaining physicians; (vii) the Debtors and SGM have coordinated changes in insurance coverages and insurance policies to ensure seamless coverage for employees and patients, and (viii) the Debtors have created plans to shut off certain services after the close of the SGM Sale. *See* Adcock Decl. ¶ 7.

G. The Debtors' Cash Collateral Agreement

30. On September 6, 2019, the Court entered the *Final Order (A) Authorizing Continued Use of Cash Collateral, (B) Granting Adequate Protection, (C) Modifying Automatic Stay, and (D) Granting Related Relief* [Docket No. 3022] (the "Supplemental Cash Collateral Order") granting the Debtors motion for use of cash collateral [Docket No. 2962, 2968] (the "Supplemental Cash Collateral Motion"). The Supplemental Cash Collateral Order authorized the Debtors' consensual

1 use of cash collateral pursuant to an agreement with certain of its secured lenders (the “Cash
2 Collateral Agreement”). Pursuant to the Cash Collateral Agreement, the Debtors are obligated to
3 meet certain milestones, including plan confirmation by December 15, 2019 and a plan effective
4 date on or before December 31, 2019. *See* Supp. Cash Collateral Mot. at 24. Further, termination
5 of the SGM APA would result in an event of default under the Cash Collateral Agreement. *See id.*
6 In each case, the success of the SGM Sale bears directly on the Debtors’ ability to fund operations
7 and timely meet its plan confirmation milestones.

8 **H. The Debtors’ Plan and Confirmation Timeline**

9 31. On September 3, 2019, the Debtors filed the *Debtors’ Chapter 11 Plan of*
10 *Liquidation (Dated September 3, 2019* [Docket No. 2993] (the “Plan”) and their related disclosure
11 statement [Docket No. 2994] (the “Disclosure Statement”). As more fully described in the
12 Disclosure Statement and below, the Debtors’ Plan provides for deemed consolidation of the
13 Debtors for purposes of implementation of the Plan and the distribution of the proceeds of the two
14 sale transactions in accordance with the Bankruptcy Code’s distribution and classification
15 provisions. Such treatment is supported by the facts of these cases and applicable law.

16 **I. The Attorney General Review Process**

17 32. For years, the Debtors engaged in dialogue with the Attorney General about the
18 Debtors’ financial challenges and the future of the Hospitals, including, for example, a July 2018
19 meeting in anticipation of the Debtors’ bankruptcy filings conducted by the Debtors’
20 representatives and Deputy Attorney General Wendi Horwitz. *See* Levy-Biehl Decl. ¶ 3.

21 33. On February 15, 2019, the Debtors’ representatives met with Attorney General
22 Xavier Becerra and Melanie Fontes Rainer, Special Assistant Attorney General, in Sacramento to
23 discuss the pending SCC Sale and the forthcoming auction and sale of the Hospitals. *See* Levy-
24 Biehl Decl. ¶ 5.

25 34. Beginning in early April 2019, the Debtors’ special healthcare regulatory counsel,
26 Nelson Hardiman LLP, engaged with Deputy Attorney General Scott Chan in anticipation of
27 submitting a notice and requesting approval of the SGM Sale. These discussions and exchanges
28 were regular and ongoing, and addressed, among other things, the substantive and procedural

1 requirements for the submission and review as well as the review timeline. At all times, the
2 Debtors consistently requested an expedited review of the submission in light of their significant
3 operating losses and cash flow challenges. *See* Levy-Biehl Decl. ¶ 7.

4 35. By letter dated May 7, 2019, the Debtors provided notice to, and requested written
5 consent from, the Attorney General for the proposed SGM Sale pursuant to California Corporations
6 Code § 5914 and title 11 of the California Code of Regulations, § 999.5. *See* Levy-Biehl Decl. ¶¶
7 7, 8. On May 13, 2019, the Debtors supplemented their submission to the Attorney General, by
8 including the filing made to the Federal Trade Commission pursuant to the Hart-Scott-Rodino
9 Antitrust Improvements Act of 1976, as amended. *See* Levy-Biehl Decl. ¶ 9.

10 36. As outlined in the submission to the Attorney General—and discussed a number of
11 times in writing, in person, and by email with various representatives of the Attorney General—the
12 SGM Sale is critical. *Id.* at 8. The Debtors explained to the Attorney General that the SGM Sale is
13 the only option to ensure that the Hospitals will survive their current financial challenges and be
14 preserved as providers of essential health care services to their communities. *Id.*; *see also* *Notice of*
15 *Submission of Debtors' Response to the Health Care Impact Statements and Conditions Proposed*
16 *by JD Healthcare, Inc.* [Docket No. 2946].

17 37. The Debtors also explained to the Attorney General that (i) the 2015 Conditions
18 accelerated the demise of the Verity Hospitals to the point that that only a Court supervised
19 restructuring could save them, and (ii) conditions materially different than those in Schedule 8.6
20 would ensure closure of the Hospitals. *See* Adcock Decl. ¶ 15; *see also* *Notice of Submission of*
21 *Debtors' Response to the Health Care Impact Statements and Conditions Proposed by JD*
22 *Healthcare, Inc.* [Docket No. 2946].

23 38. Throughout the process, the Debtors' representatives engaged in ongoing
24 discussions with the Attorney General's office, and requested, among other things, an in-person
25 meeting to review the submission, the transaction, and the expedited processing of the submission.
26 *See* Levy-Biehl Decl. ¶ 10. The Attorney General denied these requests. *Id.*

27 39. The Attorney General's expert, JD Healthcare, conducted interviews with the
28 Debtors' corporate and hospital personnel and other stakeholders in July 2019. *See* Levy-Biehl

Decl. ¶ 11. On August 16, 2019, following these interviews and public hearings, JD Healthcare released its Health Care Impact Statements on the proposed sale of SFMC and SVMC. *Id.* On August 19, 2019, JD Healthcare released its Health Care Impact Statement for Seton. *Id.* The Health Care Impact Statements set forth the expert’s proposed conditions on the SGM Sale.

40. On August 16, 2019, the Attorney General requested that the Debtors and SGM submit responses to the proposed conditions detailing the conditions that were “deal breakers” to the SGM Sale. On August 21, 2019, SGM submitted its response to the Health Care Impact Statements. On August 23, 2019, the Debtors submitted their response. *See* correspondence attached hereto as Exhibit “E.”

41. During the week of August 26, 2019, Deputy Attorney General Scott Chan held public hearings at each of the Hospitals to solicit comments regarding the SGM Sale. *See* Adcock Decl. ¶ 12. At each public meeting, representatives of SGM and the Debtors made public statements detailing the economic impact of the conditions proposed by JD Healthcare and the economic situation confronting each Hospital; urging the Attorney General to consider economic factors when issuing his conditions; and reiterating that any conditions exceeding those in Schedule 8.6 of the SGM APA could result in the termination of the SGM Sale and the closure of the Hospitals. *Id.*; *see also* Levy-Biehl Decl. ¶ 13.

42. On September 6, 2019, the Attorney General’s office met with SGM representatives to discuss the proposed SGM Sale and the proposed conditions. *See* Levy-Biehl Decl. ¶ 14. On September 19, 2019, the Attorney General’s office met with representatives of SGM and the Debtors for the same purpose. *Id.* On September 23, 2019, the Attorney General conducted another telephonic meeting with SGM and the Debtors. During each meeting, SGM consistently informed the Attorney General’s office that SGM would not proceed with the transaction if the Attorney General imposed conditions beyond those SGM agreed to accept in Schedule 8.6. *Id.*

J. The 2019 Attorney General Conditions

43. On September 25, 2019, the Attorney General conditionally consented to the SGM Sale. The Attorney General’s conditional consent is subject to the 2019 Conditions. *See* Exhibit “B.” The 2019 Conditions include numerous Additional Conditions that are materially different

1 than those SGM contractually agreed to in Schedule 8.6. *See* Exhibit “C,” which is a redline
2 reflecting the deletion of the conditions in the 2019 Conditions that are materially different than the
3 conditions in Schedule 8.6; *see also* Baronoff, Decl. ¶ 7.

4 44. The 2019 Conditions require, among other things, that SGM continue to operate the
5 Hospitals and maintain various services, clinics and contractual arrangements for a period of time
6 greater than the period of time that Debtors would have been obligated under the 2015 Conditions
7 if the Debtors had the ability to continue to operate the Hospitals. *See* Adcock, Decl. ¶ 9. The
8 2019 Conditions are also materially different than those to which SGM agreed in Schedule 8.6
9 because the Additional Conditions impose, among other things, greater requirements for charity
10 care expenditures, community benefit expenditures, capital expenditures, and do not account for the
11 substantial shift in charity care needs following the implementation of the Affordable Care Act.
12 *Id.*; *see also* Exhibit “C.”

13 45. Importantly, SGM only agreed to close the SGM Sale if the conditions imposed by
14 the Attorney General’s office were not “materially different” than the conditions SGM agreed to in
15 Section 8.6. *See* APA, Section 8.6, at 32, 33, Docket No. 2305-1; *see also* *See* Baronoff, Decl. ¶ 5.
16 Additionally, SGM has repeatedly told the Debtors that multiple lenders have informed SGM that
17 they would not agree to finance the SGM Sale if the conditions were not consistent with Schedule
18 8.6, which makes the SGM Sale nearly impossible to close. *See* Adcock, Decl. ¶ 16.

19 46. To avoid the impact of the Additional Conditions on the SGM Sale, the Debtors
20 must seek an order enforcing the Sale Order, finding that the SGM Sale is free and clear of the
21 2019 Conditions, and limiting the SGM Sale to only those conditions to which SGM contractually
22 agreed to assumed in Schedule 8.6 of the SGM APA.

23 **K. The Economic Impact of the Additional Conditions**

24 47. The Additional Conditions have a significant impact on the economic viability of
25 the Hospitals and effectively increase, by more than 50%, the purchase price in the SGM APA. By
26 way of example only, the 2019 Conditions would require SVMC to remain operated and
27 maintained as a licensed general acute care hospital (as defined in California Health and Safety
28 Code Section 1250) through December 2024, whereas Schedule 8.6 provides that SVMC will do so

1 through December 2020. The reported Financial Statements of SVMC reflect that, in fiscal year
2 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which was an 18% and 103%
3 increase over the fiscal years 2018 and 2017, respectively. *See* Chadwick Decl., at ¶ 6. Assuming
4 operating losses at SVMC can be maintained at fiscal 2019 levels (a highly optimistic assumption),
5 SGM would likely incur additional estimated losses totaling \$260 million through December 2024
6 because of the Additional Conditions. *Id.* Moreover, the \$260 million loss would likely need to be
7 financed. *Id.* Using an average interest rate of 5% for four years of debt service would result in
8 estimated incremental financing charges totaling approximately \$25 million. *Id.* Accordingly, this
9 2019 Condition alone would place a potential burden on the buyer of at least \$285 million beyond
10 that contemplated in Section 8.6.

11 48. The Charity Care requirement presents another example of the significant economic
12 impact of the 2019 Conditions when compared with Schedule 8.6. The 2019 Conditions require
13 that SGM to provide an annual amount of Charity Care at St. Francis equal to or greater than
14 \$12,793,435 for a period of six fiscal years, which is at least \$4,793,435, per year more than SGM
15 has agreed to provide, pursuant to Section 8.6 for a period of seven years.² *See* Chadwick Decl. ¶
16 7; *see also* 2019 Conditions, Exhibit “B.” After adjusting for the one-year shorter required duration
17 of this 2019 Condition, the estimated incremental cost to the buyer would be nearly \$20 million in
18 total over the six years. *See* Chadwick Decl. ¶ 7. The 2019 Conditions provide for additional
19 increases in Charity Care amounts for St. Vincent and Seton, as well as increases across all four
20 Hospitals in Community Benefit Service amounts. *Id.*

21 49. In summary, the total financial impact of just the these two examples of 2019
22 Conditions would require SGM to incur additional losses of approximately \$305 million beyond
23 those contemplated by Schedule 8.6. *See* Chadwick Decl. ¶¶ 8, 9. When compared to the SGM
24 APA purchase price of \$610 million, these represent a 50% increase in the price for the sale of
25

26 ² The Charity Care Condition imposed by the Attorney General is also \$6.4 million dollars *more*
27 than SFMC provided in Fiscal Year 2019. Thus, the Attorney General is actually requiring an
28 increase in charity care being provided by SFMC.

1 these distressed assets. *Id.* The magnitude of these losses calls into question the viability of the
2 acquisition.

3 50. The imposition of the Additional Conditions would result in the termination of the
4 SGM Sale, unless the Debtors obtain the supplemental order required in Section 8.6 of the APA.
5 *See* Baronoff, Decl. ¶ 7. If the SGM Sale does not close, the most likely outcome is that at least
6 three of the Hospitals will have to close. *See* Adcock, Decl. ¶ 9. Altogether, between July 1, 2018
7 and June 30, 2019, the Hospitals had more than 34,000 inpatient admissions and 312,000 outpatient
8 visits. *Id.* If the Hospitals are closed, all of those patients would be forced to find alternative
9 providers for treatment, perhaps at greater distances than they are now required to travel for
10 treatment at the Hospitals. For example, Seton Coastsides is the only emergency room facility on
11 the Pacific Coast between Daly City and Santa Cruz. *Id.* Additionally, Seton Coastsides has 116
12 skilled nursing facility (“SNF”) beds and, if Seton Coastsides were closed, those residents would be
13 forced to be relocated significant distances to find alternative facilities. *Id.* The risk of negative
14 outcomes for emergency room patients increases as the distance, and therefore the time, required to
15 obtain treatment, increases. In addition to the difficulty in finding alternative facilities for the SNF
16 patients, the impact of transfer trauma on this population could be significant. *Id.*

17 **IV.**

18 **ARGUMENT**

19 **A. THE SALE ORDER EFFECTUATED A SALE OF THE DEBTORS’ ASSETS FREE
20 AND CLEAR OF THE ADDITIONAL CONDITIONS**

21 **1. Section 363 Authorizes the Court to Sell the Debtors’ Assets Free and Clear of
22 Interests**

23 The Court authorized the Debtors to sell assets to SGM pursuant to §§ 363(b) and (f).
24 Section 363(b)(1) provides that the Debtors “may use, sell, or lease, other than in the ordinary
25 course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Bankruptcy Code provides
26 that a sale pursuant to § 363(b)(1) must satisfy one of five alternative tests to be “free and clear of
any interest in such property of an entity other than the estate”:

- 27 (1) applicable nonbankruptcy law permits sale of such property free
28 and clear of such interest;
(2) such entity consents;

- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Here, the Sale Order expressly provides that the SGM Sale was approved “free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights and any successor or successor-in-interest liability theories” pursuant to §§ 363(b) and (f). *See* Sale Order, ¶ G at 7. On this basis, and as set forth more fully below, the Sale Order effectuated the SGM Sale free and clear of the Additional Conditions.

2. The Additional Conditions Constitute an Interest in Property Subject to the “Free and Clear” Language in Section 363

a. Case Law Makes Clear That The Debtors Can Sell Their Hospitals Free And Clear Of “Interest In Property.”

The Bankruptcy Code does not define “interest in property” as that term is used in § 363(f). *See, e.g., Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (“The Bankruptcy Code does not define ‘any interest,’ and in the course of applying section 363(f) to a wide variety of rights and obligations related to estate property, courts have been unable to formulate a precise definition.”). The majority of courts interpret the phrase “interest in property” broadly to include both *in rem* interests in property as well as “other obligations that may flow from ownership of the property.” *Folger Adam Sec., Inc. v. DeMatteis v. MacGregor JV*, 209 F.3d 252, 258 (3d Cir. 2000); *see also In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 582 (4th Cir. 1996) (“Congress did not expressly indicate that . . . it intended to limit the scope of section 363(f) to *in rem* interests, strictly defined, and we decline to adopt such a restricted reading of the statute here.”).

The majority of courts have coalesced around a single approach: interests in property are obligations connected to or arising from the property being sold. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003) (finding that “interests in property [are] within the

1 meaning of section 363(f) in the sense that they *arise from the property being sold*”) (emphasis
2 added); *Leckie Smokeless Coal Co.*, 99 F.3d at 582 (finding that certain claims constituted
3 “interests in . . . assets within the meaning of section 363(f)” where there was “a relationship
4 between (1) the Fund’s and Plan’s rights to demand premium payments from Appellees and (2) the
5 *use to which Appellees put their assets*”) (emphasis added); *Folger Adam Sec., Inc.*, 209 F.3d at
6 259 (“‘[A]ny interest’ is intended to refer to *obligations that are connected to, or arise from, the*
7 *property being sold.*”) (emphasis added); *Indiana State Police Pension Trust v. Chrysler LLC (In re*
8 *Chrysler LLC)*, 576 F.3d 108, 124 (2d Cir. 2009), *granting cert. and vacating as moot*, 558 U.S.
9 1087 (2009) (“We agree with *TWA* and *Leckie* that the term any interest in property encompasses
10 those *claims that arise from the property being sold.*”) (emphasis added) (quotations omitted);
11 *Precision Indus., Inc.*, 327 F.3d at 545 (“the term ‘any interest’ as used in section 363(f) is
12 sufficiently broad to include Precision’s possessory interest as a lessee”); *Myers v. U.S.*, 297 B.R.
13 774, 781 (S.D. Cal. 2003) (“The court finds that Plaintiff’s claim for personal injury does *arise*
14 *from the property being sold*, i.e. the contracts to transport toxic materials.”) (emphasis added); *In*
15 *re Grumman Olson Indus., Inc.*, 467 B.R. 694, 702 (S.D.N.Y. 2012) (“[I]t is now generally
16 agreed—including in this Circuit—that this provision may more broadly extinguish claims that
17 ‘arise from the property being sold.’”).³

18 The Fourth Circuit decision in *Leckie Smokeless Coal Co.* is instructive. In *Leckie*, the
19 debtors—coal mine operators—were obligated to contribute to retiree benefit plans pursuant to the

21 ³ The breadth of case law supporting this construction cannot be understated. *See also In re La*
22 *Paloma Generating, Co.*, No. 16-12700, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017)
23 (holding that emission surrender obligations under California law are an interest in property); *In*
24 *re Vista Marketing Group Ltd.*, 557 B.R. 630 (Bankr. N.D. Ill. 2016) (fee surcharge assessed
25 against purchaser but calculated entirely on debtor’s use of sewer facilities was an interest in
26 property); *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551
27 B.R. 631, 641 (N.D. Ala. 2016) (Coal Act obligations imposed on buyer were interests in
28 property); *In re Christ Hospital*, 502 B.R. 158 (Bankr. D.N.J. 2013) (tort claims asserted
against purchaser of nonprofit hospital were interests in property); *WBQ P’ship v. Va. Dep’t of*
Med. Assistance Servs. (In re WBQ P’ship), 189 B.R. 97, 104–05 (Bankr. E.D. Va. 1995)
(state’s right to recapture depreciation is an “interest” as used in § 363(f)); *In re Aurora Gas,*
LLC, No. A16–00130, 2017 WL 4325560 (Bankr. D. Alaska Sep. 26, 2017).

1 Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701-9722 (the “Coal Act”). *See*
2 *Leckie Smokeless Coal Co.*, 99 F.3d at 575-76. Under the Coal Act, the successor to an operator
3 was jointly and severally liable with the operator for payment of premiums. *See id.* at 576-77.
4 Following the debtors’ bankruptcy filing, the benefit plans opposed a proposed asset sale free and
5 clear of successor liability for Coal Act premium payment obligations. *See id.* at 577. The
6 bankruptcy court approved the sale free and clear, and, on appeal, the Fourth Circuit affirmed,
7 concluding that the right to collect future premiums constituted interests in the assets transferred by
8 the sale. *See id.* at 582. The Fourth Circuit explained that the benefit plans’ right to collect
9 premiums under the Coal Act

10 are grounded, at least in part, in the fact that those very assets have
11 been employed for coal-mining purposes: if Appellees had never
12 elected to put their assets to use in the coal-mining industry, and had
13 taken up business in an altogether different area, the Plan and Fund
14 would have no right to seek premium payments from them. Because
15 there is therefore a relationship between (1) the Fund’s and Plan’s
rights to demand premium payments from Appellees and (2) the use
to which Appellees put their assets, we find that the Fund and Plan
have interests in those assets within the meaning of section 363(f).

16 *Id.* The relationship drawn by the Fourth Circuit between the prepetition obligation and the
17 purchaser’s use of assets for the same purposes as the debtor is cited repeatedly in cases finding
18 that regulatory obligations are interests subject to § 363(f).

19 Similarly, a debtor’s experience rating—the historic metric by which state regulators
20 determine tax or insurance rates—may not be imputed to a purchaser of the debtor’s assets. *See*,
21 *e.g.*, *In re Old Carco, LLC*, 538 B.R. 674 (Bankr. S.D.N.Y. 2015).⁴ In *Old Carco, LLC*, the
22 purchaser of substantially all of the debtor’s assets sought an order finding that the sale order
23 prohibited Indiana and Illinois from using the debtor’s experience rating to calculate the

24 _____
25 ⁴ A long line of experience rating cases reach the same conclusion as *Old Carco, LLC* along
26 similar analytical lines. *Mass. Dept. of Unemployment Assistance v. OPK Biotech, LLC (In re*
27 *PBBPC, Inc.)*, 484 B.R. 860 (B.A.P. 1st Cir. 2013); *In re Tougher Indus., Inc.*, No. 06-12960,
28 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013); *In re USA United Fleet, Inc.*, 496 B.R. 79
(Bankr. E.D.N.Y. 2013); *In re ARSN Liquidating Corp. Inc.*, No. 14-11527, 2017 WL 279472
(Bankr. D.N.H. Jan. 20, 2017).

1 purchaser's unemployment insurance tax rate. *See* 538 B.R. at 677. The state statutes in issue
2 authorized regulators to compute tax rates "based, in part, on the employer's historical claims
3 paying experience, generally reaching back three years." *Id.* at 679. Thus, the purchaser's tax rate
4 was subject to increase based on the amount of benefits paid to workers discharged during the
5 debtor's operations. *See id.* at 679-80. The bankruptcy court concluded that the experience rating
6 constituted an interest in the assets sold because

7 [t]he States' rights to use Old Chrysler's Experience Rating arises
8 from New Chrysler's acquisition of its assets and the continuation of
9 its business. Had New Chrysler started the same business from
10 scratch with new assets, the States could not use Old Chrysler's
11 Experience Rating to compute its tax rate. Furthermore, New
Chrysler's increased liability is directly related to Old Chrysler's
discharge of persons it employed in its business; these discharged
employees never worked for New Chrysler.

12 *Id.* at 684-85. Significantly, this "continuation of business" test is repeated throughout cases
13 addressing interests in property. *See, e.g., Trans World Airlines, Inc.*, 322 F.3d at 290 ("Had TWA
14 not invested in airline assets, which required the employment of the EEOC claimants, those
15 successor liability claims would not have arisen."); *PBBPC, Inc.*, 484 B.R. at 869 ("the record
16 reflects that the transfer of an employer's contribution rate to a successor asset purchaser is really
17 an attempt to recover the money that the predecessor employer would have paid if it had continued
18 in business"); *Leckie Smokeless Coal Co.*, 99 F.3d at 582 (finding no liability would arise "if
19 [purchasers] had never elected to put their assets to use in the coal-mining industry, and had taken
20 up business in an altogether different area"); *accord Chrysler LLC*, 576 F.3d at 126.

21 **b. The Additional Conditions Are An Interest In Property For At Least**
22 **Three Reasons.**

23 Applying the same analysis, it is clear that the 2019 Conditions are interests in property
24 within the meaning of § 363(f) for at least three reasons. Before discussing these reasons, the
25 Debtors reiterate that their argument only focuses on the Additional Conditions since SGM
26 contractually agreed to be bound by the conditions in Schedule 8.6.

27 **First**, as this Court has recognized, the Additional Conditions the Attorney General seeks to
28 impose on SGM are premised on the Debtors' operations. Specifically,

[t]he Conditions provide that any owner of the Hospital must furnish specified levels of emergency services, intensive care services, cardiac services, and various other services. The required service levels were derived ***based upon the historical experience of the prior operator.***

In re Verity Health Sys. of Cal., Inc., 598 B.R. 283, 293 (Bankr. C.D. Cal. 2018) (Robles, J.) (emphasis added). Thus, for example, the Additional Conditions’ purported imposition of “charitable care obligations are connected to and arise from the Assets being sold . . . [because] [h]ad the Assets not originally been earmarked for charitable purposes, the Attorney General could not seek to impose continuing charitable care obligation.” *In re Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 826 (Bankr. C.D. Cal. 2017) (Robles, J.), *appeal dismissed*, No. 17-03708, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018). The Additional Conditions constitute an interest in property to the extent they are premised or calculated based on the historical operations of the Debtors.

Second, the Attorney General’s statutory authority to impose the Additional Conditions arises from the Debtors’ operation of its assets as nonprofit acute care hospitals. The California statutory scheme grants the Attorney General authority to consent to the sale of a nonprofit health facility to a for-profit corporation. *See* CAL. CORP. CODE § 5914(a)(1)(A) (providing that a nonprofit corporation operating or controlling a health facility must obtain the consent of the Attorney General before entering into a transaction to “[s]ell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation”); *see also id.* § 5917 (authorizing the Attorney General to condition any transaction described in CAL. CORP. CODE § 5914). The California statute ***does not*** allow the Attorney General to impose similar conditions on SGM—a for-profit entity—had it “started the same business from scratch with new assets.” *Old Carco*, 538 B.R. at 684. As with the experience rating cases, it is the Debtors’ “prior ownership and use” of the assets transferred by the SGM Sale that gives the Attorney General “a contingent right” to impose conditions on the Debtors under California law. *USA United Fleet, Inc.*, 496 B.R. at 87. Accordingly, the Additional Conditions constitute interests in property because they arise from the Debtors’ prior ownership and use of the assets as nonprofit acute care hospitals.

Third, the Attorney General’s authority to review the transaction arises from SGM’s continuation of the Debtors’ business as a health facility. *See* CAL. CORP. CODE § 5914(a)(1) (applying only to a sale of the assets of a nonprofit corporation that “operates or controls a health facility”). Under California law, the Debtors’ assets subject to the SGM Sale qualify as health facilities to the extent they are operating general acute care hospitals. *See* CAL. HEALTH & SAFETY CODE § 1250(a). By way of example, in *Gardens Regional Hospital and Medical Center, Inc.*, this Court found that a sale of closed general acute care hospitals did not fall within the ambit of the Attorney General’s regulatory authority because “the Assets being sold do not include an operating hospital.” *See* 567 B.R. at 827. Here, however, SGM intends to purchase the Debtors’ assets as operating acute care hospitals and continue their operations post-closing. As this Court has observed, the Attorney General’s authority to impose the Additional Conditions on SGM under California Corporations Code, §§ 5914 *et seq.*, is “grounded, at least in part, in the fact that those very assets have been employed for” acute care hospital purposes. *Leckie Smokeless Coal Co.*, 99 F.3d at 582; *see also Gardens Reg’l Hosp. & Med. Ctr., Inc.*, 567 B.R. at 826 (“The Attorney General’s claim to regulatory authority is similar to the regulatory interests asserted in *PBBPC* and *Leckie Smokeless Coal*, and therefore constitutes an ‘interest in . . . property’ for purposes of § 363(f).”). Accordingly, the Additional Conditions constitute interests in property because the Attorney General’s authority to impose the Additional Conditions is conditioned on their operation as health facilities upon the closing of the SGM Sale.

3. The SGM Sale Should Be Authorized Free and Clear of the Additional Conditions Pursuant to Section 363(f)

The Debtors are authorized to consummate the SGM Sale free and clear of the 2019 Conditions because the SGM Sale satisfies the disjunctive sub-factors of § 363(f). *See* 11 U.S.C. 363(f); *see also Pinnacle Rest. at Big Sky, LLC v. CH SP Acquisitions (In re Spanish Peaks Hldgs. II, LLC)*, 872 F.3d 892, 897 (9th Cir. 2017). For practical purposes, the analysis below references the Additional Conditions, given that SGM contractually agreed to be bound by the conditions in Schedule 8.6.

1 a. **California Law Allows the Sale of Nonprofit Health Facilities Without**
2 **the Imposition of Additional Conditions (§ 363(f)(1))**

3 The Bankruptcy Code permits the sale of property free and clear of interests if “such a sale
4 would be **legally permissible**.” *In re Spanish Peaks Hldgs. II, LLC*, 872 F.3d at 900 (emphasis
5 added); *see also* 11 U.S.C. § 363(f)(1) (permitting sales free and clear of interests if “applicable
6 nonbankruptcy law permits the sale of such property free and clear of such interest”). Thus, absent
7 a specific statutory requirement, the purchaser of an asset assumes no associated liabilities of the
8 seller, including successor liability. *See Myers v. U.S.*, 297 B.R. at 784 (“As a general rule, under
9 California law a purchaser does not assume the seller’s liability.”). Under § 363(f)(1), the Debtors
10 can sell the Hospitals free and clear of the Additional Conditions because **neither** the Attorney
11 General’s statutory basis for imposing the Additional Conditions **nor** California common law
12 impose successor liability. *See In re Verity Health Sys. Of Cal., Inc.*, 598 B.R. at 296 (Bankr. C.D.
13 Cal. 2018) (Robles, J.) (“Provisions within the Conditions are enforceable only to the extent they
14 are supported by California law.”)

15 The California Corporations Code does not authorize the Attorney General to impose
16 successor liability on the assets of a health facility. California law imposes upon the seller the
17 obligation to notify the Attorney General of a sale and to obtain his consent to such sale. *See CAL.*
18 *CORP. CODE* § 5914(a)(1) (“Any nonprofit corporation that . . . operates a health facility . . . shall be
19 required to providing written notice to, and obtain the written consent of, the Attorney General”
20 prior to entering into a sale transaction.); *see id.* § 5917 (granting the Attorney General discretion to
21 “consent to, give conditional consent to, or not consent to any agreement or transaction). But, the
22 statute **does not** grant the Attorney General authority to impose conditions on the assets subject to
23 the transaction. Indeed, the Attorney General was previously unable to identify any provision of
24 applicable “California law entitling him to enforce successorship liability under the circumstances
25 of this case.” *In re Verity Health Sys. of Cal., Inc.*, 598 B.R. at 296 (finding that “[t]he Attorney
26 General’s reliance upon provisions purporting to make the Conditions binding upon all successors,
27 regardless of the circumstances under which such successors acquiring the Hospitals, is an
28 impermissible attempt to expand his regulatory authority over the Hospitals”).

1 In *La Paloma Generating, Co.*, a bankruptcy court granted a sale pursuant to § 363(f)(1)
2 after finding that the applicable California regulatory scheme governing the transfer of cap and
3 trade liabilities in the sale of electrical generation facilities did not impose successor liability. *See*
4 No. 16-12700, 2017 WL 5197116 (Bankr D. Del. Nov. 9, 2017). The court concluded that, as here,
5 the regulatory scheme did not impose successor liability because it imposed liabilities on entities
6 rather than the assets subject to the transaction. *See id.* at *7 (“[T]he Regulation does not dictate . .
7 . substitution and assumption of liability. In no way does Section 95835(b)(8) impugn liability on
8 the purchase of the Covered Entity’s assets.”). Here, similarly, the California Corporations Code
9 does not impose any statutory successor liability because the obligations are limited to the seller
10 rather than the assets transferred pursuant to a sale.

11 Further, the SGM Sale does not implicate any of the four grounds to impose successor
12 liability under California law. Under California law,

13 the purchaser does not assume the seller’s liabilities unless (1) there
14 is an express or implied agreement of assumption, (2) the transaction
15 amounts to a consolidation or merger of the two corporations, (3) the
16 purchasing corporation is a mere continuation of the seller, or (4) the
transfer of assets to the purchaser is for the fraudulent purpose of
escaping liability for the seller’s debts.

17 *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (1977); *see also City of San Diego v. Nat’l Steel &*
18 *Shipbuilding Co.*, No. 09-2275, 2011 WL 5104624, at *4 (S.D. Cal. Oct. 27, 2011). None of the
19 four grounds is present here. SGM has not expressly or impliedly agreed to assume the Debtors’
20 obligations under the 2015 Conditions (except to the extent contracted in the SGM APA). The
21 Court specifically found that the transfer was at arm’s length and in good faith rather than for any
22 fraudulent purpose. *See* Sale Order, ¶¶ D-E at 6-7 (“[T]he Transaction being consummated
23 pursuant to and in accordance with the APA is not being consummated, for the purpose of
24 hindering, delaying or defrauding creditors of the Debtors.”). Finally, the transaction is not a
25 consolidation, merger, or mere continuation because SGM has provided non-stock consideration
26 and SGM and the Debtors have different officers, directors, or stockholders. *See, e.g., Alad Corp.*,
27 19 Cal. 3d at 28-29 (citing *Econ. Refining & Serv. Co. v. Royal Nat. Bank of N.Y.*, 20 Cal. App. 3d
28 434 (Cal. Ct. App. 1971); *Malone v. Red Top Cab Co.* 16 Cal. App. 2d 268, 272-274 (1936);

1 *Shannon v. Samuel Langston Co.* 379 F. Supp. 797, 801 (W.D. Mich. 1974)). Accordingly, the
2 Debtors may sell the Hospitals free and clear of the Additional Conditions because nonbankruptcy
3 law does not impose successor liability notwithstanding the contrary provisions in the Additional
4 Conditions.

5 **b. The Additional Conditions Are Subject to A Bona Fide Dispute (§**
6 **363(f)(4))**

7 The Debtors may sell the Hospital free and clear of the Additional Conditions because the
8 Attorney General's authority to impose the Additional Conditions is in bona fide dispute. *See* 11
9 U.S.C. § 363(f)(4). The phrase "bona fide dispute" is not defined by the Bankruptcy Code. *See*
10 *Atlas Mach. & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F.2d 709, 715 (4th Cir. 1993)
11 ("Although courts have not agreed on a precise definition of 'bona fide dispute,' it entails some sort
12 of meritorious, existing conflict.") (citations omitted). Courts find a "bona fide dispute" when
13 "there is an objective basis for either a factual or legal dispute as to the validity of the asserted
14 interest." *In re Taylor*, 198 B.R. 142, 147 (Bankr. D.S.C. 1996). An objective legal basis for
15 dispute may arise under bankruptcy or nonbankruptcy law. *See In re L.L. Murphrey Co.*, No. 12-
16 03837-8-JRL, 2013 WL 2451368 (Bankr. E.D.N.C. June 6, 2013) (finding bona fide dispute as to
17 validity of a creditor's lien subject to avoidance under § 544(a)(3)). Importantly, it is not necessary
18 that the court resolve the dispute or its merits. *See id.* ("This standard does not require that the
19 Court resolve the underlying dispute or determine the probable outcome of the dispute, but merely
20 whether one exists.").

21 Here, the Additional Conditions are subject to bona fide dispute under bankruptcy and
22 nonbankruptcy law. As set forth in this Motion, the Debtors dispute the Attorney General's
23 authority to issue conditions impose successor liability contrary to the provisions of California law,
24 the Bankruptcy Code, and the Sale Order. Further, as discussed more fully below, the Debtors
25 dispute whether the Attorney General abused his discretion in imposing the Additional Conditions
26 without adequate support. In each instance, the Court need not determine the relative merits of the
27 disputes, and, instead, need only find that the disputes raised by the Debtors are bona fide. In each
28

1 case, the Debtors' disputes as to the Additional Conditions support a sale free and clear of the
2 Additional Conditions under § 363(f)(4).

3 **c. The Attorney General Can Be Compelled to Accept A Money**
4 **Satisfaction in the Event of Noncompliance with the Additional**
5 **Conditions (§ 363(f)(5))**

6 Section 363(f)(5) permits a sale free and clear if (i) the nondebtor could be compelled to
7 accept a money satisfaction of the interest in property (ii) in a proceeding that could be brought.
8 *See In re PW, LLC*, 391 B.R. 25, 41 (B.A.P. 9th Cir. 2008). An interest in property is subject to
9 satisfaction for purposes of § 363(f)(5) if it imposes a calculable monetary obligation. *See In re*
10 *Vista Marketing Grp. Ltd.*, 557 B.R. at 635 ("[O]ne would be hard-pressed to present a clearer
11 example of a situation where the interest-holder could be compelled to accept a money satisfaction
12 of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the
13 District in its surcharge bill and disconnection notice."); *see also In re Trans World Airlines, Inc.*,
14 322 F.3d 283, 290 (3d Cir. 2003) (interests in property such as travel vouchers and EEOC claims
15 may be reduced to a specific monetary value for purposes of § 365(f)(5)).

16 Here, many of the Additional Conditions are subject to satisfaction by the payment of
17 money. For example, certain Additional Conditions require charity care of a specific monetary
18 value. *See* Exhibit "C." The Attorney General has historically (including in the Debtors' own
19 experience) allowed health facilities to satisfy any charity care deficiency by paying funds to
20 satisfy shortfalls to other purposes or entities. *See, e.g., First-Day Decl.*, ¶ 108 at 28 ("[A]s a result
21 of a shortfall in the fiscal year 2017 charity care requirement for certain hospitals, VHS was
22 required to make an additional contribution to the Retirement Plans of \$7,619,000 in October
23 2017."); *see also In re WBQ P'ship*, 189 B.R. at 107 (finding § 363(f)(5) satisfied where state's
24 right of recapture upon sale of nursing home could constitute a claim against the debtors subject to
25 hypothetical cramdown).

26 Indeed, there is no dispute that the Attorney General allows unsatisfied charity care
27 contributions to be satisfied by the payment of money. In the 2015 Conditions, the Attorney
28 General expressly allowed the Debtors to satisfy any shortfall by paying an amount equal to the
charity care shortfall to some other purpose. For example, with regard to St. Francis, the 2015

1 Conditions expressly allowed satisfaction of the Charity Care Condition by payment of 50% of the
2 shortfall to employee pension plans and 50% of the shortfall to capital expenditures for
3 maintenance of the facilities. *See* Docket No.256-1, Exhibit A, at 9. Allowing payment of monies
4 to other entities to satisfy a shortfall in providing charity care is not unique to these hospitals. A
5 review of the Attorney General’s website describing nonprofit hospital transactions is replete with
6 such examples. *See* <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofithosp/>. For
7 example, in a decision on January 9, 2019, regarding Parkview Hospital, the Attorney General
8 approved the proposed transaction with the condition that if there was a shortfall in the charity care
9 required, that shortfall could be satisfied by the payment of “an amount equal to the deficiency to
10 one or more tax-exempt entities that provide direct health care services to residents in the
11 Hospital’s service area.”

12 Further, the 2019 Conditions make clear that the Attorney General can enforce satisfaction
13 of these monetary obligations in a hypothetical legal proceeding. *See In re WBQ P’ship*, 189 B.R.
14 at 107 (holding that nursing home sale was free and clear of state department’s right to recover
15 depreciation overpayments and emphasizing “‘hypothetical’ satisfaction, since §
16 363(f)(5) authorizes a sale if the interest holder ‘*could be* compelled, in a legal or equitable
17 proceeding, to accept a money satisfaction of such interest’”) (emphasis in original). The Attorney
18 General specifically reserves his right to enforce the 2019 Conditions “to the fullest extent provided
19 by law” and that, “[i]n addition to any legal remedies the Attorney General may have, the Attorney
20 General shall be entitled to specific performance, injunctive relief, and such other equitable
21 remedies a court may deem appropriate for breach of any of these Conditions.” *See* Exhibit “B.”
22 As with the Debtors’ prior satisfaction of the Charity Care Condition, payment of money was
23 sufficient to “extinguish” entirely the Debtors’ obligation to comply with the Charity Care
24 Condition. *See, e.g., In re Hassen Imports P’ship*, 502 B.R. 851, 861 (C.D. Cal. 2013) (finding that
25 § 363(f)(5) “only authorizes sale free and clear when money payment is given in exchange for the
26 extinguished interest”). Accordingly, as noted by the Attorney General, monetary conditions may
27 be satisfied in a hypothetical legal proceeding.

1 Accordingly, the Attorney General can be compelled to accept monetary satisfaction of the
2 Additional Conditions that impose calculable monetary obligations sufficient to sell the Hospitals
3 free and clear of the Additional Conditions. For the foregoing reasons, the Sale Order effectuated a
4 sale free and clear of the 2019 Conditions except for those SGM agreed to assume by contract as
5 set forth in Schedule 8.6.

6 **d. The Additional Conditions Contravene The Purposes of § 363(f) to the**
7 **Extent They Purport to Impose Successor Liability on SGM.**

8 California law does not authorize the Attorney General to impose successor liability on the
9 purchaser of a health care facility because the statute only makes reference to the obligations of the
10 seller rather than the assets sold. *See* discussion, *supra*; *see also In re La Paloma Generating, Co.*,
11 No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017); CAL. CORP. CODE § 5914.
12 Further, the Debtors may sell the Hospitals free and clear of any successor liability assuming,
13 *arguendo*, that the Conditions impose successor liability on SGM.

14 Courts favor a broader reading of § 363 in two instances where imposition of successor
15 liability would compromise the fundamental purposes of bankruptcy sales. **First**, “allowing sales
16 of debtor assets free and clear of liabilities of the debtor induces a higher sale price for the assets,
17 thereby maximizing the value of the estate and maximizing potential recovery to creditors.”
18 *Grumman Olson Indus. Inc.*, 467 B.R. at 703; *see also Douglas v. Stamco*, 363 Fed. Appx. 101,
19 102-03 (2d Cir. 2010) (“to the extent that the ‘free and clear’ nature of the sale . . . was a crucial
20 inducement in the sale’s successful transaction . . . the potential chilling effect of allowing a tort
21 claim subsequent to the sale would run counter to a core aim of the Bankruptcy Code”); *Indiana*
22 *State Police Pension Trust*, 576 F.3d at 126 (“The possibility of transferring assets free and clear of
23 existing tort liability was a critical inducement to the Sale.”); *In re PBBPC, Inc.*, 484 B.R. at 870
24 (rejecting imposition of experience rating where “the possibility of transferring assets free and clear
25 of successor liability was a critical inducement to the sale”) (quotations omitted); *Myers v. U.S.*,
26 297 B.R. at 781 (finding sale order sold assets free and clear of successor liability and positing
27 “who would ever purchase assets at a bankruptcy proceeding if the successor liability were not
28 limited, despite the plain wording of the bankruptcy court order?”). As discussed in detail, above,

1 imposition of the Additional Conditions have serious financial consequences for the SGM Sale that
2 undercut the free and clear nature of the SGM Sale and served as a critical inducement for the only
3 bidder on the Debtors' Hospital assets. Accordingly, the Debtors may sell the Hospitals free and
4 clear of any successor liability imposed by the Additional Conditions under § 363.

5 **Second**, allowing a claimant to pursue an asset purchaser in bankruptcy "would subvert the
6 Bankruptcy Code's priority scheme, by allowing a low-priority, unsecured claim to leapfrog over
7 other creditors in the bankruptcy." *See, e.g., In re Grumman Olson Indus. Inc.*, 467 B.R. 694, 703
8 (S.D.N.Y. 2012); *see also In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003) ("Even
9 were we to conclude that the claims at issue are not interests in property, the priority scheme of the
10 Bankruptcy Code supports the transfer of TWA's assets free and clear of the claims."); *Myers*, 297
11 B.R. at 781 (finding a sale order that *excluded* "successor liability" from the interests stripped
12 under § 363(f) nevertheless effectuated a sale of the assets free and clear of successor liability
13 because, to hold otherwise, "would allow unsecured creditors to receive greater protection and
14 more priority than secured claims"). The Additional Conditions allow the Attorney General to
15 impose monetary obligations on SGM to continue providing services such as charity care that were
16 financially infeasible for the Debtors.

17 **B. COMPLIANCE WITH § 363(d)(1) DOES NOT LIMIT THE DEBTORS' RIGHT TO**
18 **SELL ITS ASSETS FREE AND CLEAR UNDER § 363(f).**

19 Section 363(d)(1) provides that the Debtors must sell the Hospitals in accordance with
20 nonbankruptcy law applicable to nonprofit transactions, and § 363(f) authorizes the Debtors to sell
21 the Hospitals free and clear of interests in property. These two sections are easily construed under
22 several applicable principles of statutory construction.

23 First, each statutory provision should be read by reference to the whole act. *See John*
24 *Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 114 S. Ct. 517, 523 (1993); *Pavelic &*
25 *Leflore v. Marvel Entm't Grp.*, 493 U.S. 120, 123-24 (1989); *Mass. v. Morash*, 490 U.S. 107, 114-
26 15 (1989). Second, the Court should avoid interpreting a provision of the Bankruptcy Code in a
27 way inconsistent with the policy of another provision of the Bankruptcy Code. *See United Sav.*
28 *Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). Finally, specific provisions

targeting a particular issue apply instead of provisions more generally covering the issue. *See Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (a general statute will not be held to have repealed by implication a more specific one unless there is “clear intention otherwise”); *U.S. v. Novak*, 476 F.3d 1041, 1054 (9th Cir. 2007) (recognizing “the elementary tenet of statutory construction that a general statute will not alter a more specific one”) (quotations omitted). This tenet applies with equal force to interpretation of competing provisions of the Bankruptcy Code. *See Law v. Seigel*, 571 U.S. 415, 421 (2014) (resolving conflict between §§ 105(a) and 522 by “application of the axiom that a statute’s general permission to take actions of a certain type must yield to a specific prohibition found elsewhere”).

Applying these principles, the requirement to act in accordance with nonbankruptcy law does not abrogate the Debtors’ authority to sell free and clear of the Additional Conditions under the more specific provisions of § 363(f), particularly when the Additional Conditions would render the terms of the SGM APA and the Sale Order meaningless.

Section 363(f) provides specific grounds to conduct sales free and clear of interests in property that is not limited by a nonprofit debtor’s general obligation, under § 363(d)(1), to comply with nonbankruptcy law. Section 363 provides that nonprofit debtors must generally comply with applicable nonbankruptcy law in conducting sales under § 363(b). Section 363(d)(1) provides that a nonprofit debtor may sell assets of the estate pursuant to § 363(b) “only in accordance with nonbankruptcy law applicable to the transfer of property by” such nonprofit debtor. 11 U.S.C. 363(d)(1). This general requirement in § 363(d)(1) makes no reference to § 363(f), which sets forth the specific bases by which a debtor may obtain approval of a sale under § 363(b) free and clear of any interest in such property. Without a “clear intention otherwise,” the general requirement that a nonprofit debtor comply with nonbankruptcy law does not repeal by implication the specifics of free and clear sales under § 363(f), including the Debtors’ rights to sell assets free and clear of successor liability. *See Morton*, 417 U.S. at 550-51. Simply put, § 363(d)(1) does not grant the Attorney General the unfettered right to impose conditions without regard to this Court’s exclusive

jurisdiction over the Debtors' assets and any other provisions of the Bankruptcy Code. *See, e.g.*, §§ 363(f), 525, 541; *see also* 28 U.S.C. § 1334(e).⁵

Even if the provisions were in conflict, applicable law authorizing the Attorney General to review and condition sales of health facilities is not inconsistent with the successor liability limitations set forth in § 363(f). As discussed above, applicable California law does not impose successor liability on the SGM Sale because the obligations are imposed on the seller of a health facility rather than the assets themselves. *See, e.g., In re La Paloma Generating, Co.*, 2017 WL 5197116, at *7 (“[T]he Regulation does not dictate . . . substitution and assumption of liability. In no way does Section 95835(b)(8) impugn liability on the purchase of the Covered Entity’s assets.”).

Accordingly, the general requirements of § 363(d)(1) are not in conflict with the Debtors’ authority to sell assets free and clear of successor liability under § 363(f). The Debtors complied with the requirements of nonbankruptcy law and received the Attorney General’s conditional approval of the SGM Sale. Nonbankruptcy law does not impose successor liability on SGM, and,

⁵ The Attorney General has previously argued that he may enforce conditions on the sale of a nonprofit hospital, pursuant to police and regulatory powers designed to protect the health and safety of the community. *See* Docket No. 463, at 7 (the “Prior Response”). However, unlike § 362(b)(4), § 363 has no exception for governmental entities acting pursuant to police or regulatory powers. The Congress is presumed to act intentionally and purposely when it includes language in one section but omits it in another. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“where Congress includes particular language in one section of a statute but omits it in another [...] it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Even if such an exception were to apply, as the Attorney General concedes in the Prior Response, preemption of state law is most likely where the state statute carves an exception out of the Bankruptcy Code, or where the state statute is concerned with economic regulation rather than protecting the public health and safety. Prior Response, at 7, lines 1-15 (citing *Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nevada*, 35 F.3d 1348, 1353 (9th Cir. 1994)). Both situations exist here. First, the interpretation suggested by the Attorney General carves a huge exception out of the Bankruptcy Code, basically allowing him to ignore both the plain language of the federal laws, and the practical implications of his interpretation. Second, although the state statute discusses that a sale to a for-profit “may affect the availability of community health care services,” Prior Response, at 7, lines 23-24 (citing CAL. CORP. CODE, Ch. 9, Note §1m Stats 1996, ch. 1105), the Attorney General has *no* general oversight over health facilities in California or over acute care hospitals in particular. Rather, his review is predicated on the regulation of a kind of business—nonprofits—and therefore falls neatly into economic regulations.

1 to the extent the Additional Conditions impose successor liability, the Debtors may sell free and
2 clear under § 363(f) while still complying with their general obligations under § 363(d)(1).

3 **C. THE ATTORNEY GENERAL CANNOT INTERFERE WITH THE COURT’S**
4 **EXCLUSIVE JURISDICTION OVER PROPERTY OF THE ESTATES.**

5 Section 1334(e) of title 28 of the United States Code grants federal district courts—and, by
6 jurisdictional grant, pursuant to 28 U.S.C. § 157(a), bankruptcy courts within each district—
7 exclusive jurisdiction of all property of the debtor and its estate, “wherever located.” 28 U.S.C. §
8 1334(e); 11 U.S.C. § 157(a); *see also Hong Kong and Shanghai Banking Corp. v. Simon (In re*
9 *Simon)*, 153 F.3d 991 (9th Cir. 1998) (district court in which bankruptcy case is commenced has
10 exclusive *in rem* jurisdiction over all estate property); *see also Central Va. Cmty College v. Katz*,
11 546 U.S. 356, 126 S. Ct. 990 (2006) (A “critical feature of every bankruptcy proceeding [is] the
12 exercise of exclusive jurisdiction over all of the debtor’s property.”). Moreover, in the context of
13 adjudicating the rights of in a bankruptcy estate, even against the Attorney General, the power of
14 the bankruptcy court includes the “power to issue compulsory orders to facilitate the administration
15 and distribution of the res.” *Id.* The Supreme Court was clear in *Katz* that the Court’s power was
16 not limited to *in rem* beyond the “mere adjudication of rights in a res” and extended to proceedings
17 “necessary to effectuate the *in rem* jurisdiction of the bankruptcy courts.” *Id.* Therefore, under
18 *Katz*, the Court also has the power to issue orders necessary to effectuate the Sale Order, including
19 issuing orders that the SGM Sale is free and clear of the Additional Conditions.

20 Here, the Court has exclusive jurisdiction over the Hospitals because they are indisputably
21 “property of the estates” pursuant to § 541. *See* § 541. The Court’s exclusive jurisdiction limits
22 the Attorney General’s attempt to impose restrictions on the Hospitals. Moreover, the states’ right
23 to regulate an operating debtor in possession under 28 U.S.C. § 959(b) does not limit this Court’s
24 jurisdiction or give the state the right to interfere in the sale of the Debtors’ Hospitals. *See Hillis*
25 *Motors v Hawai’i Auto Dealers Assn.*, 997 F.2d 581, 592 (9th Cir 1993) (holding that state action
26 to involuntarily dissolve a corporation for non-payment of franchise fees and filings violated the
27 automatic stay as an act to control property of the estate under § 362(a)(3) and was not excepted by
28 §362 (b)(4) or (5) or 28 U.S.C. § 959(b)).

D. THE ADDITIONAL CONDITIONS VIOLATE § 525 BECAUSE THEIR EXPRESS PURPOSE IS TO REQUIRE SGM TO UNDERTAKE THE SAME OBLIGATIONS THE DEBTORS CAN NO LONGER ACCOMPLISH.

Imposition of the Additional Conditions constitutes impermissible discrimination against the Debtors and SGM, as a debtor-associate, pursuant to § 525. Section 525(a) grants the Debtors protection against discriminatory treatment by governmental unit on account of the Debtors' insolvency. *See* 11 U.S.C. § 525(a).

One of the leading case interpreting § 525 is the United States Supreme Court's decision in *Federal Communications Commission v. NextWave Communications, Inc.* 537 U.S. 293 (2003) ("NextWave"). In *NextWave*, the Federal Communications Commission (the "FCC") cancelled certain licenses owned by the debtor, but denied that the proximate cause for its cancellation of the licenses was the failure to make payments due to the FCC. Instead, the FCC contended that § 525 did not apply because it had a valid regulatory motive for the cancellation. The Supreme Court held that the FCC's motive was "irrelevant" because "[s]ection 525 means nothing more or less than that the failure to pay a dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive in pulling the trigger may be." *NextWave*, 537 U.S. at 301-02. The FCC contended that NextWave's license obligations to the commission were not "debt[s] that [are] dischargeable" in bankruptcy. *Id.* at 302. The FCC argued that regulatory requirements, such as a full and timely payment condition, are not properly classified as "debts" under the Bankruptcy Code. The Supreme Court dismissed this argument, finding that "a debt is a debt even when the obligation to pay it is a regulatory condition." *Id.* at 303. The FCC also argued that NextWave's obligations were not "dischargeable" in bankruptcy because bankruptcy courts did not have the jurisdictional authority to alter regulatory obligations. *Id.* Noting that dischargeability is not tied to the existence of such authority, the Supreme Court found that a preconfirmation debt is dischargeable unless it falls within an express exception to discharge. *Id.*

In *In re Aurora Gas, LLC*, the bankruptcy court addressed whether the State of Alaska violated § 525(a) by effectively conditioning the sale of gas leases on the purchaser's assumption of unpurchased liabilities. *See* No. 16-00130, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017).

1 The debtor formerly operated nine oil and gas wells leased from the state. *See id.* at *1. During the
2 course of the bankruptcy case, the debtor determined that it would not be able to sell three of the
3 wells leased on state lands and could not afford to completely plug and abandon the wells. *See id.*
4 The debtor, thus, began the process of temporarily plugging the wells and obtained approval to
5 reject the leases. *See id.* The debtor secured an offer to purchase five of the remaining oil and gas
6 leases for \$100,000, subject, however, to review and approval by the state. *See id.* The bankruptcy
7 court entered an order granting authority to assume and assign the leases and sell related assets free
8 and clear of claims and interests. *See id.* at *2. Subsequently, the state imposed conditions on the
9 sale that required the purchaser either agree to (i) a bond in the amount of \$200,000 and an
10 agreement to plug and abandon the three unpurchased wells, or (ii) a bond in the amount of \$6
11 million. *See id.*

12 The bankruptcy court held that the imposition of the conditions violated § 525(a). The
13 bankruptcy court noted that “the State does not deny that the Decision was an attempt to collect
14 [the debtor’s] debt for the [nonoperating] leases. Rather, it defends its action as necessary to
15 provide for the plugging and abandonment of the wells which the debtor will not be able to
16 accomplish.” *Id.* at *4. The court concluded that the state “effectively denied the debtor’s transfer
17 of five of its . . . leases because it insists on recovering the debtor’s . . . plug and abandonment
18 liability.” *Id.* at *5. Indeed, the \$6 million bonding requirement made clear that the state’s intent
19 was to recover on the debtor’s potentially dischargeable liabilities rather than the “proper exercise
20 of the agency’s discretion in discharge of its statutory duties.” *See id.* (“There is nothing in the
21 Decision to support the [state’s] conclusion that it will cost \$1,000,000 to plug and abandon each
22 well.”).

23 The Additional Conditions are no different than those addressed by the bankruptcy court in
24 *Aurora Gas* because they impose upon SGM the very same levels of services, charity care, and
25 other obligations imposed on the Debtors by the 2015 Conditions. The Additional Conditions
26 repeatedly obligate SGM to maintain licensure and services “at no less than current” levels that
27 correspond directly to the Debtors’ postpetition services. *See* Exhibit “B” (“The term ‘current’ or
28 ‘currently’ throughout this document means as of January 1, 2019.”) (2019 Conditions, at 2, n.2).

As discussed above, § 363(f) allows the Debtors to sell their assets free and clear of the Attorney General’s interests in imposing Additional Conditions. These interests are dischargeable within the meaning of § 525(a) even if the Debtors will not receive a discharge under their Plan. *See Aurora Gas, LLC*, 2017 WL 4325560, at *6 (“The State has not identified any exception within § 523(a) for the debtor’s prepetition liability for plugging and abandoning the [nonoperating] wells. Nothing within § 525(a) requires that the debtor actually obtain a discharge, only that the debt be dischargeable.”); *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. at 303 (“A preconfirmation debt is dischargeable unless it falls within an express exception to discharge.”). Further, as with *Aurora Gas*, the Additional Conditions will “effectively den[y] the [Debtors’] transfer of” their hospital assets because the Attorney General “insists on recovering” from SGM the same obligations imposed on the Debtors under the 2015 Conditions. The Additional Conditions must be denied as violative of § 525(a) because the Debtors’ inability to continue the same services following the conclusion of these Cases are “the proximate cause” of the Attorney General’s Additional Conditions. *See NextWave Pers. Commc’ns Inc.*, 537 U.S. at 301-02.

E. THE ATTORNEY GENERAL ABUSED HIS DISCRETION IN IMPOSING THE ADDITIONAL CONDITIONS.

1. The Court Has Authority to Review Whether the Attorney General Abused His Discretion in Imposing the Additional Conditions.

If the Court does not find the Additional Conditions are cut off by § 363, the Debtors ask that the Court review the Attorney General’s decision under applicable nonbankruptcy law. Section 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1221(e) (2005), makes clear that the applicable nonbankruptcy law should be interpreted by this Court and should not be referred to a state court. *In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700-01 (Bankr. S.D.N.Y. 2016) (“While a transfer [of nonprofit assets] must comply with the substantive requirements of state law. . . any determination that would be made by a state court, . . . in the absence of a bankruptcy case, is now a determination to be made by [the bankruptcy court], and not by the state court.”).

The Attorney General has discretion under applicable state law to deny, consent to, or conditionally approve a transaction. However, that discretion is limited and subject to judicial

1 review. Under state law, the Court has the power to overrule the Attorney General’s decision
2 imposing conditions inconsistent with Section 8.6 of the SGM APA. *Del Riccio v. Superior Court*,
3 115 Cal. App. 2d 29, 31 (1952) (“In the exercise of equitable jurisdiction the court undoubtedly has
4 broad discretionary powers to take whatever action is necessary in the interests of justice in order
5 that its decrees will not fail to accomplish their purpose.”); *see also* Cal. Code Civ. Proc., § 187.
6 That power extends even to reviewing discretionary decisions for abuse of discretion. *Lamb v.*
7 *Webb* (1907) 151 Cal. 451, 454 (the trial court has the power to compel the Attorney General to act
8 where the Attorney General abused its discretion); accord *City of Campbell v. Mosk*, 197 Cal. App.
9 2d 640, 645 (1961).

10 Judicial review of most public agency decisions is obtained either by: (1) a writ of
11 ordinary/traditional mandamus, pursuant to C.C.P. § 1085; or (2) a writ of administrative
12 mandamus, pursuant to C.C.P. § 1094.5. *See Friends of the Old Trees v. Dep’t of Forestry & Fire*
13 *Prot.*, 61 Cal. Rptr. 2d 297, 303 (Cal. Ct. App. 1997). Ordinary mandate under C.C.P. § 1085 is a
14 traditional remedy by which a court compels an inferior tribunal to perform a legally required duty.
15 Administrative mandate under C.C.P. § 1094.5 is a statutory remedy which enables a petitioner to
16 challenge an administrative decision after an adjudicatory hearing in which the agency performs a
17 fact finding function. Parties are entitled to seek both in the same action. *See Conlan v. Bonta*, 102
18 Cal. App. 4th 745, 751-52 (2002). Moreover, C.C.P. §§ 1085 and 1094.5, subd. (f) are identical in
19 authorizing courts to issue a writ of mandate to compel the performance of an act “which the law
20 specially enjoins.”

21 Under C.C.P. § 1094.5, the Court “begin[s] its review with a presumption of the correctness
22 of administrative findings, and then, after affording the respect due to these findings, exercise[s]
23 independent judgment in making its own findings.” *Fukuda v. City of Angels*, 977 P.2d 693, 701
24 (Cal. 1999); *see Benetatos v. City of Los Angeles*, 186 Cal. Rptr. 3d 46, 56 (Cal. Ct. App. 2015)
25 (“the independent judgment test is applied to review administrative decisions that will drive an
26 owner out of business or significantly injure the business’s ability to function”).

27 Alternatively, for traditional mandamus under C.C.P. § 1085, the Court reviews the
28 administrative action to determine whether it “was arbitrary, capricious, or entirely lacking in

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1 evidentiary support, contrary to established public policy, unlawful or procedurally unfair.” *Id.*
2 (quotations omitted). “Although mandate will not lie to control a public agency’s discretion, that is
3 to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of
4 discretion.” *Id.* (quotations omitted). “Abuse of discretion is established if the ... order or decision
5 is not supported by the findings, or the findings are not supported by the evidence.” *Wollmer v.*
6 *City of Berkeley*, 193 Cal. App. 4th 1329, 1338 (2011) (citing Cal. Code Civ. Proc., § 1094.5, subd.
7 (b).) Moreover, the Court should not give deference to the Attorney General’s interpretation of
8 State law. *County of San Diego v. State of Cal.* 15 Cal. 4th 68, 109 (1997). Because public
9 agencies and officials “have a duty to comply with applicable state statutes and local ordinances,”
10 failure to do so is an abuse of discretion that is “arbitrary, capricious, or lacking in evidentiary
11 support *Bright Dev. v. City of Tracy* 20 Cal. App. 4th 783 (1993).

12 Regardless of which standard applies here, the Attorney General’s conduct does not pass
13 muster under either statute. The Attorney General’s decision to impose many, if not all, of the
14 Additional Conditions, is not supported by findings or evidence. *See Topanga Assn. for a Scenic*
15 *Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974) (“[I]mplicit in section 1094.5 is a
16 requirement that the agency which renders the challenged decision must set forth findings to bridge
17 the analytic gap between the raw evidence and ultimate decision or order.”). The Attorney General
18 has given no consideration whatsoever to the economic impact of the 2019 Conditions on the
19 continued existence of the Hospitals. Although Attorney General’s review of the SGM Sale was
20 undertaken pursuant to a statute that purports to seek to preserve healthcare for the community, it is
21 undisputed that the 2019 Conditions imposed by the Attorney General will have the singular result
22 of destroying the SGM Sale and closing hospitals. There could not be a clearer example of an
23 abuse of discretion. *Honchariw v. City of Stanislaus* 218 Cal. App. 4th 1019, 1027 (2013); *see*
24 *also Bob Jones Univ. v. United States* 461 U.S. 574, 586 (1983) (a well-established canon of
25 statutory construction provides that literal language should not defeat the plain purpose of the
26 statute).

2. **The Scope of the Court’s Review on Writ of Mandamus**

Judicial review of most public agency decisions is obtained by a writ of: (1) ordinary or traditional mandamus, per C.C.P. § 1085; or (2) administrative mandamus, per C.C.P. § 1094.5. *See Friends of the Old Trees v. Dep’t of Forestry & Fire Prot.*, 61 Cal. Rptr. 2d 297, 303 (Cal. Ct. App. 1997).

The applicable type of mandate is determined by the nature of the administrative action or decision, in that quasi-legislative or ministerial acts are reviewed by ordinary mandate, while quasi-judicial acts are reviewed by administrative mandate. *Id.* “Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.” *Id.* (quotation omitted). More specifically, traditional mandate is used to review agency action when the agency was not required to hold a hearing, whereas administrative mandamus reviews final administrative orders from a proceeding “in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal[.]” *Id.* (quoting C.C.P. § 1094.5(a)).

Here, when evaluating the proposed transaction, the Attorney General was required to hold a hearing, take evidence, and utilize discretion in his determination of existing facts. Indeed, California Corporations Code § 5916 explicitly requires that “[p]rior to issuing any written decision referred to in Section 5915 . . . the Attorney General shall conduct one or more public meetings, one of which shall be in the county in which the facility is located, to hear comments from interested parties.” *See Sierra Club v. State Bd. of Forestry*, 7 Cal. 4th 1215, 1235 (1994) (section 1095.4 hearing requirement satisfied where the Board of Forestry is required to hold a public hearing to review timber harvesting plan and determine if it conforms to the rules and regulations of the board and the Forest Practice Act).

In addition to being required to receive public input, the Attorney General’s conditional consent must also only have been determined after considering “relevant factors,” such as the ten enumerated ones set forth in California Corporations Code § 5917. These factors include the Attorney General’s receipt and review of evidence supporting whether the transaction is “fair and

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1 reasonable to the nonprofit corporation,” at “fair market value,” and “in the public interest.” CAL.
2 CORP. CODE § 5917. As part of this evidentiary review, the Attorney General is authorized to
3 contract with experts and consultants (and has done so here). *See* CAL. CORP. CODE § 5919. As a
4 result, the Attorney General’s conditional consent is an adjudicatory administrative decision, and
5 the standard of review in this proceeding must be administrative mandamus.⁶ *See Friends of the*
6 *Old Trees*, 61 Cal. Rptr. 2d at 304–05 (Section 1094.5 review required where the statutes governing
7 the Department of Forestry & Fire Protection’s approval of a timber harvest plan provides
8 numerous opportunities for public and agency input, even though the “Department is not required
9 to hold a trial-type hearing.”); *see also Ebbetts Pass Forest Watch v. Dep’t of Forestry & Fire*
10 *Prot.*, 20 Cal. Rptr. 3d 808, 814 (Cal. Ct. App. 2004) (public meetings to review timber harvest
11 plan satisfy section 1094.5 standard).

12 Not only does the § 1094.5 framework apply, the scope of the Court’s judicial review is
13 necessarily the “independent judgment rule,” because the Attorney General’s conditional consent
14 “substantially affects” Verity’s “fundamental vested right.” *See, e.g., Mann v. Dep’t of Motor*
15 *Vehicles*, 90 Cal. Rptr. 2d 277, 283 (Cal. Ct. App. 1999). Due to the separation of powers doctrine,
16 deprivation of an entity’s or individual’s fundamental rights by an agency cannot evade judicial
17 protection. *See Bixby v. Pierno*, 481 P.2d 242 (Cal. 1971) (“By carefully scrutinizing
18 administrative decisions which substantially affect vested, fundamental rights, the courts of
19 California have undertaken to protect such rights, and particularly the right to practice one’s trade
20 or profession, from untoward intrusions by the massive apparatus of government.”). Thus, “[i]f the
21 decision of an administrative agency will substantially affect such a right, the trial court not only
22 examines the administrative record for errors of law but also exercises its independent judgment
23 upon the evidence disclosed” in a *de novo* review. *Id.*

24 _____
25 ⁶ This is in sharp contrast to the inapplicable §1085 standard involving only ministerial acts: “[a]
26 ministerial act is an act that a public officer is required to perform in a prescribed manner in
27 obedience to the mandate of legal authority and without regard to his own judgment or opinion
concerning such act’s propriety or impropriety, when a given state of facts exists.” *Schwartz v.*
Poizner, 113 Cal. Rptr. 3d 610, 614 (Cal. Ct. App. 2010) (quotations omitted).

Whether an administrative decision substantially affects fundamental vested rights is determined on a case-by-case basis, in which this Court must consider “whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking *judicial* power.” *Interstate Brands v. Unemployment Ins. Appeals Bd.*, 608 P.2d 707, 713 n.5 (Cal. 1980) (emphasis in original). In this case, the Attorney General’s conditional consent has the practical effect of closing at least three of the Hospitals, forever. In that sense, it is indistinguishable from administrative decisions involving the revocation of a professional license or business permit, which, for decades, courts have consistently held to affect a fundamental right. *See, e.g., Oxford Preparatory Acad. v. Chino Valley Unified Sch. Dist.*, 249 Cal. Rptr. 3d 726, 730–31 (Cal. Ct. App. 2019), *reh’g denied* (July 29, 2019), *review filed* (Aug. 20, 2019) (charter school “has a fundamental vested right to continue operating”); *Coe v. City of San Diego*, 208 Cal. Rptr. 3d 73, 81 (Cal. Ct. App. 2016) (“a decision to revoke a nude entertainment business permit involves a fundamental vested right.”); *The Termo Co. v. Luther*, 86 Cal. Rptr. 3d 687, 697 (Cal. Ct. App. 2008) (“The implementation of the Order and Decision would have the effect not only of shutting down a business that has been in existence for 20 years or more, but also of terminating the right to produce oil—an extraordinarily valuable resource, especially in the current economic era. . . . Certainly, a fundamental vested right is at issue.”); *Bauer v. City of San Diego*, 89 Cal. Rptr. 2d 795, 804 n.14 (Cal. Ct. App. 1999); *Goat Hill Tavern v. City of Costa Mesa*, 8 Cal. Rptr. 2d 385, 391 (Cal. Ct. App. 1992) (“the right to continue operating an established business in which [the owner] has made a substantial investment” is a “fundamental vested right.”). Indisputably, the Debtors’ rights to preserve its Hospitals—such that they can continue providing healthcare and lifesaving procedures to the community they serve—are fundamental, vested, and abridged substantially by the Attorney General’s 2019 Conditions.

The Attorney General may attempt to cast the Debtors’ rights in a purely economic light, incorrectly arguing that the Debtors merely assert the right to sell its businesses. *Cf. SP Star Enterprises, Inc. v. City of Los Angeles*, 93 Cal. Rptr. 3d 152, 162 (Cal. Ct. App. 2009). But, the rights threatened by the Attorney General’s decision are the survival of three Hospitals upon which the public undisputedly depends. *Benetatos v. City of Los Angeles*, 186 Cal. Rptr. 3d 46, 56 (Cal.

1 Ct. App. 2015) (“The substantial evidence test has been applied to review administrative decisions
2 that restrict a property owner’s return on his property, or which increase the cost of doing business,
3 or reduce profits, because such decisions impact mere economic interests rather than fundamental
4 vested rights. In contrast, the independent judgment test is applied to review administrative
5 decisions *that will drive an owner out of business or significantly injure the business’s ability to*
6 *function.*”) (emphasis added).

7 As a result, in this proceeding, this Court “begin[s] its review with a presumption of the
8 correctness of administrative findings, and then, after affording the respect due to these findings,
9 exercise[s] independent judgment in making its own findings.” *Fukuda v. City of Angels*, 977 P.2d
10 693, 701 (Cal. 1999).

11 In addition, “[w]here the court finds that there is relevant evidence that, in the exercise of
12 reasonable diligence, could not have been produced or that was improperly excluded at the hearing
13 before respondent . . . the court may admit the evidence at the hearing on the writ without
14 remanding the case.” C.C.P. § 1094.5(e); *see also Tiholiz v. Northridge Hosp. Found.*, 199 Cal.
15 Rptr. 338, 343 (Cal. Ct. App. 1984) (permitting admission of newly discovered evidence in the
16 form of declarations, finding that “a litigant has a fundamental interest at stake in procedural
17 fairness, including but not limited to an interest in the compilation of an accurate hearing record”).

18 Even if traditional mandamus applies, the Attorney General’s conditional consent
19 constitutes an abuse of his discretion. The Debtors are “beneficially interested” to seek a writ of
20 mandate, in that its particular right to sustain the Hospitals is direct and substantial, especially
21 given the undisputed public need for these hospitals. *Citizens for Amending Proposition L v. City*
22 *of Pomona*, 239 Cal. Rptr. 3d 750, 763–64 (Cal. Ct. App. 2018), *reh’g denied* (Nov. 28, 2018).
23 Under § 1085, the trial court reviews an administrative action to determine whether an agency’s
24 action “was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established
25 public policy, unlawful or procedurally unfair.” *Id.* (quotations omitted). “Although mandate will
26 not lie to control a public agency’s discretion, that is to say, force the exercise of discretion in a
27 particular manner, it will lie to correct abuses of discretion.” *Id.* (quotations omitted).

1 Because public agencies and officials “have a duty to comply with applicable state statutes
2 and local ordinances,” failure to do so is an abuse of discretion that is “arbitrary, capricious, or
3 lacking in evidentiary support.” *Id.* at 774.

4 There are also exceptions to the general rule precluding the consideration of extra-record
5 evidence in traditional mandamus actions, where such evidence provides background information
6 regarding the quasi-legislative agency decision, to establish whether the agency fulfilled its duties
7 in making the decision, or to assist the trial court in understanding the agency’s decision. *Outfitter*
8 *Properties, LLC v. Wildlife Conservation Bd.*, 143 Cal. Rptr. 3d 312, 322 (Cal. Ct. App. 2012).

9 **3. The Attorney General Failed to Assure Preservation of the Hospitals for Their**
10 **Communities**

11 As set forth above, the Attorney General’s discretion to issue conditions of approval of a
12 sale of a nonprofit hospital to a for profit entity is circumscribed by (i) California Corporations
13 Code § 5917, and (ii) the Attorney General’s general statutory and common law obligations to
14 preserve and/or redirect the charitable assets for public benefit. *See, e.g.*, CAL. GOV’T CODE §
15 12598. Although the Attorney General is not a technical fiduciary to such assets, *see Restatement*
16 *of the Law of Charitable Nonprofit Organizations Principles of the Law of Nonprofit Organizations*
17 § 5.01 TD (2017), and although the Attorney General, in the normal course, is not empowered to
18 substitute its judgment for that of the trustees of the charitable assets, the Attorney General’s role in
19 overseeing a nonprofit hospital sale becomes virtually that of a fiduciary to such assets during the
20 sale process. This virtual status results from the multiple layers of statutory and common law
21 requirements imposed on the Attorney General’s decision making, and the Attorney General’s
22 arrogation of the right to impose contractual post-sale restrictions on then for-profit assets (which
23 in fact imposes the Attorney General’s judgment over that of the successor hospital administrator).

24 Here, the Attorney General, in conditionally approving the SGM Sale, has accepted that the
25 Hospitals are no longer sustainable as part of a nonprofit enterprise. There were no nonprofit
26 bidders for the Hospitals. Once the Attorney General has determined that the Hospitals cannot be
27 maintained as nonprofit, the Attorney General’s duties are to (i) ensure that the facility is
28 monetized at a fair market value to the nonprofit seller of the facility, *see* CAL. CORP. CODE §

5917(c), and (ii) ensure that the monies received from the sale of the facility are preserved for charitable use by redirecting them under appropriate *cy pres* guidelines, *see* CAL. GOV'T CODE § 12598(a).

The Hospitals, once sold, are no longer charitable assets, so the Attorney General's power and his right of oversight of these Hospitals ceases. The 2019 Conditions represent the Attorney General's attempt to subvert California Corporations Code § 5917 and extend his continuing control over non-charitable health care assets. The Attorney General cannot commit such an end-run around the statutory limitations to his decision making discretion. Importantly, any continuing control over the Hospitals is a result solely of a contract entered into between the Attorney General and SGM.

One of the paramount obligations of the Attorney General is to preserve charitable assets. This obligation is embodied in California Government Code § 12598(a), which provides that "[t]he primary responsibility for supervising charitable trusts in California, . . . *for protection of assets held by charitable trusts* and public benefit corporations, resides in the Attorney General." (emphasis added). It is also one of the factors set forth by the Legislature in California Corporations Code § 5917(h). *See* CAL. CORP. CODE § 5917(h) ("The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.").

The Attorney General is duty-bound to ensure that the Hospitals survive, and, thus, cannot impair availability or access of the community to health care facilities. The Attorney General breached his obligation to act in a manner to preserve the charitable assets by imposing the Additional Conditions with full knowledge that such conditions would result in the closure of at least 3 Hospitals. *See* Exhibit "E;" *see also* Baronoff Decl. ¶ 7. The Attorney General's actions will have destroyed, not preserved, the charitable assets. Such action clearly controverts the Attorney General's discretion. Agency decisions, such as those of the Attorney General here, are subject to judicial review and can be reversed if the court finds that the agency's discretionary choice is an abuse of discretion. *See Motor Vehicle Mfrs. Assn. of the U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29 (1983); *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216, 271

(1994); *Coachella Valley Unified School Dist. v. State of Cal.*, 176 Cal. App. 4th 93, 113-118 (Cal. Ct. App. 2009); *Paulsen v. Golden Gate University*, 25 Cal. 3d 803, 808 (1979); *Saleeby v. State Bar*, 39 Cal. 3d 547, 563 (1985); *Quackenbush v. Mission Ins. Co.*, 46 Cal. App. 4th 458, 465 (Cal. Ct. App. 1996).

Based upon the foregoing, the Attorney General has abused his discretion and breached his most basic duty to preserve charitable assets and to ensure access and availability of health care facilities for the community.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court enter an order (i) finding that the SGM Sale is free and clear of the Additional Conditions, or alternatively, (b) the Attorney General has abused his discretion in imposing the Additional Conditions, and (iii) granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: September 30, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

Attorneys for Verity Health Systems of
California, Inc., *et al.*

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas dedicated to health and healing. In this role, I was responsible for leading Sanford Health’s growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan; Sanford Foundation (a philanthropic fundraising foundation); Sanford Frontiers (a commercial and real estate company); Profile by Sanford (a scientific weight loss program); and Sanford World Clinic (which operates clinics in multiple countries).

4. From 2012 to 2017, I served as the President of Sanford Frontiers and had the responsibility of starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for leading strategic, operational and financial aspects within Sanford

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1 Clinic. From 2004 to 2006, I served as Director of Clinical Operations at Sanford Children's
2 Specialty Clinic and led the Pediatric Subspecialty Physician program and the clinical practice
3 through all facets of the operation.

4 5. Prior to Sanford Health, I served as the Director of Engineering and Six Sigma
5 Master Black Belt at GE Medical Systems, and before that served as the Vice President of Research
6 and Development and the Co-Owner/Founder of Micro Medical Systems. I have a bachelor of
7 science in business administration and a masters of business administration in healthcare
8 management.

9 6. On May 2, 2019, the Court entered an order (the "Sale Order") approving the sale of
10 substantially all assets of Debtors'⁷ remaining hospitals (St. Francis Medical Center ("SFMC"), St.
11 Vincent Medical Center ("SVMC") including the St. Vincent Dialysis Center ("SVDC"), and Seton
12 Medical Center ("SMC"), including Seton Medical Center Coastside Campus ("SMCC")
13 (collectively the "Hospitals"), to Strategic Global Management, Inc. ("SGM") for \$610 million (the
14 "SGM Sale"), subject to certain adjustments, plus the payment of cure costs and assumption of
15 certain liabilities, as more fully set forth in that certain asset purchase agreement (the "APA")
16 [Docket No. 2306].

17 7. The Debtors, SGM and third parties have expended tremendous efforts to prepare
18 for and close the SGM Sale in reliance on the Sale Order. These tireless efforts have taken a
19 significant amount of time and resources and simply cannot be undone. By way of example: (i) the
20 Debtors sent "WARN notices" to approximately 4,900 employees, pursuant to the federal Worker
21 Adjustment and Retraining Notification Act of 1988; (ii) thousands of counterparties to executory
22 contracts and unexpired leases, including physicians, have relied on the Sale Order and continued
23 to provide services in reliance on the finality of that Sale Order; (iii) the Debtors and SGM have
24 spent months facilitating an efficient close of the sale, with approximately 20 different
25 workstreams, meeting at least weekly to ensure a smooth transition of operations; (iv) government
26 agency personnel, including the California Department of Public Health and the Board of

27 _____
28 ⁷ "Debtors" collectively refers to VHS and its affiliated debtors in this proceeding.

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1 Pharmacy, have been diligently processing SGM's change of ownership applications for licenses
2 and permits in reliance on the finality of the Sale Order; (v) the Debtors, SGM, and each of the
3 Debtors' six unions spent months successfully negotiating and finalizing modified collective
4 bargaining agreements; (vi) the medical groups affiliated with the Debtors have sent termination
5 notices to their remaining physicians; (vii) the Debtors and SGM have coordinated changes in
6 insurance coverages and insurance policies to ensure seamless coverage for employees and
7 patients, and (viii) the Debtors have created plans to shut off certain services after the close of the
8 SGM Sale. In addition, the Debtors have no further financing source.

9 8. Attached hereto as Exhibit "1" is a true and correct copy of a September 18, 2019
10 letter from Chokri BenSaid, Director of the Hospital Division of the United Healthcare Workers
11 West Service Employees International Union, Inc., to Deputy Attorney General Scott Chan,
12 expressing support for the SGM Sale. Attached hereto as Exhibit "2" is a true and correct copy of a
13 letter from Jennifer Lemmon, Collective Bargaining Director of the California Nurses Association,
14 to Attorney General Becerra, to the same effect. Attached hereto as Exhibit "3" is a true and
15 correct copy of a September 24, 2019 letter from Mark Shinderman, counsel for the official
16 committee of unsecured creditors, to Attorney General Becerra, also expressing support for the
17 SGM Sale.

18 9. I have reviewed the conditions (the "2019 Conditions") set forth in the September
19 25, 2019 report issued by the California Attorney General (the "Attorney General") regarding the
20 SGM Sale. The 2019 Conditions require, among other things, that SGM continue to operate the
21 Hospitals and maintain various services, clinics and contractual arrangements for a period of time
22 greater than the period of time that Debtors would have been obligated under the 2015 Conditions
23 (defined below) if the Debtors had the ability to continue to operate the Hospitals. The 2019
24 Conditions are also materially different than those to which SGM agreed in Schedule 8.6 because
25 they impose additional conditions including, among other things, greater requirements for charity
26 care expenditures, community benefit expenditures, capital expenditures, and do not account for the
27 substantial shift in charity care needs following the implementation of the Affordable Care Act.

1 10. The 2019 Conditions are in large part the same as the proposed conditions
2 (“Proposed Conditions”) set forth in the Initial Health Care Impact Statements prepared by JD
3 Healthcare. Annexed hereto as Exhibit “E” is a true and correct copy of a letter from SGM’s
4 counsel, Todd Swanson of Hooper, Lundy & Bookman, P.C., to Deputy Attorney General Scott
5 Chan, explaining that SGM would not accept the Proposed Conditions to the extent they materially
6 differ from Schedule 8.6 to the APA.

7 11. I previously urged the Attorney General not impose conditions that would threaten
8 to close the Hospitals or otherwise unwind stakeholders’ heroic efforts to save these Hospitals.
9 This was detailed in my *Declaration filed in support of the Notice of Submission of Debtors’*
10 *Response to the Health Care Impact Statements and Conditions Imposed By JD Healthcare, Inc.*
11 [Docket No. 2946], a true and correct copy of which is annexed hereto as Exhibit “E”. It was also
12 detailed in my August 23, 2019 letter to Deputy Attorney General Scott Chan, as true and correct
13 copy of which is annexed hereto as Exhibit “E”.

14 12. Further, during the week of August 26, 2019, Deputy Attorney General Scott Chan
15 held public hearings at each of the Hospitals to solicit comments regarding the SGM Sale. I
16 attended each of the public meetings in person. At each public meeting, representatives of SGM
17 and the Debtors made public statements detailing the economic impact of the conditions proposed
18 by the Attorney General’s expert, JD Healthcare, and the economic situation confronting each
19 Hospital; urging the Attorney General to consider economic factors when issuing his conditions;
20 and reiterating that any conditions exceeding those in Schedule 8.6 of the SGM APA could result in
21 the termination of the SGM Sale and the closure of the Hospitals.

22 13. As was the case with the Proposed Conditions, many of the 2019 Conditions are
23 materially inconsistent with those to which SGM has agreed in Schedule 8.6, and do not take into
24 consideration the negative economic impact of the 2019 Conditions and the conditions imposed on
25 the Hospitals in 2015 (the “2015 Conditions”).

26 14. Without regard to the economic and community realities, certain of the 2019
27 Conditions force the Hospitals to maintain programs that not only suffer significant losses an
28

1 annual basis, but are unnecessary because the same services (and in some instances, more
2 comprehensive services) are already provided at other hospitals in the area.

3 15. The economic impact of the 2019 Conditions cannot be understated. As a hospital
4 operator, I know from first-hand experience operating and overseeing the Hospitals that (i) the
5 2015 Conditions were too burdensome, (ii) hampered the Hospitals ability to prosper, as discussed
6 above, and (iii) accelerated the demise of these Hospitals. Verity, its employees, tens of thousands
7 of vendors and other parties have made tireless efforts during the sale process to ensure high
8 quality continued patient care and to take the necessary steps that would allow the Hospitals to be
9 sold to a new operator that could successfully operate the Hospitals. The Bankruptcy Court has
10 now approved the sale to SGM, which paves the way for these Hospitals and the communities they
11 serve to continue the Hospitals' mission of quality patient care.

12 16. The Debtors did not receive any other qualified bid to purchase the Hospitals. Thus,
13 there is no back-up bidder to purchase the Hospitals if the SGM Sale does not close. Additionally,
14 SGM representatives have repeatedly told the Debtors that multiple lenders have informed SGM
15 that they would not agree to finance the SGM Sale if the conditions were not consistent with
16 Schedule 8.6, which makes the SGM Sale nearly impossible to close. Consequently, if the
17 Additional Conditions were imposed, they would create an environment where it is likely no lender
18 would be willing to finance the sale of the Hospitals to SGM, ensuring closure of at least three of
19 the Hospitals.

20 17. Due to the Debtors' liquidity issues, unsustainable operating losses, and the absence
21 of an interested viable purchaser, SVMC, Seton Medical Center, and Seton Coastside would need
22 to be closed if the SGM Sale does not close. The closures of SVMC, Seton Medical Center, and
23 Seton Coastside would result in the loss of approximately 2,900 jobs.

24 18. As to SFMC, the Debtors would likely attempt a private sale in the bankruptcy
25 cases. I, however, foresee significant challenges to SFMC's sustainability and sale. Specifically,
26 any new sale of SFMC would require additional time, which would result in an exorbitant amount
27 of administrative and other expenses in these cases. By way of an example, the Debtors would
28 need to find a new buyer after a marketing process, seek approval from the Court, and then await

1 yet another review by the Attorney General. To even accomplish the foregoing, it is likely that the
2 Debtors would need to obtain debtor in possession financing to help fund operations, which would
3 carry another layer of expense.

4 19. Consequently, even if the Debtors were able to sell SFMC in the event the SGM
5 Sale failed, recoveries to creditors would be significantly reduced by hundreds of millions of
6 dollars since (i) there would not be any proceeds from the sale of SVMC, Seton, and Seton
7 Coastside, and (ii) the delay associated with the second sale of SFMC.

8 20. The Hospitals provide access to essential healthcare services in their communities.
9 Faced with the possibility of losing the Hospitals in their entirety, rote application of the 2015
10 Conditions should yield to the pragmatics of economics and demonstrable patient care and
11 community need.

12 21. If the SGM transaction does not close, the Debtors, employees, pension holders,
13 other stakeholders, and community members, would be exposed to significant and unrecoverable
14 health care and economic loss.

15 22. If the SGM Sale fails, the most likely outcome is that at least three of the Hospitals
16 will have to close. Altogether, between July 1, 2018 and June 30, 2019, the Hospitals had more
17 than 34,000 inpatient admissions and 312,000 outpatient visits. If the Hospitals are closed, all of
18 those patients would be forced to find alternative providers for treatment, perhaps at greater
19 distances than they are now required to travel for treatment at the Hospitals. For example, Seton
20 Coastside is the only emergency room facility on the Pacific Coast between Daly City and Santa
21 Cruz. Additionally, Seton Coastside has 116 skilled nursing facility (“SNF”) beds and, if Seton
22 Coastside were closed, those residents would be forced to be relocated significant distances to find
23 alternative facilities. In my experience, the risk of negative outcomes for emergency room patients
24 increases as the distance, and therefore the time, required to obtain treatment, increases.
25 Additionally, in addition to the difficulty in finding alternative facilities for the SNF patients, the
26 impact of transfer trauma on this population could be significant.

27 23. Further, among the other stakeholders which will be harmed by a failed SGM Sale
28 are the vendors that have supported the Hospitals by providing credit terms throughout these cases.

1 Under the SGM Sale, these creditors will receive payment for their support of the Hospitals during
2 the sale process. A failed sale to SGM would put that at risk. In addition, there are thousands of
3 vendors whose contracts will likely be assumed by SGM in the sale. Consequently, these vendors
4 will be paid for their prepetition claims, an estimated total recovery for these vendors of \$50
5 million. Even those vendors whose contracts are not assumed by SGM are still expected to receive
6 millions of dollars of recoveries. In total, the failed sale to SGM would cost these vendors tens of
7 millions of dollars in recoveries. Further, there would be a loss of future income for services
8 provided to the operating Hospitals on a go-forward basis.

9 24. The Hospitals have approximately 4,900 employees. SGM has committed to retain
10 “substantially all” employees of the Debtors, as set forth in the APA.

11 25. In the past week, the Debtors have finalized settlement agreements (the “Settlement
12 Agreements”) with each and every union that is party to collective bargaining agreements (the
13 “CBAs”) related to the Hospitals being sold to SGM. The Settlement Agreements provide, *inter*
14 *alia*, for modification and assignment of the CBAs to SGM (along with waiver of any cure
15 obligations of the Debtors), the treatment and allowance of certain claims, including severance for
16 employees who are not offered employment, paid time off, and retiree health (for the few retirees
17 who utilize the program) and the waiver of other claims. The Settlement Agreements are
18 conditioned on Bankruptcy Court approval and on other important events, including Plan
19 confirmation and closing of the sale to SGM for a purchase price that is not materially different
20 from the amount contained in the SGM APA. The Debtors are in the process of finalizing pleading
21 papers that will request Court approval of the Settlement Agreements and related relief, which it
22 expects to file for expedited consideration presently.

23 26. The SGM Sale presents the Debtors’ stakeholders with the best possible alternative,
24 and the failure of the SGM transaction will likely result in a loss of healthcare access for vulnerable
25 populations, as well as jobs of thousands of employees.

26 ///

27 ///

28

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

3 Executed this 30th day of September, 2019, in Los Angeles, California.

4 
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6 Richard G. Adcock
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Exhibit 1

Adcock Declaration



UNITED HEALTHCARE
WORKERS WEST
SERVICE EMPLOYEES
INTERNATIONAL
UNION, CLC

Dave Regan - President
Stan Lyles - Vice President

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Oakland, CA 94612
510-251-1250
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5480 Ferguson Drive
Los Angeles, CA 90022
323-734-8399
FAX 323-721-3538

Via U.S. Mail

September 18, 2019

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 94814-2919

Scott Chan, Deputy Attorney General
State of California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

RE: Verity Health Systems, Inc. and Strategic Global Management, Inc.

Dear Mr. Becerra and Mr. Chan,

The Service Employees International Union United Healthcare Workers West (SEIU-UHW), represents approximately 1,400 workers at St. Francis Medical Center and St. Vincent Medical Center. SEIU-UHW is writing in support of the sale transaction between Verity Health Systems, Inc. and Strategic Global Management, Inc. Given that Verity Health Systems has been in bankruptcy proceedings for over a year and Strategic Global Management was the only entity to submit a qualified bid for St. Francis Medical Center and St. Vincent Medical Center we believe this transaction is the best way to preserve jobs and patient care. Therefore, we urge a prompt closing of this sale.

Sincerely,

A handwritten signature in black ink, appearing to read "Chokri BenSaid", is located below the "Sincerely," text.

Chokri BenSaid
Director, Hospital Division
SEIU - UHW

Exhibit 2

Adcock Declaration



California
Nurses
Association



National
Nurses
United

Main Document Page 73 of 286

OAKLAND
155 Grand Avenue
Oakland CA 94612
phone: 800-287-5021
fax: 510-663-1625

A Voice for Nurses. A Vision for Healthcare.

Via U.S. Mail

September 17, 2019

Attorney General Xavier Becerra
Office of the Attorney General
1300 "I" Street
Sacramento, CA 94814-2919

Scott Chan, Deputy Attorney General
State of California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

RE: Verity Health Systems, Inc. and Strategic Global Management, Inc.

Dear Mr. Becerra and Mr. Chan:

The California Nurses Association represents approximately 468 registered nurses at St. Vincent Medical Center and approximately 396 registered nurses at Seton Medical Center. CNA is writing in support of the sale transaction between Verity Health Systems, Inc. and Strategic Global Management, Inc. Given that Verity Health Systems has been in bankruptcy proceedings for over a year and Strategic Global Management was the only entity to submit a qualified bid for St. Vincent Medical Center and Seton Medical Center, we believe this transaction is the best way to preserve jobs and patient care. Therefore, we urge a prompt closing of this sale.

Sincerely,

CALIFORNIA NURSES ASSOCIATION

A handwritten signature in black ink, appearing to read "Jennifer Lemmon", written over a horizontal line.

Jennifer Lemmon
Southern California & Nevada
Collective Bargaining Director

Exhibit 3

Adcock Declaration

Milbank

MARK SHINDERMAN

Partner

2029 Century Park East, 33rd Floor | Los Angeles, CA 90067-3019

T: 424.386.4411

MShinderman@milbank.com | milbank.com

September 24, 2019

VIA EMAIL

The Honorable Xavier Becerra
Attorney General, State of California
1300 I Street
Sacramento, CA 95814

Dear Attorney General Becerra:

The official committee of unsecured creditors (the “Committee”) of debtor Verity Health System (“Verity”), a statewide healthcare provider, represents the interests of Verity’s creditor constituency, including labor unions, retirees, and tort claimants, among others. The Committee is charged with the obligation to help maximize the recoveries of all unsecured creditor constituents.

Verity is rapidly depleting cash reserves such that prolonging the proceedings could result in the shuttering of healthcare facilities in underserved communities. Verity’s proposed sale of assets to Strategic Global Management, Inc., an affiliate of KPC, presents an opportunity to offer continued access to health care services for those communities served by Verity, while also providing an opportunity for unsecured creditors to obtain some recovery, albeit small (absent successful litigation with the secured creditors and others). The Committee is not aware of any alternative at this point that would accomplish these goals.

Time is of the essence and any delay in closing would be very costly. Verity estimates, and the Committee believes, that the cost of delay is almost \$5 million per week. Consequently, any further delay could eliminate unsecured creditor recoveries entirely.

#4810-3748-0337v2

MILBANK LLP

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September 24, 2019

Main Document Page 76 of 286

Page | 2

Thank you for your consideration of the Committee's views and we look forward to further discussing this matter with you should you have any questions.

Sincerely,

Mark Shinderman

Milbank

#4810-3748-0337v2

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DECLARATION OF PETER BARONOFF

Peter Baronoff declares as follows:

1. I am currently the Chief Executive Officer of KPC Healthcare, Inc., which owns four hospitals in Orange County: The Orange County Global Medical Center, Southcoast Global Medical Center, Anaheim Global Medical Center, and Chapman Global Medical Center. I am also the Chief Executive Officer of Physicians for Healthy Hospitals, Inc., which owns Hemet Global Medical Center and Mennefee Global Medical Center. I am the Chief Executive Officer of Victor Valley Hospital Acquisition, Inc., which owns the Victor Valley Global Medical Center. All of the afore-said hospitals are acute care hospitals, and collectively referred to as “KPC”.

2. Following the commencement of the Chapter 11 cases for Verity Health Systems of California, Inc., et al (collectively “Verity”), I began discussions with Verity’s representatives regarding the possible acquisition by Strategic Global Management, Inc. (“SGM”), one of KPC’s affiliates, of one or more of the Verity hospitals. Over the course of the months beginning November 2018 and continuing into February 2019, I was directly involved in the negotiations on behalf of SGM in connection with SGM’s prospective acquisition of St. Vincent Medical Center, St. Vincent Dialysis Center, St. Francis Medical Center, and Seton Medical Center (including its Seton Medical Center Coastsides campus) (“the SGM Hospitals”). These negotiations eventually led to the execution of an Asset Purchase Agreement between SGM and Verity for the SGM Hospitals (“APA”).

3. During the course of SGM’s negotiations with Verity, there were innumerable issues that the parties confronted, discussed, negotiated and ultimately resolved when the parties reached a final agreement on the terms of the APA. One of the most intensely negotiated subjects had to do with the prospective conditions that might be imposed by the California Attorney General (“Attorney General”) in connection with the proposed transfer of the SGM Hospitals to SGM. Based upon my prior experience with hospital acquisitions, both in connection with my employment at KPC and also in connection with my prior employment as an

executive of Promise Healthcare (“Promise”), I was well aware of the Attorney General’s approval process in connection with the sale of not for profit hospitals and with the precedent for the Attorney General to impose conditions on such sales. Indeed, I was personally involved, on behalf of Promise, in the Gardens Regional Hospital Chapter 11 case. Promise was a DIP lender and stalking horse bidder for Gardens Regional Hospital, but was ultimately outbid by SGM at the auction. When SGM terminated its purchase agreement, as a result of the imposition by the Attorney General of condition, which were deemed burdensome by SGM, that sale transaction was terminated and Gardens Regional Hospital was eventually closed.

4. Knowing that, in our case, SGM’s acquisition of the SGM Hospitals would undergo an approval process by the Attorney General, and knowing that the Attorney General might impose conditions that would not be acceptable to SGM, SGM recognized the importance of negotiating a provision in its Asset Purchase Agreement which would protect it from the possibility that the Attorney General would impose conditions on the transfer of the hospitals to SGM which would be burdensome from a financial standpoint and otherwise. Accordingly, SGM and Verity spent an enormous amount of time negotiating the provisions of what became Section 8.6 (and Schedule 8.6 referenced therein) of the APA. Without question, the negotiation of Section 8.6 was the most intensely negotiated provision of the APA. In fact, it was not until the morning of the hearing to approve SGM as the stalking horse purchaser, which took place on February 6, 2019, that the parties, with input from the Official Creditors Committee and other stakeholders, were able to agree on the final wording of Section 8.6.

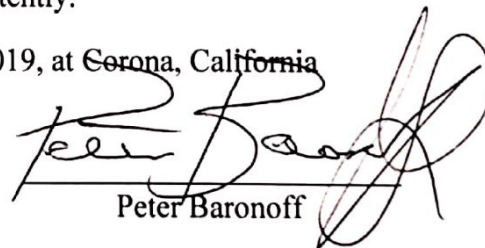
5. In essence, the parties agreed that if the Attorney General imposed “Additional Conditions” (as used in Section 8.6), SGM would not be obligated to close the sale unless Verity was able to procure from the Bankruptcy Court or another court, a supplemental sale order finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions. Section 8.6 also discusses certain time limits and finality requirements, as more specifically set forth therein.

6. The Additional Conditions referred to in Section 8.6 were those conditions which are materially different than the conditions approved by SGM in Schedule 8.6. Additional Conditions which individually or collectively impose a direct or indirect cost to SGM of \$5 million, or more, shall be conclusively deemed to be “materially different.”

7. On September 25, 2019, the Attorney General issued his decision with respect to the proposed transfer of the SGM Hospitals to SGM (“Decision”). We have carefully reviewed the Decision. The Attorney General’s Decision imposes numerous conditions on the transfer of the SGM Hospitals to SGM. Many of these conditions are “Additional Conditions” as that term is used in Section 8.6 of the APA. SGM has evaluated the Additional Conditions and has advised Verity that, based upon these Additional Conditions, SGM is invoking its rights under Section 8.6 of the APA. Accordingly, SGM has advised Verity that SGM will not close the purchase of the SGM Hospitals unless Verity is able to obtain the requisite court order within the time period provided for in Section 8.6.

8. I declare under penalty of perjury, of the laws of the United States of America, that all of the foregoing facts are true and correct and if sworn to testify concerning the contents of this Declaration I could and would do so competently.

Executed this 30th day of September, 2019, at Corona, California


Peter Baronoff

PETER C. CHADWICK

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

1. I am a Managing Director of Berkeley Research Group, LLC (“BRG”) and am duly authorized to make this declaration (the “Declaration”) on behalf of BRG. I obtained a BA from Pennsylvania State University, and an MBA in Finance from Babson College, Olin School of Business. Before joining BRG, I was an Executive Director at Capstone Advisory Group, LLC. Prior to that, I was a Senior Managing Director at FTI Consulting. For more than twenty years, I have served as a chief restructuring officer, chief executive officer, chief operating officer, chief financial officer and as a financial advisor and trustee in complex restructuring matters. Among other things, I have significant experience in the healthcare arena and effectuating sale transactions.

2. On November 7, 2018, the Court entered an order employing BRG [Docket No. 785] as the financial advisors to Verity Health System of California, Inc. and the above-referenced debtors and debtors in possession (collectively, the “Debtors”), the above captioned chapter 11 cases (the “Cases”). I have diligently worked with the Debtors on every aspect of their Cases. In addition, I have been serving as Chief Financial Officer of Seton Medical Center since September 1, 2019.

3. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents or information provided to me by employees of BRG and the Debtors. In preparing this Declaration, I have relied on my experience as described above. I am also assisted by others at BRG who work at my direction in the preparation of the analysis and other information included herein. In addition, I reviewed the Debtors’ schedules and legal papers. In preparing this Declaration, I worked with persons at the Debtors’ facilities with factual knowledge of information upon which I have relied. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

4. This Declaration is in support of the *Debtors’ Emergency Motion for the Entry of an Order (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved*

1 *by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing*
2 *Conditions on That Sale; and (IV) Granting Related Relief* (the “Motion”), and for all other
3 purposes permitted by law. All capitalized terms not otherwise defined herein shall have the same
4 meaning as in the Motion.

5 5. I have reviewed the conditions (the “2019 Conditions”) set forth in the September
6 25, 2019 report (the “Report”) issued by the California Attorney General (the “Attorney General”)
7 regarding the proposed sale of St. Francis Medical Center (“SFMC”), St. Vincent Medical Center
8 (“SVMC”), and Seton Medical Center, including its Daly City and Coastside Campuses (“Seton”)
9 (collectively, the “Hospitals”), to Strategic Global Management, Inc. (“SGM”) and its affiliated
10 entities, as reflected in that certain Asset Purchase Agreement (the “APA”). I have also compared
11 the 2019 Conditions to Schedule 8.6 to the APA.

12 6. Several of the 2019 Conditions differ materially from Schedule 8.6 attached to the
13 APA (the “Additional Conditions”). The Additional Conditions would have a significant impact
14 on the economic viability of the Hospitals and increase the purchase price in the APA to nearly a
15 billion dollars. By way of example only, the 2019 Conditions would require SVMC to remain
16 operated and maintained as a licensed general acute care hospital (as defined in California Health
17 and Safety Code Section 1250) through December 2024, whereas Schedule 8.6 provides that
18 SVMC must be operated through December 2020. The reported Financial Statements of SVMC
19 reflect that, in fiscal 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which
20 was an 18% and 103% increase over the fiscal years 2018 and 2017, respectively. Attached
21 hereto as Exhibit “1” is a true and correct copy of excerpts from SVMC’s Financial Statements,
22 which reflect this information. Assuming operating losses at SVMC can be maintained at fiscal
23 2019 levels (a highly optimistic assumption), the buyer of the Hospitals would likely incur
24 additional estimated losses totaling \$260 million. Moreover, the \$260 million loss would likely
25 need to be financed. Using an average interest rate of 5% for four years of debt service would
26 result in estimated incremental financing charges totaling approximately \$25 million.
27 Accordingly, this 2019 Condition alone would place a potential burden on the buyer of at least
28 \$285 million beyond that contemplated in Schedule 8.6.

7. The Additional Conditions also impose certain charity care (“Charity Care”) requirements on SGM. The Charity Care requirement presents another example of the significant economic impact of the 2019 Conditions when compared with Schedule 8.6. The 2019 Conditions require SGM to provide an annual amount of Charity Care at SFMC equal to or greater than \$12,793,435 for a period of six fiscal years, which is at least \$4,793,435, per year more than SGM has agreed to provide pursuant to Schedule 8.6 for a period of seven years. After adjusting for the one-year shorter required duration of this 2019 Condition, the estimated incremental cost to the buyer would be nearly \$20 million in total over the six years. The 2019 Conditions provide for additional increases in Charity Care amounts for SVMC and Seton, as well as increases across all three Hospitals in Community Benefit Service amounts. Moreover, these Charity Care conditions would actually require the Hospitals to increase the Charity Care they provide above current levels.

8. In summary, the total financial impact of just these two examples of 2019 Conditions would require SGM to incur additional losses of approximately \$305 million beyond those contemplated by Schedule 8.6. Attached hereto as Exhibit “2” is a chart reflecting the economic analysis set forth above. When compared to the buyer’s APA purchase price of \$610 million, these represent a 50% increase in the price for the sale of these distressed assets. The magnitude of these losses calls into question the viability of the acquisition.

9. The two examples of 2019 Conditions addressed above were selected to illustrate the impact on the viability of the system and impact on sale. In fact, many of the other 2019 Conditions materially diverge from Schedule 8.6, including those addressing cancer services and select uneconomic payor agreements. In addition, some of the 2019 Conditions diverge from the conditions under which VHS is currently required to operate (the “2015 Conditions”), including those addressing continuing liver transplant services and acting as a ST-Elevation Myocardial Infarction receiving center. The 2015 Conditions locked the Hospitals into financial obligations and operational obligations that made financial success impossible (the Debtors have lost hundreds of millions of dollars as a result of the implementation of the 2015 Conditions). The Hospitals’ adherence to the Additional Conditions (aside from the two specific examples

1 discussed in paragraphs 6-8 above) would add an additional burden of tens of millions of dollars
2 in losses, further undermining the viability of the Hospitals.

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

5 Executed this 30th day of September, 2019, in Los Angeles, California.

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8 PETER C. CHADWICK
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit 1

Chadwick Declaration

	FY2017	FY2018	FY2019
REVENUE			
Patient Revenue			
Inpatient Services	\$1,031,722,636	\$1,120,000,426	\$979,692,248
Outpatient Services	383,037,203	411,103,372	402,645,143
Gross Patient Revenue	\$ 1,414,759,839	\$ 1,531,103,798	\$ 1,382,337,391
Deductions from Revenue			
Contractual Adjustments	1,174,183,134	1,293,377,840	1,178,503,798
Charity	7,976,081	5,548,555	3,991,237
Other	17,232,577	15,584,788	17,122,307
Total Deductions	\$ 1,199,391,792	\$ 1,314,511,183	\$ 1,199,617,341
Pat. Rev, Net of Contractuals Allowances and Other Ded.	215,368,047	216,592,615	182,720,050
Provision for Doubtful Accounts	7,104,285	12,283,488	3,003,719
Net patient revenue	\$ 208,263,762	\$ 204,309,127	\$ 179,716,331
Other Revenue	1,963,454	1,213,265	1,671,292
Total Net Revenue	\$ 210,227,216	\$ 205,522,392	\$ 181,387,623
Premium Revenue	18,312,060	31,090,903	19,728,154
Contributions	1,217,644	1,021,479	939,167
Total Revenues	\$ 229,756,920	\$ 237,634,774	\$ 202,054,945
EXPENSES			
Operating and Administrative			
Salaries and Wages	76,453,029	86,207,418	84,278,891
Registry Nursing	5,471,579	7,041,543	5,707,894
Other Contract	1,482,844	563,584	1,055,157
Employee Benefits	22,346,934	20,619,577	23,178,513
Total Labor	\$ 105,754,386	\$ 114,432,122	\$ 114,220,456
Medical Fees	4,936,536	5,585,232	5,346,478
Supplies	48,264,174	52,175,517	41,735,262
Purchased Services	58,529,533	77,992,667	59,339,626
Insurance	2,217,126	2,408,853	2,362,620
Utilities	4,239,356	4,268,399	4,892,640
Depreciation	6,036,514	5,800,329	5,956,136
Interest	3,074,678	2,750,781	2,677,934
Total Expenses	\$ 233,052,303	\$ 265,413,900	\$ 236,531,152
Operating Income Excl Corp Allocation/Management Fees	\$ (3,295,383)	\$ (27,779,126)	\$ (34,476,207)
Corp Allocation	28,553,827	27,063,467	30,319,534
Operating Income Incl Corp Allocation	\$ (31,849,210)	\$ (54,842,593)	\$ (64,795,741)

Source: Internal financial statements

Exhibit 2

Chadwick Declaration

Estimated Impact of Certain AG Additional Conditions**\$ in millions****A.) St. Vincent incremental years of operation**

2015 AG requirement: 5 years of operation from Dec 2015 - 1 additional year

2019 AG requirement: 5 years of operation from Dec 2019

Impact: 4 incremental years of operation

Financial impact estimate:

	FY2017	FY2018	FY2019
St. Vincent			
Revenues	\$ 230	\$ 238	\$ 202
Expenses	(233)	(265)	(237)
Corp allocation (excl management fees)	(29)	(27)	(30)
Operating loss	\$ (32)	\$ (55)	\$ (65)
% chg re FY2019	103%	18%	

Cumulative 4-yr loss at FY2019 loss levels:**\$ (259)**

Financing cost

Illustrative interest rate 5.0%

4-yrs of debt service**\$ (26)****Potential burden of SV incremental years of operation****\$ (285)****B.) St. Francis charity care**

2015 AG requirement: 11 years of charity care at \$16.6 million annual - 7 additional years

SGM 8.6 7 additional years of charity care at \$8 million annual

2019 AG requirement: 6 years of charity care at \$12.8 million

Impact: Incremental annual spend of \$4.8 million, one fewer year

Financial impact estimate:

	Ann amt	Yrs	Cost
St. Francis charity care approved by SGM	8.0	7	\$ 56.0
St. Francis charity care required - 2019	12.8	6	\$ 76.8
Potential burden of SF incremental charity care			\$ (20.8)

Total financial impact of certain AG additional conditions**\$ (306)****SGM purchase price****\$ 610****Effective % increase in the purchase price****50%**

DECLARATION OF HOPE R. LEVY-BIEHL

I, Hope R. Levy-Biehl, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am an attorney at law licensed to practice before all courts in the State of California. I am a partner in the law firm of Nelson Hardiman LLP, attorneys for Verity Health System of California, Inc. (“VHS”).

2. This Declaration is in support of the *Debtors’ Emergency Motion for the Entry of an Order (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief* (the “Motion”), and for all other purposes permitted by law. All capitalized terms not otherwise defined herein shall have the same meaning as in the Motion.

3. Upon information and belief, I understand VHS has had an ongoing dialogue for several years with the California Attorney General about the financial challenges facing VHS and the future of the O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), and Seton Medical Center, including its Daly City and Coastsides Campuses (“Seton”). For example, I understand that in anticipation of filing for bankruptcy, VHS representatives met with Deputy Attorney General Wendi Horwitz in July of 2018.

4. On December 27, 2018, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153], approving a sale of OCH and SLRH, and related assets, to Santa Clara County (the “SCC Sale”).

5. Upon information and belief, I understand VHS representatives subsequently met with Attorney General Xavier Becerra and Senior Advisor Becerra Melanie Fontes Rainer in

1 Sacramento in February of 2019, to discuss the pending SCC Sale and the forthcoming auction and
2 sale of SFMC, SVMC and Seton (collectively, the “Hospitals”).

3 6. On May 2, 2019, the Court entered the order (the “Sale Order”) approving the sale
4 of substantially all assets of Debtors’ Hospitals, to Strategic Global Management, Inc. (“SGM”)
5 for \$610 million (the “SGM Sale”), plus the payment of cure costs and assumption of certain
6 liabilities, as more fully set forth in that certain asset purchase agreement (the “APA”) [Docket No.
7 2306].

8 7. In anticipation of submitting a notice and request for approval of the SGM Sale to
9 the Attorney General’s office, VHS representatives from Nelson Hardiman (including myself)
10 engaged with Deputy Attorney General Scott Chan beginning in early April 2019. These
11 discussions and exchanges were regular and ongoing, and addressed, among other things, the
12 substantive and procedural requirements for the submission and review and the related timeline. At
13 all times, VHS consistently requested an expedited review of the submission in light of its
14 significant operating losses and cash flow challenges.

15 8. By letter dated May 7, 2019, VHS provided notice to, and requested written consent
16 from, the Attorney General for the SGM Sale pursuant to California Corporations Code Section
17 5914 and Title 11 of the California Code of Regulations, Section 999.5. *See* Docket No. 2379. As
18 outlined in the submission and discussed a number of times in writing, in person and by email with
19 various representatives of the Attorney General, the SGM Sale was critical and truly the only
20 option to help ensure that the Hospitals would survive the current financial challenges facing them
21 and be preserved as providers of essential health care services to the communities they serve.

22 9. The submission to the Attorney General, on May 7, 2019, was supplemented and
23 completed on May 13, 2019, with the filing made to the Federal Trade Commission pursuant to the
24 Hart-Scott-Rodino Antitrust Improvements Act 1976, as amended.

25 10. VHS representatives thereafter engaged in ongoing discussions with the Attorney
26 General’s office, requesting, among other things, an in-person meeting to review the submission
27 and transaction prior to the completion of its expert’s Health Care Impact Statements and the
28 expedited processing of the submission. The Attorney General denied both requests.

1 11. The Attorney General retained JD Healthcare to prepare Health Care Impact
2 Statements regarding the proposed sale of the Hospitals. After conducting interviews of certain
3 corporate and hospital personnel of VHS and other stakeholders in July 2019, and in advance of the
4 public hearings held by the Attorney General, JD Healthcare released its Health Care Impact
5 Statements concerning the proposed sale of the Hospitals on August 16, 2019 and August 19, 2019.

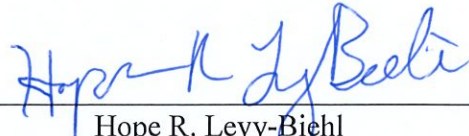
6 12. By letter, dated August 21, 2019, SGM submitted its response to the Health Care
7 Impact Statements and the embedded recommended conditions. By letter dated August 23, 2019,
8 VHS submitted its response to these statements and conditions, which was also filed with the
9 Bankruptcy Court. True and correct copies of these letters are annexed as Exhibit “E” to the
10 Motion.

11 13. In late August 2019, Deputy Attorney General Scott Chan, on behalf of the Attorney
12 General, held public meetings relating to each affected hospital. I attended the public hearings
13 regarding the sale of SFMC and SVMC. At each of the public meetings I attended, Rich Adcock of
14 VHS, Peter Baronoff of SGM, and Sam Maizel of Dentons US LLP, each spoke directly and on the
15 record about the economic issues raised by the potential conditions for each hospital, and urged the
16 Attorney General to consider the economic implications of the conditions he would impose. Mr.
17 Adcock and Mr. Baronoff made clear that the proposed transaction would be at risk, and therefore
18 the continued operations of the Hospitals would be at risk, if the Attorney General imposed
19 conditions which exceeded the conditions agreed to in Schedule 8.6. I understand Rich Adcock,
20 Peter Baronoff and Sam Maizel made similar statements at the Seton public hearings.

21 14. Following its receipt of the “deal breaker” letters and the public hearings, the
22 Attorney General’s office met first with representatives from SGM on September 6, 2019, and
23 subsequently with representatives of both SGM and VHS on September 19, 2019. Upon
24 information and belief, I understand that at the meeting on September 19, 2019, SGM informed the
25 Attorney General’s office that it would not proceed with the transaction if the Attorney General
26 imposed conditions beyond those it agreed to accept in Schedule 8.6 to the APA.

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

Executed this 30th day of September, 2019, in Los Angeles, California.



Hope R. Levy-Biehl

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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Exhibits to Memorandum of Points and Authorities

Exhibit A

Sale Order

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1 SAMUEL R. MAIZEL (Bar No. 189301)
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3 TANIA M. MOYRON (Bar No. 235736)
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5 DENTONS US LLP
6 601 South Figueroa Street, Suite 2500
7 Los Angeles, California 90017-5704
8 Tel: (213) 623-9300 / Fax: (213) 623-9924
9 Attorneys for the Chapter 11 Debtors and
10 Debtors In Possession

FILED & ENTERED

MAY 02 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re

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

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Jointly Administered With:

Debtors and Debtors In Possession.

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

Hon. Judge Ernest M. Robles

**ORDER (A) AUTHORIZING THE SALE
OF CERTAIN OF THE DEBTORS'
ASSETS TO STRATEGIC GLOBAL
MANAGEMENT, INC. FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
AN UNEXPIRED LEASE RELATED
THERE TO; AND (C) GRANTING
RELATED RELIEF**

Hearing:

Date: April 17, 2019

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

Debtors and Debtors In Possession.

☒ Affects All Debtors

☐ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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DENTONS US LLP
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1 This matter came before the Court on the *Motion For The Entry Of (I) An Order (1)*
2 *Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective*
3 *Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking*
4 *Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4)*
5 *Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5)*
6 *Approving Procedures Related To The Assumption Of Certain Executory Contracts And*
7 *Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of*
8 *All Claims, Liens And Encumbrances* (the “Motion”) [Docket No. 1279], filed by Verity Health
9 System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in
10 possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), for the entry of
11 an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the
12 “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.¹

13 At the previous hearing on the Motion on February 19, 2019 (the “Bidding Procedures
14 Hearing”), the Court considered various objections (the “Premature Objections”) filed by: (i) St
15 Vincent IPA Medical Corporation and Angeles IPA [Docket No. 1397]; (ii) the California
16 Attorney General [Docket No. 1352]; (iii) MGH Painting Inc. [Docket No. 1358]; and (iv) Belfor
17 USA Group, Inc. [Docket No. 1364]. The Court ruled that the Premature Objections were
18 premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the
19 “Bidding Procedures Order”) [Docket No. 1572]. The Bidding Procedures Order also stated that
20 objections filed by the U.S. Department of Health and Human Services and Centers for Medicare
21 and Medicaid Services [Doc. No. 1346] and the California Department of Health Care Services
22 [Doc. No. 1353] (the “Continued Objections”) were continued, as resolved by stipulations
23 [Docket Nos. 1458 and 1473, respectively], approved by this Court’s orders [Docket Nos. 1465
24 and 1483, respectively].

25
26
27 ¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
28 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and
all “LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court
for the Central District of California.

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Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 2115], the Declarations of Richard Adcock [Docket Nos. 8 and 1469] and James Moloney [Docket No. 2220] in support thereof, the *Notice To Counterparties To Executory Contracts And Unexpired Leases Of The Debtors That May Be Assumed And Assigned* [Docket No. 1704], the *Supplemental Notice To Counterparties To Executory Contracts and Unexpired Leases of The Debtors That May Be Assumed and Assigned* [Docket No. 1836], the *Second Supplemental Notice Re Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 2065] (together Docket Nos. 1704, 1836 and 2065 are the “Cure Notice”), the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. For Assumption and Assignment* [Docket No. 2131] (the “Designation Notice”), the *Notice That No Auction Shall Be Held Re Debtors’ Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders; (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections; (3) Approving Form of Notice to Be Provided to Interested Parties; (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder; and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket No. 2053] (the “No-Auction Notice”), the objections filed by various counterparties to certain executory contracts and unexpired leases [Docket Nos. 1788; 1804; 1819; 1830; 1849; 1850; 1852; 1853; 1856-1858; 1863; 1866; 1869; 1870; 1873-1877 1881; 1882; 1885; 1890-1892; 1904; 1926; 1930; 1933; 1940; 1946; 1948; 1949; 1953; 1954; 1965; 2058; 2066; 2108; 2113; 2144; 2146; 2148, 2150, 2157, 2161, 2162] (the “Cure Objections”), the objection by the California Department of Health Care Services (the “DHCS”) [Docket No. 1879], the *Stipulation Continuing Hearing Regarding Creditors U.S. Department of Health and Human Services and California Department of Health Care Services* [Docket No.

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1 2125], the *Limited Opposition of Belfor USA Group, Inc. to Debtors' Motion for an Order*
2 *Authorizing the Sale of Property Free and Clear of All Claims Liens and Encumbrances* [Docket
3 No. 2130], the *Objection of United Healthcare Insurance Company to Debtors' Motion for Order*
4 *Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, Etc.* [Docket No. 2145]
5 filed United Healthcare Insurance Company, *SEIU-UHW's Objection and Reservation of Rights*
6 *to Debtors' Sale Motion* filed by the Service Employees International Union, United Healthcare
7 Workers-West [Docket No. 2147], the *Limited Objection and Reservation of Rights of United*
8 *Nurses Associations of California to Motion of Debtors for Approval of Sale [of Remaining*
9 *Hospital Assets to the Highest Bidder* [Docket No. 2155] filed by the United Nurses Association
10 of California, the *Reservation of Rights of U.S. Bank National Association, As Series 2015 Note*
11 *Trustee and as Series 2017 Note Trustee and as Series 2017 Note Trustee, with Respect to*
12 *Debtors' Motion for Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for*
13 *Stalking Horse Bidder and For Stalking Horse Bidder and for Prospective Overbidders (2)*
14 *Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3)*
15 *Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing*
16 *to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to*
17 *the Assumption of Certain Executory Contracts and Unexpired Leases and (II) an Order (A)*
18 *Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances* [Docket
19 No. 2156] filed by U.S. Bank National Association, As Series 2015 Note Trustee and as Series
20 2017 Note Trustee, the *Official Committee of Unsecured Creditors Response to the Debtors'*
21 *SGM Sale Motion* [Docket No. 2164], the *Reservation of Rights of California Statewide*
22 *Communities Development Authority to Motion of Debtors for Approval of Sale [of Remaining*
23 *Hospital Assets] to the Highest Bidder* [Docket No. 2168] filed by the California Statewide
24 Communities Development Authority, the Premature Objections, the Continued Objections, and
25 any withdrawals thereof, the statements, arguments and representations of the parties made at the
26 Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief
27 sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and that
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the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court's tentative ruling [Docket No. 2221]; and all objections to the Motion, if any, having been withdrawn, continued or overruled; and for the reasons set forth in the Court's tentative ruling [Docket No. 2221], which the Court adopts as its final ruling and which is incorporated herein by reference; and after due deliberation and sufficient good cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated January 8, 2019, a copy of which is attached as Exhibit "A" to Docket No. 1279 (the "APA"); (ii) the Sale Hearing; (iii) the No-Auction Notice; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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1 of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also
2 complied with all obligations to provide notice of the Auction, the Sale Hearing, the proposed
3 sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to
4 object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

5 D. Arm's Length Transaction. The APA and other documents and instruments (the
6 "Transaction Documents") related to and connected with this transaction (the "Transaction") and
7 the consummation thereof were negotiated and entered into by the Debtors and Strategic Global
8 Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith and
9 through an arm's length bargaining process. Neither SGM nor any of its affiliates or
10 representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the
11 Debtors, SGM, or their respective representatives engaged in any conduct that would cause or
12 permit the APA, any of the other Transaction Documents or the Transaction to be avoided under
13 § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the
14 APA and the other Transaction Documents, including, without limitation, the consideration
15 provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be
16 avoided, and no damages may be assessed against SGM or any other party, as set forth in §
17 363(n). The consideration provided by SGM is fair, adequate and constitutes reasonably
18 equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws
19 of the United States or any of its jurisdictions or subdivisions, including the State of California.

20 E. Good Faith Purchaser. SGM has proceeded in good faith and without collusion in
21 all respects in connection with the sale process, in that: (i) SGM, in proposing and proceeding
22 with the Transaction in accordance with the APA, recognized that the Debtors were free to deal
23 with other interested parties; (ii) SGM agreed to provisions in the APA that would enable the
24 Debtors to accept a higher and better offer; (iii) SGM complied with all of the provisions in the
25 Bidding Procedures Order applicable to SGM; (iv) all payments to be made by SGM and other
26 agreements entered into or to be entered into between SGM and the Debtors in connection with
27 the Transaction have been disclosed; (v) the negotiation and execution of the APA and related
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Transaction Documents were conducted in good faith and constituted an arm's length transaction; (vi) SGM did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SGM is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction, any terms or conditions of the Transaction or SGM's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and sale of the Purchased Assets and, except with respect to the liens arising from the Special Assessments and the PACE Obligations (each as defined in §1.1(a)(iii) of the APA) assumed by SGM, shall vest in SGM, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, recoupment, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or

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1 more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of
2 Encumbrances who did not object, or who withdrew their objections, to the sale or the Motion are
3 deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did
4 object fall within one or more of the other subsections of § 363(f). All holders of the
5 Encumbrances in the Purchased Assets are adequately protected by having their respective
6 Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets
7 under the APA (subject to any Challenge within the meaning of that certain *Final Order (I)*
8 *Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens*
9 *and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection,*
10 *(V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the "Final
11 DIP Order") that has been, or may be, timely filed³), and any related documents or instruments
12 delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the
13 extent and manner herein provided.

14 H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause
15 to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in
16 consummating the Transaction, and it is in the best interests of the Debtors and their estates to
17 consummate the Transaction within the timeline set forth in the Motion and the APA. The Court
18 finds that there is no just reason for delay in the implementation of this Order, and expressly
19 directs entry of judgment as set forth in this Order.

20
21 ³ The Final DIP Order granted to the Committee standing to file the requisite pleading to
22 challenge the validity, enforceability and amount of the Prepetition Liens (each such proceeding
23 or appropriate pleading commencing a proceeding or other contested matter, a "Challenge")
24 within ninety (90) days from the formation of the Committee (the "Challenge Deadline"). See
25 Final DIP Order ¶ 5(e). The Committee's investigation as to the Prepetition Liens remains
26 ongoing. The Committee and the Prepetition Secured Creditors have entered into a number of
27 stipulations (the "Challenge Stipulations") by which the Committee has acknowledged and
28 stipulated to the validity, enforceability and perfection of the Prepetition Liens in certain
collateral identified in the Challenge Stipulations, and by which the Challenge Deadline has been
extended a number of times with respect to the validity, enforceability and perfection of the
Prepetition Liens in any other collateral. The Challenge Deadline with respect to any Prepetition
Liens for which the Committee has not stipulated pursuant to the Challenge Stipulations as to the
validity, enforceability and perfection thereof is now May 13, 2019.

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I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign to SGM the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below) and to the extent subsequently identified by SGM pursuant to paragraph 16 below, the Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently Identified Designated Contracts and the Subsequently Identified Contracts are collectively referred to herein as the “Designated Contracts”) in connection with the consummation of the Transaction, and the assumption and assignment of the Designated Contracts is in the best interests of the Debtors and their estates.

J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the APA, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Designated Contracts will have been cured, within the meaning of § 365(b)(1)(A), by payment of the amounts and in the manner set forth below, unless otherwise agreed by SGM and the counterparty. SGM has provided or will provide adequate assurance of future performance of and under the Designated Contracts within the meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors (i.e., St. Francis Medical Center, a California nonprofit public benefit corporation (“St. Francis Medical Center”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“St. Vincent Medical Center”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“St. Vincent Dialysis Center”), and Seton Medical Center, a California nonprofit public benefit corporation (“Seton Medical Center”) (collectively, the “Hospitals”), VHS, and Verity Holdings LLC, a California limited liability company (“Holdings”)), and assigned to SGM under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, SGM, notwithstanding any provision in such Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss

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1 resulting from a default on or prior to the Closing under any of the Designated Contracts within
2 the meaning of § 365(b)(1)(B).

3 K. Rejection of Executory Contracts and Unexpired Leases. The Debtors will have
4 demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for
5 the Hospitals to reject all of their executory contracts and unexpired leases, excluding (i)
6 Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in
7 addition to the Hospitals, (iii) any prepetition contract that is the subject of a Rule 9019 settlement
8 motion prior to Closing, and (vi) any collective bargaining agreement, pension plan or health and
9 welfare plan providing collectively bargained benefits to which a Hospital is a party or sponsor,
10 which matters shall be scheduled for determination as provided in paragraph 33 below. Each
11 such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31,
12 and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this
13 paragraph K, prior to Closing and shall request therein that the rejection be effective as of the
14 Closing or as otherwise appropriate.

15 L. Highest or Otherwise Best Offer. The Debtors solicited offers and noticed the
16 Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was
17 duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded
18 a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise
19 better offer to purchase the Purchased Assets. Other than SGM's Stalking Horse Bid, the Debtors
20 received two Qualified Partial Bids by the Partial Bid Deadline and did not receive a Qualified
21 Full Bid (as such terms are defined by the Bidding Procedures Order). The Debtors properly
22 consulted with the Consultation Parties in selecting the SGM Stalking Horse Bid as the highest
23 and best bid and in determining that no auction should be held (as such terms are defined in the
24 Bidding Procedures Order), as set forth in their No-Auction Notice. The transfer and sale of the
25 Purchased Assets to SGM on the terms set forth in the APA constitutes the highest or otherwise
26 best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates
27 than would be provided by any other available alternative. The Debtors' determination, in
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1 consultation with the Consultation Parties (as defined in the Bidding Procedure Order), that the
2 APA constitutes the highest or best offer for the Purchased Assets and to not conduct an auction
3 constitutes a valid and sound exercise of the Debtors' business judgment.

4 M. No De Facto or Sub Rosa Plan of Reorganization. The sale of the Purchased
5 Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it
6 does not propose to (i) impair or restructure existing debt of, or equity or membership interests in,
7 the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the
8 Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or
9 (iv) classify claims or equity or membership interests.

10 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at
11 the Sale Hearing establish just cause for the relief granted herein.

12 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

13 1. The relief requested in the Motion is GRANTED and APPROVED in all respects
14 to the extent provided herein.

15 2. All objections with regard to the relief sought in the Motion that have not been
16 withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including
17 any reservation of rights included in such objections, are overruled on the merits with prejudice.
18 To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the
19 terms of this Sale Order shall prevail.

20 3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the
21 transfer and sale of the Purchased Assets to SGM on the terms set forth in the APA, is approved
22 in all respects, and the Debtors are authorized and directed to consummate the Transaction in
23 accordance with the APA, including, without limitation, by executing all of the Transaction
24 Documents (and any ancillary documents or instruments that may be reasonably necessary or
25 desirable to implement the APA or the Transaction) and taking all actions necessary and
26 appropriate to effectuate and consummate the Transaction (including the transfer and sale of the
27 Purchased Assets) in consideration of the Purchase Price (as defined in § 1.1 of the APA) upon
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1 the terms set forth in the APA, including, without limitation, assuming and assigning to SGM the
2 Designated Contracts. The Debtors and SGM shall have the right to make any mutually
3 agreeable, non-material changes to the APA, which shall be in writing signed by both parties,
4 without further order of the Court provided, that after reasonable notice, the Official Committee
5 of Unsecured Creditors (the "Committee"), the DIP Agent (as defined in the Final DIP Order
6 defined below), and the Prepetition Secured Creditors (as defined in the Final DIP Order) do not
7 object to such changes. Any timely objection by the aforementioned parties to any agreed non-
8 material changes to the APA may be resolved by the Court on shortened notice.

9 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal,
10 valid, enforceable and effective transfer and sale of the Purchased Assets to SGM free and clear
11 of all Encumbrances, except with respect to the liens arising from the Special Assessments and
12 the PACE Obligations assumed by SGM, as further set forth in the APA and this Sale Order; and
13 (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable
14 against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor
15 thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the
16 Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the
17 Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the
18 Purchased Assets, all counterparties to the Designated Contracts and all other persons and
19 entities.

20 5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge
21 within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale
22 Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,
23 effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the
24 Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force,
25 extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any
26 Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and
27 authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition
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1 Secured Creditors, as applicable, pursuant to the Final DIP Order, to the extent that (i) the rights
2 granted to the Prepetition Secured Creditors with respect to §§506(c) and 552(b) by the Final DIP
3 Order are not limited or modified as a result of the appeal from the Final DIP Order filed by the
4 Committee on November 29, 2019; and/or (ii) any replacement liens or security interest granted
5 to the Prepetition Secured Creditors by the Final DIP Order are not invalidated as a result of any
6 Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In
7 addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect
8 to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to
9 the extent of and in accordance with its terms with all parties reserving all rights thereunder.

10 6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order
11 shall, as of the Closing, be considered and constitute for all purposes a full and complete general
12 assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all
13 of the Debtors' rights, title and interest in and to the Purchased Assets to SGM. Consistent with,
14 but not in limitation of the foregoing, each and every federal, state, and local governmental
15 agency or department, except as stated herein, is hereby authorized and directed to accept all
16 documents and instruments necessary and appropriate to consummate the transactions
17 contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be
18 filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any
19 Encumbrances of record.

20 7. Any person or entity that is currently, or on the Closing Date may be, in
21 possession of some or all of the Purchased Assets is hereby directed to surrender possession of
22 such Purchased Assets either to (a) the Debtors before the Closing or (b) to SGM or its designee
23 upon the Closing, and to cooperate with the Debtors and SGM in the Debtors' and SGM's
24 fulfillment of their obligations hereunder and pursuant to the APA.

25 8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall
26 be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and
27 upon consummation of the Transaction, including, without limitation, payment of the Purchase
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1 Price to the Debtors, vest SGM with all right, title, and interest in the Purchased Assets, free and
2 clear of all Encumbrances. Upon closing of the Transaction, SGM shall take title to and
3 possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the
4 APA. The transfer of the Purchased Assets from the Debtors to SGM constitutes a transfer for
5 reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the
6 State of California.

7 9. Following the Closing, no holder of any Encumbrance against the Debtors or upon
8 the Purchased Assets shall interfere with SGM's respective rights in, title to or use and enjoyment
9 of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from
10 taking any action that would adversely affect or interfere with the ability of the Debtors to sell
11 and transfer the Purchased Assets to SGM, including the assumption and assignment of the
12 Designated Contracts.

13 10. SGM shall not be deemed, as a result of any action taken in connection with, or as
14 a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a
15 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their
16 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,
17 doctrine or theory of successor liability, or any theory or basis of liability, regardless of source of
18 origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere
19 continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed
20 Liabilities, SGM is not assuming any of the Debtors' debts.

21 11. This Sale Order (i) shall be effective as a determination that, on Closing, all
22 Encumbrances existing against the Purchased Assets before the Closing have been
23 unconditionally released, discharged and terminated, and that the transfers and conveyances
24 described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all
25 persons and entities. If, following a reasonable written request made by the Debtors, any person
26 or entity that has filed financing statements or other documents or agreements evidencing any
27 Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or
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1 in connection with Closing, in proper form for filing and executed by the appropriate parties,
2 termination statements, instruments of satisfaction, releases of all Encumbrances which the
3 person or entity has with respect to the Purchased Assets, then SGM and/or the Debtors are
4 hereby authorized to execute and file such statements, instruments, releases and other documents
5 on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of
6 doubt, such statements, instruments, releases and other documents shall not impair Encumbrances
7 that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or
8 may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to
9 paragraphs 5 and 13 hereof.

10 12. In accordance with the APA, concurrently with the Closing, SGM shall pay that
11 portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to
12 Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in the
13 APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the
14 Prepetition Secured Creditors, and the Committee in advance of the Closing.

15 13. The terms and conditions of the Final DIP Order shall apply with respect to the
16 Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the
17 Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

18 (a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale
19 Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each
20 such hereafter referred to as "Escrow Deposit Account");

21 (b) in giving direction to SGM pursuant to sub-paragraph (a), above, the Debtors shall
22 exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among
23 the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of
24 the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of
25 rights in paragraph 4 of the Final DIP Order and paragraph 31 of the Bidding Procedures Order;
26 provided further that nothing in this paragraph shall waive or limit any rights the Committee or
27 the Prepetition Secured Creditors may have in connection with the confirmation of a proposed
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chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values and the Sale Proceeds);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee; and

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon; and

(e) for the avoidance of doubt, the rights of the Debtors, the Committee, and the Prepetition Secured Creditors as to the Sale Proceeds and any funds held in a Deposit Escrow shall be, except as set forth herein, as contemplated by Paragraph 4 of the Final DIP Order, and nothing in this Order shall be construed as altering, amending, waiving, or affecting in any way such rights. Concurrently with the Closing or as soon thereafter as is possible, and in accordance with the APA, SGM shall pay to the counter-parties to the Designated Contracts the cure amounts

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1 set forth in the Cure Notice, or as otherwise agreed to by the Debtors, SGM and the applicable
2 counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections
3 (the “Designated Cure Amounts”). SGM has the right under the APA to remove any Contracts
4 from the list of Designated Contracts up to seven (7) days prior to Closing, as also set forth in the
5 *Order Approving Stipulation Regarding Designation Deadline Re Order (1) Approving Form Of*
6 *Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders, (2)*
7 *Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections*
8 [Docket No. 1865].

9 14. To the extent that any of the contracts and/or leases, which give rise to the
10 Designated Cure Amounts and are set forth in the Designation Notice and are not subsequently
11 and timely removed by SGM under the APA and the *Order Approving Stipulation Regarding*
12 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
13 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
14 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865] (the “Currently Identified
15 Designated Contracts”) are executory contracts or unexpired leases (over which the Court is not
16 making any such determination at this time), then in connection with the Closing, the Debtors
17 shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they
18 are deemed part of the Designated Contracts) and to have assigned them to SGM, and SGM shall
19 have assumed all obligations owing under all such Currently Identified Designated Contracts
20 arising after and following the Closing. The Court shall resolve any and all disputes which may
21 arise between the Debtors, SGM and any of the Currently Identified Designated Contract
22 Counter-Parties over whether the Currently Identified Designated Contracts are executory
23 contracts or unexpired leases and whether any of the Currently Identified Designated Contract
24 Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the
25 Designated Cure Amounts (the “Assumption Dispute”).

26 15. In the event that the Court determines that any such counter-parties to the
27 Currently Identified Designated Contracts (the “Currently Identified Designated Contract”
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1 Counter-Parties” and, individually, a “Currently Identified Designated Contract Counter-Party”)
2 have an allowed cure claim against the Debtors which exceeds the Designated Cure Amounts (the
3 “Excess Cure Amount”), the difference will be paid by SGM and shall not be the responsibility of
4 the Debtors as more specifically set forth below; provided, however, that unless the Court makes
5 such a determination on or before fifteen (15) days prior to Closing, and unless the Debtor, SGM
6 and the Currently Identified Designated Contract Counter-Party agree otherwise, the Currently
7 Identified Designated Contract which is the subject of such Assumption Dispute, shall be deemed
8 a rejected contract within the meaning of § 1.11(a) of the APA as of ten (10) days prior to
9 Closing, and SGM, except as provided below, shall have no obligation to assume such Currently
10 Identified Designated Contract or to pay any Cure Amount or Excess Cure Amount in connection
11 with such Currently Identified Designated Contract. To the extent an Assumption Dispute relates
12 solely to the Cure Amount, the Debtors may, with SGM’s consent, assume and assign the
13 applicable executory contract or unexpired lease at Closing and prior to the resolution of the
14 Assumption Dispute by the Bankruptcy Court, provided, that either (a) the Bankruptcy Court has
15 estimated the maximum cure payment, pursuant to 11 U.S.C. § 502(c), and SGM has remitted
16 such amount to the Debtors to be held as sales proceeds in the Sale Proceeds Account for the
17 relevant Debtor(s), or (b) SGM provides to the relevant Debtor(s) and non-Debtor counterparty a
18 separate reasonably acceptable undertaking that SGM will promptly pay the maximum disputed
19 cure amount in accordance with 11 U.S.C. § 365 (b)(1)(A) and (B) (or such smaller amount as
20 may be fixed or estimated by the Bankruptcy Court or otherwise agreed to by such non-Debtor
21 party and SGM). The Debtors shall pay and hereby are authorized to pay disputed cure amounts
22 from the relevant Sales Proceeds Account(s) upon entry of a final order by this Court to the extent
23 SGM remitted to Sellers the amount required by item (a) of this paragraph of the Order.

24 16. All of the Currently Identified Designated Contracts, to the extent they are
25 executory contracts or unexpired leases and are not subsequently and timely removed by SGM
26 under the APA and the *Order Approving Stipulation Regarding Designation Deadline Re Order*
27 *(1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For*
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1 *Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures And Stalking*
2 *Horse Bid Protections* [Docket No. 1865], or deemed a rejected contract within the meaning of §
3 1.11(a) of the APA pursuant to paragraph 15 above, shall be part of the Designated Contracts that
4 will be assumed by the Debtors and assigned to SGM at the Closing. In the event that SGM elects
5 to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated
6 Contracts (the "Subsequently Identified Designated Contracts" and, individually, a "Subsequently
7 Identified Designated Contract") under the APA and the *Order Approving Stipulation Regarding*
8 *Designation Deadline Re Order (1) Approving Form Of Asset Purchase Agreement For Stalking*
9 *Horse Bidder And For Prospective Overbidders, (2) Approving Auction Sale Format, Bidding*
10 *Procedures And Stalking Horse Bid Protections* [Docket No. 1865], SGM shall notify the Debtors
11 of any such Subsequently Identified Designated Contracts on or before thirty days before Closing,
12 and the Debtors shall (i) file a notice with the Court identifying all such Subsequently Identified
13 Designated Contracts and their respective cure amounts as agreed upon between the Debtors and
14 SGM, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently
15 Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-
16 Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and
17 assigned to SGM at the Closing, with SGM to be obligated to pay all cure amounts owing to such
18 Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as
19 set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SGM and the applicable
20 counter-parties thereto, or ordered by the Court in accordance with paragraphs 34 and 36 below
21 (the "Additional Cure Amounts"), so long as such amount as ordered by the Court is no greater
22 than the amount agreed upon by SGM; and in the event the Additional Cure Amount is greater
23 than the amount agreed upon by SGM, and SGM is not willing to pay the Additional Cure
24 Amount, the Debtors shall not be required to pay the Additional Cure Amount(s) and the
25 Subsequently Identified Designated Contract(s) shall be deemed a rejected contract within the
26 meaning of § 1.11(a) of the APA pursuant to paragraph 15 above; provided, and for the avoidance
27 of doubt, no collective bargaining agreement, pension plan or health and welfare plan providing
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collectively bargained benefits to which a Hospital is a party or sponsor constitutes a Currently Identified Designated Contract or a Subsequently Identified Designated Contract for which SGM or the Debtors may be obligated to pay any cure amount.

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SGM, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (collectively, the “Contract Counter-Parties”). At the Closing, SGM shall pay the (i) Sale Proceeds, (ii) the Designated Cure Amounts identified in paragraph 13 above, (iii) the Excess Cure Amounts identified in paragraph 15 above, and (iv) the Additional Cure Amounts, subject to paragraph 15 above. Payment by SGM of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to “cure” all “defaults” with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The foregoing payment shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SGM, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SGM shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts, neither the Debtors nor SGM shall have any further liabilities to any Contract Counter-Parties, other than SGM’s obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SGM with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, SGM shall not be liable for the payment of any liabilities or obligations arising from or related to (a) any executory contracts that the Debtors intend to reject by appropriate motion and which are not being assumed and assigned to SGM, (b) any multiparty contract affecting more than one Debtor in addition to one of the hospitals subject to the

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Transaction, or (c) any collective bargaining agreement (“CBA”), pension plan, or health and welfare plan providing for collectively bargained for benefits to which a Hospital is a party or a sponsor, unless expressly assumed and assigned with SGM’s consent.

18. The Debtors intend, and are hereby authorized, to (A) reject, pursuant to § 365(a), all executory contracts to which one or more of the Hospitals are a party, excluding (i) Designated Contracts, and (ii) any prepetition multiparty contract affecting more than one Debtor in addition to one of the Hospitals, and, (B) reject and terminate, to the extent separately authorized by this Court, pursuant to §§ 1113, 1114, and any other applicable provision of the Bankruptcy Code, any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which one of the Hospitals is a party or sponsor and that SGM does not assume.

19. All of the Contract Counter-Parties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtors or SGM, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Designated Contracts, including any asserted breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or any purported written or oral modification to the Designated Contracts and (ii) asserting against SGM any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed Obligations.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contract or allow the counterparty to such Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions

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1 that are void and of no force and effect with respect to the Debtors' assumption and assignment of such
2 Designated Contract to SGM in accordance with the APA, pursuant to § 363(f).

3 21. The terms and provisions of this Sale Order, as well as the rights granted under the
4 Transaction Documents, shall continue in full force and effect and are binding upon any successor,
5 reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding entry
6 of any order of conversion or dismissal any such conversion, dismissal or order entry. Nothing
7 contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a
8 plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict
9 with or derogate from the provisions of the APA, any documents or instruments executed in
10 connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict
11 between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern.
12 The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or
13 dismissal of the cases and the entry of any other order that may be entered in the cases, including any
14 order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7;
15 (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

16 22. The Transaction contemplated by the APA and other Transaction Documents are
17 undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy
18 Code. SGM is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the
19 full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization
20 provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the
21 sale of the Purchased Assets to SGM. The APA and the Transactions contemplated thereby cannot be
22 avoided under § 363(n).

23 23. The failure to specifically include any particular provision of the APA or the other
24 Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such
25 provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other
26 Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of
27 this Sale Order are non-severable and mutually dependent.
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1 24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. §
2 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or
3 otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective
4 and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence
5 in approving the Transaction (including the transfer and the sale of the Purchased Assets).

6 25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the
7 Debtors to the extent necessary, without further order of this Court, to (i) allow SGM to deliver any
8 notice provided for in the APA and Transaction Documents and (ii) allow SGM to take any and all
9 actions permitted under the APA and Transaction Documents in accordance with the terms and
10 conditions thereof.

11 26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists
12 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order
13 shall govern.

14 27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the
15 provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to
16 (i) hear and determine all disputes between the Debtors and/or SGM, as the case may be, and any other
17 non-Debtor party to, among other things, the Designated Contracts concerning, among other things,
18 assignment thereof by the Debtors to SGM and any dispute between SGM and the Debtors as to their
19 respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel
20 delivery of the Purchased Assets to SGM free and clear of Encumbrances, except with respect to the
21 liens arising from the Special Assessments and the PACE Obligations; (iii) compel the delivery of the
22 Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and
23 enforce the provisions of this Sale Order; and (v) protect SGM against (A) claims made related to any
24 of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability
25 (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any
26 Encumbrances asserted on or against SGM or the Purchased Assets.

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28. Following the date of entry of this Sale Order, the Debtors and SGM are authorized to make changes to the APA and/or execute supplemental agreements implementing the transactions contemplated by the APA without the need for any further order of the Court provided that all such changes have been approved in writing by the Debtors, SGM, the Committee, the DIP Agent, and Prepetition Secured Creditors. Any other proposed changes to the APA or this Sale Order shall require a further order of the Court, after reasonable notice under the circumstances and a hearing.

29. Notwithstanding any other provision of this Sale Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

30. To the extent the Purchased Assets contain records of the Verity Health System Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension Plans") or employment records of participants of the Pension Plans, SGM shall store, and preserve any such records until the Pension Benefit Guaranty Corporation ("PBGC") has completed its investigation regarding the Pension Plans and shall make such documents available to PBGC for inspection and copying. Such records include, but are not limited to, any Pension Plan governing documents, actuarial documents, and employment records (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan Documents that are not Purchased Assets no earlier than February 28, 2020, and shall make such documents available to the PBGC for inspection and copying.

31. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the

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Hospitals' Medi-Cal Provider Agreements or (ii) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the DHCS or a Court order resolving the DHCS's objections.

32. No later than May 13, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Hospitals' Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on May 27, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements on June 5, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the HHS or a Court order resolving the HHS's objections.

33. In accordance with the terms of §§ 4.7 and 5.11 of the APA, the Debtors and SGM will negotiate regarding modification of applicable CBAs. To the extent the Debtors seek modification, rejection and/or termination of CBAs, they will comply with the requirements of § 1113, as applicable, and may do so before or after Closing under their discretion.

34. A continued hearing on the Cure Objections shall be held on June 5, 2019, at 10:00 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than May 22, 2019, at 4:00 p.m. (Pacific Time), the Debtors shall file a notice containing a list of (a) the Cure Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure Objections for which Court intervention is required, pursuant to the Order

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1 *Approving Omnibus Stipulation Continuing Hearing on Certain Objections to Notice and*
2 *Supplemental Notice of Contracts Designated for Assumption and Assignment [Docket No. 2183], the*
3 *deadline for the Debtors to reply to the Cure Objections shall be May 29, 2019, at 4:00 p.m. (Pacific*
4 *Time). the following briefing schedule shall apply: (1) the Debtors' opposition to each outstanding*
5 *Cure Objection shall be submitted by no later than May 22, 2019; and (2) the counterparties' reply in*
6 *support of its Cure Objections shall be submitted by no later than May 29, 2019.* Nothing in this Sale
7 Order constitutes a finding or determination on any Cure Objection. All Cure Objections are preserved
8 until resolved either by agreement between the Debtors and the contract counterparty or further order
9 of the Court.

10 35. As to any executory contracts or unexpired leases that were listed on the Initial
11 Designated Contract List, but not listed on any prior Cure Notice, any counterparty thereto may file an
12 objection to the cure amount or assumption thereof by May 22, 2019, and all other provisions in
13 paragraph 34 shall apply to resolution thereof.

14 36. As to Subsequently Identified Designated Contracts, (i) promptly upon SGM's
15 identifying such contract(s), the Debtors shall file a notice with the Court identifying all Subsequently
16 Identified Designated Contracts no later than 30 days prior to Closing and provide service thereof in
17 accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated
18 Contracts were not listed on a Cure Notice, counterparties subject to contracts who object to
19 assumption and/or the proposed cure amounts must file an objection no later than 14 days prior to
20 Closing, and any reply shall be filed no later than 7 days prior to Closing. To the extent that a
21 negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently
22 Identified Designated Contracts shall be adjudicated by the Court, which shall resolve any and all
23 disputed issues related to the objection(s).

24 37. The California Attorney General, the Debtors, the Consultation Parties (as defined in
25 the Bid Procedures Order) and SGM, reserve all rights, arguments and defenses concerning the
26 California Attorney General's authority, if any, to review the sale under California Corporations Code
27 §§ 5914-5924 and California Code of Regulations on Nonprofit Hospital Transactions—Title 11,
28

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Chapter 15, § 999.5, and any conditions issued thereto. Nothing in this Sale Order shall be construed as a waiver of the Attorney General's statutory and regulatory authority or other rights.

38. The Committee and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31 to 36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31 to 37 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

IT IS SO ORDERED.

###

Date: May 2, 2019



Ernest M. Robles
United States Bankruptcy Judge

Exhibit B

2019 Conditions



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

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September 25, 2019

VIA EMAIL AND US MAIL

Hope R. Levy-Biehl
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024

hlevybiehl@nelsonhardiman.com

RE: Verity Health System of California, Inc. Notice of Proposed Transfer
St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
Center

Dear Ms. Levy-Biehl:

Under Corporations Code section 5914 et seq., and California Code of Regulations, title 11, section 999.5, the Attorney General has considered the proposed transaction submitted by Verity Health System of California, Inc. In coming to the decisions, described below, we have carefully considered the factors set forth in Corporations Code section 5917 and the applicable regulations, including whether the transaction is in the public interest and whether the transaction effects the availability or accessibility of health care services to the affected community. Our decision is based on the material contained in the notice, the information and documents subsequently submitted by the applicants, comments made by members of the public, discussions with the applicants, and the results of our investigation.

The Attorney General hereby conditionally consents to Verity Health System of California, Inc.'s proposed sale of the assets of St. Francis Medical Center, St. Vincent Medical Center, including its St. Vincent Dialysis Center, and Seton Medical Center to Strategic Global Management, Inc. and/or one or more of its affiliates. The Attorney General's conditional approval of the sale is subject to the attached conditions that are incorporated by reference herein.

Verity Health System of California, Inc. also requested, under Title 11 of the California Code of Regulations, Sec. 999.5(h), a modification of the Attorney General Conditions issued on December 3, 2015. Verity Health System of California, Inc. requested that the Attorney General modify and update the Attorney General's Conditions issued on December 3, 2015 as follows: (1) modify and update the volume of charity care and community benefits provided by the St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center; (2) modify and update capital expenditures to credit Strategic Global Management for the expenditures Verity

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Health System of California, Inc. has invested in the health system; (3) modify and eliminate the requirement that Strategic Global Management maintain cancer care at St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center; and (4) modify and update the Conditions to conform to the present transaction and specific parties involved.

The Attorney General hereby denies, in part, and conditionally consents to Verity Health System of California, Inc.'s request for modification as reflected in the attached conditions that are incorporated by reference herein. The attached conditions serve as conditions for both the request for modification and the sale of the assets of St. Francis Medical Center, St. Vincent Medical Center, including its St. Vincent Dialysis Center, and Seton Medical Center as described in the second paragraph of this letter.

Sincerely,

[original signed]

SCOTT CHAN
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Kathryn F. Edgerton (Russo)
kedgerton@nelsonhardiman.com

Conditions to the Sale of St. Francis Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Francis Medical Center” shall mean the general acute care hospital located at 3630 East Imperial Highway, Lynwood, CA 90262, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Francis Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For ten years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Francis Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Francis Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Francis Medical Center. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Francis Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide 24-hour emergency and trauma medical services at no less than current² licensure and designation with the same types and/or levels of services, including the following:

- a. 46 emergency treatment stations at a minimum;
- b. Designation as a Level II Trauma Center;

² The term "current" or "currently" throughout this document means as of January 1, 2019.

- c. Designation as a 5150 Receiving Facility, as defined by the Welfare and Institutions Code, section 5150, for behavioral health patients under involuntary evaluation;
- d. Psychiatric evaluation team;
- e. Designation as an Emergency Department Approved for Pediatrics (EDAP);
- f. Designation as a Paramedic Base Station; and
- g. Certification as a Primary Stroke Center.

Strategic Global Management, Inc. must give one-year advance written notice to the Los Angeles County Emergency Medical Services Agency and the California Department of Public Health if St. Francis Medical Center seeks to reduce trauma or trauma-related care services or stop operating the Level II Trauma Center after ten years from the closing date of the Asset Purchase Agreement.

V.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical shall maintain Center on-call coverage contracts and/or comparable coverage arrangements with physicians at fair market value that are necessary to retain its qualification as a Level II trauma center. Trauma II designation requires 24-hour immediate coverage by general surgeons, as well as coverage by the specialties of orthopedic surgery, neurosurgery, anesthesiology, emergency medicine, radiology and critical care. Requirements for on-call and promptly available specialties include the following:

- a. Neurology;
- b. Obstetrics/gynecology;
- c. Ophthalmology;
- d. Oral or maxillofacial or head and neck;
- e. Plastic surgery;
- f. Reimplantation/microsurgery capability (this surgical service may be provided through a written transfer agreement); and
- g. Urology.

VI.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Cardiac services, including three cardiac catheterization labs and the designation as a STEMI Receiving Center;
- b. Critical care services, including a minimum of 36 intensive care unit beds or 24 intensive care beds and 12 definitive observation beds;
- c. Neonatal intensive care services, including a minimum of 29 neonatal intensive care beds, and at minimum, maintaining a Level II NICU;
- d. Women's health services, including women's imaging services;
- e. Cancer services, including radiation oncology;

- f. Pediatric services, including a designated area with at least five general acute care beds for pediatric services;
- g. Orthopedic and rehabilitation services;
- h. Wound care services;
- i. Behavioral health services, including a minimum of 40 distinct part inpatient acute psychiatric beds; and
- j. Perinatal services, including a minimum of 50 perinatal beds.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For at least ten years from the closing date of the Asset Purchase Agreement, St. Francis Medical Center shall maintain the same types and/or levels of women's healthcare services currently provided at the location below or a location within three miles of St. Francis Medical Center:

- a. Family Life Center at St. Francis Medical Center, located at 3630 E Imperial Highway, Lynwood, California.

VIII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Francis Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Pediatric services at Children's Counseling Center, 4390 Tweedy Ave, South Gate, California;
- b. The multi-specialty services, including wound care at Wound Care Center, 3628 E. Imperial Highway, Suite 103, Lynwood, California; and
- c. Orthopedic services at 3628 E. Imperial Highway, Suite 300, Lynwood, California.

IX.

For ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St. Francis Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
 - i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Francis Medical Center equal to or greater than \$12,793,435 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Francis Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.³

³ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Francis Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Francis Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Francis Medical Center's website.
- c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
- d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Francis Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.
- e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Francis Medical Center.
- f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Francis Medical Center.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Francis Medical Center equal to or greater than \$1,139,301 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Southern California Crossroads Program;
- b. Health Benefit Resource Center;
- c. Welcome Baby Program;
- d. Healthy Community Initiatives;
- e. American Career College access for onsite training;
- f. Paramedic Training and Education; and
- g. Patient Transportation support.

The planning of, and any subsequent changes to, the community benefit services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Francis Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Francis Medical Center's service area (31 ZIP codes), as defined on as described on page 54 in the Healthcare Impact

Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For at least ten years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County;
- b. Department of Mental Health Legal Entity Contract between the Hospital and Los Angeles County;
- c. Paramedic Base Hospital Services between the Hospital and Los Angeles County;
- d. Radiation Therapy Services between the Hospital and Los Angeles County;
- e. Designation Agreement between the County of Los Angeles Department of Mental Health (LAC-DMH) and the Hospital and approved as a 72-hour Evaluation and Intensive Treatment facility;
- f. Affiliation Agreement for physicians in post graduate training;
- g. Trauma Center Service Agreement between the Hospital and Los Angeles County; and
- h. Paramedic Training Institute Students between the Hospital and Los Angeles County.

For at least ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Francis Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XIII.

For ten years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall have at St. Francis Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Francis Medical Center. The members of the Local Governing Board shall include physicians from St. Francis Medical Center's medical staff, St. Francis Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Francis Medical Center's primary service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report

authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIV.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XV.

Strategic Global Management, Inc. shall commit the necessary investments required to maintain OSHPD seismic compliance requirements at the Hospital through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Safety. Code, § 129675-130070).

XVI.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Francis Medical Center.

XVII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Francis Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management, Inc.'s written policies, adhered to, and strictly enforced.

XVIII.

Within 15 days of the closing of date of the Asset Purchase Agreement, St. Francis Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from St. Francis Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited

into the California Community Foundation's St. Francis Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.

- b) If there are funds from St. Francis Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XIX.

For eleven fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXI.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 31 ZIP Codes from which 75% of the Hospital's inpatient discharges came from. Approximately 51% of the Hospital's discharges originated from the top eight ZIP Codes, located in Lynwood, South Gate, Los Angeles, Bell, Compton, Bell Gardens, and Huntington Park. In CY 2017, the Hospital's market share in the service area was approximately 11% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Code	Community	Discharges	Percentage of Discharges	Cumulative Percentage	Market Share	Total Discharges
90262	Lynwood	2,490	11.1%	11.1%	38.1%	6,538
90280	South Gate	2,187	9.8%	20.9%	29.0%	7,554
90221	Compton	1,400	6.3%	27.2%	24.1%	5,812
90201	Bell	1,359	6.1%	33.3%	16.3%	8,363
90002	Los Angeles	1,066	4.8%	38.0%	18.4%	5,797
90255	Huntington Park	956	4.3%	42.3%	15.5%	6,172
90059	Los Angeles	948	4.2%	46.6%	17.2%	5,527
90001	Los Angeles	922	4.1%	50.7%	15.6%	5,901
90220	Compton	708	3.2%	53.9%	12.7%	5,554
90222	Compton	700	3.1%	57.0%	18.1%	3,868
90003	Los Angeles	625	2.8%	59.8%	7.6%	8,209
90044	Los Angeles	542	2.4%	62.2%	4.5%	11,994
90723	Paramount	525	2.3%	64.6%	11.7%	4,483
90061	Los Angeles	358	1.6%	66.2%	9.5%	3,764
90650	Norwalk	344	1.5%	67.7%	3.3%	10,373
90270	Maywood	282	1.3%	69.0%	12.2%	2,309
90805	Long Beach	267	1.2%	70.2%	2.7%	9,940
90706	Bellflower	263	1.2%	71.3%	3.6%	7,223
90242	Downey	252	1.1%	72.5%	6.2%	4,038
90241	Downey	224	1.0%	73.5%	6.0%	3,726
90660	Pico Rivera	91	0.4%	73.9%	1.4%	6,608
90240	Downey	69	0.3%	74.2%	3.3%	2,073
90670	Santa Fe Springs	46	0.2%	74.4%	2.7%	1,703
90605	Whittier	44	0.2%	74.6%	1.1%	4,082
90606	Whittier	44	0.2%	74.8%	1.4%	3,244
90703	Cerritos	37	0.2%	74.9%	0.9%	4,026
90604	Whittier	32	0.1%	75.1%	0.9%	3,698
90701	Artesia	31	0.1%	75.2%	1.7%	1,813
90638	La Mirada	30	0.1%	75.4%	0.7%	4,274
90603	Whittier	3	0.0%	75.4%	0.1%	2,152
90639	La Mirada	0	0.0%	75.4%	0.0%	10
Sub-Total		16,845	75.4%	75.4%	10.5%	160,828
All Other		5,504	24.6%	100%		
Grand Total		22,349	100%			

Source: OSHPD Discharge Database, CY 2017

Conditions to the Sale of St. Vincent Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Vincent Medical Center, or the real property on which St. Vincent Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Vincent Medical Center, and any and all current and future lessees and owners of the real property on which St. Vincent Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Vincent Medical Center” shall mean the general acute care hospital located at 2131 West Third Street, Los Angeles, CA 90057, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Vincent Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For five years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Vincent Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Vincent Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Vincent Medical Center. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Vincent Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For five years from the closing date of the Asset Purchase Agreement unless otherwise stated, St. Vincent Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250). If, on Strategic Global Management, Inc.'s further evaluation, the cost to seismically retrofit the St. Vincent Medical Center becomes less feasible than building a new replacement hospital, services may need to be temporarily closed or relocated due to construction. A detailed program and services plan, architectural drawings, and financing plan shall be presented to the California Attorney General for approval before ceasing to operate any services.

V.

For five years from the closing date of the Asset Purchase Agreement, St. Vincent Medical Center shall maintain and provide 24-hour emergency services at no less than its current licensure² of 8 treatment stations, and designation and the following health care services at current licensure types, and/or levels of services:

- a. Designation as a STEMI Receiving center; and
- b. Maintaining the requirements set by the County of Los Angeles Emergency Medical Services for 911 Receiving Hospitals.

VI.

For at least five years from the closing date of the Asset Purchase Agreement, St. Vincent Medical Center shall maintain and provide the following services at current licensure, types, and/or levels of services:

- a. Acute rehabilitation services, including a minimum of 19 licensed rehabilitation beds;
- b. Intensive care services, including a minimum of 30 intensive care beds;
- c. Cardiac services, including cardiac surgery and a minimum of two cardiac catheterization labs;
- d. Cancer services, including radiation oncology. Radiation oncology services may be relocated and patients transitioned to another site that has capacity within a three-mile radius after the first year after the closing of the Asset Purchase Agreement;
- e. Gastroenterology services;
- f. Imaging and laboratory services;
- g. Nephrology services, including end stage renal disease program, acute inpatient dialysis, and hemodialysis treatments;
- h. Neurology and neurotology services, including neurosurgery;
- i. Orthopedics, joint replacement, and spine care services;
- j. Transplant services, including kidney and multi-organ transplant procedures for kidney/pancreas double transplants. Transplant services do not include the liver transplant program. These services may be relocated to another hospital in the primary service area based upon a submission of a detailed plan to be approved by the California Attorney General; and
- k. Outpatient dialysis services. The outpatient dialysis services shall be within 5 miles of St. Vincent Medical Center by either (1) operating St. Vincent Dialysis Center, or (2) transferring St. Vincent Dialysis Center to a separate entity and requiring that entity to operate it for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the Conditions herein, or (3) ensuring that a third party is operating an outpatient dialysis center(s) at current levels for 5 years from the closing date of the Asset Purchase Agreement and that such center(s) participate in the Medi-Cal and Medicare programs as required in Conditions herein.

² The term “current” or “currently” throughout this document means as of January 1, 2019.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Vincent Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Cardiac Care Institute, located at 201 S. Alvarado Street, Suite 321, Los Angeles, California;
- b. Transplant Medical Office, located at 8501 Camino Media, Suite 100, Bakersfield, California;
- c. Cancer Treatment Center, located at 201 S. Alvarado Street, Suite A, Los Angeles, California;
- d. Multi-Organ Transplant services, located at 2200 W. Third Street, 5th Floor, Los Angeles, California;
- e. Radiology services, located at 201 S. Alvarado Street, Suite 311, Los Angeles, California;
- f. Orthopedic Services, located at 2200 W. Third Street, 4th Floor, Los Angeles, California; and
- g. Multispecialty Clinic located at 2200 W. Third Street, Suite 120, Los Angeles, California.

VIII.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St Vincent Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as

other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:

- i) Local Initiative: L.A. Care Health Plan or its successor; and
- ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

IX.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Vincent Medical Center equal to or greater than \$696,643 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Vincent Medical Center. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.³

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Vincent Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Vincent Medical Center in a prominent

³ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

- location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Vincent Medical Center's website.
 - c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
 - d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Vincent Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.
 - e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Vincent Medical Center.
 - f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Vincent Medical Center.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated

August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Vincent Medical Center equal to or greater than \$1,065,604 (the “Minimum Community Benefit Services Amount”) exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. Asian Pacific Liver Center.

The planning of, and any subsequent changes to, the community benefit services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.’s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.’s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Vincent Medical Center’s service area (48 ZIP codes), as defined on as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For at least five years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County; and

b. Radiation Therapy Services between the Hospital and Los Angeles County.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Vincent Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XII.

For five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall have at St. Vincent Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Vincent Medical Center. The members of the Local Governing Board shall include physicians from St. Vincent Medical Center's medical staff, St. Vincent Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Vincent Medical Center's primary service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIII.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XIV.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at St. Vincent Medical Center through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070).

Verity Health System of California, Inc. shall commit the necessary capital investment required to refurbish St. Vincent Medical Center's elevators in order to meet the City of Los Angeles' Elevator Code.

XV.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Vincent Medical Center.

XVI.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Vincent Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Vincent Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XVII.

Within 15 days of the closing of date of the Asset Purchase Agreement, St. Vincent Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from St. Vincent Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Vincent Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.
- b) If there are funds from St. Vincent Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XVIII.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XIX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XX.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 48 ZIP Codes from which 71% of the Hospital's inpatient discharges came from. Approximately 38% of the Hospital's discharges originated from the top eight ZIP Codes, located in Los Angeles. In CY 2017, the Hospital's market share in the primary and secondary service area was approximately 4% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
90057	Los Angeles	1,106	10.0%	10.0%	5,955	18.6%
90006	Los Angeles	726	6.5%	16.5%	5,472	13.3%
90026	Los Angeles	579	5.2%	21.7%	5,034	11.5%
90004	Los Angeles	491	4.4%	26.1%	4,691	10.5%
90005	Los Angeles	486	4.4%	30.5%	2,843	17.1%
90020	Los Angeles	297	2.7%	33.2%	2,600	11.4%
90019	Los Angeles	286	2.6%	35.8%	5,893	4.9%
90018	Los Angeles	263	2.4%	38.1%	5,975	4.4%
90029	Los Angeles	238	2.1%	40.3%	4,114	5.8%
90017	Los Angeles	235	2.1%	42.4%	2,308	10.2%
90037	Los Angeles	226	2.0%	44.4%	7,439	3.0%
90011	Los Angeles	212	1.9%	46.3%	10,436	2.0%
90012	Los Angeles	198	1.8%	48.1%	4,017	4.9%
90007	Los Angeles	195	1.8%	49.9%	3,129	6.2%
90013	Los Angeles	115	1.0%	50.9%	2,655	4.3%
90015	Los Angeles	112	1.0%	51.9%	1,918	5.8%
90014	Los Angeles	99	0.9%	52.8%	1,287	7.7%
90010	Los Angeles	50	0.5%	53.3%	311	16.1%
90009	Los Angeles	12	0.1%	53.4%	113	10.6%
PSA Sub-Total		5,926	53.4%	53.4%	76,190	7.8%
90044	Los Angeles	152	1.4%	54.7%	11,994	1.3%
90027	Los Angeles	150	1.4%	56.1%	4,273	3.5%
90016	Los Angeles	130	1.2%	57.3%	5,656	2.3%
90008	Los Angeles	127	1.1%	58.4%	4,258	3.0%
90003	Los Angeles	106	1.0%	59.4%	8,209	1.3%
90062	Los Angeles	96	0.9%	60.2%	4,018	2.4%
90028	Los Angeles	95	0.9%	61.1%	2,820	3.4%
90047	Los Angeles	87	0.8%	61.9%	7,164	1.2%
90043	Los Angeles	86	0.8%	62.6%	6,137	1.4%
90038	Los Angeles	82	0.7%	63.4%	2,349	3.5%
90033	Los Angeles	77	0.7%	64.1%	5,255	1.5%
90042	Los Angeles	68	0.6%	64.7%	5,173	1.3%
90039	Los Angeles	67	0.6%	65.3%	2,365	2.8%
90031	Los Angeles	62	0.6%	65.8%	3,161	2.0%
90065	Los Angeles	62	0.6%	66.4%	4,202	1.5%
90046	Los Angeles	61	0.5%	66.9%	4,210	1.4%
90036	Los Angeles	56	0.5%	67.5%	3,313	1.7%
90063	Los Angeles	55	0.5%	67.9%	5,008	1.1%
90001	Los Angeles	51	0.5%	68.4%	5,901	0.9%
90002	Los Angeles	46	0.4%	68.8%	5,797	0.8%
90032	Los Angeles	41	0.4%	69.2%	4,442	0.9%
90255	Huntington Park	40	0.4%	69.6%	6,172	0.6%
90023	Los Angeles	36	0.3%	69.9%	4,965	0.7%
91205	Glendale	28	0.3%	70.1%	4,781	0.6%
90041	Los Angeles	22	0.2%	70.3%	2,587	0.9%
90048	Los Angeles	20	0.2%	70.5%	2,470	0.8%
91204	Glendale	14	0.1%	70.6%	2,260	0.6%
90270	Maywood	13	0.1%	70.7%	2,309	0.6%
90069	West Hollywood	10	0.1%	70.8%	1,850	0.5%
PSA + SSA Sub-Total		7,866	70.8%	70.8%	209,289	3.8%
Other ZIPs		3,238	29.2%	100%		
Total		11,104	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Conditions to the Sale of Seton Medical Center¹ and Seton Coastsides² and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures – San Jose ASC, LLC, a California limited liability company, DePaul Ventures – San Jose Dialysis, LLC, a California limited liability company, and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of Seton Medical Center and Seton Coastsides, or the real property on which Seton and Seton Coastsides are located, any and all current and future owners, lessees, licensees, or operators of Seton Medical Center and Seton Coastsides, and any and all current and future lessees and owners of the real property on which Seton Medical Center and Seton Coastsides are located.

II.

¹ Throughout this document, the term “Seton Medical Center” shall mean the general acute care hospital located at 1900 Sullivan Ave., Daly City, CA 94015, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

² Throughout this document, the term “Seton Coastsides” shall mean the skilled nursing facility with 5 general acute care beds located at 600 Marine Boulevard, Moss Beach, CA 94038-9641, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For approximately 6 years (until December 13, 2025) from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of Seton Medical Center and Seton Coastside shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of Seton Medical Center or Seton Coastside;
- (b) Transfer control, responsibility, management, or governance of Seton Medical Center or Seton Coastside. The substitution, merger or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of Seton Medical Center or Seton Coastside, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For the remainder of the term³ (until December 13, 2025), Seton Medical Center (including Seton Coastside because both facilities are on the same license) shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250).

V.

For the remainder of the term (until December 13, 2025), the Seton Medical Center shall maintain 24-hour emergency medical services at a minimum of 18 treatment stations with the same types and/or levels of services, including:

- a. Designation as a STEMI Receiving Center; and
- b. Advanced certification as a Primary Stroke Center;

VI.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current⁴ licensure, types, and/or levels of services, including:

- a. Cardiac services, including the 2 cardiac catheterization labs;
- b. Critical care services, including a minimum of 20 intensive care/coronary care beds;
- c. Psychiatric services, including a minimum of 22 distinct part beds with at least 20 beds available for the geriatric psychiatric unit;
- d. Women's health services, including the Seton Breast Health Center and women's imaging and mammography services; and
- e. Sub-acute services, including a minimum of 44 sub-acute beds and Medi-Cal Certification as a sub-acute unit.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

³ The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of Seton Medical Center and Seton Coastside and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015.

⁴ The term "current" or "currently" throughout this document means as of January 1, 2019.

For at least five years from the closing date of the Asset Purchase Agreement, Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Gastroenterology services, including enteroscopy, endoscopy, and colonoscopy services;
- b. Cancer services, including inpatient oncology services, interventional radiology, radiation therapy, and for those patients that may be in need of infusion therapy treatment, a referral process to other nearby hospitals or clinics, including Stanford Cancer Center, UCSF Helen Diller Comprehensive Cancer Clinic, St. Mary's Cancer Center, or other health facility that provides infusion therapy services. The referral process shall be memorialized in the policies and procedures at Seton Medical Center and should include procedures on how to assist patients with accessing infusion therapy at the nearby hospitals or clinics, and the transferring of patient medical records;
- c. 's written policies or procedures that refers patients that require medical infusion to be referred to another nearby hospital or entity that provides medial infusion services;
- d. Orthopedics and rehabilitation services, including spine care services;
- e. Diabetes services, including Northern California Diabetes Institute;
- f. Wound care services, including Seton Center for Advanced Wound Care; and
- g. Nephrology services.

Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VIII.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services at Seton Coastside including:

- a. 24-hour "standby" Emergency Department, with a minimum of 7 treatment stations; and
- b. Skilled nursing services, including a minimum of 116 licensed skilled nursing beds.

IX.

For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be

moved to a different location within a three-mile radius of each clinic's current location, and Seton Medical and Seton Coastside can utilize an alternative structure in providing such services.

The following clinics are subject to this condition shall maintain the same types and/or levels of services provided, including women's healthcare services, and mammography services:

- a. Women's Health Services, located at 1850 Sullivan Avenue, Suite 190, Daly City California.
- b. Imaging Services located at 1850 Sullivan Avenue, Suite 100, Daly City California; and
- c. Wound Care Services, located at 1850 Sullivan Avenue, Suite 115, Daly City California.

X.

For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at Seton Medical Center and Seton Coastside equal to or greater than \$1,055,863 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at Seton Medical Center and Seton Coastside. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁵

Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at Seton Medical Center and Seton Coastside. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:

- a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at Seton Medical Center and Seton Coastside in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.
- b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on each Seton Medical Center's and Seton Coastside's website(s).

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

- c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.
- d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at Seton Medical Center and Seton Coastsides in a newspaper of general circulation in the communities served by the hospitals, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospitals.
- e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at Seton Medical Center and Seton Coastsides.
- f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at Seton Medical Center and Seton Coastsides.

Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at Seton Medical Center and Seton Coastsides shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of charity care provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the Seton Medical Center service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at Seton Medical Center and Seton Coastsides equal to or greater than \$685,870 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years,

the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. RotaCare Clinic.

The planning of, and any subsequent changes to, the community benefit services provided at Seton Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of community benefit services provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in Seton Medical Center's service area (14 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at Seton Medical Center and Seton Coastsides;
- b) Maintain and have a Medi-Cal Managed Care contract with San Mateo Health Commission dba Health Plan of San Mateo or its successor to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastsides to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastside to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

XIII.

For at least five years from the closing date of the Asset Purchase Agreement unless otherwise indicated, Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the County of San Mateo, unless otherwise terminated by the County of San Mateo, for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital (jointly with Seton Coastside) and San Mateo County;
- b. STEMI Receiving Center Designation between the Hospital and San Mateo County;
- c. Financial Support for Seismic Upgrades between the Hospital and San Mateo County;
- d. Information Sharing and Data Use Agreement between the Hospital and the County of San Mateo Health System;
- e. Fee for Service Hospital Services Agreement between the Hospital (jointly with Seton Coastside) and San Francisco Health Plan;
- f. Memorandum of Understanding between the Hospital and San Mateo County Behavioral Health and Recovery Services Division;
- g. Affiliation Agreement for the Radiology Technology Program between the Hospital and San Mateo College District;
- h. Affiliation Agreement for the Registered Nursing Program between the Hospital (jointly with Seton Coastside) and San Mateo College District;
- i. Patient Transfer Agreement between the Hospital and San Mateo County Medical Center;
- j. Rail Shuttle Bus Service Administration for Seton Shuttle Agreement between the Hospital and San Mateo County Transit District;
- k. Medical Services Agreement between the Hospital and San Mateo Health Community Health Authority- Access and Care for Everyone (ACE) Program;
- l. Hospital Medi-Cal Hospital Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo;
- m. Memorandum of Understanding for Long Term Care Partnership Program between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo; and
- n. Care Advantage Hospital Service Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo.

XIV.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall have at Seton Medical Center and Seton Coastside Local Governing Board(s) of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board(s) of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, making changes to the charity care and collection policies, and making changes to charity care services provided at Seton Medical Center and Seton Coastside. The members of the Local Governing Board(s) shall include physicians from Seton Medical Center's and Seton Coastside's medical staff, Seton Medical Center's and Seton Coastside's Chief(s) of Staff, one member designated by the San Mateo County Board of Supervisors, and community representatives from Seton Medical Center's and Seton Coastside's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019, attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board(s)'s approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XV.

Strategic Global Management, Inc. shall commit to reserve or expend capital for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement of the amount that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.

XVI.

Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at Seton Medical Center and Seton Coastside.

XVII.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at Seton Medical Center and Seton Coastside through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). Strategic Global Management, Inc. shall meet construction benchmarks which include the starting of construction on the 1963 Tower, and as detailed on the attached Exhibit 2.

XVIII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at Seton Medical Center and Seton Coastside, and no restriction or limitation on providing or making reproductive health services available at Seton Medical Center and Seton Coastside, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XIX.

Within 15 days of the Attorney General's approval, Seton Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.

- a) The funds from Seton Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's Seton Medical Foundation, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of Seton Medical Foundation's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.
- b) If there are funds from Seton Medical Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.

XX.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XXI.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties

referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXII.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

Analysis of the Hospital's Service Area

Service Area Definition

The Hospital's service area is comprised of 14 ZIP Codes, from which approximately 82% of its discharges originated in CY 2017. Approximately 55% of the Hospital's discharges came from the top three ZIP Codes, located in Daly City, and South San Francisco. In CY 2017, the Hospital's market share in the service area was 12.6% based on inpatient discharges.

ZIP Codes	Community	PATIENT ORIGIN, CY 2017			Total Area Discharges	Market Share
		Total Discharges	% of Discharges	Cumulative % of Discharges		
94015	Daly City	1,347	25.5%	25.5%	4,640	29.0%
94014	Daly City	798	15.1%	40.6%	3,337	23.9%
94080	South San Francisco	732	13.8%	54.4%	5,074	14.4%
94044	Pacifica	533	10.1%	64.5%	2,972	17.9%
94112	San Francisco	263	5.0%	69.5%	6,620	4.0%
94066	San Bruno	216	4.1%	73.5%	3,515	6.1%
94134	San Francisco	130	2.5%	76.0%	3,795	3.4%
94132	San Francisco	114	2.2%	78.2%	1,908	6.0%
94019	Half Moon Bay	74	1.4%	79.6%	1,194	6.2%
94038	Moss Beach	46	0.9%	80.4%	249	18.5%
94005	Brisbane	21	0.4%	80.8%	369	5.7%
94037	Montara	14	0.3%	81.1%	183	7.7%
94018	El Granada	12	0.2%	81.3%	257	4.7%
94017	Daly City	11	0.2%	81.5%	33	33.3%
Subtotal		4,311	81.5%	81.5%	34,146	12.6%
Other ZIPs		977	18.5%	100%		
Total		5,288	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Report Year and Quarter
All

AB 2190 Quarterly Reports for 10801 Seton Medical Center

OSHPD Building Nbr	Bldg Name	Report Year and Quarter	Construction Project Nbr	Milestone Date	Milestone Description	Milestone Comments	Milestone Quarterly Update
BLD-00846	1963 Tower	2019 - Q2	I160019-41-00; I160019-41-01; I160019-41-02; I160019-41-03	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule
BLD-00847	Front Wing	2019 - Q2	I160020-41-00; I160020-41-01	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule

Exhibit C

The Additional Conditions

Conditions to the Sale of St. Francis Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillae Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures — San Jose ASC, LLC, a California limited liability company, DePaul Ventures — San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Francis Medical Center, or the real property on which St. Francis Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Francis Medical Center, and any and all current and future lessees and owners of the real property on which St. Francis Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a

¹ Throughout this document, the term “St. Francis Medical Center” shall mean the general acute care hospital located at 3630 East Imperial Highway, Lynwood, CA 90262, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Francis Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For ten years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Francis Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

- (a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Francis Medical Center;
- (b) Transfer control, responsibility, management, or governance of St. Francis Medical Center. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Francis Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ~~ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term² (until December 13, 2025), St. Francis Medical Center shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide 24-hour emergency and trauma medical services at no less than

² The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of St. Francis Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015 ("2015 Conditions")

current³ licensure and designation with the same types and/or levels of services, including the following:

- a. 46 emergency treatment stations at a minimum;
- b. Designation as a Level II Trauma Center;
- c. Designation as a 5150 Receiving Facility, as defined by the Welfare and Institutions Code, section 5150, for behavioral health patients under involuntary evaluation;
- d. Psychiatric evaluation team;
- e. Designation as an Emergency Department Approved for Pediatrics (EDAP);
- f. Designation as a Paramedic Base Station; and
- g. Certification as a Primary Stroke Center.

Strategic Global Management, Inc. must give one-year advance written notice to the Los Angeles County Emergency Medical Services Agency and the California Department of Public Health if St. Francis Medical Center seeks to reduce trauma or trauma-related care services or stop operating the Level II Trauma Center after ten years from the closing date of the Asset Purchase Agreement.

V.

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2025)~~, St. Francis Medical Center shall maintain ~~Center~~ on-call coverage contracts and/or comparable coverage arrangements with physicians at fair market value that are necessary to retain its qualification as a Level II trauma center. ~~Trauma II designation requires 24-hour immediate coverage by general surgeons, as well as coverage by the specialties of orthopedic surgery, neurosurgery, anesthesiology, emergency medicine, radiology and critical care. Requirements for on-call and promptly available specialties include the following:~~The following on-call coverage contracts and/or comparable coverage arrangements are required to retain St. Francis Medical Center's status as a Level II trauma center:

- a. Neurology;
- b. Obstetrics/gynecology;
- c. Ophthalmology;
- d. Oral or maxillofacial or head and neck;
- e. Orthopaedic;
- ~~e.f.~~ f. Plastic surgery;
- ~~f.g.~~ g. Reimplantation/microsurgery capability (this surgical service may be provided through a written transfer agreement); and
- ~~g.h.~~ h. Urology.⁴

VI.

³ The term "current" or "currently" throughout this document means as of January 1, 2019.

⁴ 22 CCR 100259(a)(8)(B).

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), St. Francis Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Cardiac services, including three cardiac catheterization labs and the designation as a STEMI Receiving Center;
- b. Critical care services, including a minimum of 36 intensive care unit beds or 24 intensive care beds and 12 definitive observation beds;
- c. Neonatal intensive care services, including a minimum of 29 neonatal intensive care beds, and at minimum, maintaining a Level II NICU;
- d. Women's health services, including women's imaging services;
- ~~e. Cancer services, including radiation oncology;~~
- ~~f.e.~~ e. Pediatric services, including a designated area with at least five general acute care beds for pediatric services;
- ~~g.f.~~ f. Orthopedic and rehabilitation services;
- ~~h.g.~~ g. Wound care services;
- ~~i.h.~~ h. Behavioral health services, including a minimum of 40 distinct part inpatient acute psychiatric beds; and
- ~~j.i.~~ i. Perinatal services, including a minimum of 50 perinatal beds.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), St. Francis Medical Center shall maintain the same types and/or levels of women's healthcare services currently provided ~~at the location below or a location within three miles of St. Francis Medical Center:~~

- ~~a. Family Life Center at St. Francis Medical Center, located at 3630 E Imperial Highway, Lynwood, California.~~

VIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for ~~5 years from the closing~~

~~date~~remainder of the ~~Asset Purchase Agreement~~term (December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Francis Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- ~~a. Pediatric services at Children's Counseling Center, 4390 Tweedy Ave, South Gate, California;~~
- ~~b. The multi-specialty services, including wound care at Wound Care Center, 3628 E. Imperial Highway, Suite 103, Lynwood, California; and~~
- ~~e.~~a. Orthopedic services at 3628 E. Imperial Highway, Suite 300, Lynwood, California.

IX.

For ~~ten years from~~ the ~~closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St. Francis Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
 - i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Francis Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

X.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2026), Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Francis Medical Center equal to or greater than ~~\$12,793,435~~\$8,000,000 (the Minimum Charity Care Amount). For purposes hereof, the term “charity care” shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Francis Medical Center. The definition and methodology for calculating “charity care” and the methodology for calculating “costs” shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁵

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.’s current charity care policy (Verity’s Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Francis Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Francis Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~
- ~~b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Francis Medical Center’s website.~~
- ~~c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~
- ~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Francis Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.~~
- ~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Francis Medical Center.~~
- ~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of~~

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, “the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient’s accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account.”

~~and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at St. Francis Medical Center.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.~~

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Francis Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Francis Medical Center equal to or greater than \$1,139,301 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. For six fiscal years, the following community benefit programs and services shall continue to be offered at its current or equivalent location:

~~Southern California Crossroads Program;~~

- a. Health Benefit Resource Center;
- b. Welcome Baby Program;
- c. Healthy Community Initiatives;
- d. American Career College access for onsite training;
- e. Paramedic Training and Education; and
- f. Patient Transportation support.

The planning of, and any subsequent changes to, the community benefit services provided at St. Francis Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Francis Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Francis Medical Center's service area (31 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1). Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For ~~at least ten years from the remainder of the closing date of the Asset Purchase Agreement unless otherwise indicated,~~term (until December 13, 2025), Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County;
- b. Department of Mental Health Legal Entity Contract between the Hospital and Los Angeles County;
- c. Paramedic Base Hospital Services between the Hospital and Los Angeles County;
- d. Radiation Therapy Services between the Hospital and Los Angeles County;
- e. Designation Agreement between the County of Los Angeles Department of Mental Health (LAC-DMH) and the Hospital and approved as a 72-hour Evaluation and Intensive Treatment facility;
- ~~f. Affiliation Agreement for physicians in post graduate training;~~
- ~~g.~~f. Trauma Center Service Agreement between the Hospital and Los Angeles County; and
- ~~h.~~g. Paramedic Training Institute Students between the Hospital and Los Angeles County.

For ~~at least ten years from the closing date~~remainder of the ~~Asset Purchase Agreement,~~term (until December 13, 2025), Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Francis Medical Center. The goal is to ensure that

Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XIII.

For ~~ten years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2025), Strategic Global Management, Inc. shall have at St. Francis Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Francis Medical Center. The members of the Local Governing Board shall include physicians from St. Francis Medical Center's medical staff, St. Francis Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Francis Medical Center's primary service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIV.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~ for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~ the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the ~~Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XV.

Strategic Global Management, Inc. shall commit the necessary investments required to maintain OSHPD seismic compliance requirements at the Hospital through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Safety. Code, § 129675-130070).

XVI.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Francis Medical Center.~~

~~[REMOVED]~~

XVII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Francis Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Francis Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management, Inc.'s written policies, adhered to, and strictly enforced.

XVIII.

~~Within 15 days of the closing of date of the Asset Purchase Agreement, St. Francis Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from St. Francis Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Francis Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Francis Medical Center's service area (31 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~
- ~~b) If there are funds from St. Francis Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~

~~[REMOVED]~~

XIX.

For ~~eleven~~seven fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXI.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 31 ZIP Codes from which 75% of the Hospital's inpatient discharges came from. Approximately 51% of the Hospital's discharges originated from the top eight ZIP Codes, located in Lynwood, South Gate, Los Angeles, Bell, Compton, Bell Gardens, and Huntington Park. In CY 2017, the Hospital's market share in the service area was approximately 11% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Code	Community	Discharges	Percentage of Discharges	Cumulative Percentage	Market Share	Total Discharges
90262	Lynwood	2,490	11.1%	11.1%	38.1%	6,538
90280	South Gate	2,187	9.8%	20.9%	29.0%	7,554
90221	Compton	1,400	6.3%	27.2%	24.1%	5,812
90201	Bell	1,359	6.1%	33.3%	16.3%	8,363
90002	Los Angeles	1,066	4.8%	38.0%	18.4%	5,797
90255	Huntington Park	956	4.3%	42.3%	15.5%	6,172
90059	Los Angeles	948	4.2%	46.6%	17.2%	5,527
90001	Los Angeles	922	4.1%	50.7%	15.6%	5,901
90220	Compton	708	3.2%	53.9%	12.7%	5,554
90222	Compton	700	3.1%	57.0%	18.1%	3,868
90003	Los Angeles	625	2.8%	59.8%	7.6%	8,209
90044	Los Angeles	542	2.4%	62.2%	4.5%	11,994
90723	Paramount	525	2.3%	64.6%	11.7%	4,483
90061	Los Angeles	358	1.6%	66.2%	9.5%	3,764
90650	Norwalk	344	1.5%	67.7%	3.3%	10,373
90270	Maywood	282	1.3%	69.0%	12.2%	2,309
90805	Long Beach	267	1.2%	70.2%	2.7%	9,940
90706	Bellflower	263	1.2%	71.3%	3.6%	7,223
90242	Downey	252	1.1%	72.5%	6.2%	4,038
90241	Downey	224	1.0%	73.5%	6.0%	3,726
90660	Pico Rivera	91	0.4%	73.9%	1.4%	6,608
90240	Downey	69	0.3%	74.2%	3.3%	2,073
90670	Santa Fe Springs	46	0.2%	74.4%	2.7%	1,703
90605	Whittier	44	0.2%	74.6%	1.1%	4,082
90606	Whittier	44	0.2%	74.8%	1.4%	3,244
90703	Cerritos	37	0.2%	74.9%	0.9%	4,026
90604	Whittier	32	0.1%	75.1%	0.9%	3,698
90701	Artesia	31	0.1%	75.2%	1.7%	1,813
90638	La Mirada	30	0.1%	75.4%	0.7%	4,274
90603	Whittier	3	0.0%	75.4%	0.1%	2,152
90639	La Mirada	0	0.0%	75.4%	0.0%	10
Sub-Total		16,845	75.4%	75.4%	10.5%	160,828
All Other		5,504	24.6%	100%		
Grand Total		22,349	100%			

Source: OSHPD Discharge Database, CY 2017

Conditions to the Sale of St. Vincent Medical Center¹ and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding on Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillac Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures — San Jose ASC, LLC, a California limited liability company, DePaul Ventures — San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of St. Vincent Medical Center, or the real property on which St. Vincent Medical Center is located, any and all current and future owners, lessees, licensees, or operators of St. Vincent Medical Center, and any and all current and future lessees and owners of the real property on which St. Vincent Medical Center is located.

II.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical

¹ Throughout this document, the term “St. Vincent Medical Center” shall mean the general acute care hospital located at 2131 West Third Street, Los Angeles, CA 90057, and any other clinics, laboratories, units, services, or beds included on the license issued to St. Vincent Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a

California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For five years from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of St. Vincent Medical Center shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Vincent Medical Center;

(b) Transfer control, responsibility, management, or governance of St. Vincent Medical Center. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of St. Vincent Medical Center, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise stated, term~~² (until December 13, 2020), St. Vincent Medical Center shall be operated

² The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of St. Vincent Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital

and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250). If, on Strategic Global Management, Inc.'s further evaluation, the cost to seismically retrofit the St. Vincent Medical Center becomes less feasible than building a new replacement hospital, services may need to be temporarily closed or relocated due to construction. A detailed program and services plan, architectural drawings, and financing plan shall be presented to the California Attorney General for approval before ceasing to operate any services.

V.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2020)~~, St. Vincent Medical Center shall maintain and provide 24-hour emergency services at no less than its current licensure³ of 8 treatment stations, and designation and the following health care services at current licensure types, and/or levels of services:

~~Designation as a STEMI Receiving center; and~~

- a. Maintaining the requirements set by the County of Los Angeles Emergency Medical Services for 911 Receiving Hospitals.

VI.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2020)~~, St. Vincent Medical Center shall maintain and provide the following services at current licensure, types, and/or levels of services:

- a. Acute rehabilitation services, including a minimum of 19 licensed rehabilitation beds;
- b. Intensive care services, including a minimum of 30 intensive care beds;
- c. Cardiac services, including cardiac surgery and a minimum of two cardiac catheterization labs,
- ~~d. Cancer services, including radiation oncology. Radiation oncology services may be relocated and patients transitioned to another site that has capacity within a three-mile radius after the first year after the closing of the Asset Purchase Agreement;~~
- ~~e.~~d. Gastroenterology services;
- ~~f.~~e. Imaging and laboratory services;
- ~~g.~~f. Nephrology services, including end stage renal disease program, acute inpatient dialysis, and hemodialysis treatments;
- ~~h.~~g. Neurology and neurotology services, including neurosurgery;
- ~~i.~~h. Orthopedics, joint replacement, and spine care services;
- ~~j.~~i. Transplant services, including kidney and multi-organ transplant procedures for kidney/pancreas double transplants. Transplant services do not include the liver transplant program. These services may be relocated to another hospital in the primary

Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015 ("2015 Conditions").

³ The term "current" or "currently" throughout this document means as of January 1, 2019.

service area based upon a submission of a detailed plan to be approved by the California Attorney General; and

~~k.j.~~ Outpatient dialysis services. The outpatient dialysis services shall be within 5 miles of St. Vincent Medical Center by either (1) operating St. Vincent Dialysis Center, or (2) transferring St. Vincent Dialysis Center to a separate entity and requiring that entity to operate it for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the Conditions herein, or (3) ensuring that a third party is operating an outpatient dialysis center(s) at current levels for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and that such center(s) participate in the Medi-Cal and Medicare programs as required in Conditions herein.

For the remainder of the term (until December 13, 2020), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for ~~5 years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2020), and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and St. Vincent Medical Center can utilize an alternative structure in providing such services. The following clinics are subject to this condition:

- a. Cardiac Care Institute, located at 201 S. Alvarado Street, Suite 321, Los Angeles, California;
- ~~b. Transplant Medical Office, located at 8501 Camino Media, Suite 100, Bakersfield, California;~~
- ~~e.b.~~ Cancer Treatment Center, located at 201 S. Alvarado Street, Suite A, Los Angeles, California;
- ~~d.c.~~ Multi-Organ Transplant services, located at 2200 W. Third Street, 5th Floor, Los Angeles, California;
- ~~e. Radiology services, located at 201 S. Alvarado Street, Suite 311, Los Angeles, California;~~

~~f.d.~~ Orthopedic Services, located at 2200 W. Third Street, 4th Floor, Los Angeles, California; and
~~g. Multispecialty Clinic located at 2200 W. Third Street, Suite 120, Los Angeles, California.~~

VIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2020)~~, Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at St Vincent Medical Center;
- b) Maintain and have Medi-Cal Managed Care contracts with the below listed Medi-Cal Managed Care Plans to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan:
 - i) Local Initiative: L.A. Care Health Plan or its successor; and
 - ii) Commercial Plan: Health Net Community Solutions, Inc. or its successor.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

- c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Vincent Medical Center to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care), on the same terms and conditions as other similarly situated hospitals, as required in these Conditions.

IX.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2021)~~, Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at St. Vincent Medical Center equal to or greater than ~~\$696,643~~430,384 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at St. Vincent Medical Center. The definition and methodology for calculating "charity care" and the

methodology for calculating “costs” shall be the same as that used by Office of Statewide Health Planning Development (OSHPD) for annual hospital reporting purposes.⁴

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.’s current charity care policy (Verity’s Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at St. Vincent Medical Center. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at St. Vincent Medical Center in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~
- ~~b. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on St. Vincent Medical Center’s website.~~
- ~~c. If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~
- ~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at St. Vincent Medical Center in a newspaper of general circulation in the communities served by the hospital, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospital.~~
- ~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at St. Vincent Medical Center.~~
- ~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.’s Financial Assistance Policy at St. Vincent Medical Center.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.~~

⁴ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, “the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient’s accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account.”

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach-Anaheim Average Base Period: 1982-84=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of charity care provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

X.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at St. Vincent Medical Center equal to or greater than \$1,~~065,604~~076,459 (the "Minimum Community Benefit Services Amount") exclusive of any funds from grants. ~~For six fiscal years,~~For the remainder of the term (until December 13, 2021), the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. Asian Pacific Liver Center.

The planning of, and any subsequent changes to, the community benefit services provided at St. Vincent Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the Los Angeles-Long Beach Anaheim Average Base Period: 198284=100 (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at St. Vincent Medical Center for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in St. Vincent Medical Center's service area (48 ZIP codes), as defined on as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise indicated,~~term (until December 13, 2020), Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the City and/or County of Los Angeles for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital and Los Angeles County; and
- b. Radiation Therapy Services between the Hospital and Los Angeles County.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement,~~term (until December 13, 2020), Strategic Global Management shall provide to the Los Angeles County Department of Health Services and Los Angeles County of Department of Mental Health information and documents related to staffing assessments, clinical guidelines, services provided, and technology needs for St. Vincent Medical Center. The goal is to ensure that Strategic Global Management, Inc.'s decisions or changes in these areas will not be motivated by a desire to move away from serving the Medi-Cal population. Such information and documents will also be provided to the Local Governing Board.

XII.

For ~~five years from the closing date~~remainder of the ~~Asset Purchase Agreement,~~term (until December 13, 2020), Strategic Global Management, Inc. shall have at St. Vincent Medical Center a Local Governing Board of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, including making changes to the charity care and collection policies, and making changes to charity care services provided at St. Vincent Medical Center. The members of the Local Governing Board shall include physicians from St. Vincent Medical Center's medical staff, St. Vincent Medical Center's Chief of Staff, one member designated by the Los Angeles County Board of Supervisors, and community representatives from St. Vincent Medical Center's primary service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019 attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an

emergency basis. The Local Governing Board's approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XIII.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~ for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~ the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of ~~the Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~ 2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XIV.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at St. Vincent Medical Center through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). Verity Health System of California, Inc. shall commit the necessary capital investment required to refurbish St. Vincent Medical Center's elevators in order to meet the City of Los Angeles' Elevator Code.

XV.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Vincent Medical Center.~~

[REMOVE]

XVI.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at St. Vincent Medical Center, and no restriction or limitation on providing or making reproductive health services available at St. Vincent Medical Center, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XVII.

~~Within 15 days of the closing of date of the Asset Purchase Agreement, St. Vincent Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from St. Vincent Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's St. Vincent Medical Center Fund, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of St. Vincent Medical Center's service area (48 ZIP codes), as described on page 52 in the Healthcare Impact Report authored by JD Healthcare dated August 16, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~
- ~~b) If there are funds from St. Vincent Medical Center Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~

[\[REMOVE\]](#)

XVIII.

For ~~six~~two fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XIX.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is

reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XX.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

Analysis of the Hospital's Service Area

Service Area Definition

Based upon the Hospital's CY 2017 inpatient discharges, the Hospital's service area is comprised of 48 ZIP Codes from which 71% of the Hospital's inpatient discharges came from. Approximately 38% of the Hospital's discharges originated from the top eight ZIP Codes, located in Los Angeles. In CY 2017, the Hospital's market share in the primary and secondary service area was approximately 4% based on total area discharges.

PATIENT ORIGIN, CY 2017						
ZIP Codes	Community	Total Discharges	% of Discharges	Cumulative % of Discharges	Total Area Discharges	Market Share
90057	Los Angeles	1,106	10.0%	10.0%	5,955	18.6%
90006	Los Angeles	726	6.5%	16.5%	5,472	13.3%
90026	Los Angeles	579	5.2%	21.7%	5,034	11.5%
90004	Los Angeles	491	4.4%	26.1%	4,691	10.5%
90005	Los Angeles	486	4.4%	30.5%	2,843	17.1%
90020	Los Angeles	297	2.7%	33.2%	2,600	11.4%
90019	Los Angeles	286	2.6%	35.8%	5,893	4.9%
90018	Los Angeles	263	2.4%	38.1%	5,975	4.4%
90029	Los Angeles	238	2.1%	40.3%	4,114	5.8%
90017	Los Angeles	235	2.1%	42.4%	2,308	10.2%
90037	Los Angeles	226	2.0%	44.4%	7,439	3.0%
90011	Los Angeles	212	1.9%	46.3%	10,436	2.0%
90012	Los Angeles	198	1.8%	48.1%	4,017	4.9%
90007	Los Angeles	195	1.8%	49.9%	3,129	6.2%
90013	Los Angeles	115	1.0%	50.9%	2,655	4.3%
90015	Los Angeles	112	1.0%	51.9%	1,918	5.8%
90014	Los Angeles	99	0.9%	52.8%	1,287	7.7%
90010	Los Angeles	50	0.5%	53.3%	311	16.1%
90009	Los Angeles	12	0.1%	53.4%	113	10.6%
PSA Sub-Total		5,926	53.4%	53.4%	76,190	7.8%
90044	Los Angeles	152	1.4%	54.7%	11,994	1.3%
90027	Los Angeles	150	1.4%	56.1%	4,273	3.5%
90016	Los Angeles	130	1.2%	57.3%	5,656	2.3%
90008	Los Angeles	127	1.1%	58.4%	4,258	3.0%
90003	Los Angeles	106	1.0%	59.4%	8,209	1.3%
90062	Los Angeles	96	0.9%	60.2%	4,018	2.4%
90028	Los Angeles	95	0.9%	61.1%	2,820	3.4%
90047	Los Angeles	87	0.8%	61.9%	7,164	1.2%
90043	Los Angeles	86	0.8%	62.6%	6,137	1.4%
90038	Los Angeles	82	0.7%	63.4%	2,349	3.5%
90033	Los Angeles	77	0.7%	64.1%	5,255	1.5%
90042	Los Angeles	68	0.6%	64.7%	5,173	1.3%
90039	Los Angeles	67	0.6%	65.3%	2,365	2.8%
90031	Los Angeles	62	0.6%	65.8%	3,161	2.0%
90065	Los Angeles	62	0.6%	66.4%	4,202	1.5%
90046	Los Angeles	61	0.5%	66.9%	4,210	1.4%
90036	Los Angeles	56	0.5%	67.5%	3,313	1.7%
90063	Los Angeles	55	0.5%	67.9%	5,008	1.1%
90001	Los Angeles	51	0.5%	68.4%	5,901	0.9%
90002	Los Angeles	46	0.4%	68.8%	5,797	0.8%
90032	Los Angeles	41	0.4%	69.2%	4,442	0.9%
90255	Huntington Park	40	0.4%	69.6%	6,172	0.6%
90023	Los Angeles	36	0.3%	69.9%	4,965	0.7%
91205	Glendale	28	0.3%	70.1%	4,781	0.6%
90041	Los Angeles	22	0.2%	70.3%	2,587	0.9%
90048	Los Angeles	20	0.2%	70.5%	2,470	0.8%
91204	Glendale	14	0.1%	70.6%	2,260	0.6%
90270	Maywood	13	0.1%	70.7%	2,309	0.6%
90069	West Hollywood	10	0.1%	70.8%	1,850	0.5%
PSA + SSA Sub-Total		7,866	70.8%	70.8%	209,289	3.8%
Other ZIPs		3,238	29.2%	100%		
Total		11,104	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Conditions to the Sale of Seton Medical Center¹ and Seton Coastsides² and Approval of the Asset Purchase Agreement by and among Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc.

I.

These Conditions shall be legally binding Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, ~~St. Francis Medical Center Foundation, a nonprofit public benefit corporation, St. Vincent Foundation, a California nonprofit corporation, Seton Medical Center Foundation, a California nonprofit corporation, Verity Business Services, a California nonprofit public benefit corporation, Verity Medical Foundation, a California nonprofit public benefit corporation, St. Vincent de Paul Ethics Corporation, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Marillae Insurance Company, Ltd., a Cayman Islands corporation, DePaul Ventures, LLC, a California limited liability company, DePaul Ventures — San Jose ASC, LLC, a California limited liability company, DePaul Ventures — San Jose Dialysis, LLC, a California limited liability company,~~ and Strategic Global Management, Inc., a California corporation, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities including, but not limited to, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of Seton Medical Center and Seton Coastsides, or the real property on which Seton and Seton Coastsides are located, any and all current and future owners, lessees, licensees, or operators of Seton Medical Center and Seton Coastsides, and any and all current and future lessees and owners of the real property on which Seton Medical Center and Seton Coastsides are located.

II.

¹ Throughout this document, the term “Seton Medical Center” shall mean the general acute care hospital located at 1900 Sullivan Ave., Daly City, CA 94015, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

² Throughout this document, the term “Seton Coastsides” shall mean the skilled nursing facility with 5 general acute care beds located at 600 Marine Boulevard, Moss Beach, CA 94038-9641, and any other clinics, laboratories, units, services, or beds included on the license issued to Seton Medical Center by the California Department of Public Health, effective January 1, 2019, unless otherwise indicated.

The transaction conditionally approved by the Attorney General consists of the Asset Purchase Agreement dated January 8, 2019, by and among, Verity Health System of California, Inc., a California nonprofit public benefit corporation, Verity Holdings, LLC, a California limited liability company, St. Francis Medical Center, a California nonprofit public benefit corporation, St. Vincent Medical Center, a California nonprofit public benefit corporation, St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation, Seton Medical Center, a California nonprofit public benefit corporation, and Strategic Global Management, Inc., a California corporation, and any agreements or documents referenced in or attached to as an exhibit or schedule and any other documents referenced in the Asset Purchase Agreement, including, but not limited to, the Sale Leaseback Agreement and Interim Management Agreement.

All the entities listed in Condition I, and any other parties referenced in the above agreements shall fulfill the terms of these agreements or documents and shall notify and obtain the Attorney General's approval in writing of any proposed modification or rescission of any of the terms of these agreements or documents. Such notifications shall be provided at least sixty days prior to their effective date in order to allow the Attorney General to consider whether they affect the factors set forth in Corporations Code section 5917 and obtain the Attorney General's approval.

III.

For approximately 6 years (until December 13, 2025) from the closing date of the Asset Purchase Agreement, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and all future owners, managers, lessees, licensees, or operators of Seton Medical Center and Seton Coastside shall be required to provide written notice to the Attorney General sixty days prior to entering into any agreement or transaction to do any of the following:

(a) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of Seton Medical Center or Seton Coastside;

(b) Transfer control, responsibility, management, or governance of Seton Medical Center or Seton Coastside. The substitution, ~~merger~~ or addition of a new member or members of the governing body of Strategic Global Management, Inc. that transfers the control of, responsibility for or governance of Seton Medical Center or Seton Coastside, shall be deemed a transfer for purposes of this Condition. The substitution or addition of one or more members of the governing body of Strategic Global Management, Inc., or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Strategic Global Management, Inc. shall also be deemed a transfer for purposes of this Condition.

IV.

For the remainder of the term³ (until December 13, 2025), Seton Medical Center (including Seton Coastside because both facilities are on the same license) shall be operated and maintained as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250).

V.

For the remainder of the term (until December 13, 2025), the Seton Medical Center shall maintain 24-hour emergency medical services at a minimum of 18 treatment stations with the same types and/or levels of services, including:

- a. Designation as a STEMI Receiving Center; and
- b. Advanced certification as a Primary Stroke Center;

VI.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current⁴ licensure, types, and/or levels of services, including:

- a. Cardiac services, including the 2 cardiac catheterization labs;
- b. Critical care services, including a minimum of 20 intensive care/coronary care beds;
- ~~c. Psychiatric services, including a minimum of 22 distinct part beds with at least 20 beds available for the geriatric psychiatric unit;~~
- ~~d.~~ c. Women's health services, including the Seton Breast Health Center and women's imaging and mammography services; and
- ~~e.~~ d. Sub-acute services, including a minimum of 44 sub-acute beds and Medi-Cal Certification as a sub-acute unit.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VII.

³ The term "For the remainder of the term" refers to the Conditions to Change in Control and Governance of Seton Medical Center and Seton Coastside and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Ministry Services Corporation, Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, LLC, and Integrity Healthcare, LLC., dated December 3, 2015. The System Restructuring and Support Agreement closed on December 14, 2015. ("2015 Conditions").

⁴ The term "current" or "currently" throughout this document means as of January 1, 2019.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement, term (until December 13, 2020)~~, Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services:

- a. Gastroenterology services, including enteroscopy, endoscopy, and colonoscopy services;
- ~~b. Cancer services, including inpatient oncology services, interventional radiology, radiation therapy, and for those patients that may be in need of infusion therapy treatment, a referral process to other nearby hospitals or clinics, including Stanford Cancer Center, UCSF Helen Diller Comprehensive Care Cancer Clinic, St. Mary's Cancer Center, or other health facility that provides infusion therapy services. The referral process shall be memorialized in the policies and procedures at Seton Medical Center and should include procedures on how to assist patients with accessing infusion therapy at the nearby hospitals or clinics, and the transferring of patient medical records;~~
- ~~c. 's written policies or procedures that refers patients that require medical infusion to be referred to another nearby hospital or entity that provides medial infusion services;~~
- ~~d.~~b. Orthopedics and rehabilitation services, including spine care services;
- ~~e.~~c. Diabetes services, including Northern California Diabetes Institute;
- ~~f.~~d. Wound care services, including Seton Center for Advanced Wound Care; and
- ~~g.~~e. Nephrology services.

For the remainder of the term (until December 13, 2020), Strategic Global Management, Inc. shall not place all or any portion of its above-listed licensed-bed capacity or services in voluntary suspension or surrender its license for any of these beds or services.

VIII.

For the remainder of the term (until December 13, 2025), Seton Medical Center shall maintain the following services at current licensure, types, and/or levels of services at Seton Coastside including:

- a. 24-hour "standby" Emergency Department, with a minimum of 7 treatment stations; and
- b. Skilled nursing services, including a minimum of 116 licensed skilled nursing beds.

IX.

~~For at least five years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc. shall either: (1) operate clinics (listed below) with the same number of physicians and mid-level provider full-time equivalents in the same or similar alignment structures, or (2) sell the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the purchaser(s) to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and~~

~~Medicare programs as required in the conditions herein, or (3) ensure that a third party is operating the clinics (listed below) with the same number of physician and mid-level provider full-time equivalents and require the third party to maintain such services for 5 years from the closing date of the Asset Purchase Agreement and to participate in the Medi-Cal and Medicare programs as required in the conditions herein. For any of these options, each clinic can be moved to a different location within a three-mile radius of each clinic's current location, and Seton Medical and Seton Coastside can utilize an alternative structure in providing such services.~~

~~The following clinics are subject to this condition shall maintain the same types and/or levels of services provided, including women's healthcare services, and mammography services:~~

- ~~a. Women's Health Services, located at 1850 Sullivan Avenue, Suite 190, Daly City California;~~
- ~~b. Imaging Services located at 1850 Sullivan Avenue, Suite 100, Daly City California; and~~
- ~~c. Wound Care Services, located at 1850 Sullivan Avenue, Suite 115, Daly City California.~~

[REMOVE]

X.

~~For six fiscal years from the closing date of the Asset Purchase Agreement, Strategic Global Management, Inc.~~ For the remainder of the term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Charity Care (as defined below) at Seton Medical Center and Seton Coastside equal to or greater than ~~\$1,055,863~~ 935,405 (the Minimum Charity Care Amount). For purposes hereof, the term "charity care" shall mean the amount of charity care costs (not charges) incurred by Strategic Global Management, Inc. in connection with the operation and provision of services at Seton Medical Center and Seton Coastside. The definition and methodology for calculating "charity care" and the methodology for calculating "costs" shall be the same as that used by Office of Statewide Health Planning Development (OSHDP) for annual hospital reporting purposes.⁵

~~Strategic Global Management, Inc. shall use and maintain a charity care policy that is no less favorable than Verity Health System of California, Inc.'s current charity care policy (Verity's Financial Assistance Policy No. 06.03.04 effective December 5, 2017 and revised and reviewed June 20, 2018) and in compliance with California and Federal law at Seton Medical Center and Seton Coastside. Within 90 days from the closing of the Asset Purchase Agreement, Strategic Global Management, Inc. will amend the Financial Assistance Policy to include as follows:~~

- ~~a. A copy of the Financial Assistance Policy and the plain language summary of the Financial Assistance Policy must be posted at Seton Medical Center and Seton Coastside~~

⁵ OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as . . . charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

- ~~in a prominent location in the emergency room, admissions area, and any other location in the hospital where there is a high volume of patient traffic, including waiting rooms, billing offices, and hospital outpatient service settings.~~
- ~~e. A copy of the Financial Assistance Policy, the Application for Financial Assistance, and the plain language summary of the Financial Assistance Policy must be posted in a prominent place on each Seton Medical Center's and Seton Coastsides website(s). If requested by a patient, a copy of the Financial Assistance Policy, Application for Financial Assistance, and the plain language summary must be sent by mail at no cost to the patient.~~
- ~~d. As necessary, and at least on an annual basis, Strategic Global Management, Inc. will place an advertisement regarding the availability of financial assistance at Seton Medical Center and Seton Coastsides in a newspaper of general circulation in the communities served by the hospitals, or issue a Press Release to widely publicize the availability of the Financial Assistance Policy to the communities served by the hospitals.~~
- ~~e. Strategic Global Management, Inc. will work with affiliated organizations, physicians, community clinics, other health care providers, houses of worship, and other community-based organizations to notify members of the community (especially those who are most likely to require financial assistance) about the availability of financial assistance at Seton Medical Center and Seton Coastsides.~~
- ~~f. By December 1, 2019, all staff that interacts with patients and their families concerning payment of services shall be given training to make patients and their families aware of and informed of Strategic Global Management, Inc.'s Financial Assistance Policy at Seton Medical Center and Seton Coastsides.~~

~~Any planning of, and any subsequent changes to, the charity care and collection policies, and charity care services provided at Seton Medical Center and Seton Coastsides shall be decided after consultation with the Local Governing Board of Directors.~~

Strategic Global Management, Inc.'s obligation under this Condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.'s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics). If the actual amount of charity care provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide direct healthcare services to residents in the Seton Medical Center service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) Such payment(s) shall be made within six months following the end of such fiscal year.

XI.

For ~~six fiscal years from the closing date~~remainder of the ~~Asset Purchase Agreement~~term (until December 13, 2021), Strategic Global Management, Inc. shall provide an annual amount of Community Benefit Services at Seton Medical Center and Seton Coastsides equal to or greater than ~~\$685,870,848,434~~ (the “Minimum Community Benefit Services Amount”) exclusive of any funds from grants. ~~For six fiscal years,~~For the remainder of the term (until December 13, 2021), the following community benefit programs and services shall continue to be offered at its current or equivalent location:

- a. Health Benefits Resource Center; and
- b. RotaCare Clinic.

The planning of, and any subsequent changes to, the community benefit services provided at Seton Medical Center shall be decided after consultation with the Local Governing Board of Directors.

Strategic Global Management, Inc.’s obligation under this Condition shall be prorated on a daily basis if the effective date of the Asset Purchase Agreement is a date other than the first day of Verity Health System of California, Inc.’s fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Community Benefit Services Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the 12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Average Base Period: 1982-84=100 (as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided at Seton Medical Center and Seton Coastsides for any fiscal year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Strategic Global Management, Inc. shall pay an amount equal to the deficiency to one or more tax-exempt entities that provide community benefit services for residents in Seton Medical Center’s service area (14 ZIP codes), as defined on as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1-~~2~~3). Such payment(s) shall be made within six months following the end of such fiscal year.

XII.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall:

- a) Be certified to participate in the Medi-Cal program at Seton Medical Center and Seton Coastsides;

b) Maintain and have a Medi-Cal Managed Care contract with San Mateo Health Commission dba Health Plan of San Mateo or its successor to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastside to Medi-Cal beneficiaries (both Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions, on the same terms and conditions as other similarly situated hospitals offering substantially the same services, without any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage, unless the contract is terminated for cause or not extended or renewed by the Medi-Cal Managed Care Plan.

If Strategic Global Management, Inc. questions whether it is being reimbursed on the same terms and conditions as other similarly situated hospitals offering substantially the same services, it shall notify the Attorney General's Office with at least 120 days' notice prior to taking any action that would effectuate any loss, interruption of service or diminution in quality, or gap in contracted hospital coverage or prior to giving any required notice of taking such action.

c) Be certified to participate in the Medicare program by maintaining a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at Seton Medical Center and Seton Coastside to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

XIII.

For ~~at least five years from the closing date~~remainder of the ~~Asset Purchase Agreement unless otherwise indicated;~~term (until December 13, 2020), Strategic Global Management, Inc. shall maintain its contracts and any amendments and exhibits thereto with the County of San Mateo, unless otherwise terminated by the County of San Mateo, for services, including the following:

- a. Participation in the Hospital Preparedness Program between the Hospital (jointly with Seton Coastside) and San Mateo County;
- ~~b. STEMI Receiving Center Designation between the Hospital and San Mateo County;~~
- ~~c. Financial Support for Seismic Upgrades between the Hospital and San Mateo County;~~
- ~~d.~~b. Information Sharing and Data Use Agreement between the Hospital and the County of San Mateo Health System;
- ~~e. Fee for Service Hospital Services Agreement between the Hospital (jointly with Seton Coastside) and San Francisco Health Plan;~~
- ~~f. Memorandum of Understanding between the Hospital and San Mateo County Behavioral Health and Recovery Services Division;~~
- ~~g. Affiliation Agreement for the Radiology Technology Program between the Hospital and San Mateo College District;~~
- ~~h. Affiliation Agreement for the Registered Nursing Program between the Hospital (jointly with Seton Coastside) and San Mateo College District;~~
- ~~i.~~c. Patient Transfer Agreement between the Hospital and San Mateo County Medical Center;
- ~~j. Rail Shuttle Bus Service Administration for Seton Shuttle Agreement between the Hospital and San Mateo County Transit District;~~

- k.d. Medical Services Agreement between the Hospital and San Mateo Health Community Health Authority- Access and Care for Everyone (ACE) Program;
- ~~l. Hospital Medi-Cal Hospital Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo;~~
- ~~m. Memorandum of Understanding for Long Term Care Partnership Program between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo; and~~
- ~~n. Care Advantage Hospital Service Agreement between the Hospital and San Mateo Health Commission dba Health Plan of San Mateo.~~

XIV.

For the remainder of the term (until December 13, 2025), Strategic Global Management, Inc. shall have at Seton Medical Center and Seton Coastside Local Governing Board(s) of Directors. Strategic Global Management, Inc. shall consult with the Local Governing Board(s) of Directors prior to making changes to medical services, community benefit programs, making capital expenditures, making changes to the charity care and collection policies, and making changes to charity care services provided at Seton Medical Center and Seton Coastside. The members of the Local Governing Board(s) shall include physicians from Seton Medical Center's and Seton Coastside's medical staff, Seton Medical Center's and Seton Coastside's Chief(s) of Staff, one member designated by the San Mateo County Board of Supervisors, and community representatives from Seton Medical Center's and Seton Coastside's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019, attached hereto as Exhibit 1, including at least one member from a local healthcare advocacy group. Such consultation shall occur at least sixty days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board(s)'s approval is required of all reports submitted to the Attorney General regarding compliance with these Conditions.

XV.

Strategic Global Management, Inc. shall commit to reserve or expend ~~capital~~ for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals over the five-year period from the closing of the Asset Purchase Agreement ~~of~~ the amount of capital ("Capital Amount") that remains unexpended from the \$180 million commitment required of BlueMountain Capital Management, LLC as part of the ~~Attorney General Conditions approved on December 3, 2015 but this amount can be no less than \$5.8 million among the three hospitals.~~ 2015 Conditions. The Capital Amount is calculated based on Strategic Global Management, Inc.'s proportionate share (i.e. 72%) of the \$180 million capital commitment from the 2015 Conditions that remains unexpended as of the closing of the Asset Purchase Agreement, to be allocated across the acquired Verity facilities as it deems appropriate, over a five year period from the closing of the Asset Purchase Agreement. The total commitment to reserve or expend capital, for St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center for capital improvements to the hospitals will not exceed Seventy-Five Million Dollars (\$75,000,000).

XVI.

~~Strategic Global Management, Inc. shall maintain privileges for current medical staff who are in good standing as of the closing date of the Asset Purchase Agreement. Further, the closing of the Asset Purchase Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at Seton Medical Center and Seton Coastside.~~

[REMOVE]

XVII.

Strategic Global Management, Inc. shall commit the necessary investments required to meet and maintain OSHPD seismic compliance requirements at Seton Medical Center and Seton Coastside through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, as amended by the California Hospital Facilities Seismic Safety Act, (Health & Saf. Code, § 129675-130070). ~~Strategic Global Management, Inc. shall meet construction benchmarks which include the starting of construction on the 1963 Tower, and as detailed on the attached Exhibit 2,~~ to the extent Strategic Global Management, Inc. obtains necessary waivers or other authority from OSHPD and the State of California to permit the continued operation of Seton Medical Center through the five (5) years following closing date of the Asset Purchase Agreement, pending replacement or retrofit of the current patient tower at Seton Medical Center, and Strategic Global Management, Inc. receives PACE funding at currently accrued levels (i.e. approximately Forty Million Dollars (\$40,000,000)).

XVIII.

There shall be no discrimination against lesbian, gay, bisexual, or transgender individuals at Seton Medical Center and Seton Coastside, and no restriction or limitation on providing or making reproductive health services available at Seton Medical Center and Seton Coastside, its medical office buildings, or at any of its facilities. Both of these prohibitions shall be set forth in Strategic Global Management Inc.'s written policies, adhered to, and strictly enforced.

XIX.

~~Within 15 days of the Attorney General's approval, Seton Medical Center Foundation shall transfer all charitable assets including, but not limited to, all temporary and permanently restricted funds to the California Community Foundation.~~

- ~~a) The funds from Seton Medical Center Foundation, if not previously restricted to support a specific charitable organization, will be deposited into the California Community Foundation's Seton Medical Foundation, and used to support nonprofit tax-exempt charitable organizations, clinics and facilities in providing healthcare services to residents of Seton Medical Foundation's service area (14 ZIP codes), as described on page 54 in the Healthcare Impact Report authored by JD Healthcare dated August 19, 2019. (Exhibit 1.) The donated funds shall be maintained and used for the purposes specified herein for a period of at least five years.~~

~~If there are funds from Seton Medical Foundation previously restricted to support a specific charitable organization, such funds shall be deposited into a fund or funds at California Community Foundation restricted to continuing support for such charitable organization or organizations. Such funds are protected against obsolescence. If the purposes of any restricted fund become unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served by California Community Foundation, the California Community Foundation's Board of Directors shall have the ability to modify any restriction or condition on the use such fund.~~ [\[REMOVE\]](#)

XX.

For six fiscal years from the closing date of the Asset Purchase Agreement Strategic Global Management shall submit to the Attorney General, no later than four months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein. The Chairman of the Board of Directors of Strategic Global Management, Inc. shall certify that the report is true, accurate, and complete and provide documentation of the review and approval of the report by the Local Governing Board.

XXI.

At the request of the Attorney General, all parties listed in Condition I, Verity Health System of California, Inc., Verity Holdings, LLC, Strategic Global Management, Inc., and any other parties referenced in the agreements listed in Condition II shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with these Conditions and the terms of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

XXII.

Once the Asset Purchase Agreement is closed, all parties listed in Condition I, and any other parties referenced in the agreements listed in Condition II are deemed to have explicitly and implicitly consented to the applicability and compliance with each and every Condition and to have waived any right to seek judicial relief with respect to each and every Condition.

~~The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. In addition to any legal remedies the Attorney General may have, the Attorney General shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of any of these Conditions. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.~~

Analysis of the Hospital's Service Area

Service Area Definition

The Hospital's service area is comprised of 14 ZIP Codes, from which approximately 82% of its discharges originated in CY 2017. Approximately 55% of the Hospital's discharges came from the top three ZIP Codes, located in Daly City, and South San Francisco. In CY 2017, the Hospital's market share in the service area was 12.6% based on inpatient discharges.

ZIP Codes	Community	PATIENT ORIGIN, CY 2017			Total Area Discharges	Market Share
		Total Discharges	% of Discharges	Cumulative % of Discharges		
94015	Daly City	1,347	25.5%	25.5%	4,640	29.0%
94014	Daly City	798	15.1%	40.6%	3,337	23.9%
94080	South San Francisco	732	13.8%	54.4%	5,074	14.4%
94044	Pacifica	533	10.1%	64.5%	2,972	17.9%
94112	San Francisco	263	5.0%	69.5%	6,620	4.0%
94066	San Bruno	216	4.1%	73.5%	3,515	6.1%
94134	San Francisco	130	2.5%	76.0%	3,795	3.4%
94132	San Francisco	114	2.2%	78.2%	1,908	6.0%
94019	Half Moon Bay	74	1.4%	79.6%	1,194	6.2%
94038	Moss Beach	46	0.9%	80.4%	249	18.5%
94005	Brisbane	21	0.4%	80.8%	369	5.7%
94037	Montara	14	0.3%	81.1%	183	7.7%
94018	El Granada	12	0.2%	81.3%	257	4.7%
94017	Daly City	11	0.2%	81.5%	33	33.3%
Subtotal		4,311	81.5%	81.5%	34,146	12.6%
Other ZIPs		977	18.5%	100%		
Total		5,288	100%			

Note: Excludes normal newborns

Source: OSHPD Patient Discharge Database

Report Year and Quarter
All

AB 2190 Quarterly Reports for 10801 Seton Medical Center

OSHPD Building Nbr	Bldg Name	Report Year and Quarter	Construction Project Nbr	Milestone Date	Milestone Description	Milestone Comments	Milestone Quarterly Update
BLD-00846	1963 Tower	2019 - Q2	I180019-41-00; I180019-41-01; I180019-41-02; I180019-41-03	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule
BLD-00847	Front Wing	2019 - Q2	I180020-41-00; I180020-41-01	4/1/2020	Start Construction		On schedule
				7/1/2022	Complete Construction		On schedule

Exhibit D

SGM APA

ASSET PURCHASE AGREEMENT

By and Among

Verity Health System of California, Inc., Verity Holdings, LLC,

**St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc.,
Seton Medical Center**

and

Strategic Global Management, Inc.

Dated January 8, 2019

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “**Agreement**”) is made and entered into as of the 8th day of January, 2019 (the “**Signing Date**”) by and among Verity Health System of California, Inc., a California nonprofit public benefit corporation (“**Verity**”), Verity Holdings, LLC, a California limited liability company (“**Verity Holdings**”), St. Francis Medical Center, a California nonprofit public benefit corporation (“**St. Francis**”), St. Vincent Medical Center, a California nonprofit public benefit corporation (“**St. Vincent**”), St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation (“**St. Vincent Dialysis**”), and Seton Medical Center, a California nonprofit public benefit corporation (“**Seton**” and together with St. Francis Medical Center, St. Vincent Medical Center and St. Vincent Dialysis, collectively, the “**Hospital Sellers**”) (Verity, Verity Holdings, St. Francis, St. Vincent, St. Vincent Dialysis and Seton are each referred to herein individually as a “**Seller**” and collectively as the “**Sellers**”), and Strategic Global Management, Inc., a California corporation (“**Purchaser**”).

RECITALS:

A. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis (collectively, the “**St. Francis Hospital**”).

B. St. Vincent engages in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent (collectively, the “**St. Vincent Hospital**”).

C. Seton engages in the business of the operation of two general acute care hospitals under a single license, consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Hospital**”) and (ii) the hospital known as Seton Medical Center Coastsides, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton (collectively, the “**Seton Coastsides Hospital**”) and together with the St. Francis Medical Center Hospital, the St. Vincent Medical Center Hospital and the Seton Hospital, the “**Hospitals**”; the business of the operation of the Hospitals is referred to herein as the “**Businesses**”).

D. Purchaser desires to purchase from Sellers, and Sellers desire to sell to Purchaser, the assets described in Section 1.7 below (the “**Assets**”) owned by Sellers and used with respect to the Businesses, for the consideration and upon the terms and conditions contained in this Agreement.

E. Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “**Bankruptcy Court**”), lead Case No. 2:18-bk-201510ER, jointly administered or to be jointly administered with their affiliates (the “**Bankruptcy Cases**”).

F. The parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Assets approved by the Bankruptcy Court pursuant to Section 363 of Title 11 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained in this Agreement, and for their mutual reliance and incorporating into this Agreement the above recitals, the parties hereto agree as follows:

ARTICLE 1

SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price (“**Purchase Price**”) shall consist of the following:

(i) Cash payment to Sellers (the “**Cash Consideration**”) of Six Hundred Ten Million Dollars (\$610,000,000.00), which shall be allocated Four Hundred Twenty Million Dollars (\$420,000,000) to St. Francis Medical Center, One Hundred Twenty Million Dollars (\$120,000,000) to St. Vincent Medical Center, and Seventy Million Dollars (\$70,000,000) to Seton for Seton Hospital and Seton Coastside Hospital, provided, that if the CA AG’s approval does not include a requirement that Seton Hospital remain open as an acute care hospital or that Seton Coastside Hospital remain open as a skilled nursing facility, then an amount to be determined by Purchaser, in its sole discretion, of such Cash Consideration shall be re-allocated from St. Francis to Seton;

(ii) Assumption of Sellers’ accrued vacation and other paid time off as of the Closing, to be provided only with respect to Hired Employees (as defined in Section 5.3(a)) in the form of credited vacation and PTO, subject to compliance with applicable law and regulation, including consent of such employees if required;

(iii) Assumption of all liabilities of Seton as Obligated Party and Property Owner under the (i) Agreement to Pay Assessment and Finance Improvements dated May 17, 2017 with California Statewide Communities Development Authority (“**CSCDA**”) and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 with CSCDA (collectively

the “**Special Assessments**”) each associated with of the Property Assessed Clean Energy (“**PACE**”) (seismic and clean energy) loans (collectively the “**PACE Obligations**”); and

(iv) Payment of Cure Costs (defined below) associated with any Assumed Leases and/ or Assumed Contracts and assumption of the other Assumed Obligations (as defined below).

(b) Purchaser (i) is acquiring the Assets and (ii) is only assuming (x) the PACE Obligations and (y) the Assumed Obligations (as defined below).

(c) At the Closing, Purchaser shall pay to Sellers, by wire transfer of immediately available funds to the accounts specified by Sellers to Purchaser in writing, an aggregate amount equal to the Cash Consideration, minus the Net QAF Reduction Amount (defined below), if any, plus the Net QAF Increase Amount (defined below), if any, plus any amounts (x) held by the PACE Trustee as an interest or fee reserve on account the PACE Obligations on the Closing Date and (y) remitted to CSCDA by Seton pursuant to the Special Assessments from and after the date of execution of this Agreement by Buyer up to and including the Closing Date, minus the Deposit (defined below).

(d) For purposes of this Agreement, the “**QAF Program**” means the California Department of Health Care Services Hospital Quality Assurance Fee Programs IV (“**QAF IV**”) and V (“**QAF V**”). During the period prior to Closing, Sellers shall pay any fees owing under QAF IV and QAF V, and Sellers shall be entitled to retain all payments received under QAF IV and QAF V. At Closing, Sellers shall credit to the Cash Consideration the amount by which payments received under QAF IV and QAF V between the Signing Date and Closing exceed the sum of (i) fees paid under QAF IV and QAF V during such period plus (ii) the amount of fees which are unpaid and owing as of the Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V (the “**Net QAF Reduction Amount**”), as provided above in Section 1.1(c). At Closing, Purchaser shall pay Sellers (as an increase to the Cash Consideration) the amount by which the sum of (i) fees paid under QAF IV and QAF V between the Signing Date and Closing plus (ii) the amount of fees which are unpaid and owing as of Closing in respect of invoices received by Sellers prior to Closing under QAF IV and QAF V exceeds payments received under QAF IV and QAF V during such period (the “**Net QAF Increase Amount**”), as provided above in Section 1.1(c).

(e) Purchaser shall, prior to Closing, be permitted to communicate with holders of secured debt of the Sellers regarding the possible assumption by Purchaser of all or a portion of such debt at the Closing. If Purchaser agrees to assume any such debt at the Closing, Purchaser and Sellers shall negotiate an appropriate credit to the Purchase Price for such assumption of debt.

1.2 Deposit. Purchaser, by wire transfer to an account designated by Sellers has made a good faith deposit in the amount of Thirty Million Dollars (\$30,000,000) on the date hereof (the “**Deposit**”). The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Upon Closing, the Deposit will

be credited against the Purchase Price. Pending the Closing, or until this Agreement is terminated, the Deposit shall be deposited in an interest bearing account, with interest credited to Purchaser, at a federally-insured financial institution mutually acceptable to Purchaser and Sellers. In addition, on the Signing Date, Purchaser shall deliver to Sellers executed letters from its financing sources, in form and substance satisfactory to Sellers in their discretion.

1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the “**Closing Date**”) promptly but no later than ten (10) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the “**Effective Time**”).

1.4 Items to be Delivered by Sellers at Closing. At or before the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

1.4.1 a Bill of Sale substantially in the form of Exhibit 1.4.1 attached hereto (the “**Bill of Sale**”), duly executed by each Seller, with respect to the Assets;

1.4.2 Real Estate Assignment and Assumption Agreements (the “**Real Estate Assignments**”) in the form of Exhibit 1.4.2 attached hereto with respect to (i) the Leased Real Property, and (ii) the Tenant Leases, each duly executed by each Seller;

1.4.3 a Quitclaim Deed (the “**Deed**”) in the form of Exhibit 1.4.2 attached hereto with respect to the real property listed in Schedule 1.4.3, together with all plant, buildings, structures, installments, improvements, fixtures, betterments, additions and constructions in progress situated thereon (collectively, the “**Owned Real Property**”) duly executed by each Seller;

1.4.4 an Assumption Agreement (the “**Assumption Agreement**”) in the form of Exhibit 1.4.2 attached hereto with respect to the Assumed Obligations duly executed by each Seller;

1.4.5 favorable original certificates of good standing, of each Seller, issued by the State of California, dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.4.6 a duly executed certificate of an officer of each Seller certifying to Purchaser (i) the incumbency of the officers of such Seller on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (ii) the due adoption and text of the resolutions or consents of the Board of Directors of such Seller authorizing (I) the transfer of the Assets and transfer of the Assumed Obligations by such Seller to Purchaser and (II) the due execution, delivery and performance of this Agreement and all additional documents contemplated

by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.4.7 a certified copy of the Sale Order (as defined below);

1.4.8 a Transition Services Agreement (the “**Transition Services Agreement**”) in form and substance satisfactory to Sellers and Purchaser, in their reasonable discretion, granting to Sellers use of certain assets, systems and personnel identified in such agreement solely in connection with Sellers’ wind-down of the Businesses, the completion of the Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such Transition Services Agreement shall automatically terminate);

1.4.9 acknowledgements by CSCDA and the PACE Trustee that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date, and

1.4.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.5 Items to be Delivered by Purchaser at Closing. At or before the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

1.5.1 payment of the Cash Consideration subject to credits or plus payment to Sellers of all amounts as provided under Section 1.6;

1.5.2 evidence of payment of all Cure Costs required hereunder to be paid by Purchaser;

1.5.3 a duly executed certificate of the Secretary of Purchaser certifying to Sellers (a) the incumbency of the officers of Purchaser on the Signing Date and on the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and any additional documents contemplated by this Agreement and (b) the due adoption and text of the resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement and all additional documents contemplated by this Agreement, and that such resolutions have not been amended or rescinded and remain in full force and effect on the Closing Date;

1.5.4 favorable original certificate of good standing, of Purchaser, issued by the California Secretary of State dated no earlier than a date which is fifteen (15) calendar days prior to the Closing Date;

1.5.5 the Bill of Sale, duly executed by Purchaser;

1.5.6 the Real Estate Assignment(s), duly executed by Purchaser;

1.5.7 the Assumption Agreement, duly executed by Purchaser;

1.5.8 the License Agreement referenced in Section 1.7(q);

1.5.9 the Transition Services Agreement; and

1.5.10 any such other instruments, certificates, consents or other documents which Purchaser and Sellers mutually deem reasonably necessary to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

1.6 Prorations and Utilities. All items of income and expense listed below with respect to the Assets shall be prorated in accordance with the principles and the rules for the specific items set forth hereafter:

1.6.1 All transfer, conveyance, sales, use, stamp, similar state and local taxes arising from the sale of the Assets hereunder shall be the responsibility of, and allocated to, Purchaser.

1.6.2 Other than the Utility Deposits (defined below), which are governed by Section 1.8(j), and other than with respect to Cure Costs payable by Purchaser, the following costs and expenses shall be prorated based upon the payment period (*i.e.*, calendar or other tax fiscal year) to which the same are attributable: all real estate and personal property lease payments, real estate and personal property taxes, real estate assessments, other than the PACE Special Assessments and other similar charges against real estate, and power and utility charges (collectively, the “**Prorated Charges**”) on the Assets. Each Seller shall pay its respective portion at or prior to the Closing (or Purchaser shall receive credit for) of any unpaid Prorated Charges attributable to periods or portions thereof occurring prior to the Effective Time, and Purchaser shall assume as an Assumed Liability or, to the extent previously paid by any Seller, pay to such Seller at the Closing all Prorated Charges attributable to periods or portions thereof occurring from and after the Effective Time. In the event that as of the Closing Date the actual tax bills for the tax year or years in question are not available and the amount of taxes to be prorated as aforesaid cannot be ascertained, then rates, millages and assessed valuation of the previous year, with known changes, shall be used. The parties agree that if the real estate and personal property tax prorations are made based upon the taxes for the preceding tax period, the prorations shall be re-prorated after the Closing. As to power and utility charges, “final readings” as of the Closing Date shall be ordered from the utilities; the cost of obtaining such “final readings,” if any, shall be paid by Purchaser.

1.6.3 Sellers shall be entitled to all rents and other payments under Tenant Leases accruing for the period prior to the Effective Time (“**Pre Effective Time Lease Amounts**”), and Purchaser shall be entitled to all rents and other payments under tenant leases accruing for the period after the Effective Time (“**Post Effective Time Lease Amounts**” and together with the Pre Effective Time Lease Amounts, the “**Lease Amounts**”). All Lease Amounts that are collected prior to the Closing shall be prorated as of the Closing in accordance with the immediately preceding sentence. All Lease Amounts that are accrued but uncollected as of the Closing (including, without limitation, rents and other payments accrued prior to the Closing but payable in arrears after the Closing) (collectively, the “**Unpaid Amounts**”) shall belong to Sellers, and Purchaser shall, upon receipt of said rents and other payments, receive the same in trust for Sellers and shall promptly remit any of such amounts to the applicable Seller within ten (10) days after

Purchaser's receipt of same. For the avoidance of doubt, all rental payments received after Closing shall be first applied to any amounts owed to the Sellers under this Section 1.6.3.

1.6.4 All prorations and payments to be made under the foregoing provisions shall be agreed upon by Purchaser and Sellers prior to the Closing and shall be binding upon the parties; provided, however, with respect to the Unpaid Amounts, in the event any proration, apportionment or computation shall prove to be incorrect for any reason, then either the applicable Seller or Purchaser shall be entitled to an adjustment to correct the same, provided that said party makes written demand on the party from whom it is entitled to such adjustment within thirty (30) calendar days after the erroneous payment or computation was made, or such later time as may be required, in the exercise of due diligence, to obtain the necessary information for proration. This Section 1.6 shall survive Closing.

1.7 Transfer of Assets of Sellers. On the Closing Date and subject to the terms and conditions of this Agreement, each Seller shall sell, assign, transfer, convey and deliver to Purchaser, free and clear of all liens, claims, interests and encumbrances other than the Permitted Exceptions (defined below), and Purchaser shall acquire, all of each Seller's right, title and interest in and to only the following assets and properties, as such assets shall exist on the Closing Date, in each case (notwithstanding anything else in this Agreement) solely to the extent used primarily in the conduct of the Businesses and to the extent not included among the Excluded Assets, such transfer being deemed to be effective at the Effective Time:

(a) all of the tangible personal property owned by such Hospital Seller, or to the extent assignable or transferable by each Hospital Seller, leased, subleased or licensed by such Hospital Seller, and used by such Seller in the operation of the Hospital of such Hospital Seller, including equipment, furniture, fixtures, machinery, vehicles, office furnishings and leasehold improvements (the "**Personal Property**");

(b) all of such Hospital Seller's rights, to the extent assignable or transferable, to all Medicare and Medi-Cal provider agreements, permits, approvals, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to such Seller for use in the operation of the Hospital of such Hospital Seller (the "**Licenses**"), including, without limitation, the Licenses and Medicare/Medi-Cal Provider Agreements set forth on Schedule 1.7(b), except to the extent Purchaser elects, in its discretion, not to take assignment of any such Licenses;

(c) all of such Hospital Seller's interest in and to the Owned Real Property and all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all of the following (the "**Assumed Leases**"): (i) personal property leases with respect to the operation of the Hospital of such Hospital Seller (including leases for assets described in Section 1.7(i)), (ii) the real property leases for all real property leased by such Hospital Seller and set forth on Schedule 1.7(c)(ii) (the "**Leased Real Property**"), and (iii) the real property leased or subleased by such Seller to a third party and set forth on Schedule 1.7(c)(iii) (the "**Tenant Leases**");

(d) all of such Hospital Seller's interest, to the extent assignable or transferable, in and to all contracts and agreements (including, but not limited to, purchase orders) with respect

to the operation of the Hospital of such Hospital Seller that have been designated by Purchaser as a contract to be assumed pursuant to Section 1.11 (the “**Assumed Contracts**”);

(e) other than the Excluded Settlements and Actions (defined below), all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to amounts overpaid by such Seller to any third party health plans with respect to periods prior to the Effective Time (e.g. such overpaid amounts may be determined by billing audits undertaken by such Seller or such Seller’s consultants), except with respect to any causes of action or proceeds thereof arising under Chapter 5 of the Bankruptcy Code other than with respect to Assumed Contracts and Assumed Leases and other items described in Section 1.8(h);

(f) to the extent assignable or transferable, all inventories of supplies, drugs, food, janitorial and office supplies and other disposables and consumables (i) located at the Hospital of such Seller or (ii) used in the operation of the Hospital of such Seller (the “**Inventory**”) except as set forth in Section 1.8(e);

(g) other than Utility Deposits, all prepaid rentals, deposits, prepayments (excluding prepaid insurance and prepaid taxes) and similar amounts relating to the Assumed Contracts and/or the Assumed Leases, which were made with respect to the operation of the Hospital of such Hospital Seller (the “**Prepays**”);

(h) to the extent assignable or transferrable, all of the following that are not proprietary to such Seller and/or owned by or proprietary to such Hospital Seller’s affiliates: operating manuals, files and computer software with respect to the operation of the Hospital of such Hospital Seller, including, without limitation, all patient records, medical records, employee records, financial records, equipment records, construction plans and specifications, and medical and administrative libraries; *provided, however*, that any patient records and medical records which are not required by law to be maintained by such Hospital Seller as of the Effective Time shall be an Excluded Asset;

(i) to the extent assignable or transferrable (and if leased, to the extent the associated lease is transferrable), including any assignment which is made effective pursuant to the Sale Order where the consent of a third party is required pursuant to the terms of an applicable agreement but not obtained, all systems, servers, computers, hardware, firmware, middleware, telecom equipment, networks, data communications lines, routers, hubs, switches and all other information technology equipment, and all associated documentation owned, leased or licensed by Sellers and used by Sellers with respect to the operations of the Hospitals;

(j) all Measure B trauma funding received after the Signing Date to be paid related to service periods ending on or after the Signing Date (pro rated between Purchaser and Sellers for any such payments covering service periods which include days both before and after the Signing Date based upon the number of days in the relevant payment period before the Signing Date (for the account of Sellers) and after the Signing Date (for the account of Purchaser));

(k) Except for as stated in Section 1.7(j), all accounts and interest thereupon, notes and interest thereupon and other receivables of such Seller, including, without limitation,

accounts, notes or other amounts receivable, disproportionate share payments and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, and Seller Cost Report settlements related thereto, in each case arising from the rendering of services or provision of goods, products or supplies to inpatients and outpatients at the Hospital of such Seller, billed and unbilled, recorded and unrecorded, for services, goods, products and supplies provided by such Seller prior to the Effective Time whether payable by Medicare, Medicaid, or any other payor (including an insurance company), or any health care provider or network (such as a health maintenance organization, preferred provider organization or any other managed care program) or any fiscal intermediary of the foregoing, private pay patients, private insurance or by any other source (collectively, “**Accounts Receivable**”);

(l) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the Accounts Receivable acquired by Purchaser at the Closing;

(m) other than the Excluded Settlements and Actions, all regulatory settlements, rebates, adjustments, refunds or group appeals, including without limitation pursuant to all cost reports filed by Sellers for payment or reimbursement from government payment programs and other payors with respect to periods after the Signing Date;

(n) other than the Excluded Settlements and Actions, all casualty insurance proceeds arising in respect of casualty losses occurring after the Signing Date in connection with the ownership or operation of the Assets;

(o) other than the Excluded Settlements and Actions, all surpluses arising out of any risk pools, shared savings program or accountable care organization arrangement to which any Seller is party on the Closing Date, in each case to the extent Purchaser assumes the underlying contract relating to such risk pools, shared savings program or accountable care organization arrangement;

(p) all transferable unclaimed property of any Person in Sellers’ possession as of the Closing Date, including, without limitation, property which is subject to applicable escheat laws;

(q) to the extent assignable or transferable by Sellers without out-of-pocket expense to Sellers, all warranties (including warranties of any manufacturer or vendor) on or in connection with the Assets (including the Personal Property) in favor of the Hospitals or Sellers;

(r) the right to use the names “St. Francis Medical Center”, “St. Vincent Medical Center”, “Seton Medical Center” and “Seton Medical Center Coastside”, including any trademarks, service marks, trademark and service mark registrations and registration applications, trade names, trade name registrations, logos, domain names, trade dress, copyrights, copyright registrations, website content, know-how, trade secrets and the corporate or company names of Sellers and the names of the Hospitals, together with all rights to sue and recover damages for infringement, dilution, misappropriation or other violation or conflict associated with any of the foregoing; at the Closing, Purchaser will execute and deliver to Sellers the Transition Services Agreement granting to Sellers an unlimited, royalty free, irrevocable license to use any and all of the foregoing solely in connection with the wind-down of the Businesses, the completion of the

Bankruptcy Cases and the dissolution of Sellers (and following completion of such wind-down, Bankruptcy Cases and dissolution of Sellers, such license shall automatically terminate);

(s) all goodwill of the Hospital of such Hospital Seller evidenced by or associated with any of the Assets;

(t) to the extent transferable or assignable, such Hospital Seller's right or interest in the telephone and facsimile numbers and uniform resource locaters used with respect to the operation of the Hospital of such Hospital Seller;

(u) each such Hospital Seller's Medicare and Medi-Cal provider agreements and lockbox account(s) identified on **Schedule 1.7(u)**;

(v) all documents, records, correspondence, work papers and other documents, other than patient records, primarily relating to the Accounts Receivable;

(w) with respect to Verity Holdings, the assets represented by the assessor's parcel numbers (APN's) listed in **Schedule 1.7(w)** hereof (the "**Purchased Verity Holdings Assets**");

(x) except for the Excluded Assets, to the extent assignable or transferable, and subject to the Permitted Exceptions, any other assets owned by such Hospital Seller (which are not otherwise specifically described above in this Section 1.7) that are used in the operation of the Hospital of such Hospital Seller;

(y) all of Seton's interest in and to the PACE Obligations; and

(z) all QAF V and subsequent QAF program payments received after the Closing (e.g., QAF VI and QAF VII).

As used herein, the term "**Permitted Exceptions**" means (i) the Assumed Obligations; (ii) the PACE Obligations; (iii) liens for taxes not yet due and payable (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting real property; (v) other imperfections of title or encumbrances, if any, which are not monetary in nature and that are not, individually or in the aggregate, material to the business of the Hospital; (vi) any agreements made with any governmental authority in order to obtain any consent or approval, including, without limitation, in connection with the Medicare and Medi-Cal provider agreements; and (vii) other imperfections of title or encumbrances that are expressly identified on **Schedule 1.7** hereof.

1.8 Excluded Assets. Notwithstanding anything to the contrary in Section 1.7, each Seller shall retain all interests, rights and other assets owned directly or indirectly by it (or any of such Seller's affiliates) which are not among the Assets, including, without limitation, the following interests, rights and other assets of such Seller (collectively, the "**Excluded Assets**");

(a) cash, cash equivalents and short-term investments;

- (b) all Seller Plans (defined below) and the assets of all Seller Plans and any asset that would revert to the employer upon the termination of any Seller Plan, including, without limitation, any assets representing a surplus or overfunding of any Seller Plan;
- (c) all contracts that are not Assumed Contracts;
- (d) all leases that are not Assumed Leases;
- (e) the portions of Inventory, Prepaids, and other assets disposed of, expended or canceled, as the case may be, by such Seller after the Signing Date and prior to the Effective Time in the ordinary course of business;
- (f) assets owned and provided by vendors of services or goods to the Hospital of such Hospital Seller;
- (g) all of such Seller's organizational or corporate record books, minute books, tax returns, tax records and reports, data, files and documents, including electronic data related thereto;
- (h) all claims, counterclaims and causes of action of such Seller or such Seller's bankruptcy estate (including parties acting for or on behalf of such Seller's bankruptcy estate, including, but not limited to, the official committee of unsecured creditors appointed in the Bankruptcy Cases), including, without limitation, rights of recovery or set-off of every kind and character against third parties, causes of action arising out of any claims and causes of action under chapter 5 of the Bankruptcy Code and any related claims, counterclaims and causes of action under applicable non-bankruptcy law, and any rights to challenge liens asserted against property of such Seller's bankruptcy estate, including, but not limited to, liens attaching to the Purchase Price paid to such Seller, and the proceeds from any of the foregoing;
- (i) other than casualty insurance proceeds described in Section 1.7(m), all insurance policies and contracts and coverages obtained by such Seller or listing such Seller as insured party, a beneficiary or loss payee, including prepaid insurance premiums, and all rights to insurance proceeds under any of the foregoing, and all subrogation proceeds related to any insurance benefits arising from or relating to Assets prior to the Closing Date;
- (j) all deposits made with any entity that provides utilities to the Hospital (the **"Utility Deposits"**);
- (k) all rents, deposits, prepayments, and similar amounts relating to any contract or lease that is not an Assumed Contract or Assumed Lease;
- (l) all non-transferrable unclaimed property of any third party as of the Effective Time, including, without limitation, property which is subject to applicable escheat laws;
- (m) all other bank accounts of such Sellers not listed on **Schedule 1.7(u)**;

(n) all writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection;

(o) the rights of such Seller to receive mail and other communications with respect to Excluded Assets or Excluded Liabilities;

(p) all director and officer insurance;

(q) all tax refunds of such Seller;

(r) all documents, records, operating manuals and film pertaining to the Hospital that the parties agree that such Seller is required by law to retain;

(s) all patient records and medical records which are not required by law to be maintained by such Seller as of the Effective Time;

(t) all documents, records, correspondence, work papers and other patient records that may not be transferred under applicable law, and any other documents, records, or correspondence (including with respect to any employees) that may not be transferred under applicable law;

(u) any rights or documents relating to any Excluded Liability or other Excluded Asset;

(v) any rights or remedies provided to such Seller under this Agreement and each other document executed in connection with the Closing;

(w) any (i) personnel files for employees of such Seller who are not hired by Purchaser; (ii) other books and records that such Seller is required by Law to retain; provided, however, that except as prohibited by Law and subject to Article 5, Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the business of the Hospital as conducted before the Closing or that relate to any of the Assets; (iii) documents which such Seller is not permitted to transfer pursuant to any contractual obligation owed to any third party; (iv) documents primarily related to any Excluded Assets; and (v) documents necessary to prepare tax returns (Purchaser shall be entitled to a copy of such documents). With respect to documents necessary to prepare cost reports, Purchaser shall receive the original document and such Seller shall be entitled to retain a copy of such documents for any period ending on or prior to the Closing Date;

(x) all deposits or other prepaid charges and expenses paid in connection with or relating to any other Excluded Assets;

(y) all rights, claims and causes of action of such Seller to the extent related to and/or to the extent arising out of the receivables identified in **Schedule 1.8(y)** and rights to settlements and retroactive adjustments, if any, whether arising under a Seller Cost Report or otherwise, for any reporting periods ending on or prior to the Effective Time, whether open or closed, arising from or against the United States government under the terms of the Medicare

program or TRICARE (formerly the Civilian Health and Medical Program of the Uniformed Services);

(z) all pre-Closing settlements or settlements pursuant to adversary proceedings in the Bankruptcy Cases, including, without limitation, any proceedings identified in Section 1.8(h) or 1.8(y) (together with the items identified in Section 1.8(h) and 1.8(y), the “**Excluded Settlements and Actions**”);

(aa) for the avoidance of doubt, all QAF IV and QAF V payments actually received prior to the Signing Date;

(bb) all assets of Verity Holdings other than the Purchased Verity Holdings Assets and all assets of any of the tenants located in the leased premises of the purchased Verity Holdings properties; and

(cc) any assets identified in Schedule 1.8(cc).

1.9 Assumed Obligations. On the Closing Date, each Seller shall assign, and Purchaser shall assume and agrees to discharge, perform and satisfy fully, on and after the Effective Time, the following liabilities and obligations of such Seller and only the following liabilities and obligations (collectively, the “**Assumed Obligations**”):

(a) the Assumed Contracts and all liabilities of such Seller under the Assumed Contracts, including related Cure Costs;

(b) the Assumed Leases and all liabilities of such Seller under the Assumed Leases, including related Cure Costs;

(c) all liabilities and obligations arising out of or relating to any act, omission, event or occurrence connected with the use, ownership or operation by Purchaser of the Hospital or any of the Assets on or after the Effective Time;

(d) all accrued vacation and other paid time off, to the extent assumed under Section 1.1(a)(ii);

(e) all liabilities and obligations of such Seller related to the Hired Employees arising on or following the Effective Time;

(f) all unpaid real and personal property taxes, if any, that are attributable to the Assets after the Effective Time, subject to the prorations provided in Section 1.6;

(g) all liabilities and obligations relating to utilities being furnished to the Assets, subject to the prorations provided in Section 1.6;

(h) any documentary, sales and transfer tax liabilities of such Seller incurred as a result of the consummation of the transaction contemplated by this Agreement;

(i) all liabilities or obligations provided for in Section 5.3;

(j) any obligations or liabilities Purchaser may desire or need to assume in order to have the Certifications/Licenses/Permits identified on Schedule 1.7(b) reissued to Purchaser, as well as any liabilities or obligations associated with Sellers' Medicare and Medi-Cal provider agreements, but only to the extent assumed by Purchaser, and any Medi-Cal liabilities or obligations needed to support ongoing Hospital Quality Assurance Fee Program payments; and

(k) any other obligations and liabilities identified in Schedule 1.9(k).

1.10 Excluded Liabilities. Purchaser shall not assume or become responsible for any duties, obligations or liabilities of any Seller that are not assumed by Purchaser pursuant to the terms of this Agreement, the Bill of Sale, the Assumption Agreement or the Real Estate Assignment(s) (the "**Excluded Liabilities**"), and each Seller shall remain fully and solely responsible for all of such Seller's debts, liabilities, contract obligations, expenses, obligations and claims of any nature whatsoever related to the Assets or the Hospital unless assumed by Purchaser under this Agreement, in the Bill of Sale, the Assumption Agreement or in the Real Estate Assignment(s).

1.11 Designation of Assumed Contracts and Assumed Leases.

(a) Except as provided in Section 1.11(b), all contracts and leases will be subject to evaluation by Purchaser for assumption or rejection (collectively "**Evaluated Contracts**"). Not later than seven (7) days prior to the date of the auction for the Assets (i) Purchaser shall notify each Seller in writing of which Evaluated Contracts are to be assumed by such Seller and assigned to Purchaser and (ii) Purchaser shall notify each Seller in writing signed and dated by Purchaser of which Evaluated Contracts are to be rejected by such Seller (collectively, the "**Rejected Contracts**"); provided, that Purchaser shall have the right to designate additional Evaluated Contracts for assumption up to thirty (30) days prior to Closing. Each Seller shall file such motions in the Bankruptcy Court and take such other actions as are reasonably necessary to ensure that final and non-appealable orders are entered (x) assuming and assigning the respective Assumed Contracts or Assumed Leases applicable to such Seller to Purchaser and (y) rejecting the Rejected Contracts. With respect to each Assumed Lease, the applicable Seller shall execute and deliver to Purchaser an Assignment and Assumption of Lease. Notwithstanding anything to the contrary set forth in this Agreement, the Rejected Contracts shall constitute part of the Excluded Assets pursuant to, and as defined in, this Agreement.

(b) At Closing and pursuant to an order of the Bankruptcy Court, each Seller will assume and immediately assign to Purchaser the leases of such Seller for Leased Real Property and the Tenant Leases.

(c) Notwithstanding the foregoing, Purchaser's obligation to consummate the transactions contemplated by this Agreement are not contingent upon the assumption, assignment or rejection of any contract or lease, or on the amount of any payment or other performance needed to cure any default thereunder.

1.12 Disclaimer of Warranties; Release.

(a) THE ASSETS TRANSFERRED TO PURCHASER WILL BE SOLD BY SELLERS AND PURCHASED BY PURCHASER IN THEIR PHYSICAL CONDITION AT THE EFFECTIVE TIME, “AS IS, WHERE IS AND WITH ALL FAULTS AND NONCOMPLIANCE WITH LAWS” WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, USAGE, WORKMANSHIP, QUALITY, PHYSICAL CONDITION, OR VALUE, AND ANY AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED, AND WITH RESPECT TO THE LEASED REAL PROPERTY WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, INCLUDING, WITHOUT LIMITATION, THE LAND, THE BUILDINGS AND THE IMPROVEMENTS. ALL OF THE PROPERTIES, ASSETS, RIGHTS, LICENSES, PERMITS, PRIVILEGES, LIABILITIES, AND OBLIGATIONS OF SELLERS INCLUDED IN THE ASSETS AND THE ASSUMED OBLIGATIONS ARE BEING ACQUIRED OR ASSUMED “AS IS, WHERE IS” ON THE CLOSING DATE AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS. ALL OF THE TANGIBLE ASSETS SHALL BE FURTHER SUBJECT TO NORMAL WEAR AND TEAR AND NORMAL AND CUSTOMARY USE OF THE INVENTORY AND SUPPLIES IN THE ORDINARY COURSE OF BUSINESS UP TO THE EFFECTIVE TIME.

(b) Purchaser acknowledges that Purchaser will be examining, reviewing and inspecting all matters which in Purchaser’s judgment bear upon the Assets, the Sellers, the Hospitals, the business of the Hospitals and their value and suitability for Purchaser’s purposes and is relying solely on Purchaser’s own examination, review and inspection of the Assets and Assumed Obligations. Purchaser releases each Seller and its affiliates from all responsibility and liability regarding the condition, valuation, salability or utility of the business of the Hospitals or the Assets, or their suitability for any purpose whatsoever. Purchaser further acknowledges that the representations and warranties of Sellers contained in ARTICLE 2 of this Agreement are the sole and exclusive representations and warranties made by Sellers to Purchaser (including with respect to the Hospitals, the Assets and the Assumed Obligations) and shall expire, and be of no further force or effect after January 8, 2019 (the period from the Signing Date until January 8, 2019, the “**Final Diligence Period**”), except that the Sale Order Date Representations shall expire, and be of no further force or effect upon the Sale Order Date, and in each case Sellers shall not have any liability in respect of any breach thereof following such expiration.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date and as of the last day of the Final Diligence Period, except as would not have a material adverse effect upon the Hospitals, taken as a whole (a “**Material Adverse Effect**”) and except as disclosed in the disclosure schedule, as may be amended pursuant to the terms of this Agreement (the “**Disclosure Schedule**”), provided that the representations and warranties set forth in Sections 2.1 (Authorization), 2.2 (Binding Agreement), 2.3 (Organization and Good Standing; No Violation), 2.8 (Compliance with Legal Requirements), 2.9 (Required Consents), 2.11 (Title) and 2.14 (Legal Proceedings) (the “**Sale Order Date Representations**”) shall also be made as of immediately prior to the entry of the Sale Order (the “**Sale Order Date**”):

2.1 Authorization. Such Seller has all necessary corporate power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, to carry out the transactions contemplated hereby.

2.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by such Seller and, assuming due and valid execution by Purchaser, this Agreement constitutes a valid and binding obligation of such Seller enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies. Except for such corporate actions which have been taken on or before the date hereof, no other corporate action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby and thereby.

2.3 Organization and Good Standing; No Violation.

(a) Such Seller is an entity duly organized, validly existing and in good standing under the laws of the State of California. Such Seller has all necessary power and authority to own, operate and lease its properties and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by such Seller of this Agreement nor the consummation of the transactions contemplated hereby by such Seller nor compliance with any of the material provisions hereof by such Seller, will violate, conflict with or result in a breach of any material provision of such Seller’s articles of incorporation or bylaws or any other organizational documents of such Seller.

2.4 Contracts. Except as set forth in Schedule 2.4, upon entry of the Sale Order and Purchaser’s payment of the Cure Costs, to Seller’s knowledge, Seller is not in material breach or default of the Assumed Contracts or Assumed Leases. No provision of this Section 2.4 shall apply to any failure to obtain consents to the assignment of the Assumed Contracts and Assumed Leases from third parties to the Assumed Contracts and Assumed Leases for which consent is required to

assign the Assumed Contracts and Assumed Leases to Purchaser (the “**Contract and Lease Consents**”).

2.5 Brokers and Finders. Except as set forth on Schedule 2.5, neither such Seller nor any affiliate thereof, nor any officer or director thereof, have engaged or incurred any liability to any finder, broker or agent in connection with the transactions contemplated hereunder.

2.6 Seller Knowledge. References in this Agreement to “Sellers’ knowledge or “the knowledge of Sellers” means the actual knowledge of the Chief Executive Officer or Chief Financial Officer of the applicable Seller, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

2.7 Non-Contravention. Neither the execution and delivery by Sellers of this Agreement and each Ancillary Agreement nor performance of any of the material provisions hereof by Sellers, will violate, conflict with or result in a breach of any material provisions of the articles of incorporation or bylaws of Sellers.

2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulations, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, “**Legal Requirements**”). Except as set forth in Schedule 2.8, to the knowledge of Sellers, none of the Sellers, with respect to the operation of the Hospitals, has been charged in writing with or been given written notice of or is under investigation with respect to, any material violation of, or any obligation to take material remedial action under, any applicable Legal Requirements.

2.9 Required Consents. Except as set forth in Schedule 2.9, and other than in connection with any Licenses, any provider agreements (including any such agreements with a governmental authority) and the CA AG (defined below), Sellers are not a party to or bound by, nor are any of the Assets subject to, any mortgage, or any material lien, deed of trust, material lease, or material contract or any material order, judgment or decree which, after giving effect to the Sale Order (a) will require the consent of any third party to the execution of this Agreement or (b) will require the consent of any third party to consummate the transactions contemplated by this Agreement.

2.10 Environmental Matters.

(a) Sellers have provided Purchasers with the Phase I Environmental Site Assessments set forth in said Schedule 2.10(a).

(b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority.

(c) For the purposes of this Section, the term “**Environmental Laws**” shall mean all state, federal or local laws, ordinances, codes or regulations relating to Hazardous Substances or to the protection of the environment, including, without limitation, laws and regulations relating to the storage, treatment and disposal of medical and biological waste. For purposes of this Agreement, the term “**Hazardous Substances**” shall mean (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) any Environmental Laws, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

2.11 Title. Prior to December 21, 2018, Sellers have delivered at their own expense (i) for all the Real Property preliminary title reports issued by First American Title Insurance Company (the “**Title Commitments**”), (ii) for all of the Real Property all underlying title documents listed on the Title Commitments (the “**Underlying Title Documents**”), and (iii) for all of the Hospitals an as-built ALTA Surveys (the “**Surveys**”, and collectively with the Title Commitment and the Underlying Title Documents, the “**Title Documents**”).

2.12 Certain Other Representations with Respect to the Hospitals.

(a) Except as set forth in Schedule 2.12, all Licenses which are material and necessary to the operation of the Hospitals or the Hospitals by Sellers are valid and in good standing and Sellers are in compliance with the terms and conditions of all such Licenses in all material respects, in each case except where the failure to be valid and in good standing or in compliance would not have a material adverse effect on the Assets or the Hospitals. Except as set forth in Schedule 2.12, as of the Closing Date Sellers will have any and all material Licenses required under Legal Requirements to conduct the Hospitals as presently conducted by Sellers, except where the failure to have any such License would not have a material adverse effect on the Assets or the Hospitals. To the knowledge of Sellers, no loss or expiration of any License is pending or threatened.

(b) Sellers are certified for participation in the Medicare, Medi-Cal and TRICARE programs and any other federal or state health care reimbursement programs in which they participate, and have current and valid provider agreements with each such program, except where the failure to be so certified or have such provider agreements would not have a material adverse effect.

(c) Sellers have not been excluded from Medicare, Medi-Cal or any federal or state health care reimbursement program, and, to the knowledge of Sellers, there is no pending or threatened exclusion action by a governmental authority against Sellers.

2.13 Financial Statements.

(a) Schedule 2.13(a) hereto contains the following financial statements (the “Historical Financial Statements”): (i) the unaudited balance sheets of the Sellers as of June 30,

2018; (ii) unaudited income statements of the Sellers for the twelve-month periods ended June 30, 2018; (iii) the audited consolidated income statements of Sellers for the years ended 2016 and 2017; and (iv) the unaudited consolidated balance sheet of Sellers as of June 30, 2018.

(b) the income statements contained in the Historical Financial Statements present, fairly in all material respects the results of the operations of the Sellers as of and for the periods covered therein and, except as set forth on Schedule 2.13(b), the balance sheets contained in the Historical Financial Statements (i) are true, complete and correct in all material respects; (ii) present, fairly in all material respects the financial condition of the Sellers as of the dates indicated thereon; and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered, except as disclosed therein.

2.14 Legal Proceedings. Except as set forth on Schedule 2.14, and except for any and all cases and/or pleadings filed or to be filed in the Bankruptcy Court, which shall be available through Sellers' claims and noticing agent's website at <http://www.kccclcc.com/VERITYHEALTH/>, to the knowledge of Sellers, there are no material claims, proceedings or investigations pending or threatened with respect to the ownership of the Assets or the operation of the Hospitals or the Hospitals by Sellers before any governmental authority. Except as set forth on Schedule 2.14, and other than any action or proceeding brought in the Bankruptcy Court, to the knowledge of Sellers, Sellers are not subject to any government order with respect to the ownership or operation by Sellers of the Hospitals or the other Assets or the Hospitals and are in substantial compliance with respect to each such government order.

2.15 Employee Benefits. Schedule 2.15(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation, or other retirement plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee pension benefit plan" as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Seller with respect to the operation of the Hospital, whether oral or written, which constitutes an "employee welfare benefit plan" as defined in Section 3(1) of ERISA, and (iii) each other employee benefit or perquisite provided by Seller with respect to the operation of the Hospital, in which any employee of Seller participates in his capacity as such (collectively, the "**Seller Plans**").

2.16 Personnel. Schedule 2.16 sets forth a complete list (as of the date set forth therein) of names, positions and current annual salaries or wage rates and scheduled bonus, and the accrued paid time off pay of all employees of Sellers (including employees of the Hospitals and employees of Verity and Verity Holdings) immediately prior to December 21, 2018, whether such employees are full time employees, part-time employees, on short-term or long-term disability or on leave of absence pursuant to Sellers's policies, the Family and Medical Leave Act of 1993 or other similar Legal Requirements (the "**Hospital Employees**") and indicating whether the Hospital Employee is full- time or part-time. Sellers shall have the right to update to Schedule 2.16(a) to reflect changes in employment status or new hires and terminations occurring after December 21, 2018 by providing a revised schedule to Purchase no later than five (5) Business Days before the date scheduled for the Closing.Insurance. Schedule 2.17 contains a list of all material insurance maintained by Sellers with respect to the Assets and the Businesses, as of the Signing Date.

2.18 Accounts Receivable. To the knowledge of Sellers, all Accounts Receivable included in the Assets at Closing result from the bona fide provision of products or services in the ordinary course of business. All Sellers Accounts Receivable are currently deposited, either electronically or manually, into the bank accounts listed on Schedule 4.25(b).

2.19 Payer Contracts. To the knowledge of Sellers, and subject to Section 365 of the Bankruptcy Code, Schedule 2.19 sets forth a complete list of all written contracts with private third party payers including insurance companies and HMOs (“**Payer Contracts**”). Sellers have provided Purchasers with a true and correct copy of all material Payer Contracts, whether or not entered into in the ordinary course of business, or otherwise required to be disclosed on Schedule 2.20, in each case together with all amendments thereto.

2.20 Excluded Individuals. Except as set forth on Schedule 2.20, to the knowledge of Sellers: neither Sellers, Hospitals nor any director, officer or employee of Sellers or Hospitals (a) was, is or is proposed to be, suspended, excluded from participation in, or sanctioned under, any federal or state health care program (including, without limitation, Medicare and Medicaid) (an “**Excluded Individual**”); (b) has been convicted of any criminal offense related to the delivery of any medical or health care services or supplies, or related to the neglect or abuse of patients; (c) has failed to maintain its current License to provide the services required to be provided by it to or on behalf of Sellers and Hospitals; or (d) is unable to obtain or maintain liability insurance consistent with commercially reasonable industry practices.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Purchaser hereby represents, warrants and covenants to Sellers as to the following matters as of the Signing Date and, except as otherwise provided herein, shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date:

3.1 Authorization. Purchaser has full power and authority to enter into this Agreement and has full power and authority to perform its obligations hereunder and to carry out the transactions contemplated hereby. No additional internal consents are required in order for Purchaser to perform its obligations and agreements hereunder.

3.2 Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming due and valid execution by Sellers, this Agreement constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California, is or will be duly

authorized to transact business in the State of California, and has full power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Violation. Except as set forth in **Schedule 3.4**, neither the execution and delivery by Purchaser of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Purchaser will (a) violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Bylaws or other organizational documents of Purchaser or any contract, lease or other instrument by which Purchaser is bound; (b) require any approval or consent of, or filing with, any governmental agency or authority, (c) violate any law, rule, regulation, or ordinance to which Purchaser is or may be subject, (d) violate any judgment, order or decree of any court or other governmental agency or authority to which Purchaser is subject.

3.5 Brokers and Finders. Neither Purchaser nor any affiliate thereof nor any officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.6 Representations of Sellers. Purchaser acknowledges that it is purchasing the Assets on an "AS IS, WHERE IS" basis (as more particularly described in Section 1.12), and that Purchaser is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of any Seller other than as expressly set forth in this Agreement. Purchaser further acknowledges that no Seller is making any representations or warranties herein relating to the Assets or the operation of the Hospital on and after the Effective Time.

3.7 Legal Proceedings. Except as described on **Schedule 3.7**, there are no claims, proceedings or investigations pending or, to the best knowledge of Purchaser, threatened relating to or affecting Purchaser or any affiliate of Purchaser before any court or governmental body (whether judicial, executive or administrative) in which an adverse determination would materially adversely affect the properties, business condition (financial or otherwise) of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby. Neither Purchaser nor any affiliate of Purchaser is subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to Purchaser or any affiliate of Purchaser which materially adversely affects the condition (financial or otherwise), operations or business of Purchaser or any affiliate of Purchaser or which would adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

3.8 No Knowledge of a Seller's Breach. Neither Purchaser nor any of its affiliates has knowledge of any breach of any representation or warranty by any Seller or of any other condition or circumstance that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c). If information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise and whether before or after the Signing Date) which indicates that Sellers have breached any of its representations and warranties under this Agreement, then the effect shall be as if the representations and warranties had been modified in this Agreement in accordance with the actual state of facts existing prior to the Effective Time such that there will be no breach under Sellers' representations and warranties in relation to such information; *provided, however*, that Purchaser must immediately notify Sellers if any such breach comes to its attention

on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver by Purchaser of Sellers' breach, if any, of any representation or warranty. If any such information comes to Purchaser's attention on or before the Closing Date (whether through a Seller or otherwise, including through updated schedules, and whether before or after the Signing Date) that would give Purchaser a right to terminate this Agreement pursuant to Section 9.1(c), Purchaser must immediately notify Sellers if any such information comes to its attention on or before the Closing Date, and Purchaser's failure to so notify Sellers shall constitute a waiver of such right in relation to the relevant breach.

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

3.10 Purchaser Knowledge. References in this Agreement to "Purchaser's knowledge" or "the knowledge of Purchaser" means the actual knowledge of the Chief Executive Officer, Chief Financial Officer or Chief Operating Officer of Purchaser, without independent research. No constructive or imputed knowledge shall be attributed to any such individual by virtue of any position held, relationship to any other Person or for any other reason.

3.11 Investigation. Purchaser has been afforded reasonable access to, and has been provided adequate time to review, the books, records, information, operations, facilities and personnel of each Seller and the Hospital for purposes of conducting a due diligence investigation of each Seller and the Hospital. Purchaser has conducted a reasonable due diligence investigation of each Seller and the Hospital and has received satisfactory answers to all inquiries it has made respecting each Seller and the Hospital and has received all information it considers necessary to make an informed business evaluation of each Seller and the Hospital. In connection with its due diligence investigation of each Seller and the Hospital, Purchaser has not relied upon any books, records, information, operations, facilities and personnel provided by any Seller, including in making its determination to enter into this Agreement and/or consummate the transactions contemplated hereby.

ARTICLE 4

COVENANTS OF SELLERS

4.1 Access and Information; Inspections.

4.1.1 From the Signing Date through the Effective Time, (a) each Seller shall afford to the officers and agents of Purchaser (which shall include accountants, attorneys, bankers and other consultants and authorized agents of Purchaser) reasonable access during normal business hours at Seller's corporate headquarters in El Segundo, California to, and the right to inspect, the books, accounts, records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital of such Seller and the plant and property of the Hospital of such Seller at the Hospital of such Seller and (b) each Seller shall furnish Purchaser with such additional financial and operating data and other information in such Seller's possession

as to businesses and properties of the Hospital of such Seller as Purchaser or its representatives may from time to time reasonably request; *provided, however*, that such Seller is not obligated to disclose information which is proprietary to such Seller and would not be essential to the ongoing operation of the Hospital of such Seller by Purchaser; *provided, further*, that all disclosures of information shall be consistent with the confidentiality agreements and any other non-disclosure agreements entered into (or to be entered into) among Purchaser, its representatives and such Seller. Purchaser's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of any Seller or the Hospital.

4.1.2 Notwithstanding anything contained herein, no Seller shall be required to provide Purchaser or its representatives or agents access to or disclose information where such access or disclosure would violate the rights of its patients, jeopardize the attorney-client or similar privilege with respect to such information or contravene any law, judgment, fiduciary duty or contract entered into prior to or on the date of this Agreement with respect to such information.

4.2 Cooperation.

4.2.1 Each Seller shall reasonably cooperate with Purchaser and its authorized representatives and attorneys: (a) in Purchaser's efforts to obtain all consents, approvals, authorizations, clearances and licenses required to carry out the transactions contemplated by this Agreement (including, without limitation, those of governmental and regulatory authorities) or which Purchaser reasonably deems necessary or appropriate, (b) in the preparation of any document or other material which may be required by any governmental agency as a predicate to or result of the transactions contemplated in this Agreement, and (c) in Purchaser's efforts to effectuate the assignment of Assumed Contracts to Purchaser as of the Closing Date. Except as may be otherwise requested by a Seller in order to comply with applicable law or regulatory guidance, notwithstanding anything contained herein, other than Bankruptcy Court orders and authorizations, it shall be Purchaser's sole responsibility (including payment of any fees, expenses, filings costs or other amounts) to obtain the Contract and Lease Consents, as well as all governmental consents, approvals, assignments, authorizations, clearances and licenses required to (x) carry out the transactions contemplated by this Agreement, including but not limited to medical licenses and/or (y) transfer any of the Assets, including any Licenses. To the extent Purchaser needs certain information and data which is in the possession of a Seller in order for Purchaser to complete Purchaser's license and permit approval applications, Purchaser shall receive, upon request, reasonable assistance from such Seller in connection with the provision of such information.

4.2.2 Notwithstanding any provision to the contrary contained in this Agreement (including Section 8.7), no Seller shall be obligated to obtain the approval or consent to the assignment, to Purchaser, of any Assumed Contracts or Assumed Leases, from any party to any of the Assumed Contracts or Assumed Leases even if any such contract or lease states that it is not assignable without such party's consent.

4.3 Other Bidders. Purchaser expressly acknowledges and agrees that each Seller has an obligation to seek out and determine the best and highest offer reasonably available for such

Seller's assets in accordance with the Bankruptcy Code, and nothing herein shall amend, modify, alter, diminish or affect such obligation.

4.4 Sellers' Efforts to Close. Each Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Purchaser's obligations under this Agreement to the extent that such Seller's action or inaction can control or materially influence the satisfaction of such conditions; provided, however, that such Seller shall not be required to pay or commit to pay any amount to (or incur any obligation in favor of) any person (other than filing or application fees).

4.5 Termination Cost Reports. Each Seller shall file all Medicare, Medi-Cal and any other termination cost reports required to be filed as a result of the consummation of (a) the transfer of the Assets of such Seller to Purchaser and (b) the transactions contemplated by this Agreement with respect to such Seller, provided that Purchaser shall fund reasonable costs and expenses of preparation, filing and audit of such reports. Purchaser shall permit each Seller access to all Hospital books and records to prepare such reports and shall assist such Seller in the process of preparing, filing, and reviewing the termination cost reports. All such termination cost reports shall be filed by the applicable Seller in a manner that is consistent with current laws, rules and regulations. Each Seller shall be responsible for filing governmental cost reports for the period of January 1, 2019 through the Closing Date. Purchaser shall be responsible for its own cost report filings relating to the Hospitals beginning on the day immediately following the Effective Time.

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-

Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

4.7 Contract With Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement, provided that if the unions refuse to negotiate, or otherwise are not timely, reasonable or realistic in renegotiating, the collective bargaining agreements during the period between the Signing Date and the Closing Date, Sellers and Purchaser will jointly consider, and negotiate mutually in good faith, alternative approaches that may be available and/or necessary to reduce Sellers' labor cost structure, including, but not limited to, seeking to reject the collective bargaining agreement(s).

ARTICLE 5

COVENANTS OF PURCHASER

5.1 Purchaser's Efforts to Close. Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent set forth in ARTICLE 7 and ARTICLE 8 to its or Sellers' obligations under this Agreement to the extent that Purchaser's action or inaction can control or materially influence the satisfaction of such conditions. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement, Purchaser shall be permitted to communicate and meet with (a) counter-parties to the agreements and contracts of the Hospitals, included those included in Assumed Obligations, regarding the terms and conditions under which they may be assumed and assigned to Purchaser, and (b) applicable governmental and regulatory authorities regarding prospective compliance with regulatory requirements and related issues; so long as, in the case of each of (a) and (b) (i) such communications and meetings do not interfere with the operation of the Businesses or the conduct of the Bankruptcy Cases and (ii) any communications or meetings with any governmental authority are approved in advance by Sellers as to timing and content (and Sellers are copied on such communications and afforded the opportunity to participate in such meetings).

5.2 Required Governmental Approvals.

(a) Purchaser, at its sole cost and expense (a) shall use its best efforts to secure, as promptly as practicable before the Closing Date, all consents, approvals (or exemptions therefrom), authorizations, clearances and licenses required to be obtained from governmental and regulatory authorities in order to carry out the transactions contemplated by this Agreement and to cause all of its covenants and agreements to be performed, satisfied and fulfilled (and provide Sellers copies of all materials relating to such consents, approvals, authorizations, clearances and licenses upon submission and all materials received from third parties in connection with such consents, approvals, authorizations, clearances and licenses upon receipt), and (b) will provide such other information and communications to governmental and regulatory authorities as any Seller or such authorities may reasonably request. Purchaser will provide Sellers periodic and timely updates regarding all such consents, approvals, authorizations, clearances and licenses. Purchaser is responsible for all filings with and requests to governmental authorities necessary to enable Purchaser to operate the Hospital at and after the Effective Time. Purchaser shall, promptly, but no later than thirty (30) business days after the entry of the Sale Order or sooner if required by applicable governmental or regulatory authorities, file all applications, licensing packages and other similar documents with all applicable governmental and regulatory authorities which are a prerequisite to obtaining the material licenses, permits, authorizations and provider numbers described in Section 8.1. Purchaser shall be entitled, but not obligated, to obtain the Contract and Lease Consents. Purchaser shall be entitled, but not obligated, to solicit and obtain estoppel certificates from any third party to any Leased Real Property. Purchaser's failure to obtaining any or all of the Contract and Lease Consents or estoppel certificates as of the Closing Date shall not be a condition precedent to either party's obligation to close the transactions contemplated by this Agreement.

(b) Purchaser and Sellers agree that because the change of ownership and regulatory approval process in connection with the transactions contemplated by this Agreement may take an extended period of time, Purchaser and Sellers agree to an initial closing effective upon the approval of the court and upon the approval of the transaction by the CA AG (as defined below) in accordance with Sections 7.5 and 8.6, at which time the Assets (less the portion of the Assets constituting drugs or other pharmacy assets) will be sold to Purchaser and immediately leased back

to Sellers, with a concurrent management agreement entered into at that time upon terms mutually agreeable to the parties in their reasonable business judgment. The Sale Leaseback Agreement and Interim Management Agreement will terminate at the Closing when the Purchaser is issued the Licenses necessary to operate the Hospitals directly (namely, the Hospital Licenses and pharmacy permits).

5.3 Certain Employee Matters.

(a) Purchaser agrees to make offers of employment, effective as of the Effective Time, to substantially all persons (whether such persons are full time employees, part-time employees, on short-term or long-term disability or on leave of absence, military leave or workers compensation leave) (the “**Hospital Employees**”) who, immediately prior to the Effective Time are: (i) employees of any Seller; (ii) employees of any affiliate of any Seller which employs individuals at the Hospital and are listed on Schedule 5.3; or (iii) employed by an affiliate of any Seller and are listed on Schedule 5.3. For the avoidance of doubt, the Hospital Employees shall not include any employees of Verity or any other affiliate of Seller unless such individual is listed on Schedule 5.3. Any of the Hospital Employees who accept an offer of employment with Purchaser as of or after the Effective Time shall be referred to in this Agreement as the “**Hired Employees**.” All employees who are Hired Employees shall cease to be employees of the applicable Seller or its affiliates as of the Effective Time.

(b) Purchaser shall give all Hired Employees full credit for paid time off pay to such employees as of the Closing Date by crediting such employees the time off reflected in the employment records of the applicable Seller and/or any of its affiliates immediately prior to the Effective Time, subject to compliance with applicable law and regulation, including consent of such employees if required.

(c) After the Closing Date, Purchaser’s human resources department will give reasonable assistance to each Seller and its affiliates with respect to such Seller’s and such Seller’s affiliates’ post-Closing administration of such Seller’s and such Seller’s affiliates’ pre-Closing employee benefit plans for the Hospital Employees. Within five (5) days after the Closing Date, Purchaser shall provide to each Seller a list of all the Hospital Employees who were offered employment by Purchaser but refused such employment along with a list of all Hired Employees (which such list Purchaser shall periodically update).

(d) With respect to any collective bargaining agreements or labor contract with respect to any employees, Purchaser shall comply with the applicable laws and bankruptcy court orders relating to collective bargaining agreements or labor contracts.

(e) The provisions of this Section 5.3 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith or any employee benefit plan or trustee thereof shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan for any purpose.

5.4 Excluded Assets. As soon as practicable after the Closing Date, Purchaser shall deliver to each Seller or such Seller’s designee any Excluded Assets of such Seller found at the

Hospital on and after the Effective Time, without imposing any charge on any Seller for Purchaser's storage or holding of same on and after the Effective Time.

5.5 Waiver of Bulk Sales Law Compliance. Purchaser hereby waives compliance by Sellers with the requirements, if any, of Article 6 of the Uniform Commercial Code as in force in any state in which the Assets are located and all other laws applicable to bulk sales and transfers.

5.6 Attorney General. Promptly after entry of the Sale Order, but in any event within ten (10) calendar days, Purchaser shall, at its sole cost and expense, make any notices or other filings with the Attorney General of the State of California (the "CA AG"). Each Seller shall reasonably cooperate with Purchaser in such notices or other filings.

5.7 Conduct Pending Closing. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, unless Sellers shall otherwise consent in writing, Purchaser shall not take any action or fail or omit to take any action which would cause any of Purchaser's representations and warranties set forth in ARTICLE 4 to be inaccurate or untrue as of the Closing.

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

5.9 Operating Covenant. Purchaser shall act in good faith and use Purchaser's commercially reasonable efforts to serve the medical needs of each Hospital's service area.

5.10 HSR Filing. Purchaser and each Seller will as promptly as practicable, and in any event no later than five business days after the date of the Sale Order, file with the Federal Trade Commission and the Department of Justice the notification and report forms required for the transactions contemplated hereby and any supplemental information that may be reasonably requested in connection therewith pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), which notification and report forms and supplemental information will comply in all material respects with the requirements of the HSR Act. Purchaser shall pay all filing fees required with respect to the notification, report and other requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such information and assistance as the other shall reasonably requires in connection with the preparation and submission to, or agency proceedings by, any governmental authority under the HSR Act, and each of Purchaser and Sellers shall keep the other promptly apprised of any communications with, and inquires or requests for information from, such governmental authorities. Purchaser shall take such action (including divestitures or hold separate arrangements) as may be required by any governmental authority in order to resolve with the minimum practicable delay any objections such governmental authorities may have to the transactions contemplated by this Agreement under the HSR Act.

5.11 Contract with Unions. Representatives of Sellers who are parties to collective bargaining agreements and Purchaser shall meet and confer from time to time as reasonably requested by either party to discuss strategic business options and alternative approaches in negotiating each collective bargaining agreement. The applicable Sellers and Purchaser shall each participate in all union negotiations related to any specific collective bargaining agreement. Promptly following the Signing Date, applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchaser and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. The applicable Sellers will not unreasonably withhold, condition or delay approval or implementation of any successfully renegotiated collective bargaining agreement to be assumed by Purchaser. The parties recognize that an applicable Seller's failure to secure a modification to any collective bargaining agreement, or to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement. In addition, Sellers may, in their discretion, seek to reject any or all of the collective bargaining agreement(s).

ARTICLE 6

SELLERS' BANKRUPTCY AND BANKRUPTCY COURT APPROVAL

6.1 Bankruptcy Court Approval; Overbid Protection and Break-Up Fee.

(a) Sellers and Purchaser acknowledge that this Agreement and the sale of the Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases are subject to Bankruptcy Court approval, and that this Agreement is subject to termination in its entirety in the event any Seller receives a better and higher offer for the Assets in accordance with the Bankruptcy Code and subject to the terms stated herein.

(b) Promptly following the execution of this Agreement by all parties, the Seller shall file a motion with the Bankruptcy Court (the "**Sales Procedures Motion**"), the content of which shall be subject to the reasonable approval by Purchaser, for entry of an order approving bid procedures and overbid protections containing substantially the following terms and conditions:

(1) the Seller shall not accept any offer to sell the Assets subject to this Agreement ("**Overbid**") to another purchaser ("**Overbidder**") unless that offer exceeds the Purchase Price by an amount sufficient to pay the Break-Up Fee and such offer includes the purchase of substantially all Assets subject of this Agreement;

(2) in the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the "**Alternate Transaction**") and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order, and (b) Purchaser shall be paid a break-up fee of three and one-half percent (3.25%) of the Cash Consideration (\$19,825,000.00) plus reimbursement of reasonably documented reasonable costs and expenses incurred by Purchaser related to its due diligence, and pursuing, negotiating, and documenting the transactions contemplated by this Agreement in an amount not to exceed \$2,000,000.00 (the "**Break-Up Fee**"); provided, however, that in the event that

the Purchaser is successful as to some but not all of the Assets, the Break-Up Fee shall be reduced pro rata to the percentage of Assets not actually purchased by the Purchaser, based on the allocation of the Purchase Price as described in Section 1.1(a)(i), as compared to the Assets which were the subject of this Agreement; in the event that Purchaser terminates this Agreement in accordance with Section 8.6 hereof, expenses of Purchaser incurred in satisfaction of Section 8.6 shall be reimbursed up to \$500,000; and

(3) The Break-Up Fee shall be deemed to be an allowed expense of the kind specified in Section 503(b) of the Bankruptcy Code to be paid solely from the proceeds of the Alternate Transaction, pursuant to the Sale Order. The Break-Up Fee shall not be paid if the Alternate Transaction was pursued due to a material breach by the Purchaser or the Purchaser's failure or refusal to consummate the transaction after the satisfaction or waiver of all closing conditions.

The Sales Procedures Motion will contain bid procedures as set forth in the bid procedures attached hereto as **Schedule 6.1(b)(3)**.

If Sellers fails to obtain Bankruptcy Court approval for the Sales Procedures Motion by no later than four weeks after the end of the Final Diligence Period, Purchaser shall have the right to terminate this Agreement, without recourse or liability, and Seller shall immediately thereafter return to Purchaser the Deposit and any interest earned thereon.

(c) Each Seller shall at the Sale Hearing exercise reasonable efforts to obtain a "Sale Order" approving this Agreement, subject to its obligations in respect of any better and higher offer for such Seller's assets in accordance with the Bankruptcy Code. For purposes of this Agreement, the term "**Sale Order**" shall mean an order of the Bankruptcy Court authorizing the sale of the Assets (including the assumption and assignment of the Assumed Contracts and Assumed Leases) to Purchaser consistent with this Agreement and in a form reasonably satisfactory to Purchaser.

(d) Each Seller agrees to proceed in good faith to obtain Bankruptcy Court approval of the sale contemplated herein with a determination that Purchaser is a good faith purchaser pursuant to Bankruptcy Code section 363(m) and to file such declarations and other evidence as may be required to support a finding of good faith.

(e) Each Seller shall seek an order from the Bankruptcy Court retaining jurisdiction over all matters relating to claims against such Seller as debtor solely in the Bankruptcy Court.

6.2 Appeal of Sale Order. In the event an appeal is taken or a stay pending appeal is requested from the Sale Order, Sellers shall immediately notify Purchaser of such appeal or stay request and shall provide to Purchaser promptly a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders. In the event of an appeal of the Sale Order, Sellers shall be primarily responsible for drafting pleadings and attending hearings as necessary to defend against the appeal; provided, however, Purchaser, at its option, shall have the right to

participate as a party in interest in such appeal. In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before 45 days from the date of the stay is issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.

ARTICLE 7

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers' obligation to sell the Assets and to close the transactions as contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 Signing and Delivery of Instruments. Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of this Agreement.

7.2 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction or any other governmental body and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 Performance of Covenants. Purchaser shall have in all respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

7.4 Governmental Authorizations. Purchaser shall have obtained all material licenses, permits and authorizations from governmental agencies or governmental bodies that are necessary or required for completion of the transactions contemplated by this Agreement, including reasonable assurances that any material licenses, permits and authorizations not actually issued as of the Closing will be issued following Closing (which may include oral assurances from appropriate governmental agencies or bodies).

7.5 Attorney General Provisions. The conditions to Purchaser's obligations to close set forth in Section 8.6 shall have been satisfied.

7.6 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

7.7 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

7.8 CSCDA Acknowledgement. The CSCDA and PACE Trustee shall have executed acknowledgements in form and substance acceptable to Sellers that Purchaser is the Successor Property Owner and Obligated Party under the PACE Obligations, and releases of the Sellers from any and all claims arising or accruing prior to the Closing Date.

ARTICLE 8

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

8.1 Governmental Authorizations. Except as otherwise set forth in this Agreement, Purchaser and Sellers shall have obtained licenses, permits and authorizations from governmental agencies or governmental bodies that are required for the purchase, sale and operation of the Hospitals, including without limitation approval of the CA AG (subject to Section 8.6), except in such case where failure to obtain such license, permit or authorizations from a governmental agency or governmental body does not have a Material Adverse Effect.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order and made a finding that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

8.3 Signing and Delivery of Instruments. Sellers shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of this Agreement.

8.4 Performance of Covenants. Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date; *provided, however*, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

8.5 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the transactions contemplated in this Agreement shall have been issued by any court of competent jurisdiction and shall remain in effect on the Closing Date, and further, no governmental entity shall have commenced any action or suit before any court of competent jurisdiction or other governmental authority that seeks to restrain or prohibit the consummation of the transactions contemplated hereby.

8.6 Attorney General Provisions. Purchaser recognizes that the transactions contemplated by this Agreement may be subject to review and approval of the CA AG. Purchaser

agrees to close the transactions contemplated by this Agreement so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth, as Purchaser Approved Conditions, in Schedule 8.6. In the event the CA AG imposes conditions on the transactions contemplated by this Agreement, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to be “materially different.” If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General’s imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied. During any Evaluation Period or Extended Evaluation Periods, Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order, including timely taking reasonable steps in preparation for closing of the transactions described in this Agreement; provided, however, Purchaser shall not be obligated to expend more than \$500,000. For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein,

shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services (“CMS”) and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services (“DHCS”), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers’ Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposes of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

8.8 HSR Act. The applicable waiting period under the HSR Act shall have expired or been earlier terminated.

ARTICLE 9

TERMINATION

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of the parties;
- (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
- (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019, which notice may be given by facsimile or email correspondence; provided, that for the avoidance of doubt, following expiration of the Final Diligence Period, notwithstanding anything else in this Agreement, Purchaser shall not be entitled to terminate this Agreement (or not Close) as a result of the breach of any representation or warranty made by Sellers (or any of them) other than the breach of a Sale Order Date Representation, but in each case solely to the extent such breach of a

Sale Order Date Representation would result in a Material Adverse Effect; provided, further, that any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court;

(d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;

(e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible, and Purchaser has not waived such condition in writing (provided that the failure to satisfy any of the applicable condition or conditions in Sections 8.1 through 8.5 inclusive has occurred by reason other than (i) through the failure of Purchaser to comply with its obligations under this Agreement or (ii) Sellers' failure to provide their closing deliveries on the Closing Date as a result of Purchaser not being ready, willing and able to close the transaction on the Closing Date); provided that upon the imposition of Additional Conditions by the CA AG, Section 8.6 must be satisfied or waived by Purchaser by no later than sixty (60) days thereafter.

(f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible, and Sellers have not waived such condition in writing (provided that the failure to satisfy the applicable condition or conditions has occurred by reason other than (i) through the failure of Sellers to comply with their obligations under this Agreement or (ii) Purchaser's failure to provide its closing deliveries on the Closing Date as a result of Sellers not being ready, willing and able to close the transaction on the Closing Date);

(g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

(h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or

(j) by Purchaser if a force majeure event (such as acts of God, storms, floods, landslides, earthquakes, lightning, riots, fires, pandemics, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities, other national or international calamity, one or more acts of terrorism, or failure of energy sources) shall have occurred between the Signing Date and Closing Date, which event is reasonably likely to have a Material Adverse Effect.

9.2 Termination Consequences. If this Agreement is terminated pursuant to

Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon. Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.

ARTICLE 10

POST-CLOSING MATTERS

10.1 Excluded Assets.

Subject to Section 10.2 hereof, any Excluded Asset (or proceeds thereof) (a) pursuant to the terms of this Agreement, (b) as otherwise determined by the parties' mutual written agreement or (c) absent such agreement, as determined by adjudication by the Bankruptcy Court, which comes into the possession, custody or control of Purchaser (or its respective successors-in-interest, assigns or affiliates) shall, within five (5) business days following receipt, be transferred, assigned or conveyed by Purchaser (and its respective successors-in-interest, assigns and affiliates) to the applicable Seller. Purchaser (and its respective successors-in-interest, assigns and affiliates) shall have neither the right to offset amounts payable to any Seller under this Section 10.1 against, nor the right to contest its obligation to transfer, assign and convey to any Seller because of, outstanding claims, liabilities or obligations asserted by Purchaser against any Seller. If Purchaser does not remit any monies included in the Excluded Assets (or proceeds thereof) to the applicable Seller in accordance with the first sentence of this Section 10.1, such withheld funds shall bear interest at the Prime Rate in effect on the calendar day upon which such payment was required to be made to Seller (the "**Excluded Asset Due Date**") plus five percent (5%) (or the maximum rate allowed by law, whichever is less), such interest accruing on each calendar day after the Excluded Asset Due Date until payment of the Excluded Assets and all interest thereon is made to the applicable Seller.

10.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until seven (7) years after the Closing Date or such longer period as required by law (the "**Document Retention Period**"), Purchaser shall keep and preserve all medical records (including, without limitation, electronic medical records), patient records, medical staff records and other books and records which are among the Assets as of the Effective Time, but excluding any records which are among the Excluded Assets. Purchaser will afford to the representatives of Sellers, any of their affiliates, the Official Committee of the Unsecured Creditors of the Sellers, Sellers' estate representative or any liquidating trustee of the Sellers' bankruptcy estate ("**Seller Parties**"), including their counsel and accountants, full and complete access to, and copies (including, without limitation, color laser copies) of, such records with respect to time periods prior to the Effective Time (including, without limitation, access to

records of patients treated at the Hospital prior to the Effective Time) during normal business hours after the Effective Time, to the extent reasonably needed by any Seller Party for any lawful purpose. Purchaser acknowledges that, as a result of entering into this Agreement and operating the Hospital, it will gain access to patient records and other information which are subject to rules and regulations concerning confidentiality. Purchaser shall abide by any such rules and regulations relating to the confidential information it acquires. Purchaser shall maintain the patient and medical staff records at the Hospital in accordance with applicable law and the requirements of relevant insurance carriers. After the expiration of the Document Retention Period, if Purchaser intends to destroy or otherwise dispose of any of the documents described in this Section 10.2(a), Purchaser shall provide written notice to Sellers of Purchaser's intention no later than forty-five (45) calendar days prior to the date of such intended destruction or disposal. Any of the Seller Parties shall have the right, at its sole cost, to take possession of such documents during such forty-five (45) calendar day period. If any of the Seller Parties does not take possession of such documents during such forty-five (45) calendar day period, Purchaser shall be free to destroy or otherwise dispose of such documentation upon the expiration of such forty-five (45) calendar day period.

(b) Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall give full cooperation to the Seller Parties and their insurance carriers in connection with the administration of Sellers' estate, including, without limitation, in connection with all claims, actions, causes of action or audits relating to the Excluded Assets, Excluded Liabilities or pre-Closing operation of the Sellers or the Hospital that any Seller Party may elect to pursue, dispute or defend, in respect of events occurring prior to the Effective Time with respect to the operation of the Hospital. Such cooperation shall include, without limitation, making the Hired Employees available for interviews, depositions, hearings and trials and other assistance in connection with the administration of Sellers' estate and such cooperation shall also include making all of its employees available to assist in the securing and giving of evidence and in obtaining the presence and cooperation of witnesses (all of which shall be done without payment of any fees or expenses to Purchaser or to such employees); provided that Purchaser shall not be required to incur any out of pocket costs in association therewith. In addition, Sellers and their affiliates shall be entitled to remove from the Hospital originals of any such records, but only for purposes of pending litigation involving the persons to whom such records refer, as certified in writing prior to removal by counsel retained by Sellers or any of their affiliates in connection with such litigation. Any records so removed from the Hospital shall be promptly returned to Purchaser following Sellers' or their applicable affiliate's use of such records.

(c) In connection with (i) the transition of the Hospital pursuant to the transaction contemplated by this Agreement, (ii) Sellers' rights to the Excluded Assets, (iii) any claim, audit, or proceeding, including, without limitation, any tax claim, audit, or proceeding and (iv) the Sellers' obligations under the Excluded Liabilities, Purchaser shall after the Effective Time give Sellers access during normal business hours to Purchaser's books, personnel, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Hospital as representatives of Sellers and their affiliates may from time to time reasonably request, all in such manner as not to unreasonably interfere with the operations of the Hospital.

(d) Purchaser and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Purchaser for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets prior to the Effective Time (excluding confidential employee information, privileged materials and patient records), all in such manner as to not interfere unreasonably with Sellers. Such documents and other materials shall be, at Sellers' option, either (i) copied by Sellers for Purchaser at Purchaser's expense, or (ii) removed by Purchaser from the premises, copied by Purchaser and promptly returned to Sellers.

(e) Purchaser shall comply with, and be solely responsible for, all obligations under the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164) promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 with respect to the operation of the Hospital on and after the Effective Time.

(f) Purchaser shall cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Hospital and other information required by Sellers for reporting to HFAP for the remainder of the quarterly period in which the Closing has occurred.

(g) To the maximum extent permitted by law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities or Excluded Assets, including without limitation, documents relating to the operations of any of the Hospital or any of the Hospital's committees prior to the Effective Time, prior to any disclosure of such documents, Purchaser shall notify Sellers and shall provide Sellers with the opportunity to object to, and otherwise coordinate with respect to, such request or demand.

(h) Provision of Benefits of Certain Contracts. Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract or Assumed Lease, if, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, an attempted assignment thereof, without the consent of the third party thereto, would constitute a breach thereof or in any way negatively affect the rights of Sellers or Purchaser, as the assignee of such Assumed Contract or Assumed Lease, as the case may be, thereunder. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent or approval is required but not obtained, Sellers will cooperate with Purchaser in any reasonable arrangement designed to both (a) provide Purchaser with the benefits of or under any such Assumed Contract or Assumed Lease, and (b) cause Purchaser to bear all costs and obligations of or under any such Assumed Contract or Assumed Lease. Further, notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Account Receivable the assignment of which is either prohibited by law or by the terms of any contract with a payor without the consent of such payor. Any payments received by Sellers after the Closing Date from patients, payors, clients, customers, or others who are the obligors on Accounts Receivables transferred to Purchaser as a part of the Assets on the Closing Date shall be paid over to Purchaser within ten (10) business days after receipt by Seller.

10.3 Closing of Financials. Provided that Purchaser shall not incur any out of pocket costs, Purchaser shall cause the individual acting as the chief financial officer of the Hospital after the Effective Time (the "**Post-Effective Time CFO**") to cooperate with Sellers' representatives in

order to complete the standardized closing of Sellers' financial records through the Closing Date including, without limitation, the closing of general ledger account reconciliations (collectively, the "**Closing of Financials**"). Purchaser shall cause the Post-Effective Time CFO to use his or her good faith efforts to cooperate with Sellers' representatives in order to complete the Closing of Financials by no later than the date which is thirty (30) calendar days after the Closing Date. The Post-Effective Time CFO and other appropriate personnel shall be reasonably available to Sellers for a period of no less than one hundred eighty (180) calendar days after the Closing Date to assist Sellers in the completion of Sellers' post-Closing audit, such assistance not to interfere unreasonably with such Post-Effective Time CFO's other duties.

10.4 Medical Staff. To ensure continuity of care in the community, Purchaser agrees that the Hospital's medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. On and after the Effective Time, the medical staff will be subject to the Hospital's Medical Staff Bylaws then currently in effect, provided that such Bylaws are in compliance with all applicable laws and regulations and contain customary obligations.

10.5 Shared Intangible Assets. In the event and to the extent that certain intangible Assets transferred by Sellers have been used to operate businesses of Verity or Verity Holdings or their affiliates which are not being sold to Purchaser ("**Shared Intangible Assets**") and such Shared Intangible Assets continue to be used by Verity or Verity Holdings or their affiliates to operate such businesses after Closing, Verity and Verity Holdings retain the rights to continue to use such Assets notwithstanding their sale to Purchaser. Purchaser shall reasonably cooperate with Verity and Verity Holdings and their affiliates to give effect to such rights and shall provide Verity and Verity Holdings and their affiliates such documentation, records and information and reasonable access to such systems as necessary for Verity and Verity Holdings and their affiliates to continue to operate such businesses; all in such manner as not to reasonably interfere with the operations of the Hospitals; provided, however, Purchaser shall not be required to incur any out-of-pocket costs in association therewith unless reimbursed by Verity and Verity Holdings and their affiliates.

ARTICLE 11

DEFAULT, TAXES AND COST REPORTS

11.1 Purchaser Default. If Purchaser commits any material default under this Agreement, Sellers shall have the right to sue for damages; provided, however that the amount of such damages shall never exceed \$60,000,000.00. For the avoidance of doubt, Sellers shall have no right to sue for specific performance under this Agreement.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

11.3 Tax Matters; Allocation of Purchase Price.

(a) After the Closing Date, the parties shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to tax liabilities or potential tax liabilities attributable to Sellers with respect to the operation of the Hospital for all periods prior to the Effective Time and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof. The parties shall also make available to each other to the extent reasonably required, and at the reasonable cost of the requesting party (for out-of-pocket costs and expenses only), personnel responsible for preparing or maintaining information, records and documents in connection with tax matters and as Sellers reasonably may request in connection with the completion of any post-Closing audits of the Hospital.

(b) The Purchase Price (including any liabilities that are considered to be an increase to the Purchase Price for United States federal income Tax purposes) shall be allocated among the Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder as set forth in **Schedule 11.3(b)** (such schedule the “**Allocation Schedule**”). The Allocation Schedule shall be for Sellers’ and Purchaser’s tax purposes only, and shall not limit the Sellers’ creditors in any way.

11.4 Cost Report Matters.

(a) Consistent with Section 4.5, Sellers shall, at Purchaser’s expense, prepare and timely file all cost reports relating to the periods ending prior to the Effective Time or required as a result of the consummation of the transactions described in this Agreement, including, without limitation, those relating to Medicare, Medicaid, and other third party payors which settle on a cost report basis (the “**Seller Cost Reports**”).

(b) Upon reasonable notice and during normal business office hours, Purchaser will cooperate reasonably with Sellers in regard to Sellers’ preparation and filing of the Seller Cost Reports. Such cooperation shall include, at no cost to Sellers, obtaining access to files at the Hospital and Purchaser’s provision to Sellers of data and statistics, and the coordination with Sellers pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings. Sellers shall have no obligations after the Effective Time with respect to Seller Cost Reports except for preparation and filing thereof.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Purchaser any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Purchaser at any time and shall take any and all other actions reasonably requested by Purchaser at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Purchaser, the Assets. After consummation of the transaction contemplated in this Agreement, the parties agree to cooperate with each other and take such further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement, the documents referred to in this Agreement and the transactions contemplated hereby.

12.2 Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; *provided, however*, that no party hereto may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties which consent shall not be unreasonably withheld or delayed, except that Purchaser may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its affiliates prior to the Closing Date.

12.3 Governing Law; Venue. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the laws of the State of California (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such State are superseded by the Bankruptcy Code or other applicable federal law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties hereto.

12.5 Exhibits, Schedules and Disclosure Schedule. The Disclosure Schedule and all exhibits and schedules referred to in this Agreement shall be attached hereto and are incorporated by reference herein. From the Signing Date until the Closing, the parties agree that Sellers may update the Disclosure Schedule as necessary upon written notice to Purchaser, and the applicable representation and warranty shall thereafter be deemed amended for all purposes by such updated Disclosure Schedule. Notwithstanding the foregoing, but subject to Section 9.2(c), should any exhibit or schedule not be completed and attached hereto as of the Signing Date, Sellers and Purchaser shall promptly negotiate in good faith any such exhibit or schedule, which exhibit or schedule must be acceptable to each of Sellers and Purchaser in their reasonable discretion prior to being attached hereto. Any matter disclosed in this Agreement or in the Disclosure Schedule with reference to any Section of this Agreement shall be deemed a disclosure in respect of all sections to which such disclosure may apply. The headings, if any, of the individual sections of the Disclosure Schedule are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. The Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of Article III merely for convenience, and the disclosure of an item in one section of the Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such disclosure, notwithstanding the presence or absence of an appropriate section of the Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

12.6 Notices. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including facsimile) or overnight courier, or five (5)

calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Sellers: Verity Health System of California, Inc.
2040 East Mariposa St.
El Segundo, CA 90245
Attention: Rich Adcock, CEO
Telephone: 424-367-0630

With copies to: Dentons US LLP
(which copies shall 601 South Figueroa St., Suite 2500
not constitute notice) Los Angeles, CA 90017-5704
Attention: Samuel R. Maizel, Esq.
Telephone: 213-892-2910
Facsimile: 213-623-9924

If to Purchaser: Strategic Global Management, Inc.
9 KPC Parkway, Suite 301
Corona, CA 92879
Attention: William E. Thomas
Facsimile: 951-782-8850

With copies to: Levene, Neale, Bender, Yoo & Brill L.L.P.
(which copies shall 10250 Constellation Blvd., Suite 1700
not constitute notice) Los Angeles, CA 90067
Attention: Gary E. Klausner, Esq.
Facsimile: 310-229-1244

and
Loeb & Loeb LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067
Attention: Allen Z. Sussman, Esq.
Facsimile: 310-919-3934

or at such other address as one party may designate by notice hereunder to the other parties.

12.7 Headings. The section and other headings contained in this Agreement and in the Disclosure Schedule, exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement or the Disclosure Schedule, exhibits and schedules hereto.

12.8 Publicity. Prior to the Closing Date, Sellers and Purchaser shall consult with each other as to the form and substance of any press release or other public disclosure materially related

to this Agreement or any other transaction contemplated hereby and each shall have the right to review and comment on the other's press releases prior to issuance; *provided, however*, that nothing in this Section 12.8 shall be deemed to prohibit either Sellers or Purchaser from making any disclosure that its counsel deems necessary or advisable in order to satisfy either party's disclosure obligations imposed by law subject to reasonable prior notice to the other party thereof.

12.9 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by all parties hereto.

12.10 Gender and Number; Construction; Affiliates. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable. Unless otherwise expressly provided, the word "including" followed by a listing does not limit the preceding words or terms and shall mean "including, without limitation." Any reference in this Agreement to an "affiliate" shall mean any Person directly or indirectly controlling, controlled by or under common control with a second Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. A "Person" shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

12.11 Third Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement, except for the parties' successors and permitted assigns, and except for any liquidating trustee or plan administrator for Sellers' estate.

12.12 Expenses and Attorneys' Fees. Except as otherwise provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including without limitation, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives, incidental to the preparation and carrying out of this Agreement, whether or not the transactions contemplated hereby are consummated. The parties expressly agree that all sales, transfer, documentary transfer and similar taxes, fees, surcharges and the like in connection with the sale of the Assets shall be borne by Purchaser. If any action is brought by any party to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees.

12.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto. The parties agree that facsimile copies of signatures shall be deemed originals for all purposes hereof and that a party may produce such copies, without the need to produce original signatures, to prove the existence of this Agreement in any proceeding brought hereunder.

12.14 Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits and schedules, and the documents referred to in this Agreement contain the entire understanding

between the parties with respect to the transactions contemplated hereby and supersede all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the parties on the subject matter hereof (the “**Superseded Agreements**”), which Superseded Agreements shall be of no further force or effect; provided, that notwithstanding the foregoing, the letter Confidentiality Agreement dated July 12, 2018 between Purchaser and Cain Brothers, a division of KeyBanc Capital Markets Inc., on behalf of Sellers and their related entities shall not be a Superseded Agreement and shall continue in full force in effect in accordance with its terms.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a party shall not be deemed to be a waiver of any preceding breach by any other party of any term, covenant or condition of this Agreement, other than the failure of such other party to perform the particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be construed as a waiver of any other term, covenant or condition of this Agreement.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.17 Time is of the Essence. Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

PURCHASER:

**STRATEGIC GLOBAL
MANAGEMENT, INC.,**
a California corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SELLERS:

ST. FRANCIS MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

ST. VINCENT MEDICAL CENTER,
a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

**ST. VINCENT DIALYSIS CENTER,
INC.**

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

SETON MEDICAL CENTER,

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

VERITY HOLDINGS, LLC,

a California limited liability company

Signature By: _____
Print Name: _____
Title: _____
Date: _____

**VERITY HEALTH SYSTEM OF
CALIFORNIA, INC.,**

a California nonprofit public benefit
corporation

Signature By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit E

Deal Breakers Correspondence



XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3430
Facsimile: (415) 703-5480
E-Mail: Scott.Chan@doj.ca.gov

August 16, 2019

VIA EMAIL AND US MAIL

Hope R. Levy-Biehl
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024

RE: Verity Health System of California, Inc. Notice of Proposed Transfer
St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
Center

Dear Ms. Levy-Biehl:

The Health Care Impact Statements for the proposed sale of the Verity hospitals for St. Vincent and St. Francis were posted today on the Attorney General's web site at <http://oag.ca.gov/charities/nonprofithosp>. Please have your clients review the proposed conditions in the Health Care Impact Statements, and let me know in writing whether any of the conditions are a "deal breaker." If there is such a condition, please provide an explanation why your client considers it a "deal breaker" and provide any supporting documents and information. Please provide your client's response on or before August 23, 2019. If I receive no response, I will assume your client has no such concerns. In addition, California Code of Regulations, Title 11, section 999.5(e)(3)(D) states in pertinent part:

The applicant shall prominently post a copy of the independent health care impact statement on its website available to the public and any applicant's website available to its employees within 24 hours of receipt. If the report is posted on the Attorney General's website, the applicant may provide a prominent link to the report in lieu of posting on its website.

Please have your client post on any and all hospitals' websites available to the public and websites available to its employees or post a link to the Attorney General's website.

Sincerely,

Scott Chan
SCOTT CHAN

Deputy Attorney General

For XAVIER BECERRA
Attorney General

HOOPER, LUNDY & BOOKMAN, P.C.

WRITER'S DIRECT DIAL NUMBER:
(310) 551-8195

WRITER'S E-MAIL ADDRESS:
TSWANSON@HEALTH-LAW.COM

FILE NO. 81318.909

HEALTH CARE LAWYERS & ADVISORS
1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TELEPHONE (310) 551-8111
FACSIMILE (310) 551-8181
WEB SITE: WWW.HEALTH-LAW.COM

OFFICES ALSO LOCATED IN
SAN DIEGO
SAN FRANCISCO
WASHINGTON, D.C.
BOSTON

August 20, 2019

VIA EMAIL AND OVERNIGHT DELIVERY

Scott Chan
Deputy Attorney General
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Verity Health System of California, Inc. Notice of Proposed Transfer of St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical Center.

Dear Mr. Chan:

As you know, our firm is healthcare counsel to Strategic Global Management, Inc. ("SGM"), the purchaser of four of the Verity Hospitals pursuant to the Asset Purchase Agreement between the Verity Chapter 11 Debtors ("Verity") and SGM, as approved by the Bankruptcy Court ("APA").

We have reviewed your letters of August 16, 2019 and August 19, 2019, to Hope R. Levy-Biehl, outside counsel for the Verity, as well as the Initial Health Care Impact Statements ("Impact Statements"), related to St. Vincent Medical Center, St. Francis Medical Center and Seton Medical Center ("Hospitals"), which are referenced in the letters.

In your letters to Ms. Levy-Biehl, you have requested from her the identification of any conditions set forth in the Impact Statements which are considered "deal breakers," and you further requested an explanation as to why Verity would consider any of the conditions deal breakers. Although the letters were not sent to SGM, we do want to communicate to you SGM's position on the proposed conditions set forth in the Impact Statements.

Our client very much appreciates the ongoing efforts of the Attorney General to review our client's proposed acquisition of the Hospitals and related assets, and we look forward to the opportunity of continuing a dialogue with the Attorney General regarding the acquisition of these Hospitals and any conditions that may be attached to the Attorney General's approval of their transfer to SGM.

HOOPER, LUNDY & BOOKMAN, P.C.
HEALTH CARE LAWYERS & ADVISORS

Scott Chan
August 20, 2019
Page 2

However, the conditions recommended in the Impact Statements are materially inconsistent with the conditions which our client had thoughtfully developed and agreed to accept, as set forth in Schedule 8.6 to the APA. SGM continues to investigate and analyze the Hospitals' assets and operations, but SGM still believes that the conditions agreed to in Schedule 8.6 reflect the appropriate and needed approach in support of efforts to address the significant, long standing operational, economic and physical plant challenges facing these Hospitals, many of which were noted in the Impact Statements.

Accordingly, at this juncture, SGM would not accept the conditions proposed in the Impact Statements to the extent they materially differ from the conditions accepted by SGM in Schedule 8.6 to the APA. SGM reserves all of its rights in connection with the APA and, specifically, all of SGM's rights set forth in Section 8.6 thereof.

Nonetheless, as noted above, SGM is continuing its investigation and remains open to discussions with the Attorney General regarding these matters, including face-to-face meetings as appropriate.

Very truly yours,



Todd E. Swanson

TES/sdh

cc: William Thomas, Esq.
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2040 E. Mariposa Avenue
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August 23, 2019

VIA EMAIL AND FEDEX

Scott Chan, Deputy Attorney General
California State Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Response to August 16 and August 19, 2019 Correspondence
Summary of “Deal Breakers”

Dear Mr. Chan,

Please consider this letter the response of Verity Health System of California, Inc. and its affiliates (“Verity” or “Debtors”) to your letters regarding the conditions proposed (the “Recommended Conditions”) by JD Healthcare, Inc. (“JD Healthcare” or “Expert”) in its Health Care Impact Statements (“Impact Statements”), analyzing the proposed sale of St. Francis Medical Center (“St. Francis”), St. Vincent Medical Center (St. Vincent), and Seton Medical Center, including its Daly City and Coastsides Campuses (“Seton”) (collectively, the “Hospitals”) to Strategic Global Management, Inc. and/or one of its affiliated entities (“SGM” or “Buyer”) (the “Transaction”) pursuant to the Asset Purchase Agreement (the “APA”), entered into by and between the parties and approved by the Bankruptcy Court [Docket No. 2305]. We appreciate the opportunity to provide this response.

For the reasons outlined below, if the Attorney General (“AG”) adopts the Recommended Conditions, SGM will not proceed with acquiring the Hospitals. SGM confirmed this in its letter to you dated August 21, 2019, when it stated that “the conditions recommended in the Impact Statements are materially inconsistent with the conditions . . . agreed to in Schedule 8.6.” Importantly, any condition that the AG adopts that is not consistent with Schedule 8.6 is, in our view, a “deal breaker.” Further, if the AG adopts the Proposed Conditions and if the Debtors are unsuccessful in their efforts to cut off the conditions under Section 363 of the Bankruptcy Code¹

¹ Verity reserves the right to challenge the AG’s ability to impose conditions such as the Recommended Conditions in the context of a sale in bankruptcy pursuant to section 363 of the Bankruptcy Code. In this case and *In re Gardens Regional Hospital and Medical Center, Inc.*, 567 B.R. 820 (Bankr. C.D. Cal. 2017), the Bankruptcy Court expressly held, for example, that conditions imposed on a buyer by the Attorney General, as part of the Attorney General’s review of the sale of a non-for-profit hospital, is an “interest in property” that can be stripped off the assets through a sale under section 363 of the Bankruptcy Code. *See also In re Verity Health Sys. of Cal., Inc.*, 598 B.R. 283, 293 (Bankr. C.D. 2018) (holding that the “Conditions are an “interest in property” within the meaning of §363(f). These ruling are consistent with rulings by the Second, Third, Fourth and Seventh Circuits, and many lower courts, which have interpreted “any interest” expansively to include not only in rem interests in property, but also



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and the sale to SGM does not proceed, the likely outcome is the closure of St. Vincent, Seton, and perhaps St. Francis. This would be an unnecessary and avoidable tragedy and would have a dire impact on countless patients, employees, vendors, and stakeholders. This is especially true here when SGM has agreed to continue to operate the Hospitals and to abide by the vast majority of the conditions imposed by the AG in its approval of the BlueMountain Transaction (the “2015 Conditions”)² for the remaining term that the conditions apply to Verity, as set forth in Schedule 8.6 to the APA.

Consequently, we strongly request that your office not accept the Expert’s Recommended Conditions, which are essentially a roll-forward of the 2015 Conditions based on the historic operations and not current patient care needs or market conditions. Instead, we encourage the AG to tailor the conditions to match those outlined in Schedule 8.6 providing SGM with the flexibility necessary to turn the Hospitals around financially, so they can continue to provide critical healthcare access to the communities they serve and thousands of jobs for the foreseeable future.

We further urge the Attorney General to exercise his discretion in a manner that considers the economic impact of the Recommended Conditions on the Hospitals. While the Impact Statements provide a significant amount of information related to the Hospitals background and the Transaction, the reports lack (i) any analysis of the economic impact that the 2015 Conditions have had on the Hospitals, and (ii) any cost-benefit analysis of the Recommended Conditions. Alarming, without regard to the economic and community realities, certain Recommended Conditions, if adopted, would force the Hospitals to maintain programs that not only lose significant amounts of money on an annual basis, but are unnecessary since the same services (and in some instances, more comprehensive or robust services) are already being provided at other hospitals in the area. To aid the Attorney General, we have provided evidence that considers the economic impact of the Recommended Conditions on the Hospitals both in this letter and in the enclosed, supporting declarations. We are happy to provide additional evidence and to discuss this further.

The Attorney General’s consideration of the economic impact of the prospective conditions is critical. We, as operators of the Hospitals, know the 2015 Conditions were overly burdensome and hampered the Hospitals’ ability to break even, let alone prosper. Indeed, the

other obligations that are “connected to or arise from the property being sold” or that could “potentially travel with the property being sold.” See, e.g., *In re La Paloma Generating, Co.*, 2017 WL 5197116, *4 (Bankr. D. Del. Nov. 9, 2017); *PBBPC, Inc. v. OPK Biotech, LLC* (In re PBBPC, Inc.), 484 B.R. 860 (1st Cir. B.A.P. 2013); *In re Vista Marketing Group Ltd.*, 557 B.R. 630 (Bankr. N.D. Ill. 2016); *United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 641 (N.D. Ala. 2016); *In re Tougher Indus.*, 2013 WL 1276501 (Bankr. N.D.N.Y. Mar. 27, 2013).

² These 2015 Conditions are contained in the AG’s “Conditions to Change in Control and Governance of St. Francis Medical Center and Approval of the System Restructuring and Support Agreement by and among Daughters of Charity Health System, Certain Funds Managed by BlueMountain Capital Management, L.L.C., and Integrity Health, L.L.C.” dated December 3, 2015.



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Hospitals filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code on August 31, 2018 to stop hemorrhaging precious cash resources. Verity, its employees, its 10,000 vendors, and other parties have made tireless efforts during the tenure of the Chapter 11 cases to ensure continued patient care and to take the necessary steps to allow the Hospitals to be sold to a new operator that could successfully operate the Hospitals.

The Bankruptcy Court has now approved the Transaction, which paves the way for a better chapter for these Hospitals and the communities they serve. The Attorney General should carefully consider the foregoing and not impose any conditions, based largely on historic operations, that would unravel operational improvements resulting from the heroic efforts of Verity's employees and management to save these Hospitals and inexorably lead to their closure.

We also request the opportunity to meet with you and other key decisions makers before any conditions are finalized in this Transaction, given their importance and the fact that the Recommended Conditions would destroy the Transaction and have a negative impact on tens of thousands of patients, employees, vendors, and stakeholders.

I. The 2015 Conditions and the Chapter 11 Cases

Before discussing the Recommended Conditions, I would like you to have the benefit of my experience overseeing the operations and financial performance of the Hospitals. *See* Enclosed Declaration of Richard G. Adcock, Verity Health System of California, Inc. Chief Executive Officer. Upon my appointment of CEO as the Hospitals, two competing issues were immediately apparent: the Hospitals are (i) critically important to the communities they serve, but (ii) are damaged financially as a result of cumulative decisions made in the last two decades.

While my extensive experience in healthcare has assisted me in understanding and navigating the complex problems threatening the Hospitals, one thing has crystalized for me: *the Hospitals require operational flexibility to adjust to market needs and demands and to effectuate a financial turn-around.* The 2015 Conditions do not allow for that type of flexibility and therefore hamper the Hospitals' ability to succeed. Thus, it is imperative that the Attorney General consider the pragmatic realities of the Hospitals' operations when imposing conditions on the Hospitals. We strongly request that the AG tailor the conditions imposed on this Transaction to align with the Purchaser Approved Conditions in Schedule 8.6, providing SGM with the flexibility to close on the Transaction and turn the Hospitals around so they can continue to provide meaningful health care services, community benefits, and jobs to the communities they serve.

II. SGM Was the Only Qualified Bidder for St. Francis, St. Vincent, and Seton.

Verity conducted a robust process to market and solicit potential buyers. In June 2018, it engaged Cain Brothers, a division of KeyBanc Capital Markets ("Cain"), to identify potential



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buyers of some or all of the Verity hospitals and related assets and commenced discussions with those potential buyers. Cain prepared a Confidential Investment Memorandum and organized an online data site to share information with potential buyers, contacting over 181 prospective strategic and financial buyers beginning in July 2018 to solicit their interest in exploring a transaction regarding the Verity hospitals. As a result of its far-reaching marketing process, Cain received sixteen indications of interest or other proposals and continued to develop potential sales.

Verity, in consultation with Cain and its other advisors, selected SGM's offer to serve as the stalking-horse bid to acquire the assets of St. Francis, St. Vincent, St. Vincent Dialysis Center, Seton, and related assets (the "Assets") through a sale under section 363 of chapter 11 of title 11 of the United State Code (the "Bankruptcy Code"). Following extensive negotiations, SGM and St. Francis, St. Vincent, St. Vincent Dialysis Center, and Seton entered into the APA, which provides for the purchase of the Assets for \$610 million, plus payments of cure costs, as set forth therein.

Thereafter, in accordance with the bidding procedures, Cain continued to actively market the Assets. Cain notified 90 parties of the sale process, directly sent the parties the bidding procedures approved by the bankruptcy court, and represented Cain's availability to assist in the bidding process. Thereafter, sixteen of those parties signaled ongoing interest by their requests for continued access to the data room containing information about the Assets.

Notwithstanding the time, energy, and resources dedicated to this process, SGM submitted the only qualified bid for St. Francis, St. Vincent, and Seton. *Again, and importantly, SGM has agreed to accept, in full or in large part, the majority of the 2015 Conditions imposed by the AG in its approval of the BlueMountain Transaction for the remainder of the term applicable to Verity.* SGM has not agreed to accept those 2015 Conditions in their entirety due to its need for flexibility to turn the Hospitals around financially and to modify or eliminate services that are not financially feasible to retain and/or not necessary to serve the community. The Bankruptcy Court entered orders (i) approving the APA, schedules and exhibits thereto, and (ii) authorizing the sale to SGM under section 363 of the Bankruptcy Code.

III. If the Attorney General's Office Adopts the Conditions Proposed by JD Healthcare, SGM Will Not Acquire the Hospitals.

Verity and SGM engaged in extensive discussions and negotiations about the 2015 Conditions, with Schedule 8.6 developed as a result of compromises and concessions made by the parties regarding what conditions SGM committed to accept, while ensuring it had the flexibility and opportunity to turn the failing healthcare system around. Pursuant to Section 8.6 of the APA, SGM negotiated the requirement to close on the Transaction only if the conditions imposed by the AG are "substantially consistent" with the conditions set forth in Schedule 8.6. As outlined in greater detail below, the Recommended Conditions are not substantially



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consistent with the conditions enumerated in Schedule 8.6 in a number of significant ways and, if adopted by the AG, will result in this Transaction failing. For the avoidance of any doubt, if the AG adopts and imposes any condition on this Transaction that is not consistent with Schedule 8.6, any such condition should be considered by the AG's office as a "deal breaker."

We highlight below some of the material ways in which the conditions proposed by the Expert diverge from Schedule 8.6.

A. The "term" of the Condition

In Schedule 8.6, there are a number of conditions that SGM accepted "for a term which coincides with the remaining term applicable to [the] condition" for the specific Hospital, as set forth in the 2015 Conditions. While SGM agreed to essentially stand in Verity's shoes and to honor the remaining term of the Prior Conditions, it was unwilling to commit to these 2015 Conditions for a more extended period, as these conditions were a key factor contributing to the financial demise of the Hospitals and any requirement to honor these commitments for longer would inhibit SGM's ability to make operational changes necessary to turn the Hospitals around. SGM makes its point in its letter to you when it stated "the conditions agreed to in Schedule 8.6 reflect the appropriate and needed approach in support of efforts to address the significant, long standing operational, economic and physical plant challenges facing these Hospitals, many of which were noted in the Impact Statements."

It is worth noting that in at least some cases (and specifically for Seton), JD Healthcare has recommended that certain conditions be applied to SGM "for the remainder of the term" or in some cases for a period of time that is even shorter than the term remaining on the 2015 Conditions. The AG should apply this same standard to all of the conditions required of SGM (*i.e.*, not longer than the remaining term).

As outlined in greater detail below, if the AG does not allow SGM to honor its conditions for a term that runs concurrent with the term that currently applies to Verity, there is a significant risk that the Hospitals will close. This will result in the loss of critical community-based health care services, jobs, recoveries for creditors, and the loss of over \$9 million annually in charity care and over \$3,300,000 annually in community benefits currently provided by these Hospitals.

The closure of the Hospitals would be a tremendous and completely avoidable loss. By imposing conditions for a period of time that runs concurrent with the 2015 Conditions, the AG would help to ensure that the Transaction closes and the Hospitals remain open, potentially for much longer, once under new ownership, shed from burdensome historic liabilities and challenges and on more solid financial grounds. This will give SGM the time it needs to further evaluate the opportunities and challenges for these Hospitals and to determine what changes are appropriate to ensure their long-term viability and the best and most productive services for the Hospitals going forward. SGM can, at its election, and if financially prudent, continue to honor



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the 2015 Conditions and maintain the beds, services, and offerings beyond this term, but requiring it to do so will terminate this Transaction and result in the loss of all services before the 2015 Conditions have even lapsed.

B. Cancer Care

In its Recommended Conditions, JD Healthcare suggests that the AG require SGM to maintain cancer care at the Hospitals, including radiation therapy at St. Francis and St. Vincent, and inpatient oncology, interventional radiology, radiation therapy, and infusion service at Seton. This condition is a clear deal breaker for SGM.

As a threshold matter, it is important to note that none of the Hospitals offer a comprehensive oncology service today. *See* Enclosed Declaration of Tirso del Junco, Jr. M.D., Verity Health System of California, Inc. Chief Medical Officer. St. Francis, St. Vincent and Seton do not currently provide surgical oncology services. While Seton historically had a more robust oncology service line, two of the medical oncologists previously practicing at the Hospital retired and have not been replaced, which has resulted in a further decline in oncology services, including a significant decline in infusion services.

Importantly, demand for oncology services has been steadily on the decline at each Hospital. The reasons for this decline are a function of changing market conditions and are not a mystery. By its own account, the Expert found that St. Francis' cancer care volume decreased from fiscal year 2017 through fiscal year 2019. There are at least three other community hospitals offering cancer care to the same community of patients served by St. Francis. There has also been a decrease in oncology volume at St. Vincent over the last three years, with at least four other community hospitals and/or academic medical centers providing cancer care services to the same community of patients served by St. Vincent. JD Healthcare notes that cancer is the leading cause of death in Los Angeles. While this is very unfortunate and may well be true, the Expert has not suggested that this is the result of a lack of sufficient providers of oncology services or that the provision of cancer care services at St. Vincent and St. Francis is important in fighting this epidemic.

We cannot look at the provision of oncology services in a vacuum. Oncology is a very expensive service line. *See* Enclosed Declaration of Anita Chou, Verity Health System of California, Inc. Chief Financial Officer In FY 2018, St. Vincent provided 9,435 cancer treatments for a loss of \$995,000. We would anticipate SGM losing an additional \$547,000 as a result of its inability to access drug pricing under the federal 340B Drug Discount Program ("340B pricing"),³ which would result in a projected net loss of approximately \$1.5 million annual in the oncology service line. In FY 2018, Seton provided 8,429 in oncology treatments

³ The 340B Drug Discount Program is a US federal government program created in 1992 that requires drug manufacturers to provide outpatient drugs to non-profit health care organizations at significantly reduced prices. As a for-profit enterprise, SGM is not eligible for 340B pricing.



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for a net loss of \$3.8 million. SGM would have lost an additional \$3 million as a result of its inability to access 340B pricing, with approximately \$2.6 million attributable to higher oncology drug costs. It is not financially feasible to expect Seton, once owned by SGM, to operate an oncology program with diminishing volume and need at a loss of nearly \$7 million per year, especially when the Hospital is already operating at an annual loss of \$60 million. In FY 2018, St. Francis provided 15,556 oncology treatments for a total operating cost of \$11.6 million. This service line generated a net income of \$1.8 million. St. Francis will incur a loss of \$262,000 under SGM ownership in light of its inability to access 340B drugs. Some portion of this would translate into additional costs for the St. Francis oncology program.

St. Vincent and Seton already sustain overwhelming losses each year. While St. Francis is operating at a modest profit, it has significant cash flow challenges and may not be financially successful if it had to stand on its own without the support of the system. Given these challenges, every dollar committed and lost impacts the ongoing operations and viability of the Hospitals. SGM recognized from the inception that maintaining oncology services without access to 340B pricing would negatively impact its ability to operate the Hospitals. While access to cancer care is critical, the Expert found sufficient alternative providers. Despite there being available cancer care providers in each of the Hospitals' communities, the Expert recommended requiring the Hospitals' admittedly partial cancer programs continue. The AG should not adopt these Recommended Conditions, which would require SGM to maintain an expensive, diminishing service line when there are alternative service providers in the Hospital communities.

C. Charity Care

SGM has committed to provide annual charity care funds equal to or greater than \$430,384 for patients at St. Vincent, \$8,000,000 for patients at St. Francis, and \$935,405 for patients at Seton, for a term that coincides with the remaining term of the 2015 Conditions. This translates to a commitment of approximately \$9,400,000 annually to support necessary medical services for patients in need of care. Any additional charity care requirements above these amounts are a deal breaker for SGM, as it would hinder the long term sustainability of the Hospitals' services.

We appreciate JD Healthcare's recognition that health reform and the Affordable Care Act ("ACA") have changed the need for charity care. We agree with JD Healthcare's suggestion that the AG should adjust the required commitment to charity care based on available data from time periods after the implementation of the ACA. However, a three-year lookback period is too long in light of the significant year-over-year changes in the need for charity care. Instead, the AG should look at the actual charity care provided in the past year by St. Francis, St. Vincent and Seton as a more appropriate barometer for the level of charity care that should be offered by the Hospitals prospectively. SGM has committed to a significant minimum amount of charity care in Schedule 8.6 and the AG should accept this commitment.



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SGM has agreed to administer the charity care funds under its existing financial assistance policy applicable across SGM's hospital system. In order to operate an efficient system, SGM will need to have one set of policies, procedures, and patient financial assistance applications. The Expert has recommended that SGM be required to operate under Verity's policy. SGM should be permitted to organize its administration of the charity care funds, consistent with its other hospitals, and in compliance with applicable state and federal law, without being required to continue Verity's specific policy.

D. Community Benefit

SGM has committed to provide annual community benefit services equal to or greater than \$1,076,459 for the communities served by St. Vincent, \$1,439,854 for the communities served by St. Francis, and \$848,434 for the communities served by Seton, for a term that coincides with the remaining term of the Prior Conditions. Any additional community benefit program requirements above these amounts are a deal breaker for SGM, as it would hinder the long-term sustainability of the Hospitals' services. Further, SGM must be afforded the flexibility to determine how best to serve the community and which programs to provide on behalf of each Hospital.⁴

E. Capital Commitment

As of June 30, 2019, Verity expended approximately \$172 million of the \$180 million in capital commitments required as part of the 2015 Conditions applicable to Verity's six hospitals, leaving approximately \$8 million unexpended by Verity. SGM has agreed to pay the previously required, but unexpended Verity capital commitment applicable to the three Hospitals it is acquiring. In order to determine SGM's share of the unexpended \$8 million, we considered the Santa Clara County and SGM asset purchase agreements to arrive at the proxy value of the Verity hospitals of \$845,000,000, comprised of \$235,000,000 for O'Connor Hospital and Saint Louise Regional Hospital, and \$610,000,000 for St. Francis, St. Vincent, and Seton. Based on these figures, SGM is acquiring approximately 72% of the Verity hospital assets. As such, SGM's portion of the outstanding capital commitment as of June 30, 2019, is approximately \$5.8 million.

Provided that Verity does not expend any additional capital expenditures through the closing of the pending APA, then SGM would honor and commit to expend \$5.8 million in capital commitments among St. Francis, St. Vincent, and Seton. If the remaining amount of the original capital commitment pursuant to the 2015 Conditions left unexpended through the closing of the APA is less than the above number, SGM would honor and commit to spend seventy-two percent (72%) of such lesser amount in capital commitments. We understand SGM

⁴ Please note that although St. Francis Career College was referenced in the Expert's recommendations, American Career College bought St. Francis Career College in 2013 and has since closed the Lynwood Campus in 2019.



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would want to maintain the flexibility to determine how best to apportion these required expenditures among the Hospitals based on their individual needs and their operational priorities and to have the opportunity to expend such amounts over five (5) years following the closing pursuant to the APA.

F. Economic Impact of the Expert Proposed Conditions Generally

While the Impact Statements provide a significant amount of information about the Transaction, the Hospital operations and challenges, and the communities they serve, it lacks (i) any of the economic impact the 2015 Conditions have had on the Hospitals or that the Recommended Conditions would have on SGM, and (ii) any cost-benefit analysis of the conditions recommended by the Expert. Verity and SGM agree that many of the services provided by the Hospitals are essential to the communities they serve and that is why SGM has agreed to adopt many of the 2015 Conditions. The Impact Statements fail to consider and discuss the extent to which the economic impact of the proposed conditions guarantees a failed SGM transaction. In its letter to you, SGM states: “the conditions recommended in the Impact Statements are materially inconsistent with the conditions [...] set forth in Schedule 8.6 to the APA.” It goes on to say that “SGM would not accept the conditions proposed in the Impact Statements.”

If the AG adopts the Recommended Conditions, based on the historical conditions, operations and needs and not the present reality, this will result in requirements for the Hospitals to maintain programs that not only lose a significant amount of money on an annual basis but that are also unnecessarily duplicative of other services (sometimes more comprehensive) already offered at other hospitals in the area. This will also result in SGM walking away from this Transaction.

As further discussed below, a failed SGM Transaction would mean closure for all the Hospitals resulting in the loss of access to medical care for hundreds of thousands of community members and patients, put thousands of employees out of work, and deny any financial recovery for former employees with pension rights, as well as other stakeholders.

By way of example, the Recommended Conditions require that SGM maintain transplant services at St. Vincent, including its newly developed liver transplant program, for at least five years from the Closing Date. St. Vincent established its liver transplant program earlier in 2019, performing a total of 10 liver transplants to date. At present, this program is not receiving any reimbursement as it is still going through the initial certification process. The liver transplant program places a significant financial burden on the Hospital. A third-party liver program expert consulting company has produced feasibility and performance projections for the St. Vincent program and anticipates that it will lose \$21 million over 5 years, or somewhere in excess of 15% of the total value of St. Vincent. Liver transplant services were not a required service under the 2015 Conditions and SGM should not be required to maintain liver transplant services at St. Vincent as part of this Transaction.



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Additionally, the Recommended Conditions require SGM to contract with LA Care for St. Francis, and St. Vincent. Verity is currently involved in litigation with LA Care to recover approximately \$15.2 million in underpaid and/or unpaid claims.⁵ See St. Vincent Medical Center v. Local Initiative Health Authority for Los Angeles County dba L.A. Care Health Plan, Case No. 19-01002 at kccllc.net/verity. Requiring SGM to contract with LA Care is unreasonable in light of LA Care's inability to adequately ensure timely and full payment at market rates for services. When both parties can freely negotiate a new contract with needed assurances of payment at market rates, the community benefits. This is not possible if SGM is mandated to contract with LA Care regardless of the contract terms offered by LA Care or LA Care's performance or non-performance under the contract.

These are just a few examples of how the Recommended Conditions fail to take in to account the economic consequences of the suggestions and the impact these would have on hospital viability and prudent operations.

IV. If the AG Imposes the Conditions Recommended by its Expert, and the Debtors are Unsuccessful in their Efforts to Cut Off the Conditions under Section 363 of the Bankruptcy Code, the SGM Sale Will Terminate and St. Vincent and Seton Will Close.

A. The Debtors and Their Stakeholders Will Suffer Immediate Irreparable Harm if the SGM Sale Does Not Close.

The aftermath of a failed SGM sale is the prompt closure of St. Vincent and Seton in light of their unsustainable operational losses, the absence of an interested viable purchaser that would continue operations as acute care hospitals, and the almost certain lack of financing to continue their operations. While St. Francis would attempt a private sale in the bankruptcy case, the Debtors foresee significant challenges notwithstanding the fact that its financial performance may be stronger during parts of the year than the other Hospitals. Indeed, excluding QAF, since it is often difficult to rely on from a working capital perspective due to its sporadic payment pattern, St. Francis would need to borrow greater than \$35 million from the Verity Hospital System throughout the year to manage large working capital fluctuations. The administrative expenses and risks associated with continuing the bankruptcy cases to attempt to identify a new buyer other than SGM, further threaten the Debtors' ability to finance and sell the Hospitals as going concerns and related recoveries to constituents. These threats are borne directly by the communities served by the Hospitals, their patients, employees, and other critical stakeholders, and are material considerations with which to assess the proposed SGM sale.

⁵ To add specific examples, one large category of claims at issue involves services that were authorized by LA Care through delegated vendors but that LA Care denied payment because it had no way to track the delegated vendors' authorization numbers. As a result, LA Care required timely filed electronic claims to be resubmitted in paper. Another example is that LA Care has improperly administered payments under "stop loss" provisions – denying payment to St. Francis, in particular, for services to some of the most needy patients.



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1. St. Vincent and Seton Will Likely Close.

St. Vincent and Seton are likely to close promptly after the SGM transaction fails for two significant reasons tied to their ongoing financial underperformance: (i) the Debtors cannot sustain the operational losses incurred by St. Vincent and Seton without the prospect of a potential purchaser, and (ii) the Debtors must conserve resources to underwrite a sale of St. Francis. St. Vincent and Seton (including both the Daly City and Coastsides campuses) have combined operating losses greater than \$105 million in the 10 months since filing bankruptcy.

The Expert acknowledges that “no other offers were received by the Bankruptcy Court to purchase and operate” St. Vincent and Seton. *See* St. Vincent Report at 86; Seton Report at 87. This finding is consistent with the results of the Debtors’ extensive marketing efforts. As outlined in greater detail above, beginning in July 2018, the Debtors engaged Cain to identify potential buyers of some or all of the Debtors’ Hospitals. Cain contacted over 181 strategic and financial buyers and received 11 indications of interest. None of these indications proposed purchasing and operating St. Vincent or Seton individually. The Debtors cannot sustain incurring ongoing operational losses to maintain the going-concern value of St. Vincent and Seton without the realistic prospect of a purchaser.

These closures would begin almost immediately. Because the failure of the SGM sale puts the recovery of secured creditors at risk, it is almost certain that the secured creditors would object to continued use of their cash collateral to subsidize the losses at St. Vincent and Seton. While the Debtors may be able to obtain an order authorizing the use of cash collateral over their objection, that use would be limited to the amount necessary to avoid harm to patients. Based on the experience of Debtors’ counsel, St. Vincent and Seton would first seek court approval to close their emergency departments and close the Hospitals to new patients. Given the average length of stay for hospital inpatients, we would expect all acute care patients to be discharged within a week. We would expect St. Vincent to be closed in less than one month.

Closure of Seton would be much slower than St. Vincent, given the more involved process of the skilled nursing and sub-acute resident populations at both the Daly City and Coastsides campuses, and would cost tens of millions of dollars to effectuate. We would immediately seek the assistance of the California Department of Public Health, the Center for Medicare and Medicaid Services, the Department of Health Care Services, Santa Clara and San Mateo Counties and other key governmental and non-governmental stake holders to find appropriate placements for the approximately 180 long term and subacute residents at Seton. However, the post-acute care delivery system in Northern California does not have the excess capacity to accept these residents. *See* Enclosed Declaration of Maya Altman, CEO for the Health Plan of San Mateo. We would anticipate many of these residents being displaced across the state and outside of the state in order to find appropriate and available beds and resources. The transfer trauma risk attendant to the closure of Seton’s nursing facility would be significant with patients needing to be transferred, in many cases, hundreds of miles away from their communities, families and support networks.



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Thereafter, the Debtors would most likely attempt a private sale of St. Vincent and Seton after they are closed. After their extensive but ultimately unsuccessful marketing efforts, the Debtors believe that the most likely outcome is a sale to a real estate or similar purchaser without an interest in continuing or reopening the facilities as acute care hospitals, and without the need for Attorney General review. *See In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 826-829 (Bankr. C.D. Cal. 2017) (Robles, J.) (holding that sale of a closed not for profit hospital is not subject to Attorney General review).

2. St. Francis Will Attempt a Private Sale at a Depressed Value with Significant Financial Obstacles and Creditor Scrutiny.

In the event the SGM transaction fails due to the imposition of conditions making continued operations economically unfeasible, the Debtors will turn their efforts to fund a renewed sale process for St. Francis, their only potentially profitable going-concern asset. A St. Francis sale process would face stiff headwinds and present significant liquidity demands, which would be further exacerbated if the Debtors are continuing to incur operating losses associated with St. Vincent and Seton. The Expert cites interviewees who “expressed that if this [SGM] transaction was not finalized, the Hospital would likely be acquired by another organization due to its history of financial success.” *See* St. Francis Report at 85. However, this supposition does not account for the expenses and uncertainties associated with a single-facility sale.

St. Francis realizes substantial economic benefits from its integration in the Verity Health System that would be stripped in a single-facility sale. First, St. Francis cannot sustain itself solely on cash flow from operations. The primary receivables attributable to St. Francis operations—reimbursements and related supplemental payments on account of the Hospital Quality Assurance Fee program—are paid periodically during the year and substantially after the service period to which they relate. As stated previously, excluding QAF, St. Francis must borrow greater than \$35 million from the Verity Hospital System throughout the year in order to manage its large working capital fluctuations. Historically, St. Francis has leveraged financing arrangements entered into by the Verity Health System. The obligated parties under those financing arrangements historically included VHS, O'Connor Hospital, Saint Louise Regional Hospital, Seton, St. Vincent, and St. Francis. St. Francis cannot achieve stable financial operations without access to credit historically supplied on a joint and several basis to the Verity Health System.

St. Francis benefits from the consolidated administrative functions and unified technology of the Verity Health System, which St. Francis would need to arrange for and purchase individually in anticipation of a single-facility sale. The total burden of the cost of the underlying IT systems and licensing agreements for the system, at a cost of more than \$40 million per year, would likely be the burden of St. Francis alone. In addition, St. Francis would bear a significant portion of the current annual overhead costs of over \$100 million that no longer could be spread across the other Hospitals. These two factors will put significant strain



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on the cash flow of the remaining Debtors and would ultimately make completing an extremely quick private sale of St. Francis critical to maintaining any value for the estate.

A private sale is more expedient, but, in the absence of a renewed, robust sale process, the Debtors expect the sale would yield a purchase price hundreds of millions of dollars lower than the SGM Transaction and would receive objections from constituents who would request a new marketing process. Based on the Debtors' experience through the extensive pre-bankruptcy and post-filing marketing efforts, the Debtors are very aware of (i) the difficulty in identifying a purchaser that is both interested in, and capable of, closing on such a transaction, and (ii) the large amount of time and money it takes to sustain ongoing operating losses while working with a prospective buyer through the complex sale process. In these circumstances, the Expert's comment, without support, that there would be "other buyers" if the SGM Transaction failed is at best unsupported and a gross oversimplification of what would be an involved, complicated process. Even if a new deal process were successful and yielded a willing buyer capable of closing, it is highly uncertain whether the Debtors could fund the ongoing operating capital necessary to continue to operate St. Francis while the sale worked its way through the rigorous bankruptcy, AG, and regulatory approval process.

The Debtors' creditors are also likely to object to a fire sale of St. Francis given the already small recoveries available if the SGM sale is successful. A private sale is likely to leave only a partial recovery for secured creditors and, as discussed below, no recovery for other critical stakeholders. These secured creditors and stakeholders are likely to carefully scrutinize such a transaction and demand a longer auction process in lieu of a private sale. Each of these likely demands from secured creditors, other stakeholders, and the Attorney General would expose St. Francis to further financial deterioration arising from the increased administrative and professional costs associated with a lengthy sale process as well as further losses from operations.

It should be noted that even if there are good sales prospects, Verity will likely have no choice but to close St. Francis pending a sale, putting the hospital license in suspense and closing all beds and service lines. This would require a prompt shut-down of St. Francis, including the closure of its emergency room and trauma center as well as its psychiatric unit. While a buyer could apply to have the St. Francis hospital license resurrected and taken out of suspense, this is not without consequence. As a Hospital that relies heavily on government reimbursement and QAF to survive, in taking the license out of suspense, a St. Francis buyer would need to apply for new Medicare and Medi-Cal provider agreements, enduring a period during which the hospital is open but not yet certified. In addition, St. Francis would not be eligible for QAF during the period of time when it is closed, which would also impact its QAF fees and payments upon reopening. All of this would likely have a negative impact on the value of St. Francis as a freestanding hospital as well as its timeline for reopening its emergency department and certain non-essential services.



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B. A Renewed Sale Process Will Materially Delay the Bankruptcy Cases.

The Debtors have administered and financed their bankruptcy cases and plan of liquidation assuming that the cases would conclude shortly after the SGM sale. If SGM does not consummate the sale, then the Debtors will incur additional, unexpected administrative expenses associated with continued operations as they pursue new sales and closures. These expenses—unanticipated by the Debtors and their lenders—will increasingly burden the Debtors’ ability to fund their operations.

While difficult to predict, the Debtors anticipate that a single-facility private sale of St. Francis will take approximately five to six months to close. The bankruptcy court process, assuming that (a) a buyer could be located, and (b) the Debtors would seek a private sale, would last approximately six to eight weeks and involve soliciting potential purchasers, drafting and negotiating an asset purchase agreement and sale motion, and holding a sale hearing on three weeks’ notice to interested parties. The balance of time is allocated to the 90 to 135-day Attorney General review process. This assumes that the private sale of St. Francis would not require a more belabored auction process in bankruptcy court; however, as noted above, creditors disappointed with partial or no recovery on their claims may convince the court that an auction process will result in a higher sale price.

The Debtors anticipate that the private sales of St. Vincent and Seton would take substantially less time to close if the facilities are not operating as acute care hospitals. The Debtors estimate that sales of St. Vincent and Seton could close in no less than two months on the most favorable timeline and for substantially less consideration. This assumes an expedited disposition of the facilities’ patient populations, which we anticipate will be especially challenging for Seton’s long-term patient populations at both the Daly City and Coastsides campuses.

There is significant risk in the Debtors’ ability to fund an additional six-month sale process. These alternative sale timelines, through abbreviated, nevertheless require the Debtors to incur significant administrative expenses. As discussed, the Debtors incur cash flow losses of \$450,000 every day. The Debtors have obtained \$185 million of debtor in possession financing to cover these operational and administrative expenses during their bankruptcy cases because their stakeholders were satisfied that there was a high likelihood of consummating significant asset sales; this matures September 7, 2019. In fact, the financing terms are subject to strict case milestones and short-term budgets based upon consummating sales of the Hospitals by specific dates. *See* Docket No. 309-2 (DIP Credit Agreement, § 7.1 at 63) (the Debtors’ financial covenants include limits on budget variances during the bankruptcy cases); *see id.* (DIP Credit Agreement, § 9.1(q) at 72-76) (providing for defaults if Debtors fail to meet case deadlines including sale deadlines). Without the prospect of an imminent asset sale that would, at a minimum, cover the costs of financing, the Debtors’ ability to obtain financing is a significant risk. The Debtors’ access to cash collateral and proceeds of the O’Connor Hospital and Saint Louise Regional Hospital sale are likewise subject to the liens and limitations of the Debtors’



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secured creditors. The Debtors' ability to fund their operations becomes increasingly dubious as the bankruptcy cases continue without resolution.

C. Patients, Employees, Vendors, Community Members, and Other Essential Stakeholders Bear Directly the Ramifications of a Failed SGM Transaction.

The Attorney General should not ignore the significant economic ramifications of a failed SGM sale because of the negative healthcare impacts on patients and community members. If the SGM sale does not close, patients and community members will lose access to healthcare facilities. Extending the timeline to a sale by six months will also jeopardize the ability to finance the remaining hospital. Furthermore, the degradation in value realized from the asset sales will directly affect key stakeholder recoveries.

1. The Impact on Community Members and Patients

Failure to consummate the SGM sale likely results in the closure of St. Vincent and Seton and risks closure of St. Francis. The Expert recognizes the unique role the Hospitals play in their communities. Although the Debtors challenge the specifics of the proposed conditions, it is indisputable that these facilities provide access to essential healthcare services in their communities. Faced with the possibility of losing these facilities in their entirety, rote application of historical conditions must yield to the pragmatics of economics and demonstrable community need.

St. Francis is a critical safety-net provider of health care services, serving a large number of uninsured and underinsured patients. It is located in a medically underserved area and operates the only trauma center in the service area. It also provides critical acute inpatient psychiatric services as well as a mobile crisis evaluation team.

St. Vincent is the oldest hospital in Los Angeles, providing critical emergency room and other specialized services to the community it serves. In addition to serving almost 180 skilled nursing and subacute residents, Seton also operates a geriatric-psych service line and the only emergency department on the Peninsula in the 55-mile stretch between Santa Cruz and Daly City.

In addition to the possibility of losing these Hospitals, the communities would also lose the charity care and community benefits they offer. This would be a tragic and unnecessary loss.

2. The Impact on Vendors

It is the vendors that have supported the Hospitals during the pendency of the bankruptcy cases, allowing the Hospitals to stay open and to continue providing services in the ordinary course. Under the SGM purchase agreement, these vendors will receive payment in full for their



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support of Verity during its bankruptcy and a failed sale to SGM could put those payments at risk.

In addition, there are thousands of vendors whose contracts will be assumed by SGM pursuant to the sale. As a consequence, these vendors will be paid for their pre-petition claims an estimated total recovery of more than \$50 million. For those vendors whose contracts are not being assumed by SGM, the sale will still provide millions of dollars of recoveries. In total, the failed sale to SGM would cause these vendors to lose tens of millions of dollars in recoveries. Further, there would be a loss of future services by these vendors that would provide the go-forward services to the operating hospitals.

3. The Impact on Employees

St. Francis, St. Vincent, and Seton have approximately 4,950 employees. SGM has committed to retain “substantially all” employees of the Debtors, as set forth in the APA. *See* Docket No, 2305-1 (SGM APA, § 5.3(a) at 27). Similarly, SGM has committed to participate in good faith negotiations of new collective bargaining agreements with the unions. *See id.* (SGM APA, § 4.7 at 25). The SGM sale presents the Debtors’ stakeholders with the best possible alternative, and the failure of the SGM transaction will likely result in losing healthcare access for vulnerable populations as well as the loss of employment for thousands of employees.

V. Conclusion.

For all of the reasons outlined above, the AG should not adopt the Recommended Conditions. This would result in the certain failure of the SGM Transaction and the likely closure of St. Vincent, Seton, and perhaps St. Francis. This would be a devastating loss to the communities the Hospitals serve, to their patients, employees, vendors, creditors, and more. This would entail the unnecessary loss of historic, meaningful, community hospitals with robust histories, dedicated to providing charity care and community benefits, especially when as here, there is a ready buyer in SGM who has agreed to continue to operate the Hospitals and to abide by the vast majority of the 2015 Conditions for the period of time they apply to Verity. We urge you to tailor the conditions imposed on this Transaction to align with the Purchaser Approved Conditions in Schedule 8.6, providing SGM with the flexibility to close on the Transaction and turn the Hospitals around so they can continue to provide meaningful health care services, community benefits, and jobs to the communities they serve.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Adcock'.

Richard G. Adcock, CEO

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that I have personal knowledge of the facts set forth in this declaration, and I would competently testify to them under oath if called as a witness.

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. (“VHS”). Prior thereto, I served as VHS’s Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. Prior to VHS, from 2014 until 2017, I served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas dedicated to health and healing. In this role, I was responsible for leading Sanford Health’s growth and innovation, in addition to direct operational oversight of the following related entities: Sanford Research, Sanford Health Plan; Sanford Foundation (a philanthropic fundraising foundation); Sanford Frontiers (a commercial and real estate company); Profile by Sanford (a scientific weight loss program); and Sanford World Clinic (which operates clinics in multiple countries).

4. From 2012 to 2017, I served as the President of Sanford Frontiers and had the responsibility of starting a new entity within Sanford Health focused on innovative ventures. From 2008 to 2012, I served as Executive Vice President of Sanford Clinic. I was responsible both for (i) working directly with the President of the Clinic to the lead team of Vice Presidents in all aspects of management, and (ii) Sanford World Clinics operations, including the design, opening and operation of several global clinics. From

1 2006 to 2008, I served as the Vice President of Sanford Clinic and was responsible for
2 leading strategic, operational and financial aspects within Sanford Clinic. From 2004 to
3 2006, I served as Director of Clinical Operations at Sanford Children's Specialty Clinic
4 and led the Pediatric Subspecialty Physician program and the clinical practice through all
5 facets of the operation.

6 5. Prior to Sanford Health, I served as the Director of Engineering and Six
7 Sigma Master Black Belt at GE Medical Systems, and before that served as the Vice
8 President of Research and Development and the Co-Owner/Founder of Micro Medical
9 Systems. I have a bachelor of science in business administration and a masters of
10 business administration in healthcare management.

11 6. I have reviewed the conditions proposed (the "Recommended Conditions")
12 by JD Healthcare, Inc. ("JD Healthcare" or "Expert") to the California Attorney General
13 (the "Attorney General") in the Health Care Impact Statements (the "Reports"), analyzing
14 the proposed sale of St. Francis Medical Center ("St. Francis"), St. Vincent Medical
15 Center (St. Vincent"), and Seton Medical Center, including its Daly City and Coastsides
16 Campuses ("Seton") (collectively, the "Hospitals"), to Strategic Global Management, Inc.
17 and its affiliated entities ("SGM"), as reflected in that certain Asset Purchase Agreement
18 (the "APA").

19 7. Upon review of the Recommended Conditions, I urge the Attorney General
20 not to issue the Recommended Conditions, and, instead, to impose the conditions to which
21 SGM has agreed to in Schedule 8.6 to the APA.

22 8. As explained below in detail, the Attorney General should not impose the
23 Recommended Conditions because they do not take into consideration the negative
24 economic impact of the Recommended Conditions nor the negative economic impact of
25 the previously imposed conditions on the Hospitals (the "2015 Conditions").

26 9. The Attorney General should exercise his oversight responsibilities and
27 discretion to impose conditions that consider the economic impact to the Hospitals.

28 10. My extensive experience in healthcare has helped me understand and

1 navigate the complex problems threatening the Hospitals.

2 11. Two competing issues were immediately apparent upon my appointment as
3 CEO: the Hospitals are (i) critically important to the communities they serve, but (ii) are
4 damaged financially as a result of cumulative decisions made in the last two decades.

5 12. After overseeing the operations and financial performance of the Hospitals, I
6 concluded that the only feasible path to maintain Hospital operations was to initiate a
7 bankruptcy process that would allow the transfer of the Hospitals to more financially
8 stable operators, reduce existing liabilities, and commence a process in cooperation with
9 the Attorney General to ensure the continued viability of these important community
10 assets.

11 13. While SGM has the ability to keep these Hospitals open and help them to
12 prosper, the Attorney General's role in that process cannot be understated.

13 14. Specifically, to fix the problems that presently threaten the Hospitals
14 continued viability, the Attorney General must consider the pragmatic realities of the
15 Hospitals' operations.

16 15. The Hospitals require operational flexibility to address the fast-paced
17 changes in the healthcare market. I will use a specific example to illustrate my point.
18 One of the 2015 Conditions requires that St. Francis maintains a fixed number of beds for
19 pediatric patients. However, and by way of example, children in the St. Francis service
20 area often go to the nearby children's hospital for treatment (e.g., Miller Children's,
21 Children's Hospital of Los Angeles, and Women's Hospital). Consequently, St. Francis
22 does not utilize many of the beds it is required to maintain pursuant to the condition.
23 This results in unnecessary operating costs without attendant increases in revenue and,
24 more importantly, prevents St. Francis from instead applying its resources to address the
25 demonstrated needs of the community. In addition, these pediatric beds are needed as
26 general adult inpatient beds. Put simply, 2015 Conditions do not reflect the needs of the
27 market place. This is one of many examples that is repeated across service lines affected
28 by the 2015 Conditions.

1 16. The payor contracts present another example of the negative impact of the
2 2015 conditions on the Hospitals. In my experience, I have never seen a set of conditions
3 that obligate the Hospitals, as providers, to accept a particular payor's contract no matter
4 how disadvantageous the terms and conditions. The Attorney General's mandated
5 requirement to remain in an economically damaging relationship obliterates the Hospitals'
6 ability to negotiate appropriate terms, including reimbursement consistent with market
7 conditions. The Hospital payor contracts are below-market as a result of many years of
8 poor payor contract negotiations coupled with the 2015 Conditions. Stated differently,
9 through the imposition of the conditions, the Attorney General transfers negotiating
10 leverage to the payors and leaves the Hospitals severally disadvantaged. While the
11 Attorney General certainly may not have intended that result at the time the 2015
12 Conditions were imposed, the 2015 Conditions had that impact and accelerated and
13 contributed to the threats facing the Hospitals today.

14 17. While the impact reports provide a significant amount of information
15 related to the Hospital's background and the SGM transaction, the reports are lacking (i)
16 any analysis of the economic impact the 2015 Conditions have had on the Hospitals, and
17 (ii) any cost benefit analysis of the Recommended Conditions.

18 18. Without regard to the economic and community realities, certain
19 Recommended Conditions force the Hospitals to maintain programs that not only suffer
20 significant losses an annual basis, but are unnecessary because the same services (and in
21 some instances, more comprehensive services) are already provided at other Hospitals in
22 the area.

23 19. The Attorney General's consideration of the economic impact of the
24 Recommended Conditions is critical. As a Hospital operator, I know the 2015 Conditions
25 were too burdensome and hampered the Hospitals ability to prosper, as discussed above.
26 Verity, its employees, tens of thousands of vendors and other parties have made tireless
27 efforts during the sale process to ensure high quality continued patient care and to take the
28 necessary steps that would allow the Hospitals to be sold to a new operator that could

1 successfully operate the Hospitals. The Bankruptcy Court has now approved the sale to
2 SGM, which paves the way for these Hospitals and the communities they serve to
3 continue the Hospitals' mission of quality patient care.

4 20. The alternative to an SGM sale is, most likely, the closure of SVMC and
5 Seton in light of their unsustainable operating losses, the absence of an interested viable
6 purchaser that would continue operations as acute care hospitals, and the almost certain
7 lack of financing to sustain their operations.

8 21. While SFMC would most likely attempt a private sale in the bankruptcy
9 cases, I foresee significant challenges. SFMC's financial performance may be stronger
10 during parts of the year than the other Hospitals; however, SFMC relies significantly on
11 the Verity Hospital System to borrow an excess of \$35 million throughout the year to
12 achieve its financial success and has not demonstrated an ability to independently manage
13 large working capital fluctuations. The administrative expenses and risks associated with
14 continuing the cases to attempt to identify a new buyer other than SGM, further threaten
15 the Debtors' ability to finance and sell the Hospitals as going concerns and related
16 recoveries to constituents. These threats are borne directly by the communities served by
17 the Hospitals, their patients, employees, and other critical stakeholders, and are material
18 considerations with which to assess the proposed SGM sale.

19 22. The Reports recognize the unique role the Hospitals play in their
20 communities. Although I disagree with the specifics of the Recommended Conditions, I
21 believe it is indisputable that the Hospitals provide access to essential healthcare services
22 in their communities. Faced with the possibility of losing the Hospitals in their entirety,
23 rote application of the 2015 Conditions should yield to the pragmatics of economics and
24 demonstrable patient care and community need.

25 23. If the SGM transaction does not close, the Debtors, employees, pension
26 holders, other stakeholders, and community members, would be exposed to significant
27 and unrecoverable health care and economic loss.

28 24. Among the stakeholders which will be harmed by a failed SGM sale are the

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vendors that have supported the Hospitals by providing credit terms throughout these cases. Under the SGM sale, these creditors will receive payment for their support of the Hospitals during the sale process. A failed sale to SGM would put that at risk. In addition, there are thousands of vendors whose contracts will likely be assumed by SGM in the sale. Consequently, these vendors will be paid for their pre-petition claims, an estimated total recovery for these vendors of \$50 million. Even those vendors whose contracts are not assumed by SGM are still expected to receive millions of dollars of recoveries. In total, the failed sale to SGM would cost these vendors tens of millions of dollars in recoveries. Further, there would be a loss of future income for services provided to the operating Hospitals on a go-forward basis.

25. The Hospitals have approximately 4,900 employees. SGM has committed to retain “substantially all” employees of the Debtors, as set forth in the APA.

26. The SGM sale presents the Debtors’ stakeholders with the best possible alternative, and the failure of the SGM transaction will likely result in a loss of healthcare access for vulnerable populations, as well as jobs of thousands of employees.

27. Based on the foregoing, I request the Attorney General carefully consider the foregoing and not impose conditions that would threaten to close the Hospitals or otherwise unwind stakeholders’ heroic efforts to save these Hospitals.

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

Executed this 23rd day of August, 2019, in Santa Monica, California.



Richard G. Adcock

DECLARATION OF ANITA CHOU

I, Anita Chou, declare, that if called as a witness, I would and could testify as follows based on my own personal knowledge.

1. I am the Chief Financial Officer (“CFO”) of Verity Health System of California, Inc. (“VHS”). I became the Debtors’ acting CFO on August 20, 2018, and on August 29, 2018, the board of directors appointed me as the CFO. Prior to my appointment as acting CFO, I served as the VHS SVP Hospital Finance, with oversight responsibilities over all of Verity Health System hospitals’ CFOs from February 1, 2018 until August 19, 2018, and as the St. Vincent Medical Center CFO from March 2016 to February 2018. Prior to VHS, I spent three years at Prospect Medical Holdings from March 2013 to March 2016 in various senior level corporate finance positions including Hospital System CFO, ten years as the controller for three different hospital and hospital systems (*e.g.*, Saint John’s Health Center & Affiliates, Valley Presbyterian Hospital, and USC Kenneth Norris Jr. Cancer Hospital), and three years as a Financial Market Analyst for El Camino Hospital. I received my Masters in Health Administration from the University of Southern California in 2005, and my Bachelor of Science from University of California, San Diego in 1998.

2. Debtor VHS, a California non-profit public benefit corporation, is the sole corporate member of the five debtor California non-profit public benefit corporations that operated six acute care hospitals (the “Hospitals”), including St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center, which includes its Daly City and Coastsides Campuses (“Seton”). Seton operates under one consolidated general acute care hospital license. VHS, the Hospitals and their affiliated entities operated as a non-profit healthcare system in the State of California.

3. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CFO for VHS.

4. I have reviewed the Health Care Impact Statements (the “Reports”), analyzing the proposed sale of SFMC, SVMC and Seton to Strategic Global Management, Inc., and its affiliated entities (“SGM”), as reflected in that certain Asset Purchase Agreement (the “APA”).

1 5. The report on SFMC, at pages 92-96, the report on SVMC, at pages 87-90, and the
2 report on Seton, at pages 88-92, set forth JD's recommended conditions (the "Recommended
3 Conditions") for the transactions to the California Attorney General (the "Attorney General"). I
4 urge the Attorney General not to issue the proposed conditions and, instead, to impose the
5 conditions to which SGM has agreed in Schedule 8.6 to the APA.

6 6. The Recommended Conditions for SFMC, SVMC and Seton that deviate from
7 Schedule 8.6 attached to the APA are "deal breakers" and should not be imposed by the Attorney
8 General.

9 **A. St. Francis**

10 7. The Recommended Conditions for SFMC include a requirement that, for at least 10
11 years from the closing date, SFMC maintain cancer services. The current cost to maintain cancer
12 treatment at SFMC exceeds \$11 million annually, which includes the financial advantages that
13 permit SFMC, as a non-profit hospital, to use the 340B program. The 340B Drug Discount Program
14 is a U.S. federal government program that requires drug manufacturers to provide outpatient drugs
15 to eligible health care organizations and covered entities at significantly reduced prices. SGM will
16 operate SFMC as a for-profit enterprise, and, therefore, the 340B program will no longer be
17 available, increasing the cost of pharmaceuticals, and, therefore, the cancer program, by \$262,000
18 per year.

19 8. The Recommended Conditions include a requirement that, for at least 10 years from
20 the closing date, SFMC maintain Wound Care Services. The Wound Care Clinic operated at a
21 \$385,000 net loss in 2018 and is expected to continue to operate at a loss.

22 9. The Recommended Conditions include a requirement that, for at least 10 years from
23 the closing date, SFMC maintain its participation in the Medi-Cal Managed Care Program,
24 continuing its contracts with LA Care Health Plan and Health Net Community Solutions. With
25 Managed Medi-Cal rates that are significantly below market, such a restriction will continue to
26 impose a financial burden upon SFMC as well as hinder its ability to negotiate appropriate payor
27 rates. These contracts have not been renegotiated in the last 5 years in part due to the imposition of
28 the conditions.

B. St. Vincent

10. The Recommended Conditions for SVMC include a requirement that, for at least 5 years from the closing date, SVMC maintain cancer services. The cancer treatment program at SVMC operated at a net loss in 2018 of \$995,000. And, because SGM will operate SVMC as a for profit enterprise, SGM cannot utilize the benefit of the 340B program which will impose additional cost for pharmaceuticals by \$547,000 per year, exacerbating existing operating losses at the facility of over \$65 million annually. With the loss of the 340B program, cancer care at SVMC will operate at a projected increased net loss of approximately \$1.5 million per year.

11. The Recommended Conditions include a requirement that, for 5 years after the closing date, SVMC will continue to provide liver transplant service. The liver transplant program at SVMC started in calendar year 2019. In fact, performance projections prepared by a third-party expert consultant in transplant programs show a 5-year net loss of \$21 million for SVMC. Worse, currently SVMC is not receiving reimbursement for liver transplants because SVMC is still in process of being certified to perform these transplants. Finally, SGM will have to negotiate reimbursement rates with third party payors going forward which may not cover the cost of the surgeries.

12. The Recommended Conditions include a requirement that for 5 years from the closing date, SVMC shall maintain its participation in the Medi-Cal Managed Care program, including continuing contracts with LA Care Health Plan and Health Net Community Solutions, Inc. Just as in the case with SFMC, with Managed Medi-Cal rates that are significantly below market, such a restriction will continue to impose a financial burden upon SVMC as well as hinder its ability to negotiate appropriate payor rates. These contracts have not been renegotiated in more than 5 years in part due to the imposition of the conditions.

C. Seton and Seton Coastside

13. The Recommended Conditions include a requirement that for 6 years Seton continue to offer cancer services at its Daly City Campus. The cancer services at Seton operated at a net loss of \$3.8 million in 2018. The loss of the 340B program will increase costs by \$3 million, of which \$2.6 million is attributable to the loss of infusion therapy services. It is not financially

1 feasible to operate a cancer program at a continuing loss of nearly \$7 million per year for a facility
2 that is currently operating at a loss of \$60 million annually.

3 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
4 inquiry, the foregoing is true and correct.

5 Executed this 23rd day of August, 2019, in El Segundo, California.

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8 Anita Chou
9 Chief Financial Officer
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DECLARATION OF TIRSO DEL JUNCO, JR., M.D.

I, Tirso del Junco, Jr., M.D., declare that if called as a witness, I would and could competently testify thereto, of my own personal knowledge as follows.

1. I am currently the Chief Medical Officer for Verity Health System of California, Inc. (“VHS”). I am licensed and authorized to practice medicine in the State of California. I have been with VHS since its beginning in December 2015. I have also served as VHS’s Associate Chief Medical Officer and as St. Vincent Medical Center’s Chief Medical Officer. Prior to joining VHS, I held several positions at Mission Community Hospital in Panorama City, including associate chief medical officer.

2. Debtor VHS, a California non-profit public benefit corporation, is the sole corporate member of the five debtor California non-profit public benefit corporations that operated six acute care hospitals (the “Hospitals”), including St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center, which includes its Daly City and Coastsides Campuses (“Seton”). Seton operates under one consolidated general acute care hospital license. VHS, the Hospitals and their affiliated entities operated as a non-profit health care system in the State of California.

3. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity the Chief Medical Officer for VHS.

4. I have read the Health Care Impact Statements (the “Reports”) prepared by JD Healthcare (“JD”) analyzing the proposed sale of SFMC, SVMC and Seton to Strategic Global Management, Inc., and its affiliated entities (“SGM”).

5. The report on SFMC, at pages 92-96, the report on SVMC, at pages 87-90, and the report on Seton and Seton Coastsides, at pages 88-92, set forth JD’s recommended conditions (the “Recommended Conditions”) for the transactions to the California Attorney General (the “Attorney General”).

6. The Recommended Conditions for SFMC, SVMC and Seton that deviate from Schedule 8.6 attached to the certain Asset Purchase Agreement are “deal breakers” and should not be adopted by the Attorney General.

A. St. Francis Medical Center

7. The Recommended Conditions for SFMC include a requirement that, for at least 10 years from the closing date, SFMC maintain cancer services, including radiation oncology. First, SFMC currently does not have a full complement of cancer services to offer its patients. In fact, SFMC offers *only* radiation oncology, and does not provide infusion chemotherapy and does not have a formal surgical oncology program; SFMC patients who need these services go to other hospitals. All three of those cancer services are currently being provided to patients within the area by Long Beach Memorial, Downy PIH, Torrance Memorial Medical Center and Lakewood Community Hospital. In other words, other hospitals within the area offer a full array of cancer services that SFMC does not offer, and those hospitals can thoroughly meet the needs for such services in the area. SFMC, as a non-profit hospital, receives the benefit of the 340B program. The 340B Drug Discount Program is a U.S. federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices. SGM will operate SFMC as a for-profit hospital, and, therefore, the 340B program will no longer be available, thereby increasing the cost of supplies.

8. The Recommended Conditions include a requirement that, for at least 10 years from the closing date, SFMC maintain wound care services. The report fails to note that the wound care clinic was re-licensed as a multi-specialty clinic in 2019 (for gastrointestinal services and general surgery, among other specialties); requiring SFMC to continue to provide wound care in the multi-specialty clinic would prevent SFMC from providing in the same clinic at the same time—multi-specialty services to meet community needs. In addition, the report fails to note that the hyperbaric chamber that was utilized in connection with such wound care services was removed by the vendor in 2018. Other hospitals in the area provide wound care services for patients, including Long Beach Memorial, Torrance Memorial and Downey PIH.

B. St. Vincent Medical Center

9. The Recommended Conditions include a requirement that, for at least 5 years from the closing date, SVMC maintain cancer services, including radiation oncology. As is the case with SFMC, SVMC does *not* have a full complement of cancer services to offer its patients; SVMC does

1 not provide infusion or infusion chemotherapy, and does not have a formal surgical oncology
2 program. SVMC patients who require those services are required to go to other hospitals. All four
3 of those services are currently being provided at California Hospital, Good Samaritan, White
4 Memorial, Hollywood Presbyterian and the Norris Cancer Center at USC Keck. In other words,
5 other hospitals within the area offer a full array of services that SVMC does not offer, thoroughly
6 meeting the need for such services in the area. As is the case with SFMC, the 340B program, which
7 permits SVMC as a non-profit hospital, to obtain cancer supplies, principally pharmaceuticals, from
8 vendors at discounted pricing, cannot continue at SVMC because SGM will operate SVMC as a
9 for-profit hospital. The inability to utilize the financial advantages of the 340B program will have
10 a material impact, increasing costs to provide cancer care.

11 10. As to both SFMC and SVMC, there are three facilities designated as National
12 Cancer Institutes within the Los Angeles area, including the Norris Cancer Center at Keck USC
13 Medical Center, City of Hope and UCLA Medical Center. Those facilities provide superior cancer
14 treatment to their patients. All three are within 25 miles of SFMC and SVMC.

15 11. The Recommended Conditions for SVMC include a requirement that, for 5 years
16 after the closing date, SVMC continue to provide liver transplants. The liver transplant program at
17 SVMC only started in 2019. The reality is that the community has 5 neighboring liver transplant
18 centers, which provide the same transplant services as SVMC. The cost to maintain the services is
19 high, best demonstrated by the fact that in regards to the 10 liver transplants surgeries performed
20 so far in 2019, patients have stayed an average of 35 days, which is 15 days over the geometric
21 mean length of stay ("GMLOS"), which is a benchmark to enable comparison of length of stay
22 versus severity of illness, set forth by Medicare. Worse, at the present time, SVMC is not receiving
23 reimbursements because it is awaiting Medicare review of the program for certification.


24 **C. Seton Medical Center and Seton Coastside**

25 12. The Recommended Conditions requiring Seton to provide cancer services at its Daly
26 City Campus should not be required as a condition for approval of the sale by the Attorney General.

27 13. More specifically, the Recommended Conditions include a requirement that for 6
28 years from the closing date, Seton shall maintain cancer services at its Daly City Campus, including

1 oncology services, radiation therapy and infusion services. Seton provides radiation oncology and
2 infusion therapy, but does not have a formal surgical oncology program. Accordingly, just as is
3 the case with SFMC and SVMC, Seton does not have the full complement of cancer services to
4 offer its patients. Seton patients who need the full array of services, that includes surgical oncology,
5 go to other hospitals. A full array of cancer services are currently being provided to patients within
6 the area, at UCSF and Stanford, and at Mills Peninsula which is located within ten miles of Seton.
7 Just as is the case with SFMC and SVMC, other hospitals within the area offer a full array of cancer
8 services, thoroughly meeting the community's needs for such services. Finally, just as is the case
9 with SFMC and SVMC, the 340B program cannot continue in a for-profit hospital as proposed by
10 SGM for Seton. Accordingly, the cost for Seton to provide cancer care without the 340B program
11 will dramatically increase.

12 I declare under penalty of perjury under the laws of the United State that the foregoing is
13 true and correct. Executed this 23rd day of August, 2019, in Los Angeles, California.

14 
15 _____
16 Tirso del Junco, Jr., M.D.

DECLARATION OF MAYA ALTMAN

I, Maya Altman, declare that I have personal knowledge of the facts set forth in this declaration and I would competently testify to them under oath if called as a witness.

1. I am the CEO for the Health Plan of San Mateo. My office is located at 801 Gateway Blvd., South San Francisco, California.

2. The Health Plan of San Mateo (HPSM) is a County Organized Health System (COHS) that contracts with the State of California to operate the Medi-Cal program in San Mateo County. HPSM is the single Medi-Cal plan in this county. HPSM contracts with providers in San Mateo County as well as nearby counties to provide health services, including long term care and skilled nursing care, for its members. Seton Medical Center and Seton Coastsides both currently contract with HPSM. HPSM has approximately 140,000 members; nearly all of them are enrolled in Medi-Cal or dually eligible for both Medicare and Medi-Cal.

3. I have been the CEO of HPSM since 2005. Prior to this position, I was the Director of Finance and Administration for the San Mateo County Health Department. I started with San Mateo County Health in 1994 and worked in various capacities before assuming responsibility for finance and administration.

4. I received a Master's Degree in Public Policy from the University of California at Berkeley, and a Bachelor of Arts degree from Bryn Mawr College.

5. Seton Medical Center and Seton Coastsides offer services to HPSM members that are unavailable or minimally available from other providers. For example, Seton Medical Center operates the only subacute unit in San Mateo County, a 44 bed unit fully occupied with nearly all Medi-Cal beneficiaries. Were Seton Medical Center to close, these ventilator dependent patients would have to be moved to facilities at a great distance from their families.

6. Seton Medical Center and Seton Coastsides operate a combined total of 155 skilled nursing facility beds. HPSM is gravely concerned about the erosion of SNF resources in San Mateo County and the Bay Area for people who are publicly insured

1 through Medi-Cal and Medicare. This is a national trend but is especially problematic in
2 San Mateo County where the population is aging faster than the rest of California. The
3 county's population of residents over the age of 65 is projected to increase by 57% from
4 91,447 in 2015 to 160,366 in 2030. San Mateo County's In Home Support Services
5 (IHSS) Medi-Cal population is already 26% over the age of 85 compared to 15% in the
6 rest of California. San Mateo County has already lost 264 licensed SNF beds since 2009,
7 making it extremely difficult to place Medi-Cal enrollees who need this level of care in
8 nursing facilities.

9 7. Were Seton Medical Center and Seton Coastside to close, Medi-Cal
10 beneficiaries needing skilled nursing facilities would have to be placed in facilities far
11 away, most likely outside of the Bay Area and at a great distance from their families.

12
13 I declare under penalty of perjury under the laws of the United States that the
14 foregoing is true and correct.

15 Executed this 21st day of August, 2019, in South San Francisco, California.

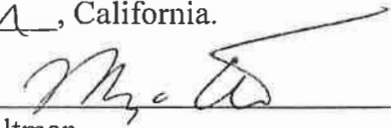
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18 Maya Altman
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EXHIBIT 14

1 UNITED STATES BANKRUPTCY COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 --oOo--

4 In Re:) Case No. 2:18-bk-20151-ER
5)
6 VERITY HEALTH SYSTEM OF) Chapter 11
7 CALIFORNIA, INC.,)
8) Los Angeles, California
9 Debtor.) Tuesday, October 15, 2019
10) 10:00 a.m.

11 HEARING RE: [3188] EMERGENCY
12 MOTION DEBTORS' EMERGENCY
13 MOTION FOR THE ENTRY OF AN
14 ORDER: (I) ENFORCING THE ORDER
15 AUTHORIZING THE SALE TO
16 STRATEGIC GLOBAL MANAGEMENT,
17 INC; (II) FINDING THAT THE
18 SALE IS FREE AND CLEAR OF
19 CONDITIONS MATERIALLY
20 DIFFERENT THAN THOSE APPROVED
21 BY THE COURT; (III) FINDING
22 THAT THE ATTORNEY GENERAL
23 ABUSED HIS DISCRETION IN
24 IMPOSING CONDITIONS ON THAT
25 SALE; AND (IV) GRANTING
RELATED RELIEF; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATIONS IN SUPPORT
THEREOF WARNING: SEE ENTRY
[3192] FOR CORRECTIVE ACTION.
ATTORNEY TO LODGE ORDER VIA
LOU. MODIFIED ON 10/1/2019
(LOMELI, LYDIA R.).

20 TRANSCRIPT OF PROCEEDINGS
21 BEFORE THE HONORABLE ERNEST ROBLES
22 UNITED STATES BANKRUPTCY JUDGE

23
24 Proceedings produced by electronic sound recording;
25 transcript produced by transcription service.

1 LOS ANGELES, CALIFORNIA TUESDAY, OCTOBER 15, 2019 10:00 AM

2 --oOo--

3 (Call to order of the Court.)

4 THE COURT: I will call the now 11:00 o'clock
5 matter, the Verity matters, in just a moment. I'll take
6 appearances first by telephone. We have a number of
7 individuals that are on listen-only mode, in which case I
8 will not be announcing your name, but, when I do announce
9 your name and you intend to make an appearance at the
10 hearing, please give us your appearance.

11 All right. Do we have Caitlin Gray on the line?

12 MS. GRAY: Yes, I'm here.

13 THE COURT: Your appearance, please.

14 MS. GRAY: Caitlin Gray, Weinberg, Roger and
15 Rosenfeld, for SEIU-UHW.

16 THE COURT: Thank you.

17 Debra Riley.

18 MS. RILEY: Yes, your Honor. Debra Riley with
19 Allen Matkins on behalf of California Statewide Community
20 Development Authority.

21 THE COURT: Thank you.

22 Kyrsten Skogstad.

23 MS. SKOGSTAD: Good morning, your Honor. Kyrsten
24 Skogstad, in-house counsel, on behalf of the California
25 Nurses Association.

1 THE COURT: Very well. Thank you.

2 The Court will make some opening comments, just to
3 place all of this into a context. First of all, my
4 apologies for issuing the tentative at the 11th hour. It's
5 not our usual tendency to do that, and, in fact, we weren't
6 going to issue any tentative at all, because I think we
7 had -- well, I know we had some computer issues, and then we
8 had an intervening holiday, and it made it difficult to get
9 this out any earlier than we did.

10 So I apologize for that, but I anticipate that
11 everybody is now familiar with the Court's tentative. If
12 not, it's been posted on the Court's web site. It's
13 available now for those of you on the telephone or in the
14 courtroom with computer availability.

15 This is the culmination of this case. We have at
16 some point a plan and disclosure statement hearing, but all
17 of that posits that we have a sale of the assets of this
18 case. If we don't, it makes no sense to have a plan and
19 disclosure statement. So this is the day and this is the
20 hour. The sale is the linchpin of the plan.

21 So, without a sale, there's no point to going
22 forward, and I reiterate that because I'm not sure if all of
23 the participants at this morning's hearing fully appreciate
24 what that means. If we don't have a plan and disclosure
25 statement that can be approved by the Court, then, on the

1 Court's own motion, or on a motion of an interested party,
2 the Court may dismiss the case, in which case I think that
3 that would spell a disaster for every party that is
4 represented here this morning.

5 In the alternative, the Court might appoint a
6 Trustee. That's no better, because a Trustee has no funds
7 with which to work. So it's not the case that a Trustee
8 would step in the shoes of the Debtor and keep the hospitals
9 open. He or she would not be in a position to do that. In
10 fact, it might be even worse, because that Trustee would
11 have to hire its own counsel, and then would have to make a
12 determination about how best to close the hospitals on an
13 efficient basis, and it may not have the knowledge to be
14 able to do that.

15 There are a number of alternatives that have been
16 proffered to the Court, and I've read the pleadings here.
17 One of them is that there are other and better offers that
18 are in the offing. I take Strategic at its word that, if we
19 don't approve a sale today that is not subject to conditions
20 imposed by the Attorney General, that it will walk away from
21 the deal. That's not something that the Court feels that
22 Strategic is simply trying to obtain a better negotiating
23 position.

24 I think that it's borne out by the financials of
25 these assets. Currently, the sole lending facility for the

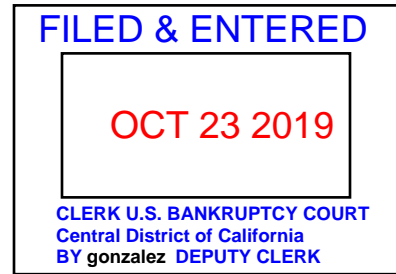
1 Debtor-In-Possession account is based upon loans by its
2 creditors. It is the creditors that are funding this
3 reorganization at this point. In the Court's view, that's
4 rock bottom. You can't get any lower, because nobody else
5 is willing to take a chance on providing any liquidity to
6 the Debtor. So I don't think that Strategic is issuing an
7 idle threat.

8 On the argument that there is another deal out
9 there, there is absolutely no evidence with respect to any
10 other deal. With respect to the argument that somehow the
11 Attorney General's Office and the Debtor and the interested
12 parties could mediate these differences, there's again no
13 evidence presented to the Court that would indicate that
14 that would be the case.

15 More importantly, throughout another set of
16 hearings with respect to a sale to some other entity, with
17 all of the time that would be occasioned by that, there is
18 no money to fund the continued operations of the Debtor,
19 which would inure to the detriment of thousands of patients,
20 thousands of employees, and not to mention the creditors in
21 the case.

22 So that's the context within which the Court
23 issues the tentative ruling, and it is not with the idea
24 that we should conclude that a sale ought to happen. Quite
25 the opposite. It's after having the analysis of the facts

EXHIBIT 15



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION GRANTING
DEBTORS' EMERGENCY MOTION TO ENFORCE
THE SALE ORDER [DOC. NO. 3188]**

Date: October 15, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



1820151191023000000000009

Before the Court is the Debtors' motion to sell four not-for-profit hospitals free and clear of regulatory conditions which the California Attorney General claims authority to impose under Cal. Corp. Code § 5914. For the reasons set forth below, the Court finds that § 363 of the Bankruptcy Code authorizes a sale free and clear of the conditions which the Attorney General contends he is authorized to impose.

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County (the "Santa Clara Sale").¹ The Santa Clara Sale closed on February 28, 2019.

On February 19, 2019, the Court entered an order establishing bidding procedures (the "Bidding Procedures Order") for the auction of the Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), Seton Medical Center ("Seton"), and Seton Medical Center Coastside ("Seton Coastside") (collectively, the "Hospitals"). Under the Bidding Procedures Order, Strategic Global Management ("SGM") was designated as the stalking horse bidder. SGM's bid for all four of the Hospitals was \$610 million.

The Hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain Brothers"). Cain Brothers notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the Hospitals.

Notwithstanding Cain Brothers' thorough marketing efforts, the Debtors did not receive any qualified bids for all of the Hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").

In 2015, prior to the commencement of these cases, the Debtors' predecessor sought authorization from the California Attorney General (the "Attorney General"), pursuant to Cal. Corp. Code § 5914, to implement a *System Restructuring and Support Agreement* (the "Restructuring Agreement"). The Attorney General approved the Restructuring Agreement, subject to various conditions (the "2015 Conditions"). Among other things, the 2015 Conditions required capital expenditures to make the Hospitals seismically compliant, and required the Hospitals to maintain specified levels of emergency services, intensive care services, cardiac services, and various other services.

Cal. Corp. Code § 5914 requires a non-profit entity operating a health facility to obtain approval from the Attorney General when selling a material amount of its assets to a for-profit entity. Pursuant to Cal. Corp. Code § 5914, the Debtors submitted the SGM Sale to the Attorney General for review.

¹ For a description of the Santa Clara Sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018) ("*Verity I*").

The Asset Purchase Agreement under which SGM agreed to purchase the Hospitals (the “APA”) provided that SGM would close the sale so long as any conditions imposed by the Attorney General under the review process set forth in Cal. Corp. Code § 5914 were substantially consistent with conditions that SGM had agreed to accept (the “Approved Conditions”).² In the event that the Attorney General sought to impose conditions materially different from the Approved Conditions (the “Additional Conditions”), the APA provided that the Debtors would have an opportunity to seek a determination from the Court that the Hospitals could be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy Code. Under the APA, Additional Conditions imposing upon SGM costs of \$5 million or more are conclusively deemed to be materially different from the Approved Conditions. Further, if the Debtors fail to obtain a final, non-appealable order authorizing the sale free and clear of the Additional Conditions, SGM is not obligated to close on the sale and is entitled to a refund of its good faith deposit.

On September 25, 2019, the Attorney General consented to the SGM Sale, subject to various conditions (the “2019 Conditions”). The 2019 Conditions are materially different from the Approved Conditions that SGM had agreed to accept. In particular, two of the 2019 Conditions impose an additional financial burden upon SGM of approximately \$305 million. First, the 2019 Conditions require that SGM continue to operate St. Vincent as a licensed general acute care hospital through December 2024. SGM had agreed to maintain St. Vincent’s general acute care license only through December 2020. SGM estimates that continuing to operate St. Vincent as a general acute care hospital for an additional four years would cost approximately \$285 million. Second, the 2019 Conditions require St. Francis to provide annual charity care in an amount of \$12,793,435 for six fiscal years. The required charity care amount is approximately \$6.4 million more than the charity care that St. Francis provided in fiscal year 2019. The charity care requirement imposes an additional incremental cost of approximately \$20 million.

SGM will not close the sale absent an order finding that the Hospitals can be sold free and clear of the Additional Conditions pursuant to § 363(f). If the SGM Sale does not close, the most likely outcome will be the closure of St. Vincent, Seton, and Seton Coastside. The Debtors would be required to close these three Hospitals to conserve resources to continue to operate St. Francis, the most solvent of the Hospitals, during the time it would take to obtain approval of a sale of St. Francis. The Debtors cannot continue to sustain operational losses of approximately \$450,000 per day without the prospect of a prompt sale. There is no back-up bidder to purchase the Hospitals if the SGM Sale does not close.

The Debtors are facing very significant liquidity constraints. Recently, the California Department of Health Care Services (the “DHCS”) began withholding certain Medi-Cal fee-for-service payments owed to the Debtors, for the purposing of recovering alleged Medi-Cal overpayments. As of the beginning of October 2019, DHCS had withheld approximately \$4.5 million. The Debtors do not have the ability to borrow under any debtor-in-possession financing facility. At this time, the Debtors’ cases are being financed by a consensual cash collateral stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”). Termination of the APA constitutes an event of default under the Cash Collateral Stipulation. It is unclear whether the Debtors would be able to obtain alternative financing. Further, the Debtors must begin the expensive process of closing the Hospitals while

² The Approved Conditions are set forth in Schedule 8.6 of the APA.

they still possess a significant cash buffer.³ In short, the Debtors' prediction that failure of the SGM Sale would necessitate the closure of St. Vincent, Seton, and Seton Coastsides is not a bluff.

The Attorney General asserts that imposition of the 2019 Conditions will not result in the closure of St. Vincent, Seton, or Seton Coastsides. The Attorney General points to a declaration from Kenneth Sim, M.D. (the "Sim Decl."), the Chairman of Allied Physicians of California, A Professional Medical Corporation ("Allied"). According to the Attorney General, the Sim Decl. shows that Allied is prepared to acquire Seton and Seton Coastsides and operate both Hospitals in accordance with the 2019 Conditions.

Contrary to the Attorney General's characterization, the Sim Decl. provides no certainty that a sale of Seton and Seton Coastsides will occur. The Sim Decl. states only that "Allied remains interested in purchasing Seton" Sim Decl. at ¶ 5. The Court further notes that Allied did not timely submit a qualified bid for Seton. At this late stage in the proceedings, Allied's vague statement that it is "interested" in purchasing Seton and Seton Coastsides does nothing to dissuade the Court from its conclusion that absent consummation of the SGM Sale, Seton and Seton Coastsides will most likely close.

The Attorney General also points to a bid for the Hospitals submitted by Prime Healthcare ("Prime"). The Attorney General overlooks the Prime did not submit a qualified bid. Among other things, Prime failed to submit the mandatory good faith deposit. In fact, Prime itself recognized that its "bid will not be formally considered at auction" and was submitted only "for reference."⁴ Further, Prime stated that it did not want to serve as a back-up bidder.⁵ In short, Prime's offer to purchase the Hospitals is just as illusory as Allied's.

Finally, the Attorney General points to an offer by AHMC Healthcare, Inc. ("AHMC Healthcare") to purchase St. Francis. The Attorney General is correct that AHMC submitted a qualified bid to purchase St. Francis. However, even assuming that AHMC would follow through on its prior bid to purchase St. Francis, that still would not prevent the closure of St. Vincent, Seton, and Seton Coastsides. As discussed above, the Debtors lack sufficient cash to continue operating all four Hospitals during the time it would take for a sale of St. Francis to close. The Debtors would be required to close St. Vincent, Seton, and Seton Coastsides to conserve the cash necessary to operate St. Francis during the sale process.

It is against this backdrop that the Debtors move for authorization to sell the Hospitals free and clear of the Additional Conditions, pursuant to § 363(f). The Debtors argue that the Additional Conditions constitute an "interest in property" within the meaning of § 363(f), and that a sale free and clear of the 2019 Conditions may be authorized under § 363(f)(1), (4), or (5), for the following reasons:

- Pursuant to § 363(f)(1), the Hospitals may be sold under applicable nonbankruptcy law, because under California law, the purchaser of assets does not assume successor liability.
- Pursuant to § 363(f)(4), the validity of the Additional Conditions is subject to a *bona fide* dispute, because the Attorney General abused his discretion in imposing the Additional Conditions.

³ For a description of the difficulties associated with closing a much smaller hospital, see *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 829 (Bankr. C.D. Cal. 2017), *appeal dismissed*, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018).

⁴ April 3, 2019 E-mail from Prime to the Debtors [Doc. No. 3333, Ex. 6].

⁵ *Id.*

- Pursuant to § 363(f)(5), the Attorney General could be compelled to accept a money satisfaction of certain of the Additional Conditions, such as the condition that SGM provide specified levels of charitable care.

The Debtors assert that imposition of the Additional Conditions violates § 525, which prohibits government entities from discriminating against debtors who have failed to pay dischargeable debts when issuing licenses. According to the Debtors, the Additional Conditions constitute an attempt by the Attorney General to collect a dischargeable debt. The Debtors' theory is that Attorney General's refusal to approve the SGM Sale absent imposition of the Additional Conditions amounts to the discriminatory denial of licensure in contravention of § 525.

Finally, the Debtors request that the Court issue a writ of mandate compelling the Attorney General to approve the SGM Sale without imposition of the Additional Conditions, pursuant to Cal. Civ. Proc. Code § 1085 or § 1094.5. The Debtors assert that a writ of mandate is justified because the Attorney General abused his discretion by imposing the Additional Conditions.

The Committee supports the Motion. The Committee argues that prompt closing of the SGM Sale is the best means of insuring a distribution to unsecured creditors.

The Attorney General opposes the Motion. He disputes the Debtors' contention that the Hospitals may be sold under applicable nonbankruptcy law, or that a bona fide dispute exists as to the Attorney General's authority to impose the Additional Conditions. The Attorney General denies that he abused his discretion in imposing the Additional Conditions. He notes that he considered an extensive record in arriving at the Additional Conditions, and states that the Debtors' dislike of the Additional Conditions does not mean that imposing the conditions was an abuse of discretion.

Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), which represents approximately 1,303 employees at St. Vincent and St. Francis, opposes the Motion. SEIU-UHW contends that the Additional Conditions are economically feasible for SGM.

The United Nurses Association of California/Union of Health Care Professional ("UNAC"), which represents approximately 900 registered nurses at St. Francis, urges SGM, the Attorney General, and the Debtors to explore prospects for a consensual resolution with respect to the Additional Conditions.

II. Discussion

Section 363(d)(1) authorizes non-profit entities, such as the Debtors, to sell estate assets only if the sale is "in accordance with nonbankruptcy law applicable to the transfer of property by" a non-profit entity. Section 541(f) similarly provides that property held by debtors that are § 501(c)(3) corporations under the Internal Revenue Code may be transferred, but "only under the same conditions as would apply if the debtor had not filed a case under this title." Section 363(b) authorizes the Debtors to sell estate property out of the ordinary course of business, subject to court approval. The Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Section 363(f) provides that a sale of estate property may be "free and clear of any interest in such property of an entity other than the estate," provided that certain conditions are satisfied.

A. The Additional Conditions are an “Interest in Property” Within the Meaning of § 363(f)

As this Court has previously explained:

The Bankruptcy Code does not define the phrase “interest in ... property” for purposes of § 363(f). The Third Circuit has held that the phrase “interest in ... property” is “intended to refer to obligations that are connected to, or arise from, the property being sold.” *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 259 (3d Cir. 2000). That conclusion is echoed by *Collier on Bankruptcy*, which observes a trend in caselaw “in favor of a broader definition [of the phrase] that encompasses other obligations that may flow from ownership of the property.” 3 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 363.06[1] (16th ed. 2017).

Courts have held that interests in property include monetary obligations arising from the ownership of property, even when those obligations are imposed by statute. For example, in *Mass. Dep’t of Unemployment Assistance v. OPK Biotech, LLC (In re PBBPC, Inc.)*, 484 B.R. 860 (1st Cir. BAP 2013), the court held that taxes assessed by Massachusetts under its unemployment insurance statutes constituted an “interest in ... property.” The taxes were computed based on the Debtor’s “experience rating,” which was determined by the number of employees it had terminated in the past. *Id.* at 862. Because the Debtor had terminated most of its employees prior to selling its assets, its experiencing rating, and corresponding unemployment insurance tax liabilities, were very high. *Id.* The *PBBPC* court held that the experience rating was an interest in property that could be cut off under § 363(f). *Id.* at 869–70. Similarly, in *United Mine Workers of Am. Combined Benefit Fund v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 581, the court held that monetary obligations imposed by the Coal Industry Retiree Health Benefit Act of 1992 constituted an “interest in ... property” within the meaning of § 363(f).

In re Gardens Reg’l Hosp. & Med. Ctr., Inc., 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), appeal dismissed, No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018) (“*Gardens P*”).

The Additional Conditions are an “interest in property” within the meaning of § 363(f). First, the Additional Conditions are monetary obligations arising from the ownership of property. Similar to the “experience rating” at issue in *PBBPC, Inc.*, the Additional Conditions were calculated based upon the Hospitals’ prior operating history. Among other things, the Additional Conditions require that SGM cause the Hospitals to provide specified levels of healthcare services. The required service levels have been set based upon the Hospitals’ historical operations. For example, the Additional Conditions require that St. Francis “maintain and provide 24-hour emergency and trauma medical services at no less than current licensure and designation with the same types and/or levels of services”⁶ St. Francis is required to maintain cardiac services, critical care services, neonatal intensive services, women’s health services, cancer services, pediatric services, orthopedic and rehabilitation services, wound care services, behavioral health services, and perinatal services, all at “current licensures, types, and/or levels

⁶ St. Francis Conditions at § IV [Doc. No. 3188, Ex. B].

of services.”⁷ St. Vincent, Seton, and Seton Coastside are also required to maintain various healthcare services at current levels.⁸

Second, the Attorney General’s statutory authority to impose the Additional Conditions arises from the Debtors’ operation of the Hospitals as non-profit entities. Had the Debtors not operated the Hospitals in this manner, there could be no contention that the SGM Sale is subject to the Attorney General’s review pursuant to Cal. Corp. Code § 5914. In this sense as well, the Additional Conditions “arise from the property being sold,” *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290 (3d Cir. 2003), and therefore qualify as an “interest in ... property” within the meaning of § 363(f).

Third, the Attorney General is barred by the law of the case doctrine from asserting that the Additional Conditions are not an “interest in ... property.” “Under the ‘law of the case’ doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.” *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir.), *amended*, 860 F.2d 357 (9th Cir. 1988). “For the doctrine to apply, the issue in question must have been ‘decided explicitly or by necessary implication in [the] previous disposition.’” *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

In connection with the Santa Clara Sale, the Court addressed the exact issue presented here—whether conditions that the Attorney General sought to impose upon the sale constituted an “interest in ... property” for purposes of § 363(f).⁹ The Attorney General litigated the issue, and the Court overruled the Attorney General’s arguments.¹⁰ The Attorney General voluntarily dismissed his appeal of the order finding that the conditions he sought to impose were an “interest in ... property.” The law of the case doctrine bars relitigation of the issue.

The doctrine of issue preclusion is a further bar to any attempt by the Attorney General to contest the Additional Conditions’ status as an “interest in ... property.” As explained by the Supreme Court, issue preclusion forecloses “‘successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,’ even if the issue recurs in the context of a different claim.” *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008) (internal citations omitted). The doctrine protects “against ‘the expense and vexation attending multiple lawsuits, conserve[s] judicial resources, and foster[s] reliance on judicial action by minimizing the possibility of inconsistent decisions.’” *Id.* Issue preclusion applies if “(1) the issue at stake was identical in both proceedings; (2) the issue was actually litigated and decided in the prior proceedings; (3) there was a full and fair opportunity to litigate the issue; and (4) the issue was necessary to decide the merits.” *Howard v. City of Coos Bay*, 871 F.3d 1032, 1041 (9th Cir. 2017).

⁷ *Id.* at § VI.

⁸ *See* St. Vincent Conditions at § VI (setting forth a list of healthcare services that St. Vincent must maintain at current levels); *see also* Seton and Seton Coastside Conditions at § VI (same).

⁹ *See Verity I*, 598 B.R. at 293 (“The Conditions [imposed by the Attorney General] are an ‘interest in property’ within the meaning of § 363(f). The Conditions provide that any owner of the Hospitals must furnish specified levels of emergency services, intensive care services, cardiac services, and various other services. The required service levels were derived based upon the historical experience of the prior operator. As such, the Conditions are monetary obligations arising from the ownership of property.”).

¹⁰ *See generally Verity I*.

The Attorney General has litigated the issue presented here, both in connection with the Santa Clara Sale and in connection with a sale in *Gardens I* (the “Gardens Sale”). Just as he did in the Santa Clara Sale, the Attorney General claimed in the Gardens Sale the regulatory authority to impose conditions. The Court found that the Attorney General’s claim to regulatory authority was an “interest in ... property” for purposes of § 363(f). *Gardens I*, 567 B.R. at 826. The Attorney General is precluded from relitigating the issue of whether his claimed authority to impose conditions on the SGM Sale is an “interest in ... property.”

B. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(1)

Sale of the Hospitals may be free and clear of the Additional Conditions only upon satisfaction of one or more of the five disjunctive sub-factors set forth in § 363(f). Under § 363(f)(1), a sale free and clear may be approved if permitted by applicable nonbankruptcy law.

Applicable nonbankruptcy law permits a sale free and clear for two reasons. First, the Attorney General’s attempt to impose the Additional Conditions upon SGM is equivalent to an attempt to impose successor liability upon SGM. California law does not authorize the imposition of successor liability upon SGM. Second, even if the Attorney General were authorized to impose successor liability under California law, the Attorney General abused his discretion in imposing the Additional Conditions, meaning that the Additional Conditions must be set aside.

1. California Law Does Not Authorize the Attorney General to Impose Successor Liability Upon SGM

i. The Additional Conditions Qualify as Successor Liability

The Attorney General’s attempt to impose the Additional Conditions upon SGM qualifies as an attempt to impose successor liability upon SGM. The reason is that the Additional Conditions impose upon SGM many of the same obligations imposed upon the Debtors by the 2015 Conditions. By attempting to enforce the Additional Conditions, the Attorney General is attempting to enforce the obligations imposed by the 2015 Conditions against SGM.

It is true that the 2015 Conditions are not identical to the Additional Conditions. Some medical services required under the 2015 Conditions are no longer required under the Additional Conditions. And unlike the 2015 Conditions, the Additional Conditions do not impose obligations to fund pension plans. But for the most part the Additional Conditions reinstate obligations imposed by the 2015 Conditions. For example, both the 2015 Conditions and the Additional Conditions require that St. Francis maintain cardiac services, including designation as a STEMI Receiving Center; critical care services, including a minimum of 36 intensive care unit beds; neonatal intensive care services, including a minimum of 29 neonatal intensive care beds; women’s health services, including women’s imaging services; cancer services, including radiation oncology; orthopedic and rehabilitation services; and wound care services. The Additional Conditions do not reinstate St. Francis’ obligation to maintain advanced certification as a Primary Stroke Center, and the Additional Conditions reduce St. Francis’ pediatric services obligation from 14 beds to 5 beds.

The 2015 Conditions required St. Francis to maintain the specified healthcare services for ten years from the date of the closing of the Restructuring Agreement. The Additional Conditions

require that the specified services be maintained for ten years from the date of the closing of the APA. That is, the Additional Conditions extend the term of the 2015 Conditions by approximately six years.

Considered within the overall scope of the obligations imposed, the differences between the 2015 Conditions and the Additional Conditions are comparatively inconsequential. The Attorney General relies upon these minor differences in support of his argument that the Additional Conditions do not impose successor liability. Such reliance is misplaced. The Additional Conditions still qualify as successor liability even though they are not exactly identical to the 2015 Conditions. Nor does the extension in the term of the reinstituted obligations remove the Additional Conditions from the category of successor liability.

The Attorney General argues that the Additional Conditions do not impose successor liability because they are SGM's own obligations, going forward from the date of the sale. According to the Attorney General, the Additional Conditions are based upon healthcare impact reports prepared for each Hospital. The Attorney General asserts that it is not surprising that the Additional Conditions resemble the 2015 Conditions, which are only four years old and relate to the same Hospitals and communities. Citing *In re General Motors Corp.*, 407 B.R. 463, 508 (Bankr. S.D.N.Y. 2009), the Attorney General analogizes the Additional Conditions to the environmental remediation liabilities that would remain the obligation of a purchaser of contaminated real estate.

These arguments are not persuasive. In *General Motors*, the environmental remediation obligations were not successor liability because any entity purchasing contaminated property would have an obligation to comply with environmental law:

Under section 363(f), there could be no successor liability imposed on the purchaser for the [seller's] ... monetary obligations related to cleanup costs, or any other obligations that were obligations of the seller. But the purchaser would have to comply with its environmental responsibilities starting with the day it got the property, and if the property required remediation as of that time, any such remediation would be the buyer's responsibility Those same principles will be applied here. Any Old GM properties to be transferred will be transferred free and clear of successor liability, but New GM will be liable from the day it gets any such properties for its environmental responsibilities going forward.

In re Gen. Motors Corp., 407 B.R. 463, 508 (Bankr. S.D.N.Y. 2009).

There is a key difference between the contaminated property at issue in *General Motors* and the Hospitals at issue here. Any entity that purchased the contaminated property at issue in *General Motors* would have been required to comply with environmental regulations going forward. A purchaser's duty to comply with environmental regulations would not vary based upon the identity of the purchaser or the identity of the seller. Here, by contrast, whether a purchaser is obligated to comply with Attorney General conditions can vary, depending upon either the identity of the purchaser or the identity of the seller. There is no general obligation imposed upon an entity that purchases a hospital in the State of California to operate that hospital in accordance with conditions asserted by the Attorney General. The Attorney General's regulatory authority applies only to non-profit hospitals, and only to certain types of sale transactions. Had the Hospitals been sold to a public entity, such as the County of Los Angeles, the Attorney General could not have reviewed the sale. See *Verity I*, 598 B.R. at 294 (holding

that Cal. Corp. Code § 5914 did not apply where non-profit hospitals were sold to a public entity). Had the Hospitals been operated by a for-profit entity, the Attorney General could not have reviewed the sale. *See* Cal. Corp. Code § 5914(a) (requiring only nonprofit corporations to submit the sale of assets to Attorney General review).

Because the obligation to comply with the Additional Conditions is contingent upon the identity of the purchaser and the identity of the seller, the conditions cannot fairly be characterized as the purchaser's obligation to comply with applicable law on a going-forward basis. The Attorney General can claim authority to impose the Additional Conditions upon purchaser SGM only because the Debtors operated the Hospitals as non-profit entities. Since the Attorney General's alleged authority to impose the Additional Conditions derives from the manner in which the sellers operated the Hospitals, the Additional Conditions are appropriately characterized as successor liability.

ii. Successor Liability Cannot Be Imposed Under California Law

Under California law, the general rule is “that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does not assume the selling corporation's debts and liabilities.” *Fisher v. Allis-Chalmers Corp. Prod. Liab. Tr.*, 95 Cal. App. 4th 1182, 1188, 116 Cal. Rptr. 2d 310, 315 (2002). The general rule does not apply if “(1) there is an express or implied agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the seller's debts.” *Id.*

None of the exceptions to the general rule are present here. First, SGM has not agreed to assume the Additional Conditions, either expressly or by implication. Second, the SGM Sale is not a consolidation or merger of the Debtors and SGM. A sale transaction is a consolidation or merger of two corporations “where one corporation takes all of another's assets without providing any consideration that could be made available to meet claims of the other's creditors or where the consideration consists wholly of shares of the purchaser's stock which are promptly distributed to the seller's shareholders in conjunction with the seller's liquidation.” *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28, 560 P.2d 3 (1977) (internal citations omitted). Neither factor applies. SGM is paying for the Hospitals in cash (not stock),¹¹ and that cash will be distributed to the Debtors' creditors through a plan of liquidation. Third, SGM is not a mere continuation of the Debtors. A purchaser is a mere continuation of a seller if there is inadequate consideration for the purchaser or if one or more persons are officers, directors, or stockholders or both corporations. *Id.* Consideration for the SGM Sale is adequate and no officers or directors of the Debtors are officers or directors of SGM.¹² Fourth, the Debtors are not selling the Hospitals for the purpose of escaping liabilities for their debts. In fact, the opposite is true—the objective of the SGM Sale is to generate proceeds to pay the Debtors' debts, to the extent possible. In sum, successor liability cannot be imposed on SGM under California common law.

Successor liability cannot be imposed under Cal. Corp. Code §§ 5914–5919. Cal. Corp. Code § 5914 authorizes the Attorney General to review transactions in which a non-profit healthcare

¹¹ *See* APA at § 1.1(a)(i) [Doc. No. 2305, Part 1].

¹² As nonprofit public benefit corporations, the Debtors do not have stockholders.

facility seeks to transfer a material amount of its assets to a for-profit entity, and provides in relevant part:

Any nonprofit corporation that is defined in Section 5046 and operates or controls a health facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, regardless of whether it is currently operating or providing health care services or has a suspended license, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

Cal. Corp. Code § 5914(a)(1) (West).

The “Attorney General shall have discretion to consent to, give conditional consent to, or not consent to” the transaction. Cal. Corp. Code § 5917.

Nothing within the statute authorizes the Attorney General to impose successor liability upon SGM, the for-profit entity that purchased the healthcare assets from the non-profit Debtors. Under the statute, the Attorney General is authorized to review transactions entered into by a “nonprofit corporation that ... operates or controls a health facility,” Cal. Corp. Code § 5914(a)(1), and to “consent to, give conditional consent to, or not consent to” any such transactions, Cal. Corp. Code § 5917. These provisions do not grant the Attorney General authority to impose going-forward obligations on the assets that are the subject of the transaction. That is, the statute does not provide that the healthcare assets themselves are subject to regulation by the Attorney General. Rather, it is the non-profit status of the entity operating the healthcare assets that triggers the Attorney General’s regulatory authority. Upon transfer of the healthcare assets from the non-profit entity to the for-profit entity, the Attorney General’s regulatory authority over the assets terminates.

The issue of the Attorney General’s authority to impose successor liability arose in the case of *La Paloma Generating Co.*, No. 16-12700, 2017 WL 5197116 (Bankr. D. Del. Nov. 9, 2017). In *La Paloma*, the debtor operated a power plant subject to a cap-and-trade emissions regulation. The regulation required “Covered Entities”—defined as entities engaging in operations that generated emissions—to surrender “Compliance Instruments” equal to the amount of emissions generated at specified times. At issue was whether a power plant could be sold “free and clear of, and without the purchaser assuming, any obligation to surrender compliance instruments under the California Cap-and-Trade Program for emissions generated by the Debtors and/or their facility during the period before the transfer of the assets.” *Id.* at *2. The court found that “[u]nder the Regulation, only entities—and not assets—are Covered Entities” subject to the obligation to surrender Compliance Instruments. *Id.* at *5. As a result, the court found, the debtors could sell the power plant free and clear of the surrender obligations, pursuant to § 363(f)(1). *Id.* at *8. The court reasoned that the regulation did not impose successor liability on the purchaser, because it imposed liability only on “Covered Entities,” and the purchaser would not become a Covered Entity until after it acquired the power plant. *Id.* at *7–*8. The regulation, the court held, was limited to Covered Entities, and could not be used to “impugn liability on the purchaser of ... the Covered Entity’s assets.” *Id.* at *8.

With respect to the imposition of successor liability, the statute at issue here operates in the same manner as the regulation examined in *La Paloma*. Similar to the regulation in *La Paloma*, Cal. Corp. Code § 5914–5919 permits the imposition of liability upon the Hospitals only because they are operated by a non-profit corporation. That is, independent of the fact that they are operated by a non-profit entity, nothing within Cal. Corp. Code § 5914–5919 authorizes the Attorney General to impose liabilities upon the Hospitals. Further, the Attorney General’s regulatory authority under the statute does not extend to for-profit entities. As was the case in *La Paloma*, Cal. Corp. Code § 5914–5919 does not authorized the Attorney General to impose liability upon the for-profit purchaser of the Hospitals.

The Attorney General argues that the statute’s implementing regulations authorize the imposition of successor liability. Specifically, the Attorney General points to Cal. Code Regs. Tit. 11, § 999.5, which provides in relevant part:

It is the policy of the Attorney General, in consenting to an agreement or transaction involving a general acute care hospital, to require for a period of at least five years the continuation at the hospital of existing levels of essential healthcare services, including but not limited to emergency room services. The Attorney General shall retain complete discretion to determine whether this policy shall be applied in any specific transaction under review.

Cal. Code Regs. tit. 11, § 999.5.

Significantly, the statute’s implementing regulations do not differentiate between Cal. Corp. Code §§ 5914–5919, which codifies the Attorney General’s authority to review transfers between a non-profit and a for-profit entity, and Cal. Corp. Code §§ 5920–5925, which codifies the Attorney General’s authority to review transfers between a non-profit entity and a different non-profit entity. Where assets are transferred between two different non-profit entities, the structure of the statute clearly provides the Attorney General the authority to impose successor liability.

The Court construes Cal. Code Regs. Tit. 11, § 999.5 as implementing Cal. Corp. Code §§ 5920–5925, not as implementing Cal. Corp. Code §§ 5914–5919. Cal. Corp. Code §§ 5920–5925 does authorize the imposition of successor liability, whereas Cal. Corp. Code §§ 5914–5919 does not. This construction is appropriate because it harmonizes the language of the regulation with the language of the statute, while still giving full effect to every part of the regulation. *See Butts v. Bd. of Trustees of California State Univ.*, 225 Cal. App. 4th 825, 835, 170 Cal. Rptr. 3d 604, 612 (2014) (“The rules of statutory construction also govern our interpretation of regulations promulgated by administrative agencies. We give the regulatory language its plain, commonsense meaning. If possible, we must accord meaning to every word and phrase in the regulation, and we must read regulations as a whole so that all of the parts are given effect.”).

Because the Attorney General’s authority to review the sale arises under Cal. Corp. Code §§ 5914–5919, the Attorney General cannot rely upon Cal. Code Regs. tit. 11, § 999.5, which implements Cal. Corp. Code §§ 5920–5925, as the basis for imposing successor liability upon SGM.

2. Even if California Law Allowed the Attorney General to Impose Successor Liability Upon SGM, the Attorney General Abused his Discretion in Imposing the Additional Conditions

As set forth below, the Court finds that the Attorney General's decision to impose the Additional Conditions is subject to judicial review by administrative mandate under California law. This Court is empowered to conduct such judicial review pursuant to § 1221(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), which provides:

Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

Pub. L. No. 109-8, § 1221(e) (2005).¹³ See also *In re HHH Choices Health Plan, LLC*, 554 B.R. 697, 700 (Bankr. S.D.N.Y. 2016) (construing New York state law to determine the appropriate disposition of a non-profit debtor's assets).

Upon review of the Attorney General's decision, the Court finds that the imposition of the Additional Conditions constituted an abuse of discretion, for the reasons explained below. Therefore, the Additional Conditions must be set aside, which means that the Debtors are authorized to sell the Hospitals free and clear of the Additional Conditions under applicable nonbankruptcy law.

i. The Attorney General's Imposition of the Additional Conditions is Subject to Judicial Review by Administrative Mandate

Cal. Civ. Proc. Code § 1094.5 provides for judicial review by administrative mandate of decisions made by agencies or officers of the State of California. A writ of mandate may be issued if the agency or officer making the decision engaged in a "prejudicial abuse of discretion." Cal. Civ. Proc. Code § 1094.5(b). An "abuse of discretion is established if ... the order or decision is not supported by the findings, or the findings are not supported by the evidence." *Id.*

The Attorney General contends that administrative mandamus review is not available because the Additional Conditions were not issued subsequent to "a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal." Cal. Civ. Proc. Code § 1094.5(a). The Attorney General acknowledges that he conducted "public meetings ... to hear comments from interested parties" as required by Cal. Corp. Code § 5922. However, the Attorney General asserts that such public meetings were not "hearings" within the meaning of Cal. Civ. Proc. Code § 1094.5(a), because public comments were not presented under oath and no effort was made to determine the accuracy of the information offered by members of the public. The Attorney General's position is that the Debtors are entitled only to traditional mandamus review under Cal. Civ. Proc. Code § 1085.

"Quasi-legislative acts are ordinarily reviewed by traditional mandate, and quasi-judicial acts are reviewed by administrative mandate. 'Generally speaking, a legislative action is the formulation of a rule to be applied to all future cases, while an adjudicatory act involves the actual application of such a rule to a specific set of existing facts.'" *Friends of the Old Trees v. Dep't of Forestry & Fire Prot.*, 52 Cal. App. 4th 1383, 1389, 61 Cal. Rptr. 2d 297, 303 (1997) (internal citation omitted).

¹³ This provision of BAPCPA does not appear in the Bankruptcy Code itself.

The Court is not persuaded by the Attorney General's contention that administrative mandamus review is unavailable to the Debtors. In reviewing the SGM Sale, the Attorney General hired JD Healthcare, Inc. to prepare expert reports containing information on how the SGM Sale would affect the availability of healthcare services in the regions served by the Hospitals. The JD Healthcare expert reports contained recommendations regarding the conditions that the Attorney General should impose on the SGM Sale. Upon receiving the expert reports, the Attorney General asked the Debtors to respond to the conditions recommended by JD Healthcare. The Attorney General conducted public meetings, all of which were transcribed, at which members of the public commented on the SGM Sale. "[P]urely documentary proceedings can satisfy the hearing requirement of Code of Civil Procedure § 1094.5, so long as the agency is required by law to accept and consider evidence from interested parties before making its decision." *Friends of the Old Trees*, 52 Cal. App. 4th at 1391–92. A "trial-type hearing" is not necessary. *Id.* at 1392.

The Attorney General's review involved "the actual application of ... a rule to a specific set of existing facts." *Friends*, 52 Cal. App. 4th at 1389. The Attorney General received evidence from JD Healthcare, heard comments from members of the public, and elected to impose the Additional Conditions after considering all the evidence collected during the review process. The Attorney General's review of the SGM Sale was a quasi-judicial act subject to review by administrative mandate.

The Attorney General next asserts that administrative mandamus review is unavailable because the Debtors have failed to produce the complete administrative record supporting the Attorney General's decision. This contention is without merit. For purposes of administrative mandamus review, a partial record is sufficient if it "accurately represent[s] the administrative proceedings, provide[s] the reviewing court with an understanding of what occurred below, and enable[s] that court to undertake an independent judicial review of the administrative decision." *Elizabeth D. v. Zolin*, 21 Cal. App. 4th 347, 349, 25 Cal. Rptr. 2d 852 (1993). The record before the Court consists of the expert reports prepared by JD Healthcare, partial transcripts of public meetings conducted by the Attorney General, and various letters submitted by stakeholders. The record on file provides the Court with an understanding of reasons for the Attorney General's decision.

There are two tests for judicial review by administrative mandate. "The 'independent judgment' rule applies when the decision of an administrative agency will substantially affect a fundamental vested right." *Mann v. Dep't of Motor Vehicles*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999). Under the "independent judgment" rule, the Court must "begin its review with a presumption of the correctness of administrative findings, and then, after affording the respect due to these findings, exercise independent judgment in making its own findings." *Fukuda v. City of Angels*, 20 Cal. 4th 805, 819, 977 P.2d 693, 701 (1999). "[T]he presumption provides the trial court with a starting point for review but it is only a presumption, and may be overcome. Because the trial court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency's findings." *Id.*

"The 'substantial evidence' rule applies when the administrative decision neither involves nor substantially affects a vested right. The trial court must then review the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law" *Mann*, 76 Cal. App. 4th 312, 320, 90 Cal. Rptr. 2d 277, 283 (1999).

To determine whether an administrative decision affects a fundamental vested right, the Court examines “whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgement by a body lacking *judicial power*.” *Interstate Brands v. Unemployment Ins. Appeals Bd.*, 26 Cal. 3d 770, 779, 608 P.2d 707, 713 (1980) (emphasis in original). An administrative decision that would have the effect of shutting down a business affects a fundamental vested right. *See, e.g., The Termo Co. v. Luther*, 169 Cal. App. 4th 394, 407–08, 86 Cal. Rptr. 3d 687, 697 (2008) (“The implementation of the Order and Decision would have the effect not only of shutting down a business that has been in existence for 20 years or more, but also of terminating the right to produce oil—an extraordinarily valuable resource, especially in the current economic era.... Certainly, a fundamental vested right is at issue.”); *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1529, 8 Cal. Rptr. 2d 385, 391 (1992) (holding that “the right to continue operating an established business in which [the owner] has made a substantial investment” is a fundamental vested right).

Imposition of the Additional Conditions will precipitate the collapse of the SGM Sale and require the Debtors to close three of the four Hospitals. The Debtors’ rights to preserve the Hospitals’ operations, by means of a sale to SGM, is a fundamental vested right that is abrogated by the Attorney General’s attempt to impose the Additional Conditions. Consequently, the Court reviews the Attorney General’s decision under the independent judgment test.

ii. In Imposing the Additional Conditions, the Attorney General Abused His Discretion

Under certain circumstances, the sale of a not-for-profit healthcare facility is subject to review by the Attorney General. Cal. Corp. Code § 5914. The Legislature enacted Cal. Corp. Code § 5914 to ensure that the public was not deprived of the benefits of charitable health facilities as a result of the transfer of those facilities’ assets to for-profit entities. In enacting § 5914, the Legislature found:

Charitable, nonprofit health facilities have a substantial and beneficial effect on the provision of health care to the people of California, providing as part of their charitable mission uncompensated care to uninsured low-income families and under-compensated care to the poor, elderly, and disabled.

Transfers of the assets of nonprofit, charitable health facilities to the for-profit sector, such as by sale, joint venture, or other sharing of assets, directly affect the charitable use of those assets and may affect the availability of community health care services....

It is in the best interests of the public to ensure that the public interest is fully protected whenever the assets of a charitable nonprofit health facility are transferred out of the charitable trust and to a for-profit or mutual benefit entity.

1996 Cal. Legis. Serv. Ch. 1105 (A.B. 3101) (West).

The Attorney General has “discretion to consent to, give conditional consent to, or not consent to” the sale of a healthcare facility. Cal. Corp. Code § 5917. In exercising that discretion, the Attorney General “shall consider any factors that the Attorney General deems relevant,” including but not limited to whether any of the following apply:

- a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.
- b) The agreement or transaction will result in inurement to any private person or entity.

- c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, “fair market value” means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and in their own best interest, and a reasonable time being allowed for exposure in the open market.
- d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.
- e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the health facility or by the affiliated nonprofit health system.
- f) The agreement or transaction involves or constitutes any breach of trust.
- g) The Attorney General has been provided, pursuant to Section 5250, with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public.
- h) The agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community.
- i) The proposed agreement or transaction is in the public interest.
- j) The agreement or transaction may create a significant effect on the availability and accessibility of cultural interests provided by the facility in the affected community.

Cal. Corp. Code § 5917 (West).

Nothing in the record indicates that SGM’s bid was other than for fair market value (factor (c)). The Hospitals were thoroughly marketed by Cain Brothers. SGM was the only bidder interested in purchasing the Hospitals. The Court must presume that a bid submitted after extensive marketing reflects the Hospital’s fair market value. *See Bank of Am. Nat. Tr. & Sav. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 457, 119 S. Ct. 1411, 1423, 143 L. Ed. 2d 607 (1999) (stating that “the best way to determine value is exposure to a market”).

There is no indication that SGM, or any other party, took any actions to decrease the value of the Hospitals (factor (d)). In view of the extensive marketing, the terms of the sale are fair and reasonable to the Debtors (factor (a)). There is no evidence that any of the parties involved in the SGM sale have engaged in any conduct that would amount to a breach of trust (factor (f)), or that the SGM Sale will inure to the benefit of any private person or entity (factor (b)). Nor has there been any suggestion that the Debtors failed to provide the Attorney General with sufficient information to evaluate the SGM Sale (factor (g)). Factor (e) does not apply, because the proceeds of the SGM Sale are fully encumbered by the claims of creditors, leaving no remaining equity that could be devoted to charitable purposes.

The remaining factors are (1) the effect of the SGM Sale on the accessibility of healthcare services (factor (h)) and cultural interests (factor (j)) in the affected communities and (2) whether the SGM Sale is in the public interest (factor (i)). Applying the independent judgment standard of review, the Court finds that in electing to impose the Additional Conditions, the Attorney General abused his discretion with respect to these factors.

By letter dated August 23, 2019 (the “August Letter”), the Debtors advised the Attorney General that if the Additional Conditions were imposed, SGM would not complete the sale and the most likely outcome would be the closure of St. Vincent, Seton, and Seton Coastside. The August Letter advised the Attorney General that SGM had submitted the only offer for the Hospitals, and that the “Debtors cannot sustain incurring ongoing operational losses to maintain

the going-concern value of St. Vincent and Seton without the realistic prospect of a purchaser.”¹⁴ The Debtors stated that upon the failure of the SGM Sale, they would be required to begin the process of closing St. Vincent, Seton, and Seton Coastsides “almost immediately.”¹⁵

Having overseen the Debtors’ bankruptcy cases since their inception, the Court has become intimately familiar with the Debtors’ operational and cash flow situation. As discussed above, the Debtors’ statements regarding the necessity of closing certain of the Hospitals upon the failure of the SGM Sale are not an idle threat.

Imposition of the Additional Conditions will dramatically reduce the availability of healthcare services by causing the closure of three of the four Hospitals. In addition to the loss of healthcare services, closure of the Hospitals will destroy approximately 2900 jobs. Closure of the Hospitals will require the relocation of many patients suffering from critical conditions. None of this is in the public interest.¹⁶

The Court understands that the Additional Conditions were imposed with the laudable objective of increasing the amount of healthcare services provided by the Hospitals. The Court can only assume that the Attorney General does not believe the representation that imposition of the Additional Conditions will result in a collapse of the SGM Sale. Unfortunately, the dire economic circumstances in which the Debtors now find themselves leaves the Court with no doubt that if the SGM Sale is not completed, three of the Hospitals will almost certainly close.

Because the Additional Conditions will reduce health care services by resulting in the closure of three of the Hospitals, imposition of the Additional Conditions was an abuse of the Attorney General’s discretion.

Outside of bankruptcy, the finding that the Attorney General abused his discretion would result in the entry of a judgment commanding the issuance of a peremptory writ of mandate, followed by the issuance of the writ. The writ would command the Attorney General to set aside the 2019 Conditions, and would further command the Attorney General to exercise his discretion with respect to the review of the SGM Sale in a lawful manner. *See, e.g., California Hosp. Assn. v. Maxwell-Jolly*, 188 Cal. App. 4th 559, 570, 115 Cal. Rptr. 3d 572, 581 (2010), *as modified on denial of reh’g* (Sept. 16, 2010).

BAPCPA § 1221(e) compels a different result inside bankruptcy. Section 1221(e) provides that the Court is not required “to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.” In *In re HHH Choices Health Plan*, the Bankruptcy Court relied upon BAPCPA § 1221(e) to conclude that it had the authority to interpret a New York law governing the transfer of the assets of a non-profit entity. The court observed that “[i]n the case of an insolvent not-for-profit corporation, section 511 of the New York Not-For-Profit Corporation Law ordinarily, would require the approval of the New York State Supreme Court for a transfer of assets.” *HHH Choices Health Plan*, 554 B.R. at 700. The court rejected arguments advanced by certain of the parties “that the

¹⁴ August Letter at 14.

¹⁵ *Id.*

¹⁶ SEIU-UHW contends that it is economically feasible for SGM to operate the Hospitals while complying with the Additional Conditions. The record does not support SEIU-UHW’s contention. SGM was the only bidder willing to purchase the Hospitals and has stated unequivocally that it will not complete its purchase if the Additional Conditions are imposed. These facts show that the Additional Conditions render operation of the Hospitals economically infeasible.

ordinary state court procedures must still be followed” with respect to the transfer of the assets. *Id.* Instead, the court held that substantive state law requirements remained applicable, but that it was the Bankruptcy Court that had authority to apply those requirements. *Id.*

Pursuant to BAPCPA § 1221(e), and consistent with the ruling in *HHH Choices Health Plan*, the Court is not required to issue a judgment and writ commanding the Attorney General to set aside the 2019 Conditions, and is not required to remand these proceedings to allow the Attorney General to conduct a further review of the SGM Sale in light of the Court’s finding that the Attorney General abused his discretion. Instead, the Court is empowered to apply Cal. Corp. Code § 5914, and to determine the conditions under which the Debtors may sell the Hospitals to SGM.

Under the circumstances presented here, the only way that closure of three of the four Hospitals can be avoided is if a sale not subject to the Additional Conditions is approved. A decision by the Attorney General to not consent to the sale, or a decision to consent to the sale subject to conditions other than the Approved Conditions, would constitute an abuse of discretion. That is because SGM, the only entity willing to purchase and continue to operate the Hospitals, will do so only if it is permitted to operate the Hospitals in a manner consistent with the Approved Conditions.

In reaching this conclusion, the Court is not limiting or controlling the discretion vested in the Attorney General, in contravention of Cal. Code Civ. Proc. § 1094.5(f). The Hospitals have been financially distressed for years. A \$100 million capital infusion made in connection with the 2015 Restructuring Agreement failed to stabilize the Hospitals’ operations. A further capital infusion of \$148 million in 2017 failed to restore the Hospitals to financial health. This demonstrates that it was not possible to successfully operate the Hospitals subject to the 2015 Conditions. It should come as no surprise that no buyer exists that is willing to purchase and operate the Hospitals if operations are constrained by Additional Conditions that are substantially similar to the 2015 Conditions. The Attorney General’s continued attempts to impose conditions rendering sustainable operation of the Hospitals impossible amounts to an abuse of discretion.

The Attorney General contends that SGM, by refusing to purchase and operate the Hospitals subject to conditions other than the Approved Conditions, is attempting to divest the Attorney General of his regulatory authority by forcing him to accede to a transaction on SGM’s terms. This argument ignores the financial and operational realities facing the Hospitals. SGM’s refusal to accept the Additional Conditions is not an attempt to blackmail the Attorney General into approving the sale. Such refusal is instead dictated by economic reality.

iii. Even if the Attorney General’s Decision is Subject to Traditional Mandamus Review Under Cal. Civ. Proc. Code § 1085, Imposition of the Additional Conditions Was an Abuse of Discretion

Even if the Attorney General’s review of the sale transaction is a quasi-legislative decision, subject to traditional mandamus review under Cal. Civ. Proc. Code § 1085, the decision to impose the Additional Conditions was an abuse of discretion.

Under Cal. Civ. Proc. Code § 1085, a traditional mandate “may issue to correct the exercise of discretionary legislative power, *but only* if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law.” *Carrancho v. California Air Res. Bd.*, 111 Cal. App. 4th 1255, 1265, 4 Cal. Rptr. 3d 536, 545 (2003) (emphasis in original). In reviewing quasi-legislative decisions, the “authority of the court is limited to determining

whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair.” *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.*, 32 Cal. 3d 779, 786, 654 P.2d 168, 172 (1982). The Court must ensure that the agency or officer making the decision “has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” *W. States Petroleum Assn. v. Superior Court*, 9 Cal. 4th 559, 577, 888 P.2d 1268, 1277 (1995). Traditional mandamus review of a quasi-legislative decision is therefore more deferential than administrative mandamus review of a quasi-judicial decision under the independent judgment standard.

Even applying this more deferential standard of review, the Court finds that the decision to impose the Additional Conditions was an abuse of discretion, and that a proper exercise of discretion required the Attorney General to consent to the sale subject only to the Approved Conditions. Preservation of access to healthcare is one of the factors the Attorney General must consider in reviewing the transaction. *See* Cal. Corp. Code § 5917(h) (requiring the Attorney General to consider whether the “agreement or transaction may create a significant effect on the availability or accessibility of health care services to the affected community”). At the hearing, the Attorney General stated that he imposed the Additional Conditions in furtherance of § 5917(h)’s objective of preserving healthcare access.¹⁷ The effect of the Additional Conditions will be the closure of three of the four Hospitals, which will significantly reduce access to healthcare. There is no “rational connection” between the purpose of the Additional Conditions (preserving healthcare access) and the actual results of the conditions (a severe reduction in healthcare access). *See W. States Petroleum Ass’n*, 888 P.2d at 1277. With respect to three of the four Hospitals, the Attorney General’s decision will destroy the very charitable assets that he is charged with protecting.

In sum, regardless of whether the Debtors are entitled to review of the Attorney General’s decision under traditional mandamus or administrative mandamus, the Attorney General’s decision to impose the Additional Conditions was an abuse of discretion. In the unique circumstances of this case, the Attorney General was required to consent to the SGM Sale without imposing the Additional Conditions. As a result, sale of the Hospitals to SGM free and clear of the Additional Conditions is authorized under applicable nonbankruptcy law. The Court approves the SGM Sale, free and clear of the Additional Conditions, pursuant to § 363(f)(1).

C. The Debtors May Sell the Hospitals Free and Clear of the Additional Conditions Pursuant to § 363(f)(4)

Under § 363(f)(4), the Hospitals may be sold free and clear of the Additional Conditions provided the Additional Conditions are “in bona fide dispute ...” A bona fide dispute exists if “there is an objective basis for either a factual or legal dispute as to the validity” of the interest at

¹⁷ Specifically, counsel for the Attorney General explained that in imposing the conditions, the Attorney General “is weighing the impact on the affected community, and making a determination as to what would be the best outcome for this community in order to ensure that it is not being adversely impacted, and not inappropriately losing access to these nonprofit hospitals” Hearing Transcript [Doc. No. 3416] at 24. Counsel further stated that the Attorney General’s “obligation is ... to do what’s needed to preserve access to healthcare, in particular for disadvantaged populations, which is clearly what we’re dealing with here.” *Id.* at 12.

issue. *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991). The court “court need not determine the probable outcome of the dispute, but merely whether one exists.” *Id.*

The Debtors dispute the Attorney General’s authority to impose the Additional Conditions, on the grounds that the (1) Additional Conditions attempt to impose successor liability in a manner not authorized under California law and that (2) the Attorney General abused his discretion in issuing the Additional Conditions. As discussed above, the Debtors have shown that the Attorney General cannot impose the Additional Conditions for both of these reasons. The Debtors have easily satisfied §363(f)(4), which does not require the Debtors to show that they will prevail upon the dispute—only that a dispute exists.

A bona fide dispute exists for yet another reason. The Debtors have shown that by imposing the Additional Conditions, the Attorney General violated § 525.

Section 525 provides in relevant part:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title ... or another person with whom such ... debtor has been associated, solely because such ... debtor is or has been a debtor under this title ... or has not paid a debt that is dischargeable in the case under this title

In *In re Aurora Gas, LLC*, the court held that the State of Alaska violated § 525 by refusing to approve the debtor’s sale of oil and gas leases unless the purchaser posted a bond of \$6 million to pay for the cost of plugging abandoned wells that the purchaser was not acquiring. *In re Aurora Gas, LLC*, No. A16-00130-GS, 2017 WL 4325560 (Bankr. D. Alaska Sept. 26, 2017). The court held that by conditioning approval of the sale upon the posting of a bond, the State was attempting to collect upon the debtor’s obligation to pay for the costs of plugging the abandoned wells. Imposition of such a condition, the court found, constituted impermissible discrimination against the debtor and its affiliate, the purchaser of the gas leases, in violation of § 525.

The facts of this case are strikingly similar. Here, the Attorney General has conditioned approval of the SGM Sale upon SGM assuming the obligation to operate the Hospitals in accordance with conditions similar to the 2015 Conditions that are an obligation of the Debtors. As discussed, the Additional Conditions require that SGM maintain and operate the Hospitals at current licensure and service levels. The Additional Conditions amount to an attempt by the Attorney General to enforce the obligations imposed by the 2015 Conditions. The 2015 Conditions are liabilities that are dischargeable in bankruptcy. By conditioning the transfer of the Hospitals upon the assumption of the Additional Conditions, which impose obligations equal to or in excess of the 2015 Conditions, the Attorney General is impermissibly discriminating against the Debtors in violation of § 525.

The fact that the Additional Conditions can be characterized as a regulatory obligation does not change the analysis. Regulatory obligations such as the Additional Conditions qualify as a “debt” under the Bankruptcy Code’s broad definition of the term:

Under the Bankruptcy Code, “debt” means “liability on a claim,” 11 U.S.C. § 101(12), and “claim,” in turn, includes any “right to payment,” § 101(5)(A). We have said that “[c]laim” has “the broadest available definition,” *Johnson v. Home State Bank*, 501 U.S.

78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), and have held that the “plain meaning of a ‘right to payment’ is nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation,” *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 559, 110 S.Ct. 2126 (1990). See also *Ohio v. Kovacs*, 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985). In short, a debt is a debt, even when the obligation to pay it is also a regulatory condition.

F.C.C. v. NextWave Pers. Commc'ns Inc., 537 U.S. 293, 302–03, 123 S. Ct. 832, 839, 154 L. Ed. 2d 863 (2003).

D. The Debtors May Sell the Hospitals Free and Clear of Certain of the Additional Conditions Pursuant to § 363(f)(5)

Under § 363(f)(5), property may be sold free and clear of an interest, if the entity holding the interest “could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

An interest “that can be reduced to a specific monetary value” falls within the scope of § 363(f)(5). *In re Trans World Airlines, Inc.*, 322 F.3d 283, 291 (3d Cir. 2003); see also *In re Vista Marketing Grp. Ltd.*, 557 B.R. 630, 635 (Bankr. N.D. Ill. 2016) (“[O]ne would be hard-pressed to present a clearer example of a situation where the interest-holder could be compelled to accept a money satisfaction of its interest under subsection (f)(5) than the calculable monetary obligation asserted by the District in its surcharge bill and disconnection notice.”).

Among the Additional Conditions are requirements that each of the Hospitals provide specified levels of charity care and community benefit services. The Additional Conditions allow any shortfalls in charity care or community benefit services to be satisfied through deficiency payments to tax-exempt entities within the Hospitals’ service area. The charity care and community benefit obligations can easily be reduced to a specific monetary value. The Debtors may sell the Hospitals free and clear of these obligations pursuant to § 363(f)(5).

E. Section 363(d)(1) Does Not Bar the Sale

As noted, § 363(d)(1) provides that non-profit entities, such as the Debtors, may sell estate assets only if the sale is “in accordance with nonbankruptcy law applicable to the transfer of property by” a non-profit entity.

For the reasons discussed in Section II.B., above, the Debtors are authorized to sell the Hospitals, free and clear of the Additional Conditions, under applicable nonbankruptcy law.

Even if the Debtors were not authorized to sell the Hospitals free and clear under applicable nonbankruptcy law, § 363(d)(1) does not limit the Debtors’ ability to sell the Hospitals free and clear of the Additional Conditions under § 363(f)(4) or (5).¹⁸ Basic principles of statutory construction dictate this result. “Statutory construction ... is a holistic endeavor.” *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 630, 98 L. Ed. 2d 740 (1988). The Court must look “to the provisions of the whole law, and to its object and policy.” *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 94–

¹⁸ Under § 363(f)(4), the Debtors are authorized to sell the Hospitals free and clear of all of the Additional Conditions. See Section II.C., above. Under § 363(f)(5), the Debtors are authorized to sell the Hospitals free and clear of the charity care and community benefit obligations. See Section II.D., above.

95, 114 S. Ct. 517, 523, 126 L. Ed. 2d 524 (1993). Absent a “clear intention otherwise,” specific provisions addressing an issue apply instead of more generalized provisions covering the same issue. *Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S. Ct. 2474, 2483, 41 L. Ed. 2d 290 (1974). This rule applies “regardless of the priority of enactment” of the provisions. *Id.*

Section 363(f) sets forth specific circumstances under which assets may be sold free and clear. Section 363(f) is not limited by a non-profit debtor’s general obligation under § 363(d)(1) to comply with nonbankruptcy law. The general requirement set forth in § 363(d)(1) makes no reference to § 363(f), which more specifically delineates the circumstances in which assets may be sold free and clear. Without a “clear intention otherwise,” *Morton*, 417 U.S. at 550–51, the general requirement of § 363(d)(1) does not repeal the specifics of free and clear sales under § 363(f), even though § 363(d)(1) was enacted subsequent to § 363(f).

F. Section 541(f) Does Not Bar the Sale

Section 541(f) provides:

Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

The Attorney General asserts that § 541(f)’s initial clause, “[n]otwithstanding any other provision of this title,” is broad enough to trump § 363(f). According to the Attorney General, § 541(f) requires that the SGM Sale comply with applicable California law. As a result, the Attorney General argues, the SGM Sale can occur only if SGM agrees to accept all of the 2019 Conditions, including the Additional Conditions.

The language of § 541(f) is similar, but not identical to, the language of § 363(d)(1). Section 363(d)(1) requires that non-profit entities transfer property “in accordance with nonbankruptcy law applicable to the transfer of property by” the non-profit entity; § 541(f) requires that such transfers occur “only under the same conditions as would apply if the debtor had not filed a case under this title.”

“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300, 78 L. Ed. 2d 17 (1983). Therefore, the Court cannot assume that § 541(f) has the same meaning as § 363(f). That is, § 541(f) cannot mean that the Debtors are required to transfer property “in accordance with nonbankruptcy law applicable to the transfer of [such] property,” since that is the language used in § 363(d)(1).

There is no legislative history to guide the Court in construing the phrase “under the same conditions” in § 541(f). Nor has the Court been able to locate any cases interpreting this section. In the absence of legislative history, phrases are construed in accordance with their “ordinary or natural meaning.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 114 S. Ct. 996, 1001, 127 L. Ed. 2d 308 (1994). According to *Roget’s 21st Century Thesaurus* (3d ed. 2013), a synonymous phrase for “under the same conditions” is “in these circumstances.”

Here, the Debtors have complied with § 541(f)’s mandate. That is, “[n]otwithstanding any other provisions” of the Bankruptcy Code, they have sought to transfer the Hospitals in the same

manner as the transfer would have occurred under applicable nonbankruptcy law. The Debtors submitted the transfer to the review of the Attorney General, paid for the expert healthcare impact statements required under the statute, and waited for 135 days for the Attorney General to review the transaction. The transfer has been subject to the same conditions that would have applied had the Debtors not sought bankruptcy protection.

Even if the Attorney General were correct that § 541(f) had the same meaning as § 363(d)(1), the Debtors would still be able to sell the Hospitals free and clear of the Additional Conditions, pursuant to § 363(f)(1), (4), and (5). Contrary to the Attorney General's contention, the "notwithstanding" clause does not mean that § 541(f) trumps § 363(f). The Ninth Circuit has held:

In examining specific statutes, we have not, however, always accorded universal effect to the "notwithstanding" language, standing alone. *See Or. Natural Res. Council v. Thomas*, 92 F.3d 792, 796 (9th Cir.1996) ("We have repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally." (citing *E.P. Paup Co. v. Dir., Office of Workers Comp. Programs*, 999 F.2d 1341, 1348 (9th Cir.1993); *Kee Leasing Co. v. McGahan (In re The Glacier Bay)*, 944 F.2d 577, 582 (9th Cir.1991); *Golden Nugget, Inc. v. Am. Stock Exch., Inc.*, 828 F.2d 586, 588–89 (9th Cir.1987) (per curium))). Instead, we have determined the reach of each such "notwithstanding" clause by taking into account the whole of the statutory context in which it appears.

United States v. Novak, 476 F.3d 1041, 1046 (9th Cir. 2007).

Relying upon the "common-sense principle of statutory construction that sections of a statute generally should be read to give effect, if possible, to every clause," the Ninth Circuit has held that a "notwithstanding" provision should not be given its broadest possible interpretation if doing so would render other statutory provisions ineffectual. *Oregon Nat. Res. Council v. Thomas*, 92 F.3d 792, 797 (9th Cir. 1996).

According the "notwithstanding" clause the broad construction advocated by the Attorney General would render § 363(f) of the Bankruptcy Code ineffectual with respect to non-profit debtors. Section 541(f) was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1221(e) ("BAPCPA"). BAPCPA made no changes to § 363(f). The Court cannot find that Congress intended § 541(f) to trump § 363(f) with respect to non-profit debtors.

G. The Court Certifies a Direct Appeal of its Decision to the Ninth Circuit Court of Appeals

Title 28 U.S.C. § 158(d)(2) provides that the Bankruptcy Court, acting on its motion, may certify a direct appeal of an order to the Court of Appeals if the order "involves a matter of public importance" or if an immediate appeal of the order will "materially advance the progress of the case or proceeding."

Certification is warranted here. The interplay between the sale provisions of the Bankruptcy Code and the authority of the Attorney General to regulate the sale of assets subject to a charitable trust is a matter of public importance. The issue has previously arisen in *Gardens I* and *Verity I*, and will continue to arise in future cases.

A direct appeal will materially advance the progress of the case. Closing of the SGM Sale is the lynchpin of the Debtors' plan of reorganization. However, under the APA, SGM is not

obligated to close the sale unless the Debtors obtain a final, non-appealable order authorizing a sale free and clear. The Debtors are facing severe liquidity constraints and cannot afford to continue to operate the Hospitals for much longer. A direct appeal will facilitate resolution of this case by providing certainty regarding the permissibility of a sale free and clear far sooner than would otherwise be possible. If the Court's order is upheld, SGM can proceed to close the sale. If not, the Debtors can commence shutting down St. Vincent, Seton, and Seton Coastside.

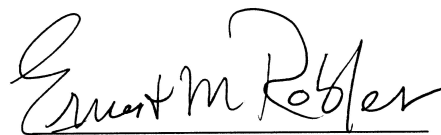
III. Conclusion

Based upon the foregoing, the Court finds that the Debtors may sell the Hospitals to SGM, free and clear of the Additional Conditions. The sale may proceed under applicable nonbankruptcy law pursuant to § 363(f)(1) because (1) the Additional Conditions qualify as successor liability that may not be imposed against SGM under California law and because (2) the Attorney General abused his discretion in attempting to impose the Additional Conditions, which therefore must be set aside. A bona dispute as to the Attorney General's authority to impose the Additional Conditions exists under § 363(f)(4), because the Debtors (1) have shown that the Additional Conditions are not authorized under California law and that (2) the attempted imposition of the Additional Conditions violates § 525. Pursuant to §363(f)(5), the sale is free and clear of the charity care and community benefit obligations, which can be reduced to a monetary valuation.

The Court will prepare and enter an order certifying this matter for a direct appeal to the Ninth Circuit. The Debtors shall submit an order granting the Motion within seven days of the issuance of this Memorandum of Decision.

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Date: October 23, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 16

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Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**STIPULATION RESOLVING "DEBTORS"
EMERGENCY MOTION FOR THE ENTRY OF AN
ORDER: (I) ENFORCING THE ORDER
AUTHORIZING THE SALE TO STRATEGIC GLOBAL
MANAGEMENT, INC.; (II) FINDING THAT THE SALE
IS FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN THOSE
APPROVED BY THE COURT; (III) FINDING THAT
THE ATTORNEY GENERAL ABUSED HIS
DISCRETION IN IMPOSING CONDITIONS ON THAT
SALE; AND (IV) GRANTING RELATED RELIEF"
[DOCKET NO. 3188]**

Hearing Date and Time:

Date: October 15, 2019

Time: 10:00 a.m. (Pacific Time)

Place: 255 E. Temple St., Courtroom 1568
Los Angeles, CA 90012



DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 This stipulation is entered into by and between Verity Health System of California, Inc. and
2 the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11
3 bankruptcy cases (collectively, the “Debtors”) and the California Attorney General (the “Attorney
4 General” and, together with the Debtors, the “Parties”), with respect to the following:

5 A. On September 30, 2019, the Debtors filed the *Debtors’ Emergency Motion for the*
6 *Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management,*
7 *Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those*
8 *Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing*
9 *the Conditions on That Sale; and (IV) Granting Related Relief* [Docket No. 3188] (the “Motion”).¹

10 B. On October 9, 2019, the Attorney General filed the *Opposition of California*
11 *Attorney General to “Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the*
12 *Order Authorizing the Sale to Strategic Global Management, Inc; (II) Finding That the Sale Is Free*
13 *and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding*
14 *That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV)*
15 *Granting Related Relief”* [Doc. 3188] [Docket No. 3333] (the “Attorney General Opposition”).

16 C. On October 10, 2019, Strategic Global Management, Inc. (“SGM”) filed the
17 *Statement of Strategic Global Management, Inc. in Support of “Debtors’ Emergency Motion for*
18 *the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global*
19 *Management, Inc; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different*
20 *Than Those Approved by the Court”* [Docket No. 3356] (the “SGM Statement”).

21 D. On October 14, 2019, the Debtors filed the *Debtors’ Reply to California Attorney*
22 *General’s Opposition to Debtors’ Motion for the Entry of an Order Enforcing the Order*
23 *Authorizing the Sale to Strategic Global Management, Inc.* [Docket No. 3382] (the “Reply”).

24 E. On October 15, 2019, at 10:00 a.m. (Pacific Time), the Court held a hearing on the
25 Motion (the “Hearing”). Appearances were as set forth on the record of the Hearing.

26 F. On October 23, 2019, the Court filed its *Memorandum of Decision Granting*
27

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 *Debtors' Emergency Motion to Enforce Sale Order [Doc. No. 3188] [Docket No. 3446] (the*
2 *"Memorandum Decision").*

3 **STIPULATION**

4 NOW, THEREFORE, all of the Parties to this Stipulation hereby conditionally stipulate and
5 agree as follows:

6 1. The Motion shall be granted by entry of the proposed order, attached hereto as
7 Exhibit "A", entitled *Order Granting "Debtors' Emergency Motion For The Entry Of An Order:*
8 *(I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding*
9 *That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The*
10 *Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On*
11 *That Sale; And (IV) Granting Related Relief" [Docket No. 3188] (the "Order").*

12 2. The Attorney General does not agree or concede that the Additional Conditions (as
13 defined in the Order) are an "interest in property" for purposes of 11 U.S.C. § 363(f), but
14 acknowledges that the Court so held in the Memorandum Decision (which is to be vacated and
15 withdrawn pursuant to the Order) and that, solely and exclusively for purposes of the APA (as
16 defined in the Order) and the Motion, the Order so states.

17 3. This Stipulation shall be binding and effective upon, but only upon, entry of the
18 Order in the proposed form attached hereto.

19
20 Dated: November 8, 2019

DENTONS US LLP

21 By: /s/ Tania M. Moyron

22 Tania M. Moyron

23 Counsel to the Debtors and Debtors in Possession

24 Dated: November 8, 2019

CALIFORNIA DEPARTMENT OF JUSTICE

25
26 By: _____

David K. Eldan

27 Counsel to Xavier Becerra, Attorney General of the
28 State of California

Exhibit A

Proposed Order

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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TANIA M. MOYRON (Bar No. 235736)
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NICHOLAS A. KOFFROTH (Bar No. 287854)
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601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
Case No. 2:18-bk-20165-ER
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Case No. 2:18-bk-20175-ER
Case No. 2:18-bk-20176-ER
Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity
2 Health System of California, Inc. and the above-referenced affiliated debtors and debtors in
3 possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the
4 response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 ____] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
11 withdrawn.
- 12 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion,
13 the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement
14 [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f),
15 and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions
16 without the imposition of any other conditions which would adversely affect the Purchaser (as
17 defined in the APA).
- 18 4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
19 controversies regarding the interpretation or enforcement of this Order. Notwithstanding the
20 preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the
21 Attorney General to enforce, in the California state courts and pursuant to section 5926 of the
22 California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the
23 APA.

24 ///

25 ///

26 ///

27 ///

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 5. The Attorney General waives any right to appeal this Order.

2
3 **IT IS SO ORDERED.**

4 ###

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT 17

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Samuel R. Maizel (SBN 189301) samuel.maizel@dentons.com Tania M. Moyron (SBN 235736) tania.moyron@dentons.com DENTONS US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017 Telephone: (213) 623-9300 Facsimile: (213) 623-9924</p> <p><input type="checkbox"/> Individual appearing without an attorney <input checked="" type="checkbox"/> Attorney for: Debtors and Debtors In Possession</p>	<p>FOR COURT USE ONLY</p>
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</p>	
<p>In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Debtors and Debtors In Possession.</p> <hr/> <p><input checked="" type="checkbox"/> Affects All Debtors</p> <p><input type="checkbox"/> Affects Verity Health System of California, Inc. <input type="checkbox"/> Affects O'Connor Hospital <input type="checkbox"/> Affects Saint Louise Regional Hospital <input type="checkbox"/> Affects St. Francis Medical Center <input type="checkbox"/> Affects St. Vincent Medical Center <input type="checkbox"/> Affects Seton Medical Center <input type="checkbox"/> Affects O'Connor Hospital Foundation <input type="checkbox"/> Affects Saint Louise Regional Hospital Foundation <input type="checkbox"/> Affects St. Francis Medical Center of Lynwood Foundation <input type="checkbox"/> Affects St. Vincent Foundation <input type="checkbox"/> Affects St. Vincent Dialysis Center, Inc. <input type="checkbox"/> Affects Seton Medical Center Foundation <input type="checkbox"/> Affects Verity Business Services <input type="checkbox"/> Affects Verity Medical Foundation <input type="checkbox"/> Affects Verity Holdings, LLC <input type="checkbox"/> Affects De Paul Ventures, LLC <input type="checkbox"/> Affects De Paul Ventures - San Jose Dialysis, LLC Liquidation Corporation, a California corporation,</p> <p style="text-align: right;">Debtor(s)</p>	<p>CASE NO.: 2:18-bk-20151-ER; Jointly administered with: Case No. 2:18-bk-20162-ER Case No. 2:18-bk-20163-ER Case No. 2:18-bk-20164-ER Case No. 2:18-bk-20165-ER Case No. 2:18-bk-20167-ER Case No. 2:18-bk-20168-ER Case No. 2:18-bk-20169-ER Case No. 2:18-bk-20171-ER Case No. 2:18-bk-20172-ER Case No. 2:18-bk-20173-ER Case No. 2:18-bk-20175-ER Case No. 2:18-bk-20176-ER Case No. 2:18-bk-20178-ER Case No. 2:18-bk-20179-ER Case No. 2:18-bk-20180-ER Case No. 2:18-bk-20181-ER</p> <p>CHAPTER: 11</p>
<p>NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: (title of motion¹): <u>Enforcement Motion [Docket No. 3188]</u></p>	

PLEASE TAKE NOTE that the order titled Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief" [Doc. 3188] was lodged on (date) 11/08/19 and is attached. This order relates to the motion which is docket number 3188.

¹ Please abbreviate if title cannot fit into text field.

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

- ☒ Affects All Debtors
- ☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
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☐ Affects De Paul Ventures - San Jose Dialysis,
LLC

Debtors and Debtors In
Possession.

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

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Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

HEREBY ORDERS AS FOLLOWS:

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 5. The Attorney General waives any right to appeal this Order.

2
3 **IT IS SO ORDERED.**

4 ###

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DENTONS US LLP
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LOS ANGELES, CALIFORNIA 90017-5704
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EXHIBIT 18

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Attorneys for Strategic Global Management, Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors in Possession.

- ☒ Affects All Debtors
☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
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☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose ASC, LLC

Debtors and Debtors in Possession.

LEAD CASE NO.: 2:18-bk-20151-ER

CHAPTER: 11
JOINTLY ADMINISTERED WITH:

CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
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CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

**OBJECTION TO ORDER GRANTING
“DEBTOR’S EMERGENCY MOTION
FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER
AUTHORIZING THE SALE TO
STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS
FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN
THOSE APPROVED BY THE COURT;
(III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION
IN IMPOSING CONDITIONS ON THAT
SALE; AND (IV) GRANTING RELATED
RELIEF” (DOC. 3188)**



1 Strategic Global Management, Inc. (“SGM”) submits the following Objection to the
2 “Order Granting Debtor’s Emergency Motion For The Entry Of An Order: (I) Enforcing The
3 Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is
4 Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III)
5 Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale;
6 And (IV) Granting Related Relief” [Doc. 3574] submitted by Verity Health System of California,
7 Inc. and related and affiliated Debtors.

8 **I.**

9 **INTRODUCTION**

10 An enormous amount of time and expense has been incurred in the efforts of the
11 Debtors, SGM, and other parties in interest, to reach an agreement for SGM’s purchase of 4
12 hospitals for a price of over \$600 Million, which will pave the way for confirmation of the
13 Debtors’ Plan of Reorganization, and the continued operation of the hospitals, employment of
14 thousands of people, and support of the communities they serve. Fundamental to that process has
15 been the need to resolve the issue of whether and to what extent SGM would be obligated to
16 perform or abide by conditions which the California Attorney General (“AG”) might attempt to
17 impose as part of his approval process. In recognition of the history in other cases of the AG’s
18 imposition of conditions that have had the effect of causing transaction to fail and hospitals to
19 close, SGM bargained for protection such that it would not have to close this transaction if the
20 conditions imposed by the AG were materially different (“Additional Conditions”) from that
21 which SGM had agreed to accept. The provisions of the APA addressing this subject matter are
22 contained in section 8.6.

23 The AG issued his Decision on September 25, 2019, in which the AG imposed Additional
24 Conditions for his approval of the sale to SGM. The Debtors, with SGM’s support, filed its
25 “Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale
26 To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of
27 Conditions Materially Different Than Those Approved By The Court; (III) Finding That The
28 Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV)

1 Granting Related Relief” [Doc. 3188] requesting a determination, among other things, that the
2 sale to SGM was free and clear of such Additional Conditions. Following the conclusion of the
3 hearing on the Emergency Motion, this court filed its Memorandum Decision on October 23,
4 2019 [Doc. 3446] in which it granted the Emergency Motion and, recognizing the importance (if
5 not ground breaking nature) of its ruling, the Court certified its ruling for a direct appeal to the
6 U.S. Court of Appeals for the Ninth Circuit.

7 The AG has agreed to waive its right to appeal in exchange for the Court’s vacation of its
8 Memorandum Decision and entry of a form of order to which it consents. That proposed order
9 [Doc. 3574] attached as Exhibit A hereto (herein, the “AG Order”), is not acceptable to
10 SGM. While SGM remains fully committed to the transaction, fundamental to SGM’s rights as a
11 purchaser is the protection to which it is entitled under APA section 8.6 in the form of a clearly
12 and unambiguously written order which forecloses, to the extent possible, any disputes or
13 controversies as to SGM’s protection from such Additional Conditions, its right not to comply
14 with, perform or adhere to any of the Additional Conditions, and SGM’s ability to come to this
15 court if there are future disputes or controversies over the interpretation or enforcement of such
16 order. Rather than accomplish that end, the AG Order is muddled, obtuse, grammatically
17 ambiguous, and, if entered, will not provide SGM the clear and unequivocal protection to which it
18 is entitled and which SGM believes the court intended it to have. Fortunately, these deficiencies
19 can be corrected, with no prejudice to the AG or to the Debtors.

20 Under the unique circumstances of this case including: (1) the removal from the record of
21 the Court’s Memorandum Decision, which thoroughly and comprehensively set forth the bases
22 for the Court’s ruling in granting the Motion, and (2) the profoundly important consequence of
23 the Court’s order on SGM’s future relationship with the AG for many years, in a transaction in
24 which SGM will be paying over \$600 Million, SGM is entitled to have a clearly-written,
25 unequivocal and unambiguous order that addresses the following subject matters which were not
26 fully and clearly provided for in the AG Order: (1) a definition of “Additional Conditions,” (2) a
27 clear statement as to what the “free and clear” terminology means as to the “Additional
28 Conditions,” and (3) a clear and unambiguous statement regarding this Court’s jurisdiction to

1 resolve disputes or controversies over the Order.

2 All of SGM's concerns over the AG Order can be fixed very simply and effectively by the
3 alternative order forth on Exhibit B hereto (the "SGM Order"). The use of the SGM Order, in
4 lieu of the AG Order, while providing necessary protection to SGM, will have no prejudicial
5 impact whatsoever on the AG or the Debtors. While SGM recognizes that one of the AG's goals,
6 in waiving its appeal and having the Court vacate its Memorandum Decision, is to limit, as much
7 as possible, a public record regarding this Court's significant decision concerning the
8 unenforceability of the Additional Conditions, the AG's goal of limiting the "collateral damage"
9 from this Court's ruling must give way to SGM's entitlement to a clearly stated, unambiguous
10 order which will avoid, or limit to the maximum extent, confusion and controversy over exactly
11 what this Court has decided.

12 Unfortunately, the AG's effort to avoid the precedential effect of this Court's ruling has
13 created an unnecessarily ambiguous order which may actually result in litigation between the AG
14 and SGM. The AG's verbatim extraction of specific language from § 8.6, while superficially
15 appealing, is grammatically unartful. Whether by design to obscure the outcome of the Court's
16 ruling or simply poor draftsmanship, the end result is an order that does not do justice to, or fairly
17 reflects, this Court's ruling and leaves SGM open to litigation.

18 II.

19 **THE CHANGES NECESSARY TO PROTECT THE INTEREST OF SGM,** 20 **CAN BE MADE WITHOUT ANY PREJUDICE TO THE AG**

21 SGM's proposed alternative order, at Paragraph 2, which is the paragraph that addresses
22 the "free and clear" provision of the order, states as follows:

23 The Debtors' transfer to SGM of the Debtors' assets (the
24 "SGM Sale") pursuant to that certain Asset Purchase
25 Agreement [Docket No. 2305-1] (the "SGM APA") is free
26 and clear of, and shall not be subject to or conditioned upon
27 SGM's performance of, compliance with, or adherence to,
28 any and all Additional Conditions (as defined in the SGM
APA and in the Motion), pursuant to Bankruptcy Code §
363(b), (f1), and (f5) and otherwise is provided in the Sale
Order."

1 The foregoing language is entirely consistent with the Debtor’s Motion, this Court’s
2 Memorandum Decision and, most importantly, expressly states what “free and clear” means, i.e.
3 that SGM is not required to perform, comply with or adhere to the Additional Conditions.
4 Because the concept of a “free and clear” sale as applied to regulatory conditions is, to say the
5 least, unusual, SGM believes that it is critical that the Order contain language, which clarifies that
6 a sale free and clear of conditions means that SGM will not have to comply with them.
7 Otherwise, there could be some doubt, and later a dispute, about exactly what the term “free and
8 clear” means as applied to regulatory conditions. The whole purpose of the SGM’s negotiation of
9 its rights under § 8.6, and of the Debtor’s Emergency Motion to satisfy its obligation under § 8.6,
10 was to establish that SGM would not have to comply with the AG Conditions. There is no
11 legitimate reason why the AG should refuse to have such language included in the Order – unless
12 the AG desires to leave the Order ambiguous enough either to be able to “spin it” or to create a
13 basis for controversy.

14 The problem with the AG’s language, especially in comparison to that proposed by SGM,
15 are several fold. First, the prefatory words “Solely and exclusively for the purposes of the APA”
16 are unnecessary, not requested by the Debtor or SGM in the Motion, and are ambiguous. The
17 transfer of the Debtor’s assets free and clear of the Additional Conditions needs to be clearly and
18 unambiguously stated. What does “Solely and exclusively for purpose of the APA” mean? If the
19 AG wants language to the effect that this Order does not apply to some other transaction over
20 which the AG has approval authority, then the Order can provide such language.

21 The AG Order contains the additional verbiage addressing the critical issue of the sale
22 being free and clear of the Additional Conditions in an awkward and imprecise manner:

23 Solely and exclusively for purposes of the APA . . . the
24 Additional Conditions . . . are an “interest in property” for
25 purposes of 11 U.S.C. § 363(f) and the assets (as defined in
26 the APA) *can be* sold free and clear of the Additional
27 Conditions(Emphasis added.)

28 The use of the words “can be sold” does not expressively state that they “are being
transferred” free and clear. While the AG has adopted verbiage from § 8.6 of the APA, word for

1 word, those words do not translate clearly into a court order. There is no particular reason why
2 the Order should use the phrase “can be sold” as opposed to “are being transferred” which is
3 consistent with the Sale Order and is exactly what this Court decided when it granted the
4 Emergency Motion.

5 Finally, this Court made no ruling as to the AG’s enforcement rights (and no such ruling
6 was requested) and this Court should retain exclusive jurisdiction to resolve any disputes or
7 controversies concerning its Order. The AG Order, after acknowledging the Bankruptcy Court’s
8 exclusive jurisdiction, goes on to say:

9 “Notwithstanding the preceding sentence, nothing contained in this Order shall
10 prohibit or limit the authority of the Attorney General to enforce, in the state courts and
11 pursuant to section 5926 of the California Corporations Code, the Purchaser Approved
12 Conditions set forth in Schedule 8.6 to the SGM APA.”

13 First, there is no basis, either in the Emergency Motion, the AG’s Opposition or the
14 Memorandum Decision, for this Court to be ruling on the AG’s enforcement right, one way or the
15 other, except with respect to the Additional Conditions. Second, the words “Notwithstanding the
16 preceding sentence” obviously are meant to supersede the prior sentence and, since the prior
17 sentence provided for the Bankruptcy Court’s “exclusive jurisdiction” over disputes pertaining to
18 the Order, the AG Order would effectively trump that provision which or, at least create a “forum
19 war” over future disputes. In light of the fact that a dispute could involve whether the AG is
20 improperly attempting to enforce an “Additional Condition”, there should be no question that any
21 such dispute should be heard in this Court, since it is this Court that has created the barrier against
22 such enforcement.

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1 Based on the foregoing, SGM respectfully requests that the Court enter the SGM Order.¹

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3 Dated: November 11, 2019

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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5 By: /s/ Gary E. Klausner
6 Gary E. Klausner
7 Counsel for Strategic Global Management, Inc.
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¹ SGM reserves all of its rights under the APA including, without limitation, as provided for in section 8.6

EXHIBIT “A”

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Samuel R. Maizel (SBN 189301) samuel.maizel@dentons.com Tania M. Moyron (SBN 235736) tania.moyron@dentons.com DENTONS US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017 Telephone: (213) 623-9300 Facsimile: (213) 623-9924</p> <p><input type="checkbox"/> Individual <i>appearing without an attorney</i> <input checked="" type="checkbox"/> <i>Attorney for:</i> Debtors and Debtors In Possession</p>	<p>FOR COURT USE ONLY</p>
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - <u>LOS ANGELES</u> DIVISION</p>	
<p>In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Debtors and Debtors In Possession.</p> <hr/> <p><input checked="" type="checkbox"/> Affects All Debtors</p> <p><input type="checkbox"/> Affects Verity Health System of California, Inc. <input type="checkbox"/> Affects O'Connor Hospital <input type="checkbox"/> Affects Saint Louise Regional Hospital <input type="checkbox"/> Affects St. Francis Medical Center <input type="checkbox"/> Affects St. Vincent Medical Center <input type="checkbox"/> Affects Seton Medical Center <input type="checkbox"/> Affects O'Connor Hospital Foundation <input type="checkbox"/> Affects Saint Louise Regional Hospital Foundation <input type="checkbox"/> Affects St. Francis Medical Center of Lynwood Foundation <input type="checkbox"/> Affects St. Vincent Foundation <input type="checkbox"/> Affects St. Vincent Dialysis Center, Inc. <input type="checkbox"/> Affects Seton Medical Center Foundation <input type="checkbox"/> Affects Verity Business Services <input type="checkbox"/> Affects Verity Medical Foundation <input type="checkbox"/> Affects Verity Holdings, LLC <input type="checkbox"/> Affects De Paul Ventures, LLC <input type="checkbox"/> Affects De Paul Ventures - San Jose Dialysis, LLC Liquidation Corporation, a California corporation,</p> <p style="text-align: right;">Debtor(s)</p>	<p>CASE NO.: 2:18-bk-20151-ER; Jointly administered with: Case No. 2:18-bk-20162-ER Case No. 2:18-bk-20163-ER Case No. 2:18-bk-20164-ER Case No. 2:18-bk-20165-ER Case No. 2:18-bk-20167-ER Case No. 2:18-bk-20168-ER Case No. 2:18-bk-20169-ER Case No. 2:18-bk-20171-ER Case No. 2:18-bk-20172-ER Case No. 2:18-bk-20173-ER Case No. 2:18-bk-20175-ER Case No. 2:18-bk-20176-ER Case No. 2:18-bk-20178-ER Case No. 2:18-bk-20179-ER Case No. 2:18-bk-20180-ER Case No. 2:18-bk-20181-ER</p> <p>CHAPTER: 11</p>
<p>NOTICE OF LODGMENT OF ORDER IN BANKRUPTCY CASE RE: <i>(title of motion¹)</i>: <u>Enforcement Motion [Docket No. 3188]</u></p>	

PLEASE TAKE NOTE that the order titled Order Granting "Debtors' Emergency Motion For The Entry Of An Order: (I) Enforcing The Order Authorizing The Sale To Strategic Global Management, Inc.; (II) Finding That The Sale Is Free And Clear Of Conditions Materially Different Than Those Approved By The Court; (III) Finding That The Attorney General Abused His Discretion In Imposing Conditions On That Sale; And (IV) Granting Related Relief" [Doc. 3188] was lodged on (date) 11/08/19 and is attached. This order relates to the motion which is docket number 3188.

¹ Please abbreviate if title cannot fit into text field.

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 Attorneys for the Chapter 11 Debtors and
 Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
 Possession.

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

Debtors and Debtors In
 Possession.

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

Jointly Administered With:

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

Chapter 11 Cases
 Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
 MOTION FOR THE ENTRY OF AN ORDER: (I)
 ENFORCING THE ORDER AUTHORIZING THE
 SALE TO STRATEGIC GLOBAL MANAGEMENT,
 INC.; (II) FINDING THAT THE SALE IS FREE
 AND CLEAR OF CONDITIONS MATERIALLY
 DIFFERENT THAN THOSE APPROVED BY THE
 COURT; (III) FINDING THAT THE ATTORNEY
 GENERAL ABUSED HIS DISCRETION IN
 IMPOSING CONDITIONS ON THAT SALE; AND
 (IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
 Time: 10:00 a.m. (Pacific Time)
 Location: Courtroom 1568
 255 E. Temple Street
 Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity
2 Health System of California, Inc. and the above-referenced affiliated debtors and debtors in
3 possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the
4 response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 3572] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
11 withdrawn.
- 12 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion,
13 the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement
14 [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f),
15 and the Assets (as defined in the APA) can be sold free and clear of the Additional Conditions
16 without the imposition of any other conditions which would adversely affect the Purchaser (as
17 defined in the APA).
- 18 4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
19 controversies regarding the interpretation or enforcement of this Order. Notwithstanding the
20 preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the
21 Attorney General to enforce, in the California state courts and pursuant to section 5926 of the
22 California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the
23 APA.

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

5. The Attorney General waives any right to appeal this Order.

IT IS SO ORDERED.

###

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EXHIBIT “B”

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Attorneys for Strategic Global Management, Inc.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

- Case No. 2:18-bk-20162-ER
Case No. 2:18-bk-20163-ER
Case No. 2:18-bk-20164-ER
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Case No. 2:18-bk-20172-ER
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Case No. 2:18-bk-20175-ER
Case No. 2:18-bk-20176-ER
Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**ORDER GRANTING DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL
MANAGEMENT, INC.; (II) FINDING THAT THE
SALE IS FREE AND CLEAR OF CONDITIONS
MATERIALLY DIFFERENT THAN THOSE
APPROVED BY THE COURT; (III) FINDING
THAT THE ATTORNEY GENERAL ABUSED
HIS DISCRETION IN IMPOSING CONDITIONS
ON THAT SALE; AND (IV) GRANTING
RELATED RELIEF" (DOC.3188)**

Hearing:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by
2 Verity Health System of California, Inc. and the above-referenced affiliated debtors and debtors
3 in possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”),
4 the response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 3572] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Debtors’ transfer to SGM of the Debtors’ assets (the “SGM Sale”) pursuant to
11 that certain asset purchase agreement [Docket No. 2305-1] (the “SGM APA”) is free and clear of,
12 and shall not be subject to or conditioned upon SGM’s performance of, compliance with, or
13 adherence to, any and all Additional Conditions (as defined in the SGM APA and in the Motion),
14 pursuant to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), and (f)(5) and otherwise as provided in the
15 Sale Order.
- 16 3. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
17 controversies regarding the interpretation or enforcement of this Order.
- 18 4. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
19 withdrawn.
- 20 5. The Attorney General waives any right to appeal this Order.

21
22 **IT IS SO ORDERED.**

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¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **OBJECTION TO ORDER GRANTING "DEBTOR'S EMERGENCY MOTION FOR THE ENTRY OF AN ORDER: (I) ENFORCING THE ORDER AUTHORIZING THE SALE TO STRATEGIC GLOBAL MANAGEMENT, INC.; (II) FINDING THAT THE SALE IS FREE AND CLEAR OF CONDITION MATERIALLY DIFFERENT THAN THOSE APPROVED BY THE COURT; (III) FINDING THAT THE ATTORNEY GENERAL ABUSED HIS DISCRETION IN IMPOSING CONDITIONS ON THAT SALE; AND (IV) GRANTING RELATED RELIEF"** (DOC. 3188) will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **November 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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- 21 • Rose Zimmerman rzimmerman@dalycity.org

22 **2. SERVED BY UNITED STATES MAIL:** On **November 11, 2019**, I served the following persons and/or
23 entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true
24 and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and
25 addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be
26 completed no later than 24 hours after the document is filed.

27 ☐ Service information continued on attached page

28 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR,
on **November 11, 2019**, I served the following persons and/or entities by personal delivery, overnight
mail service, or (for those who consented in writing to such service method), by facsimile transmission
and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or
overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served via Attorney Service

The Honorable Ernest M. Robles
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

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

November 11, 2019	Stephanie Reichert	/s/ Stephanie Reichert
Date	Type Name	Signature

EXHIBIT 19

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

FILED & ENTERED

NOV 14 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtor and Debtor In
Possession.

☒ Affects All Debtors

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

Debtors and Debtors In
Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**ORDER GRANTING "DEBTORS' EMERGENCY
MOTION FOR THE ENTRY OF AN ORDER: (I)
ENFORCING THE ORDER AUTHORIZING THE
SALE TO STRATEGIC GLOBAL MANAGEMENT,
INC.; (II) FINDING THAT THE SALE IS FREE
AND CLEAR OF CONDITIONS MATERIALLY
DIFFERENT THAN THOSE APPROVED BY THE
COURT; (III) FINDING THAT THE ATTORNEY
GENERAL ABUSED HIS DISCRETION IN
IMPOSING CONDITIONS ON THAT SALE; AND
(IV) GRANTING RELATED RELIEF" [DOC. 3188]**

Hearing Date and Time:

Date: October 15, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



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1 The Court, having considered the motion [Docket No. 3188] (the “Motion”)¹ filed by Verity
2 Health System of California, Inc. and the above-referenced affiliated debtors and debtors in
3 possession in the above captioned chapter 11 bankruptcy cases (collectively, the “Debtors”), the
4 response [Docket No. 3333] of the California Attorney General (the “Attorney General”), the
5 statement [Docket No. 3356] filed by Strategic Global Management, Inc. (collectively with its
6 affiliates, “SGM”), the reply [Docket No. 3382] filed by the Debtors, the stipulation [Docket No.
7 3572] by and among the Debtors and the Attorney General, and good cause appearing,

8 **HEREBY ORDERS AS FOLLOWS:**

- 9 1. The Motion is GRANTED.
- 10 2. The Court’s memorandum decision [Docket No. 3446] is hereby vacated and
11 withdrawn.
- 12 3. Solely and exclusively for purposes of the APA (as defined below) and the Motion,
13 the Additional Conditions (as defined in section 8.6 of that certain asset purchase agreement
14 [Docket No. 2305-1] (the “APA”)) are an “interest in property” for purposes of 11 U.S.C. § 363(f).
15 The Assets (as defined in the APA) are being sold free and clear of the Additional Conditions
16 without the imposition of any other conditions which would adversely affect the Purchaser (as
17 defined in the APA).
- 18 4. This Court shall retain exclusive jurisdiction to adjudicate any disputes or
19 controversies regarding the interpretation or enforcement of this Order. Notwithstanding the
20 preceding sentence, nothing contained in this Order shall prohibit or limit the authority of the
21 Attorney General to enforce, in the California state courts and pursuant to section 5926 of the
22 California Corporations Code, the Purchaser Approved Conditions set forth on Schedule 8.6 to the
23 APA.

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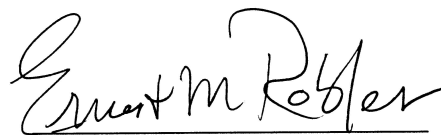
28 _____
¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 5. The Attorney General waives any right to appeal this Order.

2
3 **IT IS SO ORDERED.**

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24 Date: November 14, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 20

FILED & ENTERED

NOV 18 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

ORDER (1) FINDING THAT SGM IS OBLIGATED TO PROMPTLY CLOSE THE SGM SALE UNDER § 8.6 OF THE APA, PROVIDED THAT ALL OTHER CONDITIONS TO CLOSING HAVE BEEN SATISFIED AND (2) GRANTING DEBTORS' MOTION FOR A CONTINUANCE OF THE HEARING TO APPROVE THE DISCLOSURE STATEMENT

CONTINUED HEARING TO APPROVE DISCLOSURE STATEMENT:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



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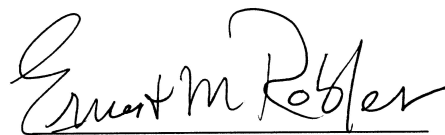
For the reasons set forth in the concurrently-issued *Memorandum of Decision (1) Finding that SGM is Obligated to Promptly Close the SGM Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors' Motion for a Continuance of the Hearing to Approve the Disclosure Statement* (the "Memorandum of Decision"), the Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

- 1) The Debtors have complied with their obligation under the APA¹ to obtain a final, non-appealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.
- 2) The hearing on the Disclosure Statement Motion is **CONTINUED** from November 20, 2019, at 10:00 a.m. to **November 26, 2019, at 10:00 a.m.** The Debtors' Reply in support of the Disclosure Statement Motion shall be filed by no later than **November 21, 2019.**

IT IS SO ORDERED.

###

Date: November 18, 2019



Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Memorandum of Decision.

EXHIBIT 21

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

FILED & ENTERED

NOV 18 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Ilewis DEPUTY CLERK

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

☒ Affects All Debtors

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

Jointly Administered With:

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

Chapter 11 Cases.

MEMORANDUM OF DECISION (1) FINDING THAT SGM IS OBLIGATED TO PROMPTLY CLOSE THE SGM SALE UNDER § 8.6 OF THE APA, PROVIDED THAT ALL OTHER CONDITIONS TO CLOSING HAVE BEEN SATISFIED AND (2) GRANTING DEBTORS' MOTION FOR A CONTINUANCE OF THE HEARING TO APPROVE THE DISCLOSURE STATEMENT

CONTINUED HEARING TO APPROVE DISCLOSURE STATEMENT:

Date: November 26, 2019
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Debtors and Debtors in Possession.,



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I. Introduction

The Debtors have filed a motion seeking (a) to continue the November 20, 2019 hearing on the Disclosure Statement and (b) to use the November 20 hearing as a Status Conference (the “Continuance Motion”).¹ The Debtors filed the Continuance Motion after being advised, on November 15, 2019, that Strategic Global Management, Inc. (“SGM”) would be sending the Debtors formal correspondence material to SGM’s agreement to purchase the Debtors’ four remaining hospitals (the “Hospitals,” and the sale transaction, the “SGM Sale”). As of the filing of the Continuance Motion, the Debtors had not received the SGM correspondence. The Continuance Motion did not specify the anticipated contents of the correspondence.

The Court will grant the Continuance Motion for the reasons set forth below. To facilitate an expeditious and successful resolution of these cases, the Court makes the findings and conclusions contained herein. The Court’s primary finding is that the Debtors have complied with their obligation under the APA² to obtain a final, non-appealable Supplemental Sale Order, and that accordingly SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.

II. Findings and Conclusions

A. SGM is Obligated to Promptly Close the Sale Under § 8.6 of the APA, Provided that All Other Conditions to Closing Have Been Satisfied

Prompt closing of the SGM Sale is indispensable to the successful resolution of these bankruptcy cases. The Debtors are sustaining operational losses of approximately \$450,000 per day. Operation of the Hospitals is being financed by a consensual cash stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”), which expires on December 31, 2019. The Debtors do not have the ability to borrow under any debtor-in-possession financing facility, and it is unclear whether the Debtors will be able to obtain alternative financing once the Cash Collateral Stipulation expires. In addition, the Debtors are facing very significant liquidity constraints. In late September 2019, the California Department of Health Care Services (the “DHCS”) began withholding certain Medi-Cal fee-for-service payments owed to the Debtors, for the purposing of recovering alleged Medi-Cal overpayments. The DHCS withholdings have deprived the Debtors of a major source of funding that had previously been used to sustain operations.

On February 6, 2019, the Court conducted a hearing to determine whether to approve the Asset Purchase Agreement (the “APA”) entered into between the Debtors and SGM, under which SGM had agreed to serve as the stalking-horse bidder for the auction of the Hospitals. The Court found that the termination rights granted to SGM in the APA were unduly broad. In response to the Court’s concerns, the Debtors renegotiated the APA to limit SGM’s termination rights. On February 19, 2019, the Court approved the renegotiated APA.³

The renegotiated provisions pertain to SGM’s ability to terminate the transaction in the event that the California Attorney General (the “Attorney General”) sought to impose conditions on the sale that were not substantially consistent with those conditions that SGM had agreed to accept (the “Purchaser Approved Conditions”). In the event that the Attorney General sought to impose conditions materially different from the Purchaser Approved Conditions (the “Additional

¹ Doc. No. 3621.

² Capitalized terms not defined in this section are defined below.

³ Doc. No. 1572.

Conditions”), the APA provides the Debtors an opportunity to obtain a determination from the Court that the Hospitals can be sold free and clear of the Additional Conditions under § 363(f) of the Bankruptcy Code (an order granting such relief, the “Supplemental Sale Order”).

The Court entered the Supplemental Sale Order on November 14, 2019.⁴ The Attorney General has waived his right to appeal the Supplemental Sale Order.⁵ All other parties with standing to appeal the Supplemental Sale Order have waived their right to appeal.

The APA provides that once the Supplemental Sale Order becomes final and non-appealable, SGM “shall consummate the Sale provided that all other conditions to closing have been satisfied.” APA at ¶ 8.6. Because all parties with standing to appeal have waived their rights to do so, the Supplemental Sale Order is now final and non-appealable. Provided that all other conditions to closing have been satisfied, SGM is obligated to promptly close the sale.

The Court conducted a hearing to resolve SGM’s objections to the form of the Supplemental Sale Order on November 13, 2019.⁶ At the hearing, SGM argued that entry of the Supplemental Sale Order did not obligate it to close the sale. SGM asserted that under § 8.6 of the APA, it had 21 business days to evaluate, in the exercise of its reasonable business judgment, whether the Supplemental Sale Order was acceptable (the “Evaluation Period”).

SGM’s argument that it is entitled to the Evaluation Period is not well taken. Under the plain language of the APA, SGM is entitled to the Evaluation Period only if the Supplemental Sale Order is the subject of a pending appeal:

If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the “Evaluation Period”) to determine, in the exercise of the Purchaser’s reasonable business judgment and in consultation with Purchaser’s financing sources, whether to proceed to consummate the transactions contemplated by this Agreement; provided, however, (i) Purchaser shall not terminate or provide notice of termination of the Stalking Horse APA based on the Seller’s failure to satisfy the condition set forth under this Section 8.6 until the expiration of the Evaluation Period as may be extended herein, and (ii) the Evaluation Period may be extended by the Debtors, in consultation with the Consultation Parties, by up to 90 days for any appeal properly perfected with respect to the Supplemental Sale Order (the “Extended Evaluation Periods”). For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser’s business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit. Sellers shall provide Purchaser with prompt written notice of the conclusion of the Extended Evaluation Periods and whether the Supplemental Sale Order has become a final, non-appealable order. For purposes of this Section 8.6, “a final, non-appealable order” shall include a Supplemental Sale Order (i) which has been affirmed or

⁴ Doc. No. 3611.

⁵ Doc. No. 3572.

⁶ For a transcript of the hearing, see Doc. No. 3620.

the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. *If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied.*

APA at ¶ 8.6 (emphasis added).

At the February 6, 2019 hearing on approval of the APA, SGM made clear that the purpose of the Evaluation Period was to prevent it from being required to close the sale if there was a risk that the Supplemental Sale Order could be overturned on appeal. SGM further stated that it would be required to close the sale if the Supplemental Sale Order became final and non-appealable:

So, what we have done now is negotiate something less in our discretion. And the way this will work is the following. In the event that the AG comes out with what we call, “Additional Conditions,” meaning those that are not set forth on the schedule, and assuming that they are material, and we’ve defined what we mean by “material.”

The Debtor has an opportunity to come to court and attempt to get the Court to determine that those conditions don’t have to be satisfied because they’re “interests” and the sale can be free and clear.

If the Court—if the Debtor decides not to seek that relief, or if the [Debtor] seeks it and doesn’t get it, we have a right to terminate. We don’t have to, but we at least would have a right at that point to terminate based upon the imposition of these Additional Conditions.

If the Debtor is successful in obtaining that order, then we have to deal with the appeal risk, which is, again, very difficult to quantify. So what we’ve agreed on is that the Debtor is going to have a period of time to get us ... a final non-appealable order.

If the Debtor can get us a final, non-appealable order, meaning that if there’s an appeal, it gets resolved in the Debtor’s favor or maybe gets dismissed, at that point we will be obligated to close the transaction, as long as all the other conditions to closing have been satisfied.

Transcript of February 6, 2019 Hearing at 20:7–21:6 (emphasis added).⁷

SGM is judicially estopped from contending that it is entitled to the Evaluation Period and is not obligated to promptly close the sale.⁸ As the Supreme Court has held:

“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” This rule, known as judicial estoppel, “generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.”

⁷ Doc. No. 1570.

⁸ The Court’s discussion assumes that all other conditions to closing have been satisfied.

New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001) (internal citations omitted).

The Court declined to approve the original form of the APA because it found that SGM's termination rights were too expansive. The Court approved the APA only after the inclusion of the provision requiring SGM to close the sale if the Debtors obtained a final, non-appealable Supplemental Sale Order. SGM received a number of benefits under the APA, including a breakup fee and consultation rights in the event an auction was conducted. Having received benefits under the APA, SGM is judicially estopped from contradicting its prior representations regarding its obligation to close the sale.

B. The Continuance Motion is Granted

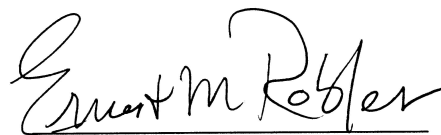
To the extent that the Continuance Motion was motivated by the dispute regarding SGM's obligations under § 8.6 of the APA, that dispute has been rendered moot by the findings set forth above. However, several objections to the Disclosure Statement Motion have been filed, and the Debtors have not yet had an opportunity to file a Reply to these objections. For that reason—and that reason alone—the Continuance Motion is granted.

The hearing on the Disclosure Statement Motion is **CONTINUED** from November 20, 2019, at 10:00 a.m. to **November 26, 2019, at 10:00 a.m.** The Debtors' Reply in support of the Disclosure Statement Motion shall be filed by no later than **November 21, 2019**.

The Court will enter an order consistent with this Memorandum of Decision.

###

Date: November 18, 2019



Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT 22

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Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER
Jointly Administered With:

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

MOTION TO (A) CONTINUE HEARING ON MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN, AND (IV) GRANTING RELATED RELIEF; (B) CONTINUE THE REPLY DEADLINE WITH RESPECT TO DISCLOSURE STATEMENT OBJECTIONS, AND (C) USE THE NOVEMBER 26, 2019, 10:00 A.M. HEARING DATE FOR A STATUS CONFERENCE ON THIS MATTER; DECLARATION OF RICHARD G. ADCOCK IN SUPPORT THEREOF

[RELATES TO DOCKET NOS. 2994, 2995, 3120, 3193, 3260, 3389, 3594, 3632, 3633]

Proposed Status Conference Date and Time:

Date: November 26, 2019

Time: 10:00 a.m. (Pacific Time)

Place: 255 E. Temple St., Courtroom 1568
Los Angeles, CA 90012



Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request (the “Motion”) that the Court (A) approve a continuance of the hearing on the *Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice and Objection Procedures for Confirmation of Debtors’ Plan; and (IV) Granting Related Relief* [Docket No. 2995] (the “Disclosure Statement Motion”) to a date to be set by the Court at the Status Conference (defined below), (B) reschedule the deadline to file replies to objections to the Disclosure Statement Motion at the Status Conference, and (C) to use November 26, 2019, 10:00 a.m., as a status conference (the “Status Conference”). In support of the Motion, the Debtors submit the attached *Declaration of Richard G. Adcock* (the “Adcock Declaration”) and, respectfully state as follows:

I.

INTRODUCTION

Yesterday, on November 18, 2019, the Court entered the memorandum decision [Docket No. 3632] and order [Docket No. 3633] (collectively, the “Orders”) “finding that SGM is obligated to promptly close the SGM Sale under § 8.6 of the APA, provided that all other conditions to closing have been satisfied.” Docket No. 3632. The Orders confirmed that the Debtors satisfied Section 8.6 of that certain asset purchase agreement (the “SGM APA”) [Docket No. 2305-1] and rendered moot any argument to the contrary. *Id.* at 5. The Order also provided that Strategic Global Management, Inc. (“SGM”) was obligated to promptly close the SGM sale (the “SGM Sale”), provided that all other conditions have been satisfied. Despite the foregoing, there remains a significant amount of uncertainty regarding the SGM sale transaction. As of the last motion [Docket No. 3621] to continue the hearing on the Disclosure Statement Motion, the Debtors anticipated receiving formal correspondence from SGM that would be material to the sale transaction. The Debtors have yet to receive the correspondence, but have been informed that it is forthcoming. Further, since the Orders, SGM orally communicated new information that undermines the Debtors’ confidence in a prompt closing of the sale. *See Adcock Declaration.*

1 The Debtors are conscious of the urgent need to advance the Disclosure Statement (as
2 defined below) and plan process, but cannot in good faith move forward until there is more
3 certainty that a successful closing can be reasonably anticipated. The Debtors' plan of liquidation
4 is contingent on the sale closing, and, thus, any material doubt cast on the SGM sale hinders the
5 Debtors ability to provide adequate information to creditors and the Court.

6 Consequently, the Debtors request that the Court enter an order granting the following
7 relief (collectively, the "Proposed Relief"): (A) rescheduling the hearing on the Disclosure
8 Statement, currently scheduled on November 26, 2019, to a date to be set by the Court at the
9 Status Conference; (B) rescheduling the deadline set forth in the Order to file replies to objections
10 to the Disclosure Statement Motion at the Status Conference; and (C) preserving the hearing on
11 November 26, 2019, 10:00 a.m., as a status conference on this matter.

12 II.

13 JURISDICTION AND VENUE

14 This Court has jurisdiction over this Motion under 28 U.S.C. § 157(b)(2)(A) and (L).
15 Venue of these proceedings and this Motion is proper pursuant to 28 U.S.C. § 1409. The
16 statutory predicate for this Motion is 11 U.S.C. § 105¹ and LBR 9013-1(m).

17 III.

18 BACKGROUND FACTS

19 A. General Background

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

25 B. The Plan and Disclosure Statement

26 2. On September 3, 2019, the Debtors filed the *Debtors' Chapter 11 Plan of*
27
28

1

1 *Liquidation (Dated September 3, 2019)* [Docket No. 2993] (the “Plan”) and related *Disclosure*
2 *Statement Describing Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)*
3 [Docket No. 2994] (the “Disclosure Statement”).

4 3. On September 4, 2019, the Debtors filed the Disclosure Statement Motion. In the
5 Disclosure Statement Motion, the Debtors seek approval of (i) the Disclosure Statement,
6 (ii) proposed solicitation and voting procedures, (iii) proposed notice and objection procedures for
7 confirmation of the Plan, and (iv) related relief. The Debtors also requested [Docket No. 2996]
8 an order setting a hearing and briefing schedule on shortened notice.

9 4. On September 4, 2019, the Court entered an *Order Setting Hearing On Motion for*
10 *Approval of Disclosure Statement for October 2, 2019, at 10:00 a.m.* [Docket No. 2998] (the
11 “Disclosure Statement Scheduling Order”). The Disclosure Statement Scheduling Order set a
12 hearing on the Disclosure Statement Motion for October 2, 2019 at 10:00 a.m., and provided that
13 any oppositions to the Disclosure Statement Motion must be filed not later than September 18,
14 2019. *See* Scheduling Order at 2.

15 5. On September 18, 2019, certain parties in interest filed responses and oppositions
16 to the Disclosure Statement Motion. *See* Docket Nos. 3079, 3084, 3086, 3087, 3089, 3090, 3092,
17 3094. Further, the Debtors have continued the opposition deadline by stipulation as they continue
18 negotiations with certain other parties with respect to the Disclosure Statement Motion and
19 Disclosure Statement. *See* Docket Nos. 3076, 3077, 3082, 3098, 3119, 3122, 3126, 3195.

20 **C. The Emergency Motion and SGM Sale**

21 6. On May 2, 2019, the Court entered an order [Docket No. 2306] (the “Sale Order”)
22 approving the SGM APA concerning the SGM Sale. On September 25, 2019, the Attorney
23 General conditionally approved the SGM Sale subject to certain conditions (the “2019
24 Conditions”). Certain of the 2019 Conditions (the “Additional Conditions”) were materially
25 different than those to which SGM agreed under the Schedule 8.6 to the SGM APA.

26 7. On September 30, 2019, the Debtors filed the motion [Docket No. 3188] (the
27 “Enforcement Motion”) for entry of an order finding (i) that the Debtors could sell their assets
28 pursuant to the SGM Sale free and clear of the Additional Conditions, or, alternatively, (ii) that

1 the Attorney General abused his discretion when imposing the Additional Conditions. As
2 discussed in greater detail in the Enforcement Motion, the Additional Conditions recently issued
3 by the Attorney General threatened the SGM Sale, and could have triggered SGM's termination
4 rights under the APA unless the Debtors obtained the relief requested by the Enforcement
5 Motion. *See* SGM APA, § 8.6.

6 8. On October 1, 2019, the Court entered the *Order Setting Hearing on Emergency*
7 *Motion for the Entry of an Order Enforcing the Order Authorizing the Sale to Strategic Global*
8 *Management for October 15, 2019, at 10:00 a.m.* [Docket No. 3193] (the "Scheduling Order"),
9 which scheduled a hearing on the Enforcement Motion on October 15, 2019, at 10:00 a.m.
10 (Pacific Time)—the same date and time as the hearing on the Disclosure Statement Motion. *See*
11 *Scheduling Order* at 2.

12 9. On October 23, 2019, the Court entered the *Memorandum of Decision Granting*
13 *Debtors' Emergency Motion to Enforce the Sale Order* [Doc. No. 3188] (the "Memorandum
14 Decision"). The Memorandum Decision granted the Enforcement Motion and further provided
15 that the Court will enter an order certifying the matter for direct appeal to the Ninth Circuit. *See*
16 *Mem. Dec.* at 24. The Court requested that the Debtors submit an order on the Enforcement
17 Motion consistent with the Memorandum Decision not later than October 30, 2019. *See id.* On
18 November 14, 2019, after holding an emergency hearing on the proposed form of order, the Court
19 entered the order granting the Enforcement Motion [Docket No. 3611] (the "Enforcement
20 Order").

21 **D. Continuance of Hearing on Disclosure Statement Motion**

22 10. The Debtors have filed six motions [Docket No. 3103, 3238, 3384, 3502, 3589,
23 3621] to continue the hearing on the Disclosure Statement Motion, which were granted by the
24 Court [Docket No. 3120, 3260, 3389, 3506, 3594, 3633]. The order on the Debtors' sixth
25 continuance motion set the Debtors' reply deadline as November 21, 2019 (the "Reply
26 Deadline"), and scheduled a continued hearing on the Motion for November 26, 2019, at 10:00
27 a.m. (Pacific Time) (the "Hearing").
28

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(213) 623-9300

E. Facts Relevant to the Motion

11. On October 10, 2019, SGM filed the *Statement of Strategic Global Management, Inc. in Support of “Debtors’ Emergency Motion for the Entry of an Order: (I) Enforcing the Order Authorizing the Sale to Strategic Global Management, Inc.’ (II) Finding that the Sale is Free and Clear of Conditions Materially Different Than Those Approved by the Court . . .”* [Docket No. 3356] (the “SGM Statement”). In the SGM Statement, SGM indicated that “it will not close the Sale unless the Debtors timely obtain a Free and Clear order from the Court.” SGM Statement at 4. The SGM APA further provides that such order must be final and non-appealable, that is, an order “which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court).” *See* SGM APA § 8.6. The Court entered the Enforcement Order on November 14, 2019. The two parties that objected to the Enforcement Motion have agreed not to appeal the Enforcement Order.

12. On the morning of November 15, 2019, the CEO of SGM informed the CEO of the Debtors of SGM’s intent to send the Debtors formal correspondence material to the SGM Sale. *See* Adcock Declaration, ¶ 4. As of the filing of this Motion, November 19, 2019, the Debtors have not received any such correspondence, but have been informed that it is forthcoming. *See id.* After the entry of the order by the Court on November 18, 2019, SGM orally communicated new information to the Debtors’ representatives that undermines the Debtors’ confidence in a prompt closing of the sale. *See id.*

IV.

ARGUMENT

LBR 9013-1(m)(1) governs motions for continuance and sets forth various general requirements. The Motion satisfies the requirements of the LBRs because it is filed more than three days prior to the Hearing, sets forth the reasons for the proposed continuance in detail, and is supported by the Adcock Declaration. *See* LBR 9013-1(m)(1).

The Debtors require a continuance of the Hearing on the Disclosure Statement Motion for the reasons discussed above. A continuance of the Hearing will serve the best interests of the

1 estates and creditors because it will ensure that the Debtors avoid the expense of unnecessary
2 amendments to their Plan and Disclosure Statement. In light of the benefit to the Debtors' Cases,
3 the Debtors respectfully request that the Court continue the Hearing on the Disclosure Statement
4 Motion from November 20, 2019, at 10:00 a.m., to a date to be set by the Court at the Status
5 Conference (the "Continued Hearing Date"). In accordance with the LBR 9013-1(m)(4), the
6 Continued Hearing Date will automatically extend the reply deadline unless otherwise ordered by
7 the Court at the Status Conference.

8 V.

9 **CONCLUSION**

10 In light of the foregoing, the Debtors respectfully request that this Court enter an Order
11 (i) granting this Motion, (ii) continuing the hearing on the Disclosure Statement Motion to at date
12 to be set by the Court at the Status Conference, (iii) rescheduling the deadline to file replies in
13 support of the Disclosure Statement Motion to a date set by the Court at the Status Conference;
14 (iv) preserving the November 26, 2019, 10:00 a.m. as a Status Conference on this matter, and
15 (v) granting such other relief as the Court deems just and proper under the circumstances.

16 Dated: November 19, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

17 By /s/ Tania M. Moyron
18 Tania M. Moyron
19 Attorneys for Verity Health Systems of
20 California, Inc., *et al.*
21
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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, submit this Declaration in support of the *Motion to (A) Continue Hearing on Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Notice and Objection Procedures for Confirmation of Debtors' Plan, and (IV) Granting Related Relief; (B) Continue the Reply Deadline with Respect to Disclosure Statement Objections; and (C) Use the November 26, 2019, 10:00 a.m. Hearing Date for a Status Conference on This Matter* (the "Motion"),¹ and hereby state as follows:

1. I am, and have been since January 2018, the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

2. I have extensive senior-level experience in the nonprofit healthcare arena, especially in the areas of healthcare delivery, hospital acute care services, health plan management, budgeting, disease management, and medical devices. I have meaningful experience in both the technology and healthcare industries in the areas of product development, business development, mergers and acquisitions, marketing, financing, strategic and tactical planning, human resources, and engineering.

3. I have personal knowledge of the facts stated in this declaration, except as to those stated on information and believe, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

4. On the morning of November 15, 2019, the CEO of SGM informed me of SGM's intent to send the Debtors formal correspondence material to the SGM Sale. As of the filing of this Motion, November 19, 2019, the Debtors have not received any such correspondence, but have been informed that it is forthcoming. After the entry of the order by the Court on November 18, 2019, SGM orally communicated new information to the Debtors' representatives that undermines the Debtors' confidence in a prompt closing of the sale.

¹ Capitalized terms not otherwise defined in this Declaration have the definitions set forth in the Motion.

EXHIBIT 23

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re,

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

Debtors and Debtors In Possession.

- ☒ Affects All Debtors
- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
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- ☐ Affects Verity Medical Foundation
- ☐ Affects Verity Holdings, LLC
- ☐ Affects De Paul Ventures, LLC
- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

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

Jointly administered with:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

NOTICE OF HEARING AND MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN; AND (IV) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date and Time:

Date: [Application for OST filed concurrently herewith]

Place: Courtroom 1568

255 E. Temple Street

Los



1820151190904000000000004

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 **PLEASE TAKE NOTICE** that at the above referenced date, time and location, before the
2 Honorable Ernest M. Robles, United States Bankruptcy Judge, in Courtroom 1568 located at 255
3 E. Temple Street, Los Angeles, California 90012, or as soon thereafter as the Court may hear the
4 matter, Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors
5 and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor”
6 and, collectively, the “Debtors”), shall hold a hearing on the *Motion of the Debtors for an Order*
7 *Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting Procedures; (III)*
8 *Notice And Objection Procedures for Confirmation Of Debtors’ Plan; And (IV) Granting Related*
9 *Relief* (the “Motion”). The Debtors filed the *Debtors Chapter 11 Plan of Liquidation (Dated*
10 *September 3, 2019)* (the “Plan”) and related disclosure statement (the “Disclosure Statement”)
11 concurrently herewith.
12

13 **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon this Notice, the
14 accompanying Memorandum of Points and Authorities, the *Declaration of Richard G. Adcock In*
15 *Support of Emergency First-Day Motions* [Docket No. 8], the record in these cases and all other
16 matters of which this Court may take judicial notice pursuant to Rule 201 of the Federal Rules of
17 Evidence, the arguments of counsel to be made at the hearing, and all other admissible evidence
18 properly brought before the Court at or before the hearing on this Motion, if any.
19

20 **PLEASE TAKE FURTHER NOTICE** that any party may review and obtain a copy of
21 the proposed Plan and Disclosure Statement, by downloading same from the website
22 <https://www.kccllc.net/verityhealth> or by contacting and requesting a copy from: Kurtzman
23 Carson Consultants LLC (“KCC”), the Debtors’ Solicitation Agent (the “Solicitation Agent”) by
24 sending a written request via standard overnight or hand delivery to: Verity Ballot Processing
25 Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. Additionally,
26 copies of the Disclosure Statement and Plan are on file with the Office of the Clerk of the
27
28

1 Bankruptcy Court for review during normal business hours and are also available on the Debtors'
2 KCC website at <https://www.kccle.net/verityhealth>. A copy may also be obtained by e-mail
3 request to: Verityinfo@kccle.com.

4 **PLEASE TAKE FURTHER NOTICE** any party opposing or responding to the Motion
5 must file and serve the response ("Response"), pursuant to Local Bankruptcy Rule 9013-1(f), on
6 the moving party and the United States Trustee. A Response must be a complete written statement
7 of all reasons in opposition thereto or in support, declarations and copies of all evidence on which
8 the responding party intends to rely, and any responding memorandum of points and authorities.

9 **PLEASE TAKE FURTHER NOTICE** that, concurrently herewith, the Debtors are filing
10 an application under Local Bankruptcy Rule 9075-1(b) for this Motion to be heard on shortened-
11 notice on October 2, 2019 at 10:00 a.m. (Pacific Time) (the "Application"). After the Application
12 is ruled on, the Debtors will provide notice of Response and reply deadlines to the Motion. In the
13 Application, the Debtors request that the Court set a Response deadline of September 18, 2019,
14 and set a reply deadline of September 25, 2019.

15 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
16 1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to
17 be consent to the relief requested herein.

18 Dated: September 3, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

19 By /s/ Tania Moyron
Tania Moyron

20 Attorneys for Verity Health Systems
21 of California, Inc., *et al.*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors
5 and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor”
6 and, collectively, the “Debtors”), request (the “Motion”) approval of (i) the *Disclosure Statement*
7 *Describing Debtors’ Chapter 11 Plan Of Liquidation (Dated September 3, 2019)* (the “Disclosure
8 Statement”)¹ filed concurrently herewith, (ii) the solicitation and voting procedures proposed
9 herein, (iii) the proposed notice and objection procedures for confirmation of the *Debtors’ Chapter*
10 *11 Plan of Liquidation (Dated September 3, 2019)* (the “Plan”) filed concurrently herewith, and
11 (iv) granting related relief as set forth more fully herein. In support of the Motion, the Debtors
12 refer to the *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions*
13 [Docket No. 8] (the “First-Day Declaration”). Concurrently herewith, the Debtors have filed an
14 application for an order setting the hearing on this Motion on shortened notice. The Debtors
15 respectfully submit that Disclosure Statement contains “adequate information,” as that phrase is
16 defined in § 1125(a)(1)², and, thus, request the Court grant the Motion.

17 **II.**

18 **JURISDICTION, VENUE, AND REQUESTED RELIEF**

19 The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This matter
20 is a core proceeding under 28 U.S.C. § 157(b)(2).

21 1. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

22
23
24 ¹ Capitalized terms not otherwise defined herein have the same definitions set forth in the
25 Disclosure Statement.

26 ² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy
28 Procedure, Rules 1001-9037. All “Local Bankruptcy Rule” references are to the Local
Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

2. The statutory predicates for the relief sought herein are §§ 105, 327, 328, 1125, and 1126; Bankruptcy Rules 2002, 2014, 3016, 3017, 3018, and 3020; and Local Bankruptcy Rules 2002-1 and 3018-1.

III.

BACKGROUND

A. General Background.

3. On August 31, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code (the “Cases”). The Cases are jointly administered before the Bankruptcy Court. *See* Docket No. 17. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

4. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that, on the Petition Date, operated six acute care hospitals: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), Seton Medical Center (“SMC”), and Seton Medical Center Coastsides (“Seton Coastsides” and, together with OCH, SLRH, SFMC, and SVMC, the “Hospitals”). SMC and Seton Coastsides (collectively, “Seton”) operated under one consolidated acute care hospital license.

5. VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health System”) have operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *See* First-Day Decl., at 4, ¶ 12. The scope of the services provided by the Verity Health System are exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, ¶ 12.

6. Additional background facts on the Debtors, including an overview of the Debtors’ business, historical operations, capital structure, employment plans, prior restructuring efforts and liquidity issues that led to these chapter 11 Cases are contained in the First-Day Declaration. Below is an abbreviated description of major historical events that preceded the chapter 11 filing.

B. Events Leadings to the Bankruptcy Cases.

7. Between 1995 and 2015, the Hospitals incurred substantial operating losses. During that time period, Daughters of Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”) and the Daughters of Charity Health System (“DCHS”) attempted to find a solution which would resolve the operating losses, either through a sale of some or all of the hospitals or a merger with a more financially sound partner. These efforts were not successful, and the health system’s losses continued to mount.

8. In 2015, DCHS marketed the health system for sale and focused on offers that maintained the system as a whole, including the assumption of all existing obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”). In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of \$100 million, arrange loans for another \$160 million to the system, and manage operations, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”). DCHS’ name was changed to VHS, and Integrity Healthcare, LLC (“Integrity”) was formed to carry out the management services under a new management agreement.

9. On December 3, 2015, the California Attorney General (the “Attorney General”) approved the BlueMountain Transaction, subject to certain conditions. The Attorney General conditions were imposed for periods ranging from 5 to 15 years, and included, *inter alia*, limits on transfers of control; maintenance of specific health services and specific bed counts; required participation in Medicare and Medi-Cal programs; and required levels of charity care.

10. Under the Restructuring Agreement, VHS, OCH, SLRH, SFMC, SVMC, and Seton, were converted from religious corporations to public benefit corporations.

11. Despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system continued to incur losses.

1 12. In July 2017, NantWorks, LLC acquired a controlling stake in Integrity, and
2 brought in a new CEO, CFO, and COO. NantWorks also loaned another \$148 million to the
3 Debtors.

4 13. Despite the infusion of capital and new management, losses continued to mount to
5 approximately \$175 million annually on a cash flow basis. It soon became apparent that the
6 problems facing the Verity Health System were too large to solve without a formal, court-
7 supervised restructuring,

8 14. Accordingly, the Debtors commenced these Cases with the objective of protecting
9 the original legacy of the Daughters of Charity to the maximum extent possible. The Debtors
10 pursued a strategy to retire debt incurred over the past 18 years so the Hospital facilities and work
11 force can continue their critical operations under new ownership and leadership without the
12 accumulated crisis of the past.

13 **C. Appointment of Committee.**

14 15. On September 17, 2018, the Office of the United States Trustee appointed an
15 Official Committee of Unsecured Creditors in the Debtors' Cases. [Docket No. 197].

16 **IV.**

17 **DISCLOSURE STATEMENT AND PLAN**

18 Concurrently herewith, the Debtors filed the proposed Plan and related Disclosure
19 Statement. The Debtors worked diligently with their advisors to prepare the Plan, which
20 maximizes value for the estates for the benefit of creditors. The Debtors concluded, after a careful
21 analysis of the Debtors' complex corporate and financial structure, that a single plan of liquidation
22 contemplating the "deemed" substantive consolidation of all Debtors—rather than seventeen
23 separate plans—will maximize value and avoid unnecessary costs and potential litigation. Thus,
24 as more fully described in the Disclosure Statement, the Plan provides for the "deemed"
25 substantive consolidation of the Debtors solely for purposes of implementation of the Plan and
26 distributions to creditors otherwise in accordance with the Bankruptcy Code's distribution and
27 classification provisions. The Disclosure Statement describes further facts and legal bases that
28 support substantive consolidation.

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As set forth in the Disclosure Statement, the net proceeds of the SCC Sale and the SGM Sale will be the primary source of funding for distributions under the Plan. The Debtors also anticipate other sources of recovery, including, but not limited to, recovery of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action, including Avoidance Actions, to be pursued by the Liquidating Trust.

The Debtors propose the following key dates in connection with the approval of the Disclosure Statement and confirmation of the Plan:³

Event Date/Deadline	Event Date/Deadline
Disclosure Statement Objection Deadline	September 18, 2019
Deadline to File Reply to Disclosure Statement Objections	September 25, 2019
Disclosure Statement Hearing	October 2, 2019 at 10:00 a.m. (Pacific Time)
Solicitation Commencement Deadline	Five (5) business days after entry of order approving the Disclosure Statement
Voting Record Date	October 2, 2019
Deadline to Object or to File a Motion to Estimate Claims for Voting Purposes	October 31, 2019
Voting Objection Deadline	October 31, 2019
Voting Deadline	November 7, 2019 at 4:00 p.m. (Pacific Time)
Confirmation Objection Deadline	November 7, 2019
Deadline to File Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order and Response to Objections to the Confirmation	November 14, 2019
Confirmation Hearing	November 21, 2019 at 10:00 a.m. (Pacific Time)

The Debtors respectfully request entry of an order: (i) approving the Disclosure Statement as containing “adequate information,” as that term is defined in § 1125(a)(1); (ii) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, including (a) approving the form and manner of the solicitation packages, (b) approving the form and manner of notice of the hearing to confirm the Plan, (c) establishing a voting record date and approving

³ The Debtors filed an application for an order setting the hearing on this Motion on shortened notice contemporaneously herewith. The dates set forth herein are subject to the Court’s ruling on the Debtors’ application and the Court’s availability with respect to the proposed confirmation schedule.

1 procedures for distributing the solicitation packages, (d) approving the forms of ballots, (e)
2 establishing the deadline for the receipt of ballots, and (f) approving procedures for tabulating
3 acceptances and rejections of the Plan; (iii) establishing procedures with respect to, and the
4 deadline for filing objections to, the confirmation of the Plan; and (iv) granting related relief.

5
6 **V.**

7 **ARGUMENT**

8 **A. The Disclosure Requirements of the Bankruptcy Code**

9 Pursuant to § 1125, a plan proponent must provide holders of impaired claims with
10 “adequate information” regarding a proposed chapter 11 plan. In that regard, § 1125(a)(1)
11 provides in pertinent part that:

12 “adequate information” means information of a kind, and in sufficient detail, as far
13 as is reasonably practicable in light of the nature and history of the debtor and the
14 condition of the debtor’s books and records, including a discussion of the potential
15 material Federal tax consequences of the plan to the debtor, any successor to the
16 debtor, and a hypothetical investor typical of the holders of claims or interests in the
17 case, that would enable such a hypothetical investor of the relevant class to make an
18 informed judgment about the plan

19 11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must as a whole, provide information that is
20 reasonably designed to permit an informed judgment by impaired creditors or equity or other
21 interest holders entitled to vote on a plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P.
22 9th Cir. 1996) (“At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate
23 information about the plan before the creditor is asked for a vote.”); *In re Art & Architecture*
24 *Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal.
25 Mar. 18, 2016) (“The primary purpose of a disclosure statement is to give creditors and interest
26 holders the information they need to decide whether to accept the plan.”) (citing *Captain Blythers,*
27 *Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re*
28 *Arnold*, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

In examining the adequacy of the information contained in a disclosure statement, the
Bankruptcy Court has broad discretion. *See Art & Architecture Books of the 21st Century*, 2016
WL 1118743, at *14 (“Bankruptcy judges have broad discretion in reviewing disclosure

1 statements and what constitutes adequate information and any particular instance will develop on a
2 case-by-case basis.”); *In re Brothby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (same); *Kirk v.*
3 *Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more
4 clear in granting broad discretion to bankruptcy judges under § 1125(a)”; *Menard-Sanford v.*
5 *Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *Tex. Extrusion Corp. v.*
6 *Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988); *see also In re*
7 *Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress intentionally drew vague
8 contours of what constitutes adequate information so that bankruptcy courts may exercise
9 discretion to tailor them to each case’s particular circumstances); *In re Dakota Rail Inc.*, 104 B.R.
10 138, 143 (Bankr. D. Minn. 1989) (a bankruptcy court has “wide discretion to determine . . .
11 whether a disclosure statement contains adequate information, without burdensome, unnecessary,
12 and cumbersome detail”).

13 Accordingly, the determination of whether a disclosure statement contains adequate
14 information is to be made on a case-by-case basis, focusing on the unique facts and circumstances
15 of each case. *See In re Diversified Inv’rs Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988)
16 (“According to the legislative history, the parameters of what constitutes adequate information are
17 intended to be flexible.”); *see also In re PC Liquidation Corp.*, 383 B.R. 856 at 866 (E.D.N.Y.
18 2008); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination is
19 largely within the discretion of the bankruptcy court.”); *In re Egan*, 33 B.R. 672, 674-75 (Bankr.
20 N.D. Ill. 1983). This discretion provides flexibility and facilitates the effective reorganization of
21 the different types of chapter 11 debtors by accommodating the varying circumstances
22 accompanying chapter 11 cases. *See H.R. REP. NO. 595*, at 408-09, 95th Cong. (1st Sess. 1977).

23 The determination of whether adequate information has been provided should take account
24 of expertise and resources, including outside advisors and relevant information already possessed
25 or publicly available, of the hypothetical investor of each class of claims or interests from which
26 classes the acceptance or rejection of the Plan is solicited after the commencement of the cases.
27 *See In re Zenith Elec. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

B. The Proposed Disclosure Statement Meets the Applicable Standards.

The Disclosure Statement provides “adequate information” to allow holders of Claims in the Voting Classes (as defined below) to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including:

- (i) An overview of the Plan (*see* Disclosure Statement, Section V);
- (ii) The corporate structure and indebtedness of the Debtors (*see id.*, Sections II.C., III);
- (iii) The operation of the Debtors’ business (*see id.*, Sections II, III);
- (iv) Key events leading to the commencement of the Chapter 11 Cases (*see id.*, Section III);
- (v) Significant events that occurred during the Chapter 11 Cases (*see id.*, Section IV);
- (vi) Information regarding Litigation (*see* Section IV);
- (vii) Financial information that would be relevant to determinations of whether to accept or reject the Plan (*see id.*, Section V);
- (viii) Tax consequences of the Plan (*see id.*, Sections IX, X);
- (ix) Risk factors affecting the Plan and the Debtors (*see id.*, Section XIII);
- (x) Requirements for confirmation of the Plan (*see id.*, Section XII);
- (xi) A liquidation analysis under chapter 7 of the Bankruptcy Code (*see id.*, Section XII at K); and
- (xii) Description of Plan Releases (*see id.*, Section VIII).

The Disclosure Statement also provides adequate notice of the release, exculpation, and injunction provisions in the Plan. Pursuant to Bankruptcy Rule 3016(c), “[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement [must] describe in specific and conspicuous language all acts to be enjoined and identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c). The Disclosure Statement provides a detailed description of releases and exculpations to be provided under the Plan. *See* Disclosure Statement, § VIII.B., C., D.

1 Furthermore, the Disclosure Statement provides an analysis of the alternatives to
2 confirmation and consummation of the Plan. *See id.*, § X.II.K. (setting forth the Debtors’
3 liquidation analysis). Accordingly, the Debtors recommend that holders of claims eligible to vote
4 on the Plan vote to accept the Plan because it is the most efficient and effective means to provide
5 remaining recoveries to holders of claims against the Debtors’ estates.

6 The Disclosure Statement also contains a detailed description of means of implementation,
7 which includes the “deemed” substantive consolidation of the Debtors and the applicable factors
8 and legal basis. The Disclosure Statements sets forth adequate information concerning (i) the
9 legal requirements to establish deemed substantive consolidation, and (ii) the factual bases
10 supporting the Debtors’ request for deemed substantive consolidation. It also provides notice that
11 the Disclosure Statement and Plan shall be deemed a motion requesting that the Bankruptcy Court
12 approve the deemed substantive consolidation contemplated by the Plan at the Confirmation
13 Hearing, unless otherwise separately scheduled. *See* Disclosure Statement, Section XIV.

14 Specifically, the Disclosure Statement sets forth the effect of deemed substantive
15 consolidation and the facts of the cases that satisfy the standard for deemed substantive
16 consolidation in the Ninth Circuit. The facts relevant to the Ninth Circuit analysis and identified
17 in the Disclosure Statement include: (i) the impact of the conditions imposed by the Attorney
18 General and the extent to which the conditions required that the Debtors act as a single economic
19 unit; (ii) the manner in which the Debtors booked significant transfers on their general account
20 ledgers between entities and the effect the claims will have on recoveries among the unsecured
21 creditors of each Debtor; (iii) the issues raised by reconciliation of claims and the allocation of
22 liabilities among the Debtors; (iv) the Debtors’ lending and business relationships with the
23 creditors and the extent to which the Debtors dealt with creditors as a single enterprise; and
24 (v) facts reflecting the extent to which the proposed deemed substantive consolidation is
25 administratively convenient and benefits creditors. Accordingly, the Disclosure Statement
26 contains the pertinent information necessary for holders of impaired claims to make an informed
27 decision about whether to vote to accept or reject the Plan, including, among other things,

1 information regarding the effect and basis for the Debtors' request for deemed substantive
2 consolidation.

3 The Debtors respectfully submit that the Disclosure Statement complies with all aspects of
4 § 1125. The Debtors will demonstrate at the hearing to approve the Disclosure Statement that the
5 Disclosure Statement addresses the information set forth above in a manner that provides holders
6 of impaired unsecured claims that are entitled to vote to accept or reject the Plan with adequate
7 information within the meaning of § 1125 and should therefore be approved.

8 **VI.**

9 **ESTABLISHING PROCEDURES FOR SOLICITATION OF THE PLAN**

10 **A. Approval of Form and Manner of Solicitation Package.**

11 Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of
12 claims for the purpose of soliciting their votes and providing adequate notice of the hearing on
13 confirmation of a plan of reorganization:

14 Upon approval of a disclosure statement,—except to the extent that the court orders
15 otherwise with respect to one or more unimpaired classes of creditors or equity
16 security holders—the debtor in possession, trustee, proponent of the plan, or clerk
as the court orders shall mail to all creditors and equity security holders, and in a
chapter 11 reorganization case shall transmit to the United States trustee:

- 17 (1) the plan or a court-approved summary of the plan;
18 (2) the disclosure statement approved by the court;
19 (3) notice of the time within which acceptances and rejections of the
20 plan may be filed; and
21 (4) any other information as the court may direct, including any court
22 opinion approving the disclosure statement or a court-approved
23 summary of the opinion.

24 In addition, notice of the time fixed for filing objections and the hearing on
25 confirmation shall be mailed to all creditors and equity security holders in
26 accordance with Rule 2002(b), and a form of ballot conforming to the appropriate
Official Form shall be mailed to creditors and equity security holders entitled to
vote on the plan

27 Fed. R. Bankr. P. 3017(d).
28

As further discussed below, if the Bankruptcy Court approves the Disclosure Statement as containing adequate information pursuant to § 1125, the Debtors propose to distribute by First Class Mail to holders of claims in the classes entitled to vote on the Plan (the “Voting Classes”)⁴ the Confirmation Hearing Notice (as defined below), as well as a package containing solicitation materials (the “Solicitation Package”) including:

- a) the Bankruptcy Court’s Order approving the Disclosure Statement (the “Disclosure Statement Order”), excluding the exhibits attached thereto;
- b) the applicable ballot (a “Ballot”), the proposed forms of which will be filed with the Court as a supplement to this Motion, together with a pre-paid, pre-addressed return envelope and, either paper copies of or electronic copies in “pdf” format on a CD-ROM or USB flash drive containing the Disclosure Statement (with the Plan and other exhibits attached thereto); and
- c) any supplemental documents filed with the Bankruptcy Court and such other materials as the Bankruptcy Court may direct, including any letters in support of the Plan.

The Debtors submit that such materials and manner of service satisfy the requirements of Bankruptcy Rule 3017(d).

Kurtzman Carson Consultants LLC (“KCC”) will serve as the Debtors’ Solicitation Agent (the “Solicitation Agent”) and provide access to Solicitation Packages, among other things. Solicitation Packages (except for Ballots) will be available (i) for download at <https://www.kccllc.net/verityhealth>, (ii) by email request to verityinfo@kccllc.com, (iii) by written request via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222

⁴ The Voting Classes consist of Class 2 (Secured 2005 Revenue Bond Claims), Class 3 (Secured 2015 Notes Claims), Class 4 (Secured Series 2017 Revenue Note Claims), Class 5 (Secured MOB I Financing Claims), Class 6 (Secured MOB II Financing Claims), Class 7 (Secured Mechanics Lien Claims), Class 8 (PBGC Claims), Class 9 (RPHE Claims), Class 10 (General Unsecured Claims), Class 11 (Convenience Claims), Class 12 (Insured Claims), and Class 13 (2016 Data Breach Claims). Class 14 (Subordinated General Unsecured Claims) and Class 15 (Interests) are deemed to reject the Plan, and, therefore, not entitled to vote. Similarly, Class 1A (Other Priority Claims) and Class 1B (Secured PACE Tax Financing Claims) are deemed not impaired, and, therefore, deemed to accept the Plan and not entitled to vote.

1 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245, and (iv) on the Bankruptcy Court's
2 website.⁵

3 **B. Approval of Form and Manner of Confirmation Hearing Notice**

4 Upon approval of the Disclosure Statement pursuant Disclosure Statement Order, the
5 Debtors will serve or cause to be served the following documents on the following parties, as
6 applicable: (i) a written notice to the Voting Classes (the "Confirmation Hearing Notice") of
7 (a) the Bankruptcy Court's approval of the Disclosure Statement, (b) the deadline for voting on the
8 Plan, (c) the time, date, and place for the hearing to consider confirmation of the Plan, and (d) the
9 deadline and procedures for filing objections to the confirmation of the Plan, together with the
10 Solicitation Package; (ii) a written notice to the non-voting accepting classes (the "Notice of Non-
11 Voting Accepting Status and Confirmation Hearing") that sets forth such parties' Plan treatment, a
12 summary of the Plan's release, injunction, and exculpation provisions, and certain information
13 regarding the hearing to consider confirmation of the Plan and related deadlines; and (iii) a written
14 notice to the non-voting rejecting classes (the "Notice of Non-Voting Rejecting Status and
15 Confirmation Hearing") that sets forth such parties' Plan treatment, a summary of the Plan's
16 release, injunction, and exculpation provisions, and certain information regarding the hearing to
17 consider confirmation of the Plan and related deadlines. The relevant notices will be served on the
18 appropriate parties by First Class Mail. The Debtors will file the proposed form of notices prior to
19 the hearing on this Motion.

20 Consistent with § 1126(f) and Bankruptcy Rule 3017(d), the Debtors propose to send the
21 Notice of Non-Voting Accepting Status and Confirmation Hearing to holders of Administrative
22 Claims, Professional Claims, Statutory Fees, Priority Tax Claims, Administrative DIP Lender
23 Claims, Other Priority Claims, and Secured PACE Tax Financing Claims (the
24 "Unclassified/Unimpaired Claimholders"), which classes are unclassified or deemed to accept the
25 Plan,.

26 _____
27 ⁵ <http://www.cacb.uscourts.gov/> (a PACER login and password are required to access documents
28 on the Bankruptcy Court's website).

1 Consistent with § 1126(g) and Bankruptcy Rule 3017(d), the Debtors proposed to send the
2 Notice of Non-Voting Rejecting Status and Confirmation Hearing to holders of Subordinated
3 General Unsecured Claims and Interests, which classes are deemed to reject the Plan.

4 The Debtors submit that such notices satisfy the requirements of the Bankruptcy Code and
5 Bankruptcy Rule 3017(d). Accordingly, the Debtors request that the Bankruptcy Court determine
6 that the Debtors are not required to distribute copies of the Plan, Disclosure Statement, or
7 Disclosure Statement Order to any of the Unclassified/Unimpaired Claimholders, holders of
8 Subordinated General Unsecured Claims, or Interest holders, unless otherwise requested in writing
9 or by the terms of the Disclosure Statement Order.

10 **C. Establishment of Voting Record Date and Approving of Procedures for Distribution**
11 **of Solicitation Packages.**

12 Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection
13 with the confirmation of a bankruptcy plan, “creditors and equity security holders shall include
14 holders of stock, bonds, debentures, notes and other securities of record on the date the order
15 approving the disclosure statement is entered or another date fixed by the court, for cause, after
16 notice and a hearing.” Fed R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar
17 provision regarding determination of the record date for voting purposes.

18 The Debtors request that the Bankruptcy Court establish October 2, 2019, as the record
19 date (the “Voting Record Date”), for purposes of determining the claimholders that are entitled to
20 vote (subject to the voting procedures set forth below) on the Plan or, in the case of non-voting
21 classes, for purposes of determining the claimholders to receive certain Plan-related materials.
22 The Debtors expect that they will be able to commence distribution of (i) the Confirmation
23 Hearing Notice and Solicitation Package to the Voting Classes and (ii) the Notice of Non-Voting
24 Accepting Status and Confirmation Hearing and/or Notice of Non-Voting Rejecting Status and
25 Confirmation Hearing to parties-in-interest outside of the Voting Classes, as applicable, as set
26 forth herein, within five (5) business days after the date of entry of the Disclosure Statement
27 Order, or as soon as reasonably practicable thereafter (the “Solicitation Commencement Date”).
28

1 In the case of Class 2 (Secured 2005 Revenue Bond Claims), certain brokerage firms and
2 banks or their agents (collectively, the “Nominees”) hold Class 2 claims rather than the individual
3 holders themselves (collectively, the “Beneficial Holders”). To ensure proper tabulation of votes
4 for all Secured 2005 Revenue Bond Claims, the Debtors will deliver Solicitation Packages to
5 holders of record as of the Voting Record Date, including Nominees, as reflected on security
6 position reports provided by The Depository Trust Company (“DTC”). Additionally, the Debtors
7 will distribute “Master Ballots” and “Beneficial Holder Ballots” to Nominees under separate cover
8 from the Solicitation Packages delivered to all other holders of record. The Beneficial Holder
9 Ballots will instruct each Beneficial Holder voting on the Plan through a Nominee to return the
10 Beneficial Holder Ballot to the appropriate Nominee in sufficient time for such Nominee to timely
11 cast votes to accept or reject the Plan on behalf of the Beneficial Holders, or otherwise follow the
12 directions of the Nominee. The Nominee will complete and return a Master Ballot, which the
13 Debtors will tabulate for purposes of determining votes for Class 2.

14 The Debtors shall cause to be distributed electronically the Disclosure Statement Order
15 (excluding exhibits thereto), the Confirmation Hearing Notice, the Disclosure Statement (together
16 with the Plan and other exhibits attached thereto), and such other materials as the Bankruptcy
17 Court may direct (excluding a Ballot) to, among other parties (to the extent such parties did not
18 otherwise receive the Solicitation Package):

- 19 a) the U.S. Trustee;
- 20 b) the Internal Revenue Service;
- 21 c) the California Attorney General; and
- 22 d) all persons and entities that have filed a request for service of filings in the
- 23 Debtors’ Cases pursuant to Bankruptcy Rule 2002.

24 The Debtors anticipate that some of the notices served in the Debtors’ Cases, including
25 notices of the hearing to approve the Disclosure Statement and notices of the commencement of
26 the Debtors’ Cases, have been or may be returned, including because certain notice parties have
27 foreign addresses. The Debtors believe that it would be costly and inefficient to distribute the
28 Solicitation Package to the same addresses to which undeliverable notices were previously

distributed. Therefore, the Debtors seek the Bankruptcy Court's approval for a departure from the strict notice rule, excusing the Debtors from distributing Solicitation Packages to those entities listed at such addresses if the Debtors are not provided with updated addresses for such entities before the Solicitation Commencement Date. Further, if the Debtors send Solicitation Packages that are deemed undeliverable and are not provided with a forwarding or more updated address, the Debtors seek that the Debtors be excused from attempting to re-deliver Solicitation Packages to such entities. The Debtors submit that good cause exists for implementing the aforementioned notice and service procedures.

D. Approval of Forms of Ballot

Bankruptcy Rule 3017(d) requires that the Debtors mail a form of Ballot to "creditors and equity security holders entitled to vote on the plan." The Debtors propose to distribute to each holder of a claim in each Voting Class a Ballot, including the Master Ballots and/or Beneficial Holder Ballots, as applicable, the form of which will be filed by the Debtors as a supplement prior to the hearing on this Motion. The form of Ballot is based upon Official Form No. B314, but has been modified to address the particular aspects of the Debtors Cases and to include certain additional information that the Debtors believe to be relevant and appropriate for the applicable classes of claims that are entitled to vote to accept or reject the Plan, including information regarding the releases, injunctions, and exculpations contained in the Plan.

E. Establishment of Deadline for Receipt of Ballots

Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement, the court shall fix a time within which the holders of claims or equity security interests may accept or reject a plan. The Debtors have developed the proposed schedule to allow for a solicitation period in the Debtors' Cases of at least 28 days, which the Debtors believe is appropriate in light of the circumstances of the case and consistent with the requirements set forth in Bankruptcy Rule 2002(b). Accordingly, the Debtors propose that in order to be counted as a vote to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to the Debtors so as to be received by the Debtors no later than **4:00 p.m. (Pacific Time) on November 7, 2019** or as otherwise ordered by the Bankruptcy Court (the "Voting Deadline") as set forth below. The

Debtors submit that such solicitation period is a sufficient period within which creditors can make an informed decision to accept or reject the Plan in light of the circumstances of the case.

All Ballots must be delivered via First Class Mail, overnight courier, or hand delivery so as to be actually received by the Debtors' solicitation agent no later than the Voting Deadline. Except as provided below, Ballots must be submitted to the Solicitation Agent at the following address in accordance with the voting procedures set forth below:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245
(888) 249-2741(domestic)
(310) 751-2635 (international)

Master Ballots submitted by Nominees holding Class 2 (Secured 2005 Revenue Bond Claims), must be delivered to the Solicitation Agent at:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
1290 Avenue of the Americas, 9th Floor
New York, NY 10104
(877) 833-4150 (domestic)
(917) 281-4800 (international)

BALLOTS TRANSMITTED TO THE DEBTORS BY FACSIMILE, ELECTRONIC MAIL, OR OTHER MEANS NOT SPECIFICALLY APPROVED BY THE BANKRUPTCY COURT MAY BE ACCEPTED BY THE DEBTORS ON A CASE-BY-CASE BASIS.

F. Approval of Procedures for Vote Tabulation

16. Section 1126(c) provides as follows:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

For purposes of voting on the Plan, with respect to all creditors of the Debtors, the Debtors propose that the amount of a claim used to tabulate acceptance or rejection of the Plan should be, as applicable:

- a) The amount of the claim listed in the Debtors' schedules of assets and liabilities (the "Schedules"); provided that (i) such claim is not scheduled as any of contingent, unliquidated, undetermined, disputed, or in a zero dollar amount, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) with respect to such claim.
- b) The noncontingent and liquidated amount specified in a proof of claim timely filed with the Bankruptcy Court (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) to the extent the proof of claim is not the subject of an objection filed by **October 31, 2019** (the "Voting Objection Deadline") (or, if such claim has been resolved for allowance and/or voting purposes pursuant to a stipulation or order entered by the Bankruptcy Court, or otherwise resolved by the Bankruptcy Court, the amount set forth in such stipulation or order).
- c) If a proof of claim has been timely filed prior to the applicable bar date and such claim is asserted in the amount of \$0.00, such claim shall not be entitled to vote.
- d) Notwithstanding anything to the contrary in these tabulation rules, the holder of any claim that has been indefeasibly paid, in full or in part, shall only be permitted to vote the unpaid amount of such claim, if any, to accept or reject the Plan.
- e) The amount temporarily allowed or estimated by the Bankruptcy Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), subject to notice consistent with the procedures set forth herein, the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall be the amount of the claim for voting purposes.
- f) If a claim for which a proof of claim has been timely filed for unknown or undetermined amounts (as determined on the face of the claim or after a reasonable review of the supporting documentation by the Debtors) and such claim has not been allowed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00.
- g) If a claim is listed on a timely filed proof of claim as either wholly or partially contingent or unliquidated, such claim is temporarily allowed in the amount that is the greater of (i) the liquidated and non-contingent amount and (ii) \$1.00, for voting purposes only, and not for purposes of allowance or distribution.

- 1 h) If a claim is deemed allowed under the Plan, such claim is allowed for
2 voting purposes in the deemed allowed amount set forth in the Plan.
- 3 i) If a claim is not listed in the Schedules or is listed in the Schedules as
4 contingent, unliquidated, or disputed (or in a zero amount) and a proof of
5 claim was not (i) filed by the applicable bar date for the filing of proofs of
6 claim established by the Bankruptcy Court or (ii) deemed timely filed by an
7 order of the Bankruptcy Court prior to the Voting Deadline, such claim
8 shall be disallowed for voting purposes.
- 9 j) If a proof of claim has been amended by a later proof of claim that is filed
10 on or prior to the Voting Record Date, the later filed amending claim shall
11 be entitled to vote in a manner consistent with these tabulation rules, and
12 the earlier filed claim shall be disallowed for voting purposes, regardless of
13 whether the Debtors have objected to such amended claim. Except as
14 otherwise ordered by the Bankruptcy Court, any amendments to proofs of
15 claim after the Voting Record Date shall not be considered for purposes of
16 these tabulation rules.

12 The temporary allowance of claims for voting purposes does not constitute an allowance of
13 claims for purposes of distribution under the Plan and is without prejudice to the rights of the
14 Debtors or any other party-in-interest in any other context, including the right of the Debtors or
15 any other party-in-interest to contest the amount or validity of any claim for purposes of allowance
16 under the Plan.

17 Additionally, the Debtors seek authorization from the Bankruptcy Court for the Debtors to
18 object to any claim (as defined in § 101(5)) solely for Plan voting purposes by filing a
19 determination motion (the “Determination Motion”), no later than the Voting Objection Deadline.
20 If an objection to a claim (made by way of a Determination Motion or otherwise) filed on or
21 before the Voting Objection Deadline requests that such claim be reduced or reclassified, such
22 claimant’s Ballot shall be counted in such reduced amount or as falling into the reclassified
23 category. Further, if a creditor casts a Ballot and has timely filed a proof of claim (or has
24 otherwise had a proof of claim deemed timely filed by the Bankruptcy Court under applicable
25 law), but the creditor’s claim is the subject of an objection (made by way of a Determination
26 Motion or otherwise) filed no later than the Voting Objection Deadline, the Debtors request, in
27 accordance with Bankruptcy Rule 3018, that the creditor’s Ballot not be counted to the extent it is
28 challenged by the objection, unless such claim is temporarily allowed by the Bankruptcy Court for

1 voting purposes pursuant to Bankruptcy Rule 3018(a) after the creditor files a motion for such
2 temporary allowance (the “Claims Estimation Motion”).⁶

3 If a creditor seeks to have its claim temporarily allowed for purposes of voting to accept or
4 reject the Plan pursuant to Bankruptcy Rule 3018(a), the Debtors request that such creditor be
5 required to file a Claims Estimation Motion for such temporary allowance by the later of (i) the
6 Voting Objection Deadline or (ii) if such claim is the subject of an objection or a Determination
7 Motion, seven (7) days after the filing of the applicable objection or Determination Motion.

8 In the event that a Determination Motion or Claims Estimation Motion is filed, the Debtors
9 request that the Bankruptcy Court allow the non-moving party to file a reply to such motion by the
10 later of (i) the Voting Objection Deadline, or (ii) seven (7) days after the filing of the applicable
11 motion (the “Voting Objection Reply Deadline”). A hearing will be scheduled (subject to the
12 Bankruptcy Court’s availability) on such motion within seven (7) days of the Voting Objection
13 Reply Deadline but in no event later than the Confirmation Hearing (as defined below). The
14 Debtors further request that the ruling by the Bankruptcy Court on any Determination Motion or
15 Claims Estimation Motion be considered a ruling with respect to the allowance of the claim(s)
16 under Bankruptcy Rule 3018 and such claim(s) be counted, for voting purposes only, in the
17 amount determined by the Bankruptcy Court.

18 The Debtors propose that, in the event a claimant reaches an agreement with the Debtors,
19 as to the treatment of its claim for voting purposes, the claim may be treated in such manner.

20 The Debtors further request that the following voting procedures and standard assumptions
21 be used in tabulating the Ballots:

- 22 a) For purposes of the numerosity requirement of § 1126(c) and based on the
23 reasonable efforts of the Debtors, separate claims held by a single creditor
24 in a particular class will be aggregated as if such creditor held one claim
25 against the Debtors in such class, and the votes related to such claims will
be treated as a single vote to accept or reject the Plan.

26 ⁶ This proposed procedure is consistent with § 1126, which provides that a plan may be accepted
27 or rejected by the holder of a claim allowed under § 502. In turn, § 502(a) provides that a filed
28 proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502(a).

- b) Any creditor who holds duplicate claims within the same class (against one Debtor or across multiple Debtors) shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such class, regardless of whether the Debtors have objected to such duplicate claims.
- c) Creditors must vote all of their claims within a particular class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple claims within a single class) that partially rejects and partially accepts the Plan will not be counted.
- d) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- e) Only Ballots that are timely received with signatures will be counted. Unsigned Ballots will not be counted.
- f) Ballots sent by mail or overnight delivery that are postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- g) Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- h) Ballots transmitted to the Debtors by facsimile, electronic mail, or other means not specifically approved by the Bankruptcy Court may be accepted by the Debtors on a case-by-case basis.
- i) Whenever a creditor casts more than one Ballot voting the same claim prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior received Ballots.
- j) If a creditor simultaneously casts inconsistent duplicate Ballots with respect to the same claim, such Ballots shall not be counted.
- k) Each creditor shall be deemed to have voted the full amount of its claim in a class. Unless otherwise ordered by the Bankruptcy Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Debtors, which determination shall be final and binding.
- l) Any Ballot containing a vote that the Bankruptcy Court determines, after notice and a hearing, was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code shall not be counted.

- m) Any Ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Plan shall not be counted.
- n) Notwithstanding anything contained herein to the contrary, the Debtors may contact parties that submitted Ballots to cure any defects in the Ballots.
- o) Any class that does not contain any claim eligible to vote to accept or reject the Plan (by reason of temporary allowance by the Bankruptcy Court or otherwise) as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such class pursuant to § 1129(a)(8).
- p) If a class contains claims eligible to vote and no holders of claims eligible to vote in such class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such claims in such class.
- q) Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors or the Bankruptcy Court determines. Neither the Debtors nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor shall any incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots shall not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) shall not be counted.
- r) The Debtors, and subject to contrary order of the Bankruptcy Court, may waive any defect in any Ballot at any time, either before or after the Voting Deadline and without notice, and any such waivers shall be documented in the voting results filed with the Bankruptcy Court.
- s) Except as provided below, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may reject such Ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan by the Bankruptcy Court; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.
- t) Subject to contrary order of the Bankruptcy Court, the Debtors reserves the absolute right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.

In addition to the foregoing, as applicable, the Debtors request that the following voting procedures and standard assumptions be used in tabulating Master Ballots:

- 1 u) In the case of Class 2 (Secured 2005 Revenue Bond Claims), votes cast by
2 beneficial owners holding through Nominees will be applied to the
3 applicable positions held by such Nominees as of the Voting Record Date.
- 4 v) If conflicting votes or “over-votes” are submitted by or on behalf of a
5 Nominee, the Solicitation Agent shall use reasonable efforts to reconcile
6 discrepancies with such Nominee. The submission of a Master Ballot
7 reflecting an aggregate amount of Class 2 (Secured 2005 Revenue Bond
8 Claims) that exceeds the Voting Record Date position is referred to herein
9 as an “overvote”.
- 10 w) If overvotes are submitted by a Nominee which are not reconciled prior to
11 the preparation of the certification of vote results, the votes to accept and to
12 reject the Plan shall be counted in the same proportion as the votes to accept
13 and to reject the Plan submitted by the Nominee, but only to the extent of
14 the Nominee’s Voting Record Date position.

15 The Debtors submit that such procedures provide for a fair and equitable voting process.

16 **G. Establishment of Deadline and Procedures for Filing Objections to the Confirmation**
17 **of the Plan.**

18 **a. Scheduling the Confirmation Hearing**

19 17. Bankruptcy Rule 3017(c) provides:

20 On or before approval of the disclosure statement, the court shall fix a time within
21 which the holders of claims and interests may accept or reject the plan and may fix
22 a date for the hearing on confirmation.

23 Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Debtors request that
24 a hearing on confirmation of the Plan (the “Confirmation Hearing”) be scheduled for **November**
25 **21, 2019 at 10:00 a.m. (Pacific Time).**

26 The Debtors propose that, no later than **November 14, 2019**, the Debtors will file with the
27 Bankruptcy Court a tabulation report for Plan voting, a proposed form of confirmation order, a
28 memorandum in support of confirmation addressing the requirements of § 1129(a) and any
29 declarations or other evidence in support thereof, and replies to any objections received by the
30 Confirmation Objection Deadline. In light of these deadlines, the Debtors respectfully request that
31 the Court shorten the ballot tabulation deadline set forth in Local Bankruptcy Rule 3018-1(b) from
32 fourteen days to seven days.

1 The Debtors request that the Confirmation Hearing may be continued from time to time by
2 the Bankruptcy Court or the Debtors without further notice other than by notices of continuance
3 filed on the docket of the Debtors' Cases. The proposed timing for the Confirmation Hearing is in
4 compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules,
5 and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

6 **H. Establishing Procedures for the Confirmation Hearing**

7 Bankruptcy Rules 2002(b) and 3017(d) require not less than twenty-eight (28) days' notice
8 to all creditors and equity security holders of the time fixed for filing objections and the hearing to
9 consider confirmation of a chapter 11 plan. In accordance with Bankruptcy Rules 2002 and
10 3017(d), the Debtors propose to provide to all creditors and interest holders a copy of either the
11 Confirmation Hearing Notice, the Notice of Non-Voting Accepting Status and Confirmation
12 Hearing, or the Notice of Non-Voting Rejecting Status and Confirmation Hearing as proposed
13 herein, setting forth, among other things, (a) the date of approval of the Disclosure Statement, (b)
14 the Voting Record Date, (c) the Voting Deadline, (d) the time fixed for filing objections to
15 confirmation of the Plan, and (e) the time, date, and place for the Confirmation Hearing. Such
16 notice will be sent at least twenty-eight (28) days before the deadline to object to confirmation of
17 the Plan.

18 Bankruptcy Rule 2002(1) permits the Bankruptcy Court to "order notice by publication if it
19 finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R.
20 Bankr. P. 2002(1). In addition to mailing the Confirmation Hearing Notice, the Debtors propose to
21 publish the Confirmation Hearing Notice once, as soon as reasonably practical after the entry of
22 the Disclosure Statement Order, in the following newspapers: *Los Angeles Times*, *San Francisco*
23 *Chronicle*, *San Jose Mercury News* and *USA Today*. The Debtors believe that publication of the
24 Confirmation Hearing Notice will provide sufficient notice of the approval of the Disclosure
25 Statement; the Voting Record Date; the Voting Deadline; the time fixed for filing objections to
26 confirmation of the Plan; and the time, date, and place of the Confirmation Hearing to persons
27 who do not otherwise receive actual written notice by mail as provided for in the Disclosure
28 Statement Order.

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 The Debtors submit that the foregoing procedures will provide adequate notice of the
2 Confirmation Hearing and, accordingly, requests that the Bankruptcy Court approve such notice as
3 adequate.

4 **I. Establishing Procedures for the Filing of Objections to the Confirmation of the Plan.**

5 Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed
6 and served “within a time fixed by the court.” The Confirmation Hearing Notice provides, and the
7 Debtors request the Bankruptcy Court to direct, that objections to the confirmation of the Plan or
8 proposed modifications to the Plan, if any, must:

- 9 a) be in writing;
- 10 b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules;
- 11 c) set forth the name of the objector and the nature and amount of any Claim
12 asserted by the objector against or in the Debtors;
- 13 d) state with particularity the legal and factual bases for the objection and, if
14 practicable, a proposed modification to the Plan that would resolve such
objection; and
- 15 e) be filed with the Bankruptcy Court, together with proof of service, and
16 served so that they are actually received by the Notice Parties (as defined
17 below) no later than **November 7, 2019** which deadline may be extended by
the Debtors (the “Confirmation Objection Deadline”).

18 The Debtors request that Court require any confirmation objection to be served on the
19 following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors, Dentons US LLP,
20 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, Attn: Tania M. Moyron, email:
21 tania.moyron@dentons.com; (ii) counsel to the Committee, Milbank LLP, 2029 Century Park
22 East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman, mshinderman@milbank.com;
23 (iii) counsel to the 2005 Revenue Bonds Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
24 P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel S. Bleck and Paul Ricotta,
25 dsblek@mintz.com, pricotta@mintz.com; (iv) counsel to the 2015 Notes Trustee, McDermott Will
26 & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, Illinois 60606, Attn: Nathan F. Coco,
27 ncoco@mwe.com; (v) counsel to the 2017 Notes Trustee, Maslon, LLP, 3300 Wells Fargo Center,
28 90 South Seventh Street, Minneapolis, Minnesota 55402, Attn: Clark Whitmore,

1 clark.whitmore@maslon.com; and (vi) counsel to the U.S. Trustee, Office of the United States
2 Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017, Attn: Hatty K. Yip,
3 hatty.yip@usdoj.gov.

4 The proposed timing for filing and service of objections and proposed modifications, if
5 any, will afford the Bankruptcy Court, the Debtors, the Committee, and other parties in interest
6 sufficient time to consider the objections and proposed modifications prior to the Confirmation
7 Hearing.

8 **VII.**

9 **CONCLUSION**

10 WHEREFORE, the Debtors request that the Bankruptcy Court enter an order:
11 (i) approving the Disclosure Statement; (ii) approving the solicitation and voting procedures;
12 (iii) approving the proposed notice and objection procedures for confirmation of the Plan; and
13 (iv) granting such other and further relief as the Bankruptcy Court deems just and proper.

14 Dated: September 3, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

17 By /s/ Tania M. Moyron
18 Tania M. Moyron

19 Attorneys for Verity Health Systems of
20 California, Inc., *et al.*

EXHIBIT 24

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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., *et al.*,

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DISCLOSURE STATEMENT DESCRIBING
DEBTORS' CHAPTER 11 PLAN OF
LIQUIDATION (DATED SEPTEMBER 3, 2019)**

Disclosure Statement Hearing:

Date: _____, 2019

Time: __:__.m. (Pacific Time)

Plan Confirmation Hearing:

Date: [To Be Scheduled]

Time: [To Be Scheduled] (Pacific Time)

Place: Courtroom 1568

255 E. Temple Street

Los Angeles, CA 90012



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I.

INTRODUCTION

Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated entities, the chapter 11 debtors and debtors in possession (collectively, the “Debtors”), each filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”)¹ on August 31, 2018 (the “Petition Date”). The Debtors’ chapter 11 bankruptcy cases (the “Chapter 11 Cases”) are pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the “Bankruptcy Court”) and jointly administered under *In re Verity Health System of California, Inc.*, Lead Case No. 2:18-bk-20151-ER.

This document is the disclosure statement (the “Disclosure Statement”), which describes the Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019) (the “Plan”).² The Plan sets forth a proposal for the resolution of Claims and the distribution of proceeds to Holders of Allowed Claims. The Plan provides that (i) a Liquidating Trustee will continue the wind-down and liquidation of the Debtors, and (ii) a Responsible Officer will oversee the operations of the Post-Effective Date Debtors during the Sale Leaseback Period in accordance with the Interim Agreements and the Transition Services Agreement. The Plan also requests the Bankruptcy Court approve and implement the terms of (i) the Creditor Settlement Agreements, if any, and (ii) documents necessary to effectuate the Plan.

A. Disclaimer

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN IS INCLUDED HEREIN AND THEREIN FOR PURPOSES OF SOLICITING

¹ All references to “§” herein are to the Bankruptcy Code, unless otherwise noted. All references to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as may be amended from time to time. All references to “Local Bankruptcy Rules” are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

² Capitalized terms not otherwise defined in this Disclosure Statement have the definitions set forth in the Plan.

1 ACCEPTANCES OF THE PLAN AND DESCRIBING TREATMENT UNDER THE PLAN.
2 THE INFORMATION CONTAINED HEREIN AND THEREIN MAY NOT BE RELIED
3 UPON FOR ANY PURPOSE OTHER THAN (I) TO DETERMINE HOW TO VOTE ON
4 THE PLAN AND (II) TO DESCRIBE TREATMENT UNDER AND TERMS OF THE
5 PLAN. ALL CREDITORS AND PARTIES IN INTEREST ARE ADVISED AND
6 ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN
7 THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

8 **READ THIS DISCLOSURE STATEMENT CAREFULLY FOR INFORMATION**
9 **CONCERNING:**

- 10 1. WHO CAN VOTE FOR, OR OBJECT TO, CONFIRMATION OF THE
11 PLAN;
- 12 2. THE TREATMENT OF YOUR CLAIM (I.E., WHAT YOU WILL RECEIVE
13 ON ACCOUNT OF YOUR CLAIM IF THE PLAN IS CONFIRMED) AND HOW THIS
14 TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD RECEIVE IN
15 LIQUIDATION;
- 16 3. THE HISTORY OF THE DEBTORS AND SIGNIFICANT EVENTS
17 DURING THEIR BANKRUPTCY CASES;
- 18 4. WHAT THE BANKRUPTCY COURT WILL CONSIDER TO DECIDE
19 WHETHER TO CONFIRM THE PLAN;
- 20 5. THE EFFECT OF CONFIRMATION; AND
- 21 6. WHETHER THE PLAN IS FEASIBLE.

22 THE PLAN WILL CONTROL IF THERE IS AN INCONSISTENCY BETWEEN
23 THE TERMS OF THIS DISCLOSURE STATEMENT AND THE TERMS OF THE PLAN.
24 PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT
25 ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THIS
26 DISCLOSURE STATEMENT, AND THE EXHIBITS ANNEXED TO THIS DISCLOSURE
27 STATEMENT.
28

1 NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY
2 REPRESENTATIONS REGARDING THE PLAN OR THE SOLICITATION OF
3 ACCEPTANCES OF THE PLAN OTHER THAN THE INFORMATION AND
4 REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT OR THE
5 PLAN. THE COURT HAS NOT YET DETERMINED WHETHER OR NOT THE PLAN
6 IS CONFIRMABLE AND THE COURT HAS NO RECOMMENDATION AS WHETHER
7 OR NOT YOU SHOULD SUPPORT OR OPPOSE THE PLAN.

8 THE FINANCIAL DATA RELIED UPON IN FORMULATING THE PLAN IS
9 BASED ON THE DEBTORS' BOOKS AND RECORDS, WHICH ARE UNAUDITED
10 UNLESS OTHERWISE INDICATED. THE INFORMATION CONTAINED IN THIS
11 DISCLOSURE STATEMENT IS PROVIDED BY THE DEBTORS. FURTHER, THE
12 DEBTORS ARE THE SOLE SOURCE OF THE INFORMATION AND THE
13 STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING,
14 WITHOUT LIMITATION, INFORMATION ABOUT THE DEBTORS, THEIR
15 BUSINESSES, AND THE ESTATES' ASSETS.

16 THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE
17 MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE
18 THAT THE STATEMENTS CONTAINED HEREIN SHALL BE CORRECT AT ANY
19 TIME AFTER THE DATE HEREOF. ANY ESTIMATES OF CLAIMS SET FORTH IN
20 THIS DISCLOSURE STATEMENT MAY VARY FROM THE AMOUNTS OF CLAIMS
21 ULTIMATELY ALLOWED BY THE BANKRUPTCY COURT.

22 **B. Purpose of this Disclosure Statement**

23 This Disclosure Statement (i) summarizes the contents of the Plan, and (ii) provides certain
24 information related to the Plan and the process the Bankruptcy Court will follow to determine
25 whether or not to confirm the Plan.

26 You should read the Disclosure Statement and the Plan. This Disclosure Statement cannot
27 tell you everything about your rights. You should consider consulting your own lawyer to obtain
28

1 more specific advice on how the Plan will affect you and your best course of action with respect to
2 the Plan.

3 The Bankruptcy Code requires that a Disclosure Statement contain “adequate information”
4 concerning the Plan. The Bankruptcy Court has approved this document as an adequate Disclosure
5 Statement, which means that this Disclosure Statement contains adequate information to enable
6 parties affected by the Plan to make an informed judgment about the Plan.

7 **C. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

8 **THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN**
9 **DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS**
10 **OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE**
11 **BANKRUPTCY COURT CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING**
12 **ON ALL CREDITORS AND INTEREST HOLDERS IN THESE CHAPTER 11 CASES.**

13 **1. Time and Place of the Confirmation Hearing**

14 The hearing where the Bankruptcy Court will determine whether or not to confirm the Plan
15 (the “Confirmation Hearing”) will take place on _____, 2019, at __: __ .m. (Pacific
16 Time), in Courtroom 1568 of the Edward R. Roybal Federal Building and United States
17 Courthouse, located at 255 East Temple Street, Los Angeles, California 90012, before the
18 Honorable Ernest M. Robles, United States Bankruptcy Judge for the Bankruptcy Court.

19 **2. Deadline For Voting For or Against the Plan**

20 If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and
21 return the ballot in the enclosed envelope to Verity Vote Plan Tabulation c/o KCC, LLC, 222 North
22 Pacific Coast Highway, Suite 300, El Segundo, California 90245. Your ballot must be received by
23 KCC by 4:00 p.m. (Pacific Time), on _____, 2019 or it will not be counted.

24 **3. Deadline for Objecting to the Confirmation of the Plan**

25 Objections to the confirmation of the Plan must be filed with the Bankruptcy Court and
26 served so that they are actually received by the following parties no later than _____,
27 2019 at 4:00 p.m. (Pacific Time) (i) counsel to the Debtors, Dentons US LLP, 601 South Figueroa
28 Street, Suite 2500, Los Angeles, CA 90017, Attn: Tania M. Moyron, email:

1 tania.moyron@dentons.com; (ii) counsel to the Committee, Milbank LLP, 2029 Century Park East,
2 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman, mshinderman@milbank.com;
3 (iii) counsel to the 2005 Revenue Bonds Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
4 P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel S. Bleck and Paul Ricotta,
5 dsblek@mintz.com, pricotta@mintz.com; (iv) counsel to the 2015 Notes Trustee, McDermott Will
6 & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, Illinois 60606, Attn: Nathan F. Coco,
7 ncoco@mwe.com; (v) counsel to the 2017 Notes Trustee, Maslon, LLP, 3300 Wells Fargo Center,
8 90 South Seventh Street, Minneapolis, Minnesota 55402, Attn: Clark Whitmore,
9 clark.whitmore@maslon.com; and (vi) counsel to the U.S. Trustee, Office of the United States
10 Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017, Attn: Hatty K. Yip,
11 hatty.yip@usdoj.gov.

12 **D. Identify of Person to Contact for Copies of the Plan and Related Documents**

13 Any interested party desiring further information about the Plan should contact KCC by
14 (i) mail at KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245;
15 or (ii) by phone at (310) 823-9000. You may also review the Debtors' Chapter 11 Case website
16 maintained by KCC at <https://www.kccllc.net/verityhealth>.

17 **II.**

18 **OVERVIEW OF THE DEBTORS AND THE NON-DEBTOR AFFILIATES**

19 **A. The Debtors**

20 Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member
21 of the following five Debtor California nonprofit public benefit corporations that, on the Petition
22 Date, operated six acute care hospitals: O'Connor Hospital ("OCH"), Saint Louise Regional
23 Hospital ("SLRH"), St. Francis Medical Center ("SFMC"), St. Vincent Medical Center ("SVMC"),
24 Seton Medical Center ("SMC"), and Seton Medical Center Coastsides ("Seton Coastsides" and,
25 together with OCH, SLRH, SFMC, and SVMC, the "Hospitals"). SMC and Seton Coastsides
26 (collectively, "Seton") operated under one consolidated acute care hospital license. All of the
27 Hospitals were licensed as general acute care hospitals by the California Department of Public
28 Health.

As of the Petition Date, VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health System”) operated as a nonprofit health care system in California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and a host of medical specialties, including tertiary and quaternary care. The scope of the services provided by the Verity Health System is exemplified by the fact that, in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. The Hospitals were certified to participate in the Medicare and Medi-Cal programs. In furtherance of its mission to serve the community, Verity Health System provided care to patients even though they lacked adequate insurance or participated in programs that did not pay full charges. Further information concerning each of the Debtor’s operations are discussed in the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”).

The Debtors are as follows:

- Verity Health System of California, Inc.
- O’Connor Hospital
- Saint Louise Regional Hospital
- St. Francis Medical Center
- St. Vincent Medical Center
- Seton Medical Center (which includes Seton Medical Center Coastsides campus)
- Verity Business Services
- O’Connor Hospital Foundation
- Saint Louise Regional Hospital Foundation
- St. Francis Medical Center of Lynwood Foundation
- St. Vincent Medical Center Foundation
- Seton Medical Center Foundation
- Verity Medical Foundation
- Verity Holdings, LLC
- De Paul Ventures, LLC
- De Paul Ventures - San Jose Dialysis, LLC
- St. Vincent Dialysis Center

The Debtors employed approximately 7,385 employees (the “Employees”) in the aggregate. Almost three-quarters of the Debtors’ Employees, approximately 5,500 people in total, were represented by one of the following unions (the “Unions”) pursuant to collective bargaining agreements between the Unions and the respective Debtors: California Nurses Association (“CNA”); Service Employees International Union (“SEIU”); California Licensed Vocational Nurses’ Association (“CLVNA”); United Nurses Associations of California/Union of Health Care

Professionals (“UNAC”); the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”); International Operating Engineers, Stationary Engineers, Local No. 39 (“Local 39”); and the International Federation of Professional and Technical Engineers, Local 20 (“Local 20”).

B. The Non-Debtor Affiliates

Certain of the Debtors have interests in the entities listed below that did not file voluntary petitions for relief (collectively, the “Non-Debtor Affiliates”). The Non-Debtor Affiliates are as follows:

- De Paul Ventures - San Jose ASC, LLC
- Marillac Insurance Company, Ltd.
- O’Connor Health Center I
- Sports Medicine Management, Inc.
- St. Vincent de Paul Ethics Corporation
- VHoldings MOB, LLC
- Robert F. Kennedy Medical Center
- Robert F. Kennedy Medical Center Foundation

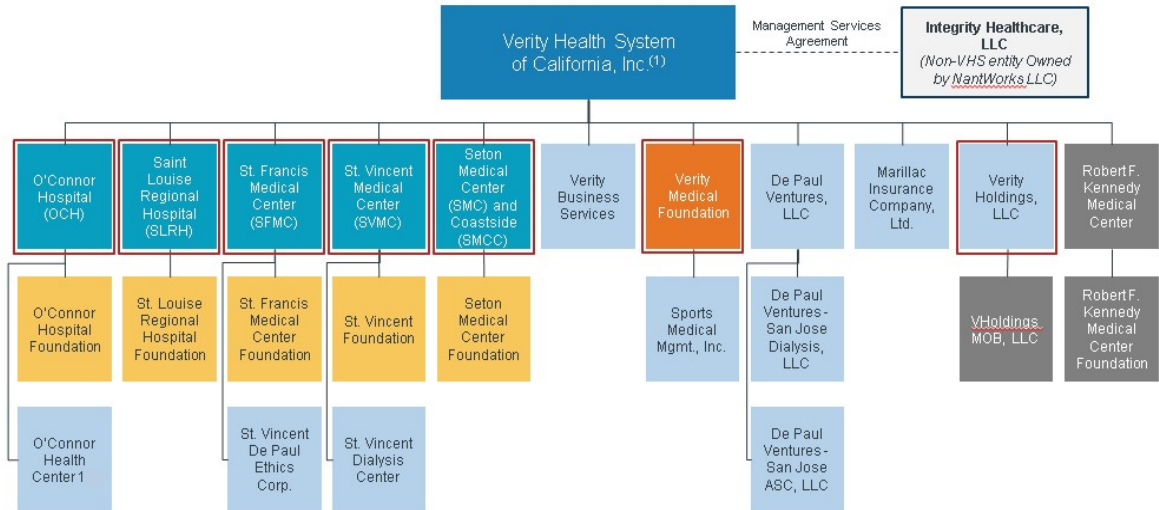
Further information concerning each of the Non-Debtor Affiliate’s operations are discussed in the First-Day Declaration. The Non-Debtor Affiliates do not have material assets or value except for Marillac Insurance Company, Ltd. (“Marillac”) and O’Connor Health Center I (“OCH1”).

Marillac, a wholly-owned subsidiary of VHS, provides insurance coverage to the Debtors. Marillac was incorporated in the Cayman Islands on December 9, 2003, and holds a Class B(i) Insurer’s License pursuant to the Cayman Islands Insurance Law, 2010. This class of licensure applies to insurers writing at least 95% of net premiums with their related business (in this case VHS). Marillac was granted a Class B(i) license effective April 2, 2015.

OCH1 is a California limited partnership, formed in January 1996. OCH Forest 1, LP is the general partner in OCH1 and OCH is a limited partner. OCH1 owns certain real property at 455 O’Connor Drive, San Jose, California, which is leased by OCH.

C. Corporate Structure

The following graphic depicts the Debtors’ prepetition organizational structure:



The Debtors' senior management is as follows:

Name	Position
Chief Executive Officer	Richard Adcock
Chief Financial Officer	Anita Chou
Chief Operating Officer	Anthony Armada
Chief Medical Officer	Tirso del Junco, Jr. M.D.

VHS is governed by the following seven-member board of directors:

Name	Position
Dr. Ernest Agatstein	Director
James Barber	Director
Terry Belmont	Secretary
Jack Krouskup	Chairman
Charles B. Patton	Director
Christobel Selecky	Director
Andrew Pines	Vice Chair

III.

EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES

A. Overview of the Debtors' Prepetition Business Operations

The Daughters of Charity of St. Vincent de Paul, Province of the West, (the "Daughters of Charity") originally owned and operated the Hospitals and VMF. The Daughters of Charity began their healthcare mission in California in 1858 with the opening of Los Angeles Infirmary, now known as St. Vincent Medical Center. The Daughters of Charity expanded its hospitals to San Jose in 1889 and San Francisco in 1893. The Daughters of Charity ministered to the poor and sick for more than 150 years.

In March 1995, the Daughters of Charity merged with Catholic Healthcare West ("CHW"). In June 2001, the Daughters of Charity Health System was formed. In October 2001, the Daughters of Charity withdrew from CHW. In 2002, the Daughters of Charity Health System commenced operations and was the sole corporate member of the Hospitals, which at that time were California nonprofit religious corporations.

Between 1995 and 2015, the Daughters of Charity and Daughters of Charity Health System struggled to find a solution to continuing operating losses, either through a sale of some or all of the hospitals or a merger with a more financially-sound partner. All these efforts failed, and the health system's losses continued to mount. In 2005, Daughters of Charity Health System issued \$364 million in bonds to refinance existing debt and to fund future capital expenditures. Three years later, in 2008, they issued another \$143 million in bonds to refinance existing debt (the "2008 Bonds").

Between 2012 and 2014, Daughters of Charity Health System participated in an affiliation with Ascension Health Alliance ("Ascension") in an effort to create greater operating efficiencies. Previously, Ascension was the largest Catholic health system in the world and the largest non-profit health system in the United States with facilities in 23 states and the District of Columbia. The affiliation between Daughters of Charity Health System and Ascension failed.

Despite continuous efforts to improve operations, operating losses continued to plague the health system due to, among other things, mounting labor costs, low reimbursement rates and the

1 ever-changing healthcare landscape. In 2013, Daughters of Charity Health System actively
2 solicited offers for OCH, SLRH, and Seton. In 2013, to avoid failing debt covenants, the Daughters
3 of Charity Foundation, an organization separate and distinct from the Daughters of Charity Health
4 System, donated \$130 million to the health system to allow it to retire the 2008 Bonds in the total
5 amount of \$143.7 million.

6 In early 2014, Daughters of Charity Health System announced that they were beginning a
7 process to evaluate strategic alternatives for the health system. Throughout 2014, Daughters of
8 Charity Health System explored offers to sell the health system and, in October of 2014, they
9 entered into a purchase agreement with Prime Healthcare Services and Prime Healthcare
10 Foundation (collectively, “Prime”). However, to keep the Hospitals open during the sale process,
11 Daughters of Charity Health System borrowed another \$125 million to mitigate immediate cash
12 needs until the sale could be consummated. Notably, the goal of the transaction was to maintain
13 the status quo. The guiding principles for the sale included protecting existing pensions, repaying
14 all bond debt, continuation of all collective bargaining agreements, maintenance of existing
15 contracts for patient services, and obtaining promises for substantial capital expenditures. In early
16 2015, the Attorney General of California (the “Attorney General”) consented to the sale to Prime,
17 subject to certain conditions. Prime terminated the transaction in light of the “onerous conditions”
18 on the continued operation of the Hospitals imposed by the Attorney General.

19 In 2015, Daughters of Charity Health System again marketed their health system for sale,
20 and, again, focused on offers that maintained the health system as a whole and assumed all the
21 obligations. In July 2015, the Daughters of Charity Health System board of directors selected
22 BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to
23 recapitalize operations and transition leadership of the health system to the new Verity Health
24 System (the “BlueMountain Transaction”).

25 In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital
26 infusion of \$100 million to the Verity Health System, arrange loans for another \$160 million to the
27 Verity Health System, and manage operations of the Verity Health System, with an option to buy
28 Verity Health System at a future time. In addition, the parties entered into a System Restructuring

1 and Support Agreement (the “Restructuring Agreement”) that, among other things, changed the
2 Daughters of Charity Health System name to Verity Health System. The Restructuring Agreement
3 also provided that VHS and the Hospitals would be converted from religious corporations to
4 nonprofit public benefit corporations.

5 The Daughters of Charity Health System requested the Attorney General’s consent to enter
6 into the Restructuring Agreement and the BlueMountain Transaction. The Attorney General
7 retained MDS Consulting, an expert consulting firm, to prepare healthcare impact reports for the
8 Attorney General concerning the proposed transactions. According to the expert’s healthcare
9 impact reports, Daughters of Charity Health System outlined the following reasons why the
10 BlueMountain Transaction was either necessary or desirable:

- 11 • The current structure and sponsorship of Daughters of Charity Health System was no longer
12 possible as a result of cash flow projections and dire financial conditions.
- 13 • In July and August of 2014, Daughters of Charity Health System obtained a short-term
14 financing bridge loan in the amount of \$125 million to mitigate the immediate cash needs
15 for an estimated period of time long enough to allow for the transaction to close. Repayment
16 of the funds was due on December 15, 2015, at which time if the full amount was not repaid,
17 Daughters of Charity Health System would be at risk of defaulting on both their outstanding
2014 and 2005 revenue bonds.
- 18 • Without bankruptcy protection or additional financial support, Daughters of Charity Health
19 System could not continue hospital operations if there is a default.

20 On December 3, 2015, the Attorney General approved the BlueMountain Transaction,
21 subject to certain conditions (the “Conditions”). The Conditions were imposed for periods ranging
22 from 5 to 15 years and generally included: (1) limits on transfers of control; (2) maintenance of
23 specific health services and specific bed counts; (3) required participation in Medicare and Medi-
24 Cal programs; (4) required levels of community benefit programs; (5) required levels of charity
25 care; (6) maintenance of certain county payor contracts; (7) requirements for local governing
26 boards; (8) requirements for medical staff compliance; and (9) an annual attestation of compliance
27 with the Conditions.

28 In 2015, BlueMountain formed Integrity Healthcare, LLC (“Integrity”) to carry out
management services for Verity Health System. The Integrity management services were provided
pursuant to 15-year term Health System Management Agreement by and between Integrity and

VHS (the “Management Agreement”). Integrity received a monthly management fee pursuant to the Management Agreement, which was calculated based on a specified percentage of trailing 12-month operating revenues for VHS and provided that VHS could defer a portion of the fee payments with such deferments subject to interest accruing at 2.82% per annum. Integrity was wholly owned by BlueMountain through June 30, 2017.

Verity Health System did not prosper despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations.

In July 2017, NantWorks, LLC (“Nantworks”) acquired a controlling stake in Integrity. NantWorks brought in new officers and NantWorks loaned another \$148 million to the Debtors. The NantWorks transaction did not result in significant changes to the terms of the Restructuring Agreement or the Conditions.

Once again, Verity Health System did not achieve expected success despite the infusion of capital and new management. Losses continued at approximately \$175 million annually on a cash flow basis.

VHS’s great efforts to revitalize its Hospitals and improvements in performance and cash flow proved insufficient to overcome the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining agreements or payor contracts, the continuing need for significant capital expenditures for seismic obligations and aging infrastructure, and the general headwinds facing the hospital industry. It became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring.

B. The Debtors’ Prepetition Capital Structure³

VHS, Verity Business Services (“VBS”), and the Hospitals are jointly obligated parties on approximately \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million

³ For additional information concerning the Debtors’ prepetition capital structure, the Debtors refer to the *Declaration of Anita Chou, Chief Financial Officer, in Support of Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate*

1 outstanding tax exempt revenue bonds, the 2005 Series A, G and H Revenue Bonds, issued by the
2 California Statewide Communities Development Authority (“CSCDA”), which loaned the bond
3 proceeds to VHS to provide funds for capital improvements and to refinance certain tax exempt
4 bonds previously issued in 2001 by the Daughters of Charity Health System; and (b) \$202 million
5 outstanding tax exempt revenue notes, the 2015 Revenue Notes and the 2017 Revenue Notes issued
6 by the California Public Finance Authority (the “CPFA”), which loaned the proceeds to VHS to
7 provide working capital. Wells Fargo Bank, National Association, is the 2005 Revenue Bonds
8 Trustee, and U.S. Bank, National Association, is the 2015 Notes Trustee and 2017 Notes Trustee.

9 Except for the taxable Series 2015C of the 2015 Revenue Notes, the 2005 Series A, G and
10 H Revenue Bonds, 2015 Revenue Notes, and 2017 Revenue Notes are all tax exempt, meaning
11 interest on the bonds is not taxable to the holders, so long as the obligors maintains their qualified
12 tax exempt status and the proceeds of the bonds are used for the tax exempt purposes for which
13 they were originally intended. The Series 2005 A Bonds are comprised of four term bonds maturing
14 on July 1, 2024, 2030 and 2035, bearing interest at 5.75% (Series 2005A-2024), (Series 2005A-
15 2030), (Series 2005A-2035) and one maturing July 1, 2039 bearing interest at 5.50% (Series
16 2005A-2039). The Series 2005G term bond matures on July 1, 2022 and bears interest at 5.50%.
17 The Series 2005H- term bond matures on July 1, 2025 and bears interest at 5.75%. The 2015
18 Revenue Notes matured on June 10, 2019 (Series 2015A, Series 2015B, Series 2015C and Series
19 2015D) and the 2017 Revenue Notes mature on December 10, 2020 (Series 2017A, 2017B). Series
20 2015A and B and Series 2017 and 2017B bear interest at 7.25%, while the Series 2015D carries an
21 8.75% interest rate and the taxable Series 2015C accrues interest at 9.5%.

22 Holdings, a direct subsidiary of its sole member VHS, was created in 2016 to hold and
23 finance the Debtors’ interests in six medical office buildings whose tenants are primarily physicians
24 and other practicing medical groups and certain of the Hospitals. Holdings is the borrower of
25 approximately \$66 million through two series of non-recourse financing secured by separate deeds
26 of trust and revenue and accounts pledges, including lease rents on each medical building, pursuant

27 *Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107*
28 *And 1108 [Docket No. 32].*

1 to the MOB I Loan Agreement and MOB II Loan Agreement (collectively, the “MOB Financings”).
2 The MOB Financings bear interest at a variable interest rate equal to One Month LIBOR, plus a
3 spread of 5.0% with a floor of 6.23% for the first series and a floor of 6.92% for the second series.
4 The secured lenders for the MOB Financings are affiliates of NantWorks, which is an affiliate of
5 Integrity.

6 During May 2017, the CSCDA issued \$20 million of limited obligation tax exempt bonds,
7 pursuant to the CaliforniaFIRST Clean Fund Program in five series all with the same maturity date
8 of September 2, 2047 (the “Clean Fund Bonds”) as the conduit issuer for the benefit and obligation
9 of Verity. The purpose of the bond funding was to assist with clean energy construction efforts of
10 the SMC and are secured by SMC’s voluntary agreement to special tax assessments by Daly City.
11 No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National
12 Association (“WTNA”) is the Trustee holding the construction funds, and a prefunded capitalized
13 interest fund and is the collateral agent for collection of the special tax assessments for use in paying
14 interest and principal on the Clean Fund Bonds. Interest on the Clean Fund Bonds accrues at 6.4%.
15 The special assessment runs for a period which is the shorter of 30 years or the early full
16 defeasement of the Clean Fund Bonds.

17 In September 2017, the CSCDA issued \$20 million of limited obligation tax exempt bonds,
18 pursuant to the CaliforniaFIRST Program for the purpose of assisting with clean energy and seismic
19 improvement construction at SMC (“NR2 Petros Bonds”). The NR2 Petros Bonds also mature on
20 September 2, 2047, and carry an interest rate of 6.45%. The NR2 Petros Bonds are also California
21 tax exempt and are secured by a special Daly City tax assessment on SMC property. No other
22 Debtor is liable for repayment of the NR2 Petros Bonds. The special assessment runs for a period
23 which is the shorter of 30 years or the early full defeasement of the NR2 Petros Bonds. WTNA is
24 the Trustee holding the seismic improvement funds, as well as a pre-funded interest payment fund.

25 NantCapital also provided \$40 million of unsecured debt financing for Holdings as reflected
26 in two \$20 million unsecured notes (the “Nant Unsecured Notes”). The Nant Unsecured Notes are
27 balloon notes with interest and principal payable at maturity in 2020 and carry annual compounded
28 interest rates of 7.25%.

C. The Debtors' Prepetition Unsecured Claims

The unsecured claims against the Debtors on the Petition Date include claims made by vendors of goods and services, cost report payables, pension obligations, management fees, incurred but not reported third party claims and other claims as discussed in Section VI of this Disclosure Statement below.

D. The Debtors' Retirement Related Benefit Plans

The Debtors maintain several retiree-related benefit plans that include pension benefits and healthcare benefits. With respect to pensions, there are two single employer defined benefits plans, two multi-employer defined benefit plans (collectively, the "Defined Benefits Pension Plans") and several defined contribution plans (collectively, the "Defined Contribution Pension Plans" and, referred to along with the Defined Benefits Plans as the "Pension Plans"). In addition, the Debtors maintain a retiree health benefit plan that provides a supplement for retirees who timely select into the program (the "Retiree Health Benefit"). At present, there are only approximately 12 retirees who utilize the Retiree Health Benefit.

The Defined Benefits Pension Plans originated with or otherwise arose out of defined benefits pension plans that were maintained by, or otherwise contributed into, by Daughters of Charity. In connection with the BlueMountain Transaction, VHS retained liabilities with respect to certain of these Defined Benefits Pension Plans, including a single employer non-ERISA compliant, non-PBGC-insured "Church Plan." At the time of the BlueMountain Transaction, the Church Plan was significantly underfunded. As a provision of the BlueMountain Transaction, VHS agreed to convert the Church Plan to an ERISA-compliant, PBGC-insurable defined benefit plan, which was called the Verity Health System Retirement Plan (the "VHS Plan"). Subsequently, in an effort to enhance its ability to meet contribution requirements, the Board of Directors of VHS converted the VHS Plan into Verity Plan A and, using approximately \$7,966,440 from the corpus of Plan A, created Verity Plan B (collectively, the "Single-Employer Plans"). The creation of Plan B permitted the largest number of beneficiaries with the lowest account balances to be shifted into Plan B, thereby reducing insurance costs of Plan A. The Debtor entities that participate in the Single-Employer Plans include OCH, SLRH, SFMC, and SVMC. In addition, certain systems

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1 office employees participate in Plan A. The Single-Employer Plans are frozen as to all employees,
2 other than with respect to Plan A for active CNA members. Since its creation and up to the Petition
3 Date, Verity made all required contributions to Plan A. Based upon those contributions, Plan A
4 became insured up to 40% of the maximum insurable level provided by PBGC. Since the Petition
5 Date, and pursuant to Bankruptcy Court authorization, contributions have been made to Plan A
6 with respect to active CNA members. Because Plan B was and remains fully funded, no
7 contributions have been made to Plan B since its creation. The PBGC has informed the Debtors
8 that it intends to terminate the Single-Employer Plans, which the Debtors' expect will be effective
9 upon or before the closing of the SGM Sale.

10 In addition to the Church Plan, Verity inherited obligations with respect to two
11 multiemployer defined benefit pension plans, referred to as the Retirement Plan for Hospital
12 Employees ("RPHE") and the Stationary Engineers Local 39 Pension Plan ("Local 39 Plan" and
13 ,collectively referred to with the RPHE as the "Multi-Employer Plans"). The Debtor entities that
14 participate in the RPHE are Seton (defined herein to include both Seton Medical Center and Seton
15 Medical Center Coastside), OCH, SLRH, and Caritas Business Services. The RPHE was frozen as
16 to these facilities, other than with respect to CNA members at OCH, SLRH and Seton Medical
17 Center. Benefits under the RPHE are generally based on years of service and employee
18 compensation. Contributions to the RPHE are based on actuarially determined amounts established
19 by the RPHE Board of Trustees to meet benefits to be paid to plan participants and satisfy IRS
20 funding requirements. Similar to the Church Plan, the RPHE was significantly underfunded. After
21 the BlueMountain transaction and up through July 31, 2018, the Debtors made all requisite
22 contributions to the RPHE.

23 In addition to the Defined Benefits Pension Plans, VHS and VMF maintain several Defined
24 Contribution Plans for employees, which include employer matching contributions and cover union
25 represented employees. The Defined Contribution Plans include the Verity Health System
26 Supplemental Retirement Plan (TSA), the Verity Health System Supplemental Retirement Plan
27 (401(a)), the Verity Health System Retirement Plan Account (RPA), the Verity Medical Foundation
28 401(k) Plan, the Verity Medical Foundation Management Bargaining Unit Employees 401(k) Plan

for represented employees and the Verity Health System Executive Long-Term Savings Plan s
457(b) (or “Rabbi Trust Plan”) for nonrepresented employees. The Defined Contribution Plans are
funded from employee and/or employer contributions generally on a payroll by payroll basis. In
addition to the above active defined contribution plans, there are several small, frozen ancillary
retirement plans. During the fiscal years ended June 30, 2017 and 2016, the employer’s
contribution expense for DC Plans was approximately \$18.48 million and \$21.75 million,
respectively. The Defined Contribution Pension Plans are fully funded and contributions have
continued throughout the Chapter 11 Cases.

E. Fiscal Crisis on the Petition Date

As described above, the fiscal crisis which faced the Debtors on the Petition Date was the
consequence of multiple historical challenges. Below are a few of the most significant financial
issues the Debtors faced when they filed the Chapter 11 Cases.

1. Payor Rates

The Debtors’ payor contracts with health plans were 20-43% below market. The Conditions
imposed by the Attorney General required that the Debtors maintain certain payor contracts, which
severely limited the Debtors’ negotiating power. These below market rates made it impossible for
the Hospitals to generate sufficient cash flow to maintain liquidity.

2. Labor Rates

Payroll costs in the twelve months before the Petition Date increased by nearly \$65 million.
The increase was partially related to Union contracts, which, prepetition, increased the Debtors’
labor costs by approximately 5% year-over-year.

3. Pension Plan Obligations

The Debtors incurred, and anticipated, significant expenses on account of Pension Plan and
other postretirement benefit liabilities, many of which are related to underfunded legacy obligations
dating back to the Daughters of Charity Health System.

For example, as of the Petition Date, the RPHE was frozen to ongoing benefit accruals,
except with respect to CNA members at OCH, SLRH, and SMC. However, prepetition, VHS had
recorded benefit expenses of \$16.72 million and \$20.46 million in cash contributions to the RPHE

for fiscal years ended June 30, 2018 and 2017, respectively, and \$12.36 million to the RPHE for the period from December 2015 through June 2016. Further, on the Petition Date, VHS was scheduled to make contributions to the RPHE totaling \$13.61 million in fiscal year 2019. A significant amount of those scheduled contributions in fiscal year 2019—\$8.54 million—represented make-up contributions for unfunded amounts that arose during the Daughters of Charity Health System time period.

Similarly, as of the Petition Date, Verity Plans A & B were frozen with respect to ongoing benefit accruals, except with respect to CNA members at SVMC participating in Verity Plan A. VHS contributed \$45.40 million and \$41.68 million to Verity Plan A & B for fiscal years ended June 30, 2018 and 2017, respectively, and \$7.73 million to Verity Plan A for the period from December 2015 through June 2016. Further, on the Petition Date, VHS was scheduled to make contributions to Verity Plan A totaling \$25.50 million in fiscal year 2019, of which \$20.26 million represented make-up contributions for underfunded amounts that arose during the Daughters of Charity Health System time period.

4. IT Investment

VHS's information technology ("IT") system required investments of nearly \$50 million over the coming year. The Debtors IT systems relied on outdated electronic health records and enterprise resource planning (i.e., human resources, supply chain management, inventory management, etc.). Further, significant IT asset upgrades were required to modernize the Hospitals and continue providing quality patient care services. For example, VHS needed to (i) immediately replace its outdated local area and wireless networking equipment with modern equipment to enable reliable access by all VHS system users (a \$15 million estimated cost over a one-year implementation period), and (ii) replace VHS's obsolete clinical systems, including medical record systems and financial systems, to provide up-to-date patient records, improved clinical planning, care management, and better charge control (a \$220 million estimated cost over a period of two years).

5. Seismic and Energy Requirements

VHS faced required seismic and energy expenditures of over \$150 million over the coming years. The forecasted expenses included building improvements and demolitions at SVMC, SMC, and OCH that must be completed by 2020, and another round of improvement obligations at SVMC, SMC, OCH, and SLRH required by 2030. These seismic improvement deadlines are mandated by the California Office of Statewide Health Planning and Development and the Attorney General pursuant to the Conditions imposed on the BlueMountain Transaction.

6. Insurance Obligations

As set forth in the First-Day Declaration, the Debtors maintain various insurance policies issued by several insurance carriers (collectively, the “Insurance Carriers”). Collectively, these policies provide for coverage for, among other things: storage tank liability, commercial property, workers’ compensation and employers liability, commercial automobile, helipad liability & non-owned aircraft liability, sexual misconduct and molestation liability, D&O liability, general liability, and professional liability (collectively, the “Insurance Policies”).⁴

Significant insurance is issued to the Debtors by its captive insurer Marillac. The policies issued by Marillac cover professional and general liability (both at the primary and excess level) and additional excess coverage as to automobile liability, heliport and non-owned aircraft liability, employer’s liability and certain other general liability.

The Debtors maintain a workers’ compensation insurance policy with Old Republic Insurance Company (“Old Republic”) with a \$500,000 deductible for each claim. Old Republic provides coverage under the policy up to \$1 million for each claim. Marillac issued a Deductible Liability Protection Policy which provides coverage for the deductible obligations on the Debtors’ workers’ compensation policy issued by Old Republic. On average, the monthly invoice amounts for deductibles (including allocated loss adjustment expenses) incurred under the workers’ compensation policy is between \$400,000 and \$650,000, which are timely paid by Marillac under the Deductible Liability Protection Policy.

⁴ The Insurance Policies include six CA DHS Patient Trust Bonds, which will not come due for renewal until December 2019.

1 The Debtors also maintain self-insured retentions of \$250,000 per claim under their D&O
2 liability coverage, \$350,000 per claim under their employment practices coverage, \$50,000 per
3 claim under their fiduciary liability coverage, \$100,000 per claim under their crime coverage, and
4 \$50,000 per claim under their sexual misconduct and molestation liability coverage (the “Self-
5 Insured Retentions” or “SIRs”). A SIR is a loss amount that the insured is obligated to pay before
6 the insurer’s coverage obligation is triggered.

7 The Debtors’ Self-Insured Retentions are administered, so that the Debtors pay directly for
8 the losses under each policy as they are incurred up to the amounts of the Self-Insured Retentions.
9 Such SIRs due prepetition have been paid pursuant to the Insurance Motion (as defined below).

10 **7. Medical Equipment**

11 On the Petition Date, VHS required over \$100 million in medical equipment expenditures
12 over a period of several years. The Debtors delayed these investments because significant debt,
13 pension, seismic and operating losses limited the Debtors’ liquidity.

14 **F. Working Capital Shortfalls**

15 The Debtors, like other hospitals serving similar communities, rely on government support
16 to help bridge the gap between what they get reimbursed by private insurance companies, Medicare
17 and Medi-Cal and their cost of providing care. The Quality Assurance Fee program, established in
18 2010, provides funding for supplemental payments to California hospitals that serve Medi-Cal and
19 uninsured patients. The program is successful, providing billions of dollars in supplemental
20 payments to California hospitals. The Medicare and Medi-Cal programs also provide funding to
21 hospitals that treat indigent patients through the Disproportionate Share Hospital (“DSH”)
22 programs, under which facilities are able to receive at least partial compensation. Under the Patient
23 Protection and Affordable Care Act of 2010 (P.L. 111-148, as amended) (the “ACA”), Congress
24 would have reduced federal DSH allotments beginning in 2014, to account for the decrease in
25 uncompensated care anticipated under health insurance coverage expansion. However, several
26 pieces of legislation enacted since 2010 have since delayed the ACA’s Medicaid DSH reduction
27 schedule. Unfortunately, the Quality Assurance Payments and DSH program payments are
28

unreliable sources of cash flow as the Debtors regularly experienced payment reductions and delays.

The Debtors' reliance on Quality Assurance Payments led to working capital shortages due to delays in approval and lower than expected payments. For example, on the Petition Date:

- *14-Month Delay*: QAF V FFS program (service period 1/1/17 - 6/30/19) was not approved until December 2017, and the Debtors did not start receiving payments until the end of February 2018 (14-month delay);
- *29-Month Delay*: QAF V HMO program's first payment was not funded until May 2019 (a 29-month delay on receiving funds);
- *Receiving less than Expected*: Through all 10 QAF V FFS cycles, the Debtors received anywhere from 70% to 100% of expected payments.

G. The Attorney General Conditions

As set forth above, as part of approving the Restructuring Agreement, the Attorney General placed certain operational restrictions on VHS and each of the Hospitals, which include certain minimum annual spending for charity care, community benefits, and capital expenditures among other mandates. The Conditions had the cumulative effect of locking the Debtors into a failing business model, dictating minute details of business operations, and denying the Debtors the ability to repurpose facilities. For example, SMC could potentially better serve its community by operating as a much-needed long-term post-acute care facility, rather than as one of the many acute care hospitals in a saturated service area. The Conditions foreclose this option.

The Conditions also compelled the Debtors to expend millions of dollars to provide charity care even though the number of uninsured people in California steadily decreased since passage of the ACA. In October 2017, VHS was also required to make an additional contribution to the Retirement Plans of \$7.62 million as a result of a shortfall in the fiscal year 2017 charity care requirement for certain hospitals.

The Conditions denied the Debtors the benefits of the marketplace. For example, as discussed above, the Conditions require the Debtors to enter into payor contracts with specific entities regardless of whether more economically advantageous contract terms are offered elsewhere. Because those payors were well aware of this obligation, VHS lost all bargaining power with those payors.

The Debtors commenced these Chapter 11 Cases as a result of the issues discussed in this Section III with the objective of protecting the original legacy of the Daughters of Charity to the maximum extent possible. The Debtors pursued a strategy to retire debt incurred over the past 18 years so the Hospital facilities and work force can continue their critical operations under new ownership and leadership without the accumulated crisis of the past.

IV.

SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES

Below is a discussion of the material pleadings and events to date during the Chapter 11 Cases.

A. Material First-Day Motions and Related Adversary Proceeding Filed on the Petition

Date

1. Emergency Motion to Pay the Debtors' Prepetition Priority Wages

The Debtors filed an emergency motion [Docket No. 22] (the "Wage Motion") for authority to pay the Debtors' prepetition priority wages and related benefits in the ordinary course of business to avoid the disruption to the Debtors' business from failing to do so. The Bankruptcy Court granted the Wage Motion. *See* Docket No. 612.

2. Emergency Motion to Provide Adequate Assurance of Payment to the Debtors'

Utilities

The Debtors filed an emergency motion [Docket No. 28] (the "Utilities Motion") for an order authorizing the Debtors to provide adequate assurance of future payment to certain utility companies pursuant to § 366(c). The Bankruptcy Court granted the Utilities Motion. *See* Docket No. 133.

3. Emergency Motion for Joint Administration of these Chapter 11 Bankruptcy

Cases

The Debtors filed an emergency motion [Docket Nos. 3-5] (the "Joint Administration Motion") for authority to jointly administer all of the Debtors' Chapter 11 Cases. The Bankruptcy Court granted the Joint Administration Motion. *See* Docket No. 17.

4. Emergency Motion for Authority to Honor Prepetition Claims of Critical Vendors

The Debtors filed an emergency motion[Docket No. 29] (the “Critical Vendor Motion”) for authority to honor the prepetition obligations to certain critical vendors. The Bankruptcy Court granted the Critical Vendor Motion. *See* Docket Nos. 134, 436].

5. Emergency Motion to Maintain Cash Management Systems

The Debtors filed an emergency motion [Docket No. 23] (the “Cash Management Motion”) for authority to maintain their cash management systems, which was imperative to avoid significant disruption to the Debtors’ business operations. The U.S. Trustee provided the Debtors with informal comments to the Cash Management Motion. *See* Docket No. 70 at 1. Based on the comments, the Debtors supplemented the Cash Management Motion [Docket No. 70] and agreed to a mutually acceptable postpetition cash management system with the U.S. Trustee. Accordingly, the Bankruptcy Court granted the Cash Management Motion on an interim basis as modified and supplemented. *See* Docket. No. 76.

On September 27, 2018, the Committee filed a response [Docket No. 313] to the Cash Management Motion. On October 1, 2018, the Debtors filed their reply [Docket No. 357]. The Bankruptcy Court overruled the objections raised in the Committee’s response and entered an order granting the Cash Management Motion on a final basis. *See* Docket Nos. 384, 728.

6. Emergency Motion to Maintain Insurance Programs and Related Adversary Proceeding

The Debtors filed an emergency motion [Docket No. 24] (the “Insurance Motion”) for authority to maintain insurance programs, pay premiums and other obligations in the ordinary course, and prevent insurance companies from enforcing *ipso facto* provisions or otherwise terminating insurance policies without first seeking relief from the automatic stay. The Bankruptcy Court granted the Insurance Motion. *See* Docket No. 131.

The Debtors filed an adversary proceeding against Old Republic requesting injunctive relief to prevent Old Republic from drawing down the Letter of Credit due to the bankruptcy filing. *See* Adv. Pro. No. 2-18-ap-01277-ER, Docket No. 1. That same day, the Bankruptcy Court entered an

1 order issuing a temporary restraining order, enjoining Old Republic from drawing down the Letter
2 of Credit in full based upon the Debtors' insolvency or bankruptcy filing. *See id.*, Docket No. 4.
3 On September 11, 2018, the Debtors and Old Republic entered into a stipulation whereby Old
4 Republic agreed not to draw on the Letter of Credit based upon the Debtors' insolvency or
5 bankruptcy filing which was approved in an order of the Bankruptcy Court. *See id.*, Docket Nos.
6 24, 25. On November 19, 2018, the Debtors voluntarily dismissed the adversary proceeding against
7 Old Republic. *See id.*, Docket No. 27.

8 **7. DIP Financing/Cash Collateral**

9 On August 31, 2018, the Debtors filed the *Emergency Motion Of Debtors For Interim And*
10 *Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The*
11 *Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured*
12 *Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Docket No. 31] (the "DIP
13 Motion"). Under the DIP Motion, the Debtors sought debtor-in-possession financing (the "DIP
14 Financing") from Ally Bank, as agent and lender under the DIP Credit Agreement (the "DIP
15 Lender"), and permission to use the cash-collateral. On October 4, 2018, the Court entered an order
16 (the "DIP Order") granting the DIP Motion [Docket No. 409], which authorized, among other
17 things, DIP Financing up to \$185 million and adequate protection to the Debtors' prepetition
18 secured creditors.

19 On December 27, 2018, the Committee appealed the DIP Order to the United States District
20 Court for the Central District of California (the "DIP Appeal"). *See* Case No. 2:18-cv-10675-RGK,
21 Docket No. 1 (C.D. Cal. Dec. 27, 2018). The Committee did not seek a stay pending appeal of the
22 DIP Order. On April 8, 2019, the District Court granted motions to intervene filed by UMB Bank,
23 N.A. ("UMB Bank"), Wells Fargo Bank, National Association ("Wells Fargo"), and U.S. Bank,
24 National Association ("U.S. Bank"). *See id.*, Docket Nos. 29, 30.

25 On March 14, 2019, the Committee filed its opening brief. *See id.*, Docket No. 22. On
26 April 15, 2019, VHS filed a reply brief, and U.S. Bank, UMB Bank, and Wells Fargo filed a
27 separate reply brief. *See id.*, Docket Nos. 31, 32. The Committee filed its reply brief on April 29,
28 2019, and the Court took the matter under submission. *See id.*, Docket Nos., 34, 36. On June 7,

2019, the parties requested expedited disposition of the DIP Appeal, which the District Court granted by order entered June 11, 2019. *See id.*, Docket Nos. 38, 39.

On August 2, 2019, the District Court issued an order dismissing the DIP Appeal as moot. *See id.*, Docket No. 40. On August 26, 2019, the Committee appealed the District Court order to the Ninth Circuit [Docket No. 2961].

Approximately \$37.3 million of adequate protection payments have been made as follows:

Verity Health System Post-Petition Adequate Protection		\$ in 000's
		Amount
Total Adequate Protection Payments	\$	(37,304)
Adequate Protection Debt Service	\$	(32,437)
Series 2017	\$	(2,791)
Series 2017A		(1,396)
Series 2017B		(1,396)
Series 2015	\$	(11,481)
Series 2015A		(3,988)
Series 2015B		(2,991)
Series 2015C		(871)
Series 2015D		(3,632)
Series 2005	\$	(13,493)
Series 2005A		(12,626)
Series 2005G		(445)
Series 2005H		(422)
MOB Notes	\$	(4,671)
Series 2018		(1,411)
Series 2017		(3,260)
Adequate Protection Professional Fees	\$	(4,867)
Series 2017		(721)
Series 2015		(905)
Series 2005		(2,070)
Master Trustee		(1,131)
MOB Notes		(40)

These payments will be credited against the applicable Claims as provided in the Plan.

The DIP facility is secured by substantially all of the Debtors' assets and also provides for superpriority administrative priority status for all obligations under the facility. The Debtors have a debtor in possession financing facility with up to \$185 million of availability from the DIP Lender subject to a borrowing base which was approved on a final basis. [Docket No. 409]. As of August 23, 2019, the outstanding balance of the DIP facility was approximately \$67 million.

Pursuant to the DIP Credit Agreement, the DIP Financing is due to expire and mature in accordance with its terms on September 7, 2019. On August 28, 2019, the Debtors filed a motion

[Docket Nos. 2962, 2968] (the “Cash Collateral Motion”) for use of cash collateral and payoff of outstanding DIP Financing amounts. The Bankruptcy Court set the Cash Collateral Motion for hearing on September 6, 2019 at 10:00 a.m.

B. Motion to Implement Key Employee Incentive Plan and Key Employee Retention Plan

On October 23, 2018, the Debtors filed a motion [Docket No. 631] (the “KEIP/KERP Motion”) to implement a key employee incentive plan [Docket No. 631-1] (the “KEIP”) and a key employee retention plan [Docket No. 631-2] (the “KERP”). The KEIP and KERP are designed to incentivize performance and ensure that the Debtors’ key employees remain employed by the Debtors during the Chapter 11 Cases until the Debtors’ Hospitals are fully liquidated. On November 28, 2018, the Court granted the KEIP/KERP Motion. *See* Docket No. 893.

The KEIP and KERP participants are only entitled to payments if the Debtors meet certain milestones to ensure that the payments serve the dual purposes of retaining critical employees and appropriately incentivize meeting case goals and objectives. The triggers for payments under the KEIP are tied to the timing and value received from the sales of the Hospitals and performance under the budget set forth in the DIP Credit Agreement. The triggers for the KERP are certain milestones where the applicable employee remains employed. The applicable KEIP participants were paid a 15% salary bonus for meeting the budget goals in the DIP Credit Agreement. The OCH and SLRH KEIP participants were paid an additional 15% bonus because the sale of OCH and SLRH closed before March 31, 2019.

The VHS KEIP participants may receive bonuses tied to the percentage of their salaries based on ranges of sale proceeds of the Debtors’ assets, with milestones of \$300 million, \$500 million, \$700 million, and \$950 million. Similarly, the Seton, SFMC, and SVMC KEIP participants may earn up to an additional 15% bonus because the sale of those facilities.

C. Motion to Reject Integrity Management Agreement

On September 21, 2018, the Debtors filed a motion [Docket No. 254] to reject the Management Agreement with Integrity. As of July 27, 2018, shortly before the Petition Date, the Debtors estimated that Integrity management fees from fiscal years 2016 through 2019 would total nearly \$157 million. The Debtors determined that they could achieve significant cost-savings—

1 approximately \$20 million annually—by employing directly the CEO, COO, CFO, and CMO and
2 rejecting the Management Agreement. Pursuant to the Conditions, and following a formal request
3 by the Debtors, the Attorney General approved termination of the Management Agreement. *See*
4 Docket No. 627. On November 8, 2018, the Bankruptcy Court entered an order [Docket No. 794]
5 granting the Debtors’ motion to reject the Management Agreement.

6 **D. Estate Professionals, the Committee, and the Patient Care Ombudsman**

7 On October 30, 2018, the Bankruptcy Court entered orders approving the employment of
8 the following professionals to the Debtors: (i) Dentons US LLP, as lead counsel [Docket No. 712];
9 and (ii) Nelson Hardiman, LLP, as special healthcare regulatory counsel [Docket No. 713]. On
10 November 5, 2018, the Bankruptcy Court entered an order [Docket No. 767] approving the
11 employment of Cain Brothers, a Division of Keybank Capital Markets, Inc. (“Cain”), as investment
12 banker. On November 7, 2018, the Bankruptcy Court entered an order [Docket No. 785] approving
13 the employment of Berkeley Research Group, LLC, as financial advisor to the Debtors. On
14 November 14, 2018, the Bankruptcy Court entered an order [Docket No. 818] approving the
15 employment of Pachulski Stang Ziehl & Jones LLP, as special conflicts counsel to the Debtors. On
16 August 7, 2019, the Bankruptcy Court entered an order [Docket No. 2862] approving the
17 employment of Jeffer Mangles Butler & Mitchell LLP, as special labor counsel to the Debtors.

18 Additionally, on October 1, 2018, the Debtors filed a motion [Docket No. 364] to employ
19 various ordinary course professionals. On October 29, 2018, the Bankruptcy Court entered an order
20 [Docket No 693] granting the motion. Since the Petition Date, the Debtors have employed,
21 pursuant to various filings, approximately 35 ordinary course professionals that provide an array of
22 important services to the Debtors in the ordinary course of business, including legal, accounting,
23 and consulting services.

24 On September 17, 2018, the U.S. Trustee appointed [Docket No. 197] an Official
25 Committee of Unsecured Creditors (the “Committee”) to represent the interests of general
26 unsecured creditors. The Committee is comprised of nine members consisting of the following: (i)
27 Aetna Life Insurance Company, (ii) Allscripts Healthcare, LLC, (iii) California Nurses Association,
28 (iv) Iris Lara, (v) Medline Industries, Inc., (vi) Pension Benefit Guaranty Corporation (“PBGC”),

(vii) SEIU United Healthcare Workers West, (viii) Sodexo Operations, LLC and (ix) St. Vincent IPA Medical Corporation. On November 6, 2018, the Bankruptcy Court entered an order [Docket No. 778] approving the employment of Milbank, Tweed, Hadley & McCloy LLP, as lead counsel to the Committee. On November 14, 2018, the Bankruptcy Court entered an order [Docket No. 822] approving the employment of FTI Consulting, Inc., as financial advisor to the Committee. On March 5, 2019, the Bankruptcy Court entered an order [Docket No. 1703] approving the employment of Arent Fox LLP, as special healthcare counsel to the Committee.

The U.S. Trustee appointed Dr. Jacob Nathan Rubin, MD, FACC, (the “Patient Care Ombudsman”) to serve as the patient care ombudsman in these Chapter 11 Cases, pursuant to § 333(a), in accordance with the order [Docket No. 430] entered by the Bankruptcy Court on October 9, 2018. On November 2, 2018, the Bankruptcy Court entered orders approving the employment of the following professionals to the Patient Care Ombudsman: Levene, Neale, Bender, Yoo & Brill LLP, as bankruptcy counsel [Docket No. 751]; and Dr. Tim Stacy DNP, ACNP-BC, as consultant [Docket No. 753].

E. Administrative Matters, Reporting and Disclosures

The Debtors were required to address the various administrative matters attendant to the commencement of these bankruptcy cases, which required an extensive amount of work by the Debtors’ employees and their professionals. These matters included the preparation of the *Schedules of Assets and Liabilities* and *Statements of Financial Affairs* for each of the Debtors’ seventeen Chapter 11 Cases (*see, e.g.*, Docket No. 514), and preparation of the materials required by the U.S. Trustee, including, without limitation, the 7-Day Package.

The Debtors have made every effort to comply with their duties under §§ 521, 1106 and 1107 and all applicable U.S. Trustee guidelines, including the filing of the Debtors’ monthly operating reports with the U.S. Trustee. *See* Docket Nos. 771, 945, 1172, 1174, 1453, 1670, 2008, 2287, 2478, 2653, 2825. The Debtors also attended their initial interview with the U.S. Trustee and the meeting of creditors required under § 341(a).

F. The SCC Sale

On October 1, 2018, the Debtors filed a motion [Docket No. 365] (the “SCC Sale Motion”)

1 requesting entry of an order (i) authorizing the proposed sale (the “SCC Sale”) of OCH and SLRH
2 to the County of Santa Clara, a political subdivision of California (“SCC”), (ii) approving the form
3 of the Asset Purchase Agreement between SCC and certain Debtors (the “SCC APA”),
4 (iii) approving certain procedures governing the SCC Sale process (the “SCC Bid Procedures”),
5 and (iv) approving certain procedures governing assumption and rejection of Executory
6 Agreements in connection with the SCC Sale.

7 On October 31, 2018, the Bankruptcy Court entered an order [Docket No. 724] approving
8 the SCC Bid Procedures. The order provided that all objections to the proposed SCC Bid
9 Procedures were overruled, remaining objections concerning the proposed SCC Sale were
10 premature, and that the Attorney General’s request to continue the hearing on the SCC Bid
11 Procedures was denied. *See* Docket No. 724 at 4-5.

12 On November 12, 2018, the Debtors filed a notice [Docket No. 810] to counterparties of
13 Executory Agreements that may be assumed and assigned in connection with the SCC Sale. The
14 Debtors filed a supplemental notice [Docket No. 998] on December 6, 2018 and an amended notice
15 [Docket No. 1110] on December 19, 2018. Certain counterparties to executory agreements filed
16 objections (collectively, the “SCC Cure Objections”) to the notices concerning assumption and
17 assignment. *See* Docket Nos. 882, 889, 904-05, 913-14, 919, 920-21, 923, 928-29, 931, 946, 970,
18 986, 1016, 1018, 1043, 1046, 1057-59, 1062, 1068-69, 1070-71, 1080, 1085, 1088-89, 1091-96,
19 1120-21.

20 On December 7, 2018, the Debtors filed a notice [Doc. 1005] that the Debtors did not
21 receive any bids pursuant to the SCC Bid Procedures, and, thus, the Debtors would not conduct an
22 auction.

23 On December 19, 2018, the Bankruptcy Court held a hearing to approve the SCC Sale
24 pursuant to the SCC Sale Motion. At the hearing, the Bankruptcy Court considered the SCC Cure
25 Objections as well as certain objections (collectively, the “SCC Sale Objections”) to the SCC Sale
26 as well as any withdrawals thereof. *See* Docket Nos. 437, 447, 562, 613, 463, 599, 605, 608, 619,
27 450, 458, 460, 465, 597, 439, 460, 452, 561, 444, 561, 592, 500, 906, 1057-62, 1067-71. The
28 Attorney General was among the parties that filed as SCC Sale Objection (the “Attorney General

1 SCC Objection”). As set forth in further detail, below, the Bankruptcy Court overruled the SCC
2 Sale Objections.

3 On December 21, 2018, the Bankruptcy Court entered an order [Docket No. 1125] notifying
4 the parties of the Bankruptcy Court’s intent to authorize the Debtors to sell OCH and SLRH free
5 and clear of the Conditions and requesting briefing. SCC [Docket No. 1136], the Committee
6 [Docket No. 1137], the Debtors [Docket No. 1139], and the Attorney General [Docket No. 1140]
7 filed responses to the Bankruptcy Court’s order.

8 On December 26, 2018, the Bankruptcy Court entered a memorandum of decision [Docket
9 No. 1146] overruling the Attorney General SCC Objection. On December 27, 2018, the
10 Bankruptcy Court entered an order [Docket No. 1153] granting the SCC Sale Motion and approving
11 the SCC Sale (the “SCC Sale Order”).

12 On January 7, 2019, the Attorney General appealed of the Sale Order and the memorandum
13 decision [Docket No. 1146] overruling the Attorney General SCC Sale Objection to the United
14 States District Court for the Central District of California (the “Attorney General Appeal”). *See*
15 Case No. 2:19-cv-00133-DMG, Docket No. 1 (C.D. Cal. Jan. 7, 2019). On January 9, 2019, the
16 Attorney General filed a motion [Docket No. 1219] for stay pending appeal in the Bankruptcy Court
17 and requested that the Bankruptcy Court hold a hearing on shortened notice [Docket No. 1220].
18 The Bankruptcy Court denied the request for shortened notice [Docket No. 1226] and set the
19 hearing on the motion for January 30, 2019. The Debtors [Docket No. 1302] and the Committee
20 [Docket Nos. 1303, 1318] filed objections to the motion, and SCC joined in the Debtors’ objection
21 [Docket No. 1334]. The Attorney General filed its reply brief [Docket No. 1365] on January 25,
22 2019. At the hearing on January 30, 2019, the Court denied the motion for stay pending appeal,
23 and entered its order [Docket No. 1464] memorializing the decision on February 5, 2019.

24 On February 1, 2019, the Attorney General filed a motion in District Court to stay the
25 effectiveness of the Sale Order pending the appeal. *See* Case No. 2:19-cv-00133-DMG, Docket
26 No. 6 (C.D. Cal. Feb. 1, 2019). On February 22, 2019, the District Court entered an order denying
27 the motion for stay pending appeal. *See id.*, Docket No. 32. On March 20, 2019, the parties filed
28 a stipulation to dismiss the appeal, which was approved by order entered April 3, 2019. *See id.*,

Docket Nos. 40, 41.

On January 2, 2019, the Debtors filed motions under § 1113 to reject, modify, and terminate certain collective bargaining agreements between either OCH or SLRH and Local 20, CNA, CLVNA, and SEIU effective upon the closing of the SCC Sale. *See* Docket Nos. 1181, 1182, 1191, 1192. CNA and SEIU filed objections on January 16, 2019 [Docket Nos. 1269, 1271] and the Debtors filed an omnibus reply brief [Docket No. 1331] on January 23, 2019. As a result of negotiations, two Unions (Local 20 and CLVNA) reached consensual resolutions with the Debtors, and agreed not to oppose the motions subject to certain clarifications of the requested relief. On February 19, 2019, the Bankruptcy Court entered orders granting the rejection motions. *See* Docket Nos. 1575, 1576, 1577, 1578

The SCC Sale closed on February 28, 2019. After payment of certain cure costs, closing costs and other items, the net remaining proceeds were approximately \$184.38 million, which are held in four sale proceeds account. An additional \$23.35 million is held in escrow (the “Post-Closing Escrow”) by First American Title Insurance Company, the escrow agent. The Post-Closing Escrow was established pursuant to the terms of the SCC APA, as security for the Debtors’ post-closing obligations and expires in February 2020. In accordance with the SCC APA, the Debtors and SCC entered into a transition services agreement.

G. Motions Related to Verity Medical Foundation

The Debtors have taken certain steps to wind-down the Debtor Verity Medical Foundation (“VMF”). For example, VMF entered into settlements and asset purchase agreements with Union Square Hearing, Inc. [Docket Nos. 2439, 2693], San Jose Medical Group and Silicon Valley Medical Development, LLC [Docket Nos. 1636, 1919], Oncology Technology Associates, LLC [Docket Nos. 1635, 1915], and All Care Medical Group, Inc. [Docket Nos. 1180, 1368]. The Debtors also rejected a professional services agreement with All Care Medical Group, Inc. [Docket Nos. 576, 1622] and filed notices of intent to abandon certain property of VMF which is of inconsequential value or benefit to the estates. *See* Docket Nos. 2590, 2648. The Debtors also obtained approval of an agreement with Centurion Service Group, Inc. (“Centurion”) permitting

Centurion to sell, dispose of or move furniture and fixtures, medical equipment and office equipment, including three MRI machines. *See* Docket Nos. 2244, 2429.

H. The SGM Sale

On January 17, 2019, the Debtors filed a motion [Docket No. 1279] (the “SGM Sale Motion”) requesting entry of an order (i) authorizing the proposed sale (the “SGM Sale”) of SFMC, SVMC, and Seton to Strategic Global Management, Inc. (“SGM”), (ii) approving the form of the Asset Purchase Agreement between SGM and certain Debtors (the “SGM APA”), (iii) approving certain procedures governing the SGM Sale process (the “SGM Bid Procedures”), and (iv) approving certain procedures governing assumption and rejection of Executory Agreements in connection with the SGM Sale. The proposed sale was the product of more than six months of marketing efforts lead by the Debtor’s investment banker, Cain, and involved more than 110 potential purchasers.

On February 19, 2019, the Bankruptcy Court entered an order [Docket No. 1572] approving the SGM Bid Procedures. The order provided that all objections to the proposed SGM Bid Procedures were overruled and the remaining objections concerning the proposed SGM Sale were premature. *See* Docket No. 724 at 4-5.

On March 5, 2019, the Debtors filed a notice [Docket No. 1704] to counterparties of Executory Agreements that may be assumed and assigned in connection with the SGM Sale. The Debtors filed a supplemental notice [Docket No. 1836] on March 18, 2019, a second supplemental notice [Docket No. 2065] on April 5, 2019, a notice [Docket No. 2131] of Executory Agreements designated for assumption and assignment on April 11, 2019, and a supplemental notice [Docket No. 2441] of designated contracts on May 24, 2019. Certain counterparties to executory agreements filed objections (collectively, the “SGM Cure Objections”) to the notices concerning assumption and assignment. *See* Docket Nos. 1788, 1804, 1819, 1830, 1849, 1850, 1852, 1853, 1856-1858, 1863, 1866, 1869, 1870, 1873-1877, 1881, 1882, 1885, 1890-1892, 1904, 1926, 1930, 1933, 1940, 1946, 1948, 1949, 1953, 1954, 1965, 2058, 2066, 2108, 2113, 2144, 2146, 2148, 2150, 2157, 2161, 2162.

On April 4, 2019, the Debtors filed a notice [Doc. 2053] that no auction would be held and

1 that the stalking horse bid submitted by SGM was the winning bid.

2 On April 17, 2019, the Bankruptcy Court held a hearing to approve the SGM Sale pursuant
3 to the SGM Sale Motion. At the hearing, the Bankruptcy Court considered certain SGM Cure
4 Objections, and certain other objections (the “SGM Sale Objections”) and withdrawals thereof. *See*
5 Docket Nos. 1397, 1352, 1358, 1364, 2130, 2145, 2147, 2155, 2156, 2164, 2168. As set forth in
6 further detail, below, the Bankruptcy Court overruled the SGM Sale Objections and continued the
7 hearings on consideration of the SGM Cure Objections. The Debtors are currently in the process
8 of resolving the SGM Cure Objections.

9 On May 2, 2019, the Bankruptcy Court entered an order [Docket No. 2306] granting the
10 SGM Sale Motion and approving the SGM Sale.

11 On May 7, 2019, VHS provided notice to, and requested written consent from, the Attorney
12 General for the proposed SGM Sale. VHS requested that the Attorney General review its
13 submission as both a request for approval of the proposed SGM Sale and a request to amend the
14 existing Conditions. On August 16, 2019, the Attorney General publicly posted the Health Care
15 Impact Statements (the “Impact Statements”) for SFMC and SVMC, which were prepared by the
16 Attorney General’s expert, JD Healthcare, Inc. (“JD Healthcare”). *See* Docket No. 2946. On
17 August 19, 2019, the Attorney General publicly posted the Impact Statement for Seton. *See id.*
18 The Impact Statements contain certain conditions recommended by JD Healthcare to the Attorney
19 General. *See id.* On August 23, 2019, at the request of the Attorney General, the Debtors submitted
20 a response to the Impact Statements, which addresses whether any of the conditions proposed in
21 the Impact Statements constitute “deal breakers” with respect to consummation of the SGM Sale.
22 *See id.*

23 The closing of the SGM Sale is contingent on, among other things, the Attorney General’s
24 approval, with conditions that are substantially consistent with the conditions approved by SGM,
25 as set forth on Schedule 8.6 to the SGM APA. Additionally, the Debtors continue to negotiate in
26 good faith with the Unions concerning the modification of their collective bargaining agreements,
27 as may be acceptable to SGM.
28

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The Debtors anticipate the SGM Sale to close in the last quarter of 2019 if the Attorney General imposes conditions that are substantially consistent with those set forth on Schedule 8.6 to the SGM APA. After payment of the estimated amount of certain cure costs, closing costs and other items, the net remaining proceeds from the SGM Sale are estimated to be approximately \$532 million, as set forth below:

SGM Sale Transaction

Cash Consideration	\$ in 000's
Purchase Price	\$ 610,000
Net QAF Reduction	(54,491)
Adj for Trauma earned prior to signing	<u>(5,807)</u>
Total cash consideration at closing	\$ 549,702

Closing Costs

Payment of accrued QAF liability (SMC)	(11,613)
Cain transaction fee	<u>(6,100)</u>
Total closing costs	\$ (17,713)
SGM net cash consideration at closing	\$ 531,989

These recovery forecasts are projections that are (i) based on a number of assumptions and estimates and (ii) subject to change.

The SGM APA approved by the Bankruptcy Court provides that the Debtors enter into the Interim Sale-Leaseback Agreement and Interim Management Agreement discussed herein. These Interim Agreements will facilitate the transition of the Hospital operations to SGM during the post-closing period before SGM obtains provider agreements and other licensure necessary to operate the Hospitals.

The Debtors will withdraw from or terminate certain of their retirement related benefit plans upon the SGM Sale closing. First, the Debtors have made postpetition contributions to RPHE with respect to active CNA members, pursuant to authorization from the Bankruptcy Court. Based upon information and belief, all requisite contributions have been made to the Local 39 Plan, including through the Chapter 11 Cases and no amounts are currently due and owing. The Debtors are in the process of withdrawing from the Multi-Employer Plans, which is intended to be effective upon the closing of the SGM Sale. Second, the Debtors are in the process of terminating the Defined Contribution Plans and will cease making employer contributions upon the closing of the SGM

1 Sale. Third, the Debtors expect to terminate the Retiree Health Benefit effective at the Closing of
2 the SGM Sale. Retirees who utilize the Retiree Health Benefit will receive treatment as set forth
3 under the Plan or under a separate order from the Bankruptcy Court. Amounts contributed
4 prepetition into the section 457(b) Plan will be returned to the Estates for distribution to creditors
5 in accordance with applicable law.

6 **I. Old Republic Accommodations**

7 The Debtors' workers' compensation policy with Old Republic was set to expire on July 1,
8 2019. Old Republic agreed to continue to provide coverage through January 1, 2020, following
9 approval Bankruptcy Court approval of certain accommodations requested by Old Republic. *See*
10 Docket Nos. 2654, 2803. Also, to provide sufficient collateral to secure a replacement letter of
11 credit necessary to renew the workers' compensation policy, the Debtors filed a supplemental
12 insurance motion, requesting authority to make a capital contribution to Marillac. [Docket No.
13 2672]. The Bankruptcy Court entered an order granting the supplemental insurance motion on July
14 26, 2019. [Docket No. 2802].

15 **J. Motions for Relief From the Automatic Stay**

16 Commencing in December, 2018, the Debtors have responded to 22 Motions For Relief
17 From Automatic Stay, in each of which motions a movant has sought relief in order to resolve the
18 amount of their claim in a forum outside the Bankruptcy Court. The Bankruptcy Court has granted
19 each of those motions, in certain instances in accordance with stipulations reached between the
20 Debtors and the movants. In the vast majority of those motions, the movant sought recovery *only*
21 from applicable insurance, if any, and waived any deficiency or other claim against the Debtors or
22 property of the Debtors' bankruptcy estates. In those few cases where a movant sought a deficiency
23 claim, relief from stay was granted on the basis that the stay would remain in effect as to the
24 enforcement of any resulting judgment against the Debtors or the bankruptcy estates, the movants
25 retaining the right to file a proof of claim and/or an adversary complaint under § 523 or § 727 in
26 the Chapter 11 Cases. No such adversary complaints have been filed.

K. Motions to Approve Settlements

The Debtors obtained Bankruptcy Court approval of the following settlements and compromises pursuant to Bankruptcy Rule 9019:

On October 4, 2018, the Debtors filed a motion [Docket No. 410] (the “Local 39 Settlement Motion”) to approve a compromise between OCH, SLRH, and Seton, on the one hand, and Local 39, on the other hand, that provided for the consensual modification of collective bargaining agreements between the parties. The Bankruptcy Court granted the Local 39 Settlement Motion. *See* Docket No. 410.

On February 20, 2019, the Debtors filed a motion [Docket No. 1591] (the “Medline Settlement Motion”) to approve a compromise with Medline Industries, Inc. (“Medline”)—one of the Debtors’ most important medical supply vendors—resolving Medline’s prepetition claims and preserving the parties going-forward business relationship. The Bankruptcy Court granted the Medline Settlement Motion. *See* Docket No. 1887.

On April 8, 2019, the Debtors filed a motion [Docket No. 2084] (the “SIS Settlement Motion”) to approve a compromise with Surgical Information Systems, LLC that allowed SCC to assume certain critical software licenses and ensure that the SCC Sale closed without disruption. The Bankruptcy Court granted the SIS Settlement Motion. *See* Docket No. 2097.

On April 10, 2019, the Debtors and the Committee filed a joint motion [Docket No. 2112] (the “St. Vincent IPA Settlement Motion”) for authority to enter into a settlement agreement with St. Vincent IPA Medical Corporation (“St. Vincent IPA”). The agreement (i) allowed St. Vincent IPA, a critical vendor, to receive a \$596,816 payment for certain prepetition amounts, (ii) allowed continuation of risk sharing between St. Vincent IPA and the Debtors, and (iii) provided for an agreed mechanism to resolve overpayments or underpayments pursuant a Healthcare Services Risk Sharing Agreement (the “St. Vincent IPA Agreement”). The Bankruptcy Court granted the St. Vincent IPA Settlement Motion. *See* Docket No. 2371.

On April 30, 2019, the Debtors filed a motion [Docket No. 2285] (the “Premier Settlement Motion”) to approve a compromise with Premier, Inc., Premier Services, LLC, Premier Healthcare Alliance, L.P., Premier Healthcare Solutions, Inc., and each of Premier, Inc.’s other subsidiaries

(collectively, “Premier”). The settlement agreement provides (i) for the satisfaction of Premier’s claims and the Debtors’ counterclaims, (ii) resolves issues regarding Premier’s and the Debtors’ post-petition relationship, and (iii) enables the Debtors to recover value from the current and future disposition of certain limited partnership interests that may be worth approximately \$7.4 million before payment of cure costs. The Bankruptcy Court granted the Premier Settlement Motion. *See* Docket No. 2461.

On June 28, 2019, the Debtors filed a motion [Docket No. 2644] (the “Smith & Nephew Settlement Motion”) to approve a compromise with Smith & Nephew, Inc. that resolved disputes regarding ownership of a certain NAVIO surgical system located at OCH and preserved the parties’ going-forward business relationship. The Bankruptcy Court granted the Smith & Nephew Settlement Motion. *See* Docket No. 2793.

On July 3, 2019, the Debtors filed a motion [Docket No. 2670] (the “DMH Settlement Motion”) to approve a compromise with the County of Los Angeles Department of Mental Health that allowed the County of Los Angeles to dismiss an appeal brought on behalf of the Debtors in exchange for the modification of the parties’ Legal Entity Agreement such that the Debtors would receive \$215,590 in additional funding. The Bankruptcy Court granted the DMH Settlement Motion. *See* Docket No. 2814.

L. Other Motions

1. St. Vincent IPA Expedited Relief Motion

On September 7, 2018, St. Vincent IPA filed a motion [Docket No. 109] (the “St. Vincent IPA Expedited Relief Motion”) to shorten the Debtors’ time to assume or reject the St. Vincent IPA Agreement to October 15, 2018. St. Vincent IPA also filed an application [Docket No. 111] to shorten notice of the hearing on the St. Vincent IPA Expedited Relief Motion, which the Debtors opposed [Docket No. 146].

On September 10, 2018, the Bankruptcy Court entered an order [Docket No. 149] denying St. Vincent IPA’s application to shorten notice and set the matter for regular briefing. On September 19, 2018, the Debtors filed their opposition [Docket No. 212]. On September 26, 2018, the Committee filed response [Docket No. 301] and St. Vincent IPA filed a reply brief [Docket No.

306]. The parties entered into negotiations and requested that the Bankruptcy Court not rule on the pleadings to allow the parties to reach a mutual settlement. Ultimately, as discussed above, the Debtors filed the St. Vincent IPA Settlement Motion.

2. Seoul Medical Group Expedited Relief Motion

On June 20, 2019, Seoul Medical Group, Inc. ("Seoul Medical Group") filed a motion [Docket No. 2579] (the "Seoul Medical Group Expedited Relief Motion") to shorten the Debtors' time to assume or reject the Seoul Medical Group Capitated Physician Group Services Agreement. On June 26, 2019, the Debtors [Docket Nos. 2627, 2632] and SGM [Docket No. 2625] filed oppositions to the Seoul Medical Group Expedited Relief Motion to which Seoul Medical Group filed separate reply briefs [Docket Nos. 2667, 2668]. The parties continued the hearings on the Seoul Medical Group Expedited Relief Motion to allow SGM and Seoul Medical Group to continue negotiations. *See* Docket Nos. 2706, 2859, 2860, 2863

M. Debtors' Adversary Proceedings

On January 3, 2019, SVMC and SFMC filed an adversary proceeding against Local Initiative Health Authority for Los Angeles dba L.A. Care Health Plan ("L.A. Care"). *See* Adv. Pro. No. 2:19-ap-01002-ER, Docket No. 1. In the Complaint, SVMC and SFMC brought claims for breach of contract, turnover, unjust enrichment, and violations of the automatic stay based on L.A. Care's failure to pay for services provided to L.A. Care members or paying less than the amounts owed for such services. *See id.* SVMC claimed damages in an amount not less than \$4,320,335.32, of which \$1,895,994.64 constituted systematic underpayments. *See id.* SFMC claimed damages in an amount not less than \$21,054,689.63, of which \$12,502,651.97 constituted systematic underpayments. *See id.* On April 15, 2019, the Bankruptcy Court entered an order staying the adversary proceeding pending completion of arbitration. *See id.*, Docket No. 43.

On February 5, 2019, VHS, SVMC and SFMC filed an adversary proceeding against Heritage Provider Network and an amended complaint was filed on March 11, 2019. *See* Adv. Pro. No. 2:19-ap-01042-ER, Docket Nos. 1, 13. In the Amended Complaint, the Debtor Plaintiffs seek to recover not less than \$4.1 million from defendant for amounts the Debtors allege were improperly deducted by defendant from amounts owing under certain fee for service and capitation

1 agreements. *See id.*, Docket No. 13. On April 12, 2019, defendant filed an answer and affirmative
2 defenses and denied Plaintiffs were entitled to any recovery. *See id.*, Docket No. 22. The parties
3 have requested that the matter be assigned to mediation and are in the process of setting a mutually
4 agreeable mediation date between October 28, 2019 and November 15, 2019. *See id.*, Docket Nos.
5 27, 33, 34. The adversary proceeding is set for trial starting the week of February 24, 2020. *See*
6 *id.*, Docket No. 31.

7 **N. Committee's Adversary Proceedings**

8 On June 13, 2019, the Committee filed adversary proceedings against U.S. Bank (Adv. Pro.
9 No. 2-19-ap-01165-ER) and UMB Bank (Adv. Pro. No. 2-19-ap-01166-ER). In both adversary
10 proceedings, the Committee seeks a determination that the applicable Trustee does not have a
11 perfected security interest in deposit accounts, future Quality Assurance Payments and certain other
12 assets. Both Defendants' dates to answer or otherwise plead have been extended by stipulation and
13 the matters are both set for mediation in September 2019. Both adversary proceedings are currently
14 set for trial beginning January 27, 2020.

15 **V.**

16 **PLAN SUMMARY**

17 The following is a summary of the key provisions of the Plan.

18 **A. Administrative Expense and Priority Claims**

19 In accordance with § 1123(a)(1), the following Claims are not classified and are excluded
20 from the Classes set forth in Section 3 hereof and shall receive the treatment discussed below:

21 **1. Administrative Claims**

22 Except to the extent that the Debtors (or the Liquidating Trust) and a Holder of an Allowed
23 Administrative Claim agree to less favorable treatment, a Holder of an Allowed Administrative
24 Claim (other than a Professional Claim, which shall be subject to Section 2.2 of the Plan) shall
25 receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such
26 Administrative Claim, Cash equal to the unpaid portion of such Allowed Administrative Claim
27 either (a) on the Effective Date, (b) if the Allowed Administrative Claim is based on liabilities
28 incurred by the Debtors in the ordinary course of their businesses after the Petition Date, in the

ordinary course of business in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the Holder of such Allowed Administrative Claim, or (c) on such other date as agreed between the Debtors (or the Post-Effective Date Debtors) and such Holder of an Allowed Administrative Claim.

2. Professional Claims

All Professionals seeking an award by the Bankruptcy Court of a Professional Claim (other than the Ordinary Course Professionals) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is sixty (60) days after the Effective Date, and shall receive, in full satisfaction of such Claim, Cash in an amount equal to 100% of such Allowed Professional Claim promptly after entry of an order of the Bankruptcy Court allowing such Claim or upon such other terms as may be mutually agreed-upon between the Holder of such Professional Claim and the Debtors. Objections to any final applications covering Professional Claims must be filed and served on the Post-Effective Date Debtors, the Liquidating Trustee, and the requesting Professional no later than ninety (90) days after the Effective Date (unless otherwise agreed by the requesting Professional).

3. Statutory Fees

All fees required to be paid by 28 U.S.C. § 1930(a)(6) and any interest thereon (“U.S. Trustee Fees”) shall be paid by the Liquidating Trustee in the ordinary course of business until the closing, dismissal or conversion of these Chapter 11 Cases to another chapter of the Bankruptcy Code. Any unpaid U.S. Trustee Fees that accrued before the Effective Date shall be paid no later than thirty (30) days after the Effective Date.

4. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction of such Allowed Priority Tax Claim, at the option of the Debtors or the Liquidating Trustee, as applicable: (a) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, and (ii) the first Business Day after the

1 date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed
2 Priority Tax Claim; or (b) equal annual Cash payments in an aggregate amount equal to the amount
3 of such Allowed Priority Tax Claim, together with interest at the applicable rate pursuant to § 511,
4 over a period not exceeding five (5) years from and after the Petition Date; provided, however, the
5 Debtors and the Liquidating Trustee, as applicable, reserve the right to prepay all or a portion of
6 any such amounts at any time under this option at their discretion.

7 **5. Administrative DIP Lender Claims**

8 Holders of Allowed DIP Lender Claims shall be paid in full in cash on the Effective Date,
9 with such payments to be distributed to the DIP Agent for the ratable benefit of the Holders of DIP
10 Lender Claims.

11 **B. Classification of Claims**

12 **1. Classification in General**

13 A Claim is placed in a particular Class for all purposes, including voting, confirmation, and
14 distribution under the Plan and under §§ 1122 and 1123(a)(1); provided that a Claim is placed in a
15 particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent
16 that such Claim is an Allowed Claim in that Class and such Allowed Claim has not been satisfied,
17 released, or otherwise settled prior to the Effective Date.

18 **2. Grouping of Debtors for Deemed Substantive Consolidation**

19 Consistent with the deemed substantive consolidation of the Debtors, as set forth more fully
20 in Section 7.1 of the Plan, the Plan groups the Debtors together for purposes of describing treatment
21 under the Plan, confirmation of the Plan, and making distributions in accordance with the Plan with
22 respect to Claims against and Interests in the Debtors under the Plan. Accordingly, pursuant to the
23 Plan, the Assets of the Debtors and their Estates, and the Claims against and Interests in the Debtors,
24 will be treated as if the Debtors and their Estates are substantively consolidated on the Effective
25 Date. Notwithstanding the foregoing, such groupings shall not affect any Debtor's status as a
26 separate legal entity, change the organizational structure of the Debtors' business enterprise,
27 constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of
28

any legal entities, or cause the transfer of any Assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities after the Effective Date.

3. Summary of Classification.

The following table designates the Classes of Claims against each of the Debtors and specifies which of those Classes are (a) Not Impaired by the Plan, (b) Impaired by the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with § 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional Claims, Statutory Fees, Priority Tax Claims, and Administrative DIP Lender Claims, have not been classified. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have holders of Claims in a particular Class or Classes, and such Classes shall be treated as set forth in Section 3.5 of the Plan.

<i>All Debtors</i>			
Class	Designation	Impairment	Entitled to Vote
1A	Other Priority Claims	Not Impaired	No (deemed to accept)
1B	Secured PACE Tax Financing Claims	Not Impaired	No (deemed to accept)
2	Secured 2005 Revenue Bond Claims	Impaired	Yes
3	Secured 2015 Notes Claims	Impaired	Yes
4	Secured Series 2017 Revenue Note Claims	Impaired	Yes
5	Secured MOB I Financing Claims	Impaired	Yes
6	Secured MOB II Financing Claims	Impaired	Yes
7	Secured Mechanics Lien Claims	Impaired	Yes
8	PBGC Claims	Impaired	Yes
9	RPHE Claims	Impaired	Yes
10	General Unsecured Claims	Impaired	Yes
11	Convenience Claims	Impaired	Yes
12	Insured Claims	Impaired	Yes
13	2016 Data Breach Claims	Impaired	Yes
14	Subordinated General Unsecured Claims	Impaired	No (deemed to reject)
15	Interests	Impaired	No (deemed to reject)

4. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Liquidating Trust, with respect to any Unimpaired Claims, including legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

5. Elimination of Vacant Classes

Any Class of Claims that, as of the commencement of the Confirmation Hearing, does not have at least one (1) Holder of a Claim in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

C. Treatment of Claims

In full and final satisfaction of all of the Claims against the Debtors (except with respect to Unclassified Claims that are satisfied as noted above), the Claims shall receive the treatment described below. Except to the extent expressly provided in Section 4 of the Plan, the timing of distributions is addressed in Section 8.3 of the Plan. A chart summarizing the current asserted Claims in each class and the current estimate of the amount of Claims that will ultimately become Allowed Claims is set forth below, although the ultimate amount of Claims which become Allowed Claims could be higher or lower than the estimates below:

Summary of Classification				
Class	Designation	Asserted Claims (Per KCC)		Estimated Allowed Claims
1A	Priority Non-Tax Claims (1)	\$	155,384,184	\$ 4,000,000
1B	Secured PACE Tax Financing Claims	\$	43,013,555	\$ 40,000,000
2	Secured 2005 Revenue Bond Claims	\$	261,897,375	\$ 259,445,000
3	Secured 2015 Notes Claims	\$	161,041,177	\$ 160,000,000
4	Secured Series 2017 Revenue Note Claims	\$	42,253,750	\$ 42,000,000
5	Secured MOB I Financing Claims	\$	46,363,096	\$ 46,363,096
6	Secured MOB II Financing Claims	\$	20,061,919	\$ 20,061,919
7	Secured Mechanics Lien Claims	\$	2,187,017	\$ 2,187,017
8	PBGC Claims (2)	\$	364,912,587	\$ []
9	RPHE Claims (2)	\$	353,102,772	\$ []
10	General Unsecured Claims	\$	5,831,000,000	\$ 710,000,000
11	Convenience Claims		N/A	\$ 50,000,000
12	Insured Claims		N/A	N/A
13	2016 Data Breach Claims		N/A	N/A
14	Subordinated General Unsecured Claims		N/A	N/A
15	Interests		N/A	N/A

(1) Excludes PBGC, RPHE, Trade and Tax claims

(2) Asserted claim includes priority and general unsecured claims

1. Class 1A: Priority Non-Tax Claims

- a. *Classification.* Class 1A consists of Priority Non-Tax Claims.
- b. *Treatment.* Except to the extent that a Holder of a Priority Non-Tax Claim agrees to a less favorable treatment of such Claim, each such Holder shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the later of the Effective Date and the date that is fourteen (14) Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, in each case, or as soon as reasonably practicable thereafter.
- c. *Voting.* Class 1A is Unimpaired. Holders of Priority Non-Tax Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

2. Class 1B: Secured PACE Tax Financing Claims

- a. *Classification.* Class 1B consists of the Secured PACE Financing Claims.
- b. *Treatment.* Each Allowed Secured PACE Tax Financing Claim shall be assumed pursuant to the SGM Sale and shall not receive any distributions under the Plan.
- c. *Voting.* Class 1B is Unimpaired. Holders of Secured PACE Tax Financing Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

3. Class 2: Secured 2005 Revenue Bond Claims

- a. *Classification.* Class 2 consists of the Secured 2005 Series A, G and H Revenue Bonds Claims against each Obligated Group Member.
- b. *Treatment.* The Secured Series A, G and H Revenue Bonds Claims shall be paid cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$259,445,000, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2005 Revenue Bond Indentures, excluding any interest at the default rate, the Tax Rate, or make whole premium, and (ii) accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2005 Revenue Bonds Trustee and the Master Trustee, pursuant to the Final DIP Order through and including the Effective Date, less (a) any amounts held by the Master Trustee and/or the 2005 Revenue Bonds Trustee in a (i) principal or revenue account, (ii) debt service or redemption reserve, or (iii) an escrow or expense reserve account, (b) principal payments since the Petition Date made by the 2005 Revenue Bonds Trustee to Holders of 2005 Revenue Bonds, and (c) any amounts remitted to the Master Trustee and/or 2005 Revenue Bonds Trustee, prior to the Effective Date on account of the Remediation Order. No beneficial Holder of any Secured Series A, G and

H Revenue Bonds Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such Holder by the 2005 Revenue Bonds Trustee.

- c. *Subordination.* Class 2 shall be permitted to retain the Class 2 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2005 Revenue Bonds Trustee in the amounts and manner provided herein are sufficient to, and upon transmission by the 2005 Revenue Bonds Trustee to the Holders of the Secured 2005 Revenue Bonds Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2005 Series A, G, and H Revenue Bonds for all purposes.
- d. *Voting.* Class 2 is Impaired. The beneficial Holders of the Secured 2005 Series 2005 A, G and H Revenue Bond Claims are entitled to vote to accept or reject the Plan.

4. Class 3: Secured 2015 Notes Claims

- a. *Classification.* Class 3 consists of the Secured 2015 Notes Claims against each Obligated Group Member.
- b. *Treatment.* The Secured 2015 Revenue Notes Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$160,000,000, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2015 Revenue Note Indentures for each of 2015 Revenue Notes Series A, B, C and D, excluding any interest at a default rate or any redemption or other premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2015 Notes Trustee and the Master Trustee, pursuant to the Final DIP Order through and including the Effective Date, less any amounts held by the Master Trustee and/or the 2015 Notes Trustee in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2015 Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2015 Notes Trustee.
- c. *Subordination.* Class 3 shall be permitted to retain the Class 3 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2015 Notes Trustee in the amounts and manner provided

herein are sufficient to, and upon transmission by the 2015 Notes Trustee to the Holders of the Secured 2015 Revenue Notes Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2015 Revenue Notes for all purposes.

- d. *Voting.* Class 3 is Impaired, and the beneficial Holders of Secured 2015 Revenue Notes Claims are entitled to vote to accept or reject the Plan.

5. Class 4: Secured 2017 Revenue Note Claims

- a. *Classification.* Class 4 consists of the Secured 2017 Revenue Note Claims.

- b. *Treatment.* The Secured 2017 Revenue Note Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$42,000,000, plus (i) any accrued, but unpaid postpetition interest, if any, at the rate specified in the 2017 Revenue Note Indentures, excluding any interest at a default rate, make whole premium or redemption premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2017 Notes Trustee and the Master Trustee pursuant to the Final DIP Order through and including the Effective Date, less any amounts held by the Master Trustee and/or the 2017 Notes Trustee in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2017 Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2017 Notes Trustee.

- c. *Subordination.* Class 4 shall be permitted to retain the Class 4 distribution in full notwithstanding anything to the contrary in the Intercreditor Agreement and on the Effective Date, and conditioned on respective receipt of all of the Plan payments to the respective the Bond and Notes Trustees on behalf of Classes 2, 3, and 4 due upon the Effective Date, the Intercreditor Agreement shall terminate and be of no further force and effect. Payments by Debtors to the 2017 Notes Trustee in the amounts and manner provided herein are sufficient to, and upon transmission by the 2017 Notes Trustee to the Holders of the Secured 2017 Revenue Notes Claims of the principal and accrued interest calculated in the manner provided herein shall be deemed to, have defeased irrevocably the 2017 Revenue Notes for all purposes.

- d. *Voting.* Class 4 is Impaired. The beneficial Holders of Secured 2017 Revenue Note Claims are entitled to vote to accept or reject the Plan.

6. Class 5: Secured MOB I Financing Claims

- a. *Classification.* Class 5 consists of the MOB I Financing Claims.

- b. *Treatment.* The Secured MOB I Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$46,363,095.90, plus (i) accrued but unpaid postpetition interest, if any, at the rate specified in the MOB I

Loan Agreement, excluding any interest at the default rate, or make whole premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing LLC, pursuant to the Final DIP Order through and including the Effective Date.

- c. *Voting.* Class 5 is Impaired. Holders of MOB I Financing Claims are entitled to vote to accept or reject the Plan.

7. Class 6: Secured MOB II Financing Claims

- a. *Classification.* Class 6 consists of the Secured MOB II Financing Claims.
- b. *Treatment.* The Secured MOB II Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of \$20,061,919.48, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the MOB II Loan Agreements, excluding any interest at the default rate, or make whole premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing II LLC, pursuant to the Final DIP Order through and including the Effective Date.
- c. *Voting.* Class 6 is Impaired. Holders of Secured MOB II Financing Claims are entitled to vote to accept or reject the Plan.

8. Class 7: Secured Mechanics Lien Claims

- a. *Classification.* Class 7 consists of the Secured Mechanics Lien Claims.
- b. *Treatment.* Each Allowed Secured Mechanics Lien Claim shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of the Allowed Claim, plus (i) accrued but unpaid postpetition interest at the appropriate contract rate, if any, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses permitted by contract.
- c. *Voting.* Class 7 is Impaired. Holders of Secured Mechanics Lien Claims are entitled to vote to accept or reject the Plan.

9. Class 8: PBGC Claims

- a. *Classification.* Class 8 consists of the PBGC Claims against all Debtors.
- b. *Treatment.* On the Effective Date, the PBGC shall be the Holder of a Claim in an amount equal to 100% of a single Allowed General Unsecured Claim in the aggregate amount of [\$_____]. On the Effective Date, or as soon as reasonably practicable thereafter, the PBGC shall receive Trust Beneficial Interests and become a Trust Beneficiary, in satisfaction of its Allowed Class 8 Claim. Except as may be expressly provided in a PBGC Settlement, the PBGC's Trust Beneficial Interests shall be in full and final satisfaction of such Allowed Claim. The foregoing treatment is intended to compensate the PBGC for the impact of the proposed deemed substantive consolidation

under the Plan.⁵ The Debtors will attempt to reach an agreement with the PBGC concerning the treatment of the PBGC Claim.

- c. *Voting.* Class 8 is Impaired. Holders of PBGC Claims are entitled to vote to accept or reject the Plan.

10. Class 9: RPHE Claims

- a. *Classification.* Class 9 consists of the RPHE Claims against all Debtors.
- b. *Treatment.* On the Effective Date, the RPHE shall be the Holder of a Claim in an amount equal to 100% of a single Allowed General Unsecured Claim in the aggregate amount of [\$_____]. On the Effective Date, or as soon as reasonably practicable thereafter, the RPHE shall receive Trust Beneficial Interests and become a Trust Beneficiary in full and final satisfaction of its Allowed Class 9 Claim. The foregoing treatment is intended to compensate the RPHE for the impact of the proposed deemed substantive consolidation under the Plan. The Debtors will attempt to reach an agreement with the RPHE concerning the treatment of the RPHE Claim.
- c. *Voting.* Class 9 is Impaired. Holders of RPHE Claims are entitled to vote to accept or reject the Plan.

11. Class 10: General Unsecured Claims

- a. *Classification.* Class 10 consists of the General Unsecured Claims against all Debtors.
- b. *Treatment.* As soon as practicable after the Effective Date or as soon thereafter as the claim shall have become an Allowed Claim, each holder of an Allowed General Unsecured Claim shall receive a Trust Beneficial Interest and become a Trust Beneficiary in full and final satisfaction of its Allowed Class 10 Claim, except to the extent that such Holder agrees (a) to become a Convenience Claim, (b) to a less favorable treatment of such Claim, or (c) such Claim has been paid before the Effective Date.
- c. *Voting.* Class 10 is Impaired. Holders of General Unsecured Claims are entitled to vote to accept or reject the Plan.

12. Class 11: Convenience Claims

- a. *Classification.* Class 11 consists of the Convenience Claims.
- b. *Treatment.* Each Holder of an Allowed Convenience Claim, or an Allowed General Unsecured Claim that has been voluntarily reduced and converted to an Allowed Convenience Claim, shall receive on the Effective Date or as soon thereafter as practical after the Claim has become an Allowed Convenience Claim, in full and final satisfaction of such Allowed Claim,

⁵ The Debtors are in negotiations with the PBGC regarding the amount and classification of its claims. The Debtors intend to amend the Disclosure Statement and Plan after further negotiations with respect to the PBGC and RPHE.

Cash in an amount equal to four percent (4%) of its Allowed Convenience Claim.

- c. *Voting.* Class 11 is Impaired. Holders of Convenience Claims are entitled to vote to accept or reject the Plan.

13. Class 12: Insured Claims*Classification.* Class 12 consists of Allowed Insured Claims.

- b. *Treatment.* Each Insured Claim shall be deemed objected to and disputed and shall be resolved in accordance with this Section, notwithstanding any other Plan provision.

Except to the extent that a Holder of an Insured Claim agrees to different treatment, or unless otherwise provided by an order of the Bankruptcy Court directing such Holder's participation in any alternative dispute resolution process, on the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Insured Claim shall receive, on account of its Insured Claim, relief from the automatic stay under § 362 and the injunctions provided under the Plan for the sole and limited purpose of permitting such Holder to seek its recovery, if any, as determined and Allowed by an order or judgment by a court of competent jurisdiction or under a settlement or compromise of such Holder's Insured Claim from the applicable and available Insurance Policies maintained by or for the benefit of any of the Debtors. A Holder's recovery of insurance proceeds under the applicable Insurance Policy(ies) shall be the sole and exclusive recovery on an Insured Claim. Any settlement of an Insured Claim within a self-insured retention or deductible must be approved by the Liquidating Trustee.

Any amount of an Allowed Insurance Claim within a deductible or self-insured retention shall be paid by the applicable insurance to the Claim Holder and such insurer shall have a General Unsecured Claim (or Secured Claim, if it holds collateral) for the amount of the deductible or retention paid, provided that it has timely filed an otherwise not objectionable proof of claim encompassing such amounts. For purposes of retentions and deductibles in any Insurance Policy, the Debtors are insolvent and unable to advance or indemnify any loss, claim, damage, settlement or judgment of Debtors within the applicable retention or deductible amount. Notwithstanding any other provision of this Section, Old Republic Insurance Company shall be entitled to all accommodations that it requested in connection with renewal of Debtors' workers' compensation policy, as approved by order of the Bankruptcy Court [Docket No. 2803].

- c. *Voting.* Class 12 is Impaired. Holders of Insured Claims are entitled to vote to accept or reject the Plan. Unless otherwise ordered by the Bankruptcy Court, each Holder of a Class 12 Insured Claim shall have a \$1.00 vote for each filed Insured Claim.

14. Class 13: 2016 Data Breach Claims

- a. *Classification.* Class 13 consists of Allowed 2016 Data Breach Claims.

b. *Treatment.* Each holder of an Allowed 2016 Data Breach Claim shall receive access to credit monitoring services at the sole cost of the Debtors for a period of two (2) years following the Effective Date.

c. *Voting.* Class 13 is Impaired. Holders of Allowed 2016 Data Breach Claims are entitled to vote to accept or reject the Plan.

15. Class 14: Subordinated General Unsecured Claims

a. *Classification.* Class 14 Claims consists of Subordinated General Unsecured Claims.

b. *Treatment.* Holders of Allowed Subordinated General Unsecured Claims shall not receive any recovery from the Debtors on or after the Effective Date.

c. *Voting.* Class 14 is Impaired. Holders of Subordinated General Unsecured Claims are deemed to reject the Plan and are not entitled to vote.

16. Class 15: Interests

a. *Classification.* Class 15 consists of Allowed Interests against any Debtor.

b. *Treatment.* Holders of Allowed Interests shall not receive any recovery from the Debtors under the Plan.

c. *Voting.* Class 15 is Impaired. The holders of Interests are deemed to reject the Plan and are not entitled to vote.

VI.

MEANS OF EFFECTUATION AND IMPLEMENTATION OF THE PLAN

The key means to effectuation and implementation of the Plan are summarized below, and set forth in more detail in the Plan and the Liquidating Trust Agreement.

A. Conditions to Effective Date. The following are conditions precedent to the Effective Date:

(a) The Confirmation Order shall become a Final Order;

(b) The SGM Sale shall have closed;

(c) The Debtors shall have sufficient Cash to satisfy the Unclassified Claims and the Secured Claims that are payable on the Effective Date;

(d) The Debtors shall have sufficient Cash to fund the Liquidating Trust Reserve;

(e) All documents, instruments and agreements provided for under or necessary to implement the Plan (including without limitation, the Interim Agreements, the Transition Services Agreement and the Liquidating Trust Agreement) shall have been executed and delivered by the parties thereto, unless such execution or delivery shall have been waived by the parties benefited thereby.

The Debtors may waive the conditions to effectiveness of the Plan, set forth in Section 12.2 of the Plan, without leave of the Bankruptcy Court and without any formal action other than proceeding with confirmation of the Plan and filing a notice of confirmation with the Bankruptcy Court. To the extent that the Debtors are unable to satisfy the conditions to the effectiveness of the Plan set forth in Section 12 of the Plan, the Debtors reserve the right to amend the Plan at such time (in accordance with the terms of the Plan) to address such inability.

B. Deemed Substantive Consolidation

Section 7.1 of the Plan requests that each of the Debtors' Estates be "deemed" substantively consolidated for the purposes set forth in the Plan described above. Certain facts supporting deemed substantive consolidation are set forth below. This Disclosure Statement provides adequate information regarding the Debtors' request to treat their Estates substantively consolidated; however, the Debtors will not seek approval of deemed substantive consolidation at the hearing to approve this Disclosure Statement. A discussion setting forth the bases for deemed substantive consolidation of the Debtors' Estates is set forth in Section XIV hereof.

The deemed substantive consolidation effected pursuant to the Plan shall not affect, without limitation, (i) the Debtors', the Post-Effective Date Debtors', or the Liquidation Trust's defenses to any Claim or Cause of Action, including the ability to assert any counterclaim, provided that the Liquidating Trust shall neither assert nor preserve Intercompany Claims, except to the extent necessary to preserve claims and defenses against third parties other than the Debtors; (ii) the Debtors', the Post-Effective Date Debtors', or the Liquidation Trust's setoff or recoupment rights; (iii) requirements for any third party to establish mutuality prior to deemed substantive consolidation in order to assert a right of setoff against the Debtors, the Post-Effective Date Debtors, or the Liquidation Trust; (iv) distributions to the Debtors, the Estates, the Post-Effective

1 Date Debtors, or the Liquidation Trust out of any Insurance Policies or proceeds of such policies;
2 (v) distributions to the Debtors, the Estates, the Post-Effective Date Debtors, or the Liquidation
3 Trust from any governmental programs, including, but not limited to, Medicare, and Medi-Cal
4 including any fee for service payments and any payments under the Quality Assurance Fee
5 program; (vi) the applicability and enforceability of any government issued licenses, including, but
6 not limited to, the Hospital Licenses, or (vii) any Avoidance Action or any other Cause of Action
7 held by the Debtors arising under §§ 541 through 550, or state laws of similar effect, against any
8 third party other than the other Debtors, except to the extent any such actions are expressly waived
9 or settled pursuant to the Plan.

10 **C. Post-Effective Date Governance of Certain Entities**

11 The Sale-Leaseback Debtors and SCC Debtors shall continue to exist after the Effective
12 Date of the Plan (i) with the Sale-Leaseback Debtors existing until the expiration of the Interim
13 Agreements so that they may engage in the transition tasks set forth in Section 5.6 of the Plan,
14 (ii) with the SCC Debtors existing until all Quality Assurance Payments are collected, and (iii) with
15 a Responsible Officer, to be identified in the Plan Supplement, will be responsible for the Sale-
16 Leaseback Debtors and the SCC Debtors as discussed in Section 5.8 of the Plan. The primary
17 transaction task (i) for the Sale-Leaseback Debtors involves the Interim Agreements, and (ii) for
18 the SCC Debtors involves remitting Quality Assurance Payments received after the Effective Date
19 to the Liquidating Trust.

20 **1. Post-Effective Date Board of Directors**

21 On the Effective Date, the board members of VHS shall resign and the Post-Effective
22 Date Board of Directors of VHS will be appointed. The members that make up the Post-Effective
23 Date Board of Directors shall also serve and remain as the members of each of the subsidiary
24 boards and any other boards required to be in existence. The Post-Effective Date Board of
25 Directors shall (i) fulfill its duties and obligations under the bylaws and state and federal law and
26 (ii) appoint and oversee the Responsible Officer, consistent with the terms of the Plan. The Post-
27 Effective Date Board of Directors is further discussed in Section 5.8 of the Plan.
28

2. Post-Effective Date Committee

Pursuant to Section 7.10 of the Plan, on the Effective Date, the Committee shall be dissolved (except with respect to any then pending litigation or contested matter to which the Committee is a party and any appeals filed regarding confirmation of the Plan) and the Post-Effective Date Committee shall be appointed. The members that shall serve on the Post-Effective Date Committee shall be selected by the Committee and shall be disclosed in a Plan Supplement. The Post-Effective Date Committee shall have duties in accordance with the Plan and the Liquidating Trust Agreement to: (i) consult and coordinate with the Liquidating Trustee as to the administration of the Liquidating Trust and the Liquidating Trust Assets, including, without limitation, consulting on the Operating Budget and the Liquidating Budget; and (ii) consult and coordinate with the Responsible Officer.

3. Liquidating Trust

As set forth in Section 6 and elsewhere in the Plan and in the Liquidating Trust Agreement, a Liquidating Trust is being established on the Effective Date of the Plan, which will hold and prosecute Causes of Action (including Avoidance Actions) and other Liquidating Trust Assets being contributed to the Liquidating Trust Assets. Allowed Claims in Class 8 (PBGC), Class 9 (RPHE), and Class 10 (General Unsecured Claims) will receive Trust Beneficial Interests, which shall be entitled to receive periodic distribution of net proceeds received by the Liquidating Trust, as set forth in the Plan and the Liquidating Trust Agreement. The Liquidating Trust shall have an initial duration of five (5) years (subject to possible extension).

The primary purpose of the Liquidating Trust shall be the liquidation and distribution of its assets, in accordance with Treasury Regulation (defined below) section 301.7701-4(d). The primary functions of the Liquidating Trust are as follows: (i) to liquidate, sell, or dispose of the Trust Assets; (ii) to cause all net proceeds of the Trust Assets, including proceeds of Causes of Action on behalf of the Trust to be deposited into the Trust; (iii) to initiate actions to resolve any remaining issues regard the allowance and payment of Claims including, as necessary, initiation and/or participation in proceedings before the Court; (iv) to take such actions as are necessary or useful to maximize the value of the Trust; and (v) to make the payments and distributions to

1 Holders of Allowed Claims, including Trust Beneficiaries, as required by the Plan.

2 The Liquidating Trustee shall have the other powers and duties set forth in the Plan and
3 the Liquidating Trust Agreement. Certain tax and securities law considerations related to the
4 Trust Beneficial Interests in the Liquidating Trust are discussed below in this Disclosure
5 Statement.

6 **4. Insurance Captive**

7 VHS, in its capacity as a Post-Effective Date Debtor, and/or the Liquidating Trustee shall
8 take such action as reasonably necessary and advisable to effectuate the sale, disposition or other
9 administration of the issued and outstanding equity interest in and assets of Marillac.⁶ The net cash
10 proceeds of such sale, disposition or other administration, if any, to the Liquidating Trust shall be
11 used to pay Holders of Claims, as set forth in the Plan and the Liquidating Trust Agreement or as
12 otherwise agreed pursuant to a Creditor Settlement Agreement.

13 **5. Coordination Between Post-Effective Date Debtors and the Liquidating Trust**

14 Notwithstanding anything herein to the contrary, in furtherance of the purposes of the
15 Liquidating Trust, at the request of the Liquidating Trustee, the Post-Effective Date Debtors
16 (including, without limitation, the Responsible Officer and the Post-Effective Date Debtors'
17 employees, agents and/or professionals) shall be authorized to provide assistance and services to,
18 or otherwise act on behalf of, the Liquidating Trustee in the performance of the Liquidating
19 Trustee's duties under the Plan and the Liquidating Trust Agreement. Without limitation on the
20 foregoing, the Post-Effective Date Debtors shall be authorized to assist in the reconciliation and
21 administration of claims, and assist in the liquidation and/or collection of Liquidating Trust Assets
22 (including, without limitation, litigation claims). The Liquidating Trustee shall oversee all such
23 services provided on behalf of the Liquidating Trustee.

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27 ⁶ The Plan will modify this provision in the event VHS sells or otherwise disposes of the issued
28 and outstanding shares in Marillac prior to the Effective Date.

6. Dissolution of Certain Non-Debtor Entities on the Effective Date

The following non-debtor entities shall be deemed dissolved under applicable state law as of the Effective Date pursuant to Section 5.2 of the Plan:

- De Paul Ventures - San Jose ASC, LLC
- Sports Medicine Management, Inc.
- St. Vincent de Paul Ethics Corporation
- V Holdings MOB, LLC
- Robert F. Kennedy Medical Center
- Robert F. Kennedy Medical Center Foundation

These entities have no material assets or operations.

7. Termination of Responsibilities of the Patient Care Ombudsman

On the SGM Sale closing date, the duties and responsibilities of the Patient Care Ombudsman shall be terminated and the Patient Care Ombudsman shall be discharged from his duties as Patient Care Ombudsman and shall not be required to file any further reports or perform any additional duties as Patient Care Ombudsman. No person or entity may seek discovery in any form, including, but not limited to, by motion, subpoena, notice of deposition or request or demand for production of documents, from the Patient Care Ombudsman or his agents, professionals, employees, other representatives, designees or assigns (collectively, with the Patient Care Ombudsman, the “Ombudsman Parties”) with respect to any matters arising from or relating in any way to the performance of the duties of the Patient Care Ombudsman in these Chapter 11 Cases, including, but not limited to, pleadings, reports or other writings filed by the Patient Care Ombudsman in connection with these Chapter 11 Cases. Nothing herein shall in any way limit or otherwise affect the obligations of the Patient Care Ombudsman under confidentiality agreements, if any, between the Patient Care Ombudsman and any other person or entity or shall in any way limit or otherwise affect the Patient Care Ombudsman’s obligation, under §§ 332(c) and 333(c)(1) or other applicable law or Bankruptcy Court Orders, to maintain patient information, including patient records, as confidential, and no such information shall be released by the Patient Care Ombudsman without further order of the Bankruptcy Court.

8. Retention and Payment of Professionals Post-Effective Date

The Post-Effective Date Debtors, the Post-Effective Date Committee and the Liquidating Trust

1 may retain and pay professionals in connection with their respective roles. Such retentions and
2 payments shall not be subject to Bankruptcy Court approval or fee applications.

3 **9. Creditor Settlement Agreements**

4 Prior to or in connection with the Confirmation Hearing, there are expected to be settlements
5 with creditors and other parties. Such settlements will be filed either as part of a Plan Supplement
6 or a separate pleading, which may be filed for expedited hearing at or before the Confirmation
7 Hearing.

8 **VII.**

9 **DISTRIBUTIONS**

10 **A. Funding for the Distributions to Creditors**

11 The funding for distributions shall primarily be from the net proceeds from the SCC Sale
12 already received and the anticipated net proceeds from the closing of the SGM Sale, as well as receipt
13 of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action
14 including Avoidance Actions to be pursued by the Liquidating Trust.

15 **B. Distribution Mechanisms**

16 The Liquidating Trust shall be charged with making distributions under the Plan with
17 respect to all Allowed Claims as set forth in Section 8 of the Plan. Unless otherwise provided in
18 the Plan, all distributions on account of Allowed Claims, other than the General Unsecured Claims,
19 shall be made as soon as practicable on or after the Effective Date. Distributions on account of
20 Allowed Claims in Classes 8, 9 and 10 shall be made exclusively on the basis of Trust Beneficial
21 Interests at least annually, provided, however, that distributions need not be made to the extent
22 there is no Cash in one or more reserve accounts to distribute or if the Liquidating Trustee
23 determines that it is reasonably necessary to retain Cash in one or more reserve accounts to maintain
24 the value of the Liquidating Trust Assets or to meet any claims or contingent liabilities against the
25 Liquidating Trust, taking into account the available Cash in the Unsecured Claims Fund and the
26 costs and expenses of each such distribution. Distributions are subject to withholding and setoff.

27 **C. Unsecured Claims Fund**

28 Sections 7.8 and 7.9 of the Plan provides for the establishment of one or more accounts or

1 reserves of Cash established by the Liquidating Trustee for payment of all Allowed Unsecured
2 Claims on or after the Effective Date. As Disputed Unsecured Claims are resolved and become
3 Allowed, Cash in the Disputed Unsecured Claim Reserve shall be transferred into the unreserved
4 portion of the Unsecured Claims Fund and made available for distribution to the Holders of such
5 newly Allowed Unsecured Claims in an amount of their Pro Rata Share in accordance with the
6 Plan.

7 **D. Claims Administration**

8 Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as
9 otherwise expressly provided herein, the Liquidating Trustee, in consultation with the Post-
10 Effective Date Committee, shall have the exclusive right to file, prosecute, resolve and otherwise
11 deal with objections to Claims. The Liquidating Trustee shall serve a copy of each Claim objection
12 upon the holder of the Claim to which the objection is made. Objections with respect to all Claims
13 shall be made as soon as reasonably practical but in no event later than the Claims Objection
14 Deadline. If the Liquidating Trustee wishes to extend the Claims Objection Deadline, it may do so
15 pursuant to a motion on notice to the Post-Effective Date Committee, which may be approved
16 without a hearing. The Claims Objection Deadline means the First Business Day that is later of (a)
17 two hundred ten (210) days after the Effective Date, or (b) such other later date as the Bankruptcy
18 Court may establish upon a motion by the Liquidation Trustee in accordance with the Plan.

19 Section 10 of the Plan sets forth the mechanisms for treatment of Claims which are subject
20 to dispute pending their Allowance or Disallowance. The following Claims shall be automatically
21 Disallowed and expunged, without the need for filing any objections thereto, and shall not be
22 entitled to any distributions under the Plan: (a) Claims for which no Proof of Claim was filed by
23 the applicable Bar Date even though such Claims were listed on the Schedules as disputed,
24 contingent, or unliquidated; and (b) Claims covered by § 502(d) to the extent that the holder of such
25 Claim has not been paid the amount or turned over the property for which such holder is liable
26 under §§ 522(i), 542, 543, 550, or 553, in accordance with § 502(d).

E. Preservation of Insurance

Nothing in the Plan shall diminish, impair or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover (a) Claims by any Debtor, or (b) Claims against any Debtor or covered Persons thereunder.

F. Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Agreements to which any Debtor is a party shall be deemed rejected as of the Effective Date, except for those Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, (c) are specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed, provided, however, that the Debtors reserve the right to amend the Plan Supplement at any time on or before thirty (30) days after the Effective Date to modify the Schedule of Assumed Contracts to include or delete any Executory Agreements. If the party to an Executory Agreement listed to be assumed in the Schedule of Assumed Contracts wishes to object to the proposed assumption (including with respect to the cure amounts), it shall do so within thirty (30) days from the service of the Schedule of Assumed Contracts. Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as otherwise provided for in the Debtors' notice of rejection) no later than thirty (30) days after the Effective Date. Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

G. Causes of Action Including Avoidance Actions

Nothing contained in the Plan shall be deemed a waiver or relinquishment of any claims or Causes of Action of the Debtors that are not specifically waived or relinquished by the Plan, which shall vest in the Liquidating Trust, subject to any existing valid and perfected security interest or lien in such Causes of Action. The Causes of Action preserved under the Plan include, without limitation, the pending adversary proceedings discussed above and claims, rights or other causes of action:

(a) against vendors, suppliers of goods or services (including attorneys, accountants, consultants, physicians or other professional service providers), utilities, contract counterparties, and other parties for, including but not limited to: (A) services rendered; (B) over- and under-payments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, setoff or recoupment; (C) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors; (D) wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (E) indemnification and/or warranty claims; or (F) turnover causes of action arising under §§ 542 or 543;

(b) against landlords or lessors, including, without limitation, for erroneous charges, overpayments, returns of security deposits, indemnification, or for environmental claims;

(c) arising against current or former tenants or lessees, including, without limitation, for non-payment of rent, damages, and holdover proceedings;

(d) arising from damage to Debtors' property;

(e) relating to claims, rights, or other causes of action the Debtors may have to interplead third parties in actions commenced against any of the Debtors;

(f) for collection of a debt owed to any of the Debtors;

(g) against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters;

(h) relating to pending litigation, including, without limitation, the suits, administrative proceedings, executions, garnishments, and attachments listed in Attachment 4a to each of the Debtors' Statements of Financial Affairs;

(i) arising from claims against health plans;

(j) that constitute Avoidance Actions;

(k) arising under or relating to any and/or all asset purchase agreements and related sale documents (including, without limitation, any leases) entered into during these Chapter 11 Cases, including, but not limited to, enforcement of such agreements by the Debtors' Estates and/or breaches of any and/or all such agreements by the applicable non-Debtor parties (including,

without limitation, the purchasers of the Debtors' assets under such agreements and any and all principals and/or guarantors of the obligations under or relating to such agreements); and

(l) relating to the Operating Assets.

The Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and the Post-Effective Date Debtors shall have, retain, reserve and be entitled to assert all such claims, rights of setoff and other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by the Plan may be asserted by the Liquidating Trustee and the Post-Effective Date Committee on their behalf after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. On and after the Effective Date, in accordance with § 1123(b) and the terms of the Plan, the Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and the Post-Effective Date Debtors shall retain and have the exclusive right to prosecute, abandon, settle or release any or all Causes of Action, as they deem appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court. The Post-Effective Date Committee shall analyze potential Causes of Action in consultation with the Liquidating Trustee, to determine whether the pursuit of these actions would be beneficial. The Liquidating Trustee shall also confer and cooperate with the Post-Effective Date Committee in the prosecution and defense of all Causes of Action to be brought under the Plan.

As set forth in the Statement of Financial Affairs filed by each Debtor, an aggregate of over \$200 million in gross payments were made by all Debtors to third parties within the 90 days before the Petition Date. Those third parties may assert various defenses to any adversary proceedings seeking to recover those payments as preferences or fraudulent transfers. The Debtors have preliminarily requested ASK LLP to conduct an analysis of the likely amount of avoidance recoveries after defenses and litigation costs. The Debtors are analyzing other litigation against third parties, some of which will be pursued prior to the Effective Date.

VIII.

EFFECT OF CONFIRMATION

A. Discharge

The Debtors will not receive a discharge under the Plan because the requirements of § 1141 necessary for the Debtors to receive a discharge are not present.

B. Injunctions and Stays

Existing injunctions, stays and orders in the Bankruptcy Case are generally being extended pursuant to Section 13.4 of the Plan. In addition, Section 13.6 of the Plan provides for injunctive relief as follows:

- a. *General Injunction.* Except as otherwise expressly provided herein, all Persons that have held, currently hold or may hold a Claim against the Debtors are permanently enjoined on and after the Effective Date from taking any action in furtherance of such Claim or any other Cause of Action released and discharged under the Plan, including, without limitation, the following actions against any Released Party: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action or other proceeding with respect to a Claim; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the Liquidating Trust with respect to a Claim; or (e) commencing, conducting or continuing any proceeding that does not conform to or comply with or is contradictory to the provisions of the Plan; provided, however, that nothing in this injunction shall (i) limit the Holder of an Insured Claim from receiving the treatment set forth in Class 12; or (ii) preclude the Holders of Claims against the Debtors from enforcing any obligations of the Debtors, the Post-Effective Date Debtors, the Liquidating Trust, the Responsible Officer, or the Liquidating Trustee under the Plan and the contracts, instruments, releases and other agreements delivered in connection herewith, including, without limitation, the Confirmation Order, or any other order of the Bankruptcy Court in the Chapter 11 Cases. By accepting a distribution made pursuant to the Plan, each Holder of an Allowed Claim shall be deemed to have specifically consented to the injunctions set forth in this Section.
- b. *Other Injunctions.* The Responsible Officer, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, the Post-Effective Date Board of Directors, or the Liquidating Trust and their respective members, directors, officers, agents, attorneys, advisors or

employees shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Responsible Officer, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except those acts found by Final Order to be arising out of its or their willful misconduct, gross negligence, fraud, and/or criminal conduct, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of the Responsible Officer, the Post-Effective Date Board of Directors, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except for any actions or inactions found by Final Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct. Any indemnification claim of the Responsible Officer, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee and the other parties entitled to indemnification under this subsection shall be satisfied from either (i) the Liquidating Trust Assets (with respect to all claims, other than those claims related to the Operating Assets), or (ii) the Operating Assets (with respect to all claims related to the Operating Assets). The parties subject to this Section shall be entitled to rely, in good faith, on the advice of retained professionals, if any.

C. Releases

Section 13.5 of the Plan contains the following releases and related provisions, which are an integral part of the Plan:

- a. *Releases.* As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Debtors arising from or related to the Debtors' pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature except for as provided in the Plan or the Confirmation Order.
- b. *Limitations of Claims Against the Liquidating Trust.* As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Liquidating Trust any other or further Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, relating to the Debtors or any Interest in the Debtors based upon any acts, omissions or liabilities, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date.
- c. *Debtors' Releases.* Pursuant to § 1123(b), and except as otherwise specifically provided in the Plan, for good and valuable consideration,

including the service of the Released Parties to facilitate the expeditious liquidation of the Debtors and the consummation of the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharge by the Debtors and their Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen, or unforeseen, existing or herein after arising in law, equity, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Chapter 11 Cases, the transactions or events giving rise to any Claim that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims before or during the Chapter 11 Cases, the marketing and the sale of Assets of the Debtors, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents, other than a Claim against a Released Party arising out of the gross negligence or willful misconduct of any such person or entity.

WAIVER OF LIMITATIONS ON RELEASES. THE LAWS OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542) PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS 13.5 (a)-(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

D. Exculpations

To the maximum extent permitted by applicable law, each Released Party and Bond and Notes Trustee shall not have or incur any liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the marketing and the sale of Assets of the Debtors, the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, or the property to be distributed under the Plan), or each Released Party's or Bond and Notes Trustee's exercise or discharge of any powers and duties set forth in the Plan, except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each Released Party

1 and Bond and Notes Trustee shall be entitled to rely upon the advice of counsel with respect to their
2 duties and responsibilities under the Plan. Without limitation of the foregoing, each such Released
3 Party and Bond and Notes Trustee shall be released and exculpated from any and all Causes of
4 Action that any Person is entitled to assert in its own right or on behalf of any other Person, based
5 in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in
6 any way relating to the subject matter of Section 13.7 of the Plan.

7 **E. Termination of All Employee, Retiree and Workers Compensation Benefits**

8 All ongoing employee benefits, retiree benefits and workers' compensation benefits will be
9 deemed rejected pursuant to § 365 as of the Effective Date.

10 **F. U.S. Trustee Quarterly Fees and Post-Confirmation Status Report**

11 All fees payable under 28 U.S.C. § 1930(a)(6) shall be paid by each Debtor in the amounts
12 and at the times such fees may become due up to and including the Effective Date. The Liquidating
13 Trust shall pay all fees payable by each Debtor under 28 U.S.C. § 1930(a)(6) until the Chapter 11
14 Cases are closed, dismissed or converted; provided, however, that the Sale-Leaseback Debtors will
15 pay all fees payable under 28 U.S.C. § 1930(a)(6) in their respective Chapter 11 Cases in
16 accordance with the Operating Budget and until the expiration of the Interim Agreements. Upon
17 the Effective Date, the Liquidating Trust and the Post-Effective Date Debtors shall be relieved from
18 the duty to make the reports and summaries required under Bankruptcy Rule 2015(a).
19 Notwithstanding the foregoing, the Liquidating Trust and Post-Effective Date Debtors shall file
20 and serve the status reports required by Local Bankruptcy Rule 3020-1(b) at such times and for
21 such period as may be set forth in the Confirmation Order.

22 **G. Retention of Jurisdiction**

23 Unless otherwise provided in the Plan or the Confirmation Order, on and after the Effective
24 Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or
25 related to the Chapter 11 Cases. Without limiting the foregoing, the Bankruptcy Court shall retain
26 jurisdiction to:

27 (a) allow, disallow determine, liquidate, classify, estimate, or establish the priority or
28 secured or unsecured status of any Claim, including the resolution of any request for payment of
any Administrative Claim and the resolution of any objections to the allowance or priority of

1 Claims, and the resolution of any claim objections brought by the Debtors or by the Liquidating
2 Trustee on behalf of the Liquidating Trust;

3 (b) resolve any matters related to the assumption, assumption and assignment, or
4 rejection of any Executory Agreement to which a Debtor(s) is a party and to hear, determine and,
5 if necessary, liquidate, any Claims arising from, or cure amounts related to, such assumption or
6 rejection;

7 (c) determine any motion, adversary proceeding, application, contested matter, and
8 other litigated matter pending on or commenced after the Effective Date, including, without
9 limitation, any and all Causes of Action preserved under the Plan commenced prior to, on, or after
10 the Effective Date;

11 (d) ensure that distributions to holders of Allowed Claims are accomplished in
12 accordance with the Plan;

13 (e) hear and determine matters relating to claims with respect to the Debtors' director
14 and officer insurance;

15 (f) enter, implement or enforce such orders as may be appropriate in the event that the
16 Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

17 (g) issue injunctions, enter and implement other orders, and take such other actions as
18 may be necessary or appropriate to restrain interference by any Person with the consummation,
19 implementation or enforcement of the Plan, the Confirmation Order or any other order of the
20 Bankruptcy Court, including, without limitation, any actions relating to the Nonprofit Status of the
21 Post-Effective Date Debtors;

22 (h) resolve a dispute with respect to and/or otherwise appoint a replacement of the
23 Responsible Officer or the Liquidating Trustee, or replacement members of the Post-Effective Date
24 Committee;

25 (i) hear and determine any application to modify the Plan in accordance with § 1127,
26 to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure
27 Statement, any contract, instrument, release, or other agreement or document created in connection
28 therewith, or any order of the Bankruptcy Court, including the Confirmation Order, in such a
manner as may be necessary to carry out the purposes and effects thereof;

(j) hear and determine all applications under §§ 330, 331, and 503(b) for awards of
compensation for services rendered and reimbursement of expenses incurred prior to the Effective
Date;

(k) hear and determine disputes arising in connection with the interpretation,
implementation, obligation or enforcement of the Plan, the Confirmation Order, any transactions
or payments contemplated in the Plan, or any agreement, instrument, or other document governing
or relating to any of the foregoing;

(l) take any action and issue such orders as may be necessary to construe, enforce,
implement, execute and consummate the Plan, including all contracts, instruments, releases, and

other agreements or documents created in connection therewith, or to maintain the integrity of the Plan following consummation;

(m) determine such other matters and for such other purposes as may be provided in the Plan and/or the Confirmation Order;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146, including without limitation, (i) any requests for expedited determinations under § 505(b) filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Petition Date through, and including, the date of final distribution under the Plan, and (ii) any other matters relating to the Nonprofit Status of the Post-Effective Date Debtors;

(o) hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and Title 28 of the United States Code;

(p) authorize recovery of all assets of any of the Debtors and property of the applicable Debtor's Estate, wherever located;

(q) consider any and all claims against each Released Party involving or relating to the administration of the Chapter 11 Cases, any rulings, orders, or decisions in the Chapter 11 Cases or any aspects of the Debtors' Chapter 11 Cases and the events leading up to the commencement of the Chapter 11 Cases, including the decision to commence the Chapter 11 Cases, the development and implementation of the Plan, the decisions and actions taken prior to or during the Chapter 11 Cases and any asserted claims based upon or related to prepetition obligations of the Debtors for the purpose of determining whether such claims belong to the Estates or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive jurisdiction with respect to any such litigation, subject to any determination by the Bankruptcy Court to abstain and consider whether such litigation should more appropriately proceed in another forum;

(r) hear and resolve any disputes regarding the reserves required hereunder, including without limitation, disputes regarding the amounts of such reserves or the amount, allocation and timing of any releases of such reserved funds; and

(s) enter final decrees closing the Chapter 11 Cases.

IX.

TAX CONSEQUENCES OF THE PLAN

CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers about possible tax issues the

1 Plan may present to these estates. The Debtors CANNOT and DO NOT represent that the tax
2 consequences contained below are the only tax consequences of the Plan because the Tax Code
3 embodies many complicated rules which make it difficult to state completely and accurately all of
4 the tax implications of any action.

5 **X.**

6 **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

7 **A. Generally**

8 The following discussion summarizes certain federal⁷ income tax consequences of the
9 implementation of the Plan to the Debtors and to U.S. Holders (as defined below) of Claims. The
10 following summary does not address the federal income tax consequences to holders whose Claims
11 are unimpaired or otherwise entitled to payment in full in Cash under the Plan, or to holders of
12 Claims or Interests who are deemed to reject the Plan.

13 The following summary is based on the Internal Revenue Code of 1986, as amended (the
14 “IRC”), existing and proposed Treasury regulations promulgated thereunder (the “Treasury
15 Regulations”), judicial decisions, and published administrative rules and pronouncements of the
16 Internal Revenue Service (the “IRS”), all as in effect on the date hereof. Changes or new
17 interpretations of these rules may have retroactive effect and could significantly affect the federal
18 income tax consequences described below. In December 2017, the federal government enacted
19 broad tax legislation that included significant changes to the taxation of business entities (including
20 entities exempt from taxation under section 501(c)(3) of the IRC) affecting, among other things,
21 the treatment of net operating losses and limitations on the deductibility of “business interest.”
22 Some aspects of this new law are not clear, and, as a result, we cannot assure you that such change
23 in law does not impact the tax considerations that we describe in this summary.

24 The federal income tax consequences of the Plan are complex and are subject to significant
25 uncertainties. The Debtors have not requested an opinion of counsel with respect to any of the tax
26 aspects of the Plan. In addition, the Debtors have not requested a ruling from the IRS concerning

27 ⁷ All references to “federal” taxes refer to tax obligations imposed by the United States of
28 America.

1 the federal income tax consequences of the Plan, and the consummation of the Plan is not
2 conditioned upon the issuance of any such ruling. Thus, no assurance can be given as to the
3 interpretation that the IRS or a court of law will adopt.

4 This summary does not address state, local or non-United States income or other tax
5 consequences of the Plan, nor does it address the federal income tax consequences of any
6 transaction that may be entered into prior to, concurrently with or subsequent to the Plan (regardless
7 of whether any such transaction is undertaken in connection with the Plan). In addition, this
8 summary does not purport to address the federal income tax consequences of the Plan to special
9 classes of taxpayers (such as former citizens or long-term residents of the United States pursuant
10 to sections 877 or 877A of the IRC, governmental entities, broker-dealers, banks, mutual funds,
11 insurance companies, financial institutions, thrifts, small business investment companies, regulated
12 investment companies, real estate investment trusts, tax-exempt entities other than the Debtors, as
13 applicable, persons whose functional currency is not the U.S. dollar or persons holding a Claim as
14 part of a hedging, straddle, conversion or constructive sale transaction or other integrated
15 investments, persons subject to section 451(b) of the IRC, traders in securities that elect to use a
16 mark-to-market method of accounting for their security holding, pass-through entities (or
17 arrangements classified as pass-through entities) or investors in pass-through entities).
18 **Accordingly, the following summary is for informational purposes only and is not a substitute**
19 **for careful tax planning and professional advice based upon the particular circumstances**
20 **pertaining to a holder of a Claim or Interest.**

21 As used in this section, the term “U.S. Holder” means a beneficial owner of a Claim (as
22 determined for federal income tax purposes) that is: (a) a citizen or an individual resident of the
23 United States; (b) a corporation (or an entity taxable as a corporation for federal income tax
24 purposes) created or organized in or under the laws of the United States or any political subdivision
25 of the United States; (c) an estate the income of which is subject to federal income taxation
26 regardless of its source; or (d) a trust which (i) is subject to the primary supervision of a court within
27 the United States and the control of a United States fiduciary as described in section 7701(a)(30)(E)
28

of the IRC or (ii) has properly elected under applicable Treasury Regulations to be treated as a United States person.

B. Certain Tax Consequences to the Debtors

1. Generally

Each Debtor is a nonprofit corporation that is exempt from federal income taxation under section 501(c)(3) of the IRC. It is intended that nothing in the Plan shall adversely affect, or be interpreted inconsistently with, the tax-exempt status of Post-Effective Date Debtors, and the Plan provides that each Post-Effective Date Debtors will retain its tax-exempt status to the same extent such status existed immediately prior to the Petition Date. Accordingly, the Debtors do not expect the implementation of the Plan to have any adverse federal income tax consequences to the tax-exempt status of Post-Effective Date Debtors. If the tax-exempt status of a Post-Effective Date Debtors were to terminate, the Post-Effective Date Debtors would be subject to tax on its income, which would reduce the amount of distributions payable to the Liquidating Trust. This summary assumes that that the Debtors are and will continue to be exempt from federal income tax under section 501 of the IRC.

Organizations that are otherwise exempt from federal income tax under section 501 of the IRC are nevertheless subject to tax on their “unrelated business taxable income” (“UBTI”). UBTI is generally defined as gross income from any unrelated trade or business regularly carried on by a tax-exempt entity less any deductions attributable thereto. An unrelated trade or business consists of any trade or business the conduct of which is not substantially related to the organization’s exempt purpose or function.

UBTI includes unrelated debt-financed income (“UDFI”). UDFI includes income derived from debt-financed property during the taxable year and may include income derived from a sale or other disposition of debt-financed property if there was acquisition indebtedness outstanding with respect to such property during the 12-month period ending with the date of sale or other disposition. Acquisition indebtedness generally includes any debt incurred directly or indirectly to purchase such property. Thus, to the extent that a tax-exempt directly or indirectly (including through an investment in a partnership or other entity (or arrangement) which is treated as a pass-

1 through entity for federal income tax purposes) has income from a trade or business, or earns
2 income in respect of certain leveraged investments, a tax-exempt partner's allocable share of such
3 income generally will be treated as UBTI.

4 If the Debtors retain their tax-exempt status and any of their assets are regarded as UDFI
5 (which generally would not include property substantially all the use of which is substantially
6 related to the exercise or performance by Post-Effective Date Debtors of the purpose or function
7 constituting the basis for its tax-exempt status), Post-Effective Date Debtors may be subject to tax
8 on a percentage of the income (including gain) derived from such assets.

9 **2. Gain or Loss on Sale or Exchange**

10 Under the IRC, a taxpayer must recognize and include in gross income gain on the sale or
11 exchange of assets equal to the excess of the amount realized therefrom over the adjusted basis of
12 the assets. The transfer of assets, in payment and discharge of recourse indebtedness is treated as
13 a sale or exchange of such assets.

14 Each Debtor is exempt from U.S. federal income taxation under section 501(c)(3) of the
15 IRC. Gain realized and recognized in a transfer of assets in payment and discharge of recourse
16 indebtedness would be exempt from U.S. federal income taxation.

17 Each Debtor is also subject to tax on UBTI. Gain on the sale of assets other than property
18 includable in inventory or held primarily for sale to customers in the ordinary course of business is
19 excluded from UBTI under the IRC. Gain on the sale of assets includable in inventory or held
20 primarily for sale to customers is included in UBTI, and is subject to tax.

21 In addition, gain on the sale or exchange of debt-financed property is included in UDFI, and
22 so includable in UBTI, and subject to tax.

23 **3. Cancellation of Debt Income**

24 Under the IRC, a taxpayer generally must include in gross income the amount of any
25 cancellation of indebtedness ("COD") income recognized during the taxable year. COD income
26 generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum
27 of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any
28 other property transferred by the debtor in satisfaction of such discharged indebtedness (including

1 stock). COD income also includes any interest that has been previously accrued and deducted but
2 remains unpaid at the time the indebtedness is discharged.

3 The IRC permits a debtor in bankruptcy to exclude its COD income from gross income if
4 the discharge occurs in a bankruptcy case (“Bankruptcy Exception”) or to the extent that the debtor
5 is insolvent at the time of the discharge (“Insolvency Exception”), either of which should apply to
6 exclude any COD income from taxation in these Chapter 11 Cases.

7 The same analysis applies to UBTI and UDFI. Income excluded from gross income under
8 the Bankruptcy Exception or Insolvency Exception for income tax purposes is also excluded from
9 gross income for UBTI and UDFI purposes. Accordingly, either the Bankruptcy Exception or the
10 Insolvency Exception should apply to exclude any UBTI or UDFI from taxation.

11 **C. Certain Tax Consequences to the U.S. Holders of Claims**

12 **1. Gain or Loss**

13 In general, each U.S. Holder of a Claim will recognize gain or loss equal to the difference,
14 if any, between (i) the “amount realized” by such holder in satisfaction of its Claim (other than
15 amounts, if any, paid in respect of any Claim for accrued but unpaid interest and other than any
16 amounts treated as imputed interest as further described below), and (ii) such holder’s adjusted tax
17 basis in its Claim (other than any Claim for accrued but unpaid interest). A U.S. Holder’s “amount
18 realized” generally will equal the sum of Cash (including, for the avoidance of doubt Cash received,
19 if any, in lieu of credit monitoring services) and fair market value of the undivided interest in the
20 Liquidating Trust Assets received by such holder. Pursuant to an IRS Announcement, the value of
21 the receipt of credit monitoring services at the sole cost of the Debtors shall not be included in the
22 gross income of such recipients. For a discussion of the federal income tax consequences to U.S.
23 Holders of any Claim for accrued but unpaid interest, see below. A U.S. Holder’s tax basis in a
24 Claim should generally equal the amount advanced to the applicable Debtor(s) or an amount
25 included in income as a result of provision of goods or services to the applicable Debtor(s), except
26 to the extent that a bad debt loss had been previously taken.

27 As discussed below (*see* “Tax Treatment of the Liquidating Trust and U.S. Holders of
28 Beneficial Interests”), the Liquidating Trust is intended to be treated as a “grantor trust” for federal

1 income tax purposes, of which the holders of Allowed Claims, whether Allowed on or after the
2 Effective Date, are the grantors. Accordingly, each holder of an Allowed Claim is intended to be
3 treated and, pursuant to the Plan and the Liquidating Trust Agreement, is required to report for
4 federal income tax purposes, as directly receiving, and as a direct owner of, its respective share of
5 the Liquidating Trust Assets, except as otherwise discussed below (*see* “Tax Treatment of the
6 Liquidating Trust and U.S. Holders of Beneficial Interests”). Pursuant to the Plan and Liquidating
7 Trust Agreement, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust
8 Assets, and all parties must consistently use such valuation for all federal income tax purposes.

9 It is possible that a U.S. Holder of an Allowed Claim may be treated for tax purposes as
10 receiving additional distributions subsequent to the Effective Date as a result of (i) additional
11 contributions made by Post-Effective Date Debtors to the Liquidating Trust and/or (ii) any
12 subsequently disallowed Disputed Claims or unclaimed distributions. In that event, the U.S. Holder
13 may be treated as having received additional amounts in respect of its Allowed Claim, and the
14 imputed interest provisions of the IRC may apply to treat a portion of such later distributions to a
15 U.S. Holder as imputed interest. In addition, it is possible that any loss realized by a U.S. Holder
16 in satisfaction of an Allowed Claim may be deferred until all subsequent distributions are
17 determinable.

18 Except as otherwise noted above, after the Effective Date, any amount a U.S. Holder of an
19 Allowed Claim receives as a distribution from the Liquidating Trust in respect of its beneficial
20 interest in the Liquidating Trust should not be included, for federal income tax purposes, in the
21 holder’s amount realized in respect of its Allowed Claim since such holder would already be
22 regarded for federal income tax purposes as owning the underlying assets (and would already have
23 realized any associated income). *See* “Tax Treatment of the Liquidating Trust and U.S. Holders of
24 Beneficial Interests” *infra*.

25 Where gain or loss is recognized by a U.S. Holder in respect of its Allowed Claim, the
26 character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income
27 or loss will be determined by a number of factors, including, among others, the nature and origin
28 of the Claim, the tax status of the U.S. Holder, whether the Claim constitutes a capital asset in the

1 hands of the U.S. Holder and how long it has been held, and whether and to what extent the U.S.
2 Holder had previously claimed a bad debt deduction in respect of such Claim. A U.S. Holder that
3 purchased its Claim from a prior holder at a market discount may be subject to the market discount
4 rules of the IRC. Under those rules, assuming that such holder has made no election to amortize
5 the market discount into income on a current basis with respect to any market discount instrument,
6 any gain recognized on the exchange of such Claim (subject to a *de minimis* rule) generally would
7 be characterized as ordinary income to the extent of the accrued market discount on such Claim as
8 of the date of the exchange.

9 **2. Distributions in Discharge of Accrued Interest or OID**

10 Pursuant to the Plan, all distributions in respect of any Claim will be allocated first to the
11 principal amount of such Claim, as determined for U.S. federal income tax purposes, and thereafter,
12 to the remaining portion of such Claim (including the interest portion thereof), if any. Current
13 federal income tax law is unclear on this point, and no assurance can be given that the IRS will not
14 challenge the Debtors' position. Holders of Claims are urged to consult their own tax advisors
15 regarding the particular federal income tax consequences to them of the treatment of accrued but
16 unpaid interest or original issue discount ("OID"), as well as the character of any loss claimed with
17 respect to accrued but unpaid interest previously included in gross income.

18 In general, to the extent that any distribution to a U.S. Holder of a Claim is received in
19 satisfaction of interest or OID accrued or amortized during the time such holder held the Claim,
20 such amount will, unless exempt pursuant to special rules under the IRC, be taxable to such holder
21 as interest income (if not previously included in such holder's gross income). Conversely, a U.S.
22 Holder will generally recognize a deductible ordinary loss to the extent of any Claim for accrued
23 interest that previously was included in its gross income and that is not paid in full. However, the
24 treatment of unpaid OID that was previously included in income is less clear. The IRS has privately
25 ruled that a holder of a debt obligation in an otherwise tax-free exchange could not claim a current
26 deduction with respect to any unpaid OID. Accordingly, it is possible that, by analogy, a holder of
27 a Claim in a taxable exchange would be required to recognize a capital loss, rather than an ordinary
28 loss, with respect to any previously included OID that is not paid in full. Holders are urged to

consult their tax advisors regarding the allocation of consideration and the deductibility of accrued but unpaid interest or OID for federal income tax purposes.

3. Tax Treatment of the Liquidating Trust and U.S. Holders of Beneficial Interests

Upon the Effective Date, the Liquidating Trust will be established for the benefit of the holders of Allowed Unsecured Claims, whether Allowed on or after the Effective Date.

The Liquidating Trust is intended to qualify as a liquidating trust for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity, but rather is treated for federal income tax purposes as a “grantor trust” (*i.e.*, a pass-through entity), such that the holders of beneficial interests therein are treated as owning an undivided interest in the assets of the trust. However, merely establishing a trust as a liquidating trust does not ensure that it will be treated as a grantor trust for federal income tax purposes. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684 (“Rev. Proc. 94-45”), set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan and Liquidating Trust Agreement, and in conformity with Rev. Proc. 94-45, all parties are required to treat, for federal income tax purposes, the Liquidating Trust (except in respect of any Liquidating Trust Assets allocable to Disputed Claims) as a grantor trust of which the beneficiaries of the Liquidating Trust are the owners and grantors. The discussion herein assumes that the Liquidating Trust will be so respected for federal income tax purposes. However, no ruling has been requested from the IRS, and no opinion of counsel has been requested concerning the tax status of the Liquidating Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position. Were the IRS to successfully challenge the trust classification (including because Post-Effective Date Debtors have the continuing obligation to make additional contributions to the Liquidating Trust), the federal income tax consequences to the Liquidating Trust and the U.S. Holders of Claims may vary significantly from those discussed herein, including the potential for an entity level tax on any income of the Liquidating Trust. Holders of Allowed Claims are urged to consult with their tax advisors regarding potential alternative characterizations.

a. General Tax Reporting by the Liquidating Trustee and Beneficiaries of the Liquidating Trust

For all federal income tax purposes, all parties must treat each transfer of Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Plan.

Pursuant to the Plan and Liquidating Trust Agreement, each transfer of Liquidating Trust Assets (other than any assets allocable to Disputed Claims) to the Liquidating Trust is treated, for federal income tax purposes, as (i) a transfer of such assets directly to the holders of Claims that constitute beneficiaries of the Liquidating Trust in partial satisfaction of their Claims (with each beneficiary of the Liquidating Trust receiving an undivided interest in such assets in accordance with their economic interests in such assets), followed by (ii) the transfer by the beneficiaries of the Liquidating Trust to the Liquidating Trust of such assets in exchange for the beneficial interests in the Liquidating Trust. Accordingly, all parties must treat the Liquidating Trust as a grantor trust, of which the beneficiaries of the Liquidating Trust are the owners and grantors, and treat the beneficiaries of the Liquidating Trust as the direct owners of an undivided interest in Liquidating Trust Assets (other than any assets allocable to Disputed Claims), consistent with their economic interests therein, for all federal income tax purposes. The economic interests of U.S. Holders of Unsecured Claims will be determined with respect to their interest in the Unsecured Claims Fund (other than any assets allocable to the reserve for Disputed Unsecured Claims). It is unclear whether a U.S. Holder of an Unsecured Claim will be required to treat cash distributed from the Disputed Claims Reserve to the Unsecured Claims Fund (other than assets allocated to the reserve for Disputed Unsecured Claims) (x) as an additional “amount realized” with respect to its Claim, thereby resulting in additional gain (or reduced loss) on its Claim at such time, or (y) an “amount realized” with respect to its interest in the Liquidating Trust.

Pursuant to the Plan and Liquidating Trust Agreement, the Liquidating Trustee will make a good faith valuation of the Liquidating Trust Assets. All parties must consistently use such valuation for all federal income tax purposes.

Allocations of the Liquidating Trust’s taxable income (other than income attributable to assets in the Disputed Claims Reserve or reserve for Disputed Unsecured Claims) among the

beneficiaries of the Liquidating Trust shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued at their tax book value and other than assets allocable to Disputed Claims) to the beneficiaries of the Liquidating Trust, in each case up to the tax book value of the assets treated as contributed by such beneficiaries of the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value (or tax basis) of the Liquidating Trust Assets for this purpose shall equal their fair market value on the date such assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the IRC, applicable Treasury regulations, and other applicable administrative and judicial authorities and pronouncements.

Taxable income or loss allocated to a beneficiary of the Liquidating Trust will be treated as income or loss with respect to such beneficiary's undivided interest in the Liquidating Trust Assets, and not as income or loss with respect to its prior Allowed Claim. The character of any income and the character and ability to use any loss will depend on the particular situation of the beneficiary of the Liquidating Trust.

The federal income tax obligations of a beneficiary of the Liquidating Trust are not dependent on the Liquidating Trust distributing any Cash or other proceeds. Therefore, a beneficiary of the Liquidating Trust may incur a federal income tax liability with respect to its allocable share of Liquidating Trust income even if the Liquidating Trust does not make a concurrent distribution to the beneficiary of the Liquidating Trust. In general, other than in respect of Liquidating Trust Assets allocable to Disputed Claims, a beneficiary of the Liquidating Trust should not be separately taxable on a distribution from the Liquidating Trust since the beneficiary of the Liquidating Trust already is regarded for federal income tax purposes as owning the

underlying assets (and was taxed at the time the income was earned or received by the Liquidating Trust).

The Liquidating Trustee will file with the IRS returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Liquidating Trustee also shall annually send to each beneficiary of the Liquidating Trust a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all of the beneficiaries of the Liquidating Trust to report such items on their federal income tax returns or to forward the appropriate information to such beneficiary's underlying beneficial holders with instructions to report such items on their U.S. federal income tax returns.

b. Tax Treatment of the Disputed Claims Reserve and Reserve for Disputed Unsecured Claims

The Liquidating Trustee shall (x) treat the Disputed Claims Reserve and the reserve for Disputed Unsecured Claims as "disputed ownership funds" governed by Treasury Regulation section 1.468B-9 by timely making an election, and (y) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

The Disputed Claims Reserve and the reserve for Disputed Unsecured Claims will be subject to tax annually on a separate entity basis on any net income earned with respect to the Liquidating Trust Assets allocable thereto. A disputed ownership fund is taxed in a manner similar to either a corporation or a "qualified settlement fund," within the meaning of applicable Treasury Regulations, depending on the nature of the assets transferred to it. It is expected that the Disputed Claims Reserve and the reserve for Disputed Unsecured Claims will be taxed as qualified settlement funds (taxable at the maximum rate applicable to trusts and estates, currently 37%) because all of the assets transferred to them should be treated as passive assets. All distributions from either the Disputed Claims Reserve or the reserve for Disputed Unsecured Claims to U.S. Holders of Allowed Claims (which distributions will be net of the related expenses of the reserve) will be treated as received by such holders in respect of their Claims as if distributed by the Debtors. All parties will be required to report for tax purposes consistently with the foregoing.

Holders of Allowed Claims should consult their tax advisors with respect to the U.S. federal income tax consequences of becoming a beneficiary of the Liquidating Trust.

D. Information Reporting and Withholding

All distributions to holders of Allowed Claims under the Plan are subject to any applicable withholding obligations (including employment tax withholding, if any). Under federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to “backup withholding” at the then-applicable rate (currently 24%). Backup withholding generally applies if the holder: (i) fails to furnish its social security number or other taxpayer identification number (“TIN”); (ii) furnishes an incorrect TIN; (iii) fails properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is such holder’s correct number and that such holder is a United States person that is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

In addition, from an information reporting perspective, applicable Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among others, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the holders’ federal income tax returns.

E. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY

1 VARY DEPENDING ON A HOLDER’S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY,
2 HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE
3 FEDERAL, STATE, LOCAL AND NON-UNITED STATES INCOME AND OTHER TAX
4 CONSEQUENCES OF THE PLAN.

5 **XI.**

6 **SECURITIES LAW DISCUSSION RELATED TO TRUST BENEFICIAL INTERESTS**

7 The Trust Beneficial Interests are not expected to be deemed “securities” within the
8 meaning of the federal securities laws, including the Securities Act of 1933 (the “1933 Act”), and
9 the distribution of the Trust Beneficial Interests will not be registered under the 1933 Act. The
10 Liquidating Trust will not be registered or reporting under either the Securities Exchange Act of
11 1934 (the “1934 Act”) or under the Investment Company Act of 1940 (the “1940 Act”). The
12 Liquidating Trust Agreement provides that the Trust Beneficial Interests may not be assigned or
13 otherwise transferred by any holder other than: (i) to any relative, spouse or relative of the spouse
14 of such holder; (ii) by will or pursuant to the laws of descent and distribution; and (iii) upon the
15 dissolution of such holder in accordance with the operation of law; provided, that any such transfer
16 will not be effective until and unless the Liquidating Trustee receives written notice of such transfer.
17 No beneficiary may subdivide beneficial interests in the Liquidating Trust except as set forth in the
18 prior sentence.

19 There is not expected to be any trading market created in Trust Beneficial Interests, and the
20 Trust Beneficial Interests will have extremely limited or no liquidity. Pursuing Causes of Action
21 in the Liquidating Trust and liquidating assets placed in the Liquidating Trust may take several
22 years, and distributions, if any, from the Liquidating Trust will be over time.

23 The Trust Beneficial Interests are not expected to be deemed “securities” within the
24 meaning of the federal securities laws, however, if they were to be deemed securities, we believe
25 that the distribution of the Trust Beneficial Interests to holders will be exempt from registration
26 under § 1145. Similarly, in the unlikely event that the Trust Beneficial Interests are deemed
27 “securities”, we believe that the Trust Beneficial Interests will not be required to be registered under
28 Section 12(g) of the 1934 Act because we expect that there will be no more than 2,000 total holders

of such interest and no more than 500 of such holders who do not qualify as “accredited investors” within the meaning of the 1933 Act. In addition, as noted above, there is effectively no secondary market or any trading market for the interest, and they will not be listed on any stock exchange or tradable on any other trading system or platform. We understand that the assets themselves of the trust are also not likely to be deemed “securities” within the meaning of the federal securities laws. However, in the unlikely event that any assets of the trusts would be securities, we believe that no more than 40% of the assets would be deemed securities, and, if so, the trust would not be deemed an “investment company” under Section 3(a)(1)(C) of the 1940 Act. In the extremely unlikely event that 40% or more of the trust’s assets would be deemed securities, we believe that the trust would not be required to register as an “investment company” in reliance on Section 7(b) of the 1940 Act in as much as the trusts’ activities are and will be incidental to its dissolution.

The holders of the Trust Beneficial Interest under the Plan are expected to be the PBGC, RPHE and General Unsecured Creditors with Claims which ultimately are allowed above the threshold for Convenience Class treatment.

XII.

CONFIRMATION REQUIREMENTS AND PROCEDURES

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A CHAPTER 11 PLAN IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The Debtors CANNOT and DO NOT represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Court can confirm a plan. Some of the requirements include that the plan must be proposed in good faith, acceptance of the plan, whether the plan pays creditors at least as much as creditors would receive in a chapter 7 liquidation, and whether the plan is feasible. These requirements are not the only requirements for confirmation.

A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan, but, as explained below, not everyone is entitled to vote to accept or reject the Plan.

B. Who May Vote to Accept or Reject the Plan

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

C. What Is an Allowed Claim or Interest

As noted above, a creditor or interest holder must first have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest files an objection to the claim or interest. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THESE CASES ON ACCOUNT OF PREPETITION CLAIMS WAS APRIL 1, 2019. A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtors' schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest.

D. What Is an Impaired Claim or Interest

As noted above, an allowed claim or interest has the right to vote only if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they are owed.

The Debtors believe that members of classes 2 through 13 are impaired and are entitled to vote to accept or reject the Plan. Parties who dispute the Debtors' characterization of their claim

1 or interest as being impaired or unimpaired may file an objection to the Plan contending that the
2 Debtors have incorrectly characterized the class.

3 **E. Who Is Not Entitled to Vote**

4 The following four types of claims are not entitled to vote: (1) claims that have been
5 disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to §§ 507(a)(2),
6 (a)(3), and (a)(8); and (4) claims in classes that do not receive or retain any value under the Plan
7 (Classes 14 and 15). Claims in unimpaired classes are not entitled to vote because such classes are
8 deemed to have accepted the Plan. Claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and
9 (a)(8) are not entitled to vote because such claims are not placed in classes and they are required to
10 receive certain treatment specified by the Bankruptcy Code. Claims in classes that do not receive
11 or retain any value under the Plan do not vote because such classes are deemed to have rejected the
12 Plan. EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL
13 HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

14 **F. Who Can Vote in More Than One Class**

15 A creditor whose claim has been allowed in part as a secured claim and in part as an
16 unsecured claim is entitled to accept or reject the Plan in both capacities by casting one ballot for
17 the secured part of the claim and another ballot for the unsecured claim.

18 **G. Votes Necessary to Confirm the Plan**

19 If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired
20 class has accepted the Plan without counting the votes of any insiders within that class, and (2) all
21 impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by
22 “cramdown” on non-accepting classes, as discussed below.

23 **H. Votes Necessary for a Class to Accept the Plan**

24 A class of claims is considered to have accepted the Plan when more than one-half (1/2) in
25 number and at least two-thirds (2/3) in dollar amount of the claims which actually voted on the
26 plan, voted in favor of the plan. A class of interests is considered to have “accepted” a plan when
27 at least two-thirds (2/3) in amount of the interest-holders of such class which actually voted on the
28 plan, voted to accept the plan.

I. Treatment of Non-Accepting Classes

As noted above, even if all impaired classes do not accept the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner required by the Bankruptcy Code. The process by which non-accepting classes are forced to be bound by the terms of a plan is commonly referred to as “cramdown.” The Bankruptcy Code allows the Plan to be “crammed down” on non-accepting classes of claims or interests if it meets all consensual requirements except the voting requirements of § 1129(a)(8) and if the Plan does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan as referred to in § 1129(b) and applicable case law.

J. Request for Confirmation Despite Non-Acceptance by Impaired Class(es)

The Debtors will ask the Bankruptcy Court to confirm the Plan by cramdown on any and all impaired classes that do not vote to accept the Plan. However, it must be noted that the Debtors are, in large part, nonprofits, and, therefore, the applicability of the “absolute priority rule” is unclear. Some courts seemingly have concluded that the structural limitations of nonprofits render the absolute priority rule categorically inapplicable without the need for a fact-specific analysis of the ownership structure at issue. *See, e.g., In re Henry Mayo Newhall Mem’l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002) (“[T]he Hospital’s nonprofit status puts creditors in an unusually disadvantaged negotiating position because they are not able to assert the Bankruptcy Code’s absolute priority rule to block unacceptable plans”); *In re Independence Vill., Inc.*, 52 B.R. 715, 726 (Bankr. E.D. Mich. 1985) (“[The debtor] is a non-profit corporation. It has no shareholders, hence there are no interests inferior to the unsecured creditors. Thus there should be little difficulty with the absolute priority rule”) (citations omitted).

K. Liquidation Analysis

Another confirmation requirement is the “Best Interest Test”, which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the Plan property of a value not less than the amount that such holder

1 would receive or retain if the Debtors were forced to liquidate under chapter 7 of the Bankruptcy
2 Code.

3 First, it is not at all clear that this test applies in the bankruptcy of a nonprofit company.
4 The best interest test protects creditors by setting a baseline of distributions that a proposed plan
5 must provide to them. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy Code and
6 state law may preclude or restrict the forced sale of a nonprofit's assets. 11 U.S.C. §§ 1112(c), 303.
7 For example, under § 1112(c), a nonprofit's creditors cannot force a nonprofit to convert its chapter
8 11 case to a chapter 7, nor under § 303 can they file an involuntary petition against a nonprofit.
9 Similarly, state statute impose stringent requirements on the transfer or sale of a nonprofit debtor's
10 assets, *see, e.g.*, CAL. CORP. CODE §§ 5913, 7913, 9633 5, and the involuntary dissolution of a
11 nonprofit, *see, e.g.*, CAL. CORP. CODE §§ 6510-6519, 8510-8519, 9680. Accordingly, it is not at all
12 clear that the best-interest test applies because of the above described prohibitions on forcing a
13 nonprofit to liquidate its assets.

14 However, assuming that the best interests test applies to nonprofits, in a chapter 7 case, the
15 debtor's assets are usually sold by a chapter 7 trustee. Secured creditors are paid first from the
16 sales proceeds of properties on which the secured creditor has a lien. Administrative claims are
17 paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their
18 rights to priority. Unsecured creditors with the same priority share in proportion to the amount of
19 their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest
20 holders receive the balance that remains after all creditors are paid, if any.

21 For the Court to be able to confirm the Plan, the Court must find that all creditors and
22 interest holders who do not accept the Plan will receive at least as much under the Plan as such
23 holders would receive under a chapter 7 liquidation of the Debtors. The Debtors maintain that this
24 requirement is clearly met. Simply put, in the event of a conversion of the Chapter 11 Cases to
25 chapter 7, one or more chapter 7 trustees who are completely unfamiliar with the vast complexities
26 of these cases would be placed in charge, and would presumably hire new professionals who are
27 equally unfamiliar with the vast complexities of these cases. The result of all of that would be in
28 the incurrence of an extraordinary amount of additional professional fees incurred by professionals

1 who would need to familiarize themselves with these cases, all of which is avoided by the current
2 professionals, who are skilled and already intimately familiar with these cases, continuing with
3 their current roles. Presumably the treatment of creditors in the context of chapter 7 liquidations
4 would be the same as they are under the Plan. Through the significant cost savings of the confirmed
5 Plan as compared to conversion to chapter 7, holders of allowed claims will receive more under the
6 Plan than they would receive in converted chapter 7 bankruptcies (and certainly at least as much
7 under the Plan).

8 The advantages of finishing a liquidation in chapter 11 are not just “common knowledge”
9 among professionals. Experts have also concluded that conversion to chapter 7 offers few
10 advantages over liquidation in chapter 11: cases where the case converted from chapter 11 to
11 chapter 7 take significantly longer to resolve than a “pure” chapter 11 liquidation, requires similar,
12 if not greater, fees, and in the end provides creditors with statistically lower recovery rates—often
13 zero—than a comparable Chapter 11 procedure. See Arturo Bris, Ivo Welch and Ning Zhu, *The*
14 *Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, 61(3) THE
15 JOURNAL OF FINANCE 1253-1303 (Feb. 2006). As discussed in more detail in the Liquidation
16 Analysis attached as Exhibit A hereto, the Debtors have satisfied the “best interest of creditors test”
17 with respect to members of class who do not vote to accept the Plan. The Debtors submit that the
18 Plan provides fair and equitable treatment of all classes of creditors and the greatest feasible
19 recovery to all creditors.

20 **L. Feasibility**

21 Another requirement for confirmation involves the feasibility of the Plan, which means that
22 confirmation of the Plan is not likely to be followed by the liquidation, or the need for further
23 financial reorganization, of the Post-Effective Date Debtors.

24 There are at least two important aspects of a feasibility analysis. The first aspect considers
25 whether the Debtors will have enough cash on hand on the Effective Date to pay all the claims and
26 expenses which are entitled to be paid on such date. Since the Debtors already have enough cash
27 on hand to pay all the claims and expenses which are entitled to be paid on the Effective Date, this
28 first aspect of Plan feasibility has clearly been satisfied. The second aspect considers whether the

1 Post-Effective Date Debtors will have enough cash over the life of the Plan to make the required
2 Plan payments. Since the Plan is a liquidating Plan, where all Estate funds will be distributed to
3 holders of allowed claims, this second aspect of Plan feasibility has, by definition, been satisfied.

4 XIII.

5 RISK FACTORS REGARDING THE PLAN

6 Since the Plan is a liquidating Plan, the funds of the Debtors' Estates will be distributed to
7 holders of allowed claims, there is no traditional "risk" to the ability of the Debtors to perform
8 under the Plan. However, given the large number of uncertainties at this time, including (i) the
9 closing of the SGM Sale, (ii) the manner in which disputed Class 10 Claims will be resolved, and
10 (iii) the amount of net proceeds on Causes of Action which the Liquidating Trust will ultimately
11 recover, it is not possible for the Debtors to provide any reliable estimate at this time as to the
12 expected ultimate recovery of for Unsecured Claims.

13 The Plan is conditioned on the SGM Sale closing in Section 12.2 of the Plan, and the Plan
14 will not be feasible if the SGM Sale does not close because the sale proceeds are needed to fund
15 the Plan. Of particular note, the SGM Sale has not yet been approved by the Attorney General who
16 is currently reviewing the SGM Sale. If the Attorney General approves the SGM Sale with
17 conditions substantially similar to those set forth in Schedule 8.6, the Debtors anticipate the SGM
18 sale will close. If the conditions are not substantially similar to Schedule 8.6 and SGM will not
19 close based on those conditions, the Debtors will file a motion requesting the Court enforce the
20 order and the original conditions under § 363. If the SGM Sale does not close, it would have other
21 ramifications in these Cases. Among others, the Plan would need to be modified. Additionally,
22 while the Debtors cannot predict every scenario, it is likely the Debtors may need to close SVMC
23 and Seton due to their ongoing operating losses, which may result in them being sold as real estate
24 for redevelopment rather than a health care. For SFMC, it is more likely that it would be sold to
25 SGM, pursuant to an asset purchase agreement, or to an alternative buyer. There can be no
26 assurance that the Debtors can obtain extended access to cash collateral to provide the additional
27 liquidity or that an alternative source of financing would be available to fund operations at SFMC
28 until an alternative deal could be negotiated and closed. Any such financing may be on different

1 and more expensive and onerous terms. Any alternative sale transaction may also be subject to
2 approval by the Attorney General who may raise similar concerns about approving any alternative
3 transaction or buyer. Were any of the Hospitals to be closed instead of sold as a going concern, the
4 sales proceeds in a liquidation of the Hospitals would be many millions of dollars less than under
5 the SGM Sale, collection of receivables and fees may be reduced and delayed and there would also
6 be substantial additional claims, including, without limitation, additional rejection damage claims,
7 employee severance claims and other claims which are no longer being assumed or paid by SGM
8 as buyer. Employees would also lose their jobs and the community and patients would lose access
9 to a conveniently located safety net health care provider.

10 **XIV.**

11 **DEEMED SUBSTANTIVE CONSOLIDATION**

12 The Plan provides for the “deemed” substantive consolidation of the Debtors. This
13 Disclosure Statements sets forth (i) the legal requirements to establish deemed substantive
14 consolidation, and (ii) the factual bases supporting the Debtors’ request for deemed substantive
15 consolidation. As set forth in the Plan, this Disclosure Statement and the Plan shall be deemed a
16 motion requesting that the Bankruptcy Court approve the deemed substantive consolidation
17 contemplated by the Plan at the Confirmation Hearing, unless otherwise separately scheduled.
18 Objections to the proposed deemed substantive consolidation must be made in writing on or before
19 the deadline to object to confirmation of the Plan, or such other date as may be fixed by the
20 Bankruptcy Court. The Bankruptcy Court will schedule a hearing with respect to timely filed
21 objections, which the Bankruptcy Court may schedule contemporaneously with the Confirmation
22 Hearing. The Debtors reserve all rights with respect to such objections, including, but not limited
23 to, the right to further supplement the facts and legal analysis in support of deemed substantive
24 consolidation as set forth in this Disclosure Statement or the Plan.

25 If the Bankruptcy Court determines that deemed substantive consolidation of any given
26 Debtor is not appropriate, then the Debtors may request that the Bankruptcy Court otherwise
27 confirm the Plan and approve the treatment of, and distributions to, the different Classes under the
28 Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Debtors reserve their rights (i) to

1 seek confirmation of the Plan without implementing deemed substantive consolidation of any given
2 Debtor, and, in the Debtors' reasonable discretion, to request that the Bankruptcy Court approve
3 the treatment of and distributions to any given Class under the Plan on an adjusted, Debtor-by-
4 Debtor basis; and (ii) to seek to substantively consolidate all Debtors into VHS if all Impaired
5 Classes entitled to vote on the Plan vote to accept the Plan.

6 As will be set forth in more detail in the Debtors' brief in support of confirmation of the
7 Plan, the Debtors believe deemed substantive consolidation is appropriate here.

8 **A. The Effect of Deemed Substantive Consolidation**

9 Substantive consolidation refers to the consolidation of the assets and liabilities of different
10 legal entities "so that the assets and liabilities are dealt with as if the assets were held by, and the
11 liabilities were owed by, a single legal entity." 1 COLLIER ON BANKRUPTCY MANUAL,
12 ¶ 105.09[1][a] (2019). "The primary purpose of substantive consolidation 'is to ensure the
13 equitable treatment of all creditors.'" *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000) (quoting *In*
14 *re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988)); *see also Bonham*, 229 F.3d
15 at 765 ("fairness to creditors" is the "sole aim" of substantive consolidation) (citations omitted).
16 However, "[t]he requirement to 'benefit all creditors' does not mean each and every creditor but
17 rather the creditor body as a whole." *In re Owners Management Services LLC Trustee Corps.*, 530
18 B.R. 711, 739 (Bankr. C.D. Cal. 2015).

19 Upon entry of a substantive consolidation order, the "consolidated assets create a single
20 fund from which all claims against the consolidated debtors are satisfied; duplicate and inter-
21 company claims are extinguished; and, the creditors of the consolidated entities are combined for
22 purposes of voting on reorganization plans." *Bonham*, 229 F.3d at 764 (citing *Augie/Restivo Baking*
23 *Co., Ltd.*, 860 F.3d at 518).

24 "Deemed consolidation" is a court-developed alternative to substantive consolidation. The
25 primary distinction between the two is that, unlike substantive consolidation, the deemed
26 consolidation alternative will "not result in the merger of or the transfer or commingling of any
27 assets of the Debtors . . . [which] will continue to be owned by the respective Debtors." *In re Owens*
28 *Corning*, 419 F.3d 195, 202 (3d Cir. 2005) (quotations omitted). Simply put, substantive

1 consolidation actually combines debtors' assets and liabilities in a singular entity whereas deemed
2 consolidation merely treats the assets and liabilities as if they were pooled without actually merging
3 the debtor entities.

4 Here, as set forth below, deemed consolidation for creditor distribution purposes is
5 appropriate to avoid the impact consolidation of the legal entities may have on matters such as
6 licensing and the proposed sale-leaseback of certain Hospital assets post-confirmation, as set forth
7 in the SGM APA.

8 **B. The Facts of the Chapter 11 Cases Satisfy Each Independent Basis for Deemed**
9 **Substantive Consolidation**

10 Courts developed the deemed consolidation analysis, which is not otherwise set forth in the
11 Bankruptcy Code. *See Bonham*, 229 F.3d at 764 ("Although substantive consolidation was not
12 codified . . . courts, as well as the bankruptcy rules, recognize its validity and have ordered
13 substantive consolidation subsequent to the enactment of the Bankruptcy Code."). In the Ninth
14 Circuit, courts conduct the deemed substantive consolidation analysis on a "case-by-case" basis
15 following "a searching review of the record." *Bonham*, 229 F.3d at 765 (citation omitted). The
16 Ninth Circuit's case-by-case substantive consolidation analysis focuses on two, independent
17 factors. First, whether creditors dealt with the entities as a single economic unit, and did not rely
18 on their separate identity in extending credit. *See id.* at 766. Second, whether the affairs of the
19 debtor are so entangled that consolidation will benefit all creditors. *See id.* Additionally,
20 bankruptcy courts have identified a third, un-enumerated factor that goes to the heart of the
21 substantive consolidation analysis—whether the equities of the case demonstrate that substantive
22 consolidation is reasonable under the circumstances. *See, e.g., In re Bashas' Inc.*, 437 B.R. 874
23 (Bankr. D. Ariz. 2010).

24 The deemed substantive consolidation test is disjunctive, thus, the Debtors need only
25 demonstrate one of these factors. *See Bonham*, 229 F.3d at 766 ("The presence of *either* factor is
26 a sufficient basis to order substantive consolidation.") (emphasis added). As set forth below, the
27 facts of these Chapter 11 Cases meet each of these factors, and demonstrate that the Debtors are
28 entitled to the deemed substantive contemplated by the Plan.

1 **1. Creditors Dealt with the Debtors as a Single, Economic Unit.**

2 a. The Conditions Addressed the Debtors as a Single Economic Unit.

3 The Conditions imposed by the Attorney General applied structural and operational
4 limitations on the Debtors collectively as the Verity Health System. The Conditions were
5 developed and imposed on the Verity Health System collectively in such a manner that required
6 the Debtors to integrate financially. The Conditions required the Hospitals to remain general acute
7 care hospitals, and specified the number of beds that each Hospital had to maintain for particular
8 services. As discussed above, compliance with these stringent limitations caused extreme financial
9 hardship for the Hospitals individually. As a result, the profitable Hospitals were required to
10 subsidize the cash losses of the other Hospitals within the Verity Health System. Compliance with
11 the Conditions was only possible due to the Hospitals integration in the Verity Health System.

12 As significant, the Conditions approved governance changes that centralized management
13 and provided that the Debtors operate as one integrated health system—the Verity Health System.
14 In a letter regarding the Proposed Change in Governance and Control of Daughters of Charity
15 Health System, dated December 3, 2015, the Attorney General conditionally consented to a
16 proposed change in governance and control of “the Daughters of Charity Health System” rather
17 than any one Hospital. The October 2015 report prepared by MDS Consulting in connection with
18 the BlueMountain Transaction likewise addressed VHS and its affiliates as one entity, Verity
19 Health System. After the Conditions were imposed, the bylaws of VHS and each of the subsidiary
20 boards vested ultimate authority over major decisions to the VHS board. Indeed, following the
21 BlueMountain Transaction, the VHS board made major decisions that impacted the Hospitals and
22 all of the affiliated entities. Many other decisions were made at the health system-level.

23 b. The Debtors Obtained Secured Financing as a Single Economic Unit.

24 The Debtors’ secured lenders dealt with the Debtors as a single economic unit. Thus, this
25 factor is satisfied even if the Debtors never claimed to be a singular entity. *See, e.g., In re Abeinsa*
26 *Hldg., Inc.*, 562 B.R. 265, 280-81 (Bankr. D. Del. 2016) (finding creditor expectations were
27 satisfied by partial substantive consolidation where, among other things, “[t]he lenders under these
28 credit agreements received combined financial reports from the Debtors as to all obligors that were

1 parties to the applicable credit agreements, and calculated financial covenant compliance based on
2 the assets and liabilities of those entities”).

3 A substantial amount of the Debtors’ prepetition secured debt relates to loan and bond
4 obligations on which multiple debtors are obligated. Specifically, VHS, SFMC, SVMC, SMC,
5 OCH, and SLRH (collectively, the “Obligated Group Members”) entered into the 2005 Series A,
6 G and H Revenue Bonds, the 2015 Revenue Notes, and the 2017 Revenue Notes (collectively, the
7 “Obligated Bonds”).

8 The Obligated Bonds imposed joint and several liability on the Obligated Group Members,
9 and the terms of the Obligated Bonds only addressed the rights and obligations of the Obligated
10 Group members collectively, rather than on a Hospital-by-Hospital basis. Specifically, the loan
11 documents, with respect to the 2015 Revenue Notes and the 2017 Revenue Notes, provide for
12 “unfettered use of the funds loaned with respect to any of” the Obligated Group Members.
13 Moreover, the Master Trust covenants for Obligated Bond borrowings are Obligated Group-
14 oriented and are not Hospital-specific. The bond indentures for each series of Obligated Bonds are
15 identical for each Hospital and are always Obligated Group-based, rather than Hospital-based.

16 The terms of the postpetition adequate protection offered to the Obligated Bonds are no
17 different. The adequate protection approved by the Bankruptcy Court clearly contemplates the
18 continued joint and several nature of the relief as follows:

- 19 • adequate protection liens are joint and several as to the Obligated Group;
- 20 • adequate protection liens are subordinated and joint and several as to VMF and
21 Holdings;
- 22 • adequate protection superpriority claims are joint and several as to the Obligated
23 Group; and
- 24 • adequate protection superpriority claims are joint and several as to VMF and
25 Holdings, but subordinated to the McKesson Claim, the Secured MOB I Financing
26 Claim, and Secured MOB II Financing Claim.

27 Additionally, the Secured MOB I Financing Claim and Secured MOB II Financing Claim were
28 granted joint and several adequate protection liens and superpriority claims subordinated only to

the Obligated Bonds, with respect to the Obligated Group Members, and McKesson, with respect to VMF.

c. The Debtors Negotiated Major Contracts and Agreements as a Single Economic Unit.

Starting in 2015, after the BlueMountain Transaction, major contracts and agreements were negotiated or entered-into on a system-wide basis, such that counterparties dealt with the Verity Health System as a single economic unit. The Debtors received benefits by negotiating collectively, such as better terms or pricing, which resulted from the greater economies of scale of the Verity Health System. In light of these benefits, the Debtors standardized system-level contracting that normalized pricing for contracts (including physician-related contracts) across all Hospitals. The Debtors' critical system-wide contracts and negotiations include:

- group purchasing order contracts;
- collective bargaining agreements;
- other contracts;
- payor contracts;
- IT systems contracts; and
- health insurance and retirement benefits.

The restructuring that resulted from the BlueMountain Transaction further centralized the Debtors' purchasing functions. VBS, VHS, and VMF, for example, functioned as cost centers for the Debtors' system-wide operations. These cost-center Debtors did not generate revenue independently, and, as a result, are unable to repay obligations without transferring value from the Hospital Debtors. In light of the restructuring, separate-entity plans would likely be contrary to the expectations of creditors that viewed their agreements with cost-center Debtors as backed by the Verity Health System.

2. The Debtors' Affairs Are So Entangled That Consolidation Will Benefit All Creditors.

At first blush, the Debtors maintained the hallmarks of separate entities. The Debtors maintained separate boards for each entity, separate books and records, tracked intercompany

1 transactions, and maintained separate bank accounts, as set forth in the Cash Management Motion.
2 However, a more thorough analysis of the Debtors' finances and operations reveals significant
3 interconnectivity, which would prove costly and time-consuming to unwind at the expense of
4 recoveries in these Chapter 11 Cases. Accordingly, the interests of creditors are best served by
5 deemed substantive consolidation.

6 "Consolidation under the second factor, entanglement of the debtor's affairs, is justified
7 only where 'the time and expense necessary even to attempt to unscramble them [is] so substantial
8 as to threaten the realization of any net assets for all the creditors' or where no accurate
9 identification and allocation of assets is possible." *Bonham*, 229 F.3d at 766 (citing *Augie/Restivo*
10 *Baking Co., Ltd.*, 860 F.2d at 519). For example, in *SK Foods, LP*, the bankruptcy court found that
11 "substantive consolidation will benefit creditors by avoiding the cost (assuming it is even possible)
12 of trying to determine the proper characterization of intercompany transfers in order to ascertain
13 who owes what to whom." *In re SK Foods, LP*, 499 B.R. 809, 827 (Bankr. E.D. Cal. 2013).

14 Here, there are also significant facts related to entangled affairs among the Debtors that
15 weigh in favor of substantive consolidation. The Debtors engaged in the following complex,
16 prepetition intercompany transfers (not always booked as intercompany transfers), combined
17 accounting, valuation issues, and collective management that would prove difficult and costly to
18 creditors to unwind or reconcile:

- 19 • VMF was historically supported by near-weekly funding from other Debtors. However,
20 these contributions are booked as direct net asset contributions rather than intercompany
21 loans. Further, the Debtors that provided funding to VMF have varied over time based
22 on cash availability.
- 23 • The Restructuring Agreement provided \$100 million of net asset funding to VHS;
24 however, beginning June 2016, \$74 million of this funding was transferred to Holdings
25 (a non-Obligated Group Member), and booked as a direct net asset contribution rather
26 than an intercompany loan.

- Members of the Obligated Group transferred real estate collateral to Holdings (a non-Obligated Group member) to be used as collateral for the MOB Financings; however, this was not booked as an intercompany transfer.
- The initial capitalization of Holdings is understated given that the transferred property was based on book value. The book value of transferred assets in FY2016 was \$21.8 million, but the FY2017 MOB I Loan Agreement provided for \$46.2 million in financing based upon appraisals for the same asset transfers.
- Although, the Hospitals generally used their own, separate bank accounts, the intercompany transfer activity is significant. From July 2015 to June 2018, booked intercompany transfers exceeded \$1.1 billion. Further, the transfers booked as “net asset transfers” exceeded \$589.1 million for the same period.
- Management and decision-making was centralized following the BlueMountain Transaction. For example, BlueMountain replaced pre-transaction boards at each hospital with Blue Mountain nominees. Additionally, outside consultants were retained at the system-level and strategic plans were also focused at the system-level since the BlueMountain Transaction.
- Since the BlueMountain Transaction, decisions to hire physicians and determine contract terms are made jointly by the VHS Chief Medical Officer and individual Hospital chief executive officers.
- Hospitals benefitted individually from the system-level contracts. For example, SFMC’s profitability is based on periodic Quality Assurance Payments. These Quality Assurance Payments are not only a result of the patient population, but also (i) the system-negotiated contracts which are incorporated in the Quality Assurance Payment formula, and (ii) consultants engaged by the Verity Health System to optimize Quality Assurance Payments for all of the Hospitals.
- SFMC’s capital improvements (i.e., the construction of the new patient tower) were financed by tax exempt financings undertaken on a joint and several basis among members of the Obligated Group. This burden shared by the other members of the

Obligated Group compensated SFMC for the system's use of excess Quality Assurance Payment entitlements.

Unwinding the transactions to prepare separate-Debtor plans would require time and allocations and assumptions. By way of example, prepetition and postpetition allocations by the estates may be subject to challenge as follows:

- Purchase price allocations are inconsistent with the actual value of certain Debtors' assets. For example, SCC attributed value from the MOB Financings to SLRH and none to Holdings. SGM also attributes value from the MOB Financings to the Hospitals and none to Holdings.
- Allocation of DIP Financing proceeds among the Debtors will be challenging because the current allocation fails to account for the "net asset transfers" to VMF, reimbursement claims constitute potential adequate protection claims of the obligated bonds and MOB Financings, and the current allocation fails to track asset sale proceeds to the detriment of 2005 Series A, G and H Revenue Bonds.
- Professional fees must also be allocated among the Debtors if the Debtors cases are not consolidated. This task would require, for each time entry, an analysis of which Debtor, or Debtors, benefitted from the particular services. Although laborious, such an analysis directly impacts creditors if the cases are not consolidated given that Professional Claims receive priority treatment.
- The system-wide changes that took effect since 2015 severely limit any assumptions based on the Debtors' historic operations. The changes were significant and took place during the relatively short, three-year period between the BlueMountain Transaction and the Petition Date. The Debtors capital structure also changed significantly during the same time—the Debtors incurred liabilities in excess of \$400 million related to capital investments, the 2015 Revenue Notes and 2017 Revenue Notes, the MOB Financings, the Unsecured Notes, and deferred fees under the Management Agreement.

- The staggered timing of the SCC Sale and the SGM Sale compound the allocation challenges with respect to the Debtors' postpetition liabilities, particularly given that certain Debtors continue to operate in some capacity post-closing.

Moreover, different asset valuation or liability allocation assumptions will lead to different results in both asset allocations among Debtors and balances available for distributions to unsecured creditors. Given that the analysis necessarily requires substantial judgment, these assumptions would present a basis for objection and conjecture from creditors attacking the Debtors' separate plans. Preserving funds in the Estates and avoiding litigation costs maximizes value and weighs in favor of substantive consolidation under the circumstances in these Chapter 11 Cases.

XV.

POST-CONFIRMATION ISSUES

A. Modification of the Plan

The Debtors reserve the right to modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or re-voting on the Plan if the Debtors modify the Plan before confirmation. The Debtors may also seek to modify the Plan at any time after confirmation of the Plan if (i) the Plan has not been substantially consummated, and (ii) the Court authorizes the proposed modifications after notice and a hearing.

B. Post-Confirmation Status Reports

Until final decrees closing the Debtors' chapter 11 cases are entered, the Reorganized Debtors shall file quarterly status reports with the Court explaining what progress has been made toward consummation of the confirmed Plan.

C. Post-Confirmation Conversion or Dismissal

A creditor or any other party in interest may bring a motion to convert or dismiss these cases under § 1112(b) after the Plan is confirmed if there is a default in performing the Plan. If the Court orders these Chapter 11 Cases converted to chapter 7 after the Plan is confirmed, then all property that had been property of these chapter 11 estates, and that has not been disbursed pursuant to the Plan, will revert in the chapter 7 estates, and the automatic stay will be reimposed upon the revested property, but only to the extent that relief from stay was not previously authorized by the Court

during these cases. The Plan Confirmation Order may also be revoked under very limited circumstances. The Court may revoke the Plan Confirmation Order if it was procured by fraud and if a party in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of the Plan Confirmation Order.

D. Final Decree

Once the Estates have been fully administered as referred to in Bankruptcy Rule 3022, the Reorganized Debtors shall file a motion with the Court to obtain final decrees to close these Chapter 11 Cases. The Reorganized Debtors shall be responsible for the timely payment of all fees incurred pursuant to 28 U.S.C. § 1930(a)(6).

Dated: September 3, 2019

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EXHIBIT 25

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

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

Debtors and Debtors In Possession.

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

Jointly administered with:

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**DEBTORS' EMERGENCY MOTION FOR (I) ISSUANCE
OF AN ORDER TO SHOW CAUSE WHY STRATEGIC
GLOBAL MANAGEMENT, INC. FAILED TO CLOSE
THE SALE TRANSACTION BY DECEMBER 5, 2019;
AND (II) ENTRY OF AN ORDER ENFORCING PRIOR
COURT ORDERS REQUIRING STRATEGIC GLOBAL
MANAGEMENT, INC. TO CLOSE THE SALE
TRANSACTION BY DECEMBER 5, 2019**

[RELATED TO DOCKET NOS. 2306, 3724]

Hearing Date and Time:

Date: TBD

Time: TBD

Place: Courtroom 1568,
255 E. Temple Street
Los



182015119120600000000009

EMERGENCY MOTION

Pursuant to LBR¹ 9020-1 and 9075-1, Rule 6004, and §§ 363 and 105(a), Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request, on an emergency basis (the “Motion”), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. (“SGM”) and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court’s order [Docket No. 3724] (the “Closing Order”) requiring SGM to close the sale (the “SGM Sale”) pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “APA”) by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors’ request for an order (a) enforcing this Court’s order [Docket No. 2306] (the “Sale Order”) approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer immediate and irreparable harm without the relief requested in this Motion. The

¹ All references to “§” herein are to sections of the “Bankruptcy Code,” 11 U.S.C. §§101, *et seq.* unless otherwise noted. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure. All references to “LBR” refer to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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1 prompt sale and transition of the Debtors' four remaining general acute care hospitals² is needed to
2 prevent any deterioration in critical healthcare in underserved communities caused by accelerating
3 employee turnover, as well as the operating losses continuing to reduce anticipated recoveries to
4 creditors. The Debtors (i) are operating at a loss of approximately \$450,000 per day, imposing
5 significant costs upon the estates and upon creditors, and (ii) the uncertainty caused by SGM has
6 significantly increased the rate of employee turnover at Verity's hospitals, a void filled by expensive
7 per diem, temporary nurses and *locum tenens* physicians at a much greater cost to the estates.
8 Finally, but crucially, the APA specifically provides that "[t]ime is of the essence." See APA at §§
9 12.17. SGM's failure to close the Sale violates the express terms of the APA, as well as this Court's
10 unambiguous Orders. In order to make critical decisions impacting the Hospitals and alternative
11 plans, the Debtors must have immediate clarity on (i) whether SGM has the financial ability to
12 proceed with the Sale transaction, and (ii) whether SGM intends to proceed with the Sale transaction
13 in 2019. SGM steadfastly has refused to provide such critical information to the Debtors, even in
14 the face of its utter failure to comply with this Court's prior Orders. This Court's immediate
15 intervention is respectfully requested and required.

16 **I.**

17 **SUMMARY OF REQUESTED RELIEF**

18 As set forth above, the Debtors seek the entry of three orders. **First**, pursuant to LBR 9020-1,
19 the Debtors respectfully request that the Court issue an order to show cause, lodged concurrently
20 herewith pursuant to LBR 9020-1(a), on an expedited basis ordering SGM and its principals, Kali
21 Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11,
22 2019, at 10:00 a.m., and show cause as to why SGM failed to (a) close the SGM Sale by December
23 5, 2019, (b) comply with this Court's Closing Order, (c) demonstrate to the Debtors that SGM
24 currently has the financial ability or access to sufficient capital to timely proceed with this
25 transaction in accordance with the APA, and (d) advise the Debtors as to SGM's intention to close
26 _____

27 ² Specifically, the hospitals and healthcare facilities subject to the SGM Sale include St. Francis
28 Medical Center, St. Vincent Medical Center, Seton Medical Center (including the Daly City and
Coastside campuses), and St. Vincent Dialysis Center.

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1 the transaction. Given the exigencies of the Debtors' Cases, the Debtors respectfully request that
2 the Court reduce the 7-day opposition or response deadline set forth in LBR 9020-1(b), or
3 provisionally issue the order to show cause and provide that parties may object to the issuance at
4 the hearing on the order to show cause. Pursuant to LBR 9020-1, the Court is not required to hold
5 a hearing on the Debtors' request to issue the order to show cause. *See* LBR 9020-1(d)(2). **Second**,
6 the Debtors respectfully request that the Court enter an order setting the balance of the relief
7 requested in this Motion and the attached Memorandum of Points and Authorities for an emergency
8 hearing on December 11, 2019, at 10:00 a.m. **Third**, following the emergency hearing, the Debtors
9 request entry of an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that
10 SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by
11 December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further
12 notice to SGM, (d) finding that the Debtors shall retain the \$30 million non-refundable deposit
13 received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final
14 DIP Order [Docket No. 409], and (e) granting such other and further relief as the Court deems just
15 and proper

16 This Motion is based upon §§ 105 and 363, Rule 6004, LBR 9020-1 and 9075-1(a), the
17 attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in Support of*
18 *Emergency First-Day Motions* [Docket No. 8], the *Declaration of Richard G. Adcock* [Docket No.
19 3188], the *Declaration of Richard G. Adcock* [Docket No. 3644], the *Declaration of Carsten Beith*
20 (the "Beith Declaration"), *Declaration of Sonia R. Martin* (the "Martin Declaration"), and the
21 *Declaration of Elspeth Paul* (the "Paul Declaration"), which are filed concurrently herewith, the
22 arguments and statements of counsel to be made at the hearing on the Motion, and any other
23 admissible evidence as may properly be brought before the Court. The Debtors further request that
24 the Court take judicial notice of all documents filed with the Court in this case that relate to the
25 status conference held before the Court on November 26, 2019, including the Debtors' status report
26 [Docket No. 3692], the documents filed under seal pursuant to the Court's orders [Docket Nos.
27 3679, 3699], and SGM's reservation of rights [Docket No. 3701].
28

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1 II.

2 **RESPONSES**

3 By this Motion, the Debtors have requested that the Court issue the order to show cause on
4 an expedited basis. Any party opposing or responding to the Debtors' request that the Court issue
5 an order to show cause pursuant to LBR 9020-1 may present such opposition or response as directed
6 by the Court in any subsequent order.

7 Any party opposing or responding to any other relief requested in the Motion may present
8 such response (the "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-
9 1(a)(8). A Response must be a complete written or oral statement of all reasons in opposition to the
10 Motion or in support, declarations and copies of all evidence on which the responding party intends
11 to rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the
12 failure to file and serve a timely objection to any request for relief set forth in the Motion may be
13 deemed by the Court to be consent to the relief requested herein.

14 III.

15 **SERVICE OF MOTION**

16 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
17 Authorities, the concurrently-filed Beith Declaration, Martin Declaration and Paul Declaration, and
18 any notice required by the Court on: (i) Strategic Global Management, Inc., (ii) the Official
19 Committee of Unsecured Creditors, (iii) the Debtors' Prepetition Secured Creditors as defined in
20 the Final DIP Order, (iv) the Office of the United States Trustee; and (v) any other parties on the
21 Limited Service List set forth in the *Order Granting Emergency Motion of Debtors for Order*
22 *Limiting Scope of Notice* [Docket No. 132]. To the extent necessary, the Debtors request that the
23 Court waive compliance with LBR 9075-1(a)(6) and approve service (in addition to the means of
24 services set forth in such Local Bankruptcy Rule) by overnight delivery.

25 IV.

26 **RESERVATION OF RIGHTS**

27 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
28 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in

1 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
2 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
3 holder.

4 **V.**

5 **CONCLUSION**

6 WHEREFORE, for all the foregoing reasons and such additional reasons as may be
7 advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the
8 Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a),
9 on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas,
10 and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause
11 as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5,
12 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with
13 this transaction in accordance with the APA, and whether it intends to close the transaction; and
14 (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points
15 and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the
16 Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding
17 that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale
18 by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without
19 further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable
20 deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of
21 the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court
22 deems just and proper.

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1 Dated: December 6, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
SONIA R. MARTIN
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

5 By /s/ Tania M. Moyron
Tania M. Moyron

Attorneys for Verity Health Systems of
California, Inc., *et al.*

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MEMORANDUM OF POINTS AND AUTHORITIES

Verity Health System Of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), respectfully request, on an emergency basis (the “Motion”), that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a), on an expedited basis ordering Strategic Global Management, Inc. (“SGM”) and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court’s order [Docket No. 3724] (the “Closing Order”) requiring SGM to close the sale (the “SGM Sale”) pursuant to that certain asset purchase agreement [Docket No. 2305-1] (the “APA”) by no later than December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors’ request for an order (a) enforcing this Court’s order [Docket No. 2306] (the “Sale Order”) approving the SGM Sale and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

The Motion is based on the *Declaration of Richard Adcock in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”), the *Declaration of Richard G. Adcock* [Docket No. 3188] (“Adcock Declaration”), the *Declaration of Carsten Beith* (the “Beith Declaration”), *Declaration of Sonia R. Martin* (the “Martin Declaration”), and the *Declaration of Elspeth Paul* (the “Paul Declaration”), which are filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, the record in the Debtors’ Cases

1 and any other judicially noticeable facts, and other admissible evidence properly brought before
2 the Court. In further support of the Motion, the Debtors respectfully state as follows:

3 I.

4 **INTRODUCTION**

5 Six months after this Court entered the order (the “Sale Order”)¹ authorizing the Debtors to
6 sell their four remaining general acute care hospitals² and St. Vincent Dialysis Center (the
7 “Hospitals”) to SGM, the Court entered its order, on November 27, 2019, obligating SGM to close
8 the SGM Sale pursuant to the APA by December 5, 2019 (the “Closing Order”).³ The Court’s
9 Closing Order also found that there has been no material adverse effect under the APA, and that
10 the APA does not permit SGM to appeal this Court’s determination as to that issue.

11 Despite the clear requirements of the APA and in direct contravention of this Court’s prior
12 Orders, SGM announced that it *would not close the SGM Sale—and, then, did not close the SGM*
13 *Sale—by December 5, 2019*. In a transparent attempt to delay this proceeding, frustrate the
14 Debtors’ ability to transfer the Hospitals pursuant to the APA, and manufacture a context to
15 renegotiate the purchase price under the APA, SGM has filed three frivolous appeals. Further,
16 SGM has taken the facially implausible position that it is entitled to a 21-day “Evaluation Period”
17 under Section 8.6 of the APA, during which it may “determine” whether it is satisfied with the
18 Attorney General Order that provides precisely the same protection that is set forth in Section 8.6
19 of the APA. Docket No. 2305-1. These actions expressly violate this Court’s Orders and the APA.
20 *See, e.g.,* APA, § 1.3 (“ . . . Purchaser shall reasonably cooperate in any efforts to render the
21 Supplemental Sale Order a final, non-appealable order[.]”).

22 Each day that goes by without prompt action by SGM to close this transaction harms the
23 estates. The Debtors’ estates and their constituents have already borne operating losses of

24
25 _____
26 ¹ Docket No. 2306.

27 ² Specifically, the Hospitals include St. Francis Medical Center, St. Vincent Medical Center, and
Seton Medical Center (including the Daly City and Coastsides campuses).

28 ³ Docket No. 3723-24.

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1 approximately \$450,000 per day waiting for SGM to close the SGM Sale. SGM's failure to timely
2 issue offer letters has had a negative impact on employee morale. Moreover, the Debtors and third
3 parties have expended tremendous efforts to prepare for and close the SGM Sale in reliance on the
4 Sale Order and the Closing Order. Despite this, SGM has intentionally frustrated the closing
5 process by refusing to participate. In addition to announcing that it would not close the SGM Sale
6 on December 5, as ordered by the Court, throughout the week leading up to the filing of this Motion,
7 SGM has refused to participate in the regular, pre-scheduled joint closing calls and operational
8 transition calls, apparently based on the advice of its counsel.

9 By signing the APA, SGM represented and agreed that "[p]urchaser has the ability to obtain
10 funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and
11 will at the Closing have immediately available funds in cash, which are sufficient to pay the
12 Purchase Price and to pay any other amounts payable pursuant to this Agreement and to
13 consummate the transactions contemplated by this Agreement." Given the actions and inactions of
14 SGM over the past month, which suggest SGM lacks the financial ability to close the SGM Sale,
15 the Debtors have made repeated and direct requests that SGM state whether it has the financial
16 ability to close the SGM Sale, and whether it intends to do so. SGM has refused to respond,
17 attempting to distract from its apparent financial inability to perform and seeking to preserve the
18 ability to argue at some later date that the Debtors breached the APA by deciding prematurely to
19 distribute their assets in a different manner, *i.e.* "Plan B" as it was referred to during the November
20 26, 2019, status conference.

21 SGM is in direct violation of this Court's prior Orders. Its conduct is an effort to gain
22 leverage against the Debtors in order to force a modification of the APA as to price and/or timing
23 of closing. Such efforts are a manifestation of SGM's lack of good faith and fair dealing under the
24 APA and constitute willful misconduct designed to harm the Debtors and impair the effectiveness
25 of this Court's orders, *i.e.*, its actions have been taken in bad faith. The Debtors respectfully urge
26 the Court to issue an order (i) enforcing this Court's Sale Order and Closing Order; (ii) ordering
27 SGM and its principals, Kali Pradip Chaudhuri, William Thomas and Peter Baronoff, to appear in
28 this Court, on December 11, 2019, and show cause as to why SGM failed to (a) close the SGM Sale

1 by December 5, 2019, (b) comply with this Court’s Closing Order, (c) demonstrate to the Debtors
2 that SGM currently has the financial ability or access to sufficient capital to timely proceed with
3 this transaction in accordance with the APA, and (d) advise the Debtors as to SGM’s intention to
4 close the transaction; (iii) finding that SGM is in material breach of the APA for (among other
5 things) failing to Close the SGM Sale by December 5, 2019; (iv) finding that the Debtors may
6 terminate the APA at any time without further notice to SGM; (v) finding that the Debtors shall
7 retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the
8 meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; (vi) granting such
9 other and further relief as the Court deems just and proper.

10 II.

11 JURISDICTION, VENUE, AND STATUTORY PREDICATES

12 The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157
13 and 1334. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant
14 to 28 U.S.C. §§ 1408 and 1409.

15 The Motion seeks an order of the Court enforcing the terms of its final order approving the
16 SGM Sale [Docket No. 2306] and its order [Docket No. 3723-24] obligating SGM to close the
17 SGM Sale, as well as to show cause to SGM for its failure to comply. The statutory predicates for
18 this relief are §§ 363 and 105, and Bankruptcy Rule 6004. This Court “plainly ha[s] jurisdiction to
19 interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151,
20 (2009); *see also In re Millenium Seacarriers, Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) (“A bankruptcy
21 court retains jurisdiction to interpret and enforce its own orders” (quoting *Luan Inv. S.E., v.*
22 *Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230 (2d Cir.2002))).

23 III.

24 FACTUAL BACKGROUND

25 1. On May 2, 2019, this Court entered its *Order (A) Authorizing the Sale of Certain of*
26 *the Debtors’ Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims,*
27 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of An*
28 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (“Sale

Order”), approving the SGM Sale pursuant to the APA. Since this Court issued its Sale Order, the Debtors have engaged in extensive, time-consuming efforts on multiple fronts to transition the Hospitals to SGM. By way of example: (i) the Debtors have sent multiple rounds of WARN notices to all employees; (ii) medical groups affiliated with the Debtors have sent termination notices to their physicians; (iii) thousands of counterparties to executory contracts and unexpired leases have relied on the Sale Order and continued to provide services in reliance on the finality of that Sale Order; (iv) the Debtors and SGM have spent almost an entire year facilitating an efficient close of the SGM Sale and developing transition plans as appropriate, including the transition of various licenses, employees, etc.; (v) the Debtors and SGM spent months successfully negotiating and reaching modified collectively bargaining agreements with all of the unions; (vi) the Debtors spent months reaching finality with the California Attorney General, the Centers for Medicare and Medicaid Services, and the California Department of Health Care Services; and (vii) created plans to shut off certain services and modify various insurance policies.

2. On October 23, 2019, the Court issued a *Memorandum of Decision Granting the Debtors’ Emergency Motion to Enforce the Sale Order* [Doc. No. 3188]. [Docket 3446.] Following extensive negotiations, the Debtors and the Attorney General reached a *Stipulation Resolving “Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief”* [Docket No. 3188]. [Docket 3572.] Accordingly, on November 14, 2019, the Court issued an *Order Granting “Debtors Emergency Motion for the Entry of an Order: (I) Enforcing the Sale Order Authorizing the Sale to Strategic Global Management, Inc.; (II) Finding That the Sale Is Free and Clear of Conditions Materially Different Than Those Approved by the Court; (III) Finding That the Attorney General Abused His Discretion in Imposing Conditions on That Sale; and (IV) Granting Related Relief”* [Doc. 3188] [Docket 3611] (the “Enforcement Order”).

3. APA section 1.3 obligates SGM to close the sale “promptly but no later than ten (10) business days following the satisfaction” of all conditions precedent. On November 18, 2019, the Court issued an Order finding that: “The Debtors have complied with their obligation under the APA to obtain a final, nonappealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied.” Docket No. 3632.

4. On November 19, 2019, the Debtors obtained a settlement with the Centers for Medicare and Medicaid Services providing for the transfer of their Medicare Provider Agreements to SGM, thereby satisfying their remaining obligations under Article 8.7 of the APA. Docket No. 3680. With respect to California Department of Health Care Services (“DHCS”), the Debtors secured an Order [Docket No. 3372] from the Bankruptcy Court authorizing the transfer free and clear of any interests asserted by DHCS, in addition to the Sale Order which terminated any creditor’s recoupment rights [Docket No. 2306]. Those Orders afford equal or greater protection to SGM than any settlement could have, thereby satisfying Section 8.7. In addition, on November 22, 2019, the Debtors reached a settlement in principle with DHCS to the same effect. *See* Nov. 26, 2019 Hr’g Tr. at 10:18-24.

5. As set forth in the Debtors’ status report [Docket No. 3692] (the “Status Report”), Debtors sent a letter to SGM, on November 20, 2019, stating (i) the conditions to close under the APA had been satisfied on November 19, 2019, and that (ii) the transaction should promptly close by December 5, 2019. *See* Status Report at 1. The letter requested assurances from SGM that the transaction would close by that date. *See id.*

6. On November 19, 2019, SGM’s CEO, Peter Baronoff, telephoned the Debtors’ investment banker and stated that SGM could not obtain sufficient financing for the transaction, contrary to Section 3.9 of the APA. [Docket No. 3644.] That telephone call immediately resulted in the Debtors’ request for an order [entered at Docket No. 3646] continuing the hearing on the Debtors’ motion [Docket No. 2995] for approval of its disclosure statement [Docket No. 2994]. *See* Beith Decl., ¶ 2. Recognizing that the existence of financing is not a condition to close, SGM resorted to making unfounded and self-serving assertions that the Debtors breached the APA and

1 embarked on impermissible efforts to re-trade the purchase price without regard to: (i) the language
2 in the APA; (ii) the indisputable fact that SGM's diligence period had expired in January 2019;
3 (iii) SGM's prior representations; and (iv) the fact that all conditions of the Debtors to close had
4 been satisfied.

5 7. On November 22, 2019, SGM sent the Debtors letters from Gary Klausner, Esq. of
6 Levene, Neale, Bender, Yoo & Brill L.L.P. and Robert W. Lundy, Jr. of Hooper, Lundy &
7 Bookman, P.C. (with enclosures), setting forth the issues that SGM had asserted amounted to a
8 "Material Adverse Effect" under the APA [Docket No. 3705] (the "November 22, 2019 Letters").⁴
9 The issues SGM raised at the eleventh hour were not "new"—they were all known or discoverable
10 during the diligence period. And none of them change the inescapable conclusion that this
11 transaction was required to close by December 5 because the Debtors and SGM negotiated the sale
12 as an "AS IS, WHERE IS" sale under the express terms of the APA. SGM's untimely, baseless
13 and immaterial complaints were nothing more than a transparent attempt to delay the closing and
14 manufacture a basis for a re-trade to obtain a lower purchase price.

15 8. On November 26, 2019, the Court held a Status Conference. In advance of the
16 Status Conference, SGM filed a Reservation of Rights, alleging (among other things) that "there
17 are no genuine disputes of material fact as to the [sic] whether there have been Material Adverse
18 Effects under the terms of the APA." [Docket 3701.] In addition, the Debtors lodged with the
19 Court SGM's November 22, 2019 Letters. At the status conference, the Court rejected SGM's
20 arguments, stating (among other things) that "[a]s far as the Court is concerned" SGM is the "proud
21 owner" of the Debtors' assets as set forth in the APA, and that SGM "has an obligation to close"
22 the transaction pursuant to the APA. (Nov. 26, 2019 Hr'g Tr. at 12:22-24, 14:10-11.)

23 9. On November 27, 2019, the Court issued an Order finding that, "[p]ursuant to § 1.3
24 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019." [Docket
25 3724.] The Memorandum Decision supporting that Order concluded, among other things, that
26 (i) "Adjudication of SGM's Obligations Under the APA Does Not Require an Adversary
27

28 ⁴ The November 22, 2019 Letters were filed under seal pursuant to Court order [Docket No. 3699].

1 Proceeding,” (ii) “Adjudication of SGM’s Obligations Under the APA Is Not Premature,” (iii)
2 “SGM Is Not Entitled to Appeal the Bankruptcy Court’s Determination Regarding a Material
3 Adverse Effect,” (iv) “No Material Adverse Effect Has Occurred,” (v) “All Conditions Precedent
4 to Closing Have Been Satisfied.” [Docket 3723.] The Court further concluded that:

5 SGM’s contention that it is not obligated to close is a cynical attempt
6 to extract a better purchase price. A key component of SGM’s
7 negotiation strategy is its attempt to delay as long as possible the
8 adjudication of its obligations under the APA. The Court will not
9 facilitate SGM’s dubious tactics.

10 * * *

11 By presenting non-meritorious arguments as to why it is not
12 obligated to close, SGM is holding the estates, creditors, and patients
13 of the Hospitals hostage in an attempt to extort a better purchase
14 price. SGM’s cynical tactics are especially offensive given the
15 significant harm that closure of the Hospitals would impose upon
16 patients. For example, two of the Hospitals that would likely close
17 upon failure of the SGM Sale contain large populations of long-term
18 patients suffering from severe illnesses, all of whom would have to
19 be relocated to other facilities.

20 [Id., pp, 6-7.]

21 10. On November 29, 2019, SGM filed two notices of appeal [Docket Nos. 3726, 3727]
22 related to (i) the order granting the Debtors’ motion to enforce the sale order [Docket No. 3611],
23 and (ii) the order finding that SGM is obligated to promptly close the transaction under section 8.6
24 of the APA provided all other conditions to closing are satisfied [Docket No. 3633].

25 11. This week, beginning Monday, December 2, 2019, SGM representatives failed to
26 participate in five pre-scheduled operations closing calls, stating that they were doing so on the
27 advice of SGM’s counsel. *See* Paul Decl., ¶ 2.

28 12. On December 3, 2019, the Debtors emailed SGM, expressing continued concern for
the delay and the impact on the Hospitals, including that many employees no longer have
confidence that SGM will purchase the hospitals given that they are still waiting for formal offers,
that the Hospitals continue to flex staff and registry to manage patient care, and that vendors and
the Hospitals’ risk pool participants/IPAs have expressed concern that SGM does not intend to
close the transaction. *See* Martin Decl., ¶ 2, Ex. A. In response, SGM announced that it would not

1 close the Sale by December 5, and that it had filed a notice of appeal [Docket No. 3746] of the
2 Court's Closing Order. *See id.*, ¶ 3, Ex. B.

3 13. On December 4 and 5, 2019, the Debtors sent additional demands to SGM for
4 information and assurances bearing on whether it has the financial ability to perform the APA and
5 whether it intends to do so. *See* Martin Decl., ¶¶ 4, 6, Exs. C, E. SGM has not provided this
6 information to Debtors. *Id.* ¶ 8.

7 IV.

8 **ARGUMENT**

9 SGM is unquestionably in violation of this Court's Sale Order and Closing Order, and time
10 is of the essence. Bankruptcy courts have the inherent power and authority to enforce their own
11 orders, including levying sanctions and/or civil contempt against violating parties. *See Travelers*
12 *Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) (finding that the "Bankruptcy Court plainly had
13 jurisdiction to interpret and enforce its own prior orders"); *see also In re Millenium Seacarriers,*
14 *Inc.*, 419 F.3d 83, 96 (2d Cir. 2005) ("A bankruptcy court retains jurisdiction to interpret and
15 enforce its own orders[.]") (quoting *Luan Inv. S.E., v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*,
16 304 F.3d 223, 230 (2d Cir.2002)); *In re Azevedo*, 506 B.R. 277, 282 (Bankr. E.D. Cal. 2014); *In re*
17 *Gonzales*, 512 B.R. 255, 258 (Bankr. C.D. Cal. 2014) ("Bankruptcy court[s] have always been
18 empowered to interpret and enforce their own orders.").

19 Accordingly, the Debtors request the following emergency relief:

20 A. **The Court Should Order SGM's Principals To Appear And Show Cause.**

21 SGM did not close the SGM Sale by December 5, 2019, in direct contravention of the
22 Court's Sale Order and Closing Order. Accordingly, the Court should order the appearance of
23 SGM's principals and explanation of why they did not comply because they are in contempt of the
24 Court's Order. There is no disputing that the Court's order directed SGM to close on December 5,
25 2019 and was, therefore, a specific and definite order of the Court. Given that fact, SGM must
26 appear before the Court and explain why it did not comply or be held in contempt. *See, e.g., Stone*
27 *v. City and County of San Francisco*, 968 F.2d 850, 856 n. 9 (9th Cir.1992) ("The moving party
28 has the burden of showing by clear and convincing evidence that the contemnors violated a specific

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1 and definite order of the court. The burden then shifts to the contemnors to demonstrate why they
2 were unable to comply.”).

3 While refusing to Close the transaction by December 5, 2019 in accordance with the Court’s
4 Closing Order, SGM has simultaneously and steadfastly refused to state whether it has the financial
5 ability to close the SGM Sale and whether it ever intends to do so. As explained above, SGM’s
6 conduct strongly suggests that it has no intention of closing this transaction, as underscored by the
7 recent statement of its CEO Peter Baronoff that SGM lacks the ability to secure funding at the level
8 required for the purchase price under the APA. The Debtors have repeatedly and directly
9 confronted SGM regarding whether it has the financial wherewithal to comply with the APA. SGM
10 has consistently dodged those questions with the pretense that it is entitled to an alleged “Evaluation
11 Period” under Section 8.6. SGM’s position is meritless for at least three reasons.

12 First, the Evaluation Period contemplated by Section 8.6 is only triggered when the
13 Attorney General is imposing conditions that *materially differ* from the conditions to which SGM
14 agreed under the APA, i.e., the Purchaser Approved Conditions. Because the Attorney General is
15 not imposing any such conditions, no Evaluation Period is implicated. Second, as the Court
16 previously found, “SGM is judicially estopped from contending that it is entitled to the Evaluation
17 Period and is not obligated to promptly close the sale” based on “its prior representations regarding
18 its obligation to close the sale.” [Docket No. 3632, pp. 4-5.] Third, even if a 21-business day
19 Evaluation Period had been triggered (which the Debtors dispute), Section 8.6 provides that SGM
20 “shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-
21 appealable order” and “shall consummate the Sale” if “the Supplemental Sale Order becomes a
22 final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other
23 conditions to closing have been satisfied.” Here, as the Court has previously determined, there is
24 a final non-appealable order, namely the Enforcement Order. [Docket No. 3611]. Obviously, filing
25 meritless appeals is a far departure from SGM’s obligation to reasonably cooperate. SGM’s appeals
26 are frivolous and designed solely to delay and frustrate these proceedings.

SGM should be directed to immediately and clearly respond to questions regarding its financial ability to perform under the APA. By signing the APA, SGM represented and agreed that:

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

See APA § 3.9. This representation, warranty and covenant does not expire, and SGM “shall be deemed to remake” it “as of the Closing Date,” *i.e.*, December 5, 2019. APA, Article III. SGM has repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in its filing dated November 11, 2019, SGM described this as a “transaction in which SGM will be paying over \$600 Million,” and SGM’s November 25, 2019 Reservation of Rights states that “SGM continues to desire to close the transaction between SGM and Verity as described in the APA.”

If SGM does not have the financial ability to close the SGM Sale, as required by Section 3.9 of the APA, then it has an obligation to inform the Court and the Debtors of that fact, so they may immediately proceed with asset distribution in an alternative manner. Accordingly, the Debtors respectfully request that Court direct the following representatives of SGM to appear in Court on December 11, 2019, to address these issues and otherwise show cause why this transaction has not close: Chairman Kali Pradip Chaudhuri, MD, Chief Executive Officer Peter Baronoff and General Counsel William Thomas.

And, to be clear, SGM’s only explanation must be why it did not comply with the order; this hearing should not be an opportunity for SGM to rehash its arguments already rejected by the Court. *See, e.g., Maggio v. Zeitz*, 333 U. S. 56, 333 U. S. 69 (1948) (“It would be a disservice to the law if we were to depart from the longstanding rule that a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed, and thus become a retrial of the original controversy. The procedure to enforce a court’s order commanding or forbidding an act should not be so inconclusive as to foster experimentation with disobedience.”

B. The Court Should Find That SGM Is In Material Breach, That The Debtors May Immediately Terminate The APA And Retain The Deposit.

Finally, the Debtors respectfully request the Court issue an order finding that SGM is in material breach of the APA by failing to close the SGM Sale on December 5, 2019, as required by the APA and as specifically ordered by the Court in its Closing Order. “[A] material breach of a contract excuses further performance by the injured party and entitles that party to terminate the contract.” *Pena v. GMAC Mortg., LLC*, No. CV0906939MMMJCX, 2010 WL 11519504, at *7 (C.D. Cal. Sept. 13, 2010) (citing *Pry Corp. of America v. Leach*, 177 Cal.App.2d 632, 639 (1960) and 1 B. Witkin, Summary of Cal. Law, Contracts, § 796 p. 719 (9th ed. 1990)). As a result of that material breach by SGM, the Debtors are now entitled to (i) walk away from the APA with no further notice to SGM, (ii) sue SGM for damages under APA Section 11.1 and as otherwise allowed under applicable law, and (iii) proceed with alternative plans to dispose of the assets. The Debtors respectfully request that the Court issue an Order to this effect.

In addition, the Debtors request an order that the Debtors may retain the \$30 million non-refundable Deposit. Section 1.2 of the APA provides that: “The Deposit shall be non-refundable in all events, except as provided in Section 6.1(b) or Section 6.2, or in the event Purchaser has terminated this Agreement pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case Seller shall immediately return the Deposit to Purchaser with all interest earned thereon.” Here, Sections 6.1(b) and Section 6.2 are inapplicable, and SGM has not terminated the Agreement under Section 9.2—rather, SGM has materially breached the Agreement by failing to perform. Accordingly, the Deposit is non-refundable, and the Debtors respectfully request that the Court order that the Debtors may retain it regardless of the manner in which the assets are ultimately distributed.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court: (i) issue an order to show cause, lodged concurrently herewith pursuant to LBR 9020-1(a),

on an expedited basis ordering SGM and its principals, Kali Pradip Chaudhuri, William Thomas, and Peter Baronoff, to appear in this Court, on December 11, 2019, at 10:00 a.m., and show cause as to why SGM failed to comply with this Court's Order and close the SGM Sale by December 5, 2019, including, but not limited to, stating whether SGM has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction; and (ii) set the balance of the relief requested in this Motion and the attached Memorandum of Points and Authorities for an emergency hearing on December 11, 2019, at 10:00 a.m., to consider the Debtors request for an order (a) enforcing this Court's Sale Order and Closing Order, (b) finding that SGM is in material breach of the APA for (among other things) failing to Close the SGM Sale by December 5, 2019, (c) finding that the Debtors may terminate the APA at any time without further notice to SGM, and (d) finding that the Debtors shall retain the \$30 million non-refundable deposit received from SGM as Sales Proceeds within the meaning of and pursuant to the terms of the Final DIP Order [Docket No. 409]; and (iii) granting such other and further relief as the Court deems just and proper.

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Dated: December 6, 2019

DECLARATION OF CARSTEN BEITH

I, Carsten Beith, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am a Managing Director and Co-Head of Health Systems M&A at Cain Brothers, a division of KeyBanc Capital Markets, investment bankers in this matter for the Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors"). I submit this Declaration in support of the *Emergency Motion for the Entry of an Order: (i) Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019; (ii) To Show Cause Why Strategic Global Management, Inc. Failed to Close Sale Transaction by December 5, 2019* (the "Motion").

2. On November 19, 2019, I received a telephone call from Peter Baronoff, the Chief Executive Officer of Strategic Global Management ("SGM"). Mr. Baronoff stated, among other comments, that SGM was not able to obtain sufficient financing to fund the sale transaction.

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

Executed this 6th day of December 2019, at New York, New York.

By: 

CARSTEN BEITH

DECLARATION OF ELSPETH PAUL

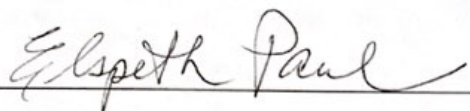
I, Elspeth Paul, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and I serve as General Counsel for the Verity Health System Of California, Inc. ("VHS"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. In connection with working towards closing the sale transaction with Strategic Global Management, Inc. ("SGM") pursuant to the Asset Purchase Agreement, SGM and the Debtors have participated in regular pre-scheduled calls in connection with operational works streams. This week, beginning on Monday, December 2, 2019, SGM representatives failed to participate in five pre-scheduled operations closing calls, stating that they were doing so on the advice of SGM's counsel.

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

Executed this 6th day of December 2019, at Los Angeles, California.

By: 
ELSPETH PAUL

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF SONIA R. MARTIN

I, Sonia R. Martin, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm Dentons US LLP, counsel in this matter for the Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors"). I submit this Declaration in support of the *Debtors' Emergency Motion for (I) Issuance of an Order to Show Cause Why Strategic Global Management, Inc. Failed to Close the Sale Transaction by December 5, 2019; and (II) Entry of an Order Enforcing Prior Court Orders Requiring Strategic Global Management, Inc. to Close the Sale Transaction by December 5, 2019* (the "Motion").

2. Attached hereto as **Exhibit A** is a true and correct copy of an email I sent to Gary Klausner of Levene, Neale, Bender, Yoo & Brill L.L.P., counsel to Strategic Global Management, Inc. ("SGM"), on December 3, 2019.

3. In response, I received an email from Mr. Klausner on December 3, 2019. A true and correct copy is attached hereto as **Exhibit B**.

4. In response, I sent an email to Mr. Klausner on December 4, 2019. A true and correct copy is attached hereto as **Exhibit C**.

5. Attached hereto as **Exhibit D** is a true and correct copy of an email Mr. Klausner sent to me and others on December 5, 2019.

6. Attached hereto as **Exhibit E** is a true and correct copy of an email I sent Mr. Klausner on December 5, 2019.

7. Attached hereto as **Exhibit F** is a true and correct copy of an email and letter that Mr. Klausner sent to Mr. Maizel on December 5, 2019.

8. As of this date, Mr. Klausner has not demonstrated to the Debtors that SGM has the financial ability or access to sufficient capital to timely proceed with this transaction in accordance with that certain asset purchase agreement [Docket No. 2305-1].

///

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

3 Executed this 6th day of December 2019, at San Francisco, California.

4
5 By: _____

6 SONIA R. MARTIN
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(213) 623-9300

Exhibit A

**December 3, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Tuesday, December 03, 2019 11:18 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: RE: Verity

Gary,

As set forth in my emails dated November 16 and 18, 2019, there is no basis for SGM to appeal and there is no Evaluation Period. Even if SGM were correct about the existence of an Evaluation Period (which it is not), the appeal and SGM's failure to take reasonable steps towards closing the transaction would constitute a breach of the APA ("Purchaser shall reasonably cooperate in any efforts to render the Supplemental Sale Order a final, non-appealable order[.]").

Indeed, the Debtors believe SGM's appeals are frivolous, and we reserve the right to seek sanctions against you and your clients pursuant to FRAP 38 and 28 USC 1927. Further, it is the position of the Debtors, that as of December 6, 2019, the Deposit, as defined in the APA, will irrevocably belong to the Debtors and its use is permitted by the Final DIP Order and the Supplemental Cash Collateral Order.

Each day that goes by without prompt action by your clients towards closing this transaction is injuring the Hospitals. Employees are leaving on a daily basis as a direct result of your clients' failure to timely issue offer letters. And, as you know, the Debtors are suffering net operating losses estimated at \$450,000 per day. Despite this, your clients continue to drag their feet on closing. Yesterday, you directed that they not participate on three regular, pre-scheduled closing calls -- calls that are essential to the transition of the Hospitals. Your clients are plainly in breach of APA Section 12.17, which provides that "[t]ime is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement."

The conduct of you and your clients strongly suggests that they have no intention of closing this transaction, which is consistent with Mr. Baronoff's statement two weeks ago that they lack the ability to secure funding at the level required for the purchase price under the APA. By signing the APA, your clients represented and agreed that "[p]urchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement." On the basis of the APA, the Court entered its Sale Order. Since then, you and your clients have repeatedly represented to the Court and the parties that SGM intends to close this transaction in accordance with the APA. For example, in your filing dated November 11, 2019, you described this as a "transaction in which SGM will be paying over \$600 Million," and your November 25, 2019 Reservation of Rights states that "SGM continues to desire to close the transaction between SGM and Verity as described in the APA."

If these representations are no longer true, your clients owe a duty to the Court and the Debtors to say so. As an officer of the court, you also owe that duty.

"Counsel, as an officer of the court, also owes a duty of candor to the tribunal. Model Rules of Professional Conduct Rule 3.3. This duty precludes counsel from making false statements of law or fact to the court and offering false evidence, and requires counsel to disclose controlling adverse legal authority not disclosed by opposing counsel, and facts necessary to avoid assisting the client in a criminal or fraudulent act. Id."

Hansen, Jones & Leta, PC v. Segal, 220 B.R. 434, 455 (D. Utah 1998). See also Cal. Rule Prof. Conduct 5-200.

The Debtors again demand that you and your clients affirm whether they have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction. If you do not respond to this request by close of business tomorrow, the Debtors will ask the Court to schedule an emergency Order to Show Cause hearing and require your clients to respond to such questions in open court.

Sonia

 Sonia R. Martin

D +1 415 882 2476 | US Internal 42476
sonia.martin@dentons.com
Bio | Website

Dentons US LLP

Larrain Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. >
Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas
& Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@Inbyb.com>

Sent: Monday, December 02, 2019 6:26 PM

To: Martin, Sonia R. <sonia.martin@dentons.com>

Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Montgomery, Claude D. <claudemontgomery@dentons.com>; Alberts, Sam J. <sam.alberts@dentons.com>; Gary E. Klausner <GEK@Inbyb.com>

Subject: Verity

[External Sender]

Sonia; as you are aware, SGM has filed a notice of appeal from the Bankruptcy Court's order of November 14, 2019 regarding Verity's emergency motion. We understand your position regarding the "finality" of that order and we respectfully disagree as our client had standing to appeal to order entered by the court, notwithstanding the fact that SGM did not oppose the underlying emergency motion. Ultimately the appellate court will decide this issue. In the meantime, so that there is no confusion or misunderstanding about SGM's position on this issue, the 21 business days evaluation period under section 8.6 began on November 14; that means, if my review of the calendar is correct, the 21 business days to respond under section 8.6 will not expire until December 16, 2019.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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From: Martin, Sonia R. [mailto:sonia.martin@dentons.com]
Sent: Saturday, November 16, 2019 9:59 AM
To: Gary E. Klausner
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.; Alberts, Sam J.
Subject: FW: Verity

Gary,

As Tania stated on the record in court on Wednesday, we do not agree with SGM's position that it has a 21-day Evaluation Period.

The Evaluation Period contemplated by Section 8.6 was included to account for the possibility that the Attorney General might insist on imposing conditions that materially differ from the Purchaser Approved Conditions. Because the Attorney General is not imposing any such conditions, the provisions relating to an Evaluation Period are not implicated.

We also note that, even if a 21-day Evaluation Period had been triggered (which we do not concede), Section 8.6 provides that SGM "shall consummate the Sale" if "the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period . . . and all other conditions to closing have been satisfied." Here, we have a final non-appealable order because the only parties who could have standing to appeal have waived that right.

Sonia

 Sonia R. Martin

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sonia.martin@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. >
Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas
& Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Friday, November 15, 2019 2:09 PM
To: Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>
Cc: Gary E. Klausner <GEK@lnbyb.com>
Subject: Verity

[External Sender]

Sam, Tania; I have heard through the grapevine that Verity may be taking the position that SGM does not have (or somehow lost) the 21 day Evaluation Period provided for in section 8.6 of the APA, which started as of the entry of the supplemental sale order yesterday. Would you please let me know if this is, in fact, Verity's positions and if so, please advise me of Verity's basis for that position. Obviously, this is a time critical issue so please get back to me immediately as I have a call scheduled with SGM at 3:00 today. Thanks.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

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Exhibit B

**December 3, 2019 Email from
Gary E. Klausner to Sonia R. Martin**

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM
To: Martin, Sonia R.
Cc: Moyron, Tania M.; Maizel, Samuel R.; Gary E. Klausner
Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

GARY E. KLAUSNER, Esq.

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

10250 Constellation Blvd. | Suite 1700 | Los Angeles, CA 90067

Phone 310 229 1234 | Direct 310 229 3360 | Fax 310 229 1244

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Exhibit C

**December 4, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Wednesday, December 04, 2019 9:30 AM
To: 'Gary E. Klausner'
Cc: Moyron, Tania M.; Maizel, Samuel R.; Montgomery, Claude D.
Subject: RE: Verity, SGM

Gary,

You have not responded to the Debtors' request that you state whether your clients "have the financial ability to proceed with this transaction in accordance with the APA, and whether they intend to close the transaction." This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. The Debtors insist that you and your clients provide this information outside the context of any confidentiality agreement, either now or in court.

Your clients have no valid basis to refuse to close this transaction. They are in breach of the APA, and the Debtors will proceed accordingly. Indeed, it has become increasingly clear that SGM likely never had the financial ability to perform the APA, and has been in breach of APA Section 3.8 from the outset.

Moreover, SGM lacks standing and has waived any ability to appeal the Court's orders. Manufacturing the Evaluation Period is precisely the type of bad faith conduct with which the Court expressed concern, and which permits the Debtors to recover damages in excess of Section 11.1 of the APA.

If SGM has a proposal that it wishes the Debtors to consider, it should send that proposal immediately. Be advised that the Debtors will proceed down another path unless SGM (i) provides a meaningful, actionable offer, and (ii) demonstrates the financial ability to perform (the failure of either condition would be fatal).

We will be sending you a revised confidentiality stipulation shortly.

 Sonia R. Martin

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Dentons US LLP

Larraín Rencoret > Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners

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From: Gary E. Klausner <GEK@Inbyb.com>
Sent: Tuesday, December 03, 2019 4:33 PM

To: Martin, Sonia R. <sonia.martin@dentons.com>

Cc: Moyron, Tania M. <tania.moyron@dentons.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Gary E. Klausner <GEK@lnbyb.com>

Subject: Verity, SGM

[External Sender]

Sonia; in response to your email of 11:20 this morning; please be advised as follows:

1. SGM has appealed from the Court's order of November 27, 2019 regarding the December 5, 2019 closing;
2. SGM will not be closing the sale transaction on December 5, 2019 and is reserving all of its rights, claims and defenses relating to the APA;
3. SGM's failure to dispute factual or legal assertions in your email shall not be considered an admission of any such assertions;
4. SGM would very much like to engage in settlement discussions with Verity and other stakeholders to see if a solution can be reached which will allow for a sale closing to take place, and, to that end, we have sent to Dentons a proposed confidentiality stipulation which, if executed by Dentons will enable settlement discussions to commence immediately, at which time, SGM can discuss the various questions which you posed regarding the status of the transaction.

GARY E. KLAUSNER, Esq.

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Exhibit D

**December 5, 2019 Email from
Gary E. Klausner to Sonia R. Martin**

From: Gary E. Klausner <GEK@lnbyb.com>
Sent: Thursday, December 05, 2019 9:58 AM
To: Martin, Sonia R.
Cc: Maizel, Samuel R.; Moyron, Tania M.; Gary E. Klausner
Subject: Verity | Weekly KPC/Verity Transaction Committee Call

[External Sender]

Sonia; a checklist call is scheduled for 10:00 today.

As you are aware, SGM is not closing the sale reflected in the APA today. SGM disputes that the notice to close set forth in Sam's letter of November 20, 2019 was effective or consistent with the APA and, notwithstanding Judge Robles order of November 27, which is now on appeal, SGM is under no contractual obligation to close today. Indeed, Verity is not, itself, prepared to close the sale today or to provide the "deliverables" and complete all of the processes necessary for closing.

Notwithstanding the foregoing, SGM has been requesting an opportunity to meet and confer with Verity and other stakeholders to attempt to resolve the disputes that have so far prevented the parties from proceeding to a closing in an organized fashion and consistent with the APA. SGM requested mediation and Verity rejected that request. SGM requested a meeting, which would be governed by applicable privileges, and Verity rejected that request. SGM submitted a proposed confidentiality stipulation to Verity yesterday, made every change that you requested, submitted a draft order to you as requested, and then was advised that Verity refused to meet and confer unless SGM first provided a proposal and financial information, not protected by any privilege.

It is apparent from your litany of threatening letters and rejection of any opportunity to salvage this transaction, that Verity has elected to attempt to force SGM into a position of breach and will pursue litigation, as opposed to participating in a process that might save the hospitals, protect the patients and avoid terminating thousands of employees.

The scheduled "checklist" call for today is clearly a sham, designed to create the appearance, although not legitimate, that Verity is still pursuing a transaction which Verity has now chosen to forego, and to attempt to obtain information for use in the eventual litigation. Accordingly, SGM sees no useful purpose in participating in such a call.

GARY E. KLAUSNER, Esq.

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Exhibit E

**December 5, 2019 Email from
Sonia R. Martin to Gary E. Klausner**

From: Martin, Sonia R.
Sent: Thursday, December 05, 2019 10:17 AM
To: 'Gary E. Klausner'
Cc: Maizel, Samuel R.; Moyron, Tania M.; Montgomery, Claude D.
Subject: In re Verity Health System of California, et al., Case No. 2:18-bk-20151-ER

Gary,

SGM still has not responded to the Debtors' request that it confirm whether it has the financial ability to proceed with this transaction in accordance with the APA, and whether it intends to close the transaction in accordance with the APA, i.e., for a purchase price of \$610 million. This includes, but is not limited to, confirmation that the representations set forth in the December 3, 2018 letter issued by Kevin R. Farrenkopf, President and CEO of The Bank of Hemet, and the December 4, 2018 email from William Thomas are still accurate, and that the funds referenced in those communications remain available for use in December 2019 in connection with this transaction. These are simple and direct questions that must be answered under the APA.

SGM cannot hide behind the charade of an "Evaluation Period" any longer. It is becoming increasingly clear that SGM does not have the financial ability to perform under the APA, and may never have had that ability. This is in direct contravention to the representation, warranty and covenant set forth in APA Section 3.9:

3.9 Ability to Perform. Purchaser has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing have immediately available funds in cash, which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

By failing to respond to the Debtors' direct questions regarding SGM's financial ability (or lack thereof), and while still purporting to "reserve rights" under the APA, you and your clients are continuing to engage in bad faith conduct at the expense of the Debtors, as well as their patients, employees and creditors. As the Court aptly observed in its November 29, 2019 Order:

SGM's contention that it is not obligated to close is a cynical attempt to extract a better purchase price. A key component of SGM's negotiation strategy is its attempt to delay as long as possible the adjudication of its obligations under the APA. The Court will not facilitate SGM's dubious tactics.

* * *

By presenting non-meritorious arguments as to why it is not obligated to close, SGM is holding the estates, creditors, and patients of the Hospitals hostage in an attempt to extort a better purchase price. SGM's cynical tactics are especially offensive given the significant harm that closure of the Hospitals would impose upon patients.

Nor are the Debtors willing to allow SGM to try to immunize itself with a nebulous "mediation agreement." The information the Debtors have requested is squarely within the scope of the APA, and the Debtors are entitled to answers under the APA and without confidentiality. The Debtors will not enter any agreement that SGM might try to use to shield the financial information we have requested. The Debtors must have the ability to promptly disclose and

act on such information in order to make critical decisions impacting the Hospitals and alternative plans for disposition of the assets. You have made it clear that the Debtors must seek the Court's immediate intervention with these issues.

As to any settlement proposal that SGM wishes to make, the protections of Rule 408 should suffice and SGM should transmit any such proposal without further delay. That said, we are continuing to discuss the proposed stipulation with the Debtors and their advisors, and will revert on that issue separately.

 Sonia R. Martin

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Exhibit F

**December 5, 2019 Email and Letter from
Gary E. Klausner to Samuel R. Maizel**

From: Gary E. Klausner <GEK@Inbyb.com>
Sent: Thursday, December 05, 2019 4:42 PM
To: Maizel, Samuel R.
Cc: Moyron, Tania M.; Martin, Sonia R.; Montgomery, Claude D.; Koffroth, Nick
Subject: Verity
Attachments: Letter to Sam Maizel re Verity 12-5-19.pdf

[External Sender]

Sam, please see the attached letter. According to the APA, we are required to give notices to you and to Rich Adcock, however, I do not believe it would be appropriate for me to write to him directly. Would you please forward the attached to him. Thanks very much.

GARY E. KLAUSNER, Esq.

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December 5, 2019

VIA EMAIL

Samuel R. Maizel
Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704

Re: In re Verity Health Systems of California, Inc., et al., Debtors ("Verity")
Sale to Strategic Global Management, Inc. ("SGM")

Dear Sam:

The purpose of this letter is to notify Verity that Verity is in material default with respect to the Asset Purchase Agreement, which was filed with the Court on May 2, 2019 (Doc 2305) and that SGM is demanding that the immediate return of its deposit of \$30 Million, with all interest earned thereon.

The Closing Condition in Section 8.7 Was Not and Continues to be Unsatisfied

Section 8.7 of the APA creates a closing condition, as follows:

"8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements pursuant to a settlement agreement with the Centers for Medicare and Medicaid Services ("CMS") and shall transfer their Medi-Cal provider agreements pursuant to a settlement agreement with the California Department of Health Care Services ("DHCS"), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers' Medicare and Medi-Cal provider agreements and (ii) full satisfaction, discharge and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable, has against the Seller or Purchaser for monetary liability arising under the Medicare or Medi-Cal; provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred."

Notwithstanding the fact that Verity had not complied with APA section 8.7, on November 20, 2019, Verity sent SGM, through counsel, a demand for a closing of the APA transaction on or before December 5, 2019 (herein the "Closing Demand") In your letter of November 20, 2019, you stated:

Samuel R. Maizel
December 5, 2019
Page 2

“Yesterday, as we notified you, that the Debtors reached a settlement agreement the United States on behalf of the Department of Health and Human Services and the Centers for Medicare and Medicaid Services, allowing for the transfer of the Medicare Provider Agreement without successor liability. Consequently, SGM must close this transaction promptly, but no later than ten (10) business days from yesterday, or December 5, 2019, because all conditions to closing are satisfied. See APA § 1.3”. (Emphasis Added.)

Your representation that “all conditions to closing are satisfied” was false. As we now know (and there is no dispute) as of November 20, 2019, Verity had not complied with the condition set forth in 8.7 because, *inter alia*, Verity had not, as of November 20, 2019, entered into a settlement agreement with DHCS which resulted in: (1) resolution of all outstanding financial defaults under any of Verity’s Medi-Cal Provider Agreements, and (2) full satisfaction, discharge and release of any claims under the Medi-Cal Provider Agreements, whether known or unknown that DHCS had against the seller or purchaser.

Indeed, as you acknowledged to the Court, at the hearing on November 26, 2019, Verity had not, even as of that hearing date, entered into a settlement agreement with DHCS. Nor, had Verity entered into such a settlement agreement, as of December 5, 2019, the time Verity set for closing.

Accordingly, Verity failed, as of the date and time which Verity set for closing, to satisfy the condition set forth in § 8.7 of the APA and, was and continues to be in material default.

Neither The Sale Order entered May 2, 2019, nor the Order Authorizing the Transfer of the Medi-Cal Provider Agreement, entered October 11, 2019, satisfies the Condition in Section 8.7.

On November 25, 2019, in recognition that Verity had failed to reach an agreement with DHCS, you sent me an email in which you contended that no such agreement was necessary; notwithstanding the clear and unambiguous language of § 8.7. Your contention was based on the theory that the Bankruptcy Court’s Order, entered on May 2, 2019, authorizing the sale to SGM, satisfied the requirements of § 8.7 because the sale generally provided for it to be free and clear. However, as you well know, DHCS had objected to the sale and, to accommodate that objection, Verity agreed, and the Sale Order so provided, for DHCS to reserve all of its rights pertaining to the assumption of the Medi-Cal Provider Agreements. The Sale Order addressed the objection that DHCS had filed to the proposed transfer of the Medi-Cal Provider Agreements, in part, as follows:

Samuel R. Maizel
December 5, 2019
Page 3

“Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS’s objection” (Doc. 2306 at 25 l. 6-8).
(Emphasis added.)

Consistent with that reservation and the need to resolve all issues regarding assumption and assignment of the Medi-Cal provider agreement, including the issue of recoupment, Verity filed its Reply Brief (Doc 3043) on September 18, 2019 seeking an order, which was necessary to satisfy its obligation under § 8.7 with respect to the transfer of the Medi-Cal Provider Agreement.

In the Court’s Memorandum of Decision, issued on September 26, 2019 the Court expressly referred to § 8.7 and the necessity for Verity to obtain an order in compliance with that section as a condition to closing.

The Asset Purchase Agreement (the “APA”) [Doc. No. 2305-1] which governs the sale of the Hospitals to SGM, provides that the sale cannot close unless issues regarding alleged financial defaults existing under each Provider Agreement have been resolved” (Doc. No. 3146 at 3, citing to footnote 5, which states: APA at par. 8.7)

Even more significantly, in the Bankruptcy Court’s Order granting the relief requested by Verity, which was entered on October 11, 2019, the Court deleted the word “recoup” from the section providing for a transfer “free and clear”, and the Court expressly stated that it was reserving the issue of DHCS’s right to recoup for future adjudication.

Provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HCAF Program.” (Doc. 3372 at 4:7-10, 16-20).

Not only does the Court’s reservation of the recoupment issue render any argument regarding the effect of either that order or the Sale Order completely meritless, but whatever benefit that might have been achieved by the Court’s October 11, 2019 Order has been nullified by the fact that the DHCS has appealed it to the U.S. District Court and that appeal has not been adjudicated.

L N B Y & B

Samuel R. Maizel
December 5, 2019
Page 4

While we do not concede that the condition in § 8.7 could have been satisfied by a court order, as opposed to a “settlement agreement”, even if Verity could have sought an order from the Bankruptcy Court resolving the recoupment issue, Verity chose not to do so.

Despite the fact that Verity was required to satisfy the section 8.7 condition by a “settlement agreement”, no such settlement agreement existed as of November 20, 2019, the date of the Closing Demand and the representation that “all conditions of closing are satisfied”. Thus, the demand was improper that statement constituted a material misrepresentation as of that date. Nor was any such agreement reached prior to the date and time, which Verity set, for closing of the APA on December 5, 2019.

As a consequence of the foregoing, Verity improperly and knowingly misrepresented the status of conditions to closing in your letter of November 20, 2019. In reality, all conditions to closing had not been satisfied and remained unsatisfied as of the date and time that Verity set for closing.

The foregoing is by no means the sum-total of all Verity’s material defaults and failed conditions relating to the APA. However, because the issue raised here regarding § 8.7 and the Debtor’s failure to comply with its requirements relating to the Medi-Cal Provider Agreements are factually and legally indisputable, SGM need not present or prove any other basis to establish Verity’s material default.

Based upon the foregoing, and pursuant to § 11.2 of the APA, SGM hereby demands the immediate return of its deposit in the amount of \$30 Million, plus all interest earned thereon.

Very truly yours



Gary E. Klausner

EXHIBIT 26

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7 Attorneys for the Chapter 11 Debtors and
Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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

10 In re

11 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,

12 Debtors and Debtors In Possession.

- 13
14
15 ☒ Affects All Debtors
16 ☐ Affects Verity Health System of
California, Inc.
17 ☐ Affects O'Connor Hospital
18 ☐ Affects Saint Louise Regional Hospital
19 ☐ Affects St. Francis Medical Center
20 ☒ Affects St. Vincent Medical Center
21 ☐ Affects Seton Medical Center
22 ☐ Affects O'Connor Hospital Foundation
23 ☐ Affects Saint Louise Regional Hospital
Foundation
24 ☐ Affects St. Francis Medical Center of
Lynwood Foundation
25 ☐ Affects St. Vincent Foundation
26 ☒ Affects St. Vincent Dialysis Center, Inc.
27 ☐ Affects Seton Medical Center Foundation
28 ☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

Jointly Administered With:

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

Chapter 11 Cases

**DEBTORS' EMERGENCY MOTION FOR
AUTHORIZATION TO CLOSE ST. VINCENT
MEDICAL CENTER; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATIONS IN SUPPORT THEREOF**

Date: TBD

Time: TBD

Place: Courtroom: 1568

U.S. Bankruptcy Court

255 East Temple Street

Los Angeles, CA 90012

Judge: Hon. Ernest M. Robles



1820151200106000000000012

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EMERGENCY MOTION

Pursuant to §§ 105, 363, and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”),¹ Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors” or the “Verity Health System”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby move, on an emergency basis (the “Motion”), for the entry of an order authorizing the Debtors to: (1) take all actions necessary in the exercise of their business judgment to effectuate the orderly and expedited closure (the “Closure”) of Debtor hospital St. Vincent Medical Center (“SVMC”) and its dialysis center, St. Vincent Dialysis Center, Inc. (as a separate Debtor entity, “SVDC,” and together with SVMC as an integrated medical center, “St. Vincent”), including the transfer of patient care to other health care providers,² the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent (the “Closure Plan”);³ and (2) granting such other relief as the Court deems just and proper in connection therewith.

The Debtors request that the relief sought be granted on an emergency basis to avoid immediate and irreparable harm given (i) St. Vincent’s continuing economic losses, (ii) the Debtors’ need to have sufficient cash on hand for the orderly closure of St. Vincent, (iii) the acceleration of staff turnover once this Motion is filed which will further increase short-term

¹ All references to “§” are to sections of the Bankruptcy Code.

² As part of the Closure Plan, St. Vincent intends to enter into an agreement with Good Samaritan Hospital (“GSH”) whereby GSH agrees to accept transfers of St. Vincent’s inpatients, subject to applicable legal requirements and patient consent. GSH is located approximately one mile from St. Vincent.

³ Certain elements of the Closure Plan may require the Debtors to enter into new contracts and dispose of equipment and other property, which relief is incorporated in this Motion, and assume or reject current contracts and leases, which relief is not requested herein. To the extent the Debtors determine in their business judgment to assume or reject contracts and leases in connection with implementing the Closure Plan, such relief will be sought by separate motion(s).

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operational costs, (iv) the Debtors' need to begin the closure process as soon as possible given that it will take at a minimum one month to safely transfer all patient care, and (v) generally that VHS cannot continue to subsidize St. Vincent's operations without putting the continued existence of the entire Verity Health System at risk. The sale of St. Vincent as documented in the Asset Purchase Agreement ("APA," and the sale documented thereby, the "SGM Sale") between the Debtors and Strategic Global Management, Inc. ("SGM") did not close as contemplated therein. At this point, any delay in St. Vincent's closure will significantly impact these Cases because St. Vincent operates with cash losses that put the entire Verity Health System at peril under the current circumstances. St. Vincent lost approximately \$65 million in fiscal year 2019, which translates to daily cash losses of over \$175,000. Accordingly, there are limited cash resources available for continued operation and patient care, which cannot at this stage be mitigated by either additional external financing (which is no longer available to the Debtors beyond a short extension by their current prepetition secured creditors to help allow the Debtors to finance an orderly wind-down) or sale prospects (of which there were none for St. Vincent as an operating entity). Moreover, once the relief sought in this Motion is made public, turnover of staff, especially nurses, is likely to accelerate, making maintenance of high quality patient care more difficult, and, to the extent that temporary nursing replacements are required, significantly more expensive. Thus, reducing the period of time between filing of the Motion and a hearing on the Motion is essential to maintaining patient care.

Finally, key constituents, including secured creditors and the Unsecured Creditors Committee have been fully informed of the Debtors' intent to file this Motion and the basis for the relief sought herein.

1 Accordingly, the Debtors respectfully request that the Court grant the Motion for an
2 emergency hearing because the proposed expedited hearing will not prejudice any parties and is
3 in the best interests of the Debtors' estates and creditors.
4

5 **I.**

6 **BASIS FOR THE REQUESTED RELIEF**

7 The Debtors seek authority to close St. Vincent as expeditiously as possible because
8 continued subsidy of its operations by VHS puts the continued existence of the entire Verity
9 Health System at risk. The Motion is based upon §§ 105, 363, and 1108, Bankruptcy Rule 6004,
10 the attached Memorandum of Points and Authorities, the *Declaration of Richard Adcock in*
11 *Support of Emergency First-Day Motions* [Docket No. 8] (the "First-Day Decl."), the *Declaration*
12 *of James M. Moloney in Support of the Debtors' Memorandum. in Support of Entry of an Order:*
13 *(A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; (B)*
14 *Authorizing the Assumption and Assignment of Designated Executory Contracts and Unexpired*
15 *Leases; and (C) Granting Related Relief* [Docket No. 2220] (the "Moloney Sale Decl."); the
16 Declarations of Richard Adcock (the "Adcock Decl."), Peter C. Chadwick (the "Chadwick
17 Decl."), and James M. Moloney (the "Moloney SVMC Decl.") filed concurrently herewith, the
18 arguments and statements of counsel to be made at the hearing on the Motion, and any other
19 admissible evidence properly brought before the Court. The Debtors request that the Court take
20 judicial notice of the record in the Debtors' Cases and any other judicially noticeable facts in
21 support of the Motion, as appropriate, including all documents filed with the Court in these Cases
22 that relate to the SGM Sale and the prior sale of hospitals to Santa Clara County.

23 **II.**

24 **RESPONSES**

25 Any party opposing or responding to the Motion may present such response (the
26 "Response") at any time before or at the hearing on the Motion. *See* LBR 9075-1(a)(8). A
27 Response must be a complete written or oral statement of all reasons in opposition to the Motion
28 or in support, declarations and copies of all evidence on which the responding party intends to

1 rely, and any responding memorandum of points and authorities. Pursuant to LBR 9013-1(h), the
2 failure to file and serve a timely objection to the Motion may be deemed by the Court to be
3 consent to the relief requested herein.

4 **III.**

5 **SERVICE OF MOTION**

6 Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and
7 Authorities, the Adcock Decl., the Chadwick Decl., the Moloney SVMC Decl., and any notice
8 required by the Court on: (i) the California Attorney General; (ii) the Official Committee of
9 Unsecured Creditors; (iii) the Debtors' prepetition secured creditors; (iv) SGM; (iv) the Office of
10 the United States Trustee; and (v) any other parties on the Limited Service List set forth in the
11 *Order Granting Emergency Motion of Debtors for Order Limiting Scope of Notice* [Docket No.
12 132]. To the extent necessary, the Debtors request that the Court waive compliance with LBR
13 9075-1(a)(6) and approve service (in addition to the means of service set forth in such LBR) by
14 overnight delivery.

15 **IV.**

16 **RESERVATION OF RIGHTS**

17 Nothing contained herein is intended or shall be construed as: (i) an admission as to the
18 validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in
19 interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; or
20 (iii) a waiver of any claims or causes of action which may exist against any creditor or interest
21 holder.

22 **V.**

23 **CONCLUSION**

24 For all the foregoing reasons and such additional reasons as may be advanced at or prior
25 to the hearing regarding this Motion, the Debtors respectfully request that the Court hold a
26 hearing on an emergency basis to consider the Debtors request for an order (i) permitting the
27 Debtors to implement the Closure Plan and to take all actions which in their business judgment
28 they deem necessary and appropriate to effectuate the orderly Closure of St. Vincent; and (ii)

1 granting such other relief as the Court deems just and appropriate.

2 Dated: January 6, 2020

DENTONS US LLP

SAMUEL R. MAIZEL

TANIA M. MOYRON

NICHOLAS A. KOFFROTH

By /s/ Tania M. Moyron

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”) has always been a vital part of the Verity Health System.¹ It is undeniable that everyone involved has done his and her utmost to promote St. Vincent’s continued existence for the benefit of its patients, employees, and the communities it serves. However, St. Vincent has been operating at significant financial losses (more than \$65 million in fiscal year 2019 alone), which has become unsustainable for both St. Vincent, and for the other Debtors forced to subsidize its losses. Additionally, as the Court is aware, the sale of St. Vincent as documented in the Asset Purchase Agreement (“APA,” and the sale documented thereby, the “SGM Sale”) between the Debtors and Strategic Global Management, Inc. (“SGM”)—which would have provided for the sale of St. Vincent as a going concern—did not close. During the extensive marketing and sale process leading up to the APA with SGM, there was no interest for St. Vincent as a going concern. Currently, there is no buyer who has presented a feasible offer to purchase St. Vincent as a going concern.²

As responsible stewards of patient safety, the Debtors’ foremost responsibility is delivery of high quality patient care, and, consequently, the Debtors must immediately begin the Closure Plan (as defined below) with sufficient cash on hand to orderly implement the plan and transfer of

¹ The “Verity Health System” comprises the following affiliated debtors and debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Cases”): Verity Health System of California, Inc. (“VHS”), O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center (“SVMC”), Seton Medical Center, O’Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical Center of Lynwood Foundation, St. Vincent Foundation (the “Foundation”), St. Vincent Dialysis Center (“SVDC”), Inc., Seton Medical Center Foundation, Verity Business Services, Verity Medical Foundation, Verity Holdings, LLC, De Paul Ventures, LLC, De Paul Ventures - San Jose Dialysis, LLC.

² Even if there were any material interest to purchase St. Vincent, St. Vincent and the estates could not sustain the losses that would be incurred during the regulatory review process, such as the losses borne during the Attorney General review process for the sale to SGM, which failed when SGM did not close the sale.

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1 patients. The Debtors anticipate that by mitigating St. Vincent's operational losses through
2 closure of its facilities as expediently as possible, the Debtors will have sufficient cash-on-hand
3 (e.g., remaining proceeds from the hospital sales to Santa Clara County plus extended consensual
4 use of cash collateral) to fund the closure (the "Closure") in an orderly manner. Continuing to
5 incur operating losses at St. Vincent outside the Closure Plan would only deplete cash resources
6 and place St. Vincent and the Debtors in a position that they would not have sufficient cash on
7 hand to conduct the orderly Closure.

8 The Debtors anticipate it will take 30 days to discharge acute care patients. As part of the
9 closure plan (the "Closure Plan"), St. Vincent intends to enter into an agreement with Good
10 Samaritan Hospital ("GSH"), whereby GSH will accept transfers of St. Vincent's inpatients,
11 subject to applicable legal requirements. GSH is located approximately one mile from St.
12 Vincent. With respect to patients in St. Vincent's kidney/pancreas transplant program, it will take
13 (i) 30 days to transfer those currently receiving care to alternate providers, and (ii) 60 days to
14 coordinate care with other outpatient health care providers for those patients who are being
15 evaluated for the program or have already received a transplant and been discharged. St. Joseph
16 Hospital ("St. Joseph") has agreed to assume care of the kidney transplant patients who are part of
17 the St. Vincent Transplant Program (defined below), subject to approval of the United Network
18 for Organ Sharing ("UNOS"). St. Joseph has its own UNOS-approved Kidney Transplant
19 Program. The Debtors are in discussions with other area hospitals to coordinate the transfer of
20 care for the kidney/pancreas-only transplant patients (less than twenty patients).

21 Accordingly, the Debtors respectfully request that the Court grant the Motion to protect
22 patient care and to avoid immediate and irreparable harm to the Debtors, the Hospitals, and the
23 estates. The Debtors respectfully submit the proposed relief is in the best interests of St. Vincent,
24 St. Vincent's patients, and the Debtors and their estates as a whole.

25 II.

26 JURISDICTION, VENUE, AND STATUTORY PREDICATES

27 The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This
28 matter is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper pursuant to 28 U.S.C.

1 §§ 1408 and 1409.

2 The statutory predicates for the relief sought in the Motion are §§ 105, 363, and 1108.³

3 **III.**

4 **STATEMENT OF FACTS**

5 **A. General Background**

6 1. On August 31, 2018 (the “Petition Date”), the Debtors each filed a voluntary
7 petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court
8 for the Central District of California, Los Angeles Division (the “Bankruptcy Court”). Since the
9 commencement of their Cases, the Debtors have been operating their businesses as debtors in
10 possession pursuant to §§ 1107 and 1108. On September 14, 2018, the Office of the United
11 States Trustee appointed the Official Committee of Unsecured Creditors [Docket No. 197].

12 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole
13 corporate member of five Debtor California nonprofit public benefit corporations that operated
14 O’Connor Hospital and Saint Louise Regional Hospital, and currently operates St. Francis
15 Medical Center, St. Vincent (the subject of this Motion), and Seton Medical Center, including
16 Seton Medical Center Coastside Campus (collectively, the “Hospitals”).

17 3. As of the Petition Date, the Verity Health System operated as a nonprofit
18 healthcare system in the State of California, with approximately 1,680 inpatient beds, six active
19 emergency rooms, a trauma center, eleven medical office buildings, and a host of medical
20 specialties, including tertiary and quaternary care. *See Declaration of Richard Adcock in Support*
21 *of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Decl.”), at ¶ 12. The scope of
22 the services provided by the Verity Health System is exemplified by the fact that in 2017, the
23 Hospitals provided medical services to over 50,000 inpatients and approximately 480,000
24 outpatients. *Id.* The Verity Health System was originally established by the Daughters of Charity
25 of St. Vincent de Paul, Province of the West, to support the mission of the Catholic Church
26 through a commitment to the sick and poor.

27 ³ All references to “§” are to sections of title 11 of the United States Code, 11 U.S.C. §§ 101, *et*
28 *seq.* (the “Bankruptcy Code”); all references to “LBR” are to the Local Bankruptcy Rules of the
United States Bankruptcy Court for the Central District of California.

4. St. Vincent was founded as the first hospital in Los Angeles in 1856. First-Day Decl., at ¶ 34. In 1971, a new facility was constructed at the Hospital’s current location at 2131 West Third Street, Los Angeles, CA 90057. *Id.* The Hospital has expanded to a 366 licensed bed, regional acute care, tertiary referral facility, specializing in cardiac care, cancer care, total joint and spine care, and multi-organ transplant services. *Id.* The Hospital serves both local residents and residents from Los Angeles, San Bernardino, Riverside, and Orange Counties. *Id.* St. Vincent provides medical care for both inpatients (*i.e.*, patients who remain in the hospital for more than 24 hours) and outpatients (*i.e.*, patients who receive outpatient services, such as MRIs). Additionally, the Debtors operate a Kidney-Pancreas Transplant Program at St. Vincent (the “St. Vincent Transplant Program”).⁴ The St. Vincent Transplant Program operates under UNOS approval. As a provider of healthcare services for a high percentage of elderly patients, many of the Hospital’s services and programs are focused on the treatment of various chronic diseases. *Id.* In 2015, under a restructuring agreement, St. Vincent was converted from a religious corporation to a public benefit corporation. *Id.* at ¶¶ 21, 92. St. Vincent owns real property commonly known as: (i) 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital and all of the facilities located thereon; and (ii) vacant land in Salton Sea, California. *Id.* at ¶ 23.⁵

5. St. Vincent has its own dialysis center (SVDC) on-campus, where St. Vincent’s kidney disease patients receive dialysis services, including hemodialysis and isolated ultrafiltration treatments as part of St. Vincent’s end-stage renal disease program. *Id.* at ¶ 36. Although together they form St. Vincent, the Hospital, SVMC and SVDC have separate corporate

⁴ There are approximately 300 patients on the waitlist in the St. Vincent Transplant Program and approximately 700 patients who have received transplants in the last five years. Another one thousand individuals are currently being evaluated for a place on the transplant waitlist.

⁵ The Foundation is governed by a Board of Trustees, and SVMC is the sole corporate member of the Foundation. Because the Foundation exists to support St. Vincent, the Debtors ultimately will seek to wind it down as well; however, they do not seek to do so through this Motion. Given its status as a medical foundation, the Foundation will be subject to a separate wind-down plan in coordination with the California Attorney General. The Foundation holds donor restricted funds, and owns: (i) a fractional timeshare of a condominium commonly known as 2600 Avenida Del Presidente, San Clemente, CA 92672; and (ii) Lot 10 of Block 572 of Rio Grande Estates, Unit 25, Valencia, NM.

1 identities, and SVMC is the sole corporate member of SVDC. *Id.* Both SVMC and SVDC are
2 exempt from federal income taxation as an organization described in § 501(c)(3) of the Internal
3 Revenue Code of 1986. *Id.* at ¶ 21.

4 6. St. Vincent as of the Petition date employed approximately 1,099 employees, of
5 which 897 were full time, 42 were part time, and 160 were per diem. *Id.* at ¶ 59(f). St. Vincent
6 employees are represented by two unions with the respective contractual obligations: (i) SEIU-
7 UHW (Non-Nursing Service Employees); and (ii) California Nurses' Association ("CNA")
8 (Nurses). *Id.* at ¶ 60.

9 7. St. Vincent is a jointly "obligated" party with its affiliates on approximately
10 \$461.4 million of outstanding secured debt consisting of: (a) \$259.4 million outstanding tax
11 exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities
12 Development Authority (the "2005 Bonds"), which loaned the bond proceeds to certain Debtors
13 to provide funds for capital improvements and to refinance certain tax exempt bonds previously
14 issued in 2001 by the Daughters of Charity Health System, and (b) \$202.0 million outstanding tax
15 exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California
16 Public Finance Authority. *Id.* at ¶ 121.

17 8. St. Vincent has consistently lost money for many years due to, among other things,
18 unfavorable payor contracts, rising health care costs, high pension obligations and certain
19 requirements imposed on St. Vincent by the State of California Attorney General, as more fully
20 described below. *See id.* at ¶¶ 95, 99. St. Vincent is also dramatically under invested in structural
21 improvements necessary to meet California's state mandated seismic and clean energy
22 requirements. *Id.* The combined effect of these issues have been a consistent drag in operating
23 cash balances absent additional financing. *See Chadwick Decl.*, at ¶ 5.

24 9. While the Debtors collectively have a poor financial history, St. Vincent has been
25 particularly troubled. *Id.* at ¶ 6. On the Petition Date, although St. Vincent accounted for
26 approximately only 23% of the patient volume of the entire Verity Health System, the hospital
27 accounted for approximately 60% of the operating losses. *Id.* The Debtors project continuing
28 operating losses by St. Vincent. The reported financial statements of St. Vincent reflect that, in

1 fiscal year 2019 (ended June 30, 2019), SVMC lost approximately \$65 million which was an 18%
2 and 103% increase over the fiscal years 2018 and 2017, respectively. *Id.* at ¶ 8.

3 **B. Marketing and Sale Efforts**

4 (1) *Prepetition Sale Efforts*

5 10. Prior to the Petition Date, the Debtors engaged in substantial efforts to market and
6 solicit interest in their assets, including the five Hospitals and related assets (collectively, the
7 “Assets”). *See Declaration of James M. Moloney in Support of the Debtors’ Memorandum. in*
8 *Support of Entry of an Order: (A) Authorizing the Sale of Property Free and Clear of All Claims,*
9 *Liens and Encumbrances; (B) Authorizing the Assumption and Assignment of Designated*
10 *Executory Contracts and Unexpired Leases; and (C) Granting Related Relief* [Docket No. 2220]
11 (the “Moloney Sale Decl.”), at ¶ 4. In June 2018, Debtors engaged Cain Brothers, a division of
12 KeyBanc Capital Markets (“Cain”), to assist in identifying potential buyers of some or all of the
13 Assets and commenced discussions with those potential Buyers. *Id.* Cain prepared a
14 Confidential Investment Memorandum and organized an online data site to share information
15 with potential buyers and contacted strategic and financial buyers beginning in July 2018. *Id.* In
16 this initial marketing process, Cain contacted more than 100 potential partners to evaluate their
17 interest in exploring a transaction involving some or all of the Assets. *Id.* By August 2018, as a
18 result of its ongoing and broad marketing process, Cain had received 11 “Indications of Interest”
19 from potential buyers of some or all of the Assets. *Id.*

20 (2) *DIP Facility*

21 11. At the commencement of the Cases, the Debtors obtained court approval for a DIP
22 financing facility with up to \$185 million of availability from Ally Bank subject to a borrowing
23 base (the “DIP Facility”). (*See* Docket No. 409). The DIP Facility was secured by substantially
24 all of the Debtors’ assets and also provided for super priority administrative priority status for all
25 obligations under the facility. *Id.* The DIP Facility enabled Debtors to operate the Hospitals
26 while they continued their efforts to find a purchaser for their assets and to reach agreements with
27 key constituents. *See* Chadwick Decl., at ¶ 7. On September 6, 2019, the Debtors received
28

1 authority to pay off the DIP Facility and continue funding operations through the consensual use
2 of cash collateral [Docket No. 3022].

3 (3) *Postpetition Sale Efforts*

4 12. Postpetition, Cain continued to work with potential buyers for some or all of the
5 Assets. Moloney Sale Decl., at ¶ 5. Based on these discussions, the Debtors determined that
6 seeking a buyer for the Assets in Santa Clara and a separate buyer for the other Assets would
7 most likely yield higher net proceeds for the Debtors' estates. *Id.* As a result, the sale of the
8 Santa Clara Assets to Santa Clara County was approved by the Court on December 27, 2018
9 [Docket No. 1153].

10 13. Thereafter, Cain focused on marketing the Debtors' remaining Assets, including
11 St. Vincent. Moloney Sale Decl., at ¶ 6. As a part of this process, Cain contacted more 189
12 potential parties to evaluate potential stalking horse bidders for some or all of the Debtors'
13 remaining Assets of which 92 had executed a NDA and 18 submitted written proposals. *Id.*
14 Subsequent to receiving access to the virtual data room and being offered additional information
15 via conference calls and site visits, many of the potential purchasers indicated that they were not
16 interested in being the stalking horse bidder. *Id.* During November and December 2018, the
17 Debtors and their advisors had substantial discussions with those potential buyers remaining,
18 during which Prime Healthcare and SGM emerged as the leading potential candidates to be
19 selected as the stalking horse bidder for the Debtors' remaining Assets. *Id.*

20 (4) *The SGM APA*

21 14. After extensive negotiations with both parties and careful review of the proposed
22 transactions by the Debtor and its advisors, the Debtors selected SGM as the stalking horse bidder
23 (the "Stalking Horse Bidder") for the Debtors' remaining Assets. *Id.* at ¶ 7. On February 19,
24 2019, the Court held a hearing on the Sale and Bidding Procedures Motion and thereafter entered
25 an order approving the Sale and Bidding Procedures Motion (the "Bidding Procedures Order")
26 [Docket No. 1572]. SGM served as the Stalking Horse Bidder under the terms of the Bidding
27 Procedures Order. The Bidding Procedures Order also approved that certain asset purchase
28 agreement [Docket No. 2305-1] (the "SGM APA") as modified therein.

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15. Cain sent the approved bidding procedures to the 90 parties with whom the Debtor had previously executed NDAs and included the timetable for the sale of the Debtors' remaining Assets. Moloney Sale Decl., at ¶ 8. Cain also requested that each party confirm that each party continued access to the data room and were interested in continuing to evaluate the purchase of some or all of the Debtors' remaining assets. *Id.* Nineteen of those parties confirmed that were still evaluating the transaction and requested continued access to the data room. *Id.*

16. Cain facilitated due diligence by potential buyers, including arranging site visits, organizing calls with the Debtors' leadership team and facilitated follow-up from the Debtors and their advisors to address diligence requests. *Id.* at ¶ 9. Of these nineteen interested parties, certain parties evaluated acquiring all the Debtors' remaining Assets, others evaluated acquiring individual hospitals, and others were real estate companies that evaluated purchasing St. Vincent to convert its campus to non-hospital uses. *Id.*

17. At the end of the marketing period, two parties submitted Qualified Bids, one for St. Vincent and one for St. Francis Medical Center, one party submitted a non-Qualified Bid for St. Francis Medical Center and one party submitted a non-Qualified Bid for all of the assets. *Id.* at ¶ 10. No Qualified Full Bid was received.

18. Accordingly, under the terms of the SGM APA and the Bidding Procedures Order, no auction was held and the Debtors declared SGM as the "winning bidder" of the Hospitals. Docket No. 2053, at 2.

19. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 2306] (the "Sale Order"), approving the sale to SGM (the "SGM Sale"). Pursuant to the SGM APA, SGM agreed to continue to operate St. Vincent as well as the Debtors' other three Hospitals.

20. The Debtors had expected the SGM Sale to close in the fourth quarter of 2019. On November 27, 2019, the Court entered an order and accompanying memorandum decision

1 requiring SGM to close the sale by December 5, 2019 [Docket Nos. 3723-24]. SGM did not
2 close the sale by December 5, 2019.

3 21. The previous marketing and sale process yielded no buyer interested in the
4 purchase of St. Vincent as a going concern, and no alternate buyer is anticipated. Moloney
5 SVMC Decl., at ¶ 4. St. Vincent's operating losses are significant and unsustainable. Chadwick
6 Decl., at ¶ 8. Consequently, the Debtors must start expeditiously resolving these Cases through
7 alternative transactions, including the relief sought in this Motion, pursuant to the authority
8 granted by the Court's order and accompanying memorandum decision [Docket Nos. 3783-84],
9 and consistent with their fiduciary duty.

10 22. The Debtors recently stipulated with their prepetition secured lenders to extend
11 their consensual use of cash collateral [Docket Nos. 3871-72] (the "Cash Collateral Agreement").

12 **C. Closure Plan**

13 *(1) Overview*

14 23. The Debtors, in consultation with their professionals and healthcare advisors, have
15 developed a comprehensive Closure Plan, certain key elements of which are described herein.

16 24. The Closure Plan provides for each of the following steps to conclude St.
17 Vincent's operations and services:

- 18 • Cessation of new inpatient admissions and closure of the emergency department;
 - 19 • Transfer, discharge, and referral of patients;
 - 20 • Communication to employees, patients, providers, government entities, area
21 hospitals, and the community at large;
 - 22 • Transfer, storage, and, when permitted, disposal of medical records;
 - 23 • Disposal of pharmaceuticals, including controlled substances;
 - 24 • Disposal and handling of medical waste and other hazardous materials;
 - 25 • Coordination with Emergency Medical Services ("EMS") and removal of St.
26 Vincent road signs; and
 - 27 • Implementation of enhanced security measures.
- 28

25. Above all, the Closure Plan emphasizes patient safety. The Debtors plan to work closely with the California Department of Public Health (“CDPH”), UNOS, EMS, the Center for Medicare and Medicaid Services (“CMS”), and other licensing and governmental authorities, and area providers to prevent disruption of patient care and ensure a smooth transition of the Debtors’ patients to alternate health care providers. As part of the Closure Plan, St. Vincent’s medical personnel will, among other steps, evaluate patients for safe transport, assess whether a patient is stable, obtain patient consents, obtain health plan authorization if required, and arrange for continuing care. In furtherance of this goal, by this Motion the Debtors also seek authority to enter into and perform under new contracts, as appropriate (*e.g.*, with such providers who accept transfer of patients), to the extent permitted by the terms of their Cash Collateral Agreement.

(2) *Timeline*

26. Although subject to modification based on patient needs and input from the CDPH and others, the Debtors’ current general timeline for shut-down of operations is as follows (all dates are calculated with reference to entry of an order granting this Motion):⁶

- Order + 1 day: Notify EMS and place St. Vincent on diversion protocol for all patients. Begin process of transferring patients, along with their medical record information, to a hospital of their choice. This process includes outreach to local outpatient dialysis providers to help facilitate scheduling for St. Vincent dialysis outpatients with future appointments.
- Order + 3 days: Complete the emergency unit closure.
- Order + 5 days: Cease scheduling all elective procedures.
- Order + 7 days: Conclude and cease all elective surgeries and other procedures.
- Order + 21 days: Complete the dialysis unit closure.
- Order + 30 days: Complete the transplant unit closure.

⁶ All dates are subject to discussions with the CDPH, UNOS, and others as appropriate.

- Order + 30 days: Complete closure and cease clinical operations (the “Closure Date”).

27. Subsequent to the Closure Date, the Debtors will continue to assist with the coordination of care for certain patients with future outpatient appointments, namely those who are in the process of being evaluated for kidney and/or pancreas transplants and patients undergoing outpatient dialysis treatment. The Debtors expect it will take approximately another 30 days to complete the coordination of care with other outpatient health care providers.

(3) *Transfer, Discharge, and Referral of Patients*

28. The most critical aspect of the Closure Plan is ensuring continuity of care for the Debtors’ patients. The majority of currently-admitted patients will be discharged in the ordinary course, and, if necessary, provided with information and assistance to make follow-up appointments with alternate providers. Inpatients will be notified of the anticipated Closure and will be transferred to other area hospitals (such as GSH) if they still require inpatient hospital services as of the Closure Date.⁷ Arrangements with an ambulance carrier will be in place to accommodate the orderly transfer of all inpatients needing ambulance transport. Outpatients with future appointments and patients of the St. Vincent Transplant Program will similarly be notified of the anticipated Closure and the Debtors will assist with care coordination with other hospitals and outpatient health care providers as appropriate for each type of patient (*e.g.*, GSH, St. Joseph, etc.). Such care transfer arrangements likely will require entry into one or more postpetition contracts (*e.g.*, with hospitals, ambulance companies, outpatient providers, etc.), authority for which the Debtors request as part of this Motion’s relief to implement the Closure Plan. The Debtors expect to complete the transfer and discharge of all inpatients by the Closure Date.

⁷ Transfers arranged by St. Vincent will require, at minimum, that (i) the attending physician has determined the patient is stable for transfer, approved the mode of transportation for the transfer and approved the transfer, in accordance with the medical staff bylaws of St. Vincent, (ii) the patient or the patient’s representative has consented to the transfer, and (iii) the patient’s health plan, if any, has approved the transfer.

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(4) *Medical and Business Records Safeguard, Storage, Transfer, and Disposal*

29. The safeguard, storage, transfer, and disposal of medical and business records are also an important element of the Closure Plan. As part of the Closure Plan, the Debtors intend to transfer custody of St. Vincent's records to St. Francis Medical Center ("SFMC"). St. Vincent's electronic records are currently stored on the same server as SFMC's records, so only St. Vincent's physical records require manual transfer. In SFMC's custody, St. Vincent's records will be maintained and retained in accordance with this Court's previous orders regarding (a) patient records [Docket No. 3597] and (b) business and other non-patient records [Docket No. 3596], to the extent applicable; otherwise, the Debtors will seek further disposition through a separate motion. A phone number and email address will be posted for patients to request copies of their medical records and this information will also be provided to CDPH as part of the closure notification process.

(5) *Communications Regarding the Closure Plan*

30. The Debtors are currently developing a comprehensive approach to keep patients, employees, government agencies, area hospitals, and the community at large informed of the Closure process. In particular, the Debtors will contact area hospitals and certain outpatient providers to inform them of the Closure and to discuss procedures for the transfer of patients. In addition, the Debtors will notify the fire department and the appropriate regulatory and governmental agencies of the Closure.

31. With respect to employees, the Debtors intend to arrange for job fairs with the desire that St. Vincent personnel may be hired by transferee hospitals and other local health care providers.

(6) *Disposal of Controlled Substances, Pharmaceuticals, Medical Waste, and Other Hazardous Materials*

32. The Debtors will manage and dispose of controlled substances, pharmaceuticals, medical waste, and other hazardous materials in accordance with state and federal guidelines. Medications, including controlled substances, radioactive materials, chemicals, medical waste, infectious materials, and other hazardous materials will be identified, secured and inventoried,

1 then destroyed, disposed of, returned to vendors, or transferred to other providers, as appropriate.
2 St. Vincent will engage vendors, as needed, to manage the disposal of medical waste and
3 infectious materials. Retention of such vendors likely will require entry into one or more
4 postpetition contracts, authority for which the Debtors request as part of this Motion's relief to
5 implement the Closure Plan.

6 **IV.**

7 **ARGUMENT**

8 Pursuant to §§ 105(a), 363, and 1108, given the failure of the SGM Sale to close, the
9 Court should authorize the orderly closure of St. Vincent in accordance with the Closure Plan
10 because Closure will then be in the best interests of St. Vincent's patients, creditors, and the
11 Debtors' estates.

12 **A. This Court Can Authorize the Closure of St. Vincent Pursuant to §105.**

13 Section 105(a) of the Bankruptcy Code in conjunction with the other sections referenced
14 herein permits the requested relief. Section 105(a) provides:

15 The court may issue any order, process, or judgment that is
16 necessary or appropriate to carry out the provisions of this title. No
17 provision of this title providing for the raising of an issue by a party
18 in interest shall be construed to preclude the court from, *sua sponte*,
taking any action or making any determination necessary or
appropriate to enforce or implement court orders or rules, or to
prevent an abuse of process.

19 11 U.S.C. § 105(a).

20 "Section 105(a) vests bankruptcy courts with broad residual powers". *In re Mastro*, 585
21 B.R. 587 (B.A.P. 9th Cir. 2018). Section 105(a) thus "confers authority to 'carry out' the
22 provisions of the Code . . .". *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014).

23 The Bankruptcy Court may evoke § 105(a) if necessary to preserve a right provided
24 elsewhere in the Code. *Bessette v. Avco Fin. Servs. Inc.*, 230 F.3d 439 (1st Cir. 2000), *cert*
25 *denied*, 532 U.S. 1048 (2001); *Law v. Siegel*, 134 S. Ct. at 1194; *see also In re Chaussee*, 399
26 B.R. 225, 235 (B.A.P. 9th Cir. 2008) ("powers granted to the court under § 105(a) to implement
27 the Code and prevent an abuse of process"); *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003)
28 (§ 105(a) provides bankruptcy courts the power to enforce the Bankruptcy Code). .

“In enacting § 105, Congress also recognized bankruptcy courts’ inherent authority to ‘run their courtrooms and to supervise the attorneys appearing before them.’” *In re Thueson*, No. 4-08-BK-10121-JMM, 2009 WL 1076888, at *12 (Bankr. D. Ariz. Mar. 12, 2009) (*quoting In re Brooks-Hamilton*, 2009 WL 226002, at *5 (9th Cir. BAP January 21, 2009)). Bankruptcy courts, accordingly, also have the power under § 105(a) to enforce their prior orders. *See In re Stokes*, No. 09-60265-7, 2013 WL 492477, at *8 (Bankr. D. Mont. Feb. 8, 2013), *vacated and remanded*, No. ADV 12-00052-RBK, 2013 WL 5313412 (B.A.P. 9th Cir. Sept. 23, 2013) (“This Court has broad powers to enforce its orders under § 105(a).”).

As more fully described below, the requested relief under § 105(a) is needed to preserve Debtors’ rights under §§ 363(b) and 1108 to use their property in a manner that will enable them to move quickly to stave off continued losses and to address the current situation facing St. Vincent given no new purchaser is reasonably anticipated. In this case, if the Court enters an order permitting closure, the Debtors will be able to quickly move forward and implement the plans and procedures necessary to close the hospital.

B. Section 363(b) Authorizes the Debtors to Use Their Property According to Their Business Judgment

The Court has the authority to grant the requested relief under § 363(b), which permits a debtor to use its property in a manner which will enhance value to the estate. The Debtors must be able to “use” their property in a manner that permits them to stop St. Vincent’s mounting losses and to retain value for the benefit of the remaining estates. More importantly in this case, as a hospital system, the Debtors must use their property in a manner that protects the patients in their care, who are best served by the orderly implementation of the Closure Plan.

Section 363(b) provides, in relevant part, that a debtor “after notice and a hearing, may **use**, sell or lease, other than in the ordinary course of business, property of the estate . . .”. 11 U.S.C. § 363(b) (emphasis added). While there is no legislative history to explain why the term “use” is part of § 363(b), courts have viewed § 363(b) as providing flexibility to debtors in the exercise of their business judgment. In reviewing a debtor’s decision to use estate property pursuant to § 363, courts have routinely held that if such use represents reasonable business

1 judgment on the part of the debtor, such use should be approved. *See In re Gardens Reg'l Hosp.*
2 *& Med. Ctr., Inc.*, Case No. 2:16-bk-17463-ER (Bankr. C.D. Cal. Jan. 20, 2017) (Robles, J.)
3 (“The closing of the hospital constitutes use of estate property, outside the ordinary course of
4 business, within the meaning of Bankruptcy Code §363(b). The Debtor’s decision to close the
5 hospital is a proper exercise of the Debtor’s business judgment.”); *see also In re Lionel Corp.*,
6 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a “good business reason” to approve a
7 transaction under § 363). “Ordinarily, the position of the trustee is afforded deference,
8 particularly where business judgment is entailed in the analysis or where there is no objection.”
9 *In re Lahijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005).

10 While the closure of St. Vincent is far from an ideal solution—in fact, it is a last, tragic
11 resort—in the absence of other alternatives, it is the only viable solution that will grant the
12 greatest safeguards to the patients in St. Vincent’s care, accomplish the goal of addressing St.
13 Vincent’s cash losses, and retain some value for the Debtors’ stakeholders. Declaration of
14 Richard Adcock (the “Adcock Decl.”), at ¶¶ 5-6. The Debtors are aware of their fiduciary duty to
15 creditors as debtors in possession, and have determined that ceasing operations at St. Vincent in
16 the absence of another viable solution is in the best interests of St. Vincent’s individual estate as
17 well as the Debtors’ collective estates. *Id.*; *see also In re R.H. Macy & Co., Inc.*, 170 B.R. 69, 74
18 (Bankr. S.D.N.Y. 1994) (“The debtor’s duty to maximize estate assets may require the cessation
19 of operations at one location.”).

20 Courts emphasize that the business judgment rule may be satisfied “as long as the
21 proposed transaction appears to enhance the debtor’s estate.” *In re Food Barn Stores, Inc.*, 107
22 F.3d 558, 566 n.16 (8th Cir. 1997); *accord In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D.
23 Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the
24 business judgment rule, “management of a corporation’s affairs is placed in the hands of its board
25 of directors and officers, and the Court should interfere with their decisions only if it is made
26 clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the
27 officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate
28 information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re*

1 *Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists*
2 *Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762
3 F.2d 1303, 1309 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th
4 Cir. 1992)). Here, the Debtors have determined in their business judgment that it is prudent to
5 seek permission to cease operations at St. Vincent. Adcock Decl., at ¶ 6. The Debtors have
6 limited cash, cannot continue operations of St. Vincent, and have therefore determined that it is in
7 the best interests of their respective estates and creditors to effectuate a Closure of St. Vincent and
8 focus on a safe and orderly wind-down through implementation of the Closure Plan. *Id.* at ¶¶ 5-8.

9 In *Gardens Regional Hospital*, this Court granted similar relief under similar
10 circumstances. This Court recognized the following facts in that case:

11 The Debtor's existing operations do not generate sufficient cash flow to
12 keep the hospital open. To maintain operations, the Debtor would be
13 required to obtain additional debtor-in-possession ("DIP") financing. No
14 lenders will extend credit to the Debtor unless the credit is secured by a
15 lien senior in priority to the liens of the Debtor's pre-petition secured
creditors. Under the circumstances, the Court lacks the statutory authority
to authorize the Debtor to obtain additional credit priming the liens of the
secured creditors.

16 Case No. 2:16-bk-17463-ER, Docket No. 633 (Bankr. C.D. Cal. Jan. 20, 2017). As a result, the
17 Bankruptcy Court concluded that "[t]he closing of the hospital constitutes use of estate property,
18 outside the ordinary course of business, within the meaning of Bankruptcy Code §363(b). The
19 Debtor's decision to close the hospital is a proper exercise of the Debtor's business judgment."
20 *Id.*

21 Indeed, this Court in *Gardens Regional Hospital* further recognized that under these
22 circumstances, the Debtors' very duty is to close the Hospital:

23 In view of the lack of funds to continue operations, and the inability of the
24 Debtor to obtain additional credit, the vote by the Debtor's Board of
25 Directors ("Board") to seek closure of the hospital was entirely consistent
26 with the Board's fiduciary duties, imposed under state law, to uphold the
27 hospital's mission of sustaining public health and welfare. Public health
28 and safety would be jeopardized if the Debtor continued to admit new
patients when it lacks funds to adequately sustain operations. In fact, the
Board would be acting in violation of its fiduciary duties to the community
if it attempted to continue operating the hospital despite the lack of
sufficient cash to sustain operations.

1 *Id.*

2 For all the same reasons here, the Debtors request urgent approval to close St. Vincent.
3 Absent the SGM Sale, there are no viable offers for St. Vincent as a going concern, and any delay
4 in commencing a closure plan prejudices patients and estate stakeholders. Adcock Decl., at ¶ 5;
5 Moloney SVMC Decl., at ¶ 4; *see also* Chadwick Decl., at ¶¶ 7, 9. The Motion is being made at
6 this time because the orderly transfer of patients and wind-down of St. Vincent will take time,
7 including time to arrange patient transfers with alternate health care providers. Adcock Decl., at
8 ¶ 6. Beyond transfer of inpatients, St. Vincent provides longer-term care for certain outpatients
9 receiving dialysis or on the UNOS transplant waitlist, which patients require further advance
10 planning as part of any transition. *Id.* So timing is truly of the essence and St. Vincent is seeking
11 authority to initiate this process as soon as possible.

12 **C. Section 1108 Authorizes the Debtors *Not* to Operate Their “Moribund” Businesses**

13 Section 1108 of the Bankruptcy Code grants a debtor in possession the *right* to operate its
14 businesses, providing that the trustee (or debtor in possession) “*may* operate the debtor’s
15 business.” 11 U.S.C. § 1108 (emphasis added). With its use of the permissive term, “may,” the
16 statute “clearly indicates that a trustee is not required to operate the debtor’s business.” *In re*
17 *Thrifty Liquors, Inc.*, 26 B.R. 26, 28 (Bankr. D. Mass. 1982). Indeed, § 1108 “necessarily implies
18 the lesser authority to modify the operation of the business on such grounds as he deems
19 appropriate under the circumstances.” *Id.* Thus, a debtor is not required to operate its business
20 “if such operations will reduce the value of the debtor’s assets or if the debtor’s business is
21 moribund.” 7 *Collier on Bankruptcy*, ¶ 1108.13 (Alan N. Resnick & Henry Sommer eds., 16th
22 ed.). Indeed, in such circumstances, “continued operation of a business that ought to be closed
23 down and liquidated may be a breach of the fiduciary duties of a trustee or debtor in possession.”
24 *Id.* As discussed further herein, the Debtors have determined that there are compelling reasons to
25 cease operations at St. Vincent.

26 **D. Good Cause Exists for Granting the Relief**

27 This Court has the authority to order the closure based on the facts and evidence
28 presented. *See* 11 U.S.C. §§ 105(a), 363(b), and 1108. The Debtors intend to conduct the closure

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1 in coordination with regulatory authorities and with due care for the patients and with the
2 assistance of their medical personnel. Adcock Decl., at ¶ 9. St. Vincent will place its license in
3 suspense, consistent with applicable law and with the assistance of the Debtors' health care
4 experts.⁸ *Id.*

5 After the closure of St. Vincent, the Debtors will seek to sell the land and buildings and
6 otherwise dispose of their assets (*e.g.*, equipment), as may be approved by this Court in
7 subsequent orders.

8 Relief similar to that requested herein has been granted in previous chapter 11 cases. *See*
9 *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 2:16-bk-17463-ER, Docket No. 633
10 (Bankr. C.D. Cal. Jan. 20, 2017) (Robles, J.) (order authorizing closure of the debtor hospital); *In*
11 *re Saint Vincents Catholic Med. Ctrs. of N.Y.*, Case No. 10-11963, Docket No. 276 (Bankr.
12 S.D.N.Y. May 14, 2010) (order authorizing continued implementation of closure plan for the
13 debtors' Manhattan hospital and certain affiliated outpatient clinics and practices); *In re Saint*
14 *Vincents Catholic Med Ctr. of N.Y.*, Case No. 05-14945, Docket No. 394 (Bankr. S.D.N.Y. Sept.
15 20, 2005) (order authorizing closure of St. Mary's hospital).

16 V.

17 **REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY**

18 Pursuant to Bankruptcy Rule 6004(h), the Debtors seek a waiver of any stay of the
19 effectiveness of any order granting the relief sought herein. Bankruptcy Rule 6004(h) provides
20 that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed
21 until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R.
22 Bankr. P. 6004(h). Here, failure to grant immediate relief would risk immediate and irreparable
23 harm to the Debtors' patients and the estates. Adcock Decl., at ¶ 5; Chadwick Decl., at ¶ 4.
24 Notwithstanding the skill and dedication of the Debtors' employees to maintain St. Vincent's
25 operations, given the Debtors' financial condition and available funding, the Debtors must be
26

27
28 ⁸ *See* Cal. Health & Safety Code § 1300(a); *see also* Cal. Code Regs., tit. 22, §§ 70131 and 70133.

1 permitted to move expeditiously to implement a closure plan for St. Vincent, in coordination with
2 applicable governmental authorities. Adcock Decl., at ¶ 5.

3
4 **VI.**

5 **CONCLUSION**

6 For all of the reasons stated above, the Debtors request that the Court grant the requested
7 relief.

8 Dated: January 6, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

9
10
11 By: /s/ Tania M. Moyron

12 Attorneys for the Chapter 11 Debtors and
13 Debtors In Possession
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DECLARATION OF RICHARD ADCOCK

I, Richard G. Adcock, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure (the “Closure”) of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent (the “Closure Plan”); and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of the Debtors as well as those affiliated entities that are not in bankruptcy.

3. I have worked for more than 25 years in the healthcare arena, with 15 years in not for profit operations. During this period, I have accumulated extensive senior level experience in the areas of not-for-profit healthcare, especially in healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management and medical devices. I also have meaningful experience in other related areas, including human resources and personnel management.

4. My background and familiarity with the Debtors’ day-to-day operations, business and financial affairs, and the circumstances leading to the commencement of these chapter 11 bankruptcy cases are set forth more fully in my *Declaration filed in Support of Emergency First-*

¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion.

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1 *Day Motions* [Docket No. 8] on the Petition Date, and is incorporated by reference into this
2 Declaration.

3 5. For all of the reasons set forth in the Motion and the supporting declarations, I
4 believe failure to grant immediate relief would risk immediate and irreparable harm to the
5 Debtors' patients and the estates. The Debtors must be permitted to move expeditiously to
6 implement a closure plan for St. Vincent because it is the only viable solution at this point in
7 these cases and grants the greatest safeguards to the patients in St. Vincent's care. As set forth in
8 the declaration of Peter Chadwick, St. Vincent has been operating at significant financial losses
9 (more than \$65 million in fiscal year 2019 alone), which has become unsustainable for both St.
10 Vincent, and for the other Debtors forced to subsidize its losses. Further, as set forth in the
11 declaration of James Moloney, there is no buyer who has presented a feasible offer to purchase
12 St. Vincent as a going concern and the previous marketing and sale process yielded no bid for St.
13 Vincent as a stand-alone hospital. Even if there were any material and viable interest to purchase
14 St. Vincent, St. Vincent and the estates could not sustain the losses that would be incurred during
15 the regulatory review process, such as the losses borne during the Attorney General review
16 process for the sale to Strategic Global Management, Inc. ("SGM"), which failed when SGM did
17 not close the sale.

18 6. Given the foregoing, the Debtors have determined in their business judgment that
19 it is in the best interest of the Debtors and their estates to seek immediate closure of St. Vincent.
20 Any delay in commencing a closure plan prejudices patients and the estates' stakeholders. The
21 Motion is being made at this time because the orderly transfer of patients and wind-down of St.
22 Vincent will take time, including time to arrange patient transfers with alternate health care
23 providers. Beyond transfer of inpatients, St. Vincent provides longer-term care for certain
24 outpatients receiving dialysis or on the UNOS transplant waitlist, which patients require further
25 advance planning as part of any transition.

26 7. Further, as responsible stewards of patient safety, the Debtors' foremost
27 responsibility is delivery of high quality patient care, and consequently the Debtors must begin
28 the Closure Plan with sufficient cash on hand to orderly implement the plan and transfer of

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1 patients. Currently, through use of cash collateral, the Debtors have sufficient cash on hand to
2 conduct the Closure. However, this assumes that the current daily loss rate does not increase
3 significantly and that the proposed Closure Plan is approved. Continuing to incur operating
4 losses at St. Vincent outside the Closure Plan would only deplete cash resources and place St.
5 Vincent and the Debtors in a position that they would not have sufficient cash on hand to conduct
6 the orderly Closure.

7 8. The Debtors anticipate it will take 30 days to discharge acute care patients. As
8 part of the Closure Plan, St. Vincent intends to enter into an agreement with Good Samaritan
9 Hospital (“GSH”) whereby GSH will accept transfers of St. Vincent’s inpatients, subject to
10 applicable legal requirements. GSH is located approximately one mile from St. Vincent. With
11 respect to patients in St. Vincent’s kidney/pancreas transplant program, it will take (i) 30 days to
12 transfer those currently receiving care to alternate providers, and (ii) 60 days to coordinate care
13 with other outpatient health care providers for those patients who are being evaluated for the
14 program or have already received a transplant and been discharged. St. Joseph Hospital (“St.
15 Joseph”) has agreed to assume care of the kidney transplant patients who are part of the St.
16 Vincent Transplant Program, subject to approval of the United Network for Organ Sharing
17 (“UNOS”). St. Joseph has its own UNOS-approved Kidney Transplant Program. The Debtors
18 are in discussions with other area hospitals to coordinate the transfer of care for the pancreas-only
19 transplant patients (less than twenty patients).

20 9. The Debtors intend to conduct the Closure in coordination with regulatory
21 authorities and with due care for the patients and with the assistance of their medical personnel.
22 St. Vincent will place its license in suspense, consistent with applicable law and with the
23 assistance of the Debtors’ health care experts.

24 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
25 inquiry, the foregoing is true and correct.

26 Executed this 6th day of January, 2020, at Los Angeles, California.

27 

28 RICHARD G. ADCOCK

DECLARATION OF PETER C. CHADWICK

I, Peter C. Chadwick, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent; and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am a Managing Director of Berkeley Research Group, LLC (“BRG”) and am duly authorized to make this declaration on behalf of BRG. Except as otherwise noted, the facts set forth herein are personally known to me and, if called as a witness, I could and would testify thereto.² In July 2018, BRG began its engagement serving as the financial advisor to the Debtors, which has continued since the Petition Date. In this capacity, I have become intimately familiar with the Debtors’ operations, business, books, records, financial affairs, material agreements, and sale processes, and, as a result, have become uniquely situated to assist the Debtors.

3. As a result, pursuant to the Debtors’ request, and as authorized by the Bankruptcy Court, I have agreed to serve in the role of Chief Financial Officer to the Debtors in these chapter 11 cases. I have significant operating experience, including improving underperforming businesses and advising debtors and creditors in complex financial matters. I have served as chief executive officer, chief operating officer, chief financial officer, and advisor to companies in a variety of industries. My healthcare experience includes acting as the advisor or an officer to healthcare providers, including leading hospital systems and long-term care providers through

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² Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at BRG and are based on information provided to me by such other BRG professionals.

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1 operational turnarounds and financial restructurings. As an officer or advisor, I prepared and
2 implemented post-acquisition integration plans, viability plans, asset dissolution strategies, and
3 liquidity enhancement plans. My experience spans the spectrum from the largest U.S. companies
4 to middle market proprietary companies.

5 4. For all of the reasons set forth in the Motion and the supporting declarations,
6 failure to grant immediate relief would risk immediate and irreparable harm to the Debtors'
7 patients and the estates.

8 5. When the Debtors filed their chapter 11 cases, they represented that St. Vincent
9 had consistently lost money for many years due to, among other things, unfavorable payor
10 contracts, rising health care costs, high pension obligations and certain requirements imposed on
11 St. Vincent by the State of California Attorney General. They also represented that St. Vincent
12 was dramatically under invested in structural improvements necessary to meet California's state
13 mandated seismic and clean energy requirements. However, the combined effect of these issues
14 have been a consistent drag in operating cash balances absent additional financing.

15 6. While the Debtors collectively have a poor financial history, St. Vincent has been
16 particularly troubled. On the Petition Date, although St. Vincent accounted for approximately
17 only 23% of the patient volume of the entire Verity Health System, the hospital accounted for
18 approximately 60% of the operating losses.

19 7. The DIP Facility enabled Debtors to operate the Hospitals while they continued
20 their efforts to find a purchaser for their assets and to reach agreements with key constituents.
21 The Debtors had expected the SGM Sale to close in the fourth quarter of 2019, but it did not. At
22 this point, even if there were any material interest (which there is not), St. Vincent and the estates
23 could not sustain the losses that would be incurred during the regulatory review process, such as
24 the losses borne during the Attorney General review process for the sale to Strategic Global
25 Management, Inc. ("SGM"), which failed when SGM did not close the sale.

26 8. St. Vincent's operating losses are significant and unsustainable. The reported
27 financial statements of St. Vincent reflect that, in fiscal year 2019 (ended June 30, 2019), SVMC
28

1 lost approximately \$65 million which was an 18% and 103% increase over the fiscal years 2018
2 and 2017, respectively.

3 9. Although the Debtors have continued operating St. Vincent by subsidizing its
4 losses in pursuit of selling the entire health system as a whole, the failure of SGM to close the
5 SGM Sale and the Debtors' liquidity constraints requires the immediate reduction of operating
6 losses to preserve the other hospitals' ability to continue to operate while alternative transactions
7 are pursued.

8 10. The Debtors recently stipulated with their prepetition secured lenders to extend
9 their consensual use of cash collateral to help fund the resolution of these Bankruptcy Cases. The
10 Debtors anticipate that by mitigating St. Vincent's operational losses through closure of its
11 facilities as expediently as possible, the Debtors will have sufficient cash-on-hand (e.g.,
12 remaining proceeds from the hospital sales to Santa Clara County plus extended consensual use
13 of cash collateral) to fund the Closure in an orderly manner.

14 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
15 inquiry, the foregoing is true and correct.

16 Executed this 6th day of January, 2020, at Los Angeles, California.

17 
18 PETER C. CHADWICK

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DECLARATION OF JAMES M. MOLONEY

I, James M. Moloney, hereby state and declare as follows:

1. I submit this declaration (the “Declaration”) in support of the *Debtors’ Emergency Motion for Authorization to Close St. Vincent Medical Center* (the “Motion”),¹ which seeks entry of an order authorizing the Debtors to: (a) take all actions necessary in the exercise of their business judgment to effectuate the orderly closure of St. Vincent Medical Center (including its on-campus dialysis center, “St. Vincent”), including the transfer of patient care to other health care providers, the proper disposition of controlled substances and hazardous materials, notices to governmental entities, and ultimately, the cessation of operations at St. Vincent; and (b) granting such other relief as the Court deems just and proper in connection therewith.

2. I am a managing director of Cain Brothers (“Cain”), which is a division of KeyBanc Capital Markets Inc., a wholly-owned broker/dealer subsidiary of KeyCorp and an affiliate of KeyBank National Association. I am located in Cain’s San Francisco office which is located at One California Street, Suite 2400, San Francisco, California. Mr. Carsten Beith and I are the co-heads of Cain’s Health Systems Mergers & Acquisition group. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon.

3. As set forth in my previous declarations, beginning in June 2018, Cain began working with the Debtors to collect and review financial, operational and other information about the historic, current and project future operations and financial performance of each of the Debtors. Cain also began searching for a buyer or buyers for the Debtors’ assets and created a potential list of buyers for the Verity Heath System as a whole or in parts. Mr. Beith and I led the marketing and sale efforts on behalf of Verity and advised Verity in connection with Verity’s selection of Strategic Global Management, Inc., as the Stalking Horse Buyer for the Debtors’ Hospitals and related assets.

4. The previous marketing and sale process yielded no bid for St. Vincent as a stand-alone hospital. Further, in our most recent discussions and outreach to potential buyers of the

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1 debtors' assets, no potential bidders have expressed an interest in purchasing St. Vincent to
2 operate the hospital as a going concern. Today, however, I did have a telephone conversation
3 with a potential bidder that expressed an interest in acquiring St. Vincent with an unidentified
4 partner with hospital operating experience. This potential bidder indicated that their long-term
5 interest for St. Vincent was as a real-estate investment if the hospital operating partner could not
6 develop a viable plan to operate St. Vincent's profitably. My discussion with this bidder
7 indicated that limited due diligence had been conducted and that it may not have experience with
8 the regulatory approval process required for such a transaction.

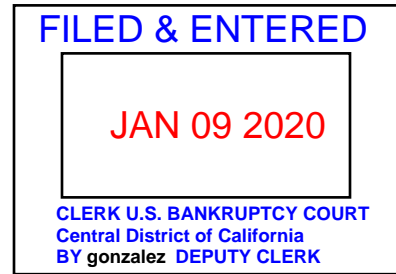
9 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
10 inquiry, the foregoing is true and correct.

11 Executed this 6th day of January, 2020, at San Francisco, California.

12 

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14 JAMES M. MOLONEY
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EXHIBIT 27



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**ORDER GRANTING DEBTORS' EMERGENCY
MOTION FOR AUTHORIZATION TO CLOSE ST.
VINCENT MEDICAL CENTER**

[RELATES TO DOC. NO. 3906]

Date: January 8, 2020
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



1820151200109000000000025

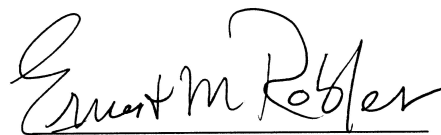
At the above-captioned date and time, the Court conducted a hearing on the *Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center* (the "Motion") [Doc. No. 3906]. For the reasons set forth in the concurrently-issued *Memorandum of Decision Granting Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center*, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Motion is **GRANTED**.
- 2) Notwithstanding Bankruptcy Rule 6004(h), this Order shall take effect immediately upon entry.
- 3) The Closure Plan¹ is **APPROVED** in its entirety, except that the deadline for physicians leasing medical office space at St. Vincent to vacate the premises shall be **April 30, 2020**.
- 4) The Debtors are authorized to take all actions necessary in their business judgment to immediately implement the Closure Plan and to effect the orderly closure of St. Vincent, including without limitation (a) transferring patients to other health care providers, (b) disposing of controlled substances and hazardous materials, (c) notifying governmental entities, and (d) ceasing operations.
- 5) By no later than **January 23, 2020**, the Debtors shall submit a Status Report regarding implementation of the Closure Plan. Subsequent Status Reports shall be submitted every fourteen days until the Closure Plan has been fully implemented.²

IT IS SO ORDERED.

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Date: January 9, 2020

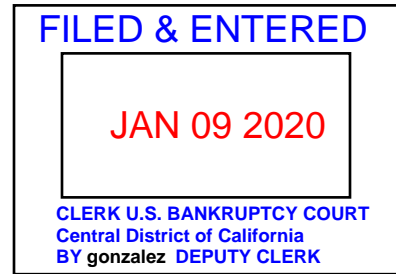


Ernest M. Robles
United States Bankruptcy Judge

¹ Capitalized terms not defined herein have the meaning set forth in the Motion.

² No hearings will be conducted in connection with the Status Report unless otherwise ordered by the Court.

EXHIBIT 28



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Verity Health System of California, Inc., *et al.*,
Debtors and Debtors in Possession.

☒ Affects All Debtors

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

Debtors and Debtors in Possession.,

Lead Case No.: 2:18-bk-20151-ER
Chapter: 11

Jointly Administered With:

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

Chapter 11 Cases.

**MEMORANDUM OF DECISION GRANTING
DEBTORS' EMERGENCY MOTION FOR
AUTHORIZATION TO CLOSE ST. VINCENT
MEDICAL CENTER**

[RELATES TO DOC. NO. 3906]

Date: January 8, 2020
Time: 10:00 a.m.
Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012



182015120010900000000024

Before the Court is the Debtors' emergency motion (the "Motion") for authorization to implement a plan to close St. Vincent Medical Center and St. Vincent Dialysis Center, Inc. (collectively, "St. Vincent"). The Court conducted a hearing on the Motion at the above-captioned date and time. Because the Motion was heard on an emergency basis, the Court allowed parties who had not filed a written opposition to the Motion to present arguments at the hearing.¹ For the reasons set forth below, the Motion is GRANTED.

I. Facts

On August 31, 2018 (the "Petition Date"), Verity Health System of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are being jointly administered.

As of the Petition Date, the Debtors operated six acute care hospitals in the state of California. On December 27, 2018, the Court authorized the Debtors to sell two of their hospitals—O'Connor Hospital and Saint Louise Regional Hospital—to Santa Clara County (the "Santa Clara Sale").² The Santa Clara Sale closed on February 28, 2019.

On February 19, 2019, the Court entered an order establishing bidding procedures (the "Bidding Procedures Order")³ for the auction of the Debtors' four remaining hospitals—St. Francis Medical Center ("St. Francis"), St. Vincent Medical Center (including St. Vincent Dialysis Center) ("St. Vincent"), Seton Medical Center ("Seton"), and Seton Medical Center Coastside ("Seton Coastside") (collectively, the "Hospitals"). Under the Bidding Procedures Order, Strategic Global Management ("SGM") was designated as the stalking horse bidder.

¹ In addition to the oral presentations made at the hearing, the Court considered the following papers in adjudicating the Motion:

- 1) Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center (the "Motion") [Doc. No. 3906];
 - a) Order Setting Hearing on Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3907];
 - b) Notice of Hearing on Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3909];
 - c) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3906, 3907 and 3909 [Doc. No. 3913];
- 2) Opposition by California Nurses Association to Debtors' Emergency Motion for Authorization to Close St. Vincent Medical Center [Doc. No. 3914];
- 3) Opposition to Emergency Motion Filed by Marc Girsky, M.D., Chief of Staff of St. Vincent Medical Center [Doc. No. 3916]; and
- 4) Opposition to Emergency Motion Filed by Samuel K. Lee [Doc. No. 3926].

² For a description of the Santa Clara Sale, see *In re Verity Health Sys. of California, Inc.*, 598 B.R. 283 (Bankr. C.D. Cal. 2018) ("*Verity I*").

³ See Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice To Be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 1572].

SGM's bid for all four of the Hospitals was \$610 million. The Bidding Procedures Order approved an Asset Purchase Agreement (the "APA") between the Debtors and SGM.

The Hospitals were extensively marketed by the Debtors' investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. ("Cain Brothers"). Cain Brothers notified ninety parties of the auction process. Sixteen of these parties requested continued access to a data room containing information about the Hospitals.

Notwithstanding Cain Brothers' thorough marketing efforts, the Debtors did not receive any qualified bids for all of the Hospitals. The Debtors received one bid to purchase only St. Vincent and one bid to purchase only St. Francis. After consulting with the Official Committee of Unsecured Creditors (the "Committee") and the largest secured creditors, the Debtors determined not to conduct an auction. On May 2, 2019, the Court entered an order finding that SGM was the winning bidder and approving the sale to SGM (the "SGM Sale").⁴

On November 27, 2019, the Court entered a memorandum of decision and accompanying order finding that as of November 19, 2019, all conditions precedent under the APA to SGM's obligation to close the SGM Sale had been satisfied.⁵ The Court found that pursuant to § 1.3 of the APA, SGM was obligated to close the SGM Sale by no later than December 5, 2019. *Id.* SGM did not close the sale by December 5, 2019.⁶ On December 27, 2019, the Debtors sent SGM a notice terminating the APA and asserting that SGM had materially breached the APA.⁷

The Debtors seek authorization to implement a plan to close St. Vincent (the "Closure Plan"). The Debtors assert that there is no buyer interested in purchasing St. Vincent as a going-concern; that the operating losses generated by St. Vincent threaten the viability of the entire Verity Health System; and that if the Debtors do not immediately begin implementing the Closure Plan, they will lack sufficient funds to conduct an orderly closure.

The timeline contemplated by the Closure Plan is as follows (all dates are calculated with reference to entry of an order granting the Motion):

- Order + 1 day: Notify Emergency Medical Services and place St. Vincent on diversion protocol for all patients. Begin process of transferring patients, along with their medical information, to a hospital of their choice.
- Order + 3 days: Complete closure of emergency department.
- Order + 5 days: Cease scheduling all elective procedures.
- Order + 7 days: Conclude and cease all elective surgeries and other procedures.
- Order + 21 days: Complete closure of the dialysis department.
- Order + 30 days: Complete closure of the transplant department.

⁴ See Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Strategic Global Management, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Unexpired Leases Related Thereto; and (C) Granting Related Relief [Doc. No. 2306].

⁵ See Memorandum of Decision Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 [Doc. No. 3723] and Order (1) Finding that SGM is Obligated to Close the SGM Sale By No Later than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement [Doc. No. 3274].

⁶ *Id.*

⁷ See Notice Re Termination of Asset Purchase Agreement with Strategic Global Management, Inc. [Doc. No. 3899].

- Order + 30 days: Complete closure and cease clinical operations.

Summary of the California Nurses Association's Opposition to the Motion

The California Nurses Association (the "CNA"), which represents registered nurses employed at St. Vincent, opposes the Motion. The CNA makes the following arguments and representations in support of its opposition:

The Debtors have not demonstrated that they have provided the notice of the contemplated closure that is required under California law. Specifically, the contemplated closure violates the following provisions of the Cal. Health & Safety Code:

- Cal. Health & Safety Code § 1255.1(a) requires that any hospital providing emergency medical services give 90 days' advance notice of the elimination of such services to "the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity."
- Cal. Health & Safety Code § 1225.1(b) requires a hospital to provide 90 days' advance notice of the closure "in a manner that is likely to reach a significant number of residents of the community" serviced by the hospital.
- Cal. Health & Safety Code § 1255.25(a)(1) requires that not less than 30 days prior to the closure, the hospital (1) post notice of the closure "at the entrance to all affected facilities" and (2) provide notice of the closure to the department and the board of supervisors of the county in which the hospital is located.
- Cal. Health & Safety Code § 1255.25(b)(2) requires that not less than 30 days prior to closure, the hospital provide notice to Medicare and Medi-Cal beneficiaries, including information on the nearest available facilities providing similar healthcare services.

The notification requirements serve a vital role in helping underserved communities prepare for the devastating loss of essential healthcare services. As set forth in a January 7, 2020 letter from California State Senator Maria Elena Durazo and California State Assembly Member Wendy Carrillo, who represent constituents in the district in which St. Vincent is located, closure of the hospital will be "devastating" for the district, and the public notice requirement "is crucial because it gives [the public] time to figure out where patients should be going to receive care in the area" and "ensure[s] workers are not left unemployed"

In *Norris Square Civic Ass'n v. St. Mary Hosp. (In re St. Mary Hosp.)*, the Bankruptcy Court enjoined a hospital from closing because it had failed to comply with applicable notice requirements imposed by state law. 86 B.R. 393, 400 (Bankr. E.D. Pa. 1988). The Motion should be denied based on the Debtors' failure to comply with the notice requirements imposed by California law.

The timeframe proposed by the Debtors for closing the emergency department creates an unreasonable risk to public safety. The Debtors plan to close the emergency department within three days after entry of an order granting the Motion. Even if ambulances are placed on diversion status, many residents of the community will still drive to the emergency department to receive care. Based on the most recent filing with the California Office of Statewide Health Planning and Development, the emergency department receives approximately 83 visits per day.

II. Discussion

A. CNA's Opposition to the Motion is Overruled

CNA asserts that the Closure Plan cannot be approved because the Debtors have failed to provide notification of the closure in accordance with the provisions of the Cal. Health & Safety Code. CNA's argument incorrectly assumes that the Cal. Health & Safety Code's notice provisions are controlling within the bankruptcy context.

Title 28 U.S.C. § 959(b) requires the Debtors to "manage and operate the property" in their possession "according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." However, § 959(b) applies only to property used in connection with an operating business; it does not apply to property where business operations have ceased and the assets are being liquidated. In *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, this Court held that § 959(b) did not apply to the sale of a closed hospital. 567 B.R. 820, 829 (Bankr. C.D. Cal. 2017). *See also S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) ("Modern courts have ... concluded that § 959(b) does not apply to liquidations"); *Alabama Surface Min. Comm'n v. N.P. Min. Co. (In re N.P. Min. Co., Inc.)*, 963 F.2d 1449, 1460 (11th Cir. 1992) ("A number of courts have held that section 959(b) does not apply when a business's operations have ceased and its assets are being liquidated"); *Saravia v. 1736 18th St., N.W., Ltd. P'ship*, 844 F.2d 823, 827 (D.C. Cir. 1988) (viewing § 959(b) "as applying only to operating businesses, not ones that were in the process of being liquidated").

Upon initiation of the Closure Plan, St. Vincent will enter the process of liquidation and will no longer be an operating business. Therefore, § 959(b) does not require the Debtors to comply with the notice deadlines of the Cal. Health & Safety Code when implementing the Closure Plan.

This case provides a compelling illustration of why the Bankruptcy Court's authority to supervise the use of estate property under § 363(b) must trump the Cal. Health & Safety Code. The Debtors worked to close the SGM Sale, which would have allowed St. Vincent to continue operating, until December 27, 2019. Compliance with the Cal. Health & Safety Code's notice requirements would have required the Debtors to provide notice that St. Vincent would be closing at a time when the Debtors reasonably expected that the SGM Sale would close. The provision of such notice would have interfered with St. Vincent's operations, disrupting the Debtors' efforts to close the SGM Sale. Premature publication of notice of closure would have harmed employee retention and morale, confused patients, and caused vendors to cease furnishing critical supplies. These serious harms would have undercut the central objective of the § 363 sale process—providing the Debtors the opportunity to realize the optimal value of their assets. *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (9th Cir. BAP 2005).

CNA's opposition suffers from an additional defect. As a party in interest, CNA "may appear and be heard on any issue" in these cases. § 1109(b). However, the Court must still assess whether CNA has standing to assert that the Closure Plan violates the Cal. Health & Safety Code. The Court finds that it does not.

The provisions of the Cal. Health & Safety Code cited by CNA are enforced by the California Department of Public Health (the "CDPH"). CDPH did not file a written opposition to the Motion.⁸ CNA's opposition essentially seeks to enforce various provisions of the Cal. Health

⁸ At the hearing, Deputy Attorney General Kenneth K. Wang, who represents the California Department of Health Care Services, alleged that the Motion had not been properly served upon

& Safety Code against the Debtors on CDPH's behalf. That is not appropriate, because the Health & Safety Code does not create a private right of action. The California Supreme Court has explained that a private right of action exists under the following circumstances:

A violation of a state statute does not necessarily give rise to a private cause of action. Instead, whether a party has a right to sue depends on whether the Legislature has "manifested an intent to create such a private cause of action" under the statute....

A statute may contain " 'clear, understandable, unmistakable terms,' " which strongly and directly indicate that the Legislature intended to create a private cause of action. For instance, the statute may expressly state that a person has or is liable for a cause of action for a particular violation. (See, e.g., Civ.Code, § 51.9 ["A person is liable in a cause of action for sexual harassment" when a plaintiff proves certain elements]; Health & Saf.Code, § 1285, subd. (c) ["Any person who is detained in a health facility solely for the nonpayment of a bill has a cause of action against the health facility for the detention"].) Or, more commonly, a statute may refer to a remedy or means of enforcing its substantive provisions, i.e., by way of an action.

Lu v. Hawaiian Gardens Casino, Inc., 50 Cal. 4th 592, 597, 236 P.3d 346, 348 (2010) (internal citations omitted).

None of the sections cited by CNA contains language expressly creating a private right of action. Further, there is no indication that the legislature intended for private entities to have the ability to enforce those provisions against hospitals. *See Lu*, 50 Cal. 4th at 600 (providing that if a statute does not expressly create a private right of action, there must be a "clear indication" that the legislature intended to do so). To the contrary, the structure of the statute indicates that the legislature delegated enforcement responsibilities solely to the CDPH. The provisions cited by CNA are contained within the chapter of the statute pertaining to licensure. That chapter also contains provisions setting forth the circumstances under which a health facility's license may be revoked, including the manner in which the CDPH must conduct hearings on license revocation. *See Cal. Health & Safety Code* § 1294 (the "state department may suspend or revoke any license

the CDPH. The Court finds that the CDPH received sufficient notice of the Motion. On January 6, 2020, the Motion was served upon Deputy Attorney General David K. Eldan, Deputy Attorney General Kenneth K. Wang, and Deputy Attorney General Scott Chan, via e-mail. Doc. No. 3913, Ex. B. On January 6, 2020, the Debtors provided telephonic notice of the hearing to Attorney General Xavier Becerra and Deputy Attorney General Kenneth K. Wang. *Id.* at Ex. A. On January 6, 2020, the Debtors served the Motion, via overnight mail, upon Attorney General Xavier Becerra, Deputy Attorney General Kenneth K. Wang, Deputy Attorney General David Eldan, the Office of the Attorney General located in Los Angeles, and the Consumer Law Section of the Office of the Attorney General. *Id.* at Ex. D. On January 7, 2020, at 5:48 p.m. (Pacific Time), the Debtors served the Motion electronically upon the CDPH, at seven different e-mail addresses. Doc. No. 3924. On that same date, the Debtors provided telephonic notice of the Motion and the hearing date to counsel to the CDPH. *Id.* CDPH had sufficient notice of the Motion to have a team of representatives onsite at St. Vincent preparing for the contemplated closure at the same time that the hearing was being conducted, as represented by Debtors' counsel at the hearing.

or special permit issued under the provisions of this chapter upon any of the following grounds”); *id.* at § 100171 (containing procedures for hearings on licensure).

In addition, at least one court has held that a provision contained within Division 2 of the Health & Safety Code (the same division containing the provisions cited by CNA) does not create a private right of action. *See John Muir Health v. Glob. Excel Mgmt.*, No. C-14-04226 DMR, 2014 WL 6657656, at *4 (N.D. Cal. Nov. 21, 2014) (dismissing a claim brought under Cal. Health & Safety Code § 13714(b) because the provision did not create a standalone private right of action).

B. The Debtors Are Authorized to Implement the Closure Plan to Effect an Orderly Closure of St. Vincent

Section 363(b) authorizes a debtor to use property of the estate outside the ordinary course of business upon court approval. The debtor must articulate a “business justification” to use property outside the ordinary course of business. *In re Walter*, 83 B.R. 14, 19–20 (B.A.P. 9th Cir. 1988). Whether the articulated business justification is sufficient “depends on the case,” in view of “all salient factors pertaining to the proceeding.” *Id.* at 19–20.

The Debtors’ decision to close St. Vincent constitutes a “use” of estate property within the meaning of § 363(b). The Debtors have articulated a sufficient business justification for closing St. Vincent. The following facts have been established by the declarations submitted in support of the Motion:

- No buyer has presented a realistic bid to purchase St. Vincent as a stand-alone hospital. Moloney Decl. at ¶ 4. Although James M. Moloney, the Debtors’ investment banker, had a telephone conversation with a potential bidder on January 6, 2020, that bidder had conducted limited due diligence and did not have experience with the regulatory approval process required to purchase a hospital. *Id.* Further, the bidder’s intended use for St. Vincent was as a real-estate investment if the bidder’s hospital operating partner could not develop a viable plan to profitably operate St. Vincent. *Id.*
- St. Vincent is generating substantial operating losses. As of the Petition Date, St. Vincent accounted for approximately 23% of the patient volume of the entire Verity Health System, but was responsible for 60% of the operating losses. Chadwick Decl. at ¶ 6. If the Debtors do not implement the Closure Plan rapidly, they will lack sufficient funds to conduct an orderly closure of St. Vincent. Adcock Decl. at ¶ 7.
- The Debtors lack sufficient funds to continue to subsidize St. Vincent’s operating losses. Absent the closure of St. Vincent, the Debtors will be unable to continue operating their other hospitals. Chadwick Decl. at ¶ 9.

Since it is not feasible for the Debtors to continue St. Vincent’s operations, implementation of the Closure Plan is necessary to sustain public health and welfare. Public safety would be jeopardized if the Debtors allowed St. Vincent to remain open while lacking sufficient funds to support its operations. In this respect, the Court notes that the Debtors do not have the ability to borrow under any debtor-in-possession financing facility. The Debtors’ cases are being financed by a consensual cash collateral stipulation executed between the Debtors and the principal secured creditors (the “Cash Collateral Stipulation”). Under the Cash Collateral Stipulation, the Debtors’ ability to use cash collateral terminates on January 31, 2020.

CNA asserts that the Debtors are entitled to damages from SGM for its failure to perform under the APA, and that St. Vincent's operations could be funded from these breach damages. CNA overlooks the fact that the Court has not made a finding as to whether SGM has breached the APA. The issue of SGM's alleged breach is subject to ongoing litigation, which will not be resolved in the near term. Sustaining St. Vincent's operations requires immediately available liquidity, which the Debtors lack. The speculative possibility of a future cash infusion based upon SGM's alleged breach is not a solution to St. Vincent's current funding crisis. Nor is pursuing a sale, another alternative suggested by CNA. There are no firm expressions of interest. Even if a buyer was identified, the sale process and review by the Attorney General's office would take months to conclude.

The Closure Plan preserves patient safety. Acute care patients will be transferred to Good Samaritan Hospital, which is located approximately one mile from St. Vincent. Adcock Decl. at ¶ 8. St. Joseph Hospital has agreed to assume care of the kidney transplant patients who are part of the St. Vincent Transplant Program, subject to approval of the United Network for Organ Sharing. *Id.*

1. The Timeline Set Forth in the Closure Plan is Approved, Except that the Deadline for Physicians to Vacate St. Vincent's Medical Office Facilities is Extended by 30 Days

At the hearing, multiple parties testified regarding the impact of the Closure Plan upon physicians, employees, patients, and other stakeholders. Having considered the evidence before it, the Court approves the deadlines set forth in the Closure Plan, with the exception of the deadline for physicians to vacate St. Vincent's medical office facilities, which is extended by 30 days to April 30, 2020.

The Court places substantial weight upon the testimony of Dr. Jacob Nathan Rubin, the Court-appointed Patient Care Ombudsman. Dr. Rubin testified as follows:

- To protect patient safety, St. Vincent must be closed as quickly as possible following the announcement of the hospital's closure. Once closure is announced, key members of St. Vincent's medical staff will immediately leave to seek employment elsewhere. Replacing experienced staff with temporary workers is not feasible because the temporary workers will be unfamiliar with St. Vincent's systems, procedures, and electronic medical records. There will not be a sufficient number of experienced staff remaining to adequately train the large influx of temporary workers. The result of the rapid departure of experienced staff will be a marked decline in the quality of patient care, seriously jeopardizing patient safety.
- The transfer of existing patients to other hospitals will not impair patient safety. Patients are routinely transferred from one hospital to another, and the hospital resources within St. Vincent's immediate vicinity are more than sufficient to accommodate St. Vincent's patients.

Alice Kirchner, director of Dialysis Services at St. Vincent, asserted that the Closure Plan did not provide sufficient notice to enable the smooth relocation of patients. Ms. Kirchner stated that the Closure Plan's deadlines were creating stress and trauma for affected patients, staff, and physicians. Ms. Kirchner requested that the Dialysis Unit be provided a minimum of 30 days to relocate patients before being shut down.

In view of Dr. Rubin's testimony, the Court does not find it appropriate to extend the deadlines set forth in the Closure Plan. In fact, Dr. Rubin testified that if the deadlines were to be modified, they should be shortened, not extended. The Court understands the difficulties that the Closure Plan's deadlines place upon stakeholders. However, the Court's first priority must be protecting patient safety, and that requires a rapid closure.

St. Vincent leases office space to physicians who provide outpatient services. Dr. Marc Girskey, St. Vincent's Chief of Staff, stated that the March 31, 2020 deadline for physicians to vacate the office space would not provide physicians adequate time to relocate their practices. Dr. Girskey requested that physicians be provided at least six months to relocate. Dr. Samuel Lee, St. Vincent's former Chief of Staff, and Ryan Yant, counsel for St. Vincent Independent Physicians Association, made statements in support of Dr. Girskey's request. The Court also received a letter signed by numerous physicians who lease office space at St. Vincent requesting that the deadline to relocate be extended to June 30, 2020.⁹

In response to the physicians' requests, the Debtors proposed extending the relocation deadline by 30 days, to **April 30, 2020**. The Court finds the compromise proposed by the Debtors to be appropriate. The April 30 deadline provides physicians approximately four months to relocate.

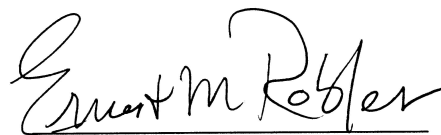
III. Conclusion

The Court is fully cognizant of the hardship that closure of St. Vincent will have upon employees and members of the surrounding community. The absence of any serious purchaser willing to acquire St. Vincent as a going-concern has placed all constituencies in this case in a difficult position. However, forcing the Debtors to keep St. Vincent open when there is insufficient money to operate it would only make the situation far worse for St. Vincent and for the patients of the Debtor's other hospitals.

The Motion is **GRANTED** to the extent set forth herein. Notwithstanding Bankruptcy Rule 6004(h), the order granting the Motion shall take effect immediately upon entry. By no later than **January 23, 2020**, the Debtors shall submit a Status Report regarding implementation of the Closure Plan. Subsequent Status Reports shall be submitted every fourteen days until the Closure Plan has been fully implemented.¹⁰ The Court will enter an order consistent with this Memorandum of Decision.

###

Date: January 9, 2020



Ernest M. Robles
United States Bankruptcy Judge

⁹ Doc. No. 3926.

¹⁰ No hearings will be conducted in connection with the Status Report unless otherwise ordered by the Court.

EXHIBIT 29

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 CALIFORNIA NURSES ASSOCIATION

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

In Re

VERITY HEALTH SYSTEM OF
 CALIFORNIA, INC., *et. al.*,

Debtors and Debtors in Possession.

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

Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER
 Jointly Administered With:
 Case No. 2:18-bk-20162-ER
 Case No. 2:18-bk-20163-ER
 Case No. 2:18-bk-20164-ER
 Case No. 2:18-bk-20165-ER
 Case No. 2:18-bk-20166-ER
 Case No. 2:18-bk-20167-ER
 Case No. 2:18-bk-20168-ER
 Case No. 2:18-bk-20169-ER
 Case No. 2:18-bk-20170-ER
 Case No. 2:18-bk-20171-ER
 Case No. 2:18-bk-20172-ER
 Case No. 2:18-bk-20173-ER
 Case No. 2:18-bk-20175-ER
 Case No. 2:18-bk-20176-ER
 Case No. 2:18-bk-20177-ER
 Case No. 2:18-bk-20178-ER
 Case No. 2:18-bk-20179-ER
 Case No. 2:18-bk-20180-ER
 Case No. 2:18-bk-20181-ER

The Honorable Ernest M. Robles

**CALIFORNIA NURSES ASSOCIATION
 OBJECTION TO DEBTORS' MOTION UNDER
 § 1113 OF THE BANKRUPTCY CODE TO
 MODIFY, REJECT AND TERMINATE CERTAIN
 TERMS OF CALIFORNIA NURSES
 ASSOCIATION'S COLLECTIVE BARGAINING
 AGREEMENT WITH O'CONNOR HOSPITAL
 AND SAINT LOUISE HOSPITAL**

Hearing:

Date: January 30, 2019
 Time: 10:00 AM
 Place: Courtroom 1568
 255 East Temple Street
 Los Angeles, CA 90012



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I. INTRODUCTION

The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors” or “Verity”), submits this objection (the “Objection”) to Debtors’ *Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of Hospitals to the County of Santa Clara* (the “1113 Motion”) [Doc. 1182]. Any replies to this Objection are due on January 23, 2019.

II. BACKGROUND

CNA Registered Nurse Representation

1. CNA represents approximately 544 registered nurses at O’Connor Hospital (“OCH”) and approximately 204 registered nurses at Saint Louise Regional Hospital (“SLRH”). The CNA nurses have been conscientiously working and maintaining the key operation of the Debtors during these uncertain times in a difficult bankruptcy.

2. CNA represented nurses at OCH and SLRH are covered by a Master Collective Bargaining Agreement (“Master Agreement”) between CNA and OCH, SLRH, St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”). A true and correct copy of the Master Agreement is attached hereto as Exhibit 1. Additionally, nurses at OCH and SLRH are covered by supplemental local agreements specific to each facility. A true and correct copy of the OCH and SLRH local Collective Bargaining Agreements are attached hereto as Exhibits 2 and 3, respectively.¹ Collectively, Exhibits 1, 2 and 3 are referred to as the “CNA CBAs”.

3. The Master Agreement contains a “successor clause” which requires any purchaser of the hospitals to adopt the CBAs [Exhibit 1, Article 3, p.3].

4. The registered nurses employed by Santa Clara County are primarily represented by the Registered Nurse Professional Association (“RNPA”). A true and correct copy of the

¹The Master Agreement and local Collective Bargaining Agreements were ratified in December of 2016 and are in effect from December 22, 2016 to December 21, 2020.

1 current RNPA contract is attached as Exhibit 4.² RNPA only represents nurses employed by
2 Santa Clara County.

3 **Verity's Petition for Bankruptcy**

4 5. In early August 2018 and prior to filing their voluntary petition for bankruptcy,
5 Debtors received eleven indications of interest ("IOI") for some or all of Verity's assets. Four
6 of the IOIs were "full system offers" and two were offers for all of Debtor's assets located in
7 Santa Clara County. Declaration of James M. Moloney in Support of Debtors' § 1113 Motions
8 (Moloney Decl.), ¶ 5 [Doc. 1194].

9 6. On August 31, 2018, the Debtors each filed a voluntary petition for relief under
10 chapter 11 of Title 11 of the United States Code.

11 7. Shortly after Debtors filed for Bankruptcy, Andrew Prediletto, CNA Assistant
12 Director of Collective Bargaining, contacted Steven Sharrer, Chief Human Resources Officer
13 of Verity Health Systems, Inc. ("Verity") to request bargaining with Verity over the sale of any
14 Verity hospitals at which CNA represents registered nurses. *See Declaration of Andrew*
15 *Prediletto* (the "Prediletto Declaration"), concurrently filed with this Objection, ¶ 3.³

16 8. On September 18, 2018, Mr. Sharrer responded in an email that Verity would
17 not meet to bargain with CNA at that time and that Mr. Prediletto's request was "premature."
18 A copy of this email is attached to the Prediletto Declaration as Exhibit 1.

19 9. On October 1, 2018, Debtors filed a Stalking Horse Bidder Motion in which
20 Debtors sought to establish the County of Santa Clara (the "County") as the Stalking Horse
21 Bidder for the sale of SLRH, OCH, and related assets (the "Assets") at a price of \$235 million
22 (the "Asset Sale") [Docket No. 365, p. 1]. The Debtors also filed an Asset Purchase Agreement
23 (the "APA") with the Stalking Horse Bidder Motion [Docket No. 365-1] for court approval.

24
25 ² This document was downloaded from the County of Santa Clara's website, available at:
26 [https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/registered-nurses-professional-](https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/registered-nurses-professional-association-RNPA-2014-through-2019.pdf)
27 [association-RNPA-2014-through-2019.pdf](https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/registered-nurses-professional-association-RNPA-2014-through-2019.pdf).

28 ³ CNA is prepared to offer the live testimony of Andrew Prediletto regarding the substance of
his Declaration. However, CNA does not believe his testimony is necessary unless this Court
finds there are disputed facts whose resolution would benefit from live testimony.

1 The APA was dated October 1, 2018, and between Debtors Verity Health System of California,
2 Inc. (“Verity”), Verity Holdings, LLC, OCH and SLRH, on the one hand, and the County, on
3 the other hand, to be used by County as the stalking horse purchaser of the assets.

4 10. Under APA § 5.3.1, the Purchaser agrees to hire substantially all of Debtor’s
5 employees on a “provisional basis” and any employees who are permanently hired will receive
6 “benefits and terms and conditions of employment generally consistent with those offered to
7 other Purchaser employees in the same or substantially similar Purchaser classifications” [*Id.* at
8 47-48].

9 11. Under APA § 8.13, the Purchaser will buy the assets free and clear of any labor
10 obligations including the terms of existing collective bargaining agreements (“CBAs”) and
11 retirement, pension, or welfare-benefits obligations [*Id.* at 58].

12 12. On October 31, 2018, the Court entered an Order approving the Stalking Horse
13 Bidder Motion and the APA (the “Bidding Procedures Order”) and, inter alia, setting deadlines
14 to bid on the Assets either in part or in full [Docket No.724].

15 13. Prior to the deadlines to submit bids for the Assets, Debtors continued to market
16 them to potential bidders with the intent of inducing them to submit bids [Doc. 1194, Maloney
17 Decl. ¶ 8]. In particular, Debtors communicated heavily with two entities identified as
18 Proposal Party A and Proposal Party B up until the auction deadlines [Doc. 1194, Maloney
19 Decl. ¶ 10-11].

20 14. On December 6, 2018, Mr. Prediletto met with Verity representatives Mr.
21 Sharrer; Mr. Richard Adcock, Verity CEO; and Mr. Sam Alberts, counsel to Verity, to bargain
22 over the modification of the OCH and SLRH collective bargaining agreements for the first time
23 [Prediletto Decl., ¶ 7].

24 15. At this meeting, the Verity representatives’ proposal to CNA was to reject the
25 entirety of the OCH and SLRH CBAs [Prediletto Decl., ¶ 9]. Mr. Alberts sent Mr. Prediletto a
26 letter memorializing this meeting on December 7, 2018 [Prediletto Decl., Ex. 2].

27 16. On December 13, 2018, Mr. Prediletto responded that CNA would meet with
28 Verity to bargain over the modification of the terms of the CBAs which were necessary in order

1 to sell the hospitals as going concerns. Additionally, CNA asked for information regarding
2 Debtors' interactions with parties who were interested in purchasing the Assets and signed an
3 NDA [Prediletto Decl. Ex. 3].

4 17. On December 18, 2018, Mr. Alberts responded that survival of any terms of the
5 CBAs would "unduly burden the Debtors' estates and their ability to reorganize." At this
6 juncture, he also offered for the first time to facilitate any discussions between Santa Clara
7 County and CNA. Moreover, he stated that the CBAs were "unnecessary" after the sale closing
8 since the CNA members would no longer be their employees. In response to CNA's request
9 for information about potential buyers, he responded that CNA would have to execute a
10 confidentiality agreement [Prediletto Decl., Ex. 4].

11 18. On December 27, 2018, this Court approved the sale of Assets to Santa Clara
12 County free and clear of liens, claims, encumbrances, and other interests.

13 19. On January 16, 2019, Mr. Prediletto offered to negotiate with Debtors regarding
14 modification of the successor clause in exchange for all nurses receiving a severance payment.
15 The intent of the proposal was to offer nurses compensation given that they will likely work
16 under less desirable terms and conditions at the County than they would under an employer
17 who adopted the successor clause [Prediletto Decl., ¶ 11, Ex. 5].

18 20. On January 16, 2019, Mr. Albert responded that Verity would be amendable to
19 only offering such payments to nurses who were not "fortunate enough to be hired by the
20 County" [Prediletto Decl., Ex. 6].

21 **III. PRELIMINARY STATEMENT**

22 Debtors' Motion fails to show compliance with the requirements of 11 U.S.C. section
23 1113 and accordingly should be denied. Debtors treated the requirements of section 1113 as a
24 pro forma checklist. Debtors never meaningfully engaged with CNA to find compromises,
25 offered a proposal which included necessary modifications to the CBAs, or provided relevant
26 information to understand their proposal. Moreover, given the unfair burdens that the CNA
27 nurses will suffer as a result of this bankruptcy sale in terms of decreased future earning
28 potential and benefit accrual, the equities militate against rejection of the CBAs. Specifically,

Debtors have not negotiated in good faith with the CNA as evidenced by their failure to commence negotiations until after the deal was done. This meant that CNA had no real power to bargain for a better outcome and Debtors had no power to influence potential buyers. That CNA could have influenced the sale and the resulting positions of the nurses is not merely an academic exercise, but an actual opportunity Verity denied to CNA in bad faith. Additionally, Verity fails to demonstrate that the entirety of the CBAs must be rejected, as opposed to only the successor clause, in order for the Asset Sale to move forward. Furthermore, Verity has failed to provide the Union with information requested regarding why the entire CBA must be rejected, as well as information regarding the identity of potential buyers and their proposals.

IV. ARGUMENT

A. Section 1113 Creates an Elevated Standard Through Which Collective Bargaining Agreements May Be Rejected and Must Be Strictly Construed.

Courts in this district have observed that “the rejection of a CBA is a rejection of one of the most binding contracts in our legal system and not a matter to be treated lightly.” *In re Karykeion*, 435 B.R. 663, 666 (Bankr. C.D. Cal 2010), citing *In Re Century Brass Products*, 795 F.2d 265, 271 (2d Cir. 1986) (CBA is accorded higher status than a normal contract).

Indeed, Congress elevated CBAs above other types of contracts by mandating additional substantive and procedural requirements to which debtors must strictly adhere before a CBA may be rejected in bankruptcy. *See* 11 U.S.C. § 1113; *In re Certified Air Techs, Inc.*, 300 B.R. 355, 361 (Bankr. C.D. Cal 2003). Section 1113(a) specifically provides that a debtor may reject a collective bargaining agreement “only in accordance with the provisions of this section,” and section 1113(f) provides that “[n]o provision of this title shall be constructed to permit a trustee to unilaterally terminate or alter any provision of a collective bargaining agreement prior to compliance with the provisions of this section.” 11 U.S.C. § 1113(f).

In order to determine if a debtor has met the requirements of section 1113, courts generally follow the nine-part test developed in *In re American Provisions Co.*, 44 Bankr. 907 (Bankr. Minn. 1984). *See, e.g., Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of*

America, 791 F.2d 1074, 1080 (3d Cir. 1986); *In re Karykeion*, 435 BR at 677. The nine requirements are:

1. The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
2. The proposal must be based on the most complete and reliable information available at the time of the proposal.
3. The proposed modifications must be necessary to permit the reorganization of the debtor.
4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5. The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
6. Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet and confer at reasonable times with the Union.
7. At meetings, the debtor must confer in good faith in attempt to reach mutually satisfactory modifications of the collective bargaining agreement.
8. The Union must have refused to accept the proposal without good cause.
9. The balance of equities must clearly favor rejection of the collective bargaining agreement.

Failure to meet any of the requirements will defeat a section 1113 motion. (*In re Bruno Supermarkets*, 2009 Bankr. Lexis 1366, *13 (Bankr. N.D. Ala. April 27, 2009), citing *In re American Provisions Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984). The moving party bears the burden of persuasion on all nine elements and must prove the first eight by a preponderance of the evidence. *In re Walway Co.*, 69 B.R. 967, 975 & n. 18 (Bankr. E.D. Mich. 1987). The final element, whether the equities clearly favor rejection of the CBA, must be shown by a higher standard as evidenced by the use of the term “clearly favor.” *Id.* Additionally, the court must analyze the compliance with the requirements stringently and not under the business judgment standard. (*In Re United States Truck Co. Holdings*, 2000 Bankr. Lexis 1376, *59 (Bankr. E.D. Mich. Sept. 29, 2000), citing 7 Collier on Bankruptcy P 1113.06[3], at 1113-49 (Lawrence P. King, ed., 15th ed. Rev. 2000).

The sheer number of requirements show that contract rejection under section 1113 is not a simple matter and requires substantial effort on the part of the debtors before courts may grant such relief. Debtors cannot merely go through the motions and expect to be granted judicial relief, but, rather, must engage with unions in an interactive process. *E.g., In re K & B Mounting, Inc.*, 50 B.R. 460, 465 (N.D. Ind. 1985) (“It must be kept in mind that one of the main purposes of the new Code section to encourage solution of the employer’s labor problems through collective bargaining rather than by means of the debtor’s unilateral action and recourse to the bankruptcy court”).

Finally, it is well-settled that the requirements of section 1113 apply equally to all forms of bankruptcy under Chapter 11, including liquidation. *In re Chicago Construction Specialties*, 510 B.R. 205, 215 (Bankr. N.D. Ill. 2014) (“It is tempting, therefore, to find that section 1113 is simply inapplicable to liquidating chapter 11 cases...But those courts that have short cut the process of applying section 1113 have paid the price on appeal”), citing *In re Family Snacks*, 257 B.R. 884, 894 (B.A.P. 8th Cir. 2001).

B. Debtors Failed to Meet their Burden to Confer with CNA in “Good Faith to Reach Mutually Satisfying Modifications.”

1. Guiding Principles of Good Faith Bargaining

Debtor’s contention that it has complied with the requirement to confer in good faith because it met with CNA after no competing bidders came forward and offered it a non-negotiable proposal to terminate the CBAs reduces this critical directive of section 1113 to a mere triviality. Instead, good faith bargaining requires “an honest purpose to arrive at an agreement as a result of the bargaining process.” *Walway*, 69 B.R. at 973; *In re Walter Energy, Inc.*, 542 B.R. 859, 894 (N.D. Ala. 2015)(“[t]he good faith requirement of section 1113 has been interpreted to mean that the debtor must make a serious effort to negotiate”). Good-faith bargaining requires flexibility and a party that is already committed itself may only make a non-negotiable offer. *In re Delta Airlines*, 342 B.R. 685, 697 (Bankr. S.D.N.Y. 2006) (finding that “a debtor cannot be said to comply with its obligation [to bargain in good faith]. . . when it steadfastly maintains that its initial proposal under subsection (b)(1)(A) is non-negotiable” in

1 response to an airlines making concessions from pilots and mechanic contingent on receiving
2 similar agreements from flight attendants); *In re Lady H*, 193 B.R. 233, 241 (Bankr. S.D.W.V.
3 1996); *In re Karykeion*, 435 B.R. at 683 (“[t]he unions are correct that beginning negotiations
4 when one party is already locked into a position does not constitute good faith”).

5 In other words, good faith bargaining means more than giving a union a “Hobson’s
6 choice between two evils,” i.e., save the members jobs without any benefits they had under the
7 prior collective bargaining agreement or “don’t save the jobs at all.” *American Flint Glass*
8 *Workers v. Anchor Resolution*, 197 F.3d 76, 82 (3d Cir. 1999). Finally, good faith negotiations
9 must be driven by a desire to reach a compromise with the union and not other concerns related
10 to the bankruptcy estate. See, *In Re United States Truck Co. Holdings*, 2000 Bankr. Lexis
11 1376, *69 (Bankr. E.D. Mich. Sept. 29, 2000) (finding that employer had not negotiated in
12 good faith in part because its bargaining was driven by its concern for “avoiding withdrawal
13 liability, eliminating the priority that would be afforded to the Union’s claim if the CBA were
14 not rejected, and maximizing the equity left in the corporation after liquidating”).

15 **2. Debtors Could Have Avoided This Hobson’s Choice Scenario If They**
16 **Engaged With CNA During a Period When Both Parties Had**
17 **Leverage over Potential Buyers.**

18 Debtors’ argument that its non-negotiable proposal to reject the CBAs is excusable
19 because the County emerged as the only viable bidder and refused to assume them is a post hoc
20 justification for not conferring in good faith. In the instant case, especially because of the
21 presence of other entities who expressed interest in the Assets, one cannot know what
22 compromises may have been possible had the union been involved at critical junctures in the
23 sale process. It may not have even been necessary for Debtors to file this motion if they had
24 bargained with CNA at important milestones. *K&B Mounting, Inc.*, 50 B.R. at 465 (finding
25 that one of the main purposes of section 1113 is to encourage bargaining rather than resorting
26 to the court’s power to reject contracts). Just because a debtor is in a non-negotiable position
27 with a union at the end of the sale process, does not mean that was the only result possible at
28 the outset.

1 However, even assuming that in hindsight it can be shown that bargaining with CNA
2 would not have changed the ultimate outcome, the obligation to bargain in good faith is not
3 rendered moot. Indeed, Debtors' reliance on *Walter Energy* for the proposition that they cannot
4 be faulted for offering non-negotiable offers when no other viable alternatives exist, must be
5 squared with the fact that the debtor and union in *Walter Energy* negotiated multiple times
6 before the debtor signed the APA and sought to "plow some middle ground" before
7 determining that they were left with no other option than rejection of successorship clause to
8 save the business. 542 B.R. at 895 ("In *Lady H Coal*, the court found good faith lacking where
9 the debtors had already obligated themselves prior to initiating modification negotiations.
10 Here, however, the Debtors were not locked in at the time negotiations commenced"). Thus,
11 far from supporting Debtors, the *Walter Energy* decision demonstrates that the good faith
12 bargaining process of section 1113 must be respected even if it is later shown that
13 circumstances prevent compromise.

14 Furthermore, Debtors' heavy reliance on *In re Alpha Natural Resources, Inc.*, 542 B.R.
15 314 (E.D. Va. 2016) for support that it conferred in good faith is likewise unavailing [Doc.
16 1182, p. 20]. Comparing the engagement between the *Alpha Natural Resources* debtors with
17 the instant situation is like comparing the pyramids of Egypt to the Luxor Hotel, one evidences
18 genuine effort and the other is an unconvincing imitation. True, in both this matter and *Alpha*
19 *Natural Resources* the debtors met with the unions and "facilitated" discussions with a sole
20 bidder, but in *Alpha Natural Resources*, the debtors began negotiating with the union prior to
21 executing an APA with the stalking horse and facilitated meetings directly between the stalking
22 horse and union directly which proved fruitful. *Alpha Natural Resources*, 552 B.R. at 336. In
23 the instant situation, Debtors only made a proposal to CNA and started discussion after no other
24 parties had bid and only then did Debtors half-heartedly offer to facilitate meetings with the
25 County [Prediletto Declaration, Exs. C&D]. The comparison is even more misplaced given
26 that Mr. Prediletto requested bargaining with Debtors prior to the execution of the APA and
27 was rebuffed [Prediletto Decl., Ex. A].

Thus, in order for the requirement to confer in good faith to have real meaning, Debtors should have met with CNA to discuss what nurses wanted in return for waiver of the successorship clause before they had signed the APA with the County. *E.g., In re Bruno Supermarkets*, 2009 Bankr. Lexis at *57 (“section 1113’s purpose is to require the parties to negotiate”). Debtors’ argument that in effect they bargained in place of the Union because they were able to obtain job retention for a “substantial” number of the nurses falls flat. CNA is the nurses’ representative, Debtors are not. The point of section 1113 is to force the employer to bargain with the union, not to bargain on its behalf. *Id.*

While it is possible that CNA would have placed job retention as the highest priority, given the difficulties of staffing OCH and SLRH which collectively require approximately 750 nurses and the high demand for nursing professionals, it is also quite plausible the County was not making a material concession by agreeing to offer substantially all of the nurses employment. (One could argue that the County benefits just as much as the nurses from this provision in the APA.) Thus, if Debtors had involved CNA early on in the sale process CNA may have chosen to strongly push for the County agree to match the nurses’ hourly wage rates or it may have wanted to ensure that the County carried over the accrued vacation and other paid-time nurses had earned while working for Verity. Furthermore, Debtors have submitted no evidence to suggest that it offered the County any of these alternatives. On the contrary, it appears Debtors were content once they received the County’s promise of job retention.

Moreover, case law illustrates that negotiations prior to any firm commitments of the parties are necessary to allow movement in parties’ positions. *Bruno Supermarkets*, 2009 Bankr. Lexis 1366, *18-*21. The facts of *In re Bruno Supermarkets* are illustrative of how parties’ positions may shift in practice if the union is engaged in the sale process while the debtor still has leverage over potential bidders. In that case, one of the potential bidders submitted a letter of interest initially stating that its offer was contingent on the court rejecting the CBAs. *Id.* However, a week later this same entity stated that it would be willing to consider purchasing the supermarket with a renegotiated union contract if such a promise would make their offer appear more attractive since there was another potential buyer

1 expressing interest. *Id.* During this same period, the union, during section 1113 negotiations
2 with the employer, expressed a willingness to renegotiate its contract with a successful
3 purchaser, as opposed to making the employer assume the current contract. *Id.* Hence, a
4 compromise was reached.

5 Thus, during the early stages of the sale process, positions which initially seem
6 intractable may change under pressure to make a competitive offer. Similar to the facts in
7 *Bruno Supermarkets*, it is conceivable that if prior to the execution of the APA, Debtor
8 consulted CNA, the parties could have agreed to amend the successor clause so that the
9 purchaser would only be bound to negotiate a new contract with CNA or make alternative
10 compromises to some of the CBAs' terms. It is also conceivable that some of the potential
11 buyers would have agreed to such an offer in an effort to make their proposal more
12 competitive, which would have placed pressure on the County to make further concessions.
13 While Debtors have stated that the County is legally precluded from bargaining with CNA, a
14 position with which CNA disagrees,⁴ in lieu of agreeing to renegotiate a contract with CNA, it
15 could have made its offer more attractive by agreeing to assume the nurses' paid time off
16 liabilities, matching their current wage rate or some other benefit.

17 In short, Verity and CNA had the most leverage to force the bidders to compete prior to
18 the execution of the APA before Verity revealed that it would accept an APA that did not
19 assume the CBAs. Arguably, Verity and CNA also had some leverage with the County prior to
20 the auction. However, after the auction when the County was revealed to be the sole bidder, all
21 meaningful power to negotiate with the County disappeared. Because Verity excluded the
22 Union from negotiations until a period when it was powerless, the Union was precluded from
23 exploring any real compromises.

24 Additionally, once the APA was executed, CNA lost much of its bargaining power to
25 negotiate for some form of compensation from Verity for violation of the successor clause.

26
27 ⁴ CNA also asserts that Verity engaged in bad-faith bargaining by not even asking for CNA's
28 legal position on whether the County could recognize CNA as the exclusive representative of
registered nurses at OCH and SLRH.

American Flint Glass Workers, 197 F.3d at 82 (“[i]n effect, the Agreement’s condition precedent [that purchaser not be bound by any retroactive wage increases due to under the CBA] stripped GMU of whatever bargaining power it might otherwise have had”). Given that the current OCH and SLRH nurses who choose to work for the County will face a decline in the terms and conditions of employment (*see* Section E below), CNA should have been given the opportunity to meet with Verity to negotiate a severance package for all nurses regardless of whether they accept County employment. Instead, CNA was forced to make its offer after all leverage was removed, and, unsurprising, Verity has responded that it will only offer severance to those nurses who are not hired by the County [Prediletto Decl., ¶¶ 11 & 12, Exs. 5 & 6]. Accordingly, Verity denied CNA its right as the employee representative to offer counterproposals at a time when discussion would have been fruitful.

To be clear, CNA is not asking the Court to make a bright line rule that good faith bargaining can never occur when the Debtor seeks to engage with the union after the parties have executed an APA. Instead, given the unique facts and circumstances of the case at bar, in order to negotiate in good faith, Verity should have engaged with CNA prior to committing itself to the APA with the County. Congress has not created any exception to the obligation to bargain in good faith under section 1113, and thus Verity should not be able to shortcut these requirements merely because the ultimate outcome was that the only bidder on the Assets staked out the position that it would not agree to adopt the CBAs.

3. Good Faith Negotiations With Unions Prior to the Debtors Obligating Themselves to Purchasers Are the Norm and Would Not Unreasonably Burden Debtors or Impede the Sale.

Debtors’ engagement with unions in the early stages of the sale process is so commonplace that even the fact patterns of the cases Verity cites in support of the 1113 Motion demonstrate it. *In re Walter Energy, Inc.*, 542 B.R. 859, 872 (N.D. Ala. 2015) (“[a]s the Stalking Horse APA was crystallizing the Debtors engaged again with UMWA to discuss the UMWA CBA”); *In re Nat’l Forge Co.*, 289 B.R. 808, 812 (W.D. Pa. 2003) (court noting that union had “ample opportunity” to contact all parties who expressed any interest in purchasing

debtor's assets because debtor had provided the identify of these entities to union prior to the sale auction); *In re Alpha Natural Res., Inc.*, 552 B.R. 314 (E.D. Va. 2016) (distinguishing the holding of *Lady H* from the case at bar because "debtors did not sign the APA until well after negotiations had begun with the union" and noting that debtors facilitated conversations between the Stalking Horse and union) (citing *Walter Energy*, 542 B.R. at 894-95); *In re Karykeion*, 435 B.R. at 682 ("This situation differs from *Lady H Coal* both because the debtor passed the unions offers along to Avanti, tried to negotiate further with Avanti on behalf of the unions, and the debtor only signed a MOU with Avanti before negotiating under 1113").

Furthermore, Debtors did not move for an expedited emergency sale hearing because the business was failing and needed to be sold rapidly⁵ or to perform any other act that suggested bargaining with the CNA prior to the sale would be infeasible. Thus, in this instance requiring Verity to engage with CNA prior to committing itself would not place unreasonable burdens on the sale process and is expected as part of good-faith negotiations.

4. Given A Liquidating Debtor's Lack of Incentive to Deal with Unions In Good Faith, Debtors' Actions Should Be Carefully Scrutinized.

Furthermore, because Verity no longer has an external incentive to bargain in good faith it is all the more important that this Court require it to fulfill its obligations. *E.g.*, *In Re United States Truck Co. Holdings*, 2000 Bankr. Lexis 1376, *89 (Bankr. E.D. Mich. Sept. 29, 2000)("Where a debtor is liquidating under Chapter 11 and is no longer operating a business, there is inherently a lack of an important incentive to bargain in good faith. . . Debtor no longer needs its employees to keep its business operating and consequently does not have to bargain to avert the threat of a work stoppage or a strike.") Accordingly, Verity's actions such as refusing to meet with Mr. Prediletto prior to signing the Asset Purchase Agreement, not consulting CNA regarding the nurses' opinions at critical junctures, disingenuously offering to meet with CNA after no real opportunity to bargain existed should not be easily excused due to the pressures and constraints inherent in any bankruptcy sale.

⁵ As an example, in *Family Snacks*, the court granted the debtors' motion for an expedited hearing due to its bleak financial condition. 257 B.R. at 887.

1 **5. *Family Snacks* Offers No Guidance or Support for Debtors' § 1113 Motion**

2 *In re Family Snacks* concerned whether a debtor could still meet section 1113's
3 requirement that rejection of the CBA "is necessary to permit reorganization" when the asset
4 sale had already occurred and the employer has closed its business. 257 B.R. 884, 890 (B.A.P.
5 8th Cir. 2001) (reversing the lower court's ruling that "[b]ecause Debtor had already sold its
6 assets, it also could not establish that rejection was necessary to facilitate the sale of the
7 business on a going concern basis"). *Family Snacks* did not concern a successor clause. In
8 that case, the reason the union opposed the CBA's rejection was so that it could have unpaid
9 prepetition medical expenses paid as an administrative expense as opposed to fourth priority
10 expenses under section 507(a)(4). *Id.* at 888. Furthermore, *Family Snacks* offered no direction
11 on the interpretation of good faith bargaining since this element of the *American Provision*
12 requirements was not before it. *Id.* at 898. Instead, it remanded the case to the lower court to
13 determine if the debtor had indeed satisfied good faith requirements. *Id.* at 898. In any event,
14 because in *Family Snacks* the Debtor moved for and was granted an expedited sale hearing
15 based on its dire financial position, it does not provide an appropriate factual comparison to the
16 case at bar for compliance with section 1113. *Id.* at 887.

17 **C. Debtors Failed To Show That Rejection of the CBAs is Necessary for the**
18 **Asset Sale to Close or Otherwise Necessary for the Survival of the Debtors'**
19 **Estate.**

20 The only justification that Debtors provided to CNA for rejecting the entirety of
21 the collective bargaining agreements as opposed to just terminating the successor clause
22 is that the Debtors will have no need upon closing for them and their continuation is
23 harmful to the estate [Prediletto Decl., Ex. 4]. It is undisputed that the Asset Sale to
24 Santa Clara County is not contingent on termination of contracts since no such condition
25 is present in the APA. While different courts have reached varying conclusions about
26 what is deemed necessary, Debtors' justification falls short under any established
27 standards. *Truck Drivers Local 807 v. Carey Transp., Inc.*, 816 F.2d 82, 89 (2d Cir.
28 1987) (finding that "necessary" is determined by whether the proposed modifications

would increase the likelihood of a successful reorganization). *Contra Wheeling-Pittsburg Steel Corp. v. United Steelworkers of Am.*, 791 F.3d 1074 (3d Cir. 1986) (strictly construing necessary to mean essential). Debtors have simply not demonstrated what burden, if any, maintaining the CBAs will impose after closure.

Additionally, since the CNA CBAs provides for retiree health benefits [*see* Ex. 2 (Article 29, Section 1.46) & Ex. 3 (Article 11, Section C)], these provisions may not be modified absent a motion under 11 U.S.C. section 1114. Therefore, it is not even permissible for the contracts to be rejected at this time.

D. The Debtors Have Not Met Their Burden to Prove that Their Proposal Was Based on “The Most Reliable Information Available” and, Likewise, Failed To Prove That They Provided the Unions With Relevant Information Necessary To Evaluate the Proposal.

CNA’s information requests have either been rebuffed or discounted. As stated above, in response to CNA’s request for information regarding what provisions of the CBA the Debtor believes are necessary to reject, Debtors told CNA that the CBAs are not needed after the closing of the sale. This response provides no information upon which CNA can evaluate Debtors’ proposal. In any event, CNA should not have to ask for this information, but Debtor should have provided it with the proposal.

In response to CNA’s requests for information regarding the potential buyers and the proposals they submitted to Verity, Debtor informed Mr. Prediletto that it would only “provide information about the bidding process, subject to any confidentiality restriction” [Prediletto Decl., Ex. 4]. As justification for its reluctance to provide CNA with information, Verity states that none of the proposed buyers had agreed to assume the CBAs [*Id.*]. However, this fact is meaningless, since as stated above with respect to good faith bargaining, Debtor should have presented CNA with the opportunity to explore compromises with potential buyers. During negotiations, parties often move from seemingly intractable positions. *National Forge*, 289 B.R. at 810 (determining that the debtor provided the union with “complete and reliable information” in part because the

1 “union was provided with information on all entities that had expressed interest in
2 acquisition of the Debtor’s assets”).

3
4 **E. Debtors’ Proposal to CNA Fails to “Assure All Affected Parties Are Treated
Fairly and Equitably.”**

5 As a result of the sale, the OCH and SLRH nurses will suffer on several levels.
6 They will lose participation in their pension plan, lose accrued paid-time off, likely have
7 diminished hourly wage rates, and lose representation by their elected union, CNA.
8 However, according to Debtors, the nurses are treated fairly in this process because they
9 will be represented by the RNPA, or as Debtors refer to it, the “Santa Clara Approved
10 Union,” should they be offered employment [Doc. 1182, p. 21]. First, it goes without
11 saying that the prospect of joining the union approved by one’s future employer is
12 tantamount to joining the “company union” and extremely unappealing. Obviously,
13 nurses would rather be represented by the “nurse approved union” which in this case is
14 CNA, a national leader, rather than RNPA, the employer approved union which only
15 represents nurses employed by the County. Additionally, because the OCH and SLRH
16 nurses have not yet received offer letters, it is unclear what wage rate the County intends
17 to offer them; however, if the wage rates negotiated by the “Santa Clara Approved
18 Union” are any indication, the OCH and SLRH are likely to face a significant pay cut.⁶
19 In order to at least approach fairness, Debtors should offer nurses a reasonable severance
20 to compensate them for this change in position.

21 The burden borne by the nurses is unlike that of the secured creditors or
22 unsecured trade creditors. These commercial creditors receive their income from several
23 different sources and may not even be substantially affected if their claims are not paid in
24

25 ⁶ See, e.g., RNPA’s highest biweekly rate (based on 80 hours of work) effective October 22,
26 2018 for a Clinical Nurse II is \$5,813.52 [Exhibit 5, Appx. A, p.105, Clinical Nurse II Step C,
27 Step 5] compared with the highest biweekly rate of an OCH Staff Nurse II is \$6,629.20 (80
28 hours multiplied by \$82.865 per hour) [Exhibit 2, Appx. A, p. 46, Staff Nurse II, Step 8]. Over
a year or 26-biweekly-payperiods the difference between the two salaries is approximately
\$21,207.68.

1 full or at all. However, for the nurses, this change in position affects their sole source of
2 income and unlike sophisticated commercial creditors they never assumed the risk that
3 their hospitals would become bankrupt. *See* Donald R. Korokin, *Employee Interests in*
4 *Bankruptcy*, 4 AM Bankr. Inst. L. Rev. 5, 6 (Spring 1996). Accordingly, the burden
5 placed on these nurses is unfair compared to the burden placed on commercial creditors
6 and Verity executives who are receiving additional compensation through the Key
7 Employee Retention Plan and Key Employee Incentive Plan [Doc. 876]. *See In re*
8 *Century Brass Prods. Inc.*, 795 F.2d 265, 273 (2d Cir. 1986) (“[t]he purpose is to spread
9 the burdens of saving the company to every constituency while ensuring that all sacrifice
10 to a similar degree).

11 **F. CNA Has Rejected Debtors’ Proposal for Good Cause and Despite the fact**
12 **that Debtors Have Provided It With Nothing to Bargain Over, CNA Made**
13 **Counter Proposals in Good Faith.**

14 CNA has good cause to not agree to reject the CBAs: Debtors have not shown
15 that their rejection is necessary, not bargained in good faith, not provided information
16 necessary to evaluate its proposal, and the proposal unfairly burdens the nurses.
17 However, despite these untenable positions taken by Debtors, CNA has not stonewalled
18 or refused to consider alternative solutions. Indeed it has offered exploring the possibility
19 of waiving the successor clause in the CBAs in exchange for severance payments to the
20 nurses [See Prediletto Decl., Ex. 5].

21 **G. The Balance of the Equities Does Not “Clearly Favor” the CBAs’ Rejection.**

22 In light of the facts that Debtors did not bargain in good faith with CNA, proposed
23 an unnecessary termination of the CBAs, did not provide CNA with the information
24 necessary to evaluate its proposal, the proposal treats the nurses unfairly, and CNA has
25 rejected the proposal for good cause, under no scenario can the equities clearly favor
26 rejection. *Delta Air Lines*, 342 B.R. at 702 (“Given my findings in point B (concerning
27 the requirement to ‘confer in good faith’), point C (concerning the ‘fairly and equitably
28

requirement’) and point D (concerning the requirement of ‘good cause’ for refusal to accept), above, I cannot find that the balance of equities clearly favors rejection”).

H. Even If Debtors Were Successful In Their § 1113 Motion Under Ninth Circuit Bankruptcy Appellate Panel Case Law, Collective Bargaining Agreements May Not be Rejected *Nunc Pro Tunc* So The Court’s Relief Would Be Meaningless.

Debtors have already violated the successor clause of the CBAs by (1) signing the APA with the County and (2) moving for a motion for approval of the Asset Sale and receiving such relief prior to moving to reject the contracts under section 1113. Thus, in order to avoid an administrative claim against the estate for breach of contract, Debtors would need to be able to reject the CBAs retroactively. However, the Ninth Circuit Bankruptcy Appellate Panel has explicitly ruled that collective bargaining agreements may not be rejected nunc pro tunc. *In re World Sales*, 183 B.R. 872 (B.A.P. 9th Cir. 1995) (“[b]ecause a CBA may not be rejected retroactively, unilateral breaches prior to rejection cannot be relegated to unsecured status”); *In re Hoffman Bros. Packing Co.*, 173 B.R. 177, 185 (B.A.P. 9th Cir. 1994)(“[t]hus the retroactive aspect of the interim order must be reversed so that the unions may be permitted to file administrative claims for their members’ post petition unpaid benefits accruing prior to entry of the court-ordered modification”).

Had Debtors wished to avoid this claim they should have filed their motions to reject the CBA prior to the sale hearing. *In re Nat’l Forge Co.*, 289 B.R. at 808 (“[b]ecause of the successor language, Debtor and its advisors were compelled to seek rejection of the CBA prior to confirmation of the sale to eliminate a potential claim by the Union under the successor clause. . .[f]ollowing rejection of the CBA, the sale hearing took place”).

I. The Denial of Debtors' Section 1113 Motion Need Not Impede the Asset Sale to Santa Clara County.

As stated in its prior filings, CNA recognizes that the County is the only entity currently willing to buy the Assets. Accordingly, CNA does not wish to block the Asset Sale. However, merely because a court denies a section 1113 motion with a successor clause at issue does not require a purchaser to assume the CBAs. Rather, a court may allow the sale to go forward, but since section 1113 relief has been denied, order relief in the form of post-petition administrative claims for breach of contract. *In re Lady H*, 193 B.R. at 243 (finding that Lady H Coal Company violated the successor clause in the CBA and ordering that "the UMWA employees or any other party with the right to assert claims will be given twenty (20) days from the date of the sale to file a damage claim for breach of the NBCWA [the CBA covering the UMWA employees] and such claim shall be a post-petition administrative claim"). This is the relief that CNA seeks.

V. CONCLUSION

For the foregoing reasons, CNA requests that the Court deny Debtors' section 1113 motion and grant CNA and the CNA-represented nurses a post-petition administrative claim for breach of contract. In addition, CNA requests that the Court grant such other and further relief as the Court may deem necessary and proper.

Dated: January 16, 2019

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT


By 
Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

Exhibit 1

Exhibit 1

**CNA/VHS CONTRACT
12/22/16 – 12/21/20**

**MASTER LANGUAGE
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ARTICLE 1 - SCOPE OF MASTER AGREEMENT

- A. Seton Medical Center, O'Connor Hospital, St. Vincent Medical Center, and Saint Louise Regional Hospital, hereinafter referred to as "the Employers," and the California Nurses Association, hereinafter referred to as "the Association" or "the Union," hereby agree to the following collective bargaining agreement (hereinafter the "Agreement."). Collectively, "the Employers" and "the Union" are referred to as "the parties."
- B. The Agreement and such local supplemental agreements and memoranda of understanding between the parties as may be agreed upon hereunder from time to time together constitute the collective bargaining agreement between each Employer and the Association.
- C. The parties agree that there shall be a single bargaining unit consisting of Registered Nurses employed at Seton Medical Center, O'Connor Hospital, St. Vincent Medical Center, and Saint Louise Regional Hospital, that each Employer shall retain their separate employer status, and that there shall be four (4) separate documents, one for each Employer, consisting of common "master" language followed by Employer-specific language.

ARTICLE 2 - BARGAINING UNIT MEMBERS

The Employers agree not to take any action to remove from the Association's bargaining unit, any bargaining unit member, either individually or as a classification, on the grounds that the Nurse is a supervisor under Section 2 (11) of the National Labor Relations Act.

ARTICLE 3 - SUCCESSORSHIP/CHANGE IN OWNERSHIP

In the event of a change in ownership of the Hospital, or if the Hospital enters into a partnership, affiliation, merger, or other transfer of ownership of the Hospital's operations, the Hospital will comply with the following:

a. Notification:

The Association shall be notified in writing by the hospital not less than sixty (60) days prior to taking any action as described herein. This agreement shall be binding upon the union and the Hospital and any successors thereof.

b. Meet and Bargain:

Upon notice to the Association, the Association and the Employers will meet at the Association's request to engage in good faith collective bargaining over the effects of any such ownership change.

The Employers shall not use the sale, transfer, or any other mechanism to evade the terms of this Agreement.

ARTICLE 4 – UNION RIGHTS AND REPRESENTATION

A. Nurse Representatives

1. The Association may appoint Nurse Representatives at the Employers. The Employers shall be notified in-writing of such appointments.

2. Normally Nurse Representatives shall be Regular employees of the Employer who shall have completed their probationary period. In unusual circumstances, the Association may appoint a non-regular Nurse of the Employer where such appointment will promote effective and responsible labor relations.

3. The function of the Nurse Representatives shall be to handle grievances and to ascertain that the terms and conditions of the Agreement are observed. In handling grievances, the Nurse Representatives shall only deal with representatives of the Employers' designate to handle grievances. The designated representatives are only required to meet with one (1) Nurse Representative on any grievance.

4. Nurse Representatives shall leave their work station to conduct such activities as are provided for in this Agreement only with permission of nursing management. If such permission is granted, time spent by a Nurse Representative conducting such activities during his/her normal scheduled working hours shall be compensated at the Nurse Representative's straight time rate but shall not be considered working time for the purpose of calculating overtime or other premium pay. When the Hospital requests a Nurse representative to be involved in a matter that cannot be postponed (e.g., such as a disciplinary action that the Hospital cannot postpone for after hours and where the Nurse asks for Union representation), the time involved shall be compensable but not considered working time for the purpose of calculating overtime or any other premium pay. Investigation of grievances by Nurse Representatives outside of grievance meetings shall be conducted only during the non-working time of all involved employees, and shall be eligible for compensation out of a bank of 12 hours per month per Employer.

5. Upon advance written request and subject to staffing and scheduling needs, the Employer will provide up to three (3) days without pay per calendar year to a Nurse Representative for the purpose of participating in C.N.A. educational programs.

B. Association Visitation

1. Representatives of the Association may visit the Employers at reasonable times to discuss with the Employers' management matters pertaining to this Agreement. Representatives of the Association may visit the Employers' premises to discuss with Nurses matters pertaining to this Agreement; but, upon such visits, the representatives shall first notify the Employers' management. Representatives shall confer with Nurses so as not to interfere with the work of the Registered Nurse or any other associate and such conferences shall not take place in the immediate presence of a patient and/or patient's family member. It is contemplated that provisions for these visits refer to informal conferences and not to the holding of meetings.

C. Bulletin Boards and Meeting Rooms

1. The Employers will provide and will mutually agree with the Association to a central and convenient location for a minimum of one (1) bulletin board for each one hundred (100) Nurses or portion thereof on the staff. A designated Association representative shall be responsible for posting material submitted by the Association, a copy of which shall be furnished to the Employers before posting. The Association agrees that no controversial material shall be posted. It is further agreed that the Employers shall post position on such bulletin boards. The Employers will provide to CNA space on a bulletin board on each nursing unit or department where CNA-represented Nurses regularly work.

2. A Employer-related Association member may request the use of Employers meeting/conference rooms for Employer-related Association meetings. The request shall be in writing to Human Resources. The written request shall include: (1) the general purpose of the meeting, (2) the date, (3) start time and end time and (4) the approximate number of participants. The request will be considered in accordance with established Employers' procedures and use limitations for meeting/conference rooms. The Human Resources designee will respond in writing to the Association member within a reasonable time. Requests will not be unreasonably denied.

D. Release Time for Association Nurse Negotiators

1. Upon proper advance notice, three (3) Registered Nurses per facility may be appointed or elected to the Union Negotiation Committee and shall be eligible to be released and compensated by the Employer for their work days missed because of their attending negotiation meetings and mutually agreed upon caucus time on those days, patient needs permitting. If the Association's Nurse Negotiation Team is not released, the Association reserves the right to cancel the bargaining date/s. The Association shall use its best efforts to appoint or elect a Union Negotiation Committee representing different units. The compensation to be paid to committee members by the Employers for work days missed shall include the Nurse's straight time wages for a maximum of twelve (12) hours work for Nurses working twelve (12) hour shifts, payment for health premiums, vacation/holiday/sick leave accruals, seniority accruals, and any coverage for which the Nurse is otherwise eligible. Time paid under this section shall not be included as time worked in the calculation of overtime. The Union shall notify the Employer at least two (2) weeks in advance of the first negotiation meeting, the Union the committee persons and in the event of changes in the committee after the first meeting, the Union shall notify the Employer at least forty-eight (48) hours prior to any meeting of any changes in the committee for such meeting.

E. New Hire Orientation

1. Association time at new hire orientations shall be included on the orientation agenda, shall be a regularly scheduled time, and shall not be the last item on the agenda unless otherwise mutually agreed. The Employer shall provide a thirty (30) Minute period during each Employer orientation for a Nurse Representative to have the opportunity to provide new members of the bargaining unit with information about the contract and the Association. This time spent by the Nurse Representative during the orientation shall be compensable but not considered working time for the purpose of calculating overtime or any other premium pay. The Nurse Representative shall be released from duty without loss of pay to perform this function, patient care needs permitting.

ARTICLE 5 – SAVINGS CLAUSE

If any provision of this Agreement or any application thereof is held by an agency or a court of competent jurisdiction to be contrary to law, then such provision or application of this Agreement shall be deemed invalid to the extent required by such agency or court decision. All other provisions shall continue in full force and effect. In case of such determination of invalidity of a contract provision, the parties agree to enter into negotiations for the exclusive purpose of arriving at a mutually acceptable replacement for the provision of this Agreement determined to be contrary to law.

ARTICLE 6 - TECHNOLOGY

Utilization of technology should be consistent with the provision of safe, therapeutic, effective care that promotes patient safety through the ability of a Registered Nurse to follow the Nursing Process, including the exercise of clinical judgment in assessing, evaluation, planning, implementing and diagnosing and acting as a patient advocate.

Technology should be utilized to safeguard patient confidentiality.

The Hospital intends to maintain a work environment in which technology provides skill enhancement and furthers the implementation of the nursing process defined in the Nursing Practice Act, Title 22, and the Standards of Competent Performance as defined in Title 16, including, but not limited to, the responsibility of patient advocacy. It is not the intention of the Employer to replace Nurses through the implementation of technology.

Technology is intended to provide information and options for clinical decision making. Clinicians will maintain accountability for actual clinical decision-making, including incorporating individualized patient needs, complications, and co-morbidities, as appropriate.

Prior to the implementation of new technology, the hospital shall notify the Professional Practice Committee (PPC) of the proposed new technology being considered. Nursing Management shall meet with the PPC upon request to assure that the new and existing technology conforms with the provisions of this Article, and provides opportunities for the Nurses to have input regarding the new technologies. Input from the Nurses and the PPC will be considered prior to the implementation of new technology.

ARTICLE 7 – ASSOCIATION MEMBERSHIP

The parties mutually agree that the purpose of this Agreement is to foster the provision of therapeutic and effective care for the sick which strives to enhance the health of the people living and working within the community, recognizing the diversity and unique needs of individuals.

The Employers recognize that the Association has responsibility for and contribute to fostering high standards of nursing practice, and that through membership in the Association the professional nursing staff in the Employers will be improved. The Employers and the Association further recognize that nursing care will not be conducted in violation of any state and federal statutes and regulations.

The intent of the parties to this Agreement is to encourage membership in the Association.

A. Membership

1. As a condition of continued employment, RNs covered by this agreement shall be required within 31 days after hire date or the effective date of this Agreement, whichever is later, to do one of the following:

- a. Join and maintain membership in the Association.
- b. Choose not to join the Association but pay to the Association a monthly charge equivalent to his/her share of the cost incurred by the Association relative to collective bargaining, contract administration, and grievance adjustments.
- c. For reasons of a bona fide religious conviction, choose not to join the Association but pay a monthly sum equivalent to Association dues to the RN's choice of a bona fide non-religious non-labor organization charitable funds exempt from taxation under Section 501(c) of the Internal Revenue Code.

B. Maintenance of Membership

Upon notice from the Association and after counseling by the Association, an RN who fails to meet the required membership or fails to pay the appropriate fees as stated above shall be given 14-days' notice of termination or shall be allowed to resign with proper notification to the Employers.

C. New Employee Notices

The Employers shall give to each RN at the time of employment a self-contained packet of Association materials provided by the Association. This packet shall include a copy of this Collective Bargaining Agreement, the current Association form authorizing voluntary payroll deduction of monthly dues and any custodial agreement or other forms that require execution by the RN. Within thirty (30) days after ratification of this Agreement, the Employers will provide electronically to the Association a master list of all employed RNs who are subject to the provision of this Agreement, giving names, addresses, classifications, Social Security Numbers (or current unique identification number), dates of employment, FTE status, wage rates, and cost center. Each

month, the Employers will forward electronically to the Association the names, addresses, classifications, Social Security Numbers (or current unique identification number), and dates of employment of new hires, and the names of RNs who have resigned or have been terminated. At the request of the Association, a master list shall be provided no more than twice a year.

D. Payroll Deductions of Association Dues Written Assignment

During the term of this Agreement the Employers will honor written assignment of salary to the Association for the payment of Association membership dues or service charges when such assignments are submitted on the form agreed to by the Employers and the Association.

E. Remitting Dues

The Employers will promptly remit the membership dues or service charge deducted pursuant to such assignment with a written statement of the names of the RNs for whom the deductions were made. Dues will be deducted and remitted every pay period. However, the Association and the Employers may make other arrangements by mutual consent.

F. Indemnification

The Association will hold the Employers harmless against any claims that may be made by any person by reason of any action taken by the Employers based upon written notice from the Association in accordance with the contract under Sections C, D and E above, including the cost of defending against any such claim, unless the claim is the result of the fault or negligence of the Employers, and will also hold the Employers harmless against any claims that may be made by any person by reason of the deduction of the Association membership dues or service charges, or the transmission of personal information required by the Association, including the cost of defending such claim. The Association will have no monetary claim against the Employers by reason of failure to perform in accordance with the contract under these sections of the contract.

ARTICLE 8 – NO DISCRIMINATION

There shall be no discrimination by the Employer against any Nurse or applicant for position as a Nurse on account of membership in or activity on behalf of the Association, provided that such Association activity shall not interfere with any Nurse's regular work.

Neither the Employers nor the Association shall discriminate for or against any Nurse or harass any Nurse on account of race, sex, age, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, political affiliation, military and veterans' status, sexual orientation or other basis in violation of applicable federal, state or municipal law. The Employer and the Association also agree that they shall also comply with the Americans with Disabilities Act and the California Fair Employment and Housing Act, including taking required steps to prevent and correct discrimination, harassment and retaliation and where such compliance requires departure from provisions of this Agreement, Employers shall notify the Association, and, upon request, shall meet and confer on the proposed action and any alternative proposals by the Association.

Any use of gender in this Agreement, including job classifications, shall not be interpreted as referring to any specific gender identity.

ARTICLE 9 - TRAVELERS AND REGISTRY

The Employers may utilize travelers and registries to fill vacant posted positions, or positions temporarily vacant due to the leave of absence of a bargaining unit RN. The Employers will not use travelers and registries to avoid their obligations under the terms of this Agreement.

After the initial seven (7) day posting period, if there are no bids, the Employer may retain a traveler to fill the position on a temporary basis. A traveler shall not be cancelled from her/his pre-scheduled contracted hours, to the extent those hours match the hours of the posted position, except in case of temporary or indefinite reduction in force. Qualified bargaining unit Nurses shall have priority for any additional hours/shifts over any traveler.

For purposes of this Article, the term “temporary reduction in force” shall mean “temporary layoff” at St. Louise (SLRH Section 12(A)(2), “reduction in staff” at O’Connor (OCH Article 12), “temporary reduction in force” at Seton [SMC Section 28.1.1(a)], and “low census call off days: at St. Vincent (SVMC Article XV).

ARTICLE 10 - REGISTERED NURSE RESPONSE NETWORK RNRN

A. GENERAL PRINCIPLES

1. The Employers recognizes that the Registered Nurse Response Network (RNRN) sponsored by the California Nurse Association has in the recent past, provided exemplary relief and professional medical assistance to victims hard hit by natural disaster.

2. In accordance with the Employers' mission, both the Association and the Employers agree they are in a unique position to jointly provide assistance to future victims of natural disasters and other emergencies, and that it is central to the vision and missions of both parties to work together to provide such aid.

B. DEFINITION OF "DISASTER" AND "DESIGNATED AGENCY"

1. A "disaster" is defined here as an event officially declared as such by federal, state, or local government or an agency designated by the IRS as a Section 501 (c) (3) not-for-profit, charitable organization (e.g. American Red Cross) as an agency that has been delegated authority to declare an emergency.

C. LEAVE REQUEST

1. A request for voluntary Registered Nurse Response Network (RNRN) leave must be made in writing consistent with the Hospital leave request procedures. Responses to all such requests for voluntary leave for disaster service and the duration of said leave must be approved in advance in writing by the Hospital's Chief Executive Officer or designee. Voluntary leave for disaster service by Nurses will only be approved if such leave does not unduly impact the Employer's operations, including health care delivery to patients. Denial of such leave shall not be subject to the grievance and arbitration provisions of the Agreement.

The Employers will make reasonable efforts to adjust work schedules to allow voluntary release time for RNs who wish to take volunteer assignments with the RNRN.

2. The Association will provide all training and will be responsible for all logistics, coordination with local authorities, transportation, meals, and lodging.

ARTICLE 11 – SAFE STAFFING, PATIENT ADVOCACY, AND MODEL OF CARE

In this article, references to the "Chief Nursing Officer" shall include her/his designee.

A. PROFESSIONAL PERFORMANCE COMMITTEE AND NURSING PRACTICE REVIEW COMMITTEE

1. Professional Performance Committee:

a. Establishment of Committee. There shall be a Professional Performance Committee at each Employer covered by this Agreement.

b. Intent: The Employer recognizes the responsibility of the Professional Performance Committee to recommend measures objectively to improve patient care and will duly consider such written recommendations and will so advise the Professional Performance Committee of action taken. Responses to written Professional Performance Committee recommendations shall be made in writing in a timely fashion not to exceed thirty (30) days unless extended by mutual agreement between the Chief Nursing Officer and the Professional Performance Committee.

c. Membership: The Professional Performance Committee ("PPC") shall be composed of up to eight (8) Registered Nurses employed at the Employer and covered by this Agreement. The Committee members shall be elected by the Registered Nurse staff at the Employer to terms equal to that of the contract term. Elections shall take place as soon after contract ratification as possible. The election results shall be communicated in writing to the Chief Nursing Officer.

d. Meetings:

1. Regular Meetings and Minutes: The PPC shall schedule regular meetings not to exceed two (2) meetings per month, for attendance at which Nurse Committee members shall be compensated up to a total of eight (8) hours straight-time pay per month. All Committee members will be excused from their entire shift and paid to attend the meetings for their released shifts, up to a total of eight (8) hours per month. The PPC shall prepare an agenda and keep minutes of all meetings, a copy of which shall be provided to the Director of Patient Care Services prior to the next meeting. The Chair will report to the Chief Nursing Officer the hours used by the committee members during the preceding pay period. Such paid time shall not be counted towards the purposes of computing overtime.

2. Informational Meetings: The PPC may request meetings with the head of any department for the purpose of obtaining information. Such meetings shall be arranged through the Chief Nursing Officer /designee who may attend.

3. Special Meetings: The Employer may request special meetings with the PPC, but such meetings shall not take the place of regularly scheduled meetings of the PPC.

4. PPC Chairperson: Each PPC shall elect a chairperson who shall be compensated up to four (4) hours per month for working on PPC activities, in addition to compensation for the regular PPC meetings.

e. Objectives: The objectives of the PPC shall be:

1. To consider constructively the professional practice of Nurses and nursing assistants;

2. To work constructively for the improvement of patient care and nursing practice;

3. To make recommendations to the Employer ways and means to improve patient care;

4. To make recommendations to the Employer where, in the opinion of the Committee, a critical Nurse staffing shortage exists;

5. To consider constructively the improvement of safety and health conditions which may be hazardous;

6. To investigate Nurse staffing complaints.

f. Nurse Staffing Information:

1. Reasonable requests for daily staffing records or other pertinent information will be provided to the PPC upon request in a timely manner not to exceed ten (10) days from the date of the request, unless mutually agreed. The Chief Nursing Officer may request the opportunity to meet with the PPC to further review or explain the information requested. The parties agree that confidential information (i.e., information referred to in the first sentence) shall not be distributed beyond the PPC or CNA.

2. The Employer will notify the PPC of any proposed changes in its staffing system prior to implementation of the changes. The Chief Nursing Officer will meet with the PPC, upon request, to discuss the system, proposed changes in the system, and conformance of the system to the requirements of this agreement.

g. Standardized Procedures Under Nursing Practice Act: Any individual(s) designated by the Employer to implement Standardized Procedures pursuant to the Nursing Practice Act shall meet with the PPC to discuss proposed provisions to be included in the Standardized Procedures prior to submission of such procedures to the approving parties identified by the Nursing Practice Act.

2. Nursing Practice Review Committee:

a. At the request of either party, a difference of opinion between the PPC and the Employer concerning matters falling within the PPC's objectives (paragraph (e) above) will be

handled by being referred to the Nursing Practice Review Committee. The Committee will be the exclusive means for resolving any such differences of opinion, and shall be composed of:

1. The Executive Director of CNA, or her/his designee, and one (1) elected Staff Nurse member of the PPC;

2. Two (2) members of the Employer's Nurse Management

- b. A meeting of the Nursing Practice Review Committee shall be held within ten (10) days of the referral (unless the Committee mutually agrees otherwise) for the purpose of jointly reviewing the original problem presented by the Professional Performance Committee, together with a summary of the information exchanged between the parties on the problem since its original presentation, and to begin joint explorations leading to resolution of the matter. Any representative on the Nursing Practice Review Committee may request, and shall receive, relevant information from the representative of the other party, or may introduce further relevant information. The recommendation of the Nursing Practice Review Committee shall be reached within (30) days of the Committee's meeting.

- c. No recommendation shall become effective unless a majority of the Nursing Practice Review Committee concurs.

3. Patient Needs Staffing

- a. General Principles:

1. The Employer shall have a staffing system based on assessment of patient needs in conformance with the accreditation requirements of The Joint Commission and Title 22 of the California Administrative Code. The Employer agrees to conform its system to any future changes adopted by either body during the term of the contract.

2. The patient classification system shall be a method of determining staffing requirements for each patient, each unit and each shift as appropriate, based on physical observation and assessment of each patient by the Nurse who is responsible for the patient.

3. The system will be adhered to in all areas to which it is applicable, and for patient care areas such as outpatient surgery, equivalent or appropriate systems for assessing staffing needs will be maintained. In the event the scheduled staffing is insufficient to meet the specific staffing ratios called for by the system, the Employer will make every reasonable effort to procure additional personnel. Should persistent shortages be identified, the Employer will take the necessary steps to ensure safe patient care.

4. The staffing system with full information summarizing or explaining the system will be located in the appropriate manual on every nursing unit, and a copy will be provided to the Professional Performance Committee, upon request. The PPC shall be notified of any changes in the system prior to the implementation of the

changes. The Chief Nursing Officer will meet with the PPC upon request to discuss the system, proposed changes in the system and the conformance of the system to the requirements of this letter.

5. As a general practice, newly hired Nurses will not be counted in the regular staffing complement during orientation, or portions thereof as designated in advance by the Employer; provided, however, that the Medial Center shall determine the, duration and scope of orientation to be given, based upon the Nurse's prior experience and/or training. Exceptions to this general practice may occur, provided that such exceptions shall not be unreasonably made. Within ninety (90) days of ratification of this Agreement, the Employer shall, upon request, make available for review by CNA its orientation practices relative to newly hired Nurses, if those practices have changed since the Employer's last submission and subsequently if the Employer changes these practices.

b. Patient Classification System Committee:

1. The Employer shall establish a Patient Classification System Committee composed of up to four (4) benefited Registered Nurses selected by the PPC, and up to four (4) representatives of Nursing Management. The Medical shall convene the Committee at least annually.

2. The Employer shall reimburse each committee representative (including PPC representatives) at their straight-time rate- for time spent in meetings of the Committee.

3. The Committee shall be responsible for reviewing the reliability and validity of the existing Patient Classification System, and for recommending any modifications or adjustments necessary to assure accuracy in measuring patient care needs. The Patient Classification System shall be used by the Employer for determining nursing care needs of individual patients that reflects the assessment, made by the direct care Registered Nurse, of patient requirements, and shall provide for shift-by-shift staffing based on those requirements.

4. The system shall include, but not limited to, the following elements: individual patient care requirements; the patient care delivery system; and generally accepted standards of nursing practice, as well as elements reflective of the unique nature of the Employer's patient population.

5. Each year, the Staff Nurses from the Employer shall select the Staff Nurses to represent the interests of the Nurses on the Patient Classification System Committee and shall communicate the results to the Chief Nursing Officer. The committee will then meet to review the existing system. Such review shall be completed within the sixty (60) days.

6. Within thirty (30) days following completion of the review, the Committee will submit to the Chief Nursing Officer any recommendations it has for modification or adjustments to the Patient Classification System. The Employer will

make its best efforts to implement within thirty (30) days recommendations that are approved by the Chief Nursing Officer. Differences of opinion between CNA and the Employer representatives on the Patient Classification System Committee that cannot be resolved may be referred by either party to the Nursing Practice Review Committee as provided in ARTICLE 11, Section A of the Agreement.

7. A Registered Nurse shall directly provide:

a. Ongoing patient assessments as defined in the Business and Professions Code, section 2725(b)(4). Such assessments shall be performed, and the findings documented in the patient's medical record, for each shift, and upon receipt of the patient when he/she is transferred to another patient care area.

b. The planning, supervision, implementation and evaluation of the nursing care provided to each patient. The implementation of nursing care may be delegated by the Registered Nurse responsible for the patient to other licensed nursing staff, or may be assigned to unlicensed staff, subject to any limitations of their licensure, certification, level of validated competency, and/or regulation.

c. The assessment, planning, implementation, and evaluation of patient education, including ongoing discharge teaching of each patient. Any assignment of specific patient education tasks to patient care personnel shall be made by the Registered Nurse responsible for the patient.

c. Conscious Sedation

1. Consistent with the California Board of Registered Nursing regarding Conscious Sedation approved 9/95 (rev 7/97), Nurses managing the care of patients receiving conscious sedation shall not leave the patient unattended or engage in tasks that would compromise continuous monitoring of the patient by the Registered Nurse.

d. Nursing Process Standards

1. Both the Association and the Employers recognize that a Registered Nurse is responsible for applying the nursing process as follows:

a. Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

b. Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

c. Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

d. Assigns or delegates tasks to other care givers based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be assigned or delegated, and provides clinical supervision of those care givers.

e. Evaluates the effectiveness of the care plan through observation of the patient's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the patient and health team member, and modifies the plan as needed.

f. Acts as the patient's advocate, as circumstances require by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the patient, and by giving the patient the opportunity to make informed decisions about health care before it is provided.

4. State Mandated Staffing Ratios

a. The Employers will comply with state mandated staffing ratios. The provisions of said law will be included in this agreement as Appendix "A". This provision and the referenced appendix shall be solely subject to Resolution and Staffing Disputes.

5. Use of Charge Nurse

a. The Employer and the Association jointly agree that the role of the Charge Nurse, where it has been assigned by the Employer, is important in the overall delivery of safe, quality patient care. The primary function of the Charge Nurse is to coordinate, direct and delegate the work on his/her unit, working in collaboration with the Nurse Manager(s). The responsibilities of the designated Charge Nurse shall include, but not be limited to the following:

- Making assignment;
- Adjusting assignments as needed and required;
- Working as a liaison with house supervisor, physicians, other departments, other managers, Hospital management, Hospital visitors and guests;
- Serving as a resource to staff on the unit to answer questions.

b. Charge Nurses or relief Charge Nurses shall not routinely be given a patient assignment. If a Charge Nurse or relief Charge Nurse is given a patient care assignment, the Employer shall continue to bring in other Nurses to staff those patients in order to release the Charge Nurse or relief Charge Nurse to her/his regular duties. An RN shall not be forced to assume a Charge Nurse position if he/she does not want to assume such a position.

6. Resolution of Staffing Disputes

a. Disputes concerning Patient Needs Staffing and Registered Nurse Responsibilities and Standards of Competent Performance, State Mandated Staffing Ratios, staffing issues arising in the PPC and all other provisions covered by this Article, which are not resolved by the Nursing Practice Review Committee, shall be submitted to a Special Review Panel at each Employer for final resolution, provided such submission is presented in writing within thirty (30) days of the meeting of the Nursing Practice Review Committee under Article 11, at which the committee is unable to reach a recommendation. Notwithstanding the above, disputes concerning (1) membership of the PPC, (2) regular meetings and minutes of the PPC, (3) election of the PPC chairperson, (4) membership on the Patient Classification System Committee and (5) reimbursement for pay for carrying out the duties of the Patient Classification System Committee shall be subject to the Grievance Procedures and Arbitration in Master Article 15.

b. The special Review Panel shall consist of three members, one selected by CNA, one selected by the Chief Nursing Officer or his/her designee and a third selected by the other two panel members to serve as a neutral chairperson. The parties will make a good faith effort to select a chairperson who is experienced in the healthcare industry and with expertise in staffing in acute care hospitals. If they are unable to find such a person, they shall select an arbitrator from the list of Arbitrators in the Grievance Procedure and Arbitrators Article to serve as chairperson.

c. In reaching a resolution, the Review Panel must take into consideration area standards regarding staffing, state and federal laws, and any other relevant information presented by the parties.

d. If the Special Review Panel is unable to agree on a resolution, the neutral third party may resolve the difference and such a decision shall be final and binding on the parties.

e. Any resolution of the Special Review Panel, including any decision by the neutral third party, must be consistent with state and federal legislation prescribing levels and ratios, and the Special Review Panel, including the neutral third party, shall have no jurisdiction to fashion any remedy that imposes an obligation on any hospital which exceeds, or is inconsistent with, the requirements of Title 22 or any other state or federal law. Either CNA or the Employer may seek to vacate any decision of the Review Panel or of the neutral third party, under any basis permitted under state or federal law regulating private arbitration.

The Employers and CNA agree that the process contained herein shall be the exclusive means of resolving all disputes arising under all provisions in this Article, including State Mandated Staffing Ratios and staffing issues arising in the PPC, and specifically, except to the extent either party seeks to vacate a decision under paragraph "D" above, the parties agree to waive their rights to initiate litigation or seek administrative remedies, including unfair labor practices under the National Labor Relations Act, arising out of such disputes, except for information requests and Section 8(a)(3) or Section 8(b)(1) charges. This Article shall not be subject to the Grievance Arbitration provisions of the Agreement.

ARTICLE 12 – WAGES

Unless expressly stated otherwise, for all represented Nurses, the wage increases shall be as follows:

Year 1 – 5%

Effective the first full pay period following ratification (December 22, 2016), RNs will receive an across the board increase of five (5) percent (%).

Year 2 – 5%

Effective the first full pay period following December 22, 2017, RNs will receive an across the board increase of five (5) percent (%).

Year 3 – 4%

Effective the first full pay period following December 22, 2018, RNs will receive an across the board increase of four (4) percent (%).

Year 4 – %

Effective the first full pay period following December 22, 2019, RNs will receive an across the board increase four (4) percent (%).

SVMC per diem rates to increase according to the schedule above.

ARTICLE 13 – DUPLICATE COVERAGE CHANGE

Currently, Associates may cover each other and/or their qualified dependents under each other's medical, dental, and/or vision plans provided by the Employers. Effective January 1, 2010, Associates who both work for the Hospital and are eligible for coverage under each other's medical, dental and/or vision plans, will only be able to cover their eligible dependents (spouse, children, etc.) under one or the other's medical, dental, and/or vision plans. If the associates do not make the change by the end of the open enrollment the employer will make changes as follows: each Associate will be left in the respective plans he or she has elected and all other dependents will be enrolled in the plan(s) of the Associate whose birthday comes first in the calendar year.

ARTICLE 14 – DISCIPLINE, DISCHARGE AND PERSONNEL FILES

A. Just Cause

1. After completion of the initial probationary period (See Article 18), the Employers shall have the right to discharge or assess disciplinary action for just cause. The foregoing does not preclude the Employers from placing a Nurse on suspension without pay pending an investigation to determine whether disciplinary action is warranted. If it is determined that disciplinary action in the form of a suspension or discharge is not warranted, the Nurse will be paid for the regularly scheduled hours missed while on investigative suspension. If it is determined by the Employers that a disciplinary suspension is warranted, and the duration of the disciplinary suspension is less than the period of investigative suspension, the Nurse shall be compensated for the difference in wages or benefits. Unless mutually agreed in writing by the Employers and the Union, no Nurse shall be placed on unpaid investigative suspension for a period in excess of seven (7) calendar days excluding Saturday, Sunday and recognized holidays. This seven (7) day period shall be extended if the Nurse does not make herself or himself reasonably available for investigatory interviews that are scheduled by the Employer during that time period and such unpaid status shall continue until such time as the investigatory interviews have been held.

2. A Nurse may request to have an Association representative present at a meeting with the Employer when the Nurse reasonably believes such a meeting may result in disciplinary action. Furthermore, the Employer should advise a Nurse in advance if a requested meeting may result in suspension or discharge of the Nurse.

3. Unless mutually agreed in writing by the Employers and the Union, no discipline may be taken against a Nurse if the Employer fails to take disciplinary action within thirty (30) calendar days excluding Saturday, Sunday and recognized holidays of the date on which the Employer first has knowledge of such the act, omission or occurrence upon which the discipline against the Nurse would otherwise be based. The aforesaid thirty (30) day period shall be extended by the duration of any leave requested and taken by the Nurse during the thirty (30) day period.

B. Employee Personnel File

1. There shall be one official personnel file for all bargaining unit Registered Nurses. A Nurse may inspect his/her own personnel file at reasonable times upon his/her request. A nurse will be provided, upon request, a single copy of any document in the Nurses' official personnel file.

2. Union Access: With respect to a particular complaint or grievance of a Nurse concerning the interpretation or application of this Agreement, and on the Nurse's written authorization, the Union may inspect at reasonable times relevant material in the Nurse's personnel file upon which the Employer is or will be relying. This provision is not intended to restrict the Union's rights under applicable law to seek and obtain subpoenas for Nurse personnel records in formal proceedings, nor is it intended to restrict the Employer's rights under applicable law to oppose the issuance of such subpoenas. This provision is not intended to restrict the Union's right to information under the National Labor Relations Act necessary to perform its function as exclusive bargaining representative.

3. Removal of Disciplinary Counseling: Disciplinary counseling documents will, upon request by a Nurse, be removed from the Nurse's personnel file after a period of two (2) years. Under applicable federal and state statutes and regulations, including appropriate recordkeeping obligations, the Employer may be required to retain some personnel records, it being understood, however, that such records, consistent with this paragraph, will not be in the Nurse's personnel file and will not be utilized for progressive discipline.

C. Notice of Discharge or Suspension

1. Notice in writing of discharge or suspension shall be sent to the Association within twenty-four (24) hours of such action excluding holidays and weekends. The seven (7) calendar days (excluding Saturday, Sunday and recognized holidays) providing for filing in STEP TWO of the Grievance Procedure shall commence from the date that the notice to the Association is postmarked and/or time stamped.

ARTICLE 15 – THE GRIEVANCE PROCEDURE AND ARBITRATION

A. The Grievance Procedure.

1. The parties shall use the following procedure in an effort to resolve any grievances which may arise during the term of the Agreement. It is the intention of both parties to discuss and resolve disputes informally and attempt to settle them prior to resorting to STEP TWO of the grievance procedure.

2. A Grievance is defined as a dispute arising during the term of this Agreement concerning the interpretation or application of any provision of this Agreement, or a dispute concerning whether or not discipline, including discharge, is for just cause.

3. Time Limits

a. As used in this Article, the term "days" is defined as calendar days excluding Saturday, Sunday and recognized holidays. The date of receipt by either Party of a grievance form or arbitration request will not count toward calculation of the time period set forth in this Article.

b. The time period specified in this Article may be waived or modified at any time, but only by mutual written agreement of the Parties, or by oral agreement with subsequent written/email confirmation signed by both Parties within five (5) days after the oral agreement is reached. Unless waived or modified in accordance with the prior sentence, the time limits contained herein will be strictly construed. No grievance will be arbitrable unless: (a) the initial grievance has been timely filed (i.e. within the time limits described herein) and (b) there has been a written referral to arbitration within the time limits described hereon.

4. STEP ONE: If an RN has a grievance, the RN is encouraged to discuss the matter with the Nurse's Supervisor or, if necessary, with the Nursing Director overseeing the Nurse's home department or designee. However, if the grievance is not resolved in this manner or if the RN prefers to go directly to STEP TWO, the grievance shall be handled in accordance with the procedure set forth below. If not adjusted or the RN has not received an answer within seven (7) days of the date of the meeting with the Nurse Supervisor or Nursing Director overseeing the Nurse's home department or designee, unless mutually agreed upon, the grievance shall automatically be eligible to go to STEP TWO.

5. STEP TWO: Any grievance between the Association and the Employer or the RN and the Employer shall be reduced to writing and a representative of CNA Staff shall meet with a representative of the Employer, designated by the Employer, who is authorized to receive grievances and adjust such matters.

6. The grievance must contain the following information:

- a. The issue, situation or nature of the grievance.
- b. The provisions of this Agreement which the RN or CNA assert have been violated.

- c. The resolution or remedy sought.
- d. An individual grievance must be signed by at least one (1) grievant.
- e. Together they shall attempt to resolve the grievance. The parties shall meet within seven (7) days of the date the grievance is received unless mutually agreed otherwise. If no response is received at STEP TWO, the grievance shall be moved to STEP THREE of the Grievance Procedure.

No grievance shall be processed under this ARTICLE unless it has been first presented in this STEP within thirty (30) days of the date when either the Nurse or the Association first had knowledge of the event constituting the grievance (or, in the normal course of events and with reasonable diligence, when either should have knowledge). In the case of a discharge or suspension, no grievance shall be processed under this ARTICLE unless it has been first presented in this STEP within seven (7) days of the discharge or suspension.

7. STEP THREE: If the grievance has not been resolved at STEP TWO, the parties may mutually agree to utilize the services of an agreed upon mediator provided by the Federal Mediation and Conciliation Service (at no cost) to resolve the grievance and to avoid unnecessary use of the arbitration process.

- a. A request by either party for mediation must be made within fourteen (14) days of the STEP TWO response;
- b. The period for referring the grievance to arbitration may be stayed if both parties agree to do so in writing while the parties consider the mediation request;
- c. Neither the Employer nor the Association will be bound by any recommendation of the mediator;
- d. Either the Employer or the Association may terminate the mediation process immediately by written notice at any time;
- e. The costs of mediation, if any, shall be shared equally by the parties.

B. Arbitration

1. If the STEP THREE procedure is not used, completed or is terminated by either party, then the grievance may be referred to an impartial Arbitrator for determination. Any such referral shall be submitted in writing within fourteen (14) days after the STEP TWO response is received or within fourteen (14) days after the mediation, whichever is applicable. The impartial Arbitrator shall be chosen by rotation from the following list: Mark Burstein, Michael Prihar, Matthew Goldberg.

2. The arbitrator will be selected by going to the first arbitrator on the list. The arbitrator must be notified of his/her selection by a joint letter signed by both parties. Once the selection letter has been sent, the arbitrator's name goes to the bottom of the list even if the arbitration is never commenced and/or completed. The next arbitration will go to the arbitrator next in order on the list.

The notification letter to the arbitrator must be sent no later than fourteen (14) calendar days from receipt by the non-grieving party of the appeal to arbitration.

3. In the event of a vacancy in the panel of Arbitrators, such vacancy shall be filled by the parties within fifteen (15) days. If the parties cannot agree upon a successor within the time specified, he/she shall be selected from a list submitted by the Federal Mediation and Conciliation Service. The parties shall alternately strike one name each from the above list (the first strike being determined by a flip of a coin observed by both a manager and a union representative) and the last name remaining shall be the new Arbitrator on the panel.

4. Expedited Arbitration Procedure

a. In cases where the parties mutually agree that it would be legally sound and practicable to utilize an expedited arbitration procedure, the following standards shall apply: The case shall be heard within ten (10) days of the decision to go to arbitration.

b. There shall be no transcript of the proceedings unless the arbitrator in his or her discretion so requires.

c. There shall be no posting-hearing briefs filed unless the Arbitrator so requires.

d. The Arbitrator shall issue a bench decision unless he or she desires additional time, which shall not be longer than ten (10) days following the hearing. Thereafter, at the request of either party, the Arbitrator shall provide a brief opinion setting forth the factual and legal basis for his or her decision.

5. Extension: The time limits above may be extended by mutual agreement of the parties.

6. Arbitrator's Decision: The Arbitrator shall render his/her decision within thirty (30) days after the matter has been submitted to him/her unless the parties, by mutual agreement, extend such time limit.

7. Scope of Arbitrator's Power: The Arbitrator's authority will be limited to interpreting the provisions of this Agreement. The Arbitrator shall have no authority to add to, subtract from, or to change this Agreement in any way. Past practice of the parties in interpreting or applying terms of this Agreement may be relevant evidence but shall not be used so as to justify, or result in what is in effect a modification (whether in addition or subtraction) of the written terms of this Agreement.

8. Final and Binding Decision: The decision of the impartial Arbitrator shall be final and binding upon the parties.

9. Expenses of the Arbitrator: Expenses of any arbitration will be shared equally by the Employer and the Association. However, each party shall bear its own expenses of representation and witnesses.

ARTICLE 16 – POSTING AND FILLING OF VACANCIES

1. Posting

Registered Nurse positions under this Agreement which are permanently vacated or newly created by the Employers shall be posted in or near the following locations: Human Resources and the cafeteria. In addition, the vacant or newly created positions shall be posted on the Employer's electronic job posting system.

2. Special Notification to Absent Nurses

For Nurses on vacation or leave of absence who requested such in writing, notices of vacancies shall be sent to an address indicated by the Nurse. If the Nurse is on leave of absence in excess of thirty (30) calendar days and is granted the position, the Nurse must be available to return to work within at least fifteen (15) calendar days from the date of posting of the position if required by the Employers.

3. Preference in Filling Vacancies

Regular Full-Time, Regular Part-Time, and Per Diem Nurses employed by the Employer may apply for such permanent vacancy or newly created position and shall be given preference in filling such vacancy on a seniority basis by employment status (i.e., Regular Nurses in seniority order followed by Per Diem Nurses in seniority order) provided: (a) the Nurse is qualified to fill the vacant position; and (b) approval of the application will not adversely affect patient care. At O'Connor, St. Louise Regional, and St. Vincent Medical Centers Registered nurses who work on the unit where the vacancy exists shall continue to be given preference to fill such vacancies by seniority over nurses outside the unit.

4. Other Sources

If the position is not filled by an internal applicant within seven (7) days of its posting, the Employer may fill the position from any source.

5. Filling of Temporary Vacancies

a. The above does not prevent an Employer from filling a vacancy on a temporary basis for a temporary period up to a maximum of ninety (90) calendar days unless such temporary vacancy is created due to a Nurse's leave of absence that is anticipated to last longer than ninety (90) calendar days, in which case the temporary position may be posted for the anticipated length of the leave of absence. The time period of the temporary position may be extended by mutual consent. The Association agrees that it will not unreasonably withhold consent to extending the temporary period.

b. An Employer may fill any regular posted position on a temporary basis with a per diem Nurse or a part-time Nurse desiring extra hours. Registered Nurse who work on the unit where the vacancy exists shall be given preference to fill such vacancies by seniority over nurses

outside the unit. Bids to fill the position on a regular basis as posted shall have priority over a bid to fill the position on a temporary basis.

6. Limits on Applications

A Nurse who applies for and is awarded a posted position may not apply for another vacancy before six (6) months unless there is a mutual agreement among that Employer, the Nurse, and the Association. If no other Nurses apply for such later vacancy within the initial seven (7) day posting period, the consent of the Association is not heeded for such Nurse to apply for and fill the later vacancy within the six (6) month period.

7. Hiring of Nurses from another Verity Hospital

a. A RN candidate from another Employer covered by this Agreement shall be given preference over external applicants not employed by a Verity hospital, provided the candidate is qualified to fill the position and meets performance standards.

b. Nurses hired by an Employer who were employed at another Verity hospital in a position covered by this Agreement shall have his or her seniority with the previous Verity hospital recognized for all purposes for which seniority is recognized under this Agreement, including but not limited to placement on the appropriate step of the wage scale applicable to the hiring Employer, assuming the Nurse had no break in service between the Employers, as defined in the Seniority Article of this Agreement. Nurses hired by an Employer who were employed by another Verity hospital in a position not covered by this Agreement shall have his or her seniority recognized pursuant to the hiring Employer's policies.

ARTICLE 17 – MEDICAL BENEFITS

The Employers will not modify the terms of the medical plans in effect as of the effective date of this Agreement through December 31, 2016.

Effective January 1, 2017, the Employers shall make available two comprehensive medical plans as proposed by the Employers, i.e., the Verity hospital-based EPO (“EPO”) plan and Verity hospital-based PPO/Buy-Up (“PPO”) plan options for all benefit eligible regular full-time and regular part-time Staff Nurses. These plans shall be as proposed by the Employers on November 9, 2016, except that for the Employers proposed PPO plan, the Tier 2 deductible shall be \$500(Nurse)/\$1000 (family).

Effective January 1, 2017, with respect to EPO coverage only, the Employers shall pay one hundred percent (100%) of the premium cost of the Nurse, Spouse and Family coverage for all benefit eligible full-time Staff Nurses and part-time Staff Nurses who are regularly scheduled on a pre-determined basis to work 20 hours or more per week, subject to the plan’s eligibility requirements.

With respect to benefit eligible Staff Nurses who elect the PPO/Buy-Up plan only, the Employers will contribute the same dollar amount (equal to the Employer’s contributions for EPO coverage) towards the cost of the PPO/Buy-Up plan and the Staff Nurse will contribute the difference through payroll deductions.

For calendar year 2017, benefit eligible Staff Nurses electing the PPO/Buy-Up will pay the following:

1. Nurse only - \$31.85/pay period
2. Nurse & Children - \$57.31/pay period
3. Nurse & Adult - \$66.86/pay period
4. Nurse & Family - \$98.69/pay period

These contributions shall be adjusted on a calendar year basis each year of this Agreement, but such contributions shall not exceed the following during the life of the Agreement. Increases in RN contributions may not exceed \$25/pay period in a given benefit year:

1. Nurse only - \$52/pay period
2. Nurse & Children - \$103/pay period
3. Nurse & Adult - \$130/pay period
4. Nurse & Family - \$156/pay period

ARTICLE 18 – SENIORITY, CANCELLATION, LAYOFF AND RECALL

A. Seniority

1. **Current Registered Nurses:** Registered Nurses hired into a bargaining unit position or who transferred into a bargaining unit position prior to the ratification of this Agreement shall maintain all prior accrued seniority including any previously received credit for prior employment in a non-bargaining-unit position or previously received credit for work as a Per Diem Registered Nurse.

2. **Newly Hired Registered Nurses:** For Registered Nurses hired by an Employer, or who transfer into a bargaining unit position following the ratification of this Agreement, seniority is determined by the Registered Nurse's most recent date of hire or transfer into a bargaining unit position or date of transfer from a non-bargaining unit position into a bargaining unit position.

3. After the probationary period of ninety (90) calendar days of employment, accumulated length of service will be broken by voluntary resignation, twelve (12) consecutive months of employment outside the bargaining unit, dismissal for just cause, twelve (12) consecutive months of layoff, failure to return to work at the end of an authorized leave of absence, failure to respond to a notice of recall within seven (7) days from the date of a written receipt of notice of recall, failure to report for work from layoff within fourteen (14) days of accepting a position, or three (3) consecutive months of unavailability as a Per Diem Nurse.

4. In cases where seniority is broken, the Nurse shall, upon re-employment or transfer back into the bargaining unit, be considered a new employee for seniority purposes, except that, if the Nurse is re-employed within six (6) months of a voluntary resignation, seniority accrued prior to the Nurse's voluntary resignation shall be credited to the Nurse upon re-employment.

5. Effective upon ratification of this Agreement, Per Diem Nurses will accumulate one (1) month of seniority for each two (2) full months of employment. Such accrual is on a going-forward basis only except at those facilities where Per Diem nurses accrued seniority under previous agreements.

6. Such seniority for Per Diem Nurses may only be utilized for layoff purposes if the Nurse is willing to accept available Regular positions.

7. No later than ninety (90) days after the ratification of this Agreement, and once a year thereafter if requested by the Association, each Employer shall provide the Association with a current seniority list. After submission, the list will be made available on each nursing unit, as well as in Nursing Administration and the Human Resources Department. Such list may be alphabetical, by Nursing Unit, or other format selected by the Employer at issue. Any inaccuracy in a Nurse's seniority is to be brought to the Employer's attention within sixty (60) calendar days after submission of the list. Thereafter, the seniority shown for Nurses shall be deemed accurate, as of the date of the list's preparation, for all purposes under this Agreement.

B. Indefinite Reduction in Force

1. In the event of a potential indefinite layoff, the Employer implementing the layoff will give at least thirty (30) calendar days advance notice to the Association.

2. Prior to implementing an indefinite layoff on any Unit, the Employer at issue shall discontinue the use of registry in the affected units(s), unless Regular or Per Diem Nurses are not available. Next, the Employer at issue will solicit volunteers on affected units who wish to be laid off. Any volunteers will have full recall rights as outlined in Section D or will have the option to sever employment as provided in Section E.

3. In the event of an indefinite reduction in force, on the request of the Association or the Employer at issue, the parties shall investigate the feasibility of a work-share arrangement among the Nurses, and may, by mutual agreement, institute such work-share agreement.

4. Indefinite layoffs, including position elimination, shall be conducted by the affected unit and shift, or in the affected positions, in reverse order of seniority, provided that, in the judgment of the Employer at issue, the clinical competency and ability of affected Nurses are equal.

5. Layoffs shall affect the Nurses in the various personnel categories in the following order (recall is in the reverse order):

- a. Temporary
- b. Probationary
- c. Per Diem
- d. Regular Nurses (Full Time or Part Time)

6. The layoff at each Employer shall continue successively within each category in the order of the least senior to the most senior until the needed reduction is achieved.

7. A Nurse whose position is eliminated in a reduction in force shall be provided with a list of available vacant positions to include the shift and scheduled hours within the Nurse's unit, cluster, as well as those positions in the Employer and he/she may exercise seniority in the following manner:

a. Any vacancy within the Nurse's area of specialty/cluster (as defined in Appendix D) for which the Nurse is competent and has the requisite seniority. If a Nurse is qualified for a vacancy but turns it down, she/he loses all recall and layoff rights.

b. If no such vacancy exists or the Nurse so elects, the affected Nurse will be offered the position of a less senior Nurse in his/her area of specialty. No new part-time Regular positions will be created without the consent of the Employer.

c. If no such positions exist as outlined in "b" above, the affected Nurse will be offered the position of a less senior Nurse within the Employer. No new part-time Regular positions will be created without the consent of the Employer.

8. A Nurse who has taken a position as outlined in a, b, or c above will be expected to competently perform the duties of the position after a reasonable orientation equal to that afforded to a newly hired Nurse in the same position.

9. Before a Nurse is offered vacancies or bumping opportunities, the Nurse will be provided a description of the available vacancies or positions held by less senior Nurses for which the Nurse is competent and qualified to fill, that includes the unit, shift, and scheduled hours.

10. Regular Nurses who lose benefits as a result of an indefinite layoff will be given preference for available work within their home unit over Per Diem Nurses and will be given preference over Per Diem Nurses when bidding for posted positions at their Employer for which they are competent and qualified for a period of up to one (1) year after layoff.

11. A Nurse whose position is eliminated may elect to change to Per Diem status.

C. Recall

1. All postings covered by this Agreement that are permanently vacated or newly created shall first be filled according to Article 16 Posting and Filling of Vacancies of this Agreement.

2. Newly created or permanently vacated positions not filled according to Article 18.C.1. above shall be made available to Nurses on the recall list for the Employer at issue. These positions shall be offered to Nurses in order of seniority provided they are willing to accept hours, shifts, assignments, etc.

3. Laid-off Nurses shall remain on the recall list for one (1) year.

4. Nurses who are recalled to work must report no later than fourteen (14) days after accepting the job.

5. Nurses on "leave of absence" whose positions are affected will have recall rights.

6. A Nurse who accepts a temporary position will remain on the recall list while in the temporary position.

7. Failure to report address or telephone changes in writing to Human Resources at the Employer at issue will result in a loss of a Nurse's recall rights.

D. Severance [SEE LOCAL AGREEMENT]

ARTICLE 19 – HEALTH AND SAFETY

A. GENERAL PRINCIPLES

The Employers agree to provide a safe and healthy work environment for Registered Staff Nurses and further agrees to comply with all applicable local, state and federal health and safety laws and regulations. Staff Nurses may raise health and safety concerns to the Professional Practice Committee.

B. SAFE PATIENT HANDLING

1. The Employers shall maintain a safe patient handling program for all patient care units at all times.

2. The Employers shall provide education and training in safe patient handling to Nurses that includes, but is not limited to, the following: the appropriate use of lifting devices and equipment to handle patients safely and the five areas of body exposure: vertical, lateral, bariatric, repositioning, and ambulation.

3. Reasonable efforts will be made to eliminate the need for patient care providers to manually lift patients. Reasonable efforts may include the integration of mechanical lifts, education and appropriate training for staff involved in handling patients. Appropriately trained and designated staff is to be available to assist with patient handling.

4. Consistent with applicable law and regulations, the Employers shall maintain a lift program appropriate for the specific patient and consistent with the employer's safety policies.

5. At an RN's request, the Employers shall provide an ergonomic evaluation of the work environment, including the RN's work space and equipment. Prior to any physical changes in the work environment, an ergonomic evaluation shall be done. Results of the ergonomic evaluation shall be reviewed and implemented in accordance with existing safety policies.

6. Staff Nurses who refuse to perform lifting assignments that the Staff Nurse in good faith and reasonably believes present an abnormal risk of immediate serious harm to the Staff Nurse or the patient, shall not be subject to disciplinary action due to that refusal, consistent with the standards provided by applicable law.

C. COMMUNICABLE DISEASES

1. General

a. The Employers shall provide information and/or training to Staff Nurses on communicable diseases to which the Staff Nurse may have workplace exposure. Information and/or training shall include the symptoms, modes of transmission, methods of protection, workplace infection control procedures, special precautions, and recommendations for immunizations where applicable.

b. Staff Nurses shall be provided appropriate protective equipment and/or attire whenever the work conditions warrant such protection and such equipment or attire is available. The Employer and the Association will work together to ensure that Staff Nurses utilize appropriate protective equipment and secure recommended immunizations. The Employer will comply with the guidelines of the Centers for Disease Control and state, local, and county health guidelines, as may be applicable. The guidelines referenced above are fluid and change based upon the evolving information available to the healthcare community.

c. Each Employer through the Infection Control Committee and any appropriate (sub) committees, is response for monitoring and implementing communicable disease guidelines, including any communicable disease/pandemics that may be declared by any governmental authority.

d. Two (2) Registered Staff Nurses chosen by CNA with direct patient contact will participate in the appropriate committee or (sub) committee deliberations.

e. Time spent by association representatives in committee meetings shall be treated as straight time pay, but shall not constitute hours worked for the purpose of calculating overtime.

f. The PPC can make recommendations to the Infection Control Committee or (sub) committee as it deems appropriate.

2. Medical Services

The Employers shall provide an appropriate medical evaluation at no cost to an RN who believes she/he may have been exposed to an Infectious Disease at the hospital. The appropriate medical evaluation process shall maintain medical confidentiality. The employer shall provide all vaccinations, prophylaxis, and medical surveillance recommended by the CDC, the state health department, the local health officer, or other government agency.

a. Any ongoing medical evaluation based upon exposure to an Infectious Disease at the hospital may include but is not limited to: Initial medical evaluation to be provided prior to first entrance into a restricted area or area of potential exposure.

b. Surveillance for signs and symptoms of infection. RNs exhibiting signs or symptoms of infection including fever and RNs requesting referral shall be referred immediately for follow-up evaluation.

c. Surveillance for signs and symptoms of over-exposures to hazardous substances used for disinfection and decontamination as appropriate for substances present in the work operation. RNs exhibiting these signs or symptoms shall be referred immediately for follow-up evaluation, and the Employers shall further investigate the source of the potential over-exposure and take corrective measures, as needed.

d. Treatment deemed medically necessary to support recovery.

3. Sick Time

RNs who are required to miss scheduled shifts as a result of exposure to an Infectious Disease while at work shall be placed on administrative leave without loss of pay, PTO or sick time and shall not be penalized or disciplined in any way. If the Staff Nurse qualifies for workers compensation and/or state disability, the Employers will only supplement to make up for the difference between these payments and the Staff Nurse's regular pay. Such paid administrative leave will last no more than one year unless mutually agreed otherwise.

D. WORKPLACE VIOLENCE

Each Employer shall take reasonable steps within its control to protect Staff Nurses from assault, verbal abuse or physical harm on hospital premises and have the following:

a. At each Staff Nurse's request, an ID badge will be created that does not identify the Staff Nurse's last name unless required for accreditation or by law.

b. If Staff Nurse licenses or certifications are on display, and personal information, including, but not limited to, a Staff Nurse's address, is visible on such licenses, the information will be redacted or blacked out where permitted by law upon request.

c. Provide for the disposition of weaponry discovered at patient admission or any time during the patient's hospital stay.

d. Consistent with the standards imposed by applicable law, make available to all RNs training that will include how to prevent and safely handle aggressive behavior.

e. Maintain a security response program that can be available to assist a Staff Nurse in situations that involve violence or potential violence. Such program(s) shall consist of identified responders, including representatives from security, and may include representatives from operations, and nursing as determined by the Hospital and as appropriate for the situation.

f. A policy for reporting injuries or illness caused by workplace violence.

g. With respect to complaints of workplace violence regarding the Hospital's medical staff, complaints should be filed on a form designated by the hospital. If a complaint is referred for further investigation (e.g., to the Medical Staff Office), the Staff Nurse's Department Director will inform the Staff Nurse of this referral. The union recognizes that no further information will be shared, and specifically acknowledges that this agreement does not provide the Union access to or information regarding this investigatory process due to statutory privileges under law.

h. No Staff Nurse shall be disciplined for taking reasonable steps to protect himself/herself from assault or physical harm on Hospital premises, including but not limited to, making good faith reports of events to local police or other governmental authorities.

2. Any disputes under this Section (Workplace Violence), including but not limited to a dispute over an Employers' compliance with the Article, shall be subjected to the grievance provisions of this Agreement but shall not be arbitrable.

E. PHYSICAL EXAMINATION

1. Before employment, each Nurse shall be given without charge a physical examination by a licensed provider.

2. An annual physical examination shall be provided by the Employers at the option of the Staff Nurse. Such examination shall be conducted during the Staff Nurse's non-working hours. The examining licensed provider may utilize diagnostic tests as deemed appropriate. Certification that the Staff Nurse is free of communicable disease and physically able to perform work assigned will be provided in conjunction with this examination.

ARTICLE 20 – PATIENT CARE ADVISORY COUNCIL

The parties agree that Registered Nurses are the frontline providers of patient care, and the repository of a wealth of experience and expertise regarding excellence in the delivery of nursing care. Therefore, St. Vincent Medical Center, Seton Medical Center, Saint Louise Regional Hospital, O'Connor Hospital and the Association agree to participate in a system-wide Patient Care Advocacy Council (the "Council") to conduct semi-annual meetings between RN representatives (as designated by the Association but not to exceed two (2) RNs per facility) and two representatives of management of each facility to discuss solution-driven mechanisms for accomplishing the following:

1. Constructively advancing the safe and therapeutic delivery of healthcare across VHS facilities through continuously monitoring patient outcomes, safety awareness, and safe patient handling, additional education and training concerning patient mobility and patient handling needs, awareness and utilization of existing equipment, whether additional equipment is needed, and if so, what type(s) of equipment, continued recognition of clinical assessment and professional judgment by RNs concerning safe patient handling, and other reasonable measures to promote RN safety and safe patient handling.

2. Advancing the practice of nursing to provide safe and high quality patient care and improve patient satisfaction.

3. Enhancing retention and recruitment of skilled RNs.

4. Ensuring a safe and healthy work environment through discussion of the Employers' programs regarding safe patient handling, communicable diseases, workplace violence, and other health and safety programs.

5. Strengthening professional education initiatives, including RN precepting and mentoring.

At least two (2) weeks prior to each meeting of the Council, the parties will exchange lists of topics they wish to address related to 1 through 4 above. All such topics will be on the agenda in the absence of agreement otherwise. The parties agree that the Council shall not be used for collective bargaining nor shall it be dispute resolution forum. While topics may be presented which had previously been discussed by the PPC, the Council shall not be an appeal forum for the PPC.

Designated RN representatives to the Council shall be eligible to be released, patient care and staffing needs permitting, and if released, shall be considered off the schedule. Such RN representatives shall be compensated by the Employer at the RN's straight time rate for scheduled work time missed because of their attendance at Council meetings. Such time shall not be considered time worked and shall not be included in the calculation of overtime. Designated RN representatives attending Council meetings shall suffer no loss of benefits as a result of attendance at Council meetings, including accrual of vacation/sick leave, PTO/ESL, seniority, and any other coverage for which the RN is eligible. Travel expenses for RN representatives on the Council who attend such meetings shall be borne by the Association.

ARTICLE 21 – RETIREMENT PROGRAM

1. **Section A – Retirement Plan for Hospital Employees ("RPHE") and Verity Health System Retirement Plan**

a. Effective January 1, 2017, (the "Pension Change Date"), the Employers shall cease benefit accruals under the benefit formula and structures in effect prior to the Pension Change Date for all Staff Nurses under the Retirement Plan for Hospital Employees and the Verity Health System Retirement Plan (formerly known as the Daughters of Charity Health System) (collectively, the "DB Pension Plans"). A Staff Nurse's benefits under the DB Pension Plans with respect to service prior to the Pension Change Date shall be based on the Staff Nurse's credited service and earnings as of the Pension Change Date, and shall be no less than the Staff Nurse's benefits under the DB Pension Plans as of the Pension Change Date.

b. Effective as of the Pension Change Date, the Employers shall implement a "cash balance" benefit structure under the DB Pension Plans, which cash balance benefit will include an annual pay credit to each Staff Nurse equal to the following percentage of the Staff Nurse's compensation at each of the following Years of Service:

1. 0 – 4 years: 4.25%
2. 5 – 9 years: 4.5%
3. 10 – 14 years: 5%
4. 15 - 19 years: 6%
5. 20 – 24 years: 7%
6. 25 – 29 years: 8%
7. 30 - 34 years: 9%
8. 35+ years: 10%

c. In addition, for purposes of the cash balance benefit, the DB Pension Plans shall include an annual interest credit of 4%.

d. Except as noted above, the terms and conditions of the DB Pension Plans shall apply to the Staff Nurses participating in each of the DB Pension Plans.

e. The Staff Nurse's cash balance benefits earned after the Pension Change Date will be expressed as a lump sum dollar amount or account balance, and may be taken upon retirement as either a lump sum dollar amount or in the form of an annuity. A Staff Nurse's total benefits under the DB Pension Plans upon retirement would include benefits accrued prior to the Pension Change Date and any cash balance benefits earned after the Pension Change Date.

f. Staff Nurses who are not vested under the DB Pension Plans as of the Pension Change Date may continue to accrue years of vesting service following the Pension Change Date in accordance with the terms and provisions of the DB Pension Plans.

g. The Employers will fund, administer and operate the Verity Health System Retirement Plan in accordance with its terms and in compliance with applicable funding rules under the Employee Retirement Income Security Act of 1974 ("ERISA").

2. **Section B – TSA/403(b) Plan and Elimination of Future Match Benefit.**

a. The Employers shall continue a payroll deduction plan under which eligible Nurses may make voluntary pre-tax contributions to the Verity Health System Supplemental Retirement Plan (TSA) (the 403(b) Plan").`

b. Effective as of the Pension Change Date, the Employers will cease to match future Nurse contributions made to the Employer sponsored 403(b) Plan. For the avoidance of doubt, effective as of the first full pay period following the Pension Change Date, the Employers shall not provide any future matching contribution to Nurses under the Verity Health System Supplemental Retirement Plan (401(a)) (the "Match Plan").

c. Nurses who are not currently fully vested under the Match Plan as of the Pension Change Date will continue to accrue years of vesting service following the Pension Change Date in accordance with the terms and provisions of the Match Plan.

APPENDIX A - STATE MANDATED STAFFING RATIOS

70217. Nursing Service Staff.

(a) Hospitals shall provide staffing by licensed nurses, within the scope of their licensure in accordance with the following nurse-to-patient ratios. Licensed nurse means a registered nurse, licensed vocational nurse and, in psychiatric units only, a licensed psychiatric technician. Staffing for care not requiring a licensed nurse is not included within these ratios and shall be determined pursuant to the patient classification system.

No Hospital shall assign a licensed nurse to a nursing unit or clinical area unless that hospital determines that the licensed nurse has demonstrated current competence in providing care in that area, and has also received orientation to that hospital's clinical area sufficient to provide competent care to patients in that area. The policies and procedures of the Hospital shall contain the Hospital's criteria for making this determination.

Licensed nurse-to-patient ratios represent the maximum number of patients that shall be assigned to one licensed nurse at any one time. "Assigned" means the licensed nurse has responsibility for the provision of care to a particular patient within his/her scope of practice. There shall be no averaging of the number of patients and the total number of licensed nurses on the unit during any one shift nor over any period of time. Only licensed nurses providing direct patient care shall be included in the ratios.

Nurse Administrators, Nurse Supervisors, Nurse Managers, Charge Nurses, and other licensed nurses shall be included in the calculation of the licensed nurse-to-patient ratio only when those licensed nurses are engaged in providing direct patient care. When a Nurse Administrator, Nurse Supervisor, Nurse Manager, Charge Nurse, or other licensed nurse is engaged in activities other than direct patient care, that nurse shall not be included in the ratio. Nurse Administrators, Nurse Supervisors, Nurse Managers and Charge Nurses who have demonstrated current competence to the Hospital in providing care on a particular unit may relieve licensed nurses during breaks, meals, and other routine, expected absences from the unit.

Licensed vocational nurses may constitute up to 50 percent of the licensed nurses assigned to patient care on any unit, except where registered nurses are required pursuant to the patient classification system or this section. Only registered nurses shall be assigned to Intensive Care Newborn Nursery Service Units, which specifically require one registered nurse to two or fewer infants. In the Emergency Department, only registered nurses shall be assigned to triage patients and only registered nurses shall be assigned to critical trauma patients.

Nothing in this section shall prohibit a licensed nurse from assisting with specific tasks within the scope of his or her practice for a patient assigned to another nurse. "Assist" means that licensed nurses may provide patient care beyond their patient assignments if the tasks performed are specific and time-limited.

The licensed nurse-to-patient ratio in a critical care unit shall be 1:2 or fewer at all times. "Critical care unit" means a nursing unit of a general acute care hospital which provides one of the following services: an intensive care service, a burn center, a coronary care service, an acute

respiratory service, or an intensive care newborn nursery service. In the intensive care newborn nursery service, the ratio shall be 1 registered nurse: 2 or fewer patients at all times.

The surgical service operating room shall have at least one registered nurse assigned to the duties of the circulating nurse and a minimum of one additional person serving as scrub assistant for each patient-occupied operating room. The scrub assistant may be a licensed nurse, an operating room technician, or other person who has demonstrated current competence to the hospital as a scrub assistant, but shall not be a physician or other licensed health professional who is assisting in the performance of surgery.

The licensed nurse-to-patient ratio in a labor and delivery suite of the perinatal service shall be 1:2 or fewer active labor patients at all times. When a licensed nurse is caring for antepartum patients who are not in active labor, the licensed nurse-to-patient ratio shall be 1:4 or fewer at all times.

The licensed nurse-to-patient ratio in a postpartum area of the perinatal service shall be 1:4 mother-baby couplets or fewer at all times. In the event of multiple births, the total number of mothers plus infants assigned to a single licensed nurse shall never exceed eight. For postpartum areas in which the licensed nurse's assignment consists of mothers only, the licensed nurse-to-patient ratio shall be 1:6 or fewer at all times.

The licensed nurse-to-patient ratio in a combined Labor/Delivery/Postpartum area of the perinatal service shall be 1:3 or fewer at all times the licensed nurse is caring for a patient combination of one woman in active labor and a postpartum mother and infant. The licensed nurse-to-patient ratio for nurses caring for women in active labor only, antepartum patients who are not in active labor only, postpartum women only, or mother-baby couplets only, shall be the same ratios as stated in subsections (3) and (4) above for those categories of patients.

The licensed nurse-to-patient ratio in a pediatric service unit shall be 1:4 or fewer at all times.

The licensed nurse-to-patient ratio in a post anesthesia recovery unit of the anesthesia service shall be 1:2 or fewer at all times, regardless of the type of anesthesia the patient received.

In a hospital providing basic emergency medical services or comprehensive emergency medical services, the licensed nurse-to-patient ratio in an emergency department shall be 1:4 or fewer at all times that patients are receiving treatment. There shall be no fewer than two licensed nurses physically present in the emergency department when a patient is present.

At least one of the licensed nurses shall be a registered nurse assigned to triage patients. The registered nurse assigned to triage patients shall be immediately available at all times to triage patients when they arrive in the emergency department. When there are no patients needing triage, the registered nurse may assist by performing other nursing tasks. The registered nurse assigned to triage patients shall not be counted in the licensed nurse-to-patient ratio.

Hospitals designated by the Local Emergency Medical Services (LEMS) Agency as a "base hospital," as defined in Section 1797.58 of the Health and Safety Code, shall have either a licensed physician or a registered nurse on duty to respond to the base radio 24 hours each day. When the duty of base radio responder is assigned to a registered nurse, that registered nurse may assist by

performing other nursing tasks when not responding to radio calls, but shall be immediately available to respond to requests for medical direction on the base radio. The registered nurse assigned as base radio responder shall not be counted in the licensed nurse-to-patient ratios.

When licensed nursing staff are attending critical care patients in the emergency department, the licensed nurse-to-patient ratio shall be 1:2 or fewer critical care patients at all times. A patient in the emergency department shall be considered a critical care patient when the patient meets the criteria for admission to a critical care service area within the hospital.

Only registered nurses shall be assigned to critical trauma patients in the emergency department, and a minimum registered nurse-to-critical trauma patient ratio of 1:1 shall be maintained at all times. A critical trauma patient is a patient who has injuries to an anatomic area that: (1) require life saving interventions, or (2) in conjunction with unstable vital signs, pose an immediate threat to life or limb.

The licensed nurse-to-patient ratio in a step-down unit shall be 1:3 or fewer at all times. A "step down unit" is defined as a unit which is organized, operated, and maintained to provide for the monitoring and care of patients with moderate or potentially severe physiologic instability requiring technical support, but not necessarily artificial life support. Step-down patients are those patients who require less care than intensive care, but more than that which is available from medical/surgical care. "Artificial life support" is defined as a system that uses medical technology to aid, support, or replace a vital function of the body that has been seriously damaged. "Technical support" is defined as specialized equipment and/or personnel providing for invasive monitoring, telemetry, or mechanical ventilation, for the immediate amelioration or remediation of severe pathology.

The licensed nurse-to-patient ratio in a telemetry unit shall be 1:4 or fewer at all times. "Telemetry unit" is defined as a unit organized, operated, and maintained to provide care for and continuous cardiac monitoring of patients in a stable condition, having or suspected of having a cardiac condition or a disease requiring the electronic monitoring, recording, retrieval, and display of cardiac electrical signals. "Telemetry unit" as defined in these regulations does not include fetal monitoring nor fetal surveillance.

The licensed nurse-to-patient ratio in medical/surgical care units shall be 1:5 or fewer at all times. A medical/surgical unit is a unit with beds classified as medical/surgical in which patients, who require less care than that which is available in intensive care units, step-down units, or specialty care units receive 24 hour inpatient general medical services, post-surgical services, or both general medical and post-surgical services. These units may include mixed patient populations of diverse diagnoses and diverse age groups who require care appropriate to a medical/surgical unit.

The licensed nurse-to-patient ratio in a specialty care unit shall be 1:4 or fewer at all times. A specialty care unit is defined as a unit which is organized, operated, and maintained to provide care for a specific medical condition or a specific patient population. Services provided in these units are more specialized to meet the needs of patients with the specific condition or disease process than that which is required on medical/surgical units, and is not otherwise covered by subdivision (a).

The licensed nurse-to-patient ratio in a psychiatric unit shall be 1:6 or fewer at all times. For purposes of psychiatric units only, "licensed nurses" also includes licensed psychiatric technicians in addition to licensed vocational nurses and registered nurses. Licensed vocational nurses, licensed psychiatric technicians, or a combination of both, shall not exceed 50 percent of the licensed nurses on the unit.

Identifying a unit by a name or term other than those used in this subsection does not affect the requirement to staff at the ratios identified for the level or type of care described in this subsection.

(b) The Hospital shall implement a patient classification system as defined in section 70053.2 above for determining nursing care needs of individual patients that reflects the assessment, made by a registered nurse as specified in subsection 70215(a)(1), of patient requirements and provides for shift-by-shift staffing based on those requirements. The ratios specified in subsection (a) shall constitute the minimum number of registered nurses, licensed vocational nurses, and in the case of psychiatric units, licensed psychiatric technicians, who shall be assigned to direct patient care. Additional staff in excess of these prescribed ratios, including non-licensed staff, shall be assigned in accordance with the Hospitals documented patient classification system for determining nursing care requirements, considering factors that include the severity of the illness, the need for specialized equipment and technology, the complexity of clinical judgment needed to design, implement, and evaluate the patient care plan, the ability for self-care, and the licensure of the personnel required for care. The system developed by the hospital shall include, but not be limited to, the following elements:

Individual patient care requirements.

The patient care delivery system.

Generally accepted standards of nursing practice, as well as elements reflective of the unique nature of the Hospital's patient population.

(c) A written staffing plan shall be developed by the administrator of nursing service or a designee, based on patient care needs determined by the patient classification system. The staffing plan shall be developed and implemented for each patient care unit and shall specify patient care requirements and the staffing levels for registered nurses and other licensed and unlicensed personnel. In no case shall the staffing level for licensed nurses fall below the requirements of subsection (a). The plan shall include the following:

Staffing requirements as determined by the patient classification system for each unit, documented on a day-to-day, shift-by-shift basis.

The actual staff and staff mix provided, documented on a day-to-day, shift-to-shift basis.

The variance between required and actual staffing patterns, documented on a day-to-day, shift-by-shift basis.

(d) In addition to the documentation required in subsections (c)(1) through (3) above, the Hospital shall keep a record of the actual registered nurse, licensed vocational nurse, and licensed

psychiatric technician assignments to individual patients by licensure category, documented on a day-to-day, shift-by-shift basis. The Hospital shall retain:

The staffing plan required in subsections (c)(1) through (3) for the time period between licensing surveys, which includes the Consolidated Accreditation and Licensing Survey process.

The record of the actual registered nurse, licensed vocational nurse, and licensed psychiatric technician assignments by licensure category for a minimum of one year.

(e) The reliability of the patient classification system for validating staffing requirements shall be reviewed at least annually by a committee appointed by the nursing administrator to determine whether or not the system accurately measures patient care needs.

(f) At least half of the members of the review committee shall be registered nurses who provide direct patient care.

(g) If the review reveals that adjustments are necessary in the patient classification system in order to assure accuracy in measuring patient care needs, such adjustments must be implemented within thirty (30) days of that determination.

(h) Hospitals shall develop and document a process by which all interested staff may provide input about the patient classification system, the system's required revisions, and the overall staffing plan.

(i) The administrator of nursing services shall not be designated to serve as a charge nurse or to have direct patient care responsibility, except as described in subsection (A) above.

(j) Registered nursing personnel shall:

Assist the administrator of nursing service so that supervision of nursing care occurs on a 24-hour basis.

Provide direct patient care.

Provide clinical supervision and coordination of the care given by licensed vocational nurses and unlicensed nursing personnel.

(k) Each patient care unit shall have a registered nurse assigned, present and responsible for the patient care in the unit on each shift.

(l) A rural General Acute Care Hospital as defined in Health and Safety Code Section 1250(a), may apply for and be granted program flexibility for the requirements of subsection 70217(i) and for the personnel requirements of subsection J1 above.

(m) Unlicensed personnel may be utilized as needed to assist with simple nursing procedures, subject to the requirements of competency validation. Hospital policies and procedures shall describe the responsibility of unlicensed personnel and limit their duties to tasks that do not require licensure as a registered or vocational nurse.

(n) Nursing personnel from temporary nursing agencies shall not be responsible for a patient care unit without having demonstrated clinical and supervisory competence as defined by the Hospital's standards of staff performance pursuant to the requirements of subsection 70213(c) above.

(o) Hospitals which utilize temporary nursing agencies shall have and adhere to a written procedure to orient and evaluate personnel from these sources. Such procedures shall require that personnel from temporary nursing agencies be evaluated as often, or more often, than staff employed directly by the Hospital.

(p) All registered and licensed vocational nurses utilized in the Hospital shall have current licenses. A method to document current licensure shall be established.

(q) The Hospital shall plan for routine fluctuations in patient census. If a healthcare emergency causes a change in the number of patients on a unit, the Hospital must demonstrate that prompt efforts were made to maintain required staffing levels. A healthcare emergency is defined for this purpose as an unpredictable or unavoidable occurrence at unscheduled or unpredictable intervals relating to healthcare delivery requiring immediate medical interventions and care.

70225. Surgical Service Staff

A physician shall have overall responsibility for the surgical service. This physician shall be certified or eligible for certification in surgery by the American Board of Surgery. If such a surgeon is not available, a physician, with additional training and experience in surgery shall be responsible for the service.

One or more surgical teams consisting of physicians, registered nurses, and other personnel shall be available at all times.

A registered nurse with training and experience in operating room techniques shall be responsible for the nursing care and nursing management of operating room service.

There shall be sufficient nursing personnel so that one person is not serving as a circulating assistant for more than one operating room.

There shall be evidence of continuing education and training programs for the nursing staff.

Title 22. Section 70455 Comprehensive Emergency Medical Service Staff

A full-time physician trained and experienced in emergency medical service shall have overall responsibility for the service. The physician or his/her designee shall be responsible for:

Implementation of established policies and procedures.

Providing continuous staffing with physicians trained and experienced in emergency medical service. Such physicians shall be assigned to and be located in the emergency service area 24 hours a day.

Providing experienced physicians in specialty categories to be available in-house 24 hours a day. Such specialties include but are not limited to medicine, surgery, anesthesiology, orthopedics, neurosurgery, pediatrics, and obstetrics-gynecology.

The most senior resident in any of the specialties may be considered an experienced physician.

Maintenance of a roster of specialty physicians immediately available for consultation and/or assistance.

Assurance of continuing education for all emergency service staff including physicians, nurses, and other personnel.

All physicians, dentists, and podiatrists providing services in the emergency room shall be members of the organized medical staff.

A registered nurse qualified by education and/or training shall be responsible for nursing care within the service.

All registered nurses shall have training and experience in emergency lifesaving and life support procedures.

A registered nurse trained and experienced in emergency nursing care shall be on duty at all times.

There shall be sufficient licensed nurses and other skilled personnel on duty as required to support the services.

APPENDIX B

California Code of Regulations

Title 8, Section 3342

8 CCR § 3342

§ 3342. Violence Prevention in Health Care.

(a) Scope and Application.

- (1) Scope. This section applies to work in the following health care facilities, service categories, and operations:
 - (A) Health facilities, as defined below
 - (B) Home health care and home-based hospice;
 - (C) Emergency medical services and medical transport, including these services when provided by firefighters and other emergency responders
 - (D) Drug treatment programs;
 - (E) Outpatient medical services to the incarcerated in correctional and detention settings.
- (2) Application.
 - (A) Employers with employees in operations identified in subsections (a)(1)(A) through (a)(1)(E) shall comply with subsections (c), (d), (e), (f), and (h).
 - (B) General acute care hospitals, acute psychiatric hospitals, and special hospitals shall also comply with subsection (g).
- (3) The employer shall provide all safeguards required by this section, including provision of personal protective equipment, training, and medical services, at no cost to the employee, at a reasonable time and place for the employee, and during the employee's paid time.
- (4) Implementation. Employers with employees in operations identified in subsections (a)(1)(A) through (a)(1)(E) shall implement subsections (d), and (h) by April 1, 2017. General acute care hospitals, acute psychiatric hospitals, and special hospitals shall also implement subsection (g) by April 1, 2017. Employers with employees in operations identified in subsections (a)(1)(A) through (a)(1)(E) shall implement the requirements of subsections (c), (e), and (f) by April 1, 2018.

EXCEPTION: 1: This section does not apply to the following facilities operated by the California Department of Developmental Services (DDS) and scheduled to close by the end of 2021: (1)

Porterville Developmental Center General Treatment Area; (2) Fairview Developmental Center; and (3) Sonoma Developmental Center. These facilities shall still comply with Section 3203 during the closure process. Any DDS facility or portion of a DDS facility that is not closed by the end of 2021 or is not planned to be closed by the end of 2021 must comply with this section.

EXCEPTION: 2: This section shall not apply to facilities operated by the California Department of Corrections and Rehabilitation. These facilities shall still comply with Section 3203.

(b) Definitions.

“Acute psychiatric hospital” (APH) means a hospital, licensed by the California Department of Public Health as such meeting the definition provided in Health and Safety Code Section 1250(b) or California Code of Regulations, Title 22, Section 71005 and all services within the hospital's license.

“Alarm” means a mechanical, electrical or electronic device that does not rely upon an employee's vocalization in order to alert others.

“Chief” means the Chief of the Division of Occupational Safety and Health of the Department of Industrial Relations, or his or her designated representative.

“Dangerous weapon” means an instrument capable of inflicting death or serious bodily injury.

“Division” means the Division of Occupational Safety and Health of the Department of Industrial Relations.

“Emergency” means unanticipated circumstances that can be life-threatening or pose a risk of significant injuries to the patient, staff or public, requiring immediate action.

“Emergency medical services” means medical care provided pursuant to Title 22, Division 9, by employees who are certified EMT-I, certified EMT-II, or licensed paramedic personnel to the sick and injured at the scene of an emergency, during transport, or during inter-facility transfer.

“Engineering controls” means an aspect of the built space or a device that removes a hazard from the workplace or creates a barrier between the worker and the hazard. For purposes of reducing workplace violence hazards, engineering controls include, as applicable, but are not limited to: electronic access controls to employee occupied areas; weapon detectors (installed or handheld); enclosed workstations with shatter-resistant glass; deep service counters; separate rooms or areas for high risk patients; locks on doors; furniture affixed to the floor; opaque glass in patient rooms (protects privacy, but allows the health care provider to see where the patient is before entering the room); closed-circuit television monitoring and video recording; sight-aids; and personal alarm devices.

“Environmental risk factors” means factors in the facility or area in which health care services or operations are conducted that may contribute to the likelihood or severity of a workplace violence incident. Environmental risk factors include risk factors associated with the specific task being performed, such as the collection of money.

“General acute care hospital” (GACH) means a hospital, licensed by the California Department of Public Health as such meeting the definition provided in Health and Safety Code Section 1250(a) or California Code of Regulations, Title 22, Section 70005, and all services within the hospital's license.

“Health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, or treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. (Ref: Health and Safety Code Section 1250). For the purposes of this section, a health facility includes hospital based outpatient clinics (HBOCs) and other operations located at a health facility, and all off-site operations included within the license of the health facility. The term “health facility” includes facilities with the following bed classifications, as established by the California Department of Public Health:

- (1) General acute care hospital
- (2) Acute psychiatric hospital
- (3) Skilled nursing facility
- (4) Intermediate care facility
- (5) Intermediate care facility/developmentally disabled habilitative
- (6) Special hospital
- (7) Intermediate care facility/developmentally disabled
- (8) Intermediate care facility/developmentally disabled-nursing
- (9) Congregate living health facility
- (10) Correctional treatment center
- (11) Nursing facility
- (12) Intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN)
- (13) Hospice facility

“Patient classification system” means a method for establishing staffing requirements by unit, patient, and shift based on the assessment of individual patients by the registered nurse as specified in Title 22, Sections 70053.2 and 70217, for General Acute Care Hospitals.

“Patient contact” means providing a patient with treatment, observation, comfort, direct assistance, bedside evaluations, office evaluations, and any other action that involves or allows direct physical contact with the patient.

“Patient specific risk factors” means factors specific to a patient that may increase the likelihood or severity of a workplace violence incident, such as use of drugs or alcohol, psychiatric condition or diagnosis associated with increased risk of violence, any condition or disease process that would cause confusion and/or disorientation, or history of violence.

“Threat of violence” means a statement or conduct that causes a person to fear for his or her safety because there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.

“Work practice controls” means procedures, rules and staffing which are used to effectively reduce workplace violence hazards. Work practice controls include, as applicable, but are not limited to: appropriate staffing levels; provision of dedicated safety personnel (i.e. security guards); employee training on workplace violence prevention methods; and employee training on procedures to follow in the event of a workplace violence incident.

“Workplace violence” means any act of violence or threat of violence that occurs at the work site. The term workplace violence shall not include lawful acts of self-defense or defense of others. Workplace violence includes the following:

- (A) The threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury
- (B) An incident involving the threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether the employee sustains an injury
- (C) Four workplace violence types:
 - 1. “Type 1 violence” means workplace violence committed by a person who has no legitimate business at the work site, and includes violent acts by anyone who enters the workplace with the intent to commit a crime.
 - 2. “Type 2 violence” means workplace violence directed at employees by customers, clients, patients, students, inmates, or visitors or other individuals accompanying a patient.
 - 3. “Type 3 violence” means workplace violence against an employee by a present or former employee, supervisor, or manager.
 - 4. “Type 4 violence” means workplace violence committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

(c) Workplace Violence Prevention Plan. As part of the Injury and Illness Prevention Program (IIPP) required by Section 3203, the employer shall establish, implement and maintain an effective workplace violence prevention plan (Plan) that is in effect at all times in every unit, service, and operation. The Plan shall be in writing, shall be specific to the hazards and corrective measures for

the unit, service, or operation, and shall be available to employees at all times. The written Plan may be incorporated into the written IIPP or maintained as a separate document, and shall include all of the following elements:

- (1) Names or job titles of the persons responsible for implementing the Plan.
- (2) Effective procedures to obtain the active involvement of employees and their representatives in developing, implementing, and reviewing the Plan, including their participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.
- (3) Methods the employer will use to coordinate implementation of the Plan with other employers whose employees work in the same health care facility, service, or operation, to ensure that those employers and employees understand their respective roles as provided in the Plan. These methods shall ensure that all employees are provided the training required by subsection (f) and shall ensure that workplace violence incidents involving any employee are reported, investigated, and recorded.
- (4) Effective procedures for obtaining assistance from the appropriate law enforcement agency during all work shifts. The procedure may establish a central coordination procedure. This shall also include a policy statement prohibiting the employer from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.
- (5) Effective procedures for the employer to accept and respond to reports of workplace violence, including Type 3 violence, and to prohibit retaliation against an employee who makes such a report.
- (6) Procedures to ensure that supervisory and non-supervisory employees comply with the Plan in accordance with Section 3203(a)(2).
- (7) Procedures to communicate with employees regarding workplace violence matters, including:
 - (A) How employees will document and communicate to other employees and between shifts and units, information regarding conditions that may increase the potential for workplace violence incidents
 - (B) How an employee can report a violent incident, threat, or other workplace violence concern;
 - (C) How employees can communicate workplace violence concerns without fear of reprisal;

- (D) How employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken.

Exhibit 2

Exhibit 2

OCH CNA LOCAL CONTRACT 2016 – 2020

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ARTICLE 1: RECOGNITION

The Hospital recognizes the Association as the exclusive representative of the employees in the following bargaining unit:

Included in the Bargaining Unit:

1. All full-time, regular part-time and per diem Registered Nurses who are a) employed to provide direct patient care, b) required to possess a current RN license and c) employed by the Employer at its O'Connor Hospital facility.
2. Included in the unit will be Registered Nurses who would otherwise be included by their assignment and place of work who may work in hospital departments outside of the hospital nursing department such as cardiac catheterization laboratories, radiology, Interventional Radiology, Endoscopy, Nuclear Medicine, Wound Care Clinic, GI laboratories, and outpatient surgery facilities that are integrated with the hospital. Any dispute over whether a Registered Nurse(s) working outside of a hospital nursing department should be included in the unit shall be decided by the third party neutral using NLRB rules and guidelines.
3. Charge Nurses where the duties assigned to such Registered Nurses do not otherwise exclude them from the unit.
4. Case Managers

Excluded from the Bargaining Unit:

1. Registered Nurses in the following positions – Clinical Educators; Patient Educators; Clinical Nurse Specialists; Nurse Practitioners; Certified Nurse Midwives; Nurse Anesthetists; Staffing Coordinator/Bed Control Nurses; Infection Control Nurses; Employee Health Nurses; Nurse auditors; Stroke Coordinator Nurse, Assistant Nurse Manager, Pre-Admission Case Manager, Computer Nurses; Quality Improvement/Assurance Nurses; Utilization Review Nurses; Risk Management Nurses; Discharge Planning Nurses; Research Nurses; Nurse Recruiters; Customer Relations Nurses; Interim Permittees; Home Health Nurses; Registry and Traveler Nurses.
2. All members of religious orders regardless of their employee assignment.
3. Employees of outside registries and other agencies supplying labor to the employer.
4. All supervisory and confidential employees as defined by the National Labor Relations Act and all other employees who are not Registered Nurses.

ARTICLE 2: COMPENSATION AND HOURS OF WORK

2.1 Wages

- A. Wages Hourly Compensation shall be as set forth in Appendix A.
- B. The Employer will pay Nurses on the basis of fourteen (14) consecutive day pay periods.
- C. Wage adjustments will be effective in the pay period beginning closest to the date of adjustment. Step increases shall take place on the Nurse's anniversary date of employment as a Registered Nurse.

2.2 The Hospital will pay a shift differential of \$3.50 Per Hour for evening shifts and \$5.50 Per Hour for night shifts.

PM Shift: A PM shift is any shift in which four (4) or more hours are scheduled after 3:00 p.m., and the PM shift differential is paid for all hours worked after 3:00 p.m.

Night Shift: A Night shift is any shift in which four (4) or more hours are scheduled after 11:00 p.m., and the Night shift differential is paid for all hours worked after 11:00 p.m.

2.3 The Hospital will pay a Weekend Differential of 5%.

2.4 For Registered Nurses who regularly work 12 Hour Shifts, the Hospital will pay 1.5 times the Nurse's base rate for all additional hours in excess of 36.

2.5 Double Shift Overtime

When a Registered Nurse works a double shift (a continuous 15 and one-half (15 1/2) hour work period), that includes a regularly scheduled shift, seven and one-half (7-1/2) hours of the double shift shall be paid at two (2) times the Nurse's straight time hourly rate.

2.6 Per Diem Rate: 20% Above Status Base Rate

2.7 Posting of Work Schedules

- A. Work schedules and days off must be posted at least 14 days in advance of the commencement of the schedule. Any schedule change with less than 14 days' notice will require notification to and approval of the Nurse.
- B. Self-scheduling shall be maintained in those units where it is practiced. Any conflicts will be resolved by seniority with the most senior Nurse being granted the scheduled day so long as, in the judgment of the clinical manager, adequate staffing resources and skills requirements are met on the unit.
- C. Nurses who initiate a schedule change request must submit the request no later than 48 hours prior to the commencement of the requested schedule change. Changes must be approved by the clinical manager.

2.8 Mandatory Overtime

The Employer and CNA recognize that mandatory overtime is not desirable and represents a burden on the Nurse. Acceptance of overtime, and shifts beyond the Nurse's schedule, shall be voluntary and in accordance with state law or regulations, except where patient care would be endangered by an internal or external emergency declared by state, local or federal government. An internal or external emergency, for the purposes of this section, is defined as an unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action.

2.9 Hours of Work and Overtime

A. Hours of Work:

Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day and week. Staffing needs require variations in Nurses' starting and ending times and total hours worked each day or week. Supervisors will advise Nurses of their individual work schedules. The Employer will use all best efforts to post Nurse work schedules not later than fourteen (14) days in advance. Changes may be made with the mutual consent of the Employer and the Nurse.

B. Overtime:

All overtime work must receive the supervisor's prior authorization. Unless overtime has been approved, overtime hours must not be worked. All overtime recorded on Kronos must be recorded on a deviation log and be signed by the Nurse's immediate manager, the house supervisor, or manager's designee per department manager direction. Unapproved overtime will be paid but shall be subject to review, and repeated or unjustified instances may be subject to appropriate disciplinary action. Overtime compensation is paid to all nonexempt Nurses in accordance with federal and state law. Overtime pay is based on actual hours worked. Paid or unpaid leaves of absence, or any other hours not actually worked, will not be considered hours worked for purposes of overtime calculations.

C. Nurses may not remain at their workstations after the assignments/shift is completed without approval of the immediate manager or house supervisor.

2.10 Weekends Off

Definition of Weekend. A weekend means Saturday and Sunday except in the case of a night shift it means Friday and Saturday.

Guarantee of Weekends Off. The Hospital shall grant each Regular Full-Time and Regular Part-Time Nurse every other weekend off. This provision may be waived on the written request of the individual Nurse. If the Employer requires such a Nurse to work more than every other weekend, either a Saturday or Sunday (Friday or Saturday for night shift Nurses), the Nurse will receive time and one-half (1-1/2) for work performed on each succeeding

weekend worked until granted a weekend off. For purposes of this paragraph, “work” means time actually worked by such Nurse.

Nurses will receive credit for the weekend worked for each full week of scheduled PTO taken in any one calendar year, if the PTO includes a weekend that the Nurse would have been scheduled to work had the Nurse not been on PTO. In the event the Nurse was scheduled for a full week of PTO which includes a weekend that he/she would have been scheduled to work, and the Nurse agrees to work one or more days during that week at the request of management, he/she shall be given credit for the weekend worked and shall not be required to make up such weekend.

2.11 Shifts

- A. Regular Full Time and Part Time Nurses are hired for one shift and are not ordinarily required to rotate. Even though every effort will be made by the Nursing Division to allow a Nurse to remain with the original shift assignment, a Nurse may be asked to work the day, evening, or night shift under the following circumstances:
- An individual requests such an arrangement.
 - Crisis situations where a patient or patients is/are in jeopardy.
- B. Rest Between Shifts: Eight and ten-hour shift Nurses shall have an unbroken rest period of at least 12 hours between shifts. Twelve-hour-shift Nurses who waive their second meal period shall have an unbroken rest period of at least eleven-and-a-half hours between shifts. Twelve-hour shift Nurses who do not waive their second meal period shall have an unbroken rest period of at least eleven hours. All hours worked within the above rest periods shall be paid at the rate of time-and-one-half times the Nurse’s base rate of pay.

2.12 Reporting Pay

- A. A Nurse who reports for work as scheduled without receiving prior notice that her/his assignment is not available, shall perform any nursing work to which s/he may be alternately assigned by the Hospital, subject to the provisions of the contract articles about floating. If no alternate work is available, the Nurse shall be paid for the full shift, unless the Nurse volunteers to leave early.
- B. No work or pay is required under this provision if either: (1) the employer has attempted to contact the Nurse by telephone (this call or attempted call will be documented) at least one and one-half (1½) hours prior to the start of the shift to inform the Nurse not to report; or (2) the Nurse has actually been notified to not report prior to reporting.

2.13 On Call, Call Back And Short Call

- A. Nurses assigned to on call status shall be paid at the rate of one-half (1/2) of their base straight time rate for each hour of such on call time.

- B. If called to work when on call status, the Nurse will be paid at the rate of one and one-half times (1-1/2x) his/her regular base straight time rate for all hours worked, with a minimum guarantee of two (2) hours of work, or pay in lieu thereof. When a Nurse is pre-assigned to be on call at the conclusion of his/her shift, the on call time starts when the Nurse completes his/her assignments and leaves work or when he/she commences work on a new assignment that would have required another Nurse to be called in. For the purpose of this section, a “new assignment” shall mean assignment to a new patient or assignment to a new procedure or case that occurs at or immediately after the end of the scheduled shift. Time spent completing an assignment from the previous shift is considered normal overtime and does not trigger on call obligations if the work can be completed in one (1) hour or less. Such premium for hours worked will cease at the commencement of the Nurse’s next scheduled shift or when the Nurse is released from work, whichever is earlier. On call pay will continue for the entire period of call back.
- C. If called by the Employer to work when not scheduled and while not on call, with less than four (4) hours notice, the Nurse will receive two times (2x) his/her hourly rate for all hours worked. Such premium will cease at the commencement of the Nurse’s next scheduled shift or when the Nurse is released from work, whichever is earlier. This provision will not apply when a Nurse is recalled from a daily cancellation or is called in due to a disaster alert. Short call premium shall apply to Full-time and part-time RNs only.
- D. RNs assigned to on-call status on a recognized holiday as defined in Article 5.14 shall be paid at the rate of three-fourths (3/4) of their hourly rate for each hour of such on-call time.
- E. There shall be equitable distribution of on-call hours. RNs willing to work short call hours shall provide their names to be put on a list in the staffing office and called using the procedure set forth in Appendix C.
- F. In the event that a Registered Nurse who is on-call is called in to work and works at least four (4) hours during the hours of 10 PM and 7 AM and is scheduled to work within eight (8) hours from the end of such on-call work, and he/she is unable to safely provide patient care, the RN will be allowed to remove him/herself from the schedule by notifying the appropriate person no later than two (2) hours before the start of the shift. This will not count as an unexcused absence unless it occurs more than three (3) times in any calendar year. At the RN’s option, he/she may use PTO or take leave without pay.

2.14 Priority for Scheduling

In development of the schedule, priority for scheduling shall be in the following order:

- A. Regular full and part-time RNs
- B. Per Diem RNs

Under no circumstances shall registry/agency/traveler/block RNs have priority in scheduling.

The Hospital shall give preference by offering any open extra shifts to RNs in the following order by seniority within the categories below, with the most senior Nurse being offered the extra shift first:

- C. Part-time RNs to work up to full-time
- D. Per Diem RNs at straight-time rate
- E. Registry RNs (including contract/agency/traveler/block)
- F. Full or part-time RNs at premium pay
- G. Per Diem RNs at premium pay.

ARTICLE 3: PAID TIME OFF

Paid Time Off (PTO) will be provided to covered Nurses in accordance with the following PTO Policy and Procedure during the life of this Agreement.

3.1 Purpose of PTO

The employer recognizes the need to provide eligible Nurses with paid periods of time away from work to rest and attend to personal needs.

3.2 PTO hours are used to provide pay for hours not worked due to:

- A. Absences related to personal illness or accident not covered by disability income plans or sick leave (if applicable).
- B. Family needs/responsibilities.
- C. Recognized holidays.
- D. Vacation days.
- E. Other reasons.

Paid leave for bereavement, attendance at educational programs and jury duty are covered by separate policies found under those titles.

Nurses on an approved Family Medical Leave are required to use PTO.

3.3 Eligibility for PTO

Nurses who work a regular schedule of 40 hours or more per pay period (*i.e.*, benefit-eligible Regular Full-time and Regular Part-time) participate in the PTO program. PTO hours accrue immediately upon employment classification in a regular schedule as defined above and accrued hours may be used immediately with the Nurse's manager's approval.

3.4 PTO Accrual Schedule

PTO hours accrue based on all hours paid including overtime each pay period. There shall be no cap on the accrual rate per pay period. The following schedule is based on the accrual rates per year of service. When applicable, Nurses move from one accrual level to the next accrual level one month prior to their anniversary date. Nurses working a 4/5th's schedule on the night shift will accrue as a full-time Nurse and Nurses working three 12-hour shifts will accrue as a Full-time Nurse.

Example for year 1 and 2:

Regular = 80 hours = 8.62/ 80 hours

Full time 12 hour Nurse = 72 hours = 8.62/ 72 hours

4/5's night Nurse = 64 hours = 8.62/ 64 hours

3.5 Accrual Rates

	<u>PTO</u> <u>Hours per Pay Period</u>	<u>PTO</u> <u>Days per Year</u>	<u>PTO Accrual Rate</u> <u>per Hour Paid</u>
Year 1 and 2	8.62	28	.10775
Years 3 and 4	10.77	35	.134625
Year 5	11.69	38	.146125
Year 6	12.00	39	.150000
Year 7	12.31	40	.153875
Year 8	12.62	41	.15775
Year 9	12.92	42	.1615
Year 10 +	13.23	43	.165375

3.6 Accrual and Payout of PTO

Eligible Nurses will begin accruing PTO on the first day of employment in a benefit status, but are not eligible to use PTO until the successful completion of the introductory period. As an exception, Nurses will be eligible to use PTO for holidays after 30 days of employment in a benefit status.

PTO will not accrue during an unpaid leave of absence or suspension from duty. However, hours accrued prior to the unpaid period began are not lost and will be available to the Nurse. Nurses will continue to accrue PTO when placed on hospital convenience (HC) involuntarily. PTO hours will be paid at the straight-time hourly rate for each eligible Nurse.

3.7 Accrual Limit

Once a Nurse has accrued 420 PTO hours, accruals stop. If a Nurse has accrued 420 hours and uses PTO thereby reducing the balance below 420, the accruals will resume the following pay period and continue until such time as the 420 limit is again reached.

Nurses absent from work due to a disability or illness eligible for State Disability will have their PTO and ESL integrated with Disability payments to equal their regular earnings level.

3.8 Emergency Cash out

Nurse may voluntarily elect to cash-out accrued and unused PTO only if a hardship arises, such as an immediate and substantial financial need arises, such as for the payment of medical care expenses previously incurred by the Nurse or his/her spouse or dependents, or the pending eviction or foreclosure on a mortgage on the Nurse's principal residence other than mortgage, provided the Nurse cannot satisfy the financial need through reimbursement

or compensation by insurance or otherwise, liquidation of the Nurse's assets, other distributions or nontaxable loans from retirement plans maintained by the Employer, or borrowing from commercial sources on reasonable commercial terms.

[Note: The emergency cash out provision is intended to permit withdrawals of accrued PTO in cash to those circumstances that are consistent with the Internal Revenue Service's position as it may be amended from time to time, concerning when such withdrawals may be made without creating "constructive receipt" of income issues, and as articulated for instance in its regulations regarding hardship withdrawals from 401(k) plans. The language contained in this provision is only intended to summarize the position as of the date of signing of this Agreement.]

3.9 PTO Individual Cashout

Nurses may cash-out accrued PTO twice during a calendar year, under the following guidelines:

- The Employer will cash-out during the first pay period of July and December any accrued but unused PTO elected by the Nurse for cash out.
- Nurse's PTO account may not be reduced below eighty (80) hours after the cash-out.
- Nurse must have a minimum balance of 120 hours of accrued but unused PTO at the time a cash-out is elected.
- A Nurse wishing to cash-out must determine and notify the Employer's Human Resources Department of the amount to be cashed out as follows: for December cash-out, by June 15 of the same year, and for July cash-out by December 15 of the prior year.
- Subject to the foregoing, in any calendar year, Nurses with less than five (5) years of continuous service may cash out up to 80 hours of PTO, and Nurses with five (5) years or more continuous service may cash-out up to 120 hours.

3.10 Vacation Advance

Requests for advance PTO checks prior to vacation must be approved by the Manager and received by Payroll two (2) weeks prior to the last day worked.

3.11 Donations of Accrued PTO

Nurses may donate PTO to other O'Connor Hospital Nurses who have exhausted their PTO balance. Such donations may occur where another Nurse has experienced an unforeseeable hardship, which is defined as a severe financial hardship to the Nurse resulting from sudden and unexpected illness or accident involving the Nurse or the Nurse's dependent, loss of the Nurse's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as the result of events beyond the control of the Nurse. These could

include such things as loss of home due to natural disaster, or a catastrophic illness or injury, which has created a financial hardship.

3.12 Use of PTO to Cover Personal Illness/Disability

PTO hours are used to cover personal illness/injury lasting three (3) consecutive workdays or less. If the Nurse has insufficient PTO to cover this period, it is taken off without pay, however for absences of greater than 3 days a Nurse may use accumulated ESL, if available.

3.13 Verification of Illness

Medical and/or other appropriate verification may be requested by the employer regarding absences. Medical verification by Employee Health may also be required to confirm fitness to return to duty.

3.14 Recognized Holidays

New Year's Day

Independence Day

Martin Luther King Jr.'s Birthday

Labor Day

President's Day

Thanksgiving Day

Memorial Day

Christmas Day

3.15 PTO and Holiday Scheduling

- A. Nurses will submit their scheduled PTO requests, in writing, for the period from April 1 through March 31, in priority order, not later than the preceding February 1.
- B. In granting scheduled PTO requests, the Hospital will not prohibit the taking of scheduled PTO based solely on the season of the year. Requests for PTO will not be arbitrarily denied. PTO of longer than two (2) weeks may be approved by the Hospital provided there is adequate coverage to meet patient care needs. Two (2) Nurses per shift per unit per day shall be granted scheduled PTO at the same time. Exceptions may be granted provided there is sufficient staffing to meet patient care needs and upon mutual agreement between the Nurse and the manager.
- C. In granting scheduled PTO requests, the Hospital will grant by seniority the highest (first) priority request for each Nurse prior to granting the next highest requests. The Hospital will then post a "Scheduled PTO" schedule by March 1.
- D. Requests made after March 1 will be considered, and granted where appropriate, on a first-come, first-served basis under the criteria of a maximum of two (2) Nurses per shift or fewer based on the size of the number of the unit and the number of staffing resources within that unit to meet the patient care needs at the time of the request. Such additional requests shall not be unreasonably denied. Managers will respond to such requests within fourteen (14) days of their submission.

- E. Nurses who are scheduled to work on Thanksgiving, Christmas Day or New Year's Day shall not be scheduled for the same holiday the following year.

ARTICLE 4: UNION/ASSOCIATION LEAVE

- A. If a Nurse is elected or appointed to a position by the Union and provides a request to the Hospital at least 30 days in advance of the time the leave would commence, said Nurse shall be granted an unpaid leave of absence (or may use PTO at the Nurse's option) to participate in Union activities. Benefits will continue for 30 days beyond the end of their paid status. One bargaining unit Nurse per 200 Nurses employed by the Hospital (but not more than one per unit unless mutually agreed otherwise by the parties) shall be granted such leave at any one time.
- B. If the leave is for 120 days or less, the Nurse shall be reinstated in his/her original position.
- C. If the leave is longer than 120 days, the Nurse shall be reinstated in his/her original position if the position is available. If the Nurse's original position is not available, the Nurse will have priority for any available position for which the Nurse is qualified.

ARTICLE 5: MANAGEMENT RIGHTS

- 5.1 Subject to the provisions contained in this Agreement and the laws and regulations governing patient care and the practice of nursing, the Employer has the right to operate its business which includes the exclusive right to determine, change, discontinue, alter, or modify in whole or in part temporarily or permanently, any of the following:
- A. The number, location, or types of facilities;
 - B. The medical and patient care standards, methods and procedures;
 - C. The price of all products and services, the price of all purchases, and the corporate and financial structure of the Hospital;
 - D. The subcontracting of facility construction and maintenance or work not presently performed by Nurses covered by this Agreement;
 - E. The equipment and machinery;
 - F. The promotion and demotion of all supervisors at the Employer;
 - G. The number of employees, including the number of employees assigned to any particular procedure or shift, and whether, when, or where there is a job opening;
 - H. Reasonable standards of performance, and whether any employee meets such standards;
 - I. The need for and the administration of physical examinations or psychological tests, background information, criminal record or drug screening as they pertain to new or probationary employees;
 - J. The direction and supervision of all of the employees;
 - K. The rules and regulations for all of the employees;
 - L. When overtime or on call assignments shall be worked or rescinded and it is agreed that a Nurse may not refuse to work overtime if it would endanger patient care, for example, during an operation or to perform dialysis or during a community disaster;
 - M. The hiring of full-time, part-time and per diem employees and the number thereof;
 - N. The utilization of registry and traveling Nurses;
 - O. The funding of each benefit including the identity and selection of each carrier, insurer fiduciary, administrator or trustee;
 - P. The security of the employees, premises, facilities, and property of the Hospital;
 - Q. The utilization of all Hospital premises, equipment, and facilities;

- R. The selection and retention or discontinuance of all catering and vending machine suppliers and other catering services and the price of their products or services; and
 - S. The job classifications and the content and qualifications thereof.
- 5.2 Any dispute arising regarding the exercise of any of the rights of the Employer enumerated above is not subject to the grievance and arbitration provision set forth in Mater Article 15. The foregoing shall not preclude a CNA grievance or arbitration contesting whether the Employer's actions or inactions are not within the rights enumerated above.
- 5.3 During the term of this Agreement, CNA and the Employer agree, upon request, to bargain in good faith about the following:
- A. Drug or other testing for current non-probationary Nurses;
 - B. Subcontracting of work currently performed by Nurses covered by this Agreement;
 - C. The utilization of employees not covered by this Agreement to do work which is currently done by Nurses covered by this Agreement;
 - D. Changing current Nurses' shift schedules from twelve (12) hours to ten (10) or eight (8) hours.
 - E. Any management right not expressly provided for in this Agreement. If no agreement is reached and the parties are at an impasse, the Employer may implement its last proposal.

ARTICLE 6: WORK STOPPAGE

There shall be no strikes, lockout, or other stoppages or interruption of work, including sympathy strikes, during the term of this Agreement.

ARTICLE 7: PERFORMANCE OF CLINICAL NURSING

Nothing in this Agreement shall prevent Registered Nurses employed by the Hospital in supervisory, Management or administrative positions from performing clinical nursing duties so long as supervisory, management or administrative positions are not created for the sole purpose of reducing bargaining unit positions. Non-bargaining unit Registered Nurses performing clinical nursing duties shall be assigned shifts and patient assignments in a fair manner, consistent with other Bargaining unit Registered Nurses' shifts and patient assignments within the Nurse's unit.

ARTICLE 8: INTRODUCTORY PERIOD

All regular full-time and part-time Nurses shall serve an introductory period for their first ninety (90) calendar days of employment. During the introductory period, newly hired Nurses may be disciplined or discharged without recourse to the Grievance Process. Said Nurses will be subject to an introductory period at the time of initial hire or rehire. Per diem Nurses shall be on probation until they have completed sixty-five (65) shifts of work or through the one hundred thirty-fifth (135th) day of employment, whichever comes first.

ARTICLE 9: EMPLOYMENT CATEGORIES

This Article provides definitions of employment categories and does not guarantee employment for any specified period of time.

Regular Full-Time: Regular full-time Nurses are those who are not in a temporary or introductory status and who are regularly scheduled to work a full-time schedule of forty (40) or more hours a week. Nurses who work three 12-hour shifts per week or Nurses who work four 8-hour shifts on the night shift shall be deemed regular full-time Nurses. Generally, they are eligible for Hospital's benefit package, subject to the terms, conditions, and limitations of each benefit program.

Regular Part-Time: Regular part-time Nurses are those who are scheduled to and do work twenty (20) to thirty-nine (39) hours per 7-day workweek pay period. While they do receive all legally mandated benefits (such as Social Security and workers' compensation insurance), they may not be eligible for some or all of the Hospital's other benefit programs, subject to the actual terms, conditions, and limitations of each benefit program's plan documents.

Per Diem: Per diem Nurses are those individuals who are selected to work on an "as needed" basis. The Hospital may place limits on the maximum number of hours worked by a per diem Nurse in a single workweek or pay period.

ARTICLE 10: MEALS AND REST PERIODS

Each Nurse shall be granted a rest period of fifteen (15) minutes during each four (4) hours of work, without deduction in pay. A Nurse who misses one or more breaks during a shift shall be paid a penalty of one hour's pay, at the Nurse's straight time rate of pay, which includes shift differentials.

Upon ratification of this agreement the parties shall meet within sixty (60) days to explore the feasibility of jointly requesting a waiver, allowing Nurses to combine two (2) fifteen (15) minute rest periods, from the Department of Industrial Relations.

Nurses who work scheduled shifts of five (5) hours or more are entitled to a duty free unpaid meal period of thirty (30) minutes. A Nurse who misses his/her meal period shall be paid a penalty of one hour's pay, at the Nurse's straight time rate of pay, which includes shift differentials.

Nurses who work scheduled shifts of twelve (12) hours shall be granted two (2) unpaid meal periods, but may voluntarily waive the second 30-minute meal break. This waiver shall be in writing and in advance, and such waiver may be revoked by the Nurse at any time.

"Penalty Pay" hours as described in this Article do not qualify as hours worked in the calculation of overtime.

The Employer will continue to make a good faith effort to provide meal and rest break relief coverage for all RNs in accordance with Title XXII state mandated staffing ratios and other applicable laws.

ARTICLE 11: FLOATING

The Nurse is always responsible for providing safe, competent, nursing care. Therefore, before accepting a patient assignment, a Nurse must have the necessary knowledge, judgment, skills, and ability to provide the required care.

Based upon patient care and staffing considerations, the Employer may require Nurses to float to another department/unit within their Division/Cluster, in compliance with applicable laws and regulations, including Title 22 of the California Code of Regulations and as provided in this Article. The Employer will make reasonable efforts to float a Nurse to another department within his/her Division/Cluster in the Hospital in lieu of a scheduled shift cancellation.

Management and Nurses have a crucial responsibility to assure appropriate and competent nursing care. It is the joint responsibility of management and the Nurse to determine whether a Nurse is clinically competent to perform the nursing care requirement outside the Division/Cluster.

Floating outside a designated Division/Cluster is encouraged when staff is willing and possess the necessary competencies and experience, and appropriate resource personnel are available. A Nurse shall not be required to float outside his/her Division/Cluster, except in emergency situations as declared by city, state, or federal authorities.

Nurses desiring to float outside their designated Division/Cluster may be floated to assist other Nurses (general nursing duties, starting IV's, assisting with procedures, etc.) or for orientation, cross-training, and competency validation to other units in the hospital that the Nurse has indicated an interest in developing skills for the purpose of future floating.

In the Family Center floating occurs within the unit cluster (Labor & Delivery, Mother-Baby, NICU, Pediatrics). Floating may occur within or between the departments of Medical-Surgical-Oncology, Critical Care, or Surgical Services according to the following guidelines: No bargaining unit RN shall be required to float outside his/her unit if there is an agency/traveler/registry/block RN who is working in that unit who is also qualified to float to the same outside unit.

Subject to the foregoing paragraphs, floating shall be accomplished as follows:

- A. Past experience and skill level of the Nurse is compatible with the area in need.
- B. Regularly scheduled Nurses are available as resource to the Nurse who floats.
- C. Assessment and care of the patient does not require special credentialing, or a resource is available who does possess the credentialing to help in the patient's assessment and care.
- D. RNs will be floated by clusters. Clusters are to be defined as:

Med-Surg Oncology

Infusion Center, MS/Oncology, SNF,
MS/Ortho

Critical Care	Intensive Care Unit, Dialysis, Plasma Pheresis
Family Center	Labor & Delivery, Mother/Baby, Pediatrics, NICU
Surgical Services	ASU, Endoscopy, PACU, Holding, OR, Pre-op Clinic
Special Procedures	Cath Lab, IR, Nuclear Medicine (See Letter of Understanding)
Wound Care Clinic	
Intermediate Care Telemetry Unit	
Emergency Department	

- E. Floating outside a designated cluster is encouraged when staff are willing and possess the necessary skills and experience and appropriate resource personnel is available.
- F. Order of Floating: When a Nurse is required to float within his/her cluster, floating will be assigned by rotation by unit within the clusters as follows:
1. Categories
 - Agency, registry, traveler, block RNs
 - Per Diem RNs on premium pay
 - Per Diem RNs at straight time pay
 - Full Time or Part Time RNs working short call
 - Full Time or Part Time RNs working “on extra” at premium pay
 - Part Time RNs working “on extra” at straight time pay
 - Full Time or Part Time RNs working a regular shift
 2. Where there is more than one Nurse required to float, floating shall be by rotation within each category as defined above.
- G. A Nurse shall not be floated more than once in a day, unless floating back to his/her home base. A Nurse who was floated during his/her shift shall have first right to float back into his/her unit if another RN is to be floated into the unit at a later time.

- H. A Nurse who floats while on premium pay (extra shift and/or short call) shall be credited for floating when working his/her regular shift.

ARTICLE 12: REDUCTION OF STAFF

- 12.1 Nurses who would like an extra day off more than 36 hours in advance of the shift may request a Paid Time Off Day (PTOD). To request a PTOD fill out a PTO request and submit it to the Staffing Office. These will be granted on a rotational basis based on unit staffing needs. These requests will be granted one hour before the start of the shift. PTOD's will be granted before H.C.'s and ROS's.
- 12.2 When the patient census or anticipated workload within a division is reduced and PTOD requests do not reduce the work force sufficiently an H.C. followed by an ROS will be utilized.
- A. Hospital Convenience (H.C.)—8 hours or less of a scheduled shift that is voluntarily taken off by the Nurse as time off with management approval to adjust staffing downward during low census. The manager has the prerogative to grant additional hours, *e.g.*, 12 hours, if staffing and census permits. In times of low census staff may request an H.C. 36 hours or less prior to the shift. If H.C.'s are not adequate to meet the decreased work load, every effort will be made, time permitting, to contact staff to volunteer for H.C. before assigning an ROS. Nurses who utilize an H.C. may elect to utilize PTO at their discretion.
- B. Reduction of Staff (ROS)—All or part of a scheduled shift that is assigned by the department manager or designee as time off for a specific Nurse or Nurses in order to adjust staffing downward during low census. Nurses who are assigned ROS may elect to utilize accrued PTO at their discretion.
- 12.3 Nurses will be listed on departmental rotation lists by shift according to skill and experience. Rosters will include the names of each staff member who shares the same shift and classification within a department, as well as the temporary agency staff who have been block scheduled within the department. The roster will be used to determine which staff member will be assigned. ROS rosters will be kept in the Staffing Office and will be updated on an ongoing basis.
- 12.4 On low census days, Nurses will be notified a minimum of one (1) hour in advance of each shift for which an ROS is assigned. In the event such notice is not given, the affected staff member will receive four (4) hours pay for work at his/her regular rate. Should the hospital make two (2) documented attempts to notify the staff member of a cancellation of shift but be unsuccessful in reaching the Nurse, she/he will be sent home and this pay provision will not apply. It will be the responsibility of the staff member to maintain a current telephone number listed with the Staffing Office (or respective department for ER, Surgical Services, Cath Lab, etc.). Failure to do so excuses the hospital from the notification requirement.
- 12.5 The 12-hour staff may not be required to take the entire 12-hour shift off.

12.6 Adjustments to staffing levels downward for low census will be accomplished as follows, based on patient needs:

- A. Grant PTOD Requests in order of request (first come, first serve).
- B. Grant HC Requests in order of request (first come, first serve).
- C. Cancel registry.
- D. Cancel Per Diem RNs at premium pay by rotation.
- E. Cancel full or part-time RNs working “on extra” at premium pay by rotation.
- F. Cancel Per Diem RNs at regular pay by rotation.
- G. Cancel full or part-time RNs working “on extra” at regular pay by rotation.
- H. Assign ROS to full and part time RNs by rotation according to the departmental shift roster.

Should the census increase, status Nurses may be given the option to work prior to using registry, or per diem at straight time.

12.7 Temporary Reductions in Force

The Hospital shall not subject RNs to cancellation when the following conditions are in place:

- A. When meal and rest break relief resources are not available in the unit or another unit, one (1) RN subject to cancellation shall be permitted to provide meal and rest period relief on his or her unit, or any other unit in which he or she has the appropriate competencies where no meal or break relief is available on that shift.
- B. Registry RNs are performing nursing duties at the facility where the RN is slated for cancellation. RNs subject to cancellation shall, at their option, by seniority, be allowed to replace the registry RNs provided that the RN has the established competencies to substitute for the registry RN.

ARTICLE 13: LEAVES OF ABSENCE

Section A – Request Procedure

Requests for leaves of absence shall be in writing and must be authorized by the Employer in writing, except in emergency; but such leave of absence must be confirmed in writing within a reasonable time after the emergency. Requests for a leave of absence may include, but need not be limited to, requests for pregnancy disability leave, parental leave, medical disability leave, workers' compensation disability leave, family and medical leave under FMLA/CFRA, and personal leave.

Section B – Extension

Leaves of absence may be extended only by agreement between the Nurse and the Hospital.

Section C – Seniority Rights

Seniority accrual shall continue while a Nurse is on an approved paid/unpaid leave of absence.

Section D – Return to Work

Leaves of Absence of Six (6) Months or Less. When a Nurse returns to duty in compliance with an authorized leave of absence of six (6) months or less, such Nurse shall be reinstated in the same classification, position, shift, unit, and scheduled hours in which the Nurse was employed before her/his absence. However, if conditions in the Facility have so changed that it would not be feasible to reinstate the Nurse in such a manner, then the Facility will reinstate the Nurse to as nearly comparable a position and shift as is reasonable under the circumstances, and such Nurse will be given first opportunity to return to her/his original position and unit. Except for maternity leave, prior notice of one (1) week may be required from each Nurse returning from an authorized leave of absence.

Leaves of Absence of More than Six (6) Months. When a Nurse returns to duty in compliance with an authorized leave of absence of more than six (6) months, she/he will be offered:

- A. Her/his choice of any available position for which she/he is qualified; or
- B. Per Diem status in her/his original unit and shift; or
- C. Lay off with recall rights to the same unit/shift status she/he held before the leave.

Three (3) weeks notice in writing to the Hospital is required for a return from a leave of absence of more than six (6) months. However, with mutual consent of the Employer and Nurse, the Nurse may return to work earlier than three (3) weeks after receipt of the written notice provided the Nurse has been medically released to return to work.

Section E – Health Insurance

The Employer shall continue the coverage of health care benefits so long as the Nurse is on a paid status (whether or not integrated with SDI or Workers' Compensation); however, a Nurse who is on unpaid status for more than thirty (30) days will be responsible for paying the cost of health benefits (COBRA – the monthly group health premium rate plus 2% administrative fee) starting the first of the month following the end of the 30-day unpaid period for each month that she/he is on an unpaid status, except as provided in Section K, Family and Medical Leave. The Employer will continue coverage of a Nurse disabled from working as a result of a work-related injury or illness during such disability up to a maximum of twelve (12) months.

Section F – Accrual of Benefits

An authorized leave of absence will not affect previously accrued benefits.

Section G – Pregnancy Disability Leave

Nurses will be eligible for pregnancy disability leave as provided by applicable federal and state laws, and in accordance with and subject to the terms of the Employer's policies regarding such leave. Such leave will be concurrent with other leaves under this Section to the extent permitted under applicable law.

Section H – Medical Disability Leave

A medical disability leave is defined as a leave of more than seven (7) calendar days for any serious medical condition that renders the Nurse unable to work.

Eligibility. After the first six (6) months of employment, all Regular Nurses shall be eligible for a medical leave of absence for a period not to exceed three (3) months. Regular Nurses with at least one (1) year of continuous service with the Facility shall be granted up to six (6) months. This leave may be extended up to an additional six (6) months if the treating physician certifies that, in her/his medical judgment, the Nurse will be able to resume the essential functions of her/his job by the end of the extension.

Use of Accrued Benefits. Use of accrued ESL/PTO is required during a medical disability leave, and will be integrated with any applicable State Disability Insurance benefits. Once a Nurse's accrued ESL is exhausted, the Nurse, at her/his option, may use accrued PTO.

Section I – Parental Leave

Nurses will be eligible for parental leave as provided by applicable federal and state laws, and in accordance with and subject to the terms of the Employer's policies regarding such leaves. Such leave will be concurrent with other leaves under this Section to the extent permitted under applicable law.

Section J – Workers’ Compensation Leave

A leave of absence shall be granted to a Nurse who is temporarily disabled as a result of a work-related injury or illness. Medical certification of disability shall be provided in accordance with the State laws governing workers’ compensation. A Nurse’s leave will be terminated if and when it is medically determined that the Nurse can return to duty or perform the essential functions of her/his job. The facility will make reasonable attempts to accommodate requests for Nurses who have been cleared to perform all essential job functions but need to return to temporarily reduced days per week for a temporary period of time. In those departments/units where reduced hours per day may be feasible, consideration shall be given and not be unreasonably denied. The temporary reduction(s) shall not exceed thirty (30) calendar days. This is separate from the Modified (Transitional) Duty Program. A Nurse may be terminated if it is medically determined that she/he cannot return to duty or perform the essential functions of his/her job with or without reasonable accommodation.

Use of Accrued Benefits. Use of accrued ESL/PTO is required during a medical disability leave, and will be integrated with any applicable State Disability Insurance benefits. Once a Nurse’s accrued ESL is exhausted, the Nurse, at her/his option, may use accrued PTO.

Section K – Family and Medical Leave

Nurses will be eligible for family/medical leave as provided by applicable federal and state laws, and in accordance with and subject to the terms of the Employer’s policies regarding such leaves. Such leave will be concurrent with other leaves under this Section to the extent permitted under applicable law.

Section L – Bereavement Leave

When a death occurs in the immediate family of a benefited Registered Nurse, the Nurse shall be entitled to a leave of absence of up to forty (40) hours with pay within seven (7) days of the death. A Registered Nurse working a regularly scheduled three (3) day twelve (12) hours per day workweek shall be paid up to thirty-six (36) hours for such leave, at the applicable formula rate. Immediate family is defined as spouse, legally domiciled adult, sister, brother, daughter, son, mother, father, current mother-in-law, current father-in-law, current daughter-in-law, current son-in-law, parent or child of a legally domiciled adult, stepchildren, grandchildren, and the RN’s own grandparents. If an RN is required to travel to a funeral or memorial service occurring more than two hundred (200) miles from the Hospital, upon request the RN will be granted an additional two (2) days of his/her accrued paid PTO/holiday or unpaid leave. A Part Time Nurse shall receive bereavement leave pay in the same ratio that the Nurse’s regular schedule bears to a full-time schedule.

Section M – Personal Leaves of Absence

Full or regular part-time Nurses working twenty-four (24) or more hours per week may request personal leaves of absence after one year of continuous service. A personal leave must be requested for any circumstance that will result in absence from work for fourteen (14) calendar days or more. Personal leaves shall be subject to management approval and shall not exceed thirty (30) calendar days.

Nurses may request a personal leave of absence by completing an LOA form, which may be obtained from the Human Resources Department. The LOA form must also be filled out by the Nurse's Department Director and the Benefits Specialist in the Human Resources Department.

Section N – Military Leave

The Employer shall provide military leaves of absence in accordance with applicable state and federal law.

Section O – No Seasonal Ban

A leave of absence request shall not be unreasonably denied because of the season of the year.

Section P – Previously Accrued Benefits

An authorized leave of absence will not affect previously accrued benefits.

Section Q – Additional Leave

Nurses will be eligible for additional leave where provided in applicable federal and state laws and in accordance with the Employer's policies regarding such leaves. Any such leave shall run concurrently with other leaves under this Article to the extent permitted under applicable law.

ARTICLE 14: PERFORMANCE OF CIVIC DUTY

14.1 Time Off To Vote

Nurses who are unable to vote before or after working will be permitted up to two (2) hours with pay at the beginning or end of their workday for voting purposes. Arrangements must be approved in advance by the Nurse's supervisor.

Under these circumstances a Nurse will be allowed a maximum of two hours on the Election Day without loss of pay. Where possible, the Nurse shall give his or her supervisor at least two days notice that time off to vote is needed.

14.2 Jury Duty And Witness Pay

A Nurse called for jury duty will receive the difference between jury pay and normal straight-time earnings for up to fifteen (15) days of jury service on days for which the Nurse is scheduled to work.

A Nurse subpoenaed to appear as a witness in a judicial procedure, not including arbitration, which arises out of the Nurse's employment but in which the Nurse is not a party, will receive the difference between witness fees and straight-time earnings.

The Nurse must notify the Employer as soon as reasonable after he or she receives a notice to report or is subpoenaed for testimony (usually within 24 hours). The Nurse must produce a receipt from the Jury Commissioner that he or she has been called or served, if such receipts are provided. In the case of witness pay, verification of attendance or of fees received may be requested.

Jury duty served while on a leave of absence, while utilizing paid time off or on a day in which the Nurse is not scheduled to work will not be compensated.

ARTICLE 15: LICENSES, CERTIFICATIONS AND COMPETENCIES

Copies of licenses, certifications, Hospital and/or unit-specific competencies, are maintained in the Nurse's personnel file. Maintenance of such licenses, certifications or competencies are the Nurse's responsibility and are a condition of continued employment. If a Nurse fails to maintain a valid license, certification or Hospital and/or unit-specific competency, the Hospital, at its sole discretion, may reassign the Nurse to another position, with compensation applicable to that position, or may remove the Nurse from the schedule until the Nurse has provided proof of required current licensure and/or satisfactory evidence of completion of certifications, Hospital and/or unit-specific competencies.

ARTICLE 16: REGISTERED NURSING RESPONSIBILITIES AND STANDARDS OF COMPETENT PERFORMANCE

- A. Registered nursing personnel shall:
1. Assist the administrator of nursing services so that supervision of nursing care occurs on a 24-hour basis.
 2. Provide direct patient care.
 3. Provide clinical supervision and coordination of care given by licensed vocational Nurses and unlicensed nursing personnel.
- B. Each patient care unit shall have at least one Registered Nurse assigned, present and responsible for the patient care in the unit.
- C. A Registered Nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:
1. Formulates a nursing diagnosis through observation of the patient's physical condition and behavior, and through interpretation of information obtained from the patient and others, including the health team.
 2. Formulates a care plan, in collaboration with the patient, which ensures that direct and indirect nursing care services provide for the patient's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.
 3. Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the patient and family, and teaches the patient and family how to care for the patient's health needs.
 4. Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by the subordinates.
 5. Evaluates the effectiveness of the care plan through observation of the patient's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and the health team members, and modifies the plan as needed.
 6. Acts as the patient's advocate, as circumstances require by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the patient, and by giving the patient the opportunity to make informed decisions about health care before it is provided.

ARTICLE 17: STAFF NURSE CLASSIFICATIONS

The following classifications shall apply to Nurses under this Agreement:

- 17.1 Staff Nurse I: Licensed Registered Nurses with less than six months of combined employment with the Hospital and/or applicable experience prior to employment.
- 17.2 Staff Nurse II: Licensed Registered Nurses with at least six months of combined employment with the Hospital and/or applicable experience prior to employment.
- 17.3 Staff Nurse III and IV: As determined pursuant to guidelines established by the Clinical Ladder Board as encompassed in the Initial Application Packet and the Renewal/Maintenance Packet.

“Applicable experience,” as used with respect to Staff Nurse I and II, refers to regularly scheduled employment (averaging at least 24 hours per week) in the past two years at an acute-care hospital.

“Experience,” as used with respect to Staff Nurse III and IV, refers to regularly scheduled employment (averaging at least 24 hours per week) in the relevant area of specialty in the past four years at an acute-care hospital.

Nurses within the Staff Nurse III and IV classification on the effective date of this Agreement will be excused from the “one full year of employment with Hospital” requirement.

ARTICLE 18: HEALTH AND WELFARE PROGRAM (REVISED)

18.1 Retiree Health Benefits

A Nurse who retires on or after age fifty-five (55) will be entitled to continued Nurse only health insurance at the then existing COBRA rate for current Nurses until age sixty-five (65) or until the Nurse is eligible for Medicare, whichever is sooner, according to the following formula:

1. If the Nurse has ten (10) or more years of benefited service but less than fifteen (15) years of benefited service, the Nurse will pay 100% of the COBRA rate.
2. If the Nurse has fifteen (15) or more years of benefited service but has less than twenty (20) years of benefited service the Nurse will pay seventy-five (75%) percent of the COBRA rate.
3. If the Nurse has twenty (20) or more years of benefited service the Nurse will pay fifty percent (50%) of the COBRA rate.
4. If the Nurse has twenty-five (25) or more years of benefited service, the Nurse will pay twenty-five percent (25%) of the COBRA rate.

A Nurse who elects coverage beyond COBRA statutory coverage must make his/her election in writing within thirty (30) days of retirement and failure to make such an election waives any right to continued health insurance with the exception of such COBRA coverage as is required by law.

A Nurse who elects coverage but does not maintain coverage by making regular, timely payments will lose coverage and such coverage will cease and may not be revived if the Nurse fails to comply with this action.

In order to qualify for this benefit, the Nurse must have at least five (5) years of continuous benefited service on the date of retirement and other than that period, whole years of benefited service may be aggregated so long as the Nurse was continuously employed by the employer. Continuous employment will be as defined in this Agreement, or if not defined, then by the Employer's policy.

18.2 Dental Benefits

- A. The Hospital will offer the Delta Dental PPO 1200 plan, as is currently provided.
- B. The Hospital will offer the Delta Dental PPO 800 Plan and Cigna DHMO Plans, fully paid for Nurse and dependents (including legally domiciled adults).

18.3 Vision Coverage

To be retained as is currently provided.

18.4 Accidental Death and Dismemberment

The Hospital will provide AD&D Insurance per current practice and Nurse cost. The cost to Nurse is determined based on coverage level, age and salary.

18.5 Long Term Disability

The Hospital will provide Long Term Disability Insurance per current practice. Hospital pays full cost for coverage at 40% or 50% of annual base pay. Nurse may purchase coverage up to 60% of annual base pay.

ARTICLE 19: PRECEPTOR

19.1 Definition of a Preceptor

A preceptor is a Nurse appointed and responsible for precepting

- (1) newly hired Nurses;
- (2) Nurses who transfer from another department or unit; or
- (3) a final semester A.D.N., BSN, or MSN student.

Individuals who meet the criteria in either (1) through (3) above shall be known as “preceptees.” Preceptees will not be counted in the staffing complement while being precepted. The preceptorship will be based on the existing unit/program-based orientation/precepting packet, which shall include skills checklists, competencies, written objectives and measurable, time-limited goals. All completed checklists and documents shall be provided by the preceptor to the Nurse Manager/ designee at the end of the preceptor period.

19.2 Preceptor Training

A Nurse who volunteers to be a preceptor must, prior to appointment by the Employer as a preceptor, attend a preceptor training program. The cost of the training program shall be borne by the Employer and the Nurse shall be paid his/her regular hourly rate of pay for attending the training.

19.3 Preceptor Differential

A differential of \$3.00 per hour above the base rate will be paid for precepting.

19.4 Preceptor Opportunities

Preceptor opportunities shall be offered to the most senior Nurse who volunteers and, in the judgment of the Nurse Manager, meets the qualifications as defined in 30.1 and has successfully completed preceptor training as described in 30.2.

19.5 Non-Nursing Personnel

Nurses will not be required to precept, as precepting is defined in 30.1, any non-nursing personnel.

19.6 Nurse Trainers

Nurses who teach a class or conduct a training on behalf of the Employer shall be paid straight time at their base rate per hour.

ARTICLE 20: RELIEF IN HIGHER CLASSIFICATION

When performing charge Nurse duties or relief in a higher classification, a Nurse will receive \$3.50 per hour for all hours while performing such duties.

ARTICLE 21: EDUCATION LEAVE

21.1 Education Leave

- A. Education Leave shall be earned at a maximum rate of forty (40) hours per year for full time Nurses, cumulative to eighty (80) hours, pro-rated for part-time Nurses. Education leave hours shall be placed in the Nurse's bank effective on the first day of the first full pay period of each calendar year.
- B. The Employer shall approve such leave, provided:
 - 1. The courses, workshops, or seminars relate to the Nursing/Healthcare professions;
 - 2. There will be a direct or indirect benefit to the maintenance of or improvement in the Nurse's skills;
 - 3. Application in writing is received by the Employer no fewer than 14 days prior to the requested date of leave.
- C. Education leave may be used by Nurses for home study programs with prior Hospital approval, and provided that such home study programs qualify for continuing education course credit by the Board of Registered Nursing. Requests for pay for home study shall be handled in the same manner as requests for educational leave with pay, and payment shall be made upon submission by the RN of the Certificate of Completion, which Certificate shall be submitted within sixty (60) days after the Nurse's request is approved.
- D. Approval of requests for education leave shall not be unreasonably withheld.
- E. RNs shall be paid for attendance at all educational classes required by the Hospital, at no cost to the RN. The Hospital may require a Nurse to use 8 hours/6 part-time of education leave to attend mandated staff education programs. The Nurse may elect to use any remaining leave hours in his/her bank for home study.

21.2 Tuition Reimbursement

The Employer shall reimburse a Nurse per current Hospital policy up to \$2000.00 per year for tuition and books for courses credited at a college or university provided the Nurse achieves a passing grade for the course. The Hospital will not deduct taxes from tuition reimbursement payments.

21.3 Mandatory Classes/Meetings

- A. If a Nurse is required by the Employer to attend a particular education or training program, session, in-service, class or other meeting, the Nurse shall be paid at his/her usual wage rate and this time shall be counted as time worked. A Nurse shall receive

a minimum of 1 hour's pay for attendance at mandatory classes or meetings if called in on her/his day off.

- B. On any scheduled work day in which a Nurse finishes a mandatory class in sufficient time to return to work for a minimum of one-half of his/her scheduled shift, he or she shall be allowed to either return to work or to take PTO at the Nurse's option. A scheduled work day is defined for purposes of this section as any day worked which enables the Nurse to meet his/her scheduled hours.
- C. The Hospital shall have responsibility for replacing RNs who are attending mandatory classes.
- D. Education leave, unless mandatory, shall not be considered hours worked for overtime purposes.

ARTICLE 22: LAYOFFS AND RECALL

A. Temporary Layoff

1. A temporary layoff is one that is expected to last no more than thirty (30) calendar days.
2. Nurses shall be laid off by seniority by unit and shift and the order of layoff shall be as follows:
 - a. Per diem
 - b. Probationary
 - c. Part-time and Full-time
3. A Nurse may elect to receive pay during a temporary layoff by using accrued Paid Time Off.

B. Severance

1. Laid off regular full-time and part-time Nurses shall receive severance pay according to the following:

<u>Length of Service</u>	<u>Severance</u>
At least 90 days but less than 3 years	2 weeks
4-5 years	3 weeks
6-7 years	4 weeks
8-9 years	5 weeks
10-14 years	6 weeks
15 or more years	8 weeks

2. Severance is calculated as weeks of pay for regularly scheduled work at the Nurse's most recent base salary level but does not include overtime or any other non-salary payments. Nurses on alternate compensation shall use their base rate, not the alternate compensation rate.
3. To receive severance pay, the Nurse must sign a general release prepared by the Employer waiving all claims against the Employer, including but not limited to claims under this Agreement, claims under Title VII, Age Discrimination in Employment Act ("ADEA"), Americans with Disabilities Act ("ADA"), Fair Employment and Housing Act ("FEHA"), etc.

ARTICLE 23: ORGANIZING RIGHTS

- A. **Statement of Philosophy.** The Employer and the Union support the philosophy that positive relationships arise from shared creativity and responsibility; the recognition and protection of basic human rights of workers; and the representation of workers' interest in those decisions that affect them in a way that assures that their voice will be consistently and effectively heard.

The Employer also supports the right of workers to form and join an employee organization and to choose not to do so. Both the Employer and the Union acknowledge that it is important when employees are making such a choice that accurate information about the goals and vision of any organization that is seeking to represent them be available to the employees to assist them in making their decision.

- B. **Notice of Intent to Organize.** When employees have begun signing union authorization cards in an appropriate unit, as defined herein, the Union shall promptly notify the Employer of the employees in that unit of its intent to organize a group of employees and identify an appropriate unit.

Within seven (7) days of the Union's notification to the Employer of its intent to organize an appropriate unit, the Employer and the Union will distribute a jointly signed reproduction of the Recognition Procedure as described herein.

- C. **Appropriate Unit Defined.** The parties agree that, except as provided herein, an appropriate unit is that which is defined by the National Labor Relations Board for healthcare providers.

Bargaining units pursuant to this provision will be on a single facility basis, and shall be as set forth in the National Labor Relations Board Health Care Rules.

- D. **Determination of Majority Status/Election.** Immediately upon the filing of an NLRB petition by CNA for any facility covered by this Agreement, the facility will agree to a consent election, and shall consent to conduct the CNA's requested election at dates and times within forty-five (45) days after the filing of the petition with the NLRB, provided such dates and times are acceptable to the NLRB. In any such consent election, all of the provisions of this Agreement, including the Code of Conduct, will apply. However, any objections to such consent election must be filed and resolved pursuant to the Arbitration section of this Agreement, and all parties acknowledge and submit to the arbitrator's exclusive authority to rule on such objections and any determinative challenges and the parties waive their rights to have the NLRB resolve any objections or determinatives challenged.

Within five (5) days after the election is directed by the Board, the Employer will provide the Union with a list of names, addresses, and current telephone numbers of employees in the unit the Union seeks to organize, subject to applicable laws.

The Employer agrees to recognize the Union as the collective bargaining agent on behalf of employees in any appropriate unit, as defined herein, where a majority of employees vote for CNA representation, subject to applicable law.

E. **Code of Conduct.** This Code of Conduct shall apply to any elections, including decertification elections of any kind.

1. Employees shall be entitled to make a decision regarding union representation free from coercion, intimidation, promises or threats.
2. The Employer and the Union agree that they will communicate only which they believe will be factual and will do so in a way that does not personally attack officers, executives, representatives, employees, or sponsors of either the Employer or the Union.
3. The Employer agrees that it shall not utilize professional persuaders to conduct an anti-Association campaign. Likewise the Employer shall not provide assistance to any individual or group who may wish to pursue an anti-Association campaign.
4. The Employer will not inform or imply to eligible voters that they will lose benefits, wages, or be subject to less favorable working conditions by unionizing.
5. The Employer agrees that its authorized communication with employees regarding unionization shall take place in group meetings and that it shall not initiate one-on-one conversations with employees about Union representation. Employee participation in Hospital initiated group meetings for the purpose of discussing unionization shall be voluntary.
6. During the period following provision of notice of “Intent to Organize” as described above, the parties will meet periodically to regulate adherence to the Code of Conduct.

F. **Dispute Resolution and Arbitration.** If one party believes that the other party has violated this Agreement, the affected party should contact the other party’s representative by phone or fax. The parties should have a direct conversation within 48 hours to try to resolve the issue.

If the parties are unable to resolve a dispute, either party may submit the unresolved dispute about compliance with or construction of the Agreement for final and binding resolution by, Barry Winograd, John Kagel, and Anne Andrews Ellis as the permanent Arbitrators selected for deciding any dispute under this Agreement. In the event they are unavailable, the parties will select a substitute by mutual agreement or through the American Arbitration Association (“AAA”). The Arbitrator shall have discretion to establish procedures for the resolution of such disputes that may include submission of evidence by the parties, and is authorized to develop and order remedies. The Arbitrator shall not be limited in the scope of his/her remedies. All

such disputes shall be resolved within 14 days of the submission of the issue unless the issue concerns an alleged violation pertaining to conduct raised before the election, in which case the Arbitrator shall rule within 48 hours of the issue's submission to him/her.

The parties agree that, upon filing a petition with the Board, the Union and the Employer will meet promptly and will exert their best efforts to identify and resolve issues concerning supervisors, managerial employees, and confidential employees. Should any disagreements arise that cannot be resolved between the parties, the matter shall be resolved according to the arbitration procedure described in this section.

ARTICLE 24: DURATION OF THE AGREEMENT

The term of this Agreement shall be from the time of ratification through December 21, 2020. This Agreement shall be automatically extended or renewed from year-to-year thereafter unless either party serves notice in writing on the other party no later than ninety days nor more than one hundred twenty days prior to the expiration date of this Agreement. If a new Agreement is not reached prior to the expiration date or any anniversary date thereafter, the parties may, by mutual consent, extend the existing Agreement for a specified period of time.

Executed this ____ day of _____, 2018 at _____, California.

O'CONNOR HOSPITAL

By: _____
Steven Sharrer
Verity Health System
Chief Human Resources Officer

CALIFORNIA NURSES ASSOCIATION

By: _____
By: _____
By: _____
By: _____
By: _____
By: _____
By: _____

APPENDIX A: WAGE SCALE

OCH Current						
As of April 1, 2013						
			PD	12 HR	PD/ 12 HR	Duration at Step
Staff Nurse I						
	N/A	49.801	59.762	55.335	66.402	6 mths
Staff Nurse II						6 mths or 1 yr (if hired at this step)
	1	52.497	62.997	58.33	69.996	
Nurse II	2	55.033	66.039	61.148	73.377	1 yr
Nurse II	3	57.882	69.459	64.314	77.176	1 yr
Nurse II	4	60.83	72.996	67.589	81.107	1 yr
Nurse II	5	63.81	76.572	70.9	85.08	1 yr
Nurse II	6	66.947	80.337	74.386	89.263	4 yr
Nurse II	7	68.287	81.944	75.874	91.049	10-20 yrs
Nurse II	8	72.27	86.724	80.3	96.36	20+ yrs
Staff Nurse III						
	1	54.872	65.847	60.969	73.163	1 yr
Nurse III	2	57.719	69.263	64.133	76.959	1 yr
Nurse III	3	60.947	73.137	67.719	81.263	1 yr
Nurse III	4	63.554	76.265	70.616	84.739	1 yr
Nurse III	5	67.151	80.582	74.612	89.535	1 yr
Nurse III	6	70.082	84.098	77.868	93.442	4 yr
Nurse III	7	71.84	86.208	79.822	95.787	10-20 yrs
Nurse III	8	75.647	90.776	84.052	100.863	20+ yrs
Staff Nurse IV						
	1	58.747	70.496	65.274	78.329	1 yr
Nurse IV	2	61.695	74.034	68.55	82.26	1 yr
Nurse IV	3	64.794	77.753	71.993	86.392	1 yr
Nurse IV	4	68.049	81.659	75.61	90.732	1 yr
Nurse IV	5	71.421	85.705	79.356	95.228	1 yr
Nurse IV	6	75.041	90.05	83.379	100.055	4 yr
Nurse IV	7	76.536	91.844	85.04	102.048	10-20 yrs
Nurse IV	8	80.969	97.162	89.965	107.958	20+ yrs

OCH Ratification				
As of first full pay period after December 22, 2016				
ATB	5%			
Basis	OCH Current			
		Hourly rate	PD	Duration at Step
Staff Nurse I				
	N/A	52.291	62.750	6 mths
Staff Nurse II				6 mths or 1 yr (if hired at this step)
	1	55.122	66.147	
Nurse II	2	57.785	69.341	1 yr
Nurse II	3	60.776	72.932	1 yr
Nurse II	4	63.872	76.646	1 yr
Nurse II	5	67.001	80.401	1 yr
Nurse II	6	70.294	84.354	4 yr
Nurse II	7	71.701	86.041	10-20 yrs
Nurse II	8	75.884	91.060	20+ yrs
Staff Nurse III				
	1	57.616	69.139	1 yr
Nurse III	2	60.605	72.726	1 yr
Nurse III	3	63.994	76.794	1 yr
Nurse III	4	66.732	80.078	1 yr
Nurse III	5	70.509	84.611	1 yr
Nurse III	6	73.586	88.303	4 yr
Nurse III	7	75.432	90.518	10-20 yrs
Nurse III	8	79.429	95.315	20+ yrs
Staff Nurse IV				
	1	61.684	74.021	1 yr
Nurse IV	2	64.780	77.736	1 yr
Nurse IV	3	68.034	81.641	1 yr
Nurse IV	4	71.451	85.742	1 yr
Nurse IV	5	74.992	89.990	1 yr
Nurse IV	6	78.793	94.553	4 yr
Nurse IV	7	80.363	96.436	10-20 yrs
Nurse IV	8	85.017	102.020	20+ yrs

OCH Year 2				
As of first full pay period after December 22, 2017				
ATB	5%			
Basis	OCH Ratification			
		Hourly rate	PD	Duration at Step
Staff Nurse I	N/A	54.906	65.888	6 mths
Staff Nurse II				6 mths or 1 yr (if hired at this step)
	1	57.878	69.454	
Nurse II	2	60.674	72.808	1 yr
Nurse II	3	63.815	76.579	1 yr
Nurse II	4	67.066	80.478	1 yr
Nurse II	5	70.351	84.421	1 yr
Nurse II	6	73.809	88.572	4 yr
Nurse II	7	75.286	90.343	10-20 yrs
Nurse II	8	79.678	95.613	20+ yrs
Staff Nurse III				
	1	60.497	72.596	1 yr
Nurse III	2	63.635	76.362	1 yr
Nurse III	3	67.194	80.634	1 yr
Nurse III	4	70.069	84.082	1 yr
Nurse III	5	74.034	88.842	1 yr
Nurse III	6	77.265	92.718	4 yr
Nurse III	7	79.204	95.044	10-20 yrs
Nurse III	8	83.400	100.081	20+ yrs
Staff Nurse IV				
	1	64.768	77.722	1 yr
Nurse IV	2	68.019	81.623	1 yr
Nurse IV	3	71.436	85.723	1 yr
Nurse IV	4	75.024	90.029	1 yr
Nurse IV	5	78.742	94.490	1 yr
Nurse IV	6	82.733	99.281	4 yr
Nurse IV	7	84.381	101.258	10-20 yrs
Nurse IV	8	89.268	107.121	20+ yrs

OCH Year 3				
As of first full pay period of December 22, 2018				
ATB	4%			
Basis	OCH Y2			
		Hourly rate	PD	Duration at Step
Staff Nurse I				
	N/A	57.102	68.524	6 mths
Staff Nurse II				6 mths or 1 yr (if hired at this step)
	1	60.193	72.232	
Nurse II	2	63.101	75.720	1 yr
Nurse II	3	66.368	79.642	1 yr
Nurse II	4	69.749	83.697	1 yr
Nurse II	5	73.165	87.798	1 yr
Nurse II	6	76.761	92.115	4 yr
Nurse II	7	78.297	93.957	10-20 yrs
Nurse II	8	82.865	99.438	20+ yrs
Staff Nurse III				
	1	62.917	75.500	1 yr
Nurse III	2	66.180	79.416	1 yr
Nurse III	3	69.882	83.859	1 yr
Nurse III	4	72.872	87.445	1 yr
Nurse III	5	76.995	92.396	1 yr
Nurse III	6	80.356	96.427	4 yr
Nurse III	7	82.372	98.846	10-20 yrs
Nurse III	8	86.736	104.084	20+ yrs
Staff Nurse IV				
	1	67.359	80.831	1 yr
Nurse IV	2	70.740	84.888	1 yr
Nurse IV	3	74.293	89.152	1 yr
Nurse IV	4	78.025	93.630	1 yr
Nurse IV	5	81.892	98.270	1 yr
Nurse IV	6	86.042	103.252	4 yr
Nurse IV	7	87.756	105.308	10-20 yrs
Nurse IV	8	92.839	111.406	20+ yrs

OCH Year 4				
As of first full pay period after December 22, 2019				
ATB	4%			
Basis	OCH Y3			
		Hourly rate	PD	Duration at Step
Staff Nurse I	N/A	59.386	71.265	6 mths
Staff Nurse II				6 mths or 1 yr (if hired at this step)
	1	62.601	75.121	
Nurse II	2	65.625	78.749	1 yr
Nurse II	3	69.023	82.828	1 yr
Nurse II	4	72.539	87.045	1 yr
Nurse II	5	76.092	91.310	1 yr
Nurse II	6	79.831	95.800	4 yr
Nurse II	7	81.429	97.715	10-20 yrs
Nurse II	8	86.180	103.416	20+ yrs
Staff Nurse III				
	1	65.434	78.520	1 yr
Nurse III	2	68.827	82.593	1 yr
Nurse III	3	72.677	87.213	1 yr
Nurse III	4	75.787	90.943	1 yr
Nurse III	5	80.075	96.092	1 yr
Nurse III	6	83.570	100.284	4 yr
Nurse III	7	85.667	102.800	10-20 yrs
Nurse III	8	90.205	108.247	20+ yrs
Staff Nurse IV				
	1	70.053	84.064	1 yr
Nurse IV	2	73.570	88.284	1 yr
Nurse IV	3	77.265	92.718	1 yr
Nurse IV	4	81.146	97.375	1 yr
Nurse IV	5	85.168	102.201	1 yr
Nurse IV	6	89.484	107.382	4 yr
Nurse IV	7	91.266	109.520	10-20 yrs
Nurse IV	8	96.553	115.862	20+ yrs

APPENDIX B: ALTERNATIVE WORK SCHEDULE PROGRAM

1. IMPLEMENTATION

- 1.1 The Parties agree that Alternative Work Schedules (“AWS”), either 12-hour or 10-hour shifts, may be voted and implemented in individual units, as part of the collective bargaining exemption. The Employer may implement these shifts in individual units only in accordance with these provisions. An Employer may designate a unit as appropriate for implementation of an AWS program by notifying CNA in writing and posting a notice on the unit. Within fourteen (14) days of the notice, CNA and the Employer shall jointly conduct a meeting among the Staff Nurses on the unit to explain the impact of these shifts in the unit, how the vote will be conducted, the options available to Per Diem Staff Nurses, and the mock schedules. Within thirty (30) days of the notice, a vote shall be conducted in accordance with state law. At least fourteen (14) days before the election, the Employer will provide CNA with a list of Staff Nurses in the unit and CNA will investigate any discrepancies between the list and the CNA membership roster. CNA will advise the Employer of any discrepancies.
- 1.2 For an AWS to be adopted, a 2/3 majority vote of those Staff Nurses who vote is required. An affected Staff Nurse who does not vote shall not be counted. The votes may be held on up to three days within the voting week to accommodate schedules. The vote and vote count will be in the presence of a Staff Nurse appointed by CNA and a management representative. The Staff Nurse observing the vote count shall be on paid time during the count.
- 1.3 Upon ratification, the program shall be implemented commencing with the next posted schedule, provided that the Staff Nurses receive at least fourteen (14) days’ notice of the schedule changes.
- 1.4 Employer maintains right to create 8 hour shifts in units electing AWS and Staff Nurses may bid for any such shift or position in accord with applicable provisions of the CBA.

2. AWS UNITS

- 2.1 Without waiving the Employers’ right to designate additional units for an AWS vote, the Employers agree that the following units shall be designated for an initial AWS vote within the timelines set forth below:

- 2.1. a. O’Connor Hospital AWS Vote

The Employer shall consider an AWS vote for the following units:
ASU, PACU, IR, OR, Med Surg, Postpartum/Peds.

3. POSTING AND SCHEDULING

- 3.1 On each unit where the Staff Nurses have voted for AWS shifts and where the Employer has scheduled AWS shifts, the Employer will make a reasonable effort to find another work assignment for any Staff Nurse who participated in the vote which authorized the schedule and is unable to work the shifts. The Employer shall not be required to offer a different work assignment to a Staff Nurse if such a work assignment is not available or if the Staff Nurse is hired after the adoption of the alternative work schedule.

4. DISCONTINUANCE OF THE ALTERNATIVE WORK SCHEDULES

- 4.1 The Employer may discontinue an AWS at any time upon sixty (60) days' advance notice to CNA.
- 4.2 After the AWS has been in place for 12 months or more it may be repealed by a vote of the affected Staff Nurses. Upon a petition of one-third of the affected Staff Nurses, a new secret ballot election shall be held in accordance with state law.

5. HOURS OF WORK

5.1 12-Hour Shift Staff Nurses:

- a. The regular work week for full-time Staff Nurses on the 12-hour shift schedule will consist of no more than thirty-six (36) hours, three (3) days a week.
- b. A straight time day's work will consist of no more than twelve (12) hours worked within a thirteen hour period, except for Staff Nurses who have voluntarily waived one of their meal periods, in which case the twelve (12) hours worked will be within a twelve and one-half hour period.
- c. The Employer will use its best efforts to regularly schedule a Staff Nurse to work no more than two (2) consecutive 12 hour shifts, unless the Staff Nurse requests a three (3) consecutive day schedule. The Employer will use its best efforts to grant the Staff Nurse at least a two (2) day break if he/she has worked three (3) consecutive 12 hour shifts, unless the Staff Nurse requests otherwise. The Employer will use best efforts to grant the Staff Nurse a three (3) day weekend on the Staff Nurse's weekend off.

- 5.2 10-Hour Shift Nurses: The regular work week for full-time Staff Nurses on the 10 hour shift schedule will consist of forty (40) hours, four (4) days a week. A straight time day's work will consist of no more than ten (10) hours worked within a ten and one-half hour period.

6. OVERTIME

- 6.1 Staff Nurses who work more than three (3) 12 hour shifts in a workweek will be paid time and one half (1 ½) their regular rate of pay for the first eight (8) hours worked on the first extra day of that workweek, and two (2) times their regular rate for all hours worked after the eight (8) extra hours in that workweek.
- 6.2 Staff Nurses will be paid double time for all hours worked in excess of 12 in one day.
- 6.3 Daily overtime shall be paid for 8 hour, 10 hour, and 12 hour shift Staff Nurses who work a shift that deviates from their assigned schedule in accordance with state law and any daily overtime rules adopted as part of an AWS program.
- 6.4 Paid Leave Accrual. Full-time Nurses working three (3) 12-hour shifts in a 7-day workweek will accrue benefits, such as vacation, PTO, holidays, sick time, education leave, etc., on the same basis as full-time Nurses working a normal forty (40) hour workweek. Part-time Nurses working 12-hour shifts will have benefits pro-rated according to the provisions of the CBA.
- 6.5 Meal and Rest Breaks. Meal and rest breaks will be provided according to the provisions of the CBA.

7. O'CONNOR HOSPITAL

- 7.1
 - a. Holidays. All Nurses working on a holiday recognized in the Collective Bargaining Agreement between the parties will receive one and one-half times their straight time hourly rate for each hour worked on the holiday. Hours worked in excess of 12-hours on a holiday will be paid at twice the Nurse's straight time hourly rate. Holiday pay will be earned for the shift the majority of which is worked on the holiday.
 - b. Paid Leave Days. Paid leave days such as bereavement leave, jury duty leave and sick leave may be taken only when the basis for such leave falls on a Registered Nurse's scheduled work day.
 - c. Education Leave. Education leave may be taken according to hospital policy and practice.
 - d. Bereavement And Jury Duty. Bereavement and jury duty leaves are available to Nurses in 12-hour shift positions on the same basis as Nurses in 8-hour shift positions, subject to the applicable provisions of the Collective Bargaining Agreement. Nurses in 12-hour shift positions who are required to report for jury duty will receive their regular compensation for each day of service, less jury duty pay. Proof of jury service must be provided to the Hospital in order to be paid in accordance with this provision.
 - e. Education Leave. Education leave shall be earned prorated and based on status. A Nurse working 12-hour shifts may take up to twelve (12) hours of

education leave to cover approved courses, workshops, or seminars, provided the Nurse has available sufficient hours of accrued but unused education leave. In the event that the Nurse has taken twelve (12) hours of education leave and required home study is assigned for the course, all time spent in home study will be considered part of the twelve (12) hours of education leave. If the Nurse was normally scheduled to work a 12-hour shift and takes education leave, the Nurse may, if needed in the unit, choose to report to work following the completion of the course, workshop or seminar. In such an event, the Nurses would utilize only that amount of education leave necessary to cover the time involved for the course and would be paid at the straight time rate for the remainder of the shift.

Nurses required to attend mandatory education classes, in-services, or meetings on an assigned workday shall report for work in their unit for the remainder of their shift at the conclusion of the class, in-service or meeting.

Education leave, unless mandatory, shall not be considered hours worked for overtime purposes.

- f. Rest Between Shifts. Rest between shifts shall be governed by the Collective Bargaining Agreement except that the period between shifts shall be reduced to eleven and one-half (11-1/2) hours.

APPENDIX C: CNA SHORT-CALL AVAILABILITY PROCEDURE

Shifts that remain unfilled or become available four (4) hours prior to the start of the shift shall be filled following the process outlined below:

Upon ratification of the contract, full and part-time Registered Nurses willing to work short-call hours shall provide their names to their department manager to be put on a list in the Staffing Office by submitting the Availability of Short-Call form.

Subsequent to the initial lists, RNs who submit their availability for short-call shall be added to the list in seniority order. The staffing office will provide a copy of the Short-Call Availability list to the unit manager who will verify that the list is accurate.

The Staffing Office will maintain and update the Short-Call Availability list daily and have it available for review. The seniority list will be available in the staffing office at all times and updated by Human Resources on an ongoing basis. A copy of the Short Call list calls made for the pay period will be posted on each unit on the following Friday.

Any calls made to the Nurses within four (4) hours of the start of the shift will be considered short-call in accordance with Article 3.13 of the current Collective Bargaining Agreement.

Nurses on the Short-Call Availability list will be called for Short-Call hours in rotating order of seniority, regardless of shift, for their department in which there is a need.

If no Nurse in the Department/Unit on the Short-Call Availability List is available, the Staffing Office will call the remaining department Registered Nurses who are not on the Short-Call Availability List by rotating seniority.

If no Nurse from the department is available, the Staffing Office will call the next Nurse in rotation in the same cluster, if the staff Nurse is competent to work in that department.

If no Nurse is still available, the Staffing Office will call the next Nurse on rotation that is qualified/competent to work in that department.

The parties agree that it will not be considered a violation of either the CBA or the Short-Call Availability agreement by passing over the next Nurse in the short-call rotation if such shift would result in the Nurse having less than seven and one-half (7 1/2) hours rest between shifts, eleven and one-half (11 1/2) hours for twelve-hour Nurses.

STEPS FOR CNA SHORT CALL AVAILABILITY PROCEDURE

STEP 1: FORM

1. Submit Availability of Short Call Form to your respective department manager.
2. Manager will turn in the form to staffing office and verify the accuracy of the list with staffing office.
3. It is the RN's responsibility to ensure that their phone number is accurate and updated in Human Resources.
4. Guidelines
 - Voice mail is considered a notification.
 - A call by staffing office but no voice mail, no answer or invalid number is considered a notification. Staffing office will call the number again to verify the number dialed is accurate.
 - Short call is any calls made to the Nurse within four (4) hours of the start of the shift by the staffing office or designee (i.e. house supervisor, manager).
 - RN on vacation will be bypassed if he/she is on vacation/PTO and will be eligible again based on rotation.
 - RN on LOA will be marked as LOA and will be able to pick up short call upon their return in their regular seniority order.
 - Staffing Office will call listed primary number and is not obligated to call alternative numbers provided.
 - RN can waive short call and will be placed as available.
5. Breaking seniority tie will be done using the last four digits of RN's social security number.
6. It is not considered a violation of either the CBA or the Short Call Availability agreement by passing over the next Nurse in the short call rotation if such shift would result in the Nurse having less than seven and a half (7 1/2) hours rest between shifts, eleven and one-half (11 1/2) hours for twelve-hour Nurses.

STEP 2: IMPLEMENTATION

Day 1: First short call will be made to the most senior staff in the department who is not otherwise on duty.

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Smith, Jane (1/9/88)	8/6/07					
Snow, White (7/24/88)						
Jingle, Bell (12/25/88)						
Peter, Pan (6/19/89)						
Apple, Gate (3/16/90)						
Test, Ana (3/16/91)						
Mini, Moe (5/17/92)						
Benz, Mercedes (6/29/92)						
BMW, Joe (10/30/95)						
Van, Halen (9/26/96)						
Mac, Donald (4/25/99)						
Calvin, Kline (4/25/99)						

Day 2: Staffing Office will call the next person (less senior) on the list. If the RN was unable to contact, staffing office will leave a voicemail if available and will be considered as shift offered as short call. Staffing office will continue to call the next person on the list. Staffing Office is not obligated to wait for the person to call back. If the RN calls back and the shift was filled, the staff is no longer entitled to the shift and have to wait until his/her turn comes again for the short call.

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Smith, Jane (1/9/88)	8/6/07					
Snow, White (7/24/88)		VM				
Jingle, Bell (12/25/88)		8/7/07				
Peter, Pan (6/19/89)						
Apple, Gate (3/16/90)						
Test, Ana (3/16/91)						
Mini, Moe (5/17/92)						
Benz, Mercedes (6/29/92)						
BMW, Joe (10/30/95)						
Van, Halen (9/26/96)						
Mac, Donald (4/25/99)						
Calvin, Kline (4/25/99)						

Day 3: When staffing office calls and no answer or no voicemail is available, the call is considered a notification and will call the next person on the list.

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Smith, Jane (1/9/88)	8/6/07					
Snow, White (7/24/88)		VM				
Jingle, Bell (12/25/88)		8/7/07				
Peter, Pan (6/19/89)			CNVM			
Apple, Gate (3/16/90)			8/8/07			
Test, Ana (3/16/91)						
Mini, Moe (5/17/92)						

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Benz, Mercedes (6/29/92)						
BMW, Joe (10/30/95)						
Van, Halen (9/26/96)						
Mac, Donald (4/25/99)						
Calvin, Kline (4/25/99)						

Day 4: Staff can decline short call when it is his/her turn. Staffing Office will document and call the next person on the list.

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Smith, Jane (1/9/88)	8/6/07					
Snow, White (7/24/88)		VM				
Jingle, Bell (12/25/88)		8/7/07				
Peter, Pan (6/19/89)			CNVM			
Apple, Gate (3/16/90)			8/8/07			
Test, Ana (3/16/91)				DECLINED		
Mini, Moe (5/17/92)				8/9/07		
Benz, Mercedes (6/29/92)						
BMW, Joe (10/30/95)						
Van, Halen (9/26/96)						
Mac, Donald (4/25/99)						
Calvin, Kline (4/25/99)						

Day 5: The last four digits of an RN's social security number will be used to break a seniority tie between 2 or more RNs who have the same seniority date.

Calvin, Kline 4/25/99 (#1153)

Mac, Donald 4/25/99 (#0099)

Fulltime, Cherry 4/25/99 (#1253)

*** Seniority order will be: #1 Mac
 #2 Calvin
 #3 Fulltime

Day 6: RN can place his/her self as available for shift(s) as additional shift or overtime and will not be considered a short call or forfeit his/her turn in the short call list.

On day 6, Smith, Mary (6/9/07) called staffing office the night before and places herself available for 7 a.m. shift if someone calls off sick. Staffing office will offer her the shift before going to the short call list.

Day 7: If a Nurse calls the staffing office that he/she is available for short call after the list was posted, the RN will be added to list based on seniority. Staffing office will

continue to call the next person in line based on the last staff called and the RN has to wait until it is their turn.

On 8/10/07 Randy Regular called seniority date of 10/8/87. He wants to add himself to the short call list. Although he is now the most senior staff, he will not be called until it is his turn. Staffing office will offer the shift to Mercedes Benz who is the next person on the list.

NAME	DATE	DATE	DATE	DATE	DATE	DATE
Regular, Randy (10/8/87)						
Smith, Jane (1/9/88)	8/6/07					
Snow, White (7/24/88)		VM				
Jingle, Bell (12/25/88)		8/7/07				
Peter, Pan (6/19/89)			CNVM			
Apple, Gate (3/16/90)			8/8/07			
Test, Ana (3/16/91)				DECLINED		
Mini, Moe (5/17/92)				8/9/07		
Benz, Mercedes (6/29/92)					8/10/07	
BMW, Joe (10/30/95)						
Van, Halen (9/26/96)						
Mac, Donald (4/25/99)						

Day 8: If an RN is working and it is his/her turn for the short call, the shift will be offered to the next person on the list.

NAME	DATE	DATE	DATE	DATE	DATE	DATE	DATE
Regular, Randy (10/8/87)							
Smith, Jane (1/9/88)	8/6/07						
Snow, White (7/24/88)		VM					
Jingle, Bell (12/25/88)		8/7/07					
Peter, Pan (6/19/89)			CNVM				
Apple, Gate (3/16/90)			8/8/07				
Test, Ana (3/16/91)				DECLINED			
Mini, Moe (5/17/92)				8/9/07			
Benz, Mercedes (6/29/92)					8/10/07		
BMW, Joe (10/30/95)						WRKG	8/12/07
Van, Halen (9/26/96)						8/11/07	
Mac, Donald (4/25/99)							

**APPENDIX D: LETTER OF UNDERSTANDING RE CATH LAB,
INTERVENTIONAL RADIOLOGY AND NUCLEAR MEDICINE**

1. Within thirty (30) days of ratification, representatives of the Union and the Employer will meet and confer in a collaborative effort over the Employer's contemplated cross training and validation of competency for RNs in the Special Procedures cluster in order to provide safe, competent and quality patient care in Cath Lab, Interventional Radiology and Nuclear Medicine.
2. It is understood that the Employer's intent is to provide RN staffing in all three areas that is competent and capable of safely performing all procedures in all three areas, within the meaning of the term competency as provided in Article 16 of this collective bargaining agreement ("Agreement").
3. To meet this goal, it is understood that there will be one set of competency standards for each of the three areas that Nurses will be cross-trained in.
4. Cross-training shall include both in-service programs and/or outside courses, workshops or seminars as may be required to attain and maintain competency in all procedures in all three areas. All such cross-training shall be provided at the Employer's expense pursuant to Article 21 of this Agreement. Once an RN has achieved competency in any procedure, such competency shall be maintained.
5. Floating within and between Cath Lab, Interventional Radiology and Nuclear Medicine may continue on the same basis as described under Article 11 – Floating until such time as the aforementioned cross-training and validation of competency has been established.
6. RNs in the Special Procedure cluster who are on-call shall not be required to answer calls outside their unit unless and until they have completed the required cross-training, and have validated competency on procedures outside their unit.
7. Nothing in this Letter of Understanding is intended to amend or modify any rights or obligations of the Union or the Employer under this Agreement.

APPENDIX E: SIDE LETTER
BETWEEN O'CONNOR HOSPITAL AND CNA
REGARDING PROFESSIONAL PERFORMANCE COMMITTEE

Whereas the Professional Performance Committee ("PPC") at O'Connor Hospital ("OCH") was recently elected to a three (3) year term, OCH and CNA agree to the following:

1. The PPC at OCH will continue to be comprised of ten (10) members: and
2. PPC members at OCH shall be compensated a maximum of six (6) hours per month instead of eight (8) hours for attendance at PPC meetings.

In all other respects the terms of Article 11 of the Master Agreement regarding the PPC shall apply to the PPC at OCH, including that the PPC chair at OCH shall receive the additional four (4) hours of pay per the Master Agreement.

While this Side Letter remains in effect, if any of the current members of the PPC at OCH leave employment at OCH or otherwise end their membership on the PPC, such departing members may not be replaced by CNA.

This Side Letter expires June 1, 2019 or upon notice by CNA to OCH, whichever occurs sooner. Upon expiration of this Side Letter, the membership and compensation of PPC members will revert to the provisions of the Master Agreement.

Exhibit 3

Exhibit 3

SLRH CNA LOCAL CONTRACT 2016 – 2020

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ARTICLE 1: RECOGNITION AND COVERAGE

Section A: Recognition

Saint Louise Regional Hospital (hereinafter referred to as the “Employer”) recognizes California Nurses Association (hereinafter referred to as the “Union” or the “Association”) as the bargaining representative for the following employees of Saint Louise Regional Hospital:

All regularly-scheduled full-time, regularly-scheduled part-time, per diem, including wound care and endoscopy nurses and case managers, employed by Saint Louise Regional Hospital in Gilroy, California; excluding admitting nurses, nurse educators, employee health nurses, utilization review Registered Nurses, all other employees, guards and supervisors as defined in the National Labor Relations Act.

Section B: Coverage

Registered Nurses in classifications for which the Union is recognized as the bargaining representative in Section A Recognition, above, are covered by this Agreement when they are regularly scheduled to work sixteen (16) hours or more per week. Per Diem Nurses may not be regularly scheduled to work sixteen (16) or more hours per week; provided, however, that they may be regularly scheduled to work up to a full-time schedule to fill vacancies created by the temporary absence of a regular nurse, such as for vacation, sick leave, jury duty, leaves of absence or paid time off, and to fill temporarily a posted vacancy that has not been filled by a regular nurse or outside applicant.

Section C: Applicability of Collective Bargaining Agreement to Per Diem Registered Nurses

All provisions of this collective bargaining agreement shall be applicable to per diem Registered Nurses, as set forth in Section A of this Article, with the exception of the following provisions which shall not be applicable to such per diem Registered Nurses only:

- Article 4.H – Reporting Pay
- Article 4.L – Shift Rotation
- Article 4.M – Weekends Off
- Article 5 – Paid Time Off and Extended Sick Leave
- Article 6.C.1 – Medical Disability Leave
- Article 6.C.5 – Personal Leaves
- Article 6.C.6 – Association Leave
- Article 6.L – Bereavement Leave
- Article 6.M – Education Leave and Tuition Reimbursement
- Article 7.A – Jury Duty
- Article 8 – Health and Welfare Program

ARTICLE 2: EMPLOYER RIGHTS

The Employer will retain and have exclusive right to exercise all customary functions of management of its operations, including, by way of example only and without limitation, the right to manage and control the premises and equipment; the right to select, hire, promote, suspend, discharge, assign, supervise and discipline Nurses; the right to determine and change starting times, quitting times and shifts; the right to determine and change the size of, composition of and qualifications of the work forces; the right to establish, change and abolish its policies, practices, rules and regulations and to adopt new policies, practices, rules and regulations; the right to determine and modify job descriptions, job classifications, job evaluations, and the assignment or reassignment of particular functions; the right to determine the nature and extent of its operations and the services to be provided or discontinued; the right to determine or change methods and means by which the Employer's operations are to be carried on including the right to subcontract one or more services; the right to assign duties to employees in accordance with needs and requirements as determined by the Employer; and the right to carry out all other necessary, traditional and/or usual functions of management, whether or not exercised by the Employer prior to execution of this Agreement, and subject only to express limitations as set forth in the provisions of this Agreement.

In the event that the Employer intends to: (1) change unit starting times and quitting times; (2) establish, change or abolish policies, rules or regulations or adopt new policies, rules or regulations; (3) modify or adopt new job descriptions or job classifications; or (4) subcontract bargaining unit work; and such changes will impact terms and conditions of employment, the Employer will provide written notice to the Union sixty (60) days in advance, and, upon request, will bargain over the proposed changes or new policies/job descriptions/job classification during the sixty (60) day period.

ARTICLE 3: EMPLOYMENT CATEGORIES

Section A: Status

1. Regular Full-Time. A Regular Full-Time Nurse is one who is regularly scheduled on a predetermined basis for forty (40) hours in each workweek, or eighty (80) hours in a fourteen (14) day pay period (or for purposes of layoff under Article 12 only, seventy-two (72) hours per pay period under a 12-hour shift arrangement). A Regular Full-Time Nurse will be entitled to all of the benefits listed in Articles 5 through 9.
2. Regular Part-Time. A Regular Part-Time Nurse is one who is regularly scheduled on a predetermined basis to work at least sixteen (16) hours, but less than forty (40) hours, in each workweek (less than thirty-six (36) hours for 12-hour shift Nurses), or at least thirty-two (32) hours, but less than eighty (80) hours in a fourteen (14) day pay period. Those Regular Part-Time Nurses who have a regular schedule of twenty (20) or more hours per workweek, or forty (40) or more hours per pay period, will be entitled to those benefits listed in Articles 5 through 8 herein on a prorated basis in accordance with the number of straight time hours the Nurse works, up to a maximum of forty (40) hours in each workweek, or eighty (80) hours in a fourteen (14) day pay period. For purposes of benefit accrual only, paid time off (“PTO”), extended sick leave (“ESL”), paid bereavement leave, paid jury duty leave, and voluntary and involuntary daily cancellation hours as provided in Article 12, Section A.2 of this Agreement, will be considered as hours worked. Regular Part-Time Nurses who have a regular schedule of sixteen (16) or more hours but less than twenty (20) hours per workweek, or of thirty-two (32) hours or more but less than forty (40) hours per pay period, will not be entitled to any of the benefits listed in Articles 5 through 8 of this Agreement, except that they will receive time and one half (1-1/2x) of their straight time rate plus shift differential, if applicable, for working on a holiday recognized under Article 5, Section J.

Section B: Change in Status

If a Regular Nurse converts to Per Diem status, then (s)he will be paid any remaining accrued but unused PTO. Should the Nurse reconvert to Regular status within the twelve (12) month period, (s)he Staff will begin to accrue PTO at his/her previous rate.

Section C: Staff Nurse Categories

1. Staff Nurse I. A Nurse hired with less than twelve (12) months of recent acute care hospital experience as a Registered Nurse will be classified as a Staff Nurse I until (s)he has a total of twelve (12) months’ experience, at which

time (s)he will be reclassified as a Staff Nurse II, and placed on Step 1. The date of reclassification will become the Nurse's anniversary date for salary step progression purposes.

2. Staff Nurse II. A Nurse who has one (1) or more years of recent acute care hospital experience as a Registered Nurse will be classified as a Staff Nurse II.
3. Staff Nurse III. A Nurse who has satisfied the requirements established through the procedures set forth in Section D, below, will be classified as a Staff Nurse III. Upon reclassification, the Nurse will be paid at the same step, but his/her date of reclassification will become the anniversary date for salary step progression purposes.
4. Staff Nurse IV. A Nurse who has satisfied the requirements established through the procedures set forth in Section D, below, will be classified as a Staff Nurse IV. Upon reclassification to Staff Nurse IV, the Nurse will be paid at the same step, but his/her date of reclassification will become the Nurse's anniversary date for salary step progression purposes.
5. Reclassification To A Lower Category. Should a Staff Nurse III or Staff Nurse IV fail to satisfy the requirements established through the procedures set forth in Section D below, as appropriate, the Nurse will be reclassified to the appropriate lower category (i.e., to Staff Nurse III or Staff Nurse II depending upon the circumstances). Upon such reclassification the Nurse will be paid at the same step on the applicable scale, without adjustment to the Nurse's anniversary date for salary step progression purposes.

Section D: Clinical Ladder Committee

The criteria for Staff Nurse III and Staff Nurse IV developed by the Professional Performance Committee shall continue to be effective and may be modified only by mutual agreement between the Professional Performance Committee and the Chief Nurse Executive.

ARTICLE 4: COMPENSATION AND HOURS OF WORK

Section A: Salaries

1. Hourly compensation will be as set forth in Appendix A.
2. The Employer will pay Nurses on the basis of fourteen (14) consecutive day pay periods.
3. Wage adjustments will be made in the pay period beginning closest to the date of adjustment.
4. Progression Schedule/Step Increases

All nurses will progress annually through the wage scale steps to Step 5 based on their most recent hire date in the bargaining unit. A nurse must be employed with Saint Louise Regional Hospital through the end of the 5th year to move to Step 6, through the end of their 9th year to move to Step 7, and through the end of the 19th year to move to Step 8.

Newly graduated nurses with less than 12 months experience in an acute care setting will start as RN I, Step 1.

Nurses with more than 12 months experience but less than 24 months in an acute care setting shall start as RN II, Step 1.

Nurses with more than 24 months experience but less 36 months or less in an acute care setting will start as RN II, Step 2.

Nurses with three (3) to five (5) years experience in an acute care setting will start as RN II, Step 3.

Nurses with six (6) to nine (9) years experience in an acute care setting will start as RN II, Step 4.

Nurses with 10 or more years experience in an acute care setting will start as RN II, Step 5.

5. RN III and RN IV

In accordance with the RN III/IV Criteria, a newly hired nurse who has obtained RN III/IV designation at another hospital with a CNA Agreement may be hired as a RN III/IV pursuant to the above experience steps. The appropriate department manager and the PPC will evaluate such RN within 90 days from their date of hire to determine if the Nurse may continue at the RN III/IV status. A Nurse in this status who is determined not to meet the Saint Louise Regional Hospital criteria will be reclassified to RN II/III (as appropriate) at the same step.

Section B: Straight Time Shifts and Workweek

1. The Employer may implement alternative shifts on a unit-wide basis pursuant to Appendix B. Subject to staffing and the need to match shifts, the Employer will attempt to reasonably accommodate a Nurse for whom working an alternative shift presents a hardship.
2. A full-time straight time workweek will be forty (40) hours for Nurses employed on a forty (40) hours workweek basis, and eighty (80) hours for Nurses employed on the 8/80 plan under the Fair Labor Standards Act, as amended.
3. Nurses will not be required to work a shift which is split by any unpaid break of over one (1) hour.

Section C: Overtime

1. Nurses employed to work eight (8) hour shifts will be employed under the 8/80 option and will receive overtime premium of one and one-half times ($1\frac{1}{2}$ x) their regular rate for all hours worked in excess of eight (8) hours per workday and for all hours in excess of eighty (80) in a fourteen (14) day pay period, in accordance with the provisions of the Fair Labor Standards Act, as amended.
2. Nurses employed to work alternative shifts (e.g., 10 or 12 hour shifts) will receive overtime premium equal to one and one-half times ($1\frac{1}{2}$ x) their regular rate for all hours worked in excess of forty (40) in a workweek.
3. A Nurse will receive premium pay equal to twice (2 x) his/her regular rate for all hours worked in excess of twelve (12) hours in a day.
4. Mandatory overtime will be restricted as provided in this subsection.
 - a. There shall be no mandatory overtime except as follows:
 - 1) a state of emergency as declared by city, county, state or federal authorities; or
 - 2) inability to transfer ED patients to other facilities due to lack of beds at other facilities and lack of staffed beds at SLRH; or
 - 3) unexpected multiple admissions.

- b. Mandatory overtime will be limited to extraordinary circumstances and all reasonable efforts will be made to obtain voluntary or external assistance.
 - c. The nurse will not be required to work more than two (2) hours beyond the end of his/her shift in the case of a 12-hour shift nurse, or more than four (4) hours beyond the end of the shift in the case of an 8-hour shift nurse; nor shall a nurse be required to work more than four (4) hours of mandatory overtime in any calendar month.
 - d. Each incident of mandated overtime will be documented by the manager or designee and copies provided to the nurse, staffing office, and the PPC. The PPC will review all mandated overtime for the purpose of identifying ways to minimize future incidents.
 - e. Mandatory overtime will be distributed equitably among the RNs in the unit.
 - f. In the circumstances described above, volunteers or RN(s) required to remain on duty will be compensated at double time (2x) for all hours worked beyond their regularly scheduled shift.
 - g. Mandatory overtime does not include the time required to finish charting, to give report, or to complete an assignment/procedure begun by the Registered Nurse(s) prior to the end of the shift; nor does it include time spent beyond the end of the shift engaged in emergent procedures (e.g., Code Blue) begun prior to the shift's end. In addition, mandated overtime due to an emergency declared by federal, state, county or city authorities will not be subject to the hours limitations of this section.
5. Double-Shift Overtime. When a Registered Nurse works a double shift (a continuous shift of fifteen and one-half (15½) hours or more), the RN will be paid at the rate of double the RN's hourly rate for all hours beyond eight (8) hours.

Section D: Workday and Workweek

The "workday" and "workweek" will be a standard period of time for all Nurses. The workweek will begin at 12:00 midnight on Sunday and end at 11:59 p.m. on the following Saturday. The workday is the twenty-four (24) hour period beginning at 12:00 midnight.

For those Nurses whose shifts overlap workdays/workweeks, the start time will be the determining factor to establish the workday or workweek (e.g., an 11:00 p.m. Saturday to 7:00 a.m. Sunday shift is considered a Saturday shift).

Section E: Shift Differential

1. P.M. Shift. A P.M. Shift is any shift in which four (4) or more hours fall after 3:00 p.m. and the P.M. Shift Differential is paid for all hours falling after 3:00 p.m. The P.M. Shift Differential is Three Dollars and Fifty Cents (\$3.50).
2. Night Shift. A Night Shift is any shift in which four (4) or more hours fall after 11:00 p.m., and the Night Shift Differential will be paid for all hours falling after 11:00 p.m. The Night Shift Differential is Five Dollars and Fifty Cents (\$5.50).
3. Alternative Shifts. A Nurse will be paid P.M. Shift Differential for hours worked between the hours of 3:00 p.m. and 11:00 p.m., and Night Shift Differential for hours worked between 11:00 p.m. and 7:00 a.m.
4. Hours worked beyond the end of the Nurse's shift, as an extension of the shift, will be paid the same differential as received for the final scheduled hour of the shift, if any.
5. Weekend Differential. A RN working any weekend hours (as defined in Section M) shall be paid a differential of Two Dollars (\$2.00) per hour.
6. When a nurse is absent from a scheduled shift due to illness/injury and is eligible for PTO/ESL/PSL, the nurse shall be paid their regular rate plus any applicable shift differential.

Section F: On-Call and Call-back (Short Notice Call)

1. Nurses assigned to on-call status shall be paid at the rate of one-half (1/2x) of their base straight time rate for each hour of such on-call time.
2. If called to work when on call status, the Nurse will be paid at the rate of one and one-half times (1½ x) his/her regular base straight time rate for all hours worked, with a minimum guarantee of three (3) hours of work, or pay in lieu thereof. Twelve (12) hour nurses who already completed their shift and are placed on call shall receive two times (2x) his/her regular base straight time rate for all hours worked when called, with a minimum guarantee of three (3) hours of work. The Nurse will receive on-call pay for hours worked or guaranteed when called back to work. Such premium for hours worked will cease at the commencement of the Nurse's next scheduled shift or when the Nurse is released from work, whichever is earlier.
3. If called by the Employer to work when not scheduled and while not on call, with less than two (2) hours' notice, the Nurse will receive two times (2x)

his/her hourly rate for all hours worked, with a guarantee of three (3) hours of work, or pay in lieu thereof. Such premiums will cease at the commencement of the Nurse's next scheduled shift or when the Nurse is released from work, whichever is earlier. This provision will not apply when a Nurse is recalled from a daily cancellation or is called in due to a disaster alert. Short call premium shall apply for Full-time and part-time RNs only.

4. When a Nurse is pre-assigned to be on call at the conclusion of his/her shift, the on-call time starts when the Nurse completes his/her assignments and leaves work. Time spent completing an assignment from the previous shift is considered normal overtime and does not trigger on call obligations. If the designated on call Nurse is asked to stay at the end of a scheduled shift to commence work on a new assignment that would have required another Nurse to be called in or stay beyond the end of their shift, on call and call-back time provisions shall then be applicable. For the purpose of this section, a "new assignment" shall mean assignment to a new procedure or case that occurs at or immediately after the end of the scheduled shift.

Section G: Meetings

1. Nurse attendance at mandatory meetings called by the Employer, including mandatory in-service education meetings, will be considered time worked.
2. Nurses attending mandatory meetings on a scheduled day off will be paid at straight time or one and one-half times (1½ x) their regular rate, whichever rate applies under Sections B and C, above. Nurses attending a meeting while on standby will be paid for their attendance in accordance with this Section G and not pursuant to the call-back provisions of Section F.2., above.

Section H: Reporting Pay

A Nurse who reports for work as scheduled without receiving prior notice that her/his assignment is not available, shall perform any nursing work to which s/he may be alternately assigned by the Hospital, subject to the provisions of contract articles regarding floating. If no alternate work is available, the Nurse shall be paid for the full shift, unless the Nurse volunteers to leave early.

Section I: Meals and Rest Periods

Each Nurse shall be granted a rest period of fifteen (15) minutes during each four (4) hours of work, without deduction in pay. A Nurse who misses one or more breaks during a shift shall be paid a penalty of one hour's pay, at the Nurse's straight time rate of pay, which includes shift differentials.

Nurses who work scheduled shifts of five (5) hours or more are entitled to a duty free unpaid meal period of thirty (30) minutes. A Nurse who misses his/her meal period shall be paid a penalty of one hour's pay, at the Nurse's straight time rate of pay, which includes shift differentials.

Nurses who work scheduled shifts of twelve (12) hours shall be granted two (2) unpaid meal periods, but may voluntarily waive the second 30-minute meal break. This waiver shall be in writing and in advance, and such waiver may be revoked by the Nurse at any time.

"Penalty Pay" hours as described in this Article do not qualify as hours worked in the calculation of overtime.

Section J: Rest Between Shifts

Each Nurse will have an unbroken rest period of at least twelve (12) hours between shifts, and of at least fifty-five (55) hours when the Nurse is given two (2) consecutive days off, and of at least thirty-one (31) hours between shifts when given a holiday or single day off. All hours worked within the above rest period will be paid at the rate of time and one-half ($1\frac{1}{2} \times$). All hours worked and paid at the rate of time and one-half for whatever reason count as rest periods for purposes of this Section. These rest between shift provisions may be waived upon the request of the Nurse and with the approval of his/her supervisor.

Section K: Relief in a Higher Classification (Charge Nurse)

When performing charge nurse duties or relief in a higher classification, a Nurse will receive Three Dollars and Seventy-Five Cents (\$3.75) per hour for all hours while performing such duties.

Upon implementation of the nurse to patient ratios as defined in Title 22, there shall be a RN assigned charge duties on each shift in the Med/Surg/Peds (MSP) unit.

The Charge Nurse shall not have a planned direct patient care assignment in order to be a resource. The Charge Nurse shall not be included in the calculation of the licensed nurse-to-patient ratios, i.e. out of count.

Nothing in this section shall preclude the Charge Nurse from temporarily taking a patient care assignment to relieve for breaks/meals, or assist with admissions, or provide support during peak/unplanned patient care activity.

Charge assignment shall be offered to a regular or part time Registered Nurse on the unit prior to being assigned to a Per Diem Nurse, provided that such Regular Nurse is, in the judgment of the unit director, fully qualified to perform all duties of the Charge Nurse.

Section L: Shift Rotation

The Employer will not require Nurses who have bid upon and accepted a position on a particular shift to rotate shifts, except for the purposes of training, orientation and/or precepting. Notwithstanding the preceding restrictions, the Employer may post and fill vacant positions which call for the rotation of shifts, and a Nurse may also voluntarily waive the prohibition against rotating shifts with respect to the position (s)he already holds, in which case (s)he may be scheduled for such shifts without his/her position being posted. If the Employer posts a rotating shift position, the position will not call for work on more than two (2) shifts, and will specify the shifts involved.

Section M: Weekends Off

1. A weekend is defined as Saturday and Sunday, except in the case of a night shift it means Friday and Saturday.
2. Guarantee of Weekends Off – The hospital shall grant each regular full-time and regular part-time RN every other weekend off. This provision may be waived on the written request of the individual RN.
3. If a Nurse is required to work one of two days of a weekend for which he/she would normally be off, the Nurse will be paid one and one-half times (1 1/2x) his/her regular rate of pay for such work, and will receive one and one-half times (1 1/2x) his/her regular rate of pay for work performed on each succeeding weekend worked until granted a weekend off. Neither weekend premium shall apply where work on a scheduled weekend off is performed by a Nurse on a voluntary basis. Example – If a Nurse is required to work and works any hours on a second (2nd) consecutive weekend – either Saturday or Sunday (or Friday or Saturday for night shift nurses) – the Nurse will receive one and one-half times (1 1/2x) his/her regular rate of pay for all hours on each succeeding weekend until granted a weekend off, unless waived by the Nurse.

This premium pay provision will not apply to a Nurse who is currently working an every weekend schedule or working more than every other weekend at his/her request. This provision may be waived on the written request of the individual nurse.

4. Nurses who are cancelled on their scheduled weekend shall be given credit for the weekend and shall not be required to make up such weekend.

Section N: Preceptees and Preceptor Differential

Newly hired nurses and nurses who have transferred into the facility or a new division will not be counted in the staffing complement while being precepted. The length of precepting

shall be based on the nurse's prior experience and/or training and determined by the Nurse Manager/designee. The preceptorship will be based on the existing unit/program-based orientation/precepting packet, which shall include skills checklists and competencies and shall include written objectives, measurable and time-limited goals. All documents are to be provided to the Nurse Manager/designee in accordance with the objectives and time-limited preceptorship goals.

A preceptor is an experienced and competent Staff Nurse who has received formal training to function in this capacity and serves as a role model and resource person for newly graduated nurses, including Interim Permittees, experienced nurses transferring to a department requiring different skills and competencies, paramedic interns, Nursing instructors and final semester nursing students. The Employer will ensure that the nurse selected to perform preceptor duties is provided the relevant (school specific) preceptorship program and competency/skills checklist.

RN II/III/IV selected for preceptor training shall have preceptor training paid for by the Employer and the RN shall be paid his/her regular hourly rate of pay for attending the training. Such nurses who participate in the training shall be required to serve as preceptors upon request from the Employer for a period of two (2) years, at which time the Employer and the nurse shall review and may agree on continued service as a preceptor for an additional two (2) years. The requirement to perform as a preceptor may be waived for good cause and the Employer will not unreasonably deny a request for waiver.

A nurse shall be paid a differential of Two Dollars and Fifty Cents (\$2.50) per hour for all hours worked as a preceptor, unless he/she chooses to use such for his/her clinical ladder advancement.

Section O: Paycheck Errors

In the event of a paycheck error resulting in an underpayment, a check for the underpayment shall be issued within twenty-four (24) hours (normal business day/hours, Monday through Friday, excluding recognized holidays). In the event that there is a dispute about wages owed, the Hospital will make all reasonable efforts to research and resolve the disputed amount in a timely manner.

Section P: Compensation for Per Diem Registered Nurses

Upon ratification of this Agreement, the Per Diem wage scale shall be fifteen percent (15%) above the current wage scale. Per Diem Nurses at the time of ratification shall be placed on the closest step at or above their current pay rate.

ARTICLE 5: PAID TIME OFF AND EXTENDED SICK LEAVE

Paid Time Off (PTO) and Extended Sick Leave (ESL) will be provided to the Nurses during the life of this Agreement in accordance with the Employer's PTO Policy and Procedure, applicable to all non-contractual employees at Saint Louise Regional Hospital.

Section A: Purpose of PTO

The Employer recognizes the need to provide eligible Nurses with paid periods of time away from work to rest and attend to personal needs.

PTO hours are used to provide pay for hours not worked due to:

1. Absences related to personal illness or accident not covered by disability income plans or ESL (or PSL if applicable).
2. Family needs/responsibilities.
3. Recognized holidays.
4. Vacation days.
5. Other reasons.

Paid leave for bereavement, attendance at educational programs, and jury duty are covered by separate policies found under those titles.

Section B: Eligibility for PTO/ESL

Nurses who work a regular schedule of 40 hours or more per pay period (i.e., benefit-eligible Regular Full-Time and Regular Part-Time) participate in the PTO program. PTO hours accrue immediately upon employment classification in a regular schedule as defined above and accrued hours may be used immediately with the Nurse's manager's approval.

Section C: PTO Accrual Schedule

PTO hours accrue based on a maximum of 80 hours each pay period. The following schedules are based on the maximum accrual. When applicable, Nurses move from one accrual level to the next accrual level one month prior to their anniversary date. Nurses paid for less than 80 hours in the pay period will earn PTO on a prorated basis.

	PTO Hours Per Pay Period	PTO Days Per Year	ESL Hours Per Pay Period	ESL Days Per Year	Total Days Per Year
First Year	8.62	28	1.85	6	34

2 nd through 4th years	10.16	33	1.85	6	39
5 th through 4th years	11.39	37	1.85	6	43
10 th + years	12.62	41	1.85	6	47

Section D: Accrual and Payout of PTO

PTO will not accrue during an unpaid leave of absence or suspension from duty. However, hours accrued until the unpaid period began are not lost and will be available to the Nurse.

1. Accrual Limit. Once a Nurse has accrued 420 PTO hours, accruals stop. If a Nurse has accrued 420 hours and uses PTO, thereby reducing the balance below 420, the accruals will resume the following pay period and continue until such time as the 420 limit is again reached. The accrual limit will be 420 hours.
2. Emergency Cash-out. Nurse may voluntarily elect to cash-out accrued and unused PTO only if a hardship arises, such as an immediate and substantial financial need arises, such as for the payment of medical care expenses previously incurred by the Nurse or his/her spouse or dependents, or the pending eviction or foreclosure on a mortgage on the Nurse's principal residence, or costs related to the purchase of the Nurse's principal residence other than mortgage, provided the Nurse cannot satisfy the financial need through reimbursement or compensation by insurance or otherwise, liquidation of the Nurse's assets, other distributions or nontaxable loans from retirement plans maintained by the Employer, or borrowing from commercial sources on reasonable commercial terms.

[Note: The emergency cashout provision is intended to permit withdrawals of accrued PTO in cash to those circumstances that are consistent with the Internal Revenue Service's position as it may be amended from time to time, concerning when such withdrawals may be made without creating "constructive receipt" of income issues, and as articulated for instance in its regulations regarding hardship withdrawals from 403(b) plans. The language contained in this provision is only intended to summarize the position as of the date of signing of this Agreement.]

3. Vacation Advance. Requests for advance PTO checks prior to vacation must be approved by the Manager and received by Payroll two (2) weeks prior to the last day worked.
4. Donation of Accrued PTO. Nurses may donate PTO to other SLRH Nurses who have exhausted their PTO balance. Such donations may occur where

another Nurse has experienced an unforeseeable hardship, which is defined as a severe financial hardship to the Nurse resulting from sudden and unexpected illness or accident involving the Nurse or the Nurse's dependent, loss of the Nurse's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as the result of events beyond the control of the Nurse. These could include such things as loss of home due to natural disaster, or a catastrophic illness or injury, which has created a financial hardship.

5. PTO Pay at Termination. A nurse who terminates employment with the hospital shall receive all accrued unpaid PTO earned up to the date of termination at the nurse's straight-time hourly rate.
6. Cash Out of PTO. A nurse may cash-out accrued, but unused PTO in increments of 8 hours twice during the calendar year. This cash-out will be at 100% of the value of the requested PTO hours to be cashed-out. The nurse's PTO account balance may not be reduced below eighty (80) hours subsequent to the PTO cash-out.

Nurses may elect PTO cash-out as follows:

- a. Nurses between the first (1st) and fifth (5th) years of service – up to eighty (80) hours in a calendar year.
- b. Nurses with five (5) or more years of service – up to one hundred twenty (120) hours in a calendar year.

Section E: Use of PTO to Cover Personal Illness/Disability

PTO hours are used to cover personal illness/injury lasting three (3) consecutive workdays (24 consecutive work hours for alternative shift nurses) or less. If the Nurse has insufficient PTO to cover this period, it is taken off without pay.

Regular full-time and part-time Nurses may use up to one-half of their annual PTO accrual, if available at the time of need, for time off to care for a sick child, parent, spouse, registered domestic partner or child of a registered domestic partner.

Section F: ESL Accumulation and Payout

In addition to PTO, Nurses have ESL to cover personal illnesses exceeding twenty-four (24) consecutive work hours. Full-time Nurses accumulate 1.85 ESL hours per pay period (i.e., 48 hours or 6 days/year). Part-time Nurses accumulate ESL based on a maximum of 80 hours paid per pay period prorated by the number of hours worked.

1. Accumulation Maximum. The maximum ESL accrual is 720 hours. Accruals stop at 720 hours and will not accrue again until the balance falls below 720

hours. After a Nurse has been off work due to personal illness/injury more than three (3) consecutive workdays, (24 consecutive work hours for alternative shift nurses) the Nurse may integrate use of their ESL account with State Disability.

2. Waiver of Waiting Period. If a Nurse is hospitalized as an inpatient or has surgery as an outpatient in a same-day surgery center or hospital during the first three (3) days of illness, or has oral surgery, ESL or PSL may be used on the first day. If administration and/or Nurse health removes an RN from his/her scheduled shifts for infection control reasons, the RN shall be eligible to access his/her ESL/PSL immediately.
3. Integration. When a Nurse is eligible to receive state disability or workers' compensation benefits, the Nurse must apply for such benefits. If these benefits do not equal the Nurses' normal wages, PTO, ESL, PSL, as appropriate, shall be used in an amount sufficient to equal but not exceed the Nurse's regular base pay.

Section G: Use of ESL for Illness While on PTO

If a Nurse becomes ill or injured while on PTO, the Nurse will continue to use PTO until the ESL waiting period, if any, as defined in F.2., has passed. The ESL waiting period, if any, will start the 1st day of the illness, which must be verified in writing by the attending physician.

Section H: Use of PTO During Sick Leave

If the Nurse has no accumulated ESL to cover extended illness, PTO may be used. If PTO is not available this time off shall be without pay.

Section I: Verification of Illness

Medical and/or other appropriate verification may be requested by the facility regarding absences or use of ESL. Medical verification by Nurse Health may also be required to confirm fitness to return to duty.

Section J: PTO Scheduling

1. Annual Use. Nurses are encouraged to use their full annual accruals each year. A minimum of 120 hours of PTO (prorated to scheduled hours) shall be taken by a Nurse during each full calendar year of employment.
 - a. A Nurse may split his/her scheduled PTO into segments of no less than one (1) week and no more than two (2) weeks. Notwithstanding the preceding limitation, at the written request of the Nurse, and with the

mutual agreement of the Employer, a Nurse may take scheduled PTO of more than two (2) consecutive weeks, or may set aside up to one (1) week of scheduled PTO to be taken in daily segments with at least thirty (30) days' advance notice and provided the Employer determines that staffing, patient care and other previously granted PTO requests permit.

- b. Nurses will submit their scheduled PTO requests, in writing, for the period from April 1st through March 31st, in priority order, by the preceding February 1st. The Employer will post a "Scheduled PTO" schedule by March 1st.
 - c. In granting scheduled PTO requests the Employer will consider staff availability, patient care needs and census trends, but will not prohibit the taking of scheduled PTO based solely on the season of the year.
 - d. In granting scheduled PTO requests, the Employer will attempt to accommodate the highest priority request possible for each Nurse before granting second requests, and will then attempt to accommodate the next highest priority request possible for each Nurse by seniority and so on.
 - e. Requests made after March 1st will be considered, and granted where appropriate, on a first-come, first-served basis. Managers will approve or deny such requests within two (2) weeks of submission of the PTO request.
2. Use of PTO For Recognized Holidays. Whenever possible, Nurses will be automatically scheduled off during recognized holidays. The Nurse shall use PTO, but may request in writing to take the time off without pay if the Nurse has less than 40 hours of accrued PTO.
 3. Recognized Holidays. The following holidays are recognized by the Employer.

New Year's Day	Independence Day
Martin Luther King Jr.'s Birthday	Labor Day
President's Day	Thanksgiving Day
Memorial Day	Christmas Day
 4. Pay for Working On A Recognized Holiday. Nurses required to work on one of the above holidays will be paid one and one-half (1 and ½) times their hourly rate for the first 12 hours worked and double time in excess of 12 hours (see 12 hour shift agreements, where applicable); provided, however, that a

Nurse required to work Christmas and Thanksgiving Day will receive double time (rather than time and one-half) for all hours worked on Christmas Day.

5. Major Holiday Off. The Employer will use its best efforts to grant each Nurse one of the following three (3) holidays off: Thanksgiving, Christmas Day and the day following Thanksgiving Day. The Employer will grant each Nurse requesting off on Christmas Day and/or Thanksgiving Day one of these two (2) days off before granting any Nurse both such days off. If more Nurses request Christmas Day off than can be accommodated, the requests will be granted by seniority in each unit/department consistent with the need for the presence of specific skills and abilities. The requests of Nurses denied a request for Christmas Day off one year will be considered first the following year, and if all such requests cannot be granted, they will be granted by seniority in each unit/department consistent with the need for the presence of specific skills and abilities. For subsequent years, the process will be repeated.
6. Holiday Shift Defined. A Nurse shall be paid for all hours worked on a holiday. (For example, if a Nurse is scheduled to work at 7:00 p.m. on July 3rd until 7:30 a.m. on July 4th, s/he will be paid only holiday pay from 12:00 a.m. on July 4th until 7:30 a.m.).
7. Newly Hired Nurses. A newly hired Nurse without sufficient accumulated PTO to cover a holiday, for which they are scheduled off, will be paid only to the extent of his/her accrued PTO hours.
8. Exclusion Of PTO And ESL Hours From Overtime Calculation. PTO and ESL hours are not used in calculating overtime pay.
9. Unscheduled Use Of PTO. Nurses may request PTO for unplanned absences in addition to those that are pre-scheduled. Unplanned absences could include dependent care needs, personal illness/injury or emergency. To be eligible for payment of unplanned absences, the Nurse must contact his/her supervisor as soon as she/he is aware of the circumstances necessitating the absence, and must notify the Nursing Supervisor at least two (2) hours prior to the start of the shift.
10. Use of PTO for Daily Cancellation. Managers may require Nurses to take time off due to low census or other financially related needs. When such time off is taken voluntarily or as required by the Employer, Nurses may elect to use PTO or take time off without pay.

ARTICLE 6: LEAVES OF ABSENCE

Section A: Leaves of Absence Defined

A leave of absence is any absence from work, whether paid, unpaid, or a combination of paid and unpaid absence, normally for more than one (1) consecutive week, other than vacation leave. However, family/medical and pregnancy disability leaves of a shorter duration will also be handled in accordance with this Article.

Section B: General Provisions, Procedures and Obligations

Except to the extent that this Agreement conflicts therewith, the general provisions, procedures and obligations applicable to leaves of absence will be those set forth in the Employer's policies and procedures regarding such leaves. Should the Employer make substantial changes to such policies, it will notify the Union of the changes in advance of their effective date and, upon the Union's request, will meet to explain and discuss their impact and the reasons therefore.

Section C: Types and Maximum Duration of Leaves

1. Medical Disability Leave. A Nurse is entitled to a leave of absence of up to a maximum of six (6) months for the Nurse's total absence due to disability or illness each year. Paid time off and unpaid leave will both be considered for purposes of determining the maximum leave available under this Section. This leave may be extended up to an additional six (6) months if the treating physician certifies that, in her/his medical judgment, the Nurse will be able to resume the essential functions of her/his job by the end of the extension.
2. Workers' Compensation. When a Nurse needs to take a leave of absence as a result of qualifying work-related injury, (s)he will be entitled to a workers' compensation leave. Duration of this leave will be determined on a case-by-case basis until the Nurse is able to return to work or is determined to be unable to return to work and the injury is determined to be permanent and stationary or maximum medical improvement (MMI). Nurses on workers' compensation leave are eligible to use their accumulated ESL from the first day of leave.
3. Statutory Family/Medical and Pregnancy Disability Leave. Nurses will be eligible for family/medical leave and pregnancy disability leaves as provided by applicable federal and state laws, and in accordance with and subject to the terms of the Employer's policies regarding such leaves. Such leave will be concurrent with other leaves under this Section to the extent permitted under applicable law.

4. Military Service. Military leave and the return to work thereafter will be handled in accordance with applicable law and the Employer's policy.
5. Personal Leaves. A leave of absence for personal reasons, or for reasons other than those specified in this Section, may be requested by an eligible Nurse. Such leaves may be granted for a period of up to thirty (30) calendar days, with up to two thirty (30) calendar day extensions each year, but the granting or denial of any such leave, including but not limited to determining the length of any leave granted, will be within the discretion of the Employer, consistent with applicable law. Requests for personal leave will not be arbitrarily denied.
6. Association Leave: If a nurse is elected or appointed to a position in the Union and provides a request to the Hospital, the nurse shall be granted an unpaid leave of absence of up to twelve (12) months.
 - a. A nurse shall request the leave as soon as the nurse learns of the need for such leave.
 - b. If the leave is for seven (7) days or more, the RN will provide notice to the hospital at least thirty (30) days prior to the start of the leave. Only one (1) such leave shall be granted at the same time. If the leave would create an undue burden on staffing, the Union, RN, and the Employer will review the request, staffing and available options. The Employer and Union agree the reasonable options will not be denied. The Hospital shall not be required to grant more than two (2) such leaves in a calendar year.
 - c. Benefits will continue through the end of the month in which the unpaid leave commences. The RN may continue benefits through COBRA.
 - d. If the leave is for one hundred twenty (120) days or less, the Nurse shall be reinstated in his/her original position. If the leave is longer than one hundred twenty (120) days, the Nurse shall be reinstated in his/her original position, if available. If the Nurse's original position is not available, the Nurse will have priority for any available position for which the Nurse is qualified.

Section D: Eligibility for Leave

With the exceptions of Workers' Compensation, military and pregnancy disability leaves of absence, or where otherwise required by law, only Regular Nurses who have been working continuously for six (6) months will be eligible for a leave of absence under this Section. Eligibility for family/medical leave will be determined under applicable law. Notwithstanding the foregoing, a Regular Nurse who has completed ninety (90) days of employment will also be eligible for Medical Disability Leave.

Section E: Use of PTO and ESL During Leaves

Nurses are required to use any accumulated ESL and/or accrued PTO, as applicable, in connection with leaves of absence granted pursuant to this Section, except to the extent otherwise required by law. Payments will be coordinated with state disability, workers' compensation or any other wage reimbursement for which the Nurse is eligible. At no time will a Nurse receive greater total combined payment than the Nurse's regular wage.

Section F: Leave Procedures

1. Request for Leave. Except in an emergency, requests for leaves of absence and any appropriate and/or required supporting information will be submitted by the Nurse to the Human Resources Department at least thirty (30) days in advance of the requested time off, or as much in advance as possible if the need is not known thirty (30) days in advance, on a form obtained from the Human Resources Department. Written approval or denial of the requested leave of absence will be given within fifteen (15) calendar days after submission of the request. Requests for an extension of a medical disability, workers' compensation, or family medical leave must be made as far in advance of the expiration of leave as possible, and no less than five (5) calendar days in advance, except where the Nurse can demonstrate that the need for an extension could not reasonably have been known that far in advance.
2. Emergency Leaves. In case of an emergency, the Nurse's supervisor will be notified immediately of the emergency and the reasons which require a leave, and the immediate supervisor will approve or deny the leave. If approved, and as soon as is possible thereafter, the Nurse will complete any necessary leave of absence application, and provide the required supporting information. Emergency leaves will be granted only for the reasons set forth in Subsections C.1., C.2., C.3., C.4., and C.5 above, and the granting of approval will not affect the Employer's right to request subsequent verification of the reasons given when the leave was requested.
3. Commencement of Leave. Except as otherwise required by law, the leave will be deemed to have commenced from the first day of continuous absence for the reason for which the leave is granted.

Section G: Verification

As a condition to authorizing, continuing or extending a leave of absence, the Employer may require verification (on forms to be obtained from the Human Resources Department) of the reasons given by the Nurse who is requesting the leave. In addition, the Employer may periodically request (typically, once per 30 days) updated information and/or

documentation on the continued existence of reasons requiring a leave, and the Nurse's intent to return from leave.

Section H: Return From Leave

Except as otherwise provided by law, a nurse returning to duty in accordance with an authorized medical disability leave of ninety (90) days or less shall be reinstated in the same classification, position, shift, unit, and scheduled hours in which the nurse was employed before his/her absence. However, if conditions in the hospital have so changed that is not feasible to reinstate the nurse in such a manner (such as the elimination of the position or reduction in force in accordance with Article 12, Section A) the hospital will reinstate the nurse to as nearly comparable position and such nurse is eligible for all rights as described in Article 12, Section A.

Except as otherwise provided by law, a nurse returning from a leave in excess of ninety (90) days in accordance with an authorized medical leave will be offered:

1. His/her choice of any available position for which he/she is qualified, or;
2. Per Diem status in his/her original unit and shift and shall have reemployment rights in accordance with the contract;
3. Lay off with recall rights to the same unit/shift/status she/he had prior to the leave.

A Nurse returning from a medical disability leave, family/medical leave due to the Nurse's own disability, or workers' compensation leave, must provide the Human Resources Department with a clearance to resume duties from the Nurse's physician, as permitted by law, which clearance will be placed in the Nurse's health file. The Employer may seek verification from a physician designated by it, as and to the extent permitted by law.

Section I: Failure to Return From Leave

Any Nurse who does not return to work on the due date in accordance with the terms of an approved leave will be terminated as of that date, unless a leave of absence extension has previously been requested in writing by the Nurse and granted in writing by the Employer, prior to the return due date. If the Employer denies an extension, the Nurse must return to work as of the original date authorized. Failure to return on the due date in accordance with the terms of a leave extension will also result in termination effective as of that date.

Section J: Performing Work While on Leave

Performing work for another employer during an authorized leave of absence that is similar in nature to the work performed for the Employer constitutes cause for dismissal unless authorized in advance by the Human Resources Department.

Section K: Adjustment of Seniority Date and Anniversary Date

Except where otherwise required by law, if a leave of absence is in excess of the initial maximum leave available for the type of leave, the Nurse's seniority date and his/her anniversary date for compensation purposes will be adjusted forward for the period of the leave that exceeds that period. The Nurse will retain previously accrued or accumulated but unused paid time off benefits, if any, and to the extent that they are not exhausted during the leave, and will retain his/her benefit accrual status, but no such benefits will accumulate during the period of any unpaid leave.

Section L: Bereavement Leave

When a death occurs in the immediate family of a benefited Registered Nurse, the Nurse shall be entitled to a leave of absence of up to forty (40) hours with pay within seven (7) days of the death. A Registered Nurse working a regularly scheduled three (3) day twelve (12) hours per day workweek shall be paid up to thirty-six (36) hours for such leave, at the applicable formula rate. Immediate family is defined as spouse, legally domiciled adult, sister, brother, daughter, son, mother, and father, current mother-in-law, current father-in-law, current daughter-in-law, current son-in-law, parent or child of a legally domiciled adult, stepchildren, grandchildren, and the RN's own grandparents. If an RN is required to travel to a funeral or memorial service occurring more than two hundred (200) miles from the Hospital, upon request, the RN will be granted an additional two (2) days of his/her accrued vacation/holiday or unpaid leave. A part time Nurse shall receive bereavement leave in the same ratio that the Nurse's regular schedule bears to a Full Time Schedule.

Section M: Education Leave, Tuition Reimbursement and Certification

1. General. The Employer will provide, to each Regular Full-time Nurse, up to forty (40) hours of education leave each calendar year for the purposes, and under the conditions, described in this Section. Regular Part-time Nurses will be eligible for such leave in the proportion that their regularly scheduled hours bear to a full-time schedule. Leave will also be prorated for any calendar year in which the Nurse is employed in a Regular status for less than the full calendar year. Unused education leave hours for which a Nurse is eligible may not be carried over from one calendar year to the next.
2. Definition of Qualified Leave. Education leave may be used for state or nationally recognized courses for which CE credit is available, which also involve specific skills: that are utilized by the Nurse in his/her job; that would improve or increase his/her skills and knowledge in the performance of his/her job; or that would enable him/her to qualify or remain qualified for another position with the Employer. Examples could be regular CE accredited courses that relate to the duties of the Nurse on his or her unit, as well as courses for MICN, CCRN, ACLS, PALS, NALS and Oncology Nurse Certification, etc., which are either necessary to retain the Nurse's current position, or are

necessary for him/her to move into a new position in which (s)he is interested. The Employer may require a Nurse to utilize eight (8) hours (six (6) hours in the case of a Part-Time Nurse) each year in the Employer's staff education programs, which will be job related, will qualify for continuing education credit, and will be at no cost to the Nurse.

3. Home Study Courses. RNs eligible for Educational Leave may use BRN acceptable home study courses for Continuing Education Units. BRN acceptable home study courses are defined as courses of continuing education, the extent which must be relevant to the practice of nursing. Learning experiences are expected to enhance the knowledge of the Registered Nurse at a level above that required for licensure. Courses must be related to the scientific knowledge and/or technical skills required for the practice of nursing, or be related to direct and/or indirect patient care. Courses related to the scientific knowledge for the practice of nursing include basic and advanced courses in the physical, social, and behavioral sciences, as well as advanced nursing in general or specialty areas. Content which includes the application of scientific knowledge to patient care in addition to advanced nursing courses may include courses in related areas, i.e. human sexuality, death, dying, and grief; foreign language (conversational); therapeutic interpersonal relationship skills; pharmacology; and those relating to specialty areas of nursing practice.
4. Application For Leave Procedure. In order to receive paid education leave, the Nurse must apply for the leave as far in advance as (s)he reasonably can, and in no event less than forty-two (42) days prior to the date(s) upon which the course is to be given. An RN who submits a request for Educational Leave that is less than forty-two (42) days prior to the date of the course, will have the request granted, providing the RN obtains coverage of comparable competencies (RN). This coverage shall not incur overtime. When submitting his/her request, the Nurse must submit to his/her manager the course curriculum and information about its relationship to the attainment of advanced skills as described above.
5. Approval of Leave Requests. The Manager will determine whether the course or program qualifies for paid leave. Approval for qualified education leave that was requested in a timely manner in accordance with the procedure described above will be subject to staffing requirements, and will not be unreasonably withheld. If the availability of a course first becomes known less than eight (8) weeks in advance, the Nurse may apply to have it approved for educational leave, but whether it is approved will be in the sole discretion of the Manager.

6. Payment for Leave. Payment for approved education leave will be made upon submission by the Nurse of evidence of satisfactory completion of the course for which the leave was requested and approved, and will be based upon the Nurse's scheduled shift hours.
7. Attendance At the Direction of the Employer. If the Employer requires a Nurse to attend a particular course or program for the benefit of the Employer (other than courses or programs that must be attended to maintain the required skills or qualifications for the position), the hours spent attending the course or program will be paid, but will not count against the education leave hours for which the Nurse is eligible. Any nurse requesting to attend PALS and ACLS certification will have the course provided at no cost to the Nurse, and the hours will not be counted against education leave. The two (2) day ACLS recertification will be available for Nurses in all departments, excluding ICU and Emergency Department.
8. Supplemental Leave. The Employer may also elect to approve additional education leave for a Nurse or Nurses, either paid or unpaid, where it determines that it is appropriate to do so, but its decision in any given case(s) will be in its sole discretion and will not serve as precedent in any other case.
9. Dissemination of Information Acquired During Leave. The Employer may request a Nurse to make a presentation for other Nurses regarding the information learned through the course, and the Nurse will not unreasonably refuse the request. Such presentation, if requested, will be considered time worked, and paid accordingly.
10. Tuition Reimbursement.
 - a. Nurses must be employed by Saint Louise Regional Hospital for at least six (6) months to be eligible for tuition reimbursement.
 - b. Completed Tuition Reimbursement Form will be submitted to the Department Director to determine if the course meets eligibility requirements. Tuition Reimbursement Form must be approved prior to the start of the course. Upon successful completion of the course, the Nurse shall submit to the Department Director:
 - 1) The approved Tuition Reimbursement Form.
 - 2) The receipts for books and tuition.
 - 3) A copy or the final grade report (minimum acceptable grade of "C"), or certificate which is evidence of satisfactory completion.

- c. Reimbursement shall be within two (2) weeks of the submission of receipts and certification of completion of the course and/or transcripts.
 - d. d. The Nurse shall be reimbursed up to \$2,000 per year (July 1 to June 30) for tuition and books.
11. Certification. The hospital shall reimburse a nurse upon successful certification (and submission of certification and receipts) in a recognized specialty for the cost of certification. Reimbursement as described in Section 10 – Tuition Reimbursement shall be available for both initially obtaining, as well as maintaining such certification.

ARTICLE 7: JURY DUTY AND COURT APPEARANCE

Section A: Jury Duty

1. A Nurse is to present a Notice To Report to jury duty to his/her manager immediately upon receipt and is to cooperate in seeking to be excused or deferred if the Employer deems it necessary in the interests of patient care and staffing.
2. Nurses are eligible for jury duty pay for up to a maximum of four (4) weeks each calendar year, and may thereafter utilize PTO. The Nurse will receive pay for jury duty upon submission of a Proof of Duty Statement to his/her manager, showing the time called and the time released, if provided.
3. The Hospital may excuse a Night Shift either the night before or the night after the Nurse is to report for jury duty.
4. If a Nurse who regularly works a Day or P.M. Shift is excused before the end of his or her shift, the Nurse will immediately advise his/her Manager or Supervisor by telephone. In such a case, a Nurse will not be required to report back to work if the Nurse has served eight (8) or more hours on jury duty. If a Nurse has served less than eight (8) hours on jury duty, the Nurse may be required to report back to work, but the combination of hours worked and hours spent on jury duty shall not exceed eight (8), except to complete an assignment, charting, etc., unless the Nurse agrees otherwise. No Nurse will be required to report to work on other than the Nurse's previously scheduled shift. In the case of the P.M. Shift, the Nurse will work the difference in hours as close to the commencement of the shift as is practical.
5. A Nurse who lives more than thirty-five (35) miles from the Hospital will be given the option to not be scheduled for work and use PTO (if accrued) if placed on telephone standby by the Court.

Section B: Court Appearances

1. All Nurses are eligible for pay associated with work-related court appearances, when the Nurse is appearing on behalf of the Employer. When a Nurse receives a subpoena for such an appearance, the Employer will reimburse the Nurse for the round trip mileage between the worksite and the place of appearance unless the Nurse receives such reimbursement with the subpoena.
2. If the time of the appearance is different than the Nurse's normal work shift, the Employer will also pay for the time spent traveling, waiting and testifying

at the Nurse's regular rate of pay (including shift differential if it applies to the hours relating to the appearance). These hours will apply toward work hours for the overtime calculation.

3. Should a Nurse receive, from a court or sources other than the Employer, witness fees or mileage reimbursement, the Nurse shall forward such fees and reimbursement to the Employer when the Employer has paid the Nurse for the court appearance and/or mileage.

ARTICLE 8: HEALTH AND WELFARE PROGRAM

During the life of this Agreement the Employer will provide eligible Regular Full-time and Part-time Nurses covered by this Agreement with the same health, dental, vision, life, accidental death and dismemberment, dependent life and long term disability insurance options, and the same medical reimbursement account and dependent care account options, as are provided to its other Nurses pursuant to the FlexAbility Program.

A Nurse hired into a Regular Full-time position, or into a Regular Part-time position involving a regular schedule of twenty (20) or more hours per workweek or forty (40) or more hours per pay period, and Nurses who convert to a Regular Full-time status or to a Regular Part-time status as described above from a Per Diem status, will be eligible for FlexAbility Program benefits on the first of the month following completion of sixty (60) days in Regular Full-time status or in such Regular Part-time status.

The premiums will be those charged for other Nurses in the DCHS and the benefits provided under the FlexAbility Program are subject to the terms, conditions, limitations and other provisions of the FlexAbility Program and the respective plan documents, and the plans making up the FlexAbility Program may be altered, amended, discontinued, replaced or augmented; provided, however, that the Employer will notify the Union in writing of such changes in benefits or plan provisions in advance, and will, upon request of the Union, meet to explain the changes and the reasons therefore; and provided further that if the premiums are to change the Employer will notify the Union in writing in advance, and will, upon request, meet to explain the changes and to negotiate with the Union concerning them prior to implementation.

ARTICLE 9: RETIREMENT

Section A: Retiree Health Benefits

A Nurse who retires on or after age fifty-five (55) will be entitled to continued Nurse only health insurance at the then existing COBRA rate for current Nurses until age sixty-five (65) or until the Nurse is eligible for Medicare, whichever is sooner, according to the following formula:

1. If the Nurse has ten (10) or more years of benefitted service but less than fifteen (15) years of benefitted service, the Nurse will pay 100% of the COBRA rate.
2. If the Nurse has fifteen (15) or more years of benefitted service but has less than twenty (20) years of benefitted service the Nurse will pay seventy-five percent (75%) of the COBRA rate.
3. If the Nurse has twenty (20) or more years of benefitted service the Nurse will pay fifty percent (50%) of the COBRA rate.
4. If the Nurse has twenty-five (25) or more years of benefitted service, the Nurse will pay twenty-five percent (25%) of the COBRA rate.

A Nurse who elects coverage beyond COBRA statutory coverage must make his/her election in writing within thirty (30) days of retirement, and failure to make such an election waives any right to continued health insurance with the exception of such COBRA coverage as is required by law.

A Nurse who elects coverage but does not maintain coverage by making regular, timely payments will lose coverage and such coverage will cease and may not be revived if the Nurse fails to comply with this action.

In order to qualify for this benefit, the Nurse must have at least five (5) years of continuous benefitted service on the date of retirement and, other than that period, whole years of benefitted service may be aggregated so long as the Nurse was continuously employed by the Employer. Continuous employment will be as defined in this Agreement, or if not so defined, then by the Employer's policy.

ARTICLE 10: SCHEDULING

Section A: Posting of Schedules

Nurses' work schedules and days off must be posted at least fourteen (14) days in advance of their commencement.

Section B: Changes in Schedule

Once posted, the schedule will not be changed with less than fourteen (14) days' notice without agreement of the Nurse, except in the case of an emergency as declared by federal, state or local government agencies. Nurses may change days off with other Nurses in their department/unit, provided overtime or other premium pay does not result and provided they have at least equal skills and abilities, so long as the change is submitted to the appropriate immediate supervisor, and is approved in advance by the appropriate immediate supervisor(s) in his/her/their reasonable discretion. Once the schedule is posted, changes are to be submitted fourteen (14) days in advance. Changes submitted less than fourteen (14) days in advance may be granted at the supervisor's discretion.

Section C: Schedule Development, Additional Work and Overtime

1. In development of the work schedule Nurses shall be scheduled in the following order:
 - a. Full-Time RNs working up to their status.
 - b. Part-Time RNs working up to their status.
 - c. Part-time RNs up to Full-time, as long as no overtime is incurred.
 - d. Traveler RNs.
 - e. Per Diem RNs working up to Full-time, as long as no overtime is incurred.
2. Additional work is work that is not pre-scheduled. This includes work created by unscheduled absences of a regularly scheduled Nurse, but does not include vacancies created by leave of absences or by the separation of a regularly scheduled Nurse. Guaranteed registry and travelers are considered as pre-scheduled.
3. The Employer shall offer additional work to Nurses in the same department/division as long as the additional work would not cause the Nurse to incur overtime liability. Additional work will be offered by rotation according to the following preference list:

- a. Regular Full-Time Nurses who have been House Cancelled, except those who have volunteered to be cancelled.
 - b. Regular Part-Time Nurses who have been House Cancelled, except those who have volunteered to be cancelled.
 - c. Regular Part-Time Nurses.
 - d. Per Diem Nurses.
 - e. Registry.
4. If the Employer cannot fill the additional work hours with Nurses working straight time, the additional hours will be offered to Nurses who have indicated their availability for overtime, on a rotational basis.
 5. Full-Time and Part-Time Nurses will submit, in writing, the days and shifts they are available for additional work and overtime.
 6. The above preference order in Paragraph 3 above will not result in bumping Nurses out of work which is prescheduled.

ARTICLE 11: PERFORMANCE EVALUATIONS

The Employer will evaluate the performance of Nurses, in writing, at the completion of their probationary period, and not later than by the end of the fourth month of employment. Thereafter, the Nurse's performance will be evaluated annually. The nature of the employment evaluation will be determined by the Employer, the evaluation will be discussed with the Nurse by a member of Nursing Administration, and the Nurse will sign the evaluation to indicate that it has been reviewed with him/her. The Nurse's signature will not, however, be construed to indicate the Nurse's agreement with the evaluation. The Nurse may submit written comments concerning the evaluation, and is encouraged to do so. Any such written response will be attached to the evaluation, and placed in the Nurse's personnel file along with the evaluation. A copy of the evaluation will be given to the Nurse. Evaluations will not be subject to the grievance and arbitration procedures of Master Article 15.

ARTICLE 12: SENIORITY

Section A: Reduction In Force

1. Severance: Laid off regular full-time and part-time Registered Nurses shall receive severance pay according to the following:

Length of Service	Severance
At least 90 days but less than 3 years	2 weeks
3-5 years	3 weeks
6-7 years	4 weeks
8-9 years	5 weeks
10-14 years	6 weeks
15 or more years	8 weeks

2. Temporary Layoffs. “Temporary” for the purposes of this subsection will be a period of up to thirty (30) days. In the event the Employer must temporarily reduce the number of Nurses, or the number of hours, due to operational or other reasons, it will do so on a day-by-day basis (“daily cancellation”).

The Employer will cancel personnel in the following manner and order, provided that the Nurses or other employees with the necessary qualifications and skills and ability can be retained through such rotation on a given day:

- a. Registry Nurses;
- b. Nurses scheduled for shifts that would involve overtime or other premium pay;
- c. Nurses who are assigned to the classification and work area on the day and shift who volunteer to take a day off without pay;
- d. Guaranteed registry and travelers from the unit and shift;
- e. Per Diem Nurses assigned to the classification and work area on the day and shift.
- f. Regular Nurses working additional shifts at straight time pay.

- g. Regular Nurses assigned to the classification and work area on the day and shift, by rotation.

The Employer may cancel a Nurse working a twelve (12) hour shift for the entire shift or for only that portion corresponding to the eight (8) hour shift for which a cancellation is occurring. (For example, a Nurse working from 7:00 p.m. to 7:30 a.m. may, at the Employer's determination, be cancelled for the entire shift, for only that portion from 7:00 p.m. to 11:00 p.m. if the cancellation is only for the P.M. Shift, or for only that portion from 11:00 p.m. to 7:30 a.m. if the cancellation is only for the Night Shift.). Unless notified by the Employer to the contrary, the Nurse will be expected to work the portion of the shift for which (s)he was not canceled, if any.

Where the need is known sufficiently in advance to do so, the Employer will attempt to notify affected Nurses of the need for a day off without pay at least two (2) hours in advance of the Nurse's scheduled shift (or before the portion of the shift being cancelled in the case of a 12-hour shift), and earlier if possible.

The taking/canceling of such a day without pay will have no effect on a Regular Nurse's seniority or accrual/accumulation of benefits. Regular Nurses being canceled/taking a day off will be permitted to use accrued PTO if they so choose.

The Employer may elect to place a Nurse being cancelled for the day under this provision in an on call status, in accordance with Article 4.F., for the shift for which (s)he is cancelled. If a Nurse who has been cancelled and placed on call is called in to work during the shift for which (s)he is cancelled, (s)he will be guaranteed a minimum of three (3) hours work or pay in accordance with Article 4.F plus shift differential and weekend premium if applicable. Where the Nurse has elected to utilize PTO and is subsequently called back to work, PTO will be utilized only in the amount necessary so that, when combined with the pay for being called back, the paid hours will equal the hours for which the Nurse was scheduled.

3. Limitation on Temporary Reductions in Force.

Notwithstanding the current cancellation language in Article 12.A.2, the Employer agrees as follows:

- a. Where RN coverage for meal and break relief is required, one RN subject to cancellation per shift shall, at his or her option, by seniority, be allowed to take a meal or break relief assignment, or other appropriate nurse associated duties as determined by management, so long as the RN has appropriate competencies.
- b. When non-guaranteed registry RNs are performing nursing duties, and an RN is slated for cancellation, RNs subject to cancellation shall, at their option, by seniority, be allowed to replace the registry RNs, so long

as the RN has the appropriate competencies to substitute for the registry RN.

4. Other Procedures. The parties may mutually agree upon a procedure to follow other than that set forth in Section A where they deem it appropriate to do so.

ARTICLE 13: NO STRIKE/NO LOCKOUT

The parties agree that there will be no stoppages, slowdowns, sickouts, interruptions of work, strikes, sympathy strikes or any other forms of concerted disruption or interference by the Union or by Nurses, nor will there be lockouts by the Employer, during the life of this Agreement.

ARTICLE 14: PERSONNEL POLICIES

The Employer's personnel policies will continue to apply to covered Nurses, provided they are neither in conflict with this Agreement nor unreasonable. Covered Nurses will receive a copy of any revised policies, a copy of the employee handbook and a copy of any individual written revisions to the handbook. If appropriate to ensure the Nurses understand a change in policy, the Employer will conduct in-services. A copy will also be forwarded to the Union, and, upon request of the Union, the Employer will meet to explain any revisions to its policies.

ARTICLE 15:FLOATING

Section A: General

The Nurse is always responsible for providing safe, competent, nursing care. Therefore, before accepting a patient assignment, a nurse must have the necessary knowledge, judgment, skills, and ability to provide the required care.

Based upon patient care and staffing considerations, the Employer may require nurses to float to another department/unit within their Division/Cluster, in accordance with applicable laws and regulations, including Title 22 of the California Code of Regulations and as provided in this Article. The Employer will make reasonable efforts to float a Nurse to another department within his/her Division/Cluster in the Hospital in lieu of a scheduled shift cancellation.

Management and Nurses have a crucial responsibility to assure appropriate and competent nursing care. It is the joint responsibility of management and the Nurse to determine whether a Nurse is clinically competent to perform the nursing care requirement outside the Division/Cluster.

Floating outside a designated Division/Cluster is encouraged when staff is willing and possess the necessary competencies and experience, and appropriate resource personnel are available. A Nurse shall not be required to float outside his/her Division/Cluster, except in emergency situations as declared by city, state, or federal authorities.

Nurses desiring to float outside their designated Division/Cluster may be floated to assist other Nurses (general nursing duties, starting IVs, assisting with procedures, etc.) or for orientation, cross-training, and competency validation to other units in the Hospital that the Nurse has indicated an interest in developing skills for the purpose of future floating.

Section B: Divisions

The Employer may require a nurse to float within his/her Division.

Division 1

ICU

Emergency

Division 2

Medical/Surgical/Peds

Wound Care

Division 3 (Maternal Child Health)

Labor and Delivery

Mother Baby

Nursery

Division 4

Surgical Services

Section C: Order of Floating

Nurses will float in the following order, provided that sufficient Nurses will remain in the unit/department having the necessary skills, competencies and abilities:

1. Volunteers
2. Registry*
3. Travelers*
4. Per Diem Nurses
5. Regular Nurses by rotation.

The Employer will develop a system to track float rotation accurately.

(*Note: There may be circumstances where a registry or traveling nurse may be retained on the unit rather than floated because (s)he has not been oriented to, or determined to be competent on the unit to which a Nurse is to be floated. The employer will make reasonable efforts to obtain registry and traveling nurses who are willing to float within their areas of competency.)

ARTICLE 16: SOCIAL SECURITY PROGRAM

The Employer will continue to participate in the Federal Insurance Contribution Act tax (FICA).

ARTICLE 17: CALIFORNIA UNEMPLOYMENT AND DISABILITY INSURANCE

All Nurses will be covered by the California Unemployment Insurance Act, with the premiums for such coverage to be paid by the Employer. In addition, all Nurses will be covered by the California Unemployment Compensation Disability Benefits or its equivalent with the premiums for such coverage to be paid by the Nurses.

ARTICLE 18: ORGANIZING RIGHTS

Section A: Statement of Philosophy

The Employer and the Union support the philosophy that positive relationships arise from shared creativity and responsibility; the recognition and protection of basic human rights of workers; and the representation of workers' interest in those decisions that affect them in a way that assures that their voice will be consistently and effectively heard.

The Employer also supports the right of workers to form and join an employee organization and to choose not to do so. Both the Employer and the Union acknowledge that it is important when employees are making such a choice that accurate information about the goals and vision of any organization that is seeking to represent them be available to the employees to assist them in making their decision.

Section B: Notice of Intent to Organize

When employees have begun signing union authorization cards in an appropriate unit, as defined herein, the Union shall promptly notify the Employer of the employees in that unit of its intent to organize a group of employees and identify an appropriate unit.

Within seven (7) days of the Union's notification to the Employer of its intent to organize an appropriate unit, the Employer and the Union will distribute a jointly signed reproduction of the Recognition Procedure as described herein.

Section C: Appropriate Unit Defined

The parties agree that, except as provided herein, an appropriate unit is that which is defined by the National Labor Relations Board for healthcare providers.

Bargaining units pursuant to this provision will be on a single facility basis, and shall be as set forth in the National Labor Relations Board Health Care Rules.

Section D: Determination of Majority Status/Election

Immediately upon the filing of an NLRB petition by CNA for any facility covered by this Agreement, the facility will agree to a consent election, and shall consent to conduct the CNA's requested election at dates and times within forty-five (45) days after the filing of the petition with the NLRB, provided such dates and times are acceptable to the NLRB. In any such consent election, all of the provisions of this Agreement, including the Code of Conduct, will apply.

However, any objections to such consent election must be filed and resolved pursuant to the Arbitration section of this Agreement, and all parties acknowledge and submit to the arbitrator's exclusive authority to rule on such objections and any determinative challenges and the parties waive their rights to have the NLRB resolve any objections or determinative challenges.

Within five (5) days after the election is directed by the Board, the Employer will provide the Union with a list of names, addresses, and current telephone numbers of employees in the unit the Union seeks to organize, subject to applicable laws.

The Employer agrees to recognize the Union as the collective bargaining agent on behalf of employees in any appropriate unit, as defined herein, where a majority of employees vote for CNA representation, subject to applicable law.

Section E: Code of Conduct

This Code of Conduct shall apply to any elections, including decertification elections of any kind.

1. Employees shall be entitled to make a decision regarding union representation free from coercion, intimidation, promises or threats.
2. The Employer and the Union agree that they will communicate only which they believe will be factual and will do so in a way that does not personally attack officers, executives, representatives, employees, or sponsors of either the Employer or the Union.
3. The Employer agrees that it shall not utilize professional persuaders to conduct an anti-Association campaign. Likewise the Employer shall not provide assistance to any individual or group who may wish to pursue an anti-Association campaign.
4. The Employer will not inform or imply to eligible voters that they will lose benefits, wages, or be subject to less favorable working conditions by unionizing.
5. The Employer agrees that its authorized communication with employees regarding unionization shall take place in group meetings and that it shall not initiate one-on-one conversations with employees about Union representation. Employee participation in Hospital initiated group meetings for the purpose of discussing unionization shall be voluntary.
6. During the period following provision of notice of “Intent to Organize” as described above, the parties will meet periodically to regulate adherence to the Code of Conduct.

Section F: Dispute Resolution and Arbitration

If one party believes that the other party has violated this Agreement, the affected party should contact the other party’s representative by phone or fax. The parties should have a direct conversation within 48 hours to try to resolve the issue.

If the parties are unable to resolve a dispute, either party may submit the unresolved dispute about compliance with or construction of the Agreement for final and binding resolution by Barry Winograd and John Kagel as the permanent Arbitrators selected for deciding any dispute under this Agreement. In the event they are unavailable, the parties will select a substitute by mutual agreement or through the American Arbitration Association (“AAA”). The Arbitrator shall have discretion to establish procedures for the resolution of such disputes that may include submission of evidence by the parties, and is authorized to develop and order remedies. The Arbitrator shall not be limited in the scope of his/her remedies. All such disputes shall be resolved within 14 days of the submission of the issue unless the issue concerns an alleged violation pertaining to conduct raised before the election, in which case the Arbitrator shall rule within 48 hours of the issue’s submission to him/her.

The parties agree that, upon filing a petition with the Board, the Union and the Employer will meet promptly and will exert their best efforts to identify and resolve issues concerning supervisors, managerial employees, and confidential employees. Should any disagreements arise that cannot be resolved between the parties, the matter shall be resolved according to the arbitration procedure described in this section.

ARTICLE 19: TERM OF AGREEMENT

This Agreement will become effective as of December 22, 2016, except when another date is specifically provided elsewhere in this Agreement, and will continue in effect through December 21, 2020. Beginning with December 22, 2020, this Agreement will be automatically renewed and extended from year to year thereafter, unless either party serves notice in writing upon the other party, not less than ninety (90) calendar days prior to December 22, 2020, or any anniversary date thereof, of its desire to terminate or amend this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ___ day of _____, 2018.

CALIFORNIA NURSES ASSOCIATION

By:

Rose Ann DeMoro
Executive

By:

Phuong Tran
Labor Representative

SAINT LOUISE REGIONAL HOSPITAL

By:

Steven Sharrer
Verity Health System
Chief Human Resources Officer

By:

Donna Fischer, RN

By:

William McNamara, RN

By:

Michele Moseley, RN

APPENDIX A: WAGES

SLHR Current								
As of first full pay period April 2013								
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6 (6th – 9th yr)	Step 7 (10th – 19th yr)	Step 8 (20th yr)
Staff Nurse I	49.07							
Staff Nurse II	51.73	54.2	57.02	59.92	62.86	65.95	67.26	68.62
Staff Nurse III	54.06	56.84	60.04	62.63	66.15	69.05	70.75	71.81
Staff Nurse IV	57.88	60.76	63.83	67.04	70.39	73.93	75.39	76.89

SLHR Ratification								
As of first full pay period after December 22, 2016								
ATB	5%							
Basis	SLRH Current							
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6 (6th – 9th yr)	Step 7 (10th – 19th yr)	Step 8 (20th yr)
Staff Nurse I	51.52							
Staff Nurse II	54.32	56.91	59.87	62.92	66.00	69.25	70.62	72.05
Staff Nurse III	56.76	59.68	63.04	65.76	69.46	72.50	74.29	75.40
Staff Nurse IV	60.77	63.80	67.02	70.39	73.91	77.63	79.16	80.73

SLHR Year 2								
As of first full pay period after December 22, 2017								
ATB	5%							
Basis	SLRH Ratification							
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
						(6th – 9th yr)	(10th – 19th yr)	(20th yr)
Staff Nurse I	54.10							
Staff Nurse II	57.04	59.76	62.86	66.07	69.30	72.71	74.15	75.65
Staff Nurse III	59.60	62.66	66.19	69.05	72.93	76.13	78.00	79.17
Staff Nurse IV	63.81	66.99	70.37	73.91	77.61	81.51	83.12	84.77

SLHR Year 3								
As of first full pay period of December 22, 2018								
ATB	4%							
Basis	SLRH Y2							
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
						(6th – 9th yr)	(10th – 19th yr)	(20th yr)
Staff Nurse I	56.26							
Staff Nurse II	59.32	62.15	65.37	68.71	72.07	75.62	77.12	78.68
Staff Nurse III	61.98	65.17	68.84	71.81	75.85	79.18	81.12	82.34
Staff Nurse IV	66.36	69.67	73.18	76.87	80.71	84.77	86.44	88.16

SLHR Year 4								
As of first full pay period after December 22, 2019								
ATB	4%							
Basis	SLRH Y3							
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
						(6th – 9th yr)	(10th – 19th yr)	(20th yr)
Staff Nurse I	58.51							
Staff Nurse II	61.69	64.64	67.98	71.46	74.95	78.64	80.20	81.83
Staff Nurse III	64.46	67.78	71.59	74.68	78.88	82.35	84.36	85.63
Staff Nurse IV	69.01	72.46	76.11	79.94	83.94	88.16	89.90	91.69

APPENDIX B: ALTERNATIVE WORK SCHEDULE PROGRAM

1. IMPLEMENTATION

- 1.1 The Parties agree that Alternative Work Schedules (“AWS”), either 12-hour or 10-hour shifts, may be voted and implemented in individual units, as part of the collective bargaining exemption. The Employer may implement these shifts in individual units only in accordance with these provisions. An Employer may designate a unit as appropriate for implementation of an AWS program by notifying CNA in writing and posting a notice on the unit. Within fourteen (14) days of the notice, CNA and the Employer shall jointly conduct a meeting among the Staff Nurses on the unit to explain the impact of these shifts in the unit, how the vote will be conducted, the options available to Per Diem Staff Nurses, and the mock schedules. Within thirty (30) days of the notice, a vote shall be conducted in accordance with state law. At least fourteen (14) days before the election, the Employer will provide CNA with a list of Staff Nurses in the unit and CNA will investigate any discrepancies between the list and the CNA membership roster. CNA will advise the Employer of any discrepancies.
- 1.2 For an AWS to be adopted, a 2/3 majority vote of those Staff Nurses who vote is required. An affected Staff Nurse who does not vote shall not be counted. The votes may be held on up to three days within the voting week to accommodate schedules. The vote and vote count will be in the presence of a Staff Nurse appointed by CNA and a management representative. The Staff Nurse observing the vote count shall be on paid time during the count.
- 1.3 Upon ratification, the program shall be implemented commencing with the next posted schedule, provided that the Staff Nurses receive at least fourteen (14) days’ notice of the schedule changes.
- 1.4 Employer maintains right to create 8 hour shifts in units electing AWS and Staff Nurses may bid for any such shift or position in accord with applicable provisions of the CBA.

2. AWS Units

- 2.1 Without waiving the Employers’ right to designate additional units for an AWS vote, the Employers agree that the following units shall be designated for an initial AWS vote within the timelines set forth below:

2.1.a. St Louise AWS Vote:

Within 90 Days after Ratification

ICU

Maternal Child Health

ER

3. POSTING AND SCHEDULING

3.1 On each unit where the Staff Nurses have voted for AWS shifts and where the Employer has scheduled AWS shifts, the Employer will make a reasonable effort to find another work assignment for any Staff Nurse who participated in the vote which authorized the schedule and is unable to work the shifts. The Employer shall not be required to offer a different work assignment to a Staff Nurse if such a work assignment is not available or if the Staff Nurse is hired after the adoption of the alternative work schedule.

4. **DISCONTINUANCE OF THE ALTERNATIVE WORK SCHEDULES**

4.1 The Employer may discontinue an AWS at any time upon sixty (60) days' advance notice to CNA.

4.2 After the AWS has been in place for 12 months or more it may be repealed by a vote of the affected Staff Nurses. Upon a petition of one-third of the affected Staff Nurses, a new secret ballot election shall be held in accordance with state law.

5. **HOURS OF WORK**

5.1 12-Hour Shift Staff Nurses:

- a. The regular work week for full-time Staff Nurses on the 12-hour shift schedule will consist of no more than thirty-six (36) hours, three (3) days a week.
- b. A straight time day's work will consist of no more than twelve (12) hours worked within a thirteen hour period, except for Staff Nurses who have voluntarily waived one of their meal periods, in which case the twelve (12) hours worked will be within a twelve and one-half hour period.
- c. The Employer will use its best efforts to regularly schedule a Staff Nurse to work no more than two (2) consecutive 12 hour shifts, unless the Staff Nurse requests a three (3) consecutive day schedule. The Employer will use its best efforts to grant the Staff Nurse at least a two (2) day break if he/she has worked three (3) consecutive 12 hour shifts, unless the Staff Nurse requests otherwise. The Employer will use best efforts to grant the Staff Nurse a three (3) day weekend on the Staff Nurse's weekend off.

5.2 10-Hour Shift Nurses: The regular work week for full-time Staff Nurses on the 10 hour shift schedule will consist of forty (40) hours, four (4) days a week. A straight time day's work will consist of no more than ten (10) hours worked within a ten and one-half hour period.

6. **OVERTIME**

6.1 Staff Nurses who work more than three (3) 12 hour shifts in a workweek will be paid time and one half (1 ½) their regular rate of pay for the first eight (8) hours worked

on the first extra day of that workweek, and two (2) times their regular rate for all hours worked after the eight (8) extra hours in that workweek.

6.2 Staff Nurses will be paid double time for all hours worked in excess of 12 in one day.

6.3 Daily overtime shall be paid for 8 hour, 10 hour, and 12 hour shift Staff Nurses who work a shift that deviates from their assigned schedule in accordance with state law and any daily overtime rules adopted as part of an AWS program.

8.0 Paid Leave Accrual. Full-time Nurses working three (3) 12-hour shifts in a 7-day workweek will accrue benefits, such as vacation, PTO, holidays, sick time, education leave, etc., on the same basis as full-time Nurses working a normal forty (40) hour workweek. Part-time Nurses working 12-hour shifts will have benefits pro-rated according to the provisions of the CBA.

9.0 Meal and Rest Breaks. Meal and rest breaks will be provided according to the provisions of the CBA.

10.2 SLRH Specific Provisions

10.2.a Holidays. All Nurses working on a holiday recognized in the Employer's current Paid Time Off policy/applicable provisions of the collective bargaining agreement between the parties will receive one and one-half times (1 1/2x) their regular hourly rate as described above for each hour worked on the holiday. Hours worked in excess of 12 hours on a holiday will be paid for at twice (2x) the Nurse's regular hourly rate. In addition, Nurses working a holiday will at their election receive an additional 12 hour day off, provided sufficient hours of accrued but unused Paid Time Off are available. Holiday premium pay will be paid for the shift the majority of which is worked on the holiday.

10.2.b Paid leave days such as bereavement leave, jury duty leave, Paid Time Off and Extended Sick Leave may be taken only when the basis for such leave falls on a Nurse's scheduled work day. Education leave may be taken according to Employer policy and practice.

10.2.c. Bereavement Leave: Nurses working a regularly scheduled three (3) day twelve (12) hours per day workweek shall be paid up to forty (40) hours for such leave, at the applicable straight time rate in the event of the death of an immediate family member as defined in the applicable provisions of the collective bargaining agreement between the parties.

10.2.d. Jury Duty, Jury duty leaves are available to Registered Nurses in 12-hour shift positions on the same basis as Nurses in 8-hour shift positions. Nurses in 12-hour shift positions who are required to report for jury duty will receive their regular compensation for each such day of service, less jury duty pay. Proof of jury service must be provided to the Employer in order to be paid in accordance with this provision.

10.2.e. Sick time. Nurses who are unable to report for work due to illness may utilize 12 hours of Paid Time Off, Extended Sick Leave (or where applicable, Personal Sick Leave) for each such day of illness in accordance with the provisions of the Paid Time Off/Extended Sick Leave program, provided sufficient hours of Paid Time Off, Extended Sick Leave (or Personal Sick Leave) are available.

10.2.f. Education leave.

Education leave will be earned at the rate of forty (40) hours per year of continuous full-time employment in accordance with the Employer's current policy/applicable provision of the collective bargaining agreement between the parties. A Nurse working 12-hour shifts may take up to 12 hours of education leave to cover approved courses, workshops, or seminars, provided the Registered Nurse has available sufficient hours of accrued but unused education leave. If the Nurse was normally scheduled to work a 12-hour shift and takes education leave, the Nurse may, if needed in the unit, choose to report to work following the completion of the course, workshop or seminar. In such an event, the Nurse would utilize only that amount of education leave necessary to cover the time involved for the course and would be paid at the straight time rate for the remainder of the shift.

Nurses required to attend mandatory education classes, in-services, or meetings on an assigned workday will report for work in their unit for the remainder of their shift at the conclusion of the class, in-service or meeting. If the required class or meeting is scheduled on a full-time Nurse's day off, the Nurse will be paid one and one-half (1 1/2) her/his straight time rate for all hours the Registered Nurse is required to be in attendance, provided the Nurse has already worked three 12-hour shifts in the week.

Education leave, unless mandatory, will not be considered hours worked for overtime purposes.

10.2.g. Cancellation/ROS. Cancellation/ROS will be regulated by the applicable terms of employment/collective bargaining agreement between the parties, except that in the case of partial Cancellation/ROS, if a 12-hour shift Nurse under this Side Letter is canceled for all or a portion of a shift and is asked to be available during that shift, then the Registered Nurse will be paid half the straight time rate for all hours asked to be available, and all hours actually worked during such shifts will be paid at the straight time rate.

APPENDIX C: SIDE LETTER OF AGREEMENT RE BREAK RELIEF

The parties will execute a Side Letter within 60 days of ratification confirming the following:

Subject to the occurrence of extraordinary circumstances such as unexpected increases in patient census, unplanned surgical cases, unscheduled RN absences and a state of emergency affecting the hospital declared by appropriate government officials, the Employer shall make continuous good faith efforts to assign Meal and Break Relief RNs as follows:

The following units shall be staffed with one (1) break relief Nurse for up to eight (8) Nurses:

- Medical/ Surgical/ Peds

The following units shall be staffed with one (1) break relief Nurse for up to five (5) Nurses:

- ICU
- Maternal Child Health
- Surgical (OR and PACU)
- ER

APPENDIX D: SIDE LETTER OF AGREEMENT ON THE USE OF LVNS

St. Louise Regional Hospital shall not hire new LVNs during the life of the agreement to perform nursing duties except in those cases where a vacant position has been posted for at least ninety (90) days.

APPENDIX E: SIDE LETTER OF AGREEMENT ON THE URGENT CARE CLINIC

A. Terms and Conditions of Operations at the Urgent Care Clinic

The Employer will establish a new department/unit at the DePaul Medical Center located in Morgan Hill. It is understood that the following conditions shall govern the operations at the urgent care clinic:

1. The new department/ unit shall be an urgent care clinic and will be operating seven days a week.
2. The Union shall be notified of any changes in the hours of operations and will be provided the opportunity to request a meet and confer meeting prior to any changes being made.
3. Registered Nurses assigned to the DePaul Medical Center shall be scheduled for ten (10) hours a day with thirty (30) minutes of the ten (10) hours to be a paid lunch break. The Hospital shall also compensate the nurse one hour of penalty for the paid lunch break.
4. CNA shall represent any Registered Nurse who is employed at this location and he/she shall be covered under the current collective bargaining agreement.
5. Should the urgent care clinic be closed permanently within a year from the date of opening, any bargaining unit Registered Nurse who transferred to the Morgan Hill site from the SLRH location shall have the right to transfer back to their previous department/ unit he/ she transferred from.
6. Should additional nursing staff be needed at the DePaul Center, staff from the SLRH Gilroy location may volunteer to float outside of their cluster. Floating conditions and requirements shall be maintained per Article 15 Floating.
 - a. Posting and scheduling of 10-hour shifts will be posted and filled in accordance with the terms and conditions of employment/ terms of the collective bargaining agreement between the Employer and the Union.
 - b. The Hospital will schedule Nurses to work no more than four (4) 10-hour shifts in a row, unless the Nurse submits an unsolicited written request for a different schedule. Except when requested by the Nurse, if the Hospital requires a Nurse to work more than four (4) consecutive 10-hour shifts, the Nurse will be paid one and one-half (1 ½) times the Nurse's rate for such subsequent shift.

THE WEINGARTEN RIGHTS

The Supreme Court has ruled that a Nurse is entitled to have a CNA Representative present during any interview which may result in discipline. These rights are called your Weingarten Rights.

1. You must request that a CNA rep be called into the meeting.
2. You must have a reasonable belief that discipline will result from the meeting.
3. You have the right to know the subject of the meeting and the right to consult your CNA rep prior to the meeting to get advice.
4. Do not refuse to attend the meeting if a rep is requested but denied. We suggest you attend the meeting and repeatedly insist upon your right to have a CNA rep present. If this fails, we suggest that you not answer questions and take notes.

Exhibit 4

Exhibit 4

AGREEMENT

Between

COUNTY OF SANTA CLARA

And

REGISTERED NURSES PROFESSIONAL ASSOCIATION

NOVEMBER 10, 2014 THROUGH OCTOBER 20, 2019

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PREAMBLE

This Memorandum of Agreement is entered into by the County of Santa Clara (hereinafter referred to as the County) and the Registered Nurses Professional Association (hereinafter referred to as the Association). This Memorandum of Agreement incorporates by this reference all appendices attached.

ARTICLE I - RECOGNITION

The County recognizes Registered Nurses Professional Association as the exclusive bargaining representative for all classified and unclassified nurses in coded and uncoded classifications within the Registered Nurses bargaining unit.

For the purpose of this Agreement, a nurse shall be defined as a person employed in coded and uncoded classifications in a bargaining unit covered by this Agreement.

The following classifications are included in the Registered Nurses bargaining unit:

- Assistant Nurse Manager
- Certified Registered Nurse Anesthetist
- Clinical Nurse I
- Clinical Nurse II
- Clinical Nurse III
- Clinical Nurse Specialist
- Infection Control Nurse
- Nurse Coordinator
- Nurse Practitioner
- Psychiatric Nurse I
- Psychiatric Nurse II
- Staff Developer
- Per Diem Clinical Nurse
- Per Diem Psychiatric Nurse
- Per Diem Nurse Practitioner

ARTICLE 2 - NO DISCRIMINATION

Section 2.1 - Employment

Neither the County nor the Association shall discriminate (except as allowed by law) against nurses because of race, age, sex, color, disability, creed, national origin, religion, Association activity, affiliations, political opinions, or sexual preference.

Section 2.2 - Association Affiliation

Neither the County nor the Association shall interfere with, intimidate, restrain, coerce or discriminate against any nurse in the nurse's free choice to participate or join or refuse to participate or join the Association.

Section 2.3 - Affirmative Action

The County and the Association agree to cooperate to achieve equitable representation of women, minorities and disabled at all occupational levels designated by Federal, State and County Affirmative Action goals and timetables, as adopted by the Board of Supervisors.

ARTICLE 3 - ASSOCIATION SECURITY

Section 3.1 - Relationship Affirmation

The intent and purposes of this Agreement are to encourage harmonious relationships between the County and the Registered Nurses it employs who are subject hereto; to promote and improve that relationship subject to their joint duties to the community and to the high standards of patient care; to clarify certain rights and privileges of the parties; to set forth and define rates of pay, economic benefits and other conditions of employment that shall apply to such nurses; and to establish amicable processes for collective bargaining. The Association agrees that it will cooperate with the County and support its efforts to assure efficient operation, to serve the needs of the community, and to meet the highest of professional standards in such services.

Section 3.2 - Dues Deductions

a) Maintenance

Nurses covered by this Agreement who have authorized Association dues deductions as of date of signature of this Agreement shall continue to have such deductions made by the County during the term of this Agreement, except that such nurses may terminate such dues deductions during the month of February pursuant to paragraph (e) of this Section.

b) Condition of Employment

Each person employed during the term of this Agreement shall at the time of employment and as a condition of employment execute an authorization for the payroll deduction of Association dues or of a service fee equivalent to Association dues on a form provided by the Association and shall continue said authorization in effect, except that such nurses may terminate such dues deductions pursuant to paragraph (e) of this Section.

c) Implementation

Any nurse hired by the County subject to this Agreement shall be provided by the County with a notice advising that the County has entered into an agency shop agreement with the Association and that all employees subject to this Agreement must either join the Association, pay a service fee to the Association, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Association dues or a service fee. Said nurse shall have five working days from the initial date of employment to fully execute the authorization form of his/her choice and return said form to County payroll. If the form is not completed properly and returned within five working days, the County shall commence

and continue a payroll deduction of service fees from the regular bi-weekly pay warrants of each employee. The effective date of Association dues, service fee deductions or charitable contributions for such nurse shall be the beginning of the first pay period of employment except that initiation fees shall be deducted in two installments in successive pay periods, beginning with the first pay period. The nurse's earnings must be sufficient after other legal and required deductions are made to cover the amount of dues or service fees check-off authorized. When a nurse is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period for future earnings. In the case of a nurse who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions (including health care and pension deductions), have priority over Association dues and service fee.

d) Religious Exemption

A nurse subject to this Agreement who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization and which is recognized by the National Labor Relations Board as such, shall, upon presentation of verification of active membership in such religion, body, or sect be permitted to make a charitable contribution equal to the service fee in lieu of Association membership or service fee payment.

Declarations of or applications for religious exemption and any supporting documentation shall be forwarded to the Association by the objecting nurse in accordance with paragraph e below. The Association shall have fifteen days after receipt of a request for religious exemption to challenge any exemption. If challenged, the deduction to the charity shall commence but shall be held in escrow pending resolution of the challenge in accordance with Association policy. The Association shall inform the County of the outcome of the challenge. Charitable deductions shall be by regular payroll deduction only. For purposes of this Section, a charitable deduction means a contribution to the Valley Medical Center Foundation or the Santa Clara Family Health Foundation.

e) Revocation

A nurse may terminate authorization for Association dues and commence authorization of service fee, or terminate service fee deduction and commence charitable contribution deduction by giving notice thereof to the Association and the County

Controller by individual letter deposited in the U.S. Mail (1) within the last ten (10) working days in the month of February prior to the expiration of the Agreement, or (2) within the first ten (10) working days following the date of first employment, whichever applies. If the canceled letter is not postmarked, it must be received and date stamped within the time limits specified in (1) or (2) above.

The County shall promptly forward a copy of the letter of revocation to the Association.

A nurse who makes changes to deductions during the month of February shall have the deduction changed on the first pay period in April.

A nurse who makes changes to deduction within ten (10) working days following the date of first employment shall have the deduction changed following the receipt of the notification by the County.

f) No Fault

The Association agrees to indemnify, defend and hold the County harmless from any and all claims, demands, suits, or any other action arising from the provisions of this Section or from complying with any demand for termination or revocation hereunder.

g) Leaves of Absence

Upon return from leaves of absence, the County shall reinstate the payroll deduction of Association dues for those nurses who were on dues check-off immediately prior to taking leave, provided the employee has not authorized cancellation of dues check-off in accordance with the prescribed provisions.

Section 3.3 - Other Deductions

The County shall deduct other deductions for insurance programs from pay checks of nurses under reasonable procedures prescribed by the County for such deductions which may include nurses not within the recognized bargaining unit of the Association in accordance with procedures that may be established between the parties.

Section 3.4 - Association Notices and Activities

a) Bulletin Boards

The Association, where it represents nurses of a County Department, shall be provided by that Department use of adequate and accessible space on designated bulletin boards for communications.

The glass covered, locked bulletin board purchased by the Association and installed by Valley Medical Center will be maintained in the cafeteria hallway at Santa Clara Valley Medical Center.

b) Distribution

The Association may distribute material to nurses in its representation unit through normal channels, including use of County's e-mail.

c) Visits by Association Representatives

Any Representative of the Association shall give notice to the Department Head or designated representative when entering departmental facilities. The Representative shall be allowed reasonable contact with nurses on County facilities provided such contact does not interfere with the nurse's work. Solicitation for membership or other internal nurse organization business shall not be conducted during work time. Prearrangement for routine contact may be made on an annual basis.

For this purpose rest periods are not work time.

d) Facilities

County buildings and other facilities shall be made available for use by the Association or its Representatives in accordance with administrative procedures governing such use.

e) Names and Addresses of Covered Nurses

The County shall supply the Association with a bi-weekly data processing run of names and addresses and classifications of work of all nurses within the representation unit. Such list shall be supplied without cost to the Association except that addresses shall not be supplied of those nurses who request the County in writing to not provide such information. A copy of such request shall be forwarded to the Association.

f) Notification of Association Coverage

When a person is hired in any classification covered by a bargaining unit represented by the Association, the County shall notify that person that the Association is the recognized bargaining representative for the nurses in said unit and present that person with a copy of the present Agreement, and a copy of the purpose and objectives of RNPA as approved.

g) Report of Transactions

The County shall supply the Association a data processing run covering the following nurse transactions as are currently

available on the system: newly hired nurse, provisional appointments, reinstatement, re-employment, return from leave, return from military leave, miscellaneous, promotion, return to former class, voluntary demotion, disciplinary demotion, transfer, title change, suspension, temporary military leave, injury or illness leave, other leave, indefinite military leave, resignation, probationary resignation, probationary release, provisional release, miscellaneous release, dismissal, retirement, death, layoff.

Section 3.5 - New Nurse Orientation

The Association shall be allowed a Representative at County-wide orientations for new nurses or departmental orientations where they are held in place of County-wide orientations. Such Representative shall be allowed twenty (20) minutes to make a presentation and answer questions to nurses in classifications represented by their organization. The Association may present packets to represented nurses at orientation, such packets being subject to review by the County. The County or department, where appropriate, will notify the Association one (1) week in advance of such orientation sessions.

Section 3.6 - Printing of Agreement

The parties agree to share equally the cost of printing bound copies of this Agreement. The Association shall reimburse the County for the actual cost of copies ordered by the Association. The design and format of the printed Agreement shall be jointly determined by the parties. It is agreed that the contract will be printed not more than one hundred and twenty (120) days after final agreement on all language.

ARTICLE 4 - OFFICIAL REPRESENTATIVES AND NEGOTIATING COMMITTEE

Section 4.1 - Official Representatives

a) Notification of Official Representatives

The Association agrees to notify the County of their Official Representatives for its representation unit and changes in such Representatives. It may also designate alternates to such Official Representatives for purposes of specific meetings by advance notice to the appropriate level of Management.

b) Release Time

Up to three (3) Official Representatives at any given time shall be allowed thirty-two (32) hours of release time each pay period. Effective November 10, 2002, up to three (3) Official Representatives at any given time shall be allowed release time. The total combined time may not exceed eighty (80) hours per pay period and the total for one (1) individual shall not exceed thirty-two (32) hours per pay period. This provision shall cover all shifts and must be taken in a minimum of one (1) hour increments. This time shall be scheduled in advance by mutual agreement between the Association and Management.

c) Release Time Log

RNPA Representatives who are on their shift during approved release time will log the time they leave their work assignments and the time they return on a form provided by the County.

Section 4.2 - Negotiating Committee

There shall be six (6) Official Representatives for the Registered Nurses Unit. The County agrees to release six (6) persons upon such request where required.

a) Compensatory Time

Those negotiators who are on their own time during the meetings will not be granted compensatory time.

b) Resource People

Resource people for negotiations shall be allowed on their own time, leave without pay, PTO, or compensatory time off to attend scheduled negotiation meetings for this Association to provide information to the committee on specific items on an as needed basis and as mutually agreed, prearranged and scheduled by the committee. The County shall facilitate arranging time off for resource people attending negotiations.

ARTICLE 5 - LAYOFF

Section 5.1 - Seniority Defined

For purposes of layoff, seniority is defined as the total length of continuous employment in a coded classification from the first date of hire within the bargaining unit. First date of hire shall be adjusted for all time on suspension or leave without pay which extends beyond one full pay period, but shall not be adjusted for all time on Maternity Leave, Worker's Compensation Leave and Military Leave. If an employee resigns and is subsequently reinstated within 12 months of the resignation, the seniority shall be restored for the period of time previously served within the bargaining unit.

The County will provide the Union with a copy of the appropriate current seniority list prior to the issuance of notices described below in Section 5.8.

Section 5.2 - Transfer of Prior Employer Service

If a function of another employer is transferred to the County, with employees performing nursing duties comparable to those performed by this bargaining unit, the County and the RNPA will meet and confer over the definition of seniority for the transferred employees.

Section 5.3 - Changes to Classes

The County and the Association agree that to the extent possible, nurses should not lose their rights under this Article because classes have been revised, established, abolished or retitled.

Section 5.4 - Order of Layoff and Reassignment

When the County determines that bargaining unit positions will be reduced or eliminated which results in a layoff, the order of layoff shall be based on seniority as applied to each classification. The order shall be: a) provisional nurses in inverse seniority; b) nurses on original probation in inverse seniority; c) permanent nurses in inverse seniority.

The provisions of Appendix B "Classifications and Areas of Competency" shall apply for purposes of layoff and reassignment as a result of layoff.

Employees will be retained within their current assigned work unit on the basis of seniority. The employees (other than those in the classifications of Clinical Nurse I, II, III or Psychiatric Nurse I or II) for whom no position exists at the same code status within the current assigned work unit will be reassigned in order of seniority as follows:

- a) to a vacant position in the same code status and classification within the related competency area; or if no such position exists,
- b) to a position held by the least senior individual in the same code status and classification within the related competency area; or if no such position exists,
- c) to a vacant position in the same code status and classification within another competency area; or if no such position exists,
- d) to a position held by the least senior individual in the same code status and classification within another area of competency; or if no such position exists,
- e) to a position of the next lower code status within the same classification, following the sequence "a" through "d" above until all successive code statuses are exhausted; or if no such positions exist,
- f) to a position in the next lower classification applying the sequence "a" through "e" above until all lower classifications are exhausted;

The employees in the classifications of Clinical Nurse I, II, III or Psychiatric Nurse I or II for whom no position exists at the same code status and same or lower classification in the series within the current assigned work unit will be reassigned in order of seniority as follows:

- a) to a vacant position in the same code status and same or lower classification within the related competency area; or if no such position exists,
- b) to a position held by the least senior individual in the same code status and same or lower classification within the related competency area; or if no such position exists,
- c) to a vacant position in the same code status and same or lower classification within another competency area; or if no such position exists,
- d) to a position held by the least senior individual in the same code status and same or lower classification within another area of competency; or if no such position exists,

- e) to a position of the next lower code status and same or lower classification, following the sequence "a" through "d" above until all successive code statuses are exhausted.

Nurses in full-time status who are assigned to less than a full-time position as a result of layoff will retain full-time benefits pursuant to section 7.4b of this agreement.

Employees who are currently part-time cannot assert seniority to claim a position with more hours than currently held.

Section 5.5 - Reassignment from a Lower Classification

After all nurses within an affected classification have been afforded the opportunity to be reassigned according to Section 5.4 and a vacancy remains in that classification, that vacancy shall be filled by reassignment of the most senior nurse in the next lower classification from the vacancy's related area of competency and then another area of competency as identified in Appendix B.

Section 5.6 - Competency Standards

The classifications, the work units, and the areas of competency for layoff purposes are listed in Appendix B. The County shall establish written competency standards for each area of competency. These standards shall not be greater than the hiring standards.

Section 5.7 - Employee Competency Profile

Prior to the issuance of layoff notice, the employee will be provided the opportunity to complete an Employee Competency Profile or add any information to an existing profile which might qualify the employee for an area of competency. Failure to respond will be construed as acceptance of the information on file.

Section 5.8 - Notice of Layoff

a) Notice to the Association of Intent to Reduce or Eliminate Bargaining Unit Positions

The County will notify the Association of the decision to reduce or eliminate bargaining unit positions which would result in a layoff. At a minimum, the notice shall include the total proposed reduction. Upon request, the Association shall be afforded an opportunity to meet with the County prior to layoff notices being issued to discuss the circumstances requiring the layoff and any proposed alternatives.

b) Notice to Employee

The County shall provide a written layoff notification to any nurse whose employment is being terminated, whose code status is being reduced, or whose classification is being changed as a result of layoff. Additionally, employees shall receive a notice of reassignment due to layoff. The notice shall be provided at least 20

working days before the effective date. The Association will receive concurrent notices.

Section 5.9 - Training Opportunities

Nurses who are reassigned as a result of layoff according to Section 5.4 will be provided orientation training and skills upgrade, up to a maximum of six weeks, if needed. Additional training beyond six weeks may be provided on an individual basis.

Section 5.10 - Layoff

a) Layoff

In the event that a nurse is not reassigned as a result of layoff as in Section 5.4, the nurse shall be laid off, unless the employee has a right to return to a former classification in another bargaining unit. If a nurse refuses the reassignment pursuant to Section 5.4 "a" through "d" or refuses to return to a former class in another bargaining unit, the nurse may be deemed to have been offered and to have declined such work.

b) Inplacement

If a nurse has been issued a layoff notice pursuant to Section 5.8 and has no reassignment in lieu of layoff rights pursuant to Sections 5.4 or 5.5, then that nurse shall be considered for inplacement.

Inplacement is an offer of transfer (within specific wage bands) or demotion to a nurse with a layoff notice into a vacant position which the County intends to fill during the layoff notice period.

The following conditions apply to the inplacement process:

1. A nurse must be qualified to transfer or demote. The Personnel Director shall determine qualifications.
 - a. Testing requirements will be the same as if the nurse had been reclassified.
 - b. In determining qualifications and possible positions, transfers and demotions to both related and non-related classes may be considered.
2. Transfers resulting from layoffs will be deemed a "lateral transfer" if movement from one class to another does not exceed an upward salary change of 10%_(ten percent).
3. The normal transfer (ordinance code) rules apply when an inplacement transfer occurs. If a nurse has underlying

- permanent status the probationary period following the transfer shall be considered a subsequent probation. Consistent with this status, the nurse on a subsequent probation with underlying permanent status, has Personnel Board appeal rights.
4. The nurse may express a preference for certain occupational fields, assignments or departments. However, the nurse has no right to claim any position nor is the County required to offer placement.
 5. A position shall not be considered "vacant" for inplacement purposes if the position has been identified as claimable under Section 5.4 or 5.5 by another nurse who has been issued a layoff notice under Section 5.8 or by a nurse on a re-employment list established pursuant to Section 5.11.
 6. A nurse who is placed under Section 5.4 or laid off under Section 5.10 shall have his/her name placed on all re-employment lists pursuant to Section 5.11 for the appropriate classification.
 7. In determining placement offers, the Association and the County, on a case by case basis, may by mutual agreement include as part of the placement offer:
 - a. basic skill competency training and/or;
 - b. literacy training and/or;
 - c. other methods (other than transfer or demotion) of filling vacant positions that do not violate Merit System principles or County Ordinance Code provisions.
 8. All inplacement offers must be made and accepted or rejected prior to the effective date of the layoff notice. Time permitting, the Personnel Department may assist nurses on the re-employment list in addition to those workers with layoff notices. Such nurses shall be entitled to all provisions of this Agreement.
 9. If a worker is not placed by the effective date of the layoff notice, he/she shall be laid off under the provisions of the layoff notice.
 10. Nurses are eligible to transfer to vacant positions within a unit in accordance with 6.9 prior to filling positions by inplacement of employees outside the bargaining unit into RNPA. Vacancies existing within a unit seven (7) calendar

days prior to date of layoff shall not be posted and shall be considered for purposes of inplacement. This provision relates to inplacement of employees outside of RNPA and does not include employees with return to former classification rights.

Section 5.11 - Re-employment List

- a) The names of such probationary and permanent nurses reassigned or laid off in accordance with this Article shall be entered upon a re-employment list in inverse order of seniority. The County shall maintain re-employment lists by classification and code status. At the time of a nurse's placement on a re-employment list, the County will inform the nurse in writing of the employee's responsibility to leave the address and/or telephone number where the employee can be contacted.
- b) When a vacancy exists which the County intends to fill, the most senior nurse on the appropriate re-employment list shall be offered appointment, provided the required competencies are met. Nurses on re-employment lists shall retain the right to take promotional exams and/or receive promotional preference on exams.
 1. If the County is able to contact the nurse to communicate the offer of re-employment, the nurse will be encouraged to respond within forty-eight (48) hours, but, if requested, will be allowed up to four (4) working days to respond.
 2. If the County is unable to make contact, the County will send the offer by certified mail, return receipt, to the last known address. The nurse must respond to the offer within ten (10) working days from the date of mailing.
 3. If no response is received within the above time limits, the nurse will be deemed to have been offered and to have refused such work.

Section 5.12 - Extra-Help and Per Diem Work for Laid Off Nurses

Interested nurses who are placed upon the re-employment list due to layoff and who elect to be available for extra-help or per diem work shall be given preference for any work in their former Department/Agency for which they are currently qualified. The election to be available for extra-help and per diem work must be made in writing at the time of layoff. Employees may decline to be available for extra-help and per diem work or may decline such work itself without affecting any rights under this Article.

Section 5.13 - Names Dropped from Re-employment List

No name shall be carried on a re-employment list for a period longer than two (2) years, and the names of persons re-employed in a permanent position within the same classification shall, upon such re-employment be dropped from the list. Refusal to accept one of two offers of re-employment within the same classification, shall cause the name of the person to be dropped from the re-employment list.

Section 5.14 - Rights Restored

Upon re-employment of a nurse from a re-employment list, all rights acquired by a nurse prior to the nurse's placement on such list shall be restored; including but not limited to PTO accrual rates, seniority as defined in Section 5.1, salary step and time-in-step placement, and educational leave.

Section 5.15 - Temporary Layoff

In the event of a decrease in census of any unit requiring a temporary reassignment of work areas or layoff of Registered Nurses for less than thirty (30) calendar days, the appointing authority shall:

- a) Attempt to float any affected nurse to any unit which the nurse has been oriented.
- b) As an educational opportunity, allow a nurse to request an orientation to an unfamiliar unit.
- c) Request volunteers to take time-off by using PTO, comp. time or leave without pay.
- d) Implement a layoff of nurses by inverse seniority, if there are insufficient volunteers. This subsection, however, shall not apply to any classification of nurses that are designated as FLSA exempt.

It is agreed that this provision shall be applied by unit and shift. It is also understood that the hospital will not assign extra-help, per diem or registry RN to the unit on that shift when this section is implemented.

ARTICLE 6 - PERSONNEL ACTIONS

Section 6.1 - Probation

- a) Each new nurse shall serve a probationary period of nine (9) months, which shall be counted as twenty (20) complete pay periods. Upon successful completion of such probationary period, the nurse shall be deemed a permanent employee. A leave of absence without pay shall not be credited toward completion of the nurse's probationary period. The parties agree that probationary nurses shall have all rights in this Agreement, unless otherwise specified, including full and complete access to the grievance procedure. Any nurse released during the probationary period shall, upon request, be provided with a statement of the reasons for the release. Consistent with County Charter Section 704(e), probationary nurses may not grieve suspensions, demotions, or dismissals.
- b) Probationary nurses shall have the right to request and receive Department/Agency administrative review of disciplinary action taken during probation. Such review must be requested in writing within ten (10) working days of the disciplinary action or it is waived. The review process shall consist of a meeting with the clinical director or his or her designee. The review process shall proceed promptly after a request is received. The clinical director or his or her designee shall hear and make a decision within fifteen (15) working days.

Section 6.2 - Disciplinary Action - Unclassified Nurses

Unclassified nurses who have completed a period equal to the probationary period for a comparable classified position may grieve disciplinary action on the grounds that such discipline was not for cause. Such grievance shall comply in all respects with Article 16 of this Agreement.

Notice of disciplinary action must be served on the nurse in person or by certified mail prior to the disciplinary action becoming effective. Notice shall be included in the nurse's personnel file and a copy sent to the Association and shall include:

- a) Statement of the nature of the disciplinary action.
- b) Effective date of the action.
- c) Statement of the cause thereof.
- d) Statement in ordinary and concise language of the act or omissions upon which the causes are based.

- e) Statement advising the nurse of the right to appeal from such action and the right to Association representation.

Section 6.3 - Personnel Files

The County shall maintain a personnel file for each nurse. The Santa Clara Valley Health and Hospital System may also maintain a personnel file for each nurse. Nurses shall have the right to review their personnel file(s) or authorize review by their representative. No material will be inserted into the nurse's personnel file(s) without prior notice to the nurse. Nurses may cause to be placed in their personnel file(s) responses to adverse material inserted therein and a reasonable amount of correspondence originating from other sources directly related to their job performance.

Materials relating to suspensions which become final will be removed after four (4) years if no other suspensions have occurred during the four (4) year period except those involving charges as listed in A25-301(a) (4) Brutality in the performance of duties and (b) (2) Guilty of immoral conduct or a criminal act.

Materials relating to suspensions may be removed from the nurse's personnel file earlier than the regular removal schedule by mutual agreement between the Union, the Office of Labor Relations and the CNO or his/her designee.

Materials relating to disciplinary actions recommended but not taken, or disciplinary actions overturned on appeal, shall not be retained in a nurse's personnel file.

Section 6.4 - Disciplinary Action - Permanent Classified

The County may take disciplinary action for cause against any permanent classified nurse by suspension, demotion or discharge by notifying the nurse in writing. Notice of disciplinary action must be served on the nurse in person or by certified mail prior to the disciplinary action becoming effective. The notice shall be included in the nurse's personnel file(s) and a copy sent to the Association and shall include:

- a) Statement of the nature of the disciplinary action.
- b) Effective date of the action.
- c) Statement of the cause thereof.
- d) Statement in ordinary and concise language of the act or omissions upon which the causes are based.

- e) Statement advising the nurse of the right to appeal to the Personnel Board from such action and the right to Association representation.

Such nurse shall be given either five (5) days' notice of discharge, or demotion, or five (5) days' pay, except where circumstances require immediate action.

In cases of questionable gross negligence or incompetence as defined in the Nurse Practice Act, the nurse, at the sole election of the appointing authority or their designee, may be placed on administrative leave with pay, not to exceed fifteen (15) working days, pending an investigation. If circumstances permit, a nurse will be advised in writing that they are being placed on administrative leave under this provision.

6.5 - Counseling and Unfavorable Reports

a) Counseling

In the event that a nurse's performance or conduct is unsatisfactory or needs improvement, informal counseling shall be provided by the nurse's first level supervisor. Counseling shall be separate and distinct from on-going worksite dialogue. Documentation of such counseling (including verbal counseling) shall be given to the nurse as it is developed. Such documentation shall not be placed in a nurse's personnel file(s) and when the situation allows counseling, counseling shall be used prior to any unfavorable reports being issued. Counseling shall be removed from supervisory files within two (2) years, and shall not be used in the progressive disciplinary process provided no subsequent related counseling or other personnel action was issued.

b) Unfavorable Reports on Performance or Conduct

If upon such counseling a nurse's performance or conduct does not improve and disciplinary action could result, a written report shall be prepared by the supervisor including specific suggestions for corrective action, if appropriate. A copy shall be given to the nurse and a copy filed in the nurse's personnel file(s). No unfavorable reports shall be placed in a nurse's file(s) unless such report is made within ten (10) working days of the County's knowledge of the occurrence or incident which is the subject of this report. Provided no additional report has been issued during the intervening period, each report shall be removed from the nurse's file(s) at the end of two (2) years. Upon resignation, any such reports shall be removed from the nurse's file(s). Unfavorable reports may be removed from the nurse's personnel file earlier than the regular removal schedule by mutual agreement between the Union, the Office of Labor

Relations and the CNO or his/her designee. Nurses shall have the right to grieve the factual content of such reports or attach a written response to the report for inclusion in their personnel file(s).

Section 6.6 - Return to Former Class

As an alternative to appointment from any employment list, any current regular nurse, upon recommendation of the appointing authority and approval by the Director of Personnel, may be appointed without further examination to a position in any class in which regular status had formerly been acquired, or to any related class on a comparable level with the former class.

Section 6.7 - Unclassified Appointment

No nurse, while holding a position in the unclassified service, shall be assigned to or occupy any classified position.

Section 6.8 - Rights Upon Promotion to Classified or Unclassified Service or Transfer to Unclassified Service

Any permanent nurse who receives a provisional or probationary promotion, or who is transferred or promoted to a position in the unclassified service shall retain all rights and benefits as a permanent nurse of the nurse's former class while in such provisional, probationary, or unclassified status. These include the right to participate in promotional examinations and the right to return to the nurse's former class if released while in such status. All such service shall count toward seniority credits in the nurse's former class in the event the layoff procedure is involved.

Any permanent nurse who receives a provisional promotion, or who is transferred or promoted to a position in the unclassified service, the duration of which is known to be for less than six (6) months, shall be considered to be on leave from the nurse's permanent position and departments are authorized to make substitute appointments to such vacated positions.

Section 6.9 - Transfers and Job Opportunities

Santa Clara Valley Health and Hospital System shall establish a system to facilitate transfers and career mobility of Registered Nurses.

- a) All coded vacancies, transfer opportunities, and all special assignment positions created within existing job specifications, that the County intends to fill shall be posted on the work unit where the vacancy exists for a period of seven (7) calendar days. The County will transmit electronically to the RNPA all vacancies every payroll period.

- b) Code and / or shift change requests within a unit shall be based on seniority within the unit subject to the following:
- 1) Nurses who have been issued an Unfavorable Report, suspension, subsequent probationary release or demotion within the past twelve (12) months may only transfer to a higher code status with management approval. T/A CP 1/13/31
 - 2) The nurse is available to fulfill the position within six (6) weeks of the request.
- c) If a vacant position exists after exhausting the above provisions, management shall post a notice of the vacancy for transfers of eligible nurses outside the work unit for seven calendar days. The vacancy may also be posted as promotional or open/competitive. Should the vacancy be posted as promotional or open/competitive, any nurse interested and eligible for transfer will be interviewed and considered prior to interviewing outside candidates. The vacancies will be posted on a bulletin board outside the Nursing Office and the Cafeteria at Valley Medical Center at least bi-weekly. In addition, the list shall be distributed to designated individuals in non-hospital locations for posting in nursing areas. All Job postings may be accessed at the following websites: www.sccgovatwork.org and www.sccjobs.org.

Section 6.10 - Exchange of Shifts

Nurses may exchange shifts within the same code status and within the same work unit using the following process:

1. From February 1 through February 10 and August 1 through August 10 of each year, nurses desiring to change shifts within his/her same code status may submit in writing to management a request to change shifts. For example: day shift nurse holding a 3/5ths position requesting to exchange to night shift 3/5ths position.
2. Such requests shall be maintained in the schedule binder of each unit. Nursing management shall notify nurses of a viable shift change by February 15 and August 15 of each year.
3. If two or more requests to exchange to the same different shift are received, the nurse with the most seniority shall be granted shift exchange provided there is a staff member on the opposite shift in the same code status desiring to exchange. Seniority for the purposes

of shift exchange is defined as continuous date in the unit as a coded RN. Date of seniority for this purpose will be adjusted for unpaid leaves of absence.

4. Exchange of shifts will occur as soon as practical but not to exceed six weeks after notification to both parties.

ARTICLE 7 - PAY PRACTICES

Section 7.1 - Salaries

Effective on the dates listed all salaries shall be as listed in Appendix A attached hereto and made a part hereof. The parties agree that the rates of pay established by this Agreement are commensurate with those prevailing throughout the County for comparable work as required by the Charter for the County of Santa Clara.

Section 7.2 - Basic Pay Plan

The Basic Pay Plan consists of the salary ranges and the assignment of classes to such ranges as provided in this Section. Each nurse shall be paid within the range for the nurse's class according to the following provisions.

a) Step One

The first step in each range is the minimum rate and shall normally be the hiring rate for the class. In cases where it is difficult to secure qualified personnel or a person of unusual qualifications is engaged, the Director, with the approval of the County Executive, may approve appointment at the second, third, fourth or fifth step. If a nurse is hired under the difficult-to-secure-qualified- personnel clause, the County will move those nurses within that same class to the same salary step as that being received by the new nurse. The Association will receive a monthly listing of positions by class and department which list positions hired above the first salary step.

Effective April 11, 2005 Step 1 and Step 2 of the Clinical Nurse I wage scale shall be eliminated thereby making the entry wage for Clinical Nurse I to be at the Step 3 level.

b) Step Two

The second step shall be paid after the accumulation of six (6) months of competent service at the first step.

c) Step Three

The third step shall be paid after the accumulation of twelve (12) months of competent service at the second step.

d) Step Four

The fourth step shall be paid after the accumulation of twelve (12) months of competent service at the third step.

e) Step Five

The fifth step shall be paid after the accumulation of twelve (12) months of competent service at the fourth step.

f) Longevity Pay - Step Six

Effective August 7, 2000 a sixth step is established at approximately five percent (5%) above step five for the existing classifications of Clinical Nurse III, Psychiatric Nurse II, Nurse Coordinator, Staff Developer, Clinical Nurse Specialist, Infection Control Nurse, and Nurse Practitioner. The sixth step shall be paid after the accumulation of thirty-six (36) months of competent service at the fifth step. Beginning November 12, 2001 eligibility for sixth step shall be extended to the classifications of Assistant Nurse Manager and Certified Registered Nurse Anesthetist.

g) Longevity Pay - Step Seven

Effective August 7, 2000 a seventh step is established at approximately five percent (5%) above step six for the existing classifications of Clinical Nurse III, Psychiatric Nurse II, Nurse Coordinator, Staff Developer, Clinical Nurse Specialist, Infection Control Nurse and Nurse Practitioner. The seventh step shall be paid after the accumulation of one hundred and thirty two months (132) of competent service subsequent to attainment of step five of the nurse's current classification.

Effective August 7, 2000, former Clinical Nurse IVs and Clinical Nurse Vs, who are currently Clinical Nurse III's and had their salaries frozen, shall be eligible to be paid at step seven.

h) Longevity Pay Steps - Steps A, B and C

Effective November 8, 2004 pay steps A, B and C are established as sub-steps within a salary range at approximately two and one half percent (2.5%), five percent (5%) and seven and one half percent (7.5%) higher than a corresponding step (e.g. step 7, step 7A, step 7B and step 7C). The A step shall be paid during the 15th year through the 19th year of service in this bargaining unit. The B step shall be paid during the 20th year through the 24th year of service in this bargaining unit. The C step shall be paid during the 25th year and beyond of service in this bargaining unit.

i) Time for Salary Adjustments

Salary adjustments shall be made on the first day of the pay period in which the required accumulation of months of competent service occurs.

j) For nurses hired on or after February 4, 2013, the following salary steps shall apply:

- 1) Effective February 4, 2013, two lower sub-steps below step one shall be established for all classifications at 5% difference between each step. The first sub-step shall be

the hiring rate for all new nurses hired on or after February 4, 2013.

- 2) Sub step 98 is the minimum rate and shall normally be the hiring rate for the classification. In cases where it is difficult to secure qualified personnel or a person of unusual qualities is engaged, the County Executive may approve the appointment at step 99, one, two, three, four or five.
- 3) Sub step 99 shall be paid after the accumulation of twelve (12) months competent service at sub step ninety-eight.
- 4) Step one shall be paid after the accumulation of twelve months competent service at step ninety-nine.
- 5) Step two shall be paid after the accumulation of six months competent service at step one.
- 6) Step three shall be paid after the accumulation of twelve months competent service at step two.
- 7) Step four shall be paid after the accumulation of twelve months competent service at step three.
- 8) Step five shall be paid after the accumulation of twelve months competent service at step four.
- 9) Sub-step 98 and 99 Elimination:
Sub-steps 98 and 99 shall be eliminated effective November 10, 2014.

Nurses hired on or after February 4, 2013, into sub-step 98/99 and who remain in sub step 98/99 on November 10, 2014 shall be placed in step 1 effective November 10, 2014.

Nurses who remain in sub-step 98/99 on or after June 23, 2014, shall receive the difference between sub-step 98/99 and step 1 for all hours paid starting from June 23, 2014 through November 9, 2014.

Section 7.3 - Effect of Promotion, Demotion or Transfer on Salaries

a) Promotion

Upon promotion, a nurse's salary shall be adjusted as follows:

1. For a promotion of less than ten percent (10%) the salary shall be adjusted to the step in the new range which provides for a corresponding percentage increase in salary.

2. For a promotion of ten percent (10%) or more the salary shall be adjusted to the step in the new range which provides for ten percent (10%) increase in salary or to the first step in the new range, whichever is greater.

Any other promotion will be in accordance with regular County procedure.

b) Demotion

Notwithstanding the provisions of Section 7.2, upon demotion of a nurse with permanent status in the nurse's current class, the nurse's salary shall be adjusted to the highest step in the new class not exceeding the salary received in the former class.

c) Transfer

Upon transfer, the salary shall remain unchanged.

d) No Loss of Time-In-Step

Notwithstanding the provisions of Section 7.2, no salary adjustment upon promotion, demotion, or transfer shall effect a loss of time acquired in the former salary step, and such time as was acquired in the former salary step shall be included in computing the accumulation of the required months of service for eligibility of the employee for further salary increases.

e) Voluntary Demotion

In the event of a voluntary demotion required by a work-connected illness or injury and a resulting disability, the salary of the nurse shall be placed at the step in the salary range which corresponds most closely to the salary received by the nurse as of the time of injury. In the event that such voluntary demotion would result in a salary loss of more than ten percent (10%), the nurse's new salary shall be set at the rate closest to, but not less than ten percent (10%) below the nurse's salary as of the time of injury.

f) Lateral Transfers

When making a lateral transfer or demotion to another class, an application review by the Personnel Director shall be deemed as an appropriate qualifying examination for nurses in instances where a qualifying examination is required. If otherwise qualified under this provision, and the only prohibition to lateral transfer is the salary of the new class, it shall be deemed to be a lateral transfer if the move from one classification to another does not exceed twelve percent (12%) upward range movement.

Section 7.4 - Part-Time Salaries

a) Salary Ranges

The salary ranges provided in the attached Appendix are for full-time service in full-time positions, and are expressed in dollars per the number of working days in a bi-weekly pay period. If any position is established on any other time basis, the compensation for such position shall be adjusted proportionately.

b) Benefits

Beginning with the 1996 open enrollment period, part-time nurses may elect to be covered by either the County's health care package (medical, dental, vision, and life) or medical coverage only and shall authorize a payroll deduction for the appropriate prorated cost.

Nurses who become part-time nurses as a result of a layoff from full-time will continue to receive full-time benefits until such time as they are offered a full-time position in their current classification or higher.

Nurses may withdraw from the insurance package at any time. Nurses may enroll in the insurance package upon entering part-time, upon changing from any increment of part-time to any other increment of part-time or to full-time, or once per year during the County-wide insurance window.

Any nurse in a part-time status who pays for medical benefit coverage will be reimbursed in the following pay period the additional pro-rated premiums consistent with any hours worked above their code status the previous month. This shall begin with changes coinciding with the 1996 open enrollment period.

c) Split Codes

The County shall provide a minimum of fifty (50) full-time codes to be filled on a half-time basis at any one time. The location and choice of these codes will be determined on a departmental basis. Requests for split codes shall not unreasonably be denied. Reasonable denial shall include, but not be limited to, demonstration that the work is not divisible, demonstration that qualified partners, if needed, are not available, or that the fifty (50) available codes are filled. Nurses shall make a written request for a split code to their immediate supervisor. If the request is denied, it shall be reviewed by their Department Head and they shall receive a written response.

Section 7.5 - Work Out of Classification

a) Pay

Work out of classification assignments shall only be made if such assignment is 15 consecutive calendar days or more. When a nurse is temporarily assigned work out of classification to a vacant position or a position where the incumbent is unavailable for work due to an authorized leave, the nurse will receive pay consistent with the promotional pay procedure as set forth in Article 7.3. When such payment for higher level duties is appropriate under these terms and conditions, it will commence on the first day of the assignment and continue throughout the duration thereof. Any nurse assigned work out of classification must meet the minimum qualifications of the classification to which the nurse is assigned. The Association will be notified in writing of any work out of classification pay which continues beyond three (3) months.

Work out of classification to vacancies within the bargaining unit shall be posted within the unit for a period of five days. In order to be considered, nurses expressing interest in such assignment shall notify his/her Nurse Manager in writing. No nurse shall be assigned work out of classification in a vacancy within the bargaining unit for more than twelve (12) consecutive months per occurrence.

b) Application to Holiday and Sick Leave

Upon eligibility for pay in accordance with Section 7.5(a), a nurse temporarily assigned work out of classification shall receive the pay for:

1. Holidays when the nurse is assigned work out of classification the day prior to and following the holiday.
2. Sick leave absences when the nurse is assigned work out of classification and while absent is not relieved by the incumbent or by another nurse assigned work out of classification in the same position.

c) Vacant Regular Codes

Work out of classification may be assigned to cover vacant regular codes after ordinance code provisions for filling such vacancies have been followed and with approval of the Director of Personnel. The appointing authority shall consider appointment of nurses under work out of classification provision before making a provisional appointment.

Section 7.6 - Paychecks

a) Night Employees

The County agrees to provide paychecks for night nurses by 12:01 a.m. on payday.

b) Shortage Errors

Cash advance by the Controller's Department to cover a shortage error in a nurse's paycheck shall be provided to the nurse within one (1) working day after written notification of discrepancy by the department to Finance. The department will notify Finance within one (1) working day after verification of the shortage. This provision is to cover only those discrepancies above a net one hundred dollars (\$100.00).

Shortage errors of less than a net one hundred dollars (\$100.00) shall be adjusted within two (2) pay periods of when the department learns of the error.

c) Overpayment Errors

When a net twenty-five dollar (\$25.00) or more overpayment error occurs, the nurse will repay the overpayment in the same amount and within the same number of pay periods in which the error occurred. In cases that necessitate pay back of overpayments totaling more than \$200.00, the County shall notify the Association prior to implementing repayment action.

Section 7.7 - Automatic Check Deposit

All nurses hired after the effective date of this Agreement shall be paid by automatic check deposit. By March 1, 2008 all nurses hired prior to the effective date of this Agreement shall be paid by automatic check deposit unless the nurse certifies he/she does not have a bank account.

ARTICLE 8 - HOURS OF WORK, OVERTIME, PREMIUM PAY

Section 8.1 - Hours of Work

Eight (8) hours work shall constitute a full day's work and forty (40) hours work shall constitute a full week's work unless otherwise provided by law, code or other agreement. Nurses assigned to an eight (8) hour shift which is shortened to seven (7) hours due to daylight savings time shall be paid for eight (8) hours, and nurses assigned to an eight (8) hour shift which is lengthened to nine (9) hours due to daylight savings time, shall be paid overtime one (1) hour as defined in Section 8.2(b).

Section 8.2 - Overtime Work

a) Overtime Defined

1. Exempt Nurses

Overtime is defined as time worked beyond eighty (80) hours on a bi-weekly pay period, or beyond eight (8) hours in any work day except as mutually agreed upon between the County and the Association. Time for which pay is received but not worked such as vacation, sick leave, and authorized compensatory time off, will be counted towards the base period. The County Executive shall determine by administrative order those classes and positions which shall be eligible for overtime work and for cash payment.

2. Non-exempt Nurses

For non-exempt nurses all provisions regarding overtime shall be as set by the Fair Labor Standards Act. All disputes regarding that Act shall be within the sole jurisdiction of the U.S. Department of Labor and shall not be subject to grievance or arbitration under this contract. At least five (5) working days prior to filing any complaint regarding the Act with the U.S. Department of Labor, the Association shall give the County written notice. Such notice shall contain specific information so that the County can prepare a response.

b) Rate of Pay

When overtime work is assigned and is authorized by the appointing authority to be worked, compensation for such time worked shall be time off with pay computed as noted in 1. and 2. below, except that such overtime work shall be paid in cash for nurses where required by State or Federal law or when specifically authorized by administrative order of the County Executive.

1. Regular Overtime - one and one-half (1 1/2) hours for every hour of overtime worked.

2. Continuous Shift - one and one-half (1 1/2) hours for the first four (4) hours of overtime contiguous to their regular shift of a minimum of eight (8) hours and two (2) hours for any additional hours worked.

All compensatory time off must be taken within twelve (12) months of the date the overtime was worked, and failure to take the compensatory time off shall be deemed a waiver of the compensatory time by the nurse. In the event the appointing authority does not provide compensatory time off during the mandatory time period, the nurse may take compensatory time off as a matter of right immediately before the end of the pay period in which the compensatory time would be lost. Compensatory time balances shall be paid in cash on separation. A nurse may elect in advance to receive compensatory time-off credit in lieu of cash compensation for overtime where compensatory time off is allowed, if the appointing authority agrees.

c) Distribution of Overtime

In situations where the need for overtime work exists, coded nurses in the applicable work unit shall first be offered the overtime work. Overtime work shall be distributed among nurses in the applicable work unit as equally as practicable.

Section 8.3 - Meal Periods

a) Length

Nurses shall be granted a meal period not less than thirty (30) minutes nor more than one (1) hour, scheduled at approximately the mid-point of the work day. Nurses required to be at work stations for eight (8) or more consecutive work hours shall have their meal during work hours.

b) Overtime Meals

If a nurse is assigned two (2) or more hours of overtime work contiguous to the nurse's regular work shift or is called in within three (3) hours of the nurse's scheduled quitting time and then works two (2) or more hours of overtime work, the County will reimburse the cost of the meal actually purchased and consumed by the nurse on the nurse's own time to a maximum amount of nine dollars (\$9.00). Nurses shall be provided additional meals as above for every seven (7) hour period of overtime completed thereafter. Nurses must present their claim for the reimbursement within fourteen (14) calendar days following the shift it was earned or the meal reimbursement is waived.

c) County Facilities

Whenever the duties or responsibilities of any County nurse require the nurse to be present and on duty during the serving of meals in a County facility and where such duty or responsibility occupies that nurse's meal period, such individual shall be entitled to that meal without charge.

d) Meal Rates

In each County dining facility where meals are served to nurses at the nurse's expense, the Department Head in charge of the operation of that facility shall prescribe the rates to be charged. The rates so prescribed shall, as a minimum, be sufficient to defray the costs of the food served.

Section 8.4 - Rest Periods

All nurses shall be granted and take a rest period of fifteen (15) minutes during each half shift of four (4) hours of work. Rest periods shall be considered as time worked for pay purposes. Should an individual nurse anticipate not being able to take his/her rest period due to patient care needs, he/she shall promptly notify his/her charge nurse or supervisor, or if unable to directly notify the charge nurse or supervisor, the nurse shall inform the relief nurse, in which case every effort shall be made to ensure the nurse is offered an alternate rest period during his/her shift. Any alternate rest period offered shall be considered a rest period and not a meal period.

If a nurse is not offered a rest period, the missed break shall be reported utilizing the Notice of Staffing Level Concerns form and process as listed in Section 18.10(d), (e), and (f).

Section 8.5 - Clean-Up Time

All nurses whose work causes their person or clothing to become soiled shall be provided with reasonable time and adequate facilities for wash-up purposes.

Section 8.6 - On-Call Pay

a) Definition

On-call is defined as the requirement to remain immediately available to report for duty to perform an essential service when assigned by the appointing authority, subject to approval by the County Executive. On-call duty is in addition to and distinct from the normal work week. This Section is only applicable to those situations where nurses are recalled to work when previously placed on an on-call status.

b) Classifications Eligible

Each Department Head, subject to approval by the County Executive, shall designate which class(es) of nurse(s) shall be subject to on-call duty.

c) Rates of Pay

Nurses assigned to on-call duty shall receive, in addition to their regular salary, one half (1/2) of their regular base rate of pay for each hour of assigned call duty. Nurses who are called into work while on-call will receive one and one-half (1 1/2) times their regular base rate of pay for each hour worked. Shift differentials shall be paid in accordance with Section 8.8.

d) Beepers

Beepers shall be provided to all nurses when placed on on-call status.

Section 8.7 - Call-Back Pay

If overtime work does not immediately follow or precede the regular work shift, a minimum of four (4) hours call-back time shall be credited the nurse. Call-back pay is subject to all provisions of Article 8, Section 2, Overtime Work.

The O.R. Nurse or Recovery Room Nurse may elect to receive compensatory time off credit in lieu of cash compensation for call-back time worked.

An O.R. Nurse or Recovery Room Nurse shall be granted a day charged to Paid Time Off, leave without pay, or compensatory time, on the O. R. or Recovery Room Nurse's normal work day following five (5) or more hours of call-back time.

Nurses will be credited for each call-back during a scheduled shift.

Section 8.8 - Call-In Pay

Availability does not constitute confirmation to work. Definite confirmation must be made by authorized personnel before the nurse reports to work. If staffing needs change and the nurse reports to work for a specific area, no work is available and no alternate assignment can be made, the nurse shall be reimbursed for a minimum of four (4) hours.

No work or pay is required under this provision if the employer has attempted to contact the nurse by phone (contact or attempted contact has been documented) at least one and one half (1.5) hours prior to the start of the shift to inform the nurse not to report. This provision is waived if the nurse declines an alternate assignment.

Section 8.9 - Shift Differentials

a) Definition of shifts:

1. DAY shift -- any scheduled shift of at least eight (8) hours beginning on or after 6:00 a.m. and ending on or before 6:00 p.m.
2. EVENING shift -- any scheduled shift of at least eight (8) hours beginning on or after 2:00 p.m. and ending on or before 2:00 a.m.
3. NIGHT shift -- any scheduled shift of at least eight (8) hours beginning on or after 10:00 p.m. and ending on or before 10:00 a.m.

b) Part Time/Overlapping Shifts:

1. For shifts of fewer than eight (8) hours, a differential will be paid on the hours worked only if at least half the hours fall between 5:00 p.m. and 6:00 a.m.
2. For shifts which fall across the shifts as defined above, a differential will be paid if at least half the hours fall between 5:00 p.m. and 6:00 a.m.
3. For shifts which fall across both the evening and night shifts as defined above, the differential will be paid according to which shift contains the majority of hours worked. If the split is half and half, the night shift differential will be paid.

c) Pay Rates:

1. The hourly rate for evening shift differential is \$4.00.
2. The hourly rate for night shift differential is \$7.25.
3. The above differentials are paid on productive hours worked only.

Section 8.10 - Split Shift Pay

A nurse who is performing services upon a split shift shall be paid an additional twelve dollars (\$12.00) per day. "Split Shift" is defined as eight (8) hours of work which are not completed within any nine (9) consecutive hours in a work day.

Section 8.11 - Charge Nurse Differential

A Clinical Nurse I, II, or III, and Psychiatric Nurse I, or II who is assigned as a charge nurse shall receive an additional two dollars and seventy five cents (\$2.75) per hour.

Section 8.12 - Weekend Off Provision

The County will attempt to grant every other weekend off and each nurse will not be required to work more than two (2) consecutive weekends in a row. The County guarantees that nurses will not be required to work more than twenty-six (26) weekends per year. If the County requires a nurse to work more than two (2) consecutive weekend days, or more than twenty-six (26) required above, the nurse will receive time and one-half for work in excess of that required. These penalties shall not be duplicated for the same weekend worked. Work as used in this section shall mean productive time. Weekend work required shall be prorated for newly coded nurses and for any nurse who is off the payroll due to an authorized leave of absence.

The above weekend off provisions may be waived on the written request of the individual nurse.

The weekend day a nurse is required to work must be the same day during consecutive weekends, e.g. a nurse who works the first Saturday, the second Saturday, and the third Saturday and Sunday would receive penalty pay at time and one half for the third Saturday. A nurse who works the first Saturday, the second Saturday, and the third Sunday would not receive penalty pay at time and one half for the third Sunday.

A nurse must pick up at least half of a scheduled shift on each weekend day worked to be eligible for penalty pay, e.g. a nurse working an eight hour shift who works the first Saturday for three hours, the second Saturday for eight hours, and the third Saturday for eight hours would not receive penalty pay at time and one half for the third Saturday. A nurse working an eight hour shift who works the first Saturday for four hours, the second Saturday for eight hours, and the third Saturday for eight hours would receive penalty pay at time and one half for eight hours the third Saturday. A nurse working an eight hour shift who works the first Saturday for eight hours, the second Saturday for three hours, and the third Saturday for eight hours would not receive penalty pay at time and one half for the third Saturday. A nurse working an eight hour shift who works the first Saturday for eight hours, the second Saturday for four hours, and the third Saturday for eight hours would receive penalty pay at time and one half for eight hours the third Saturday.

The examples listed are not exhaustive.

Section 8.13 - Weekend Shift Differential

A weekend differential of two dollars (\$2.00) per hour will be paid to Registered Nurses for productive time worked on a Saturday and/or Sunday. For the Night Shift only, the weekend will begin at the start of the RN's regularly scheduled Saturday shift (i.e., 11:00 p.m. on Friday) and terminate at the end of his/her regularly scheduled shift on Sunday (i.e., 7:30 a.m. on Sunday).

This differential shall not be pyramided with other penalty premiums or paid on overtime shifts. The value of the weekend differential does not increase regardless of hours worked or rates of pay, etc.

Section 8.14 - Float Differential

The order of float shall be as follows:

- a) Volunteers;
- b) Extra help and per diem;
- c) Coded nurses:
 - 1. All coded nurses working overtime will float prior to regularly scheduled coded unit nurses;
 - 2. All coded nurses working over-code will float prior to regularly scheduled coded unit nurses.

Each nurse will only float within areas as follows:

- 1. Medical-Surgical Units (3 Surgical, 4 Surgical, 4 Medical)
Admission, Discharge, Transfer (ADT) Nurse
- 2. Neonatal ICU
Pediatrics
Pediatric Intensive Care Unit
- 3. Adult Intensive Care Units (MICU, CCU, SICU, TICU)
Burn Unit
Cardiac Cath Lab
Interventional Radiology
- 4. Rehabilitation Unit 1 RHB
Rehabilitation Unit 2 RHB
Rehabilitation Trauma Unit RTC2
- 5. Labor and Delivery
- 6. Mother Infant Care Center (MICC)
- 7. Operating Room

8. Post Anesthesia Care Unit (PACU)
Ambulatory Surgery Unit (ASU)
9. Transitional Care Neurosurgery Unit
Medical Short Stay Unit
10. Drug and Alcohol
11. Psychiatric Inpatient
Emergency Psychiatric Service
12. Custody Health Services
13. Ambulatory Care Clinics
14. Emergency Department
(not to float except in emergency)
15. Renal Care Center/ Renal Dialysis Unit
16. Resource Nurse
17. Endoscopy

- b) If a float assignment outside like areas is necessary, Management shall attempt to send volunteers from the unit to be floated from prior to making an involuntary assignment. If a coded nurse is required to float outside of one of the like areas, the nurse shall receive one dollar (\$1.00) per hour for such assignment. A nurse who requests to float in order to broaden the nurse's experience may put the nurse's name on a list, maintained in the Nursing Office, indicating where the nurse requests to float. In this case, a differential shall not be paid.

Except in emergencies (emergency is defined as a situation when reasonable efforts to float from like areas fails), no nurse will be assigned to an area without having adequate orientation to that area. Adequate orientation will be determined by the Director of Nursing with input from the Nurse Manager, and Staff Developer.

Assignments shall include only those duties and responsibilities for which competency has been validated. A registered nurse with demonstrated competencies for the area shall be responsible for the nursing care, and shall be assigned as a resource to the

RN who has been assigned to the unlike area and who has not completed competencies for that area.

This Section will not apply when one of the units is temporarily closed.

- c) The County will attempt to expand the float pool at Valley Medical Center. Coded Floats and Resource Nurses will be paid the current differential.

Section 8.15 - Temporary Work Location

When a nurse is assigned to work at a location different from the nurse's regularly assigned work location, the nurse shall be allowed to travel on County time to that work location. Time allotted for travel and mileage paid shall be based on actual miles traveled. Actual miles traveled shall be defined as all miles driven on County business. However, no mileage reimbursement shall be paid for miles traveled to the first field or work location of the day from the nurse's place of residence or from the last field or work location of the day to the nurse's place of residence, unless the miles traveled exceeds the distance normally traveled by the nurse during their normal home-to-work commute. In that case, the nurse may claim reimbursement for only the added mileage which exceeds their normal home-to-work location.

The County will either supply transportation for such travel or shall pay mileage based on the above distances. The County assumes no obligation to the nurse who for self-convenience voluntarily reports to other than the regularly assigned work location.

Section 8.16 - Bilingual Pay

On recommendation of the appointing authority and the Director of Personnel, the County may approve payments of one hundred fifty (\$150.00) per month to a bilingual nurse whose abilities have been determined by the Director of Personnel as qualifying to fill positions requiring bilingual speaking and/or writing ability. Bilingual skill payments will be made when:

- a) Public contact requires continual eliciting and explaining information in a language other than English; or
- b) Where translation of written material in another language is a continuous assignment; or
- c) The position is the only one in the work location where there is a demonstrated need for language translation in providing services to the public.

The County shall review positions covered by this Agreement not less than annually to determine the number and location of positions to be designated as requiring bilingual abilities. The County will post the names and language skills by work unit of those employees who are being paid a bilingual differential.

Differential may be removed when the criteria ceases to be met.

Section 8.17 - Hazard Duty

- a) The work places covered and included in this Section are the JPD Ranches and the locked/secured sections of the following facilities:
- The Main Jail
 - Elmwood
 - North County Jail
 - JPD Hall
 - Psychiatric Inpatient
 - Emergency Psychiatric Services
- b) A premium for Hazard Duty of ninety-five cents (\$.95) per hour shall be paid to coded classifications while in paid status whose entire assignment for the County is in a work place described in paragraph a). This payment shall be made irrespective of classification, pay level, overtime status, holiday work, or other wage variations. This hazard duty premium shall be included in the pay status time of the coded classifications described in this paragraph b).
- c) A premium for hazard duty of ninety-five cents (\$.95) per hour shall be paid to coded classifications, whose entire assignment is not in a work place described in paragraph a), for only the hours assigned and worked in a work place described in paragraph a). This payment shall be made irrespective of classification, pay level, overtime status, holiday work or other wage variations. This hazard duty premium shall not be included in the pay status time of the coded classification described in this paragraph c). A nurse must work a minimum of thirty (30) consecutive minutes per entry into a work place described in paragraph a) prior to being eligible for the hazard duty premium. Coded classifications shall receive an additional full hourly premium for time worked of more than six (6) minutes in any hour after the first hour of work.
- d) The hazard duty premium shall not be allowed in computing payments at the time of termination.

Section 8.18 - Alternate Work Schedules

The only alternate shifts recognized are ten (10) and twelve (12) hour shifts. A nurse may elect to work an alternate work schedule based on eighty (80) hours per two (2) week period. Time worked in excess of eighty (80) hours bi-weekly shall be subject to overtime pay provisions of this Agreement. This schedule shall be a voluntary/optional alternative to a previous eight (8) hour per day schedule with mutual agreement of the nurse and management. A nurse working a regularly scheduled ten (10) or twelve (12) hour shift shall be compensated for each hour worked at the regular hourly base pay. Hours worked in excess of ten (10) or twelve (12) hours of a regularly scheduled ten (10) or twelve (12) hour shift, shall be subject to overtime provisions of Article 8, Section 2 (Overtime Pay).

Shift differential shall be paid for all hours worked as specified in Article 8, Section 8 (Shift Differentials).

Section 8.19 - Changes in Schedules

Except for emergencies, changes in a nurse's scheduled work unit, scheduled regular shift or scheduled regular number of hours in the work day will not be made unless the nurse is given advance notice of the change and is provided the opportunity to discuss the proposed change with the appropriate supervisor.

Section 8.20 - Additional Shift Work

Draft schedules shall be posted two weeks in advance of the posting of the final schedule. Nurses shall indicate availability for additional shift work in writing. Prior to posting of the final work schedule, nurses in part time codes will be given preference over Per Diem and Extra-Help nurses for available, additional shifts in their work unit. Additional shift work within a unit shall be distributed as equally as practicable among coded nurses in the following sequence:

- a) Part time coded nurses within the work unit the additional shifts are available;
- b) Part time coded nurses outside the work unit, provided such nurse can claim competency in the area the additional shifts are available.

Additional shifts do not result in overtime compensation or weekend off provision penalty pay unless pre-approved by Management.

Section 8.21 - Voluntary Reduced Work Hours Program

- a) The County agrees to establish a Voluntary Reduced Work Hours Program for full-time nurses represented by the Association.

The purpose of the Program is to reduce work hours and a commensurate amount of pay on a voluntary basis.

- b) Nurses may elect a two and one-half percent (2 1/2%), five percent (5%), ten percent (10%) or twenty percent (20%) reduction in pay for a commensurate amount of time off for a six (6) month period. Admission into the plan will be at six (6) month intervals.
- c) All nurses in the Program will revert to their former status at the end of six (6) months. If a nurse transfers, promotes, demotes, terminates, or in any other way vacates or reduces the nurse's present code, the nurse will be removed from the Program for the balance of the six (6) month period.
- d) Compensatory time shall accrue as earned and shall not be scheduled on any day considered as a County holiday. Nurses may use the reduced hours time in advance of accrual and will reimburse the County for hours taken in advance of accrual upon early termination from the Program.
- e) Participation in this Program shall be by mutual agreement between the nurse and the Department/Agency Head. At no time will approval be given if it results in overtime. Restrictions by Department/ Agencies within work units shall be uniformly applied.
- f) It is understood by the County that due to this Program there may be lower levels of service.
- g) All nurses will be notified in writing regarding the Program specifics and the sign-up options. Such written notice to be mutually agreed upon by the parties.
- h) Full and timely disclosure of actual sign-ups and any analysis developed will be made available to both the County and the Association.
- i) This agreement governs as to the Voluntary Reduced Work Hours Program, but will in no way alter the meaning of the Association and County Agreements currently in effect. This will include any departmental, side letter agreements, etc.

Section 8.22 - National Certification Pay

Annual compensation of two hundred fifty dollars (\$250.00) may be issued to a coded nurse who is certified or recertified in a clinical specialty. Each coded nurse may apply for National Certification Pay provided:

- a) The certification is clinically relevant to the nurse's area of clinical specialty and will enhance the nurse's knowledge base and skill in providing expert patient care.
- b) The certification is issued by a nationally recognized accrediting agency and applicable to current area of practice.
- c) Certification that is required by the California Board of Registered Nursing (BRN) to meet certification or recertification requirements as a Certified Registered Nurse Anesthetist (CRNA) does not qualify for National Certification pay.
- d) Certification that was used to meet the California Board of Registered Nursing credentialing requirements as a Nurse Practitioner or Clinical Nurse Specialist does not qualify for National Certification pay.
- e) Verification of successful completion of such certification is submitted during the April submission month.

ARTICLE 9 - PAID TIME OFF

Section 9.1 - Purpose

Paid Time Off was developed to allow more flexibility in the use of nurse's time off. The following were taken into consideration in establishing the amount of time accrued each pay period:

3 Personal leave days
12 Holidays
1 Birthday
Vacation

9.2 - Paid Time Off Accrual

a) Each nurse shall be entitled to annual Paid Time Off. Paid Time off is earned on an hourly basis. For purposes of this section, a day is defined as eight (8) work hours. Prior to February 16, 2003, the provisions of the prior contract will apply to PTO total yearly accrual, accrual factor, hourly accrual factor per pay period and maximum allowable balances.

Effective February 16, 2003, the accrual schedule shall be as follows:

SERVICE YEARS & WORK DAY ALLOWABLE EQUIVALENT	TOTAL YEARLY ACCRUAL IN WORK DAYS	ACCRUAL FACTOR PER HOUR	HOURLY ACCRUAL FACTOR PER PP	MAXIMUM BALANCE
1st year (1st through 261 days)	27	0.103846	8.307	81 work days
2nd through 4th year (262 through 1044 days)	29	0.111538	8.923	87 work days
5th through 9th year (1045 through 2349 days)	33	0.126923	10.153	99 work days
10th through 14th year (2350 through 3654 days)	35	0.134615	10.769	105 work days
15th through 19th year (3655 through 4959 days)	37	0.142307	11.384	111 work days
20th year and thereafter (4960 days and beyond)	39	0.150000	12.000	117 work days

Section 9.3 - Pre-Scheduled Usage

Paid Time Off may be used for any lawful purpose by the nurses; the time requested shall require the approval of management with due consideration of nurse convenience and administrative requirements. Requests for paid time off shall not be unreasonably denied. Approvals / denials shall be made in writing to the requesting nurse in accordance with Nursing Standards within thirty (30) days of the receipt of the request. All Paid Time Off hours must be exhausted before Leave Without Pay may be used with the exception of leaves of absence Where there are no earnings in one (1) full pay period. A nurse may be granted Leave Without Pay for less than one (1) pay Period upon the approval of the appointing authority or their designee.

Each unit shall maintain a vacation calendar effective June thirtieth (30) for the upcoming calendar year. The purpose of the calendar is to aid in vacation planning by the nurse and is not to be considered as an approval of a nurse's request. The scheduler will enter nurse's vacation requests(s) on such calendar as it is received.

Before denying a request, the employer will make all reasonable attempts to accommodate conflicts considering the utilization of over code work, scheduling extra help and per diem, and voluntary shift trades in support of vacation scheduling.

Upon request of a nurse denied vacation, management shall meet with the nurse on an individual basis no later than forty five (45) days before schedules are finalized in order to explore all reasonable options for resolving such conflicts. Requests for vacation shall be prioritized by submission date. Should two or more requests be submitted on the same date seniority, as defined in Section 5.1-Seniority Defined, will be used to resolve the conflict.

Section 9.4 - Paid Time Off Carry Over

In the event the nurse does not take all the paid time off to which he/she is entitled in the succeeding payroll year (twenty-six (26) or twenty-seven (27) pay periods), the nurse shall be allowed to carry over the unused portion, provided that the nurse may not accumulate more than three (3) years' earnings except:

- a) When absent on full salary due to work-related compensation injury which prevents the nurse from reducing credits to the maximum allowable amount, or
- b) In the case of inability to take paid time off because of extreme emergency, such as fire, flood or other similar

disaster, an additional accumulation may be approved by the County Executive.

Section 9.5 - Paid Time Off Pay-Off

Upon termination of employment a nurse shall be paid the monetary value of the earned Paid Time Off balance as of the actual date of termination of employment.

Section 9.6 - Nurse's Exit from Paid Time Off Program

In the event that a nurse covered by this section ceases to be covered by this section, the nurse shall revert back to Ordinance Section A25-693 "Vacations", A25-688 "Bereavement Leave", A25-694 "Sick Leave" and A25-664 "Holidays", or superseded agreement with a recognized employee organization. Any balance of paid time off shall be reconverted to vacation leave, and any paid time off accumulated over an amount allowed without reference to this section shall be credited as compensatory time off which must be used within one (1) year. Any balance in the Sick Leave Bank shall be converted to Sick Leave.

9.7 - Annual Cash Out of PTO

- a) If a nurse has no more than two (2) occurrences of unscheduled absences, the nurse may cash out up to eighty hours of PTO. During the term of this agreement, a nurse may only cash out up to forty (40) hours under this subsection.
- b) If the nurse has no more than four occurrences of unscheduled absences, the nurse may cash out up to forty hours of PTO.

Section 9.8 - Sick Leave Conversion to PTO

A nurse's eligibility for sick leave conversion is determined by the number of occurrences of sick leave usage. Sick leave use attributed to Worker's Compensation shall not be counted as an occurrence. The period for 2008 sick leave conversion eligibility begins December 17, 2007 and ends December 14, 2008. The period for 2009 sick leave conversion eligibility begins December 15, 2008, and ends December 27, 2009. The period for 2010 sick leave conversion eligibility begins December 28, 2009 and ends December 26, 2010. The conversion of sick leave to PTO will be for those nurses meeting the eligibility requirements below and upon the nurse's request to the Health and Hospital Systems Human Resources Department. A nurse must identify any sick leave use attributed to Worker's Compensation with the request in order for such leave to be disregarded as an occurrence. Requests for sick leave conversion for 2008 must be submitted in February 2009 and conversion to PTO shall be credited on March 9, 2009 (paycheck of March 27, 2009). Requests for sick leave conversion

for 2009 must be submitted in February 2010 and conversion to PTO shall be credited on March 22, 2010 (paycheck of April 9, 2010). Requests for sick leave conversion for 2010 must be submitted in February 2011 and conversion to PTO shall be credited on March 21, 2011 (paycheck of April 8, 2011).

Sick leave may be converted annually on the following basis (prorated for nurses other than full time on the basis of code status):

- a) If a nurse has no sick leave usage, seven (7) days of sick leave will be converted into PTO.
- b) If a nurse has one (1) occurrence of sick leave usage, six (6) days of sick leave will be converted into PTO.
- c) If a nurse has two (2) occurrences of sick leave usage, five (5) days of sick leave will be converted into PTO.
- d) If a nurse has three (3) occurrences of sick leave usage, two (2) days of sick leave will be converted into PTO.
- e) If a nurse has four (4) occurrences of sick leave usage, one (1) day of sick leave will be converted into PTO.
- f) If a nurse has five (5) or more occurrences of sick leave usage, no sick leave shall be converted to PTO.

Section 9.9 - Usage of Paid Time Off on Holidays

- a) The following shall apply to all holidays listed below:
 - 1. Holiday falls on regularly scheduled day to work and nurse does not work -- Charge maximum eight (8) hours PTO.
 - 2. Holiday falls on regularly scheduled day to work and nurse works -- Charge maximum eight (8) hours PTO and pay time and one-half for all hours worked.
 - 3. Holiday falls on scheduled day off and nurse does not work -- Nothing is charged as holidays are in PTO accrual rate.
 - 4. Holiday falls on scheduled day off and nurse works -- No charge to PTO Bank and pay time and one-half for all hours worked.
 - 5. Half-time nurses who do not work the holiday may elect in advance to charge four (4) hours to PTO and the remainder to leave without pay.

- b) The following shall be observed as legal holidays:
1. January 1st
 2. Third Monday in January
 3. Third Monday in February
 4. March 31st
 5. Last Monday in May
 6. July 4th
 7. First Monday in September
 8. Second Monday in October
 9. Veteran's Day to be observed on the date State of California workers observe the holiday
 10. Fourth Thursday in November (Thanksgiving Day)
 11. The Friday following Thanksgiving Day (Day After Thanksgiving)
 12. December 25th
 13. Other such holidays as may be designated by the Board of Supervisors.

All previous informal time off practices are eliminated and unauthorized.

- c) Nurses shall enjoy the same number of holidays, regardless of variations in work weeks. For nurses who are assigned to positions which are not normally staffed on the weekends (Saturdays and Sundays, such as the clinics and Staff Development), holidays which fall on Sunday are observed on the following Monday and holidays which fall on Saturdays shall be observed on the preceding Friday. For employees who are assigned to positions which normally work on weekends (such as the Medical Units, ICU's, Institutional Units, etc.) the holiday shall be observed on the actual day listed in (b), supra.
- d) The employer will use its best efforts to rotate equitably holiday time off among coded nurses for each unit for Thanksgiving, Christmas and New Year holidays.

- e) A nurse may elect in advance to receive compensatory time off credit in lieu of cash compensation.
- f) A nurse may elect in advance to use compensatory time off for a holiday in lieu of charging PTO.

Section 9.10 - Call Back From PTO

When a nurse is called back from PTO, which has been scheduled at least five (5) calendar days in advance of the first day of PTO, the nurse shall be paid at 1 1/2 times the nurse's base hourly rate.

Section 9.11 - PTO Illness Conversion

If a nurse on PTO becomes ill, the nurse may convert PTO to sick leave with pay. Such conversion must be supported by a statement from an accredited physician.

ARTICLE 10 - SICK LEAVE PROVISIONS

Section 10.1 - Sick Leave Bank Usage and Accrual

Each nurse shall be entitled to sick leave. Such leave may be used for personal illness or for medical consultation to preserve the nurse's health. Except for emergencies, all absences for medical consultation must be approved by the nurse's supervisor. Such leave shall be earned on an hourly basis and computed at the rate of ninety-six (96) hours per year and may be accrued without limitation. The accrual factor per hour is .045977 and the accrual factor per full pay period is 3.678.

Section 10.2 - Sick Leave Usage for Care of Immediate Family

A nurse who has acquired a sufficient right to sick leave with pay may be granted permission to use same not to exceed three (3) working days of such leave in order to care for a sick or injured member of the nurse's immediate family requiring care. "Immediate family" shall mean the mother, father, grandmother, grandfather of the nurse or of the spouse of the nurse and the spouse, son, son-in-law, daughter, daughter-in-law, brother, sister, grandchild, brother-in-law or sister-in-law of the nurse or any person living in the immediate household of the nurse.

Section 10.3 - Doctor's Notes

Request for sick leave with pay in excess of three (3) working days must be supported by a statement from a licensed medical practitioner who is eligible for third party reimbursement. Management may require such a supporting statement for absences of less than three (3) days when there is reasonable cause.

Section 10.4 - Bereavement Leave

Leaves of absence with pay shall be granted nurses in order that they may discharge the customary obligations arising from the death of a member of their immediate family. "Immediate family" shall mean the mother, father, grandmother, grandfather of the nurse or of the spouse of the nurse and the spouse, son, son-in-law, daughter, daughter-in-law, brother, sister, grandchild, brother-in-law, sister-in-law, registered domestic partner or step-parent of the nurse or any person living in the immediate household of the nurse. Up to forty (40) hours pay shall be granted which will consist of sixteen (16) hours not charged to any accumulated balance followed by twenty-four (24) hours chargeable to sick leave, if necessary. An additional twenty-four (24) hours, sixteen (16) chargeable to sick leave and eight (8) not charged to any accumulated balance, is authorized if out-of-state travel is required.

Section 10.5 - Sick Leave Bank Pay Off

For purposes of this paragraph, a day is defined as eight (8) work hours.

Upon death or retirement, up to sixty (60) days of accrued sick leave shall be paid off at a rate of fifty percent (50%) of the equivalent cash value. All accrued balances beyond sixty (60) days shall be paid off at the rate of twelve and one-half percent (12 1/2%) of the accrued cash value (one hour's pay for one day of accrual).

Upon resignation in good standing, nurses with ten (10) or more years' service shall be paid up to sixty (60) days of accrued sick leave at the rate of twenty-five percent (25%) of the equivalent cash value. All accrued balances beyond sixty (60) days will be paid off at the rate of twelve and one-half percent (12 1/2%) of the accrued cash value.

Section 10.6 - Reinstatement Pay Back

Nurses receiving a sick leave bank payoff in accordance with Section 10.5 may, if reinstated within one (1) year, repay the full amount of sick leave bank payoff received and have the former sick leave bank balance restored. Repayment in full must be made prior to reinstatement.

Section 10.7 - Sick Leave Conversion

A portion of unused sick leave may be converted to PTO in accordance with Section 9.8.

ARTICLE 11 - LEAVE PROVISIONS

Section 11.1 - Leave Without Pay

a) Reasons Granted

Leaves of absence without pay may be granted to nurses for up to one (1) year. Extensions to leaves approved for less than one (1) year shall not unreasonably be denied provided adequate advance notice is given. If a nurse wishes to return to work early from a leave of absence, the nurse shall provide reasonable advance notice to the appointing authority. Leaves beyond one (1) year may be granted due to unusual or special circumstances. The following are approved reasons for such leaves:

1. Illness beyond that covered by sick leave.
2. Education or training which will benefit the County, including advancement in nursing.
3. Other personal reasons which do not cause inconvenience on the department.
4. To accept other government agency employment.
5. Paternity leave, not to exceed six (6) months.

b) Leave for Association Business

Upon thirty (30) days' advance notice, a long term leave without pay to accept employment with the Association shall be granted by the appointing authority for a period of up to one (1) year. No more than three (3) nurses shall be granted a leave at any one time. A leave may only be denied if:

1. The notice requirement is not met.
2. The number of nurses on leave has reached the maximum of three (3).
3. The nurse has specialized skills and abilities which are necessary and could not be replaced.

With notice no less than thirty (30) days prior to the conclusion of the leave, such leave may be extended up to one (1) year upon approval of the appointing authority.

c) Revocation

A leave may be revoked by the Director of Personnel upon evidence that the cause for granting it was misrepresented or has ceased to exist.

d) Seniority Rights

Maternity leaves of more than thirteen (13) pay periods; leaves of absence of more than two (2) pay periods; and suspensions shall not be counted as time spent in a salary step in computing eligibility of the nurse for further salary increases. All time spent on industrial injury leave shall be counted.

Section 11.2 - Family Leave

a) Maternity and Adoptive Leave

1. Length

Upon request, maternity leave without pay shall be granted to natural or adoptive parents by the appointing authority for a period of up to six (6) months. With notice no less than one (1) month prior to the conclusion of the leave, such leave may be extended up to one (1) year upon approval of the appointing authority. A request for extension can only be denied for good cause. A nurse who is pregnant may continue to work as long as her physician approves with concurrence from the Department.

2. Sick Leave Use

If, during the pregnancy leave or following the birth of a child, the nurse's physician certifies that she is unable to perform the duties of her job, she may use her PTO or accumulated sick leave during the period certified by the physician. The authorized PTO or sick leave shall be charged either prior to or at the termination of the leave.

b) Paternity Leave

Upon request, paternity leave without pay shall be granted to natural or adoptive parents not to exceed six (6) months. All provisions of Section 11.1 shall apply to this paternity leave provision.

c) Other Family Leave

Upon request, family leave shall be granted for the placement of a foster child, or to attend to the serious illness of a family member in accordance with the Family and Medical Leave Act, and for the serious illness of a same sex domestic partner, for a period of up to six (6) months.

Section 11.3 - Leaves to Perform Jury Duty or to Respond to a Subpoena

a) Response to Summons

A nurse shall be allowed to take leave from the nurse's County duties without loss of wages, PTO, sick leave or nurse benefits for the purpose of responding to summons to jury selection or serving on a jury for which the nurse has been selected, subject to the limitation that a nurse shall receive paid leave to serve on a jury for which the nurse has been selected not more than once during a calendar year and provided that the nurse executes a written waiver of all compensation other than the mileage allowance, for which the nurse would otherwise receive compensation by virtue of the nurse's performance of such jury duty. No nurse shall be paid more than the nurse's regular shift pay or regular work week pay as a result of jury duty service. The nurse is required to notify the nurse's appointing authority when the nurse has received a jury summons and when the nurse's jury service is completed.

b) Jury Duty

Nothing in this Section shall prevent any County nurse from serving on a jury more than once per calendar year, provided, however, that such additional periods of absence from regular County duties as a result thereof shall be charged, at the option of such nurse, to either accrued Paid Time Off (PTO) or leave without pay.

c) Response to a Subpoena

No nurse shall suffer loss of wages or benefits in responding to a subpoena to testify in court if that nurse is not a party to the litigation.

d) Release Time

In the event a nurse is called to court under the above provision, the following shall apply:

1. Swing or PM shift shall have release time the day of court attendance; time spent in court shall be deducted from the regular shift on that day with no loss of wages or benefits.
2. Night or graveyard shift shall have release time on the shift prior to court attendance; and that nurse shall suffer no loss of wages or benefits.
3. When a nurse, whose regularly scheduled hours includes two (2) full shifts (16 hours) of scheduled duty between 11:00 p.m., Friday to 3:00 a.m., Monday, is selected for a jury

and is required to be in Court during his/her regular days off, the department will make every effort to provide the following Saturday or Sunday as a regularly scheduled day off. The weekend cannot count as a weekend worked for weekend off provisions.

e) Return to Work

For the purpose of this Section, a nurse who responds to a summons to jury duty and who is not selected as a juror shall not be deemed to have performed jury duty and shall return to work as soon as possible.

Section 11.4 - Compulsory Leave

a) Fitness for Duty Examination

If any non-probationary nurse is required by the appointing authority to take a fitness for duty examination not connected with preexisting or existing industrial injury to determine if the nurse is incapacitated for work, the following provisions will apply and will be given to the nurse in writing:

1. Before making a decision, the physician designated by the appointing authority will consult with the nurse's personal physician and will advise the nurse of this procedure.
2. If the nurse's personal physician agrees with the decision of the physician designated by the appointing authority, the decision is final.
3. If the physicians disagree, and the nurse so requests, they will select a third physician whose determination will be final. Cost for such examination by the selected physician will be equally shared by the nurse and the appointing authority.

b) Court Related

The appointing authority may require a nurse who has been formally charged in a court of competent jurisdiction with the commission of any felony or of a misdemeanor involving moral turpitude, provided said crime is related to the nurse's employment status, to take a compulsory leave of absence without pay pending determination by way of a plea, finding or verdict at the trial court level as to the guilt or innocence of such nurse.

1. Determination of Innocence

If there is a determination of innocence or the charges are dropped, the nurse shall be reinstated to the nurse's position with return of all benefits, including salary,

that were due for the period of compulsory leave if the nurse was available for work during this period. Despite reinstatement, the nurse remains subject to appropriate disciplinary action if warranted under the circumstances. Any such disciplinary action may be imposed effective as of the commencement date of the compulsory leave imposed under this Section.

2. Determination of Guilt

If there is a determination of guilt, the appointing authority may take appropriate disciplinary action. If the action is a suspension and the suspension is for a shorter duration than the compulsory leave, the nurse shall receive the difference between the compulsory leave and the suspension in salary and all benefits.

Section 11.5 - Military Leave

a) Governing Provision

The provisions of the Military and Veterans Code of the State of California and the County ordinance code shall govern the military leave of nurses of the County of Santa Clara.

b) Physical Examination

Any regular or provisional nurse shall be allowed time off with no loss in pay for the time required to receive a physical examination or re-examination as ordered by provisions of a national conscription act or by any branch of the National or State military services.

Section 11.6 - Educational Leave for Registered Nurses

a) Each July 1 a credit of forty (40) hours per year shall be granted for educational leave for all full-time nurses. Educational leave will be accumulative to a maximum of eighty (80) hours. Educational leave for part-time nurses will be prorated. There shall be a three (3) month waiting period for all nurses hired after the execution of this contract. However, each nurse who uses any time earned between three (3) and six (6) months must sign a note which states that the nurse will authorize a deduction from the nurse's last paycheck for the time used if the nurse leaves County employment within one (1) year of the date of hire.

b) The individual nurse shall decide the educational program in which they shall participate. It is understood that all use of educational leave shall be principally related to nursing practices within the County.

- c) Details in the written application for educational leave shall include but not be limited to the course, institute, workshops, classes, or homestudy subjects, hours, faculty and purpose of taking the course, seminar, etc. The application shall be received by the Administration no less than ten (10) working days prior to the requested date of leave of absence. At least five (5) working days prior to the commencement of the leave of absence date, the Administration shall respond in writing to the nurse. When notification of a course is received less than ten (10) working days prior to the course date, Administration may consider approval.
- d) In all instances set forth above, the leave request shall be subject to approval by the Department. Such leaves shall not unduly interfere with staffing requirements for patients' care or duplicate comparable training offered by the Department. The Department agrees that it shall not unreasonably withhold approval.
- e) Proof of attendance may be requested by the Department. The nurse may be requested by the Department to report such activity in writing.
- f) Every effort shall be made to arrange scheduling for the individual nurse's use of educational leave time.
- g) If the educational leave falls on the nurse's day off, the nurse shall select one of the following:
 - 1. The day will be charged to educational leave and the nurse will have a day added to the nurse's Paid Time Off balance, or
 - 2. The day will be charged to educational leave and the nurse will be given another day off during the pay period, or
 - 3. The day will not be charged to educational leave.
 - 4. Educational leave granted for homestudy courses shall not be counted toward the base period in calculation of overtime.
- h) Participation in the Registered Nurses Unit educational leave program shall not alter the RN's right to benefits included in the Professional Development Fund Section of this Agreement.
- i) The County shall provide three (3) courses approved by the Board of Registered Nursing for continuing educational credit,

provided qualified instructors are available and interested. The County is under no obligation to hire additional instructors.

- j) Educational leave for homestudy courses will be paid at the rate of one (1) hour for each contact hour completed. A copy of the certificate verifying successful completion is required for educational leave to be paid.

ARTICLE 12 - PROFESSIONAL DEVELOPMENT AND
TUITION REIMBURSEMENT

Section 12.1 - Professional Development Fund

a) General

1. The County will fund, on a matching basis, up to eighty thousand dollars (\$80,000) per fiscal year for group and individual professional development, California Board of Registered Nursing (BRN) Registered Nurse licensure, certification and recertification in a nursing specialty, and for education, as described in sections "b" and "c". An additional amount of fifteen thousand dollars (\$15,000) per fiscal year shall be funded for the use by nurses in the classifications of Nurse Practitioner and Clinical Nurse Specialist for individual claims that are beyond the \$300 annual matching limits. Funds not used for any period shall be carried over for use in the next period.

b) Individual

1. Funded on a matching basis: fifty percent (50%) by the nurse and fifty percent (50%) by the County, up to a maximum County contribution of three hundred dollars (\$300) for nurses in the classifications of Clinical Nurse I, II, & III, Psychiatric Nurse I & II, Nurse Coordinator, Staff Developer, Infection Control Nurse, Assistant Nurse Manager, and Certified Registered Nurse Anesthetist per fiscal year. For nurses in the classifications of Nurse Practitioner and Clinical Nurse Specialist the matching cap is eight hundred dollars (\$800) per fiscal year.
2. The requested expenditure must relate to the nurse's job or one to which the nurse could reasonably aspire within County service.
3. Requests will be processed on a "first come, first served" basis, but priority will be given to first requests by an individual for the current year.
4. At least five (5) working days must be allowed for prior approval in the amount of the estimated County contributions for authorized expenses other than licensure reimbursement.
5. Allowable expenses shall include but not be limited to: certifications and recertifications in a nursing specialty; conference and seminar registration fees; actual cost of California BRN Registered Nurse licensure fees; tuition not reimbursed under the tuition reimbursement program; books

and materials required for a conference, seminar or course; expenses for travel out of the county to attend a conference, seminar or course, including transportation, meals, lodging, car rental, etc., per County reimbursement policy, procedures and schedules.

6. An itemized statement of expenses for programs shall be submitted by the nurse for reimbursement or accounting as the case may be.
7. All nurses whose BRN licenses expire during the term of the agreement must present a receipt or other proof of payment and/or the renewed BRN license within sixty (60) calendar days after expiration of the BRN license in order to receive reimbursement. Requests must be submitted on a form provided by the County.
8. Substitute courses may be approved when approved courses are found to be unavailable.

c) Group

1. Funded on a matching basis: twenty-five percent (25%) by the participating nurses and/or the Association, and seventy-five percent (75%) by the County.
2. The Association will plan and budget group programs for review and approval by the County/Association Committee. Each proposed program will be considered separately on its own merits.
3. The Association will administer the approved programs, making all the necessary arrangements, etc.

d) Quarterly Financial Statement

A quarterly financial statement shall be forwarded to the Association on the status of the fund no later than two (2) weeks after the end of each quarter.

Section 12.2 - Tuition Reimbursement

a) Fund

The County shall maintain a tuition reimbursement program for the term of this Agreement. The total monies in this program will be administered at the County level. The fund will consist of two hundred thousand dollars (\$200,000) per fiscal year. Effective July 1, 2008, the fund will increase to three hundred thousand (\$300,000) per fiscal year. One quarter (1/4) of each year's fund will be available on the following quarterly dates:

Fiscal Year 14-15
2nd quarter - October 1, 2014
3rd quarter - January 1, 2015
4th quarter - April 1, 2015

Fiscal Year 15-16
1st quarter - July 1, 2015
2nd quarter - October 1, 2015
3rd quarter - January 1, 2016
4th quarter - April 1, 2016

Fiscal Year 16-17
1st quarter - July 1, 2016
2nd quarter - October 1, 2016
3rd quarter - January 1, 2017
4th quarter - April 1, 2017

Fiscal Year 17-18
1st quarter - July 1, 2017
2nd quarter - October 1, 2017
3rd quarter - January 1, 2018
4th quarter - April 1, 2018

Fiscal Year 18-19
1st quarter - July 1, 2018
2nd quarter - October 1, 2018
3rd quarter - January 1, 2019
4th quarter - April 1, 2019

Fiscal Year 19-20
1st quarter - July 1, 2019
2nd quarter - October 1, 2019

Funds not used for any period shall be carried over for use in the next period. Funds shall be encumbered to fifteen percent (15%) above the amount allotted for each funding period for the first one and one half fiscal years including any unused amount carried over from the prior funding period. This additional amount for encumbrance for the last one half fiscal year of this Agreement may be decreased based on the actual usage pattern. No amount may be approved or expended beyond funds available for the term of the Agreement.

b) Eligibility

Nurses are eligible to participate in the program provided:

1. The nurse is not receiving reimbursement from any other government agency or private source. (This applies to reimbursement only.)

2. The training undertaken is related to the nurse's occupational area or has demonstrated value to the County.
3. The application was filed with the appointing authority or their designee prior to the commencement of the course. Applications requiring time off must be filed with the appointing authority at least ten (10) days prior to the commencement of the course.
4. Substitute courses may be approved when approved courses are found to be unavailable.
5. There are sufficient funds available in the program.

c) Disapproval

Management may disapprove an application for tuition reimbursement provided:

1. Notice of disapproval is given to the nurse within ten (10) working days of the application.
2. The County alleges disapproval is necessary because any of the provisions above have not been met. When a nurse disagrees with the disapproval and files a grievance, they shall be allowed to continue the course with time off as provided for in this Section, except for denial based on paragraph b(5) above. If a final determination is made against the nurse, time off shall be made up by working, charging Paid Time Off (PTO) or comp time, or payroll deduction, and tuition reimbursement shall not be paid. If a final determination is made supporting the nurse, they shall be fully reimbursed in accordance with this Section.

d) Reimbursement

Total reimbursement for each nurse participating in the program will not exceed nine hundred dollars (\$900.00) per fiscal year. Mileage and subsistence will not be authorized unless the training is required of the nurse. Within the above limit, nurses shall receive full immediate reimbursement for tuition, including approved home study courses and other required costs (including textbooks) upon presentation of a receipt showing such payment has been made.

e) Deduction Authorization

The nurse shall sign a note which states that, upon receipt of reimbursement, they authorize:

1. Deduction from their wages in the event they do not receive a passing grade of C or better.
2. Deduction of fifty percent (50%) of the amount of reimbursement if they leave County employment within one (1) year after satisfactory completion of the course.
3. Deduction of the full amount of reimbursement if they leave County employment before completion of the course.
4. Any monies deducted from nurses under this Section will be redeposited into the Tuition Reimbursement Fund.

f) Make-Up Time

Nurses taking a course only available during working hours must make up fifty percent (50%) of the time away from the job. Make-up time may be deducted from the nurse's accrued educational leave, Paid Time Off (PTO) or compensatory time balance. Make-up time will not be allowed when it results in the payment of overtime. The department will make every effort to allow the nurse time off except where the payment of overtime will result. A nurse and the appropriate level of management may mutually rearrange the duty shift beyond eight (8) hours but within the eighty (80) hour pay period for purposes of participating in non-duty education and/or training deemed by the County to be to the benefit of the nurse and the County and such arrangement will be considered a waiver of Section 8.2.

g) Quarterly Financial Statement

A quarterly financial statement shall be forwarded to the Association on the status of the fund no later than two (2) weeks after the end of each period.

ARTICLE 13 - BENEFIT PROGRAMS

Section 13.1 - Workers' Compensation

a) Eligibility

Every nurse shall be entitled to industrial injury leave when the nurse is unable to perform services because of any injury as defined in the Workers' Compensation Act.

b) Compensation

A nurse who is disabled as a result of an industrial injury shall be placed on leave, using as much of the nurse's accumulated compensable overtime, accrued sick leave, and PTO time as when added to any disability indemnity payable under the Workers' Compensation Act will result in a payment to the nurse of not more than the nurse's full salary unless at the time of the filing of the Supervisor's Report of Injury the nurse indicates on the form provided by the supervisor that he/she does not want such integration of payments to take place. This choice shall be binding for the entire period of each disability unless the employee later requests in writing that the Workers' Compensation Division begin integration. In such case, integration shall be implemented at the beginning of the next pay period.

If integration occurs, the first three (3) days are to be charged to the nurse's accrued but unused sick leave. If the temporary disability period exceeds fourteen (14) calendar days, temporary disability will be paid for the first three (3) days.

c) Industrially Injured Workers - Temporary Modified Work Program

The County has established a program to return workers with temporary disabling occupational injuries or illnesses to modified duty within the County as soon as medically practical. Pursuant to the program, the County will make every reasonable effort to provide meaningful work assignments to all such workers capable of performing modified work. The maximum length of such work program shall not exceed twelve (12) weeks. With the approval of the Worker's Compensation Division, a temporary modified work assignment may be extended to no more than 16 weeks.

There are three kinds of "Temporary Modified Work" shown in order of preference:

1. Return to the worker's same job with some duties restricted.

2. Return to the same job, but for fewer hours per day or fewer hours per week. To be used if an injured worker cannot return on a full time basis.
3. Return temporarily to a different job. This is the least desirable and will only be attempted if the regular job cannot be reasonably modified to meet the injured worker's medical limitations.

d) Clothing Claims

Loss of, or damage to, a nurse's clothing resulting from an industrial injury which requires medical treatment will be replaced by the County through the following:

The Department will review and make a determination on all such incidents as submitted in writing by the nurse. Reimbursement will be limited to the lesser of:

1. Seventy-five percent (75%) of proven replacement cost, or
2. The repair cost.

However, both of the above are limited by a fifty dollar (\$50.00) maximum. (Nothing in this Section is intended to replace or supersede Article 13.2 which provides for replacement of items damaged, lost or destroyed in the line of duty.)

e) Tracking of High Incidents of Industrial Injury

The County shall design and initiate a study/analysis of on-the-job injury/illness incidents to identify whether there are areas of unusually high injury and/or illness. The County may submit the report to the County-wide Safety Committee. The parties agree to review and determine what course of action, if any, may be required based on the findings.

Section 13.2 - Repair/Replace Claims

County shall provide the necessary protective clothing to nurses and classifications pursuant to such requests by the nurses affected as provided by law under Cal-OSHA, Title 8, Article 10. The County shall pay the cost of repairing or replacing the uniforms, clothing and equipment of County nurses which have been damaged, lost or destroyed in the line of duty when the following conditions exist:

- a) The clothing, uniform or equipment is specifically required by the department or necessary to the nurses to perform the nurse's duty; and not adaptable for continued wear to the extent that they may be said to replace the nurse's regular clothing; or

- b) The clothing, uniform or equipment has been damaged or destroyed in the course of making an arrest, or in the issuance of a citation, or in the legal restraint of persons being placed in custody or already in custody, or in the service of legal documents as part of the nurse's duties or in the saving of a human life; and
- c) The nurse has not, through negligence or willful misconduct, contributed to such damage or destruction of said property.

Claims for reimbursement shall be reviewed and approved by the Department in accordance with procedures set forth by the County Executive.

Section 13.3 - Insurance Premiums

- a) The HMO plan design will be \$10 co-payments for office visits, \$35 co-payment for emergency room visits, \$5-\$10 co-payment for prescriptions (30-day supply) and \$10-\$20 co-payment for prescriptions (100-day supply) and \$100 copayment for hospital admission; the Point of Service plan design will be \$15/\$20/30% (Tier 1/2/3) for office visits, \$50/\$75/30% co-payment for emergency room visits, and \$5/\$15/\$30 (generic/brand/formulary) co-payment for prescription (30-day supply) and \$10/\$30/\$60 co-payment for prescription (90-day supply).

Hearing aid coverage, up to \$1000 for 1 to 2 devices every 36 months, will be counted in all health plans.

Effective November 10, 2014 the County and employees will share in the cost of medical plan premiums. The County, in order to provide one health plan where there is not premium sharing, will continue to offer Valley Health Plan without premium sharing. For all other plans, the County will pay the cost of any premiums for "employee only" and "employee plus dependent" tiers that is not covered by the employee's share of the premium. The employee share shall be 2% of premium in effect as of November 10, 2014, converted to a flat rate.

Effective November-07-2016, and each November thereafter, for those plans and tiers where the employee pays a portion of the premium, the dollar amount of the then current employee contribution shall constitute the base onto which an additional amount equal to 10% of the increase in medical plan premiums rate for the plan year, if any, will be added to form the new total employee contribution. The County share of the premiums will decrease accordingly.

During the term of the agreement the employee contribution shall be capped at an amount equal to 10% of the increase. Employees shall not pay a higher share of the increase in medical plan premium rate than other bargaining units during the term of the agreement. Should a bargaining unit negotiate a lower term on a year for year basis during the term of this agreement, the share paid by RNPA members shall be adjusted accordingly.

Dual Coverage

Effective November 1, 1999, married couples and same sex domestic partners who are both County employees shall be eligible for coverage under one medical plan only with the County paying the full premium for dependent coverage. Married couples and registered domestic partners who had one dependent coverage and one single coverage will have the single coverage dropped effective November 1, 1999. If both employees have single coverage, one will be converted to dependent coverage. County employee couples are not eligible to participate in the Health Plan Bonus Waiver Program.

High Deductible Health Plan (HDHP)

The parties agree to investigate the feasibility of adding by mutual agreement a High Deductible Health Plan (HDHP) with or without Health Savings Account (HSA) or Health Reimbursement Account (HRA) as an option to current health plans.

Medical Premiums during Medical, Family, Maternity or Industrial Injury Leave of Absence

The County shall pay the nurse's premium subject to applicable co-payments in this Section as follows:

1. While on medical, maternity or industrial injury leave of absence without pay, up to thirteen (13) pay periods of employee only coverage. A portion of the leave may include dependent coverage in accordance with the Family and Medical Leave Act, The California Family Rights Act and the County's Family and Medical Leave Policy.
2. For a nurse on family leave without pay, in accordance with the County's Family and Medical Leave Policy, up to twelve (12) weeks of dependent coverage.

Registered Domestic Partners

- a) County employees who have filed a Declaration of Registered Domestic Partnership in accordance with the provisions of

Family Code 297-297.5 shall have the same rights, and shall be subject to the same responsibilities and obligations as are granted to and imposed upon spouses. The term "spouse" in this contract shall apply to Registered Domestic Partners.

b) Tax Liability

Employees are solely responsible for paying any tax liability resulting from benefits provided as a result of their Domestic Partnership.

b) Dental Insurance

The County agrees to contribute the amount of the current monthly insurance premium to cover the nurse and full dependent contribution and to pick up inflationary costs during the term of this Agreement. The existing Delta Dental Plan coverage will be continued in accordance with the following schedule:

Basic and Prosthodontics: 75-25 - no deductible. \$2,000 maximum per patient per calendar year.

Orthodontics: 60-40 - no deductible. \$2000 lifetime maximum per patient (no age limit).

The County will continue to provide an alternative dental plan. The current alternate dental plan is Pacific Union Dental. The County will contribute up to the same dollar amount to this alternative dental plan premium as is paid to the Delta Dental Plan.

c) Life Insurance

The County agrees to increase the existing base group Life Insurance Plan to twenty-five thousand dollars (\$25,000) per nurse for the term of the Agreement.

d) Social Security

Effective October 12, 1981, the County did cease payment of the nurses' portion of Social Security.

e) Vision Care Plan

The County agrees to provide a Vision Care Plan for all nurses and dependents. The Plan will be the Vision Service Plan - Plan A with benefits at 12/12/24 month intervals with twenty dollar (\$20.00) deductible for examinations and twenty dollar (\$20.00) deductible for materials. The County will fully pay the monthly

premium for nurse and dependents and pick up inflationary costs during the term of the agreement.

f) County-wide Benefits

The parties agree that, during the term of this Agreement, County-wide changes in benefits, such as medical, dental, life insurance or retirement, shall be applied to nurses in this Unit.

Section 13.4 - Training for Nurses With Disabilities

a) Vocational Rehabilitation

When a nurse is determined by the County to be unable to return to the classification in which the nurse held permanent status because of a work-connected illness or injury and does not elect a disability retirement, that nurse will be offered vocational rehabilitation.

b) Lateral Transfer/Demotion Openings

If the nurse meets all the qualifications for a particular position (this would take into account the nurse's medical limitations, prior work experience and skills) and an opening exists that involves a lateral transfer or demotion, the position shall be offered to the nurse.

c) Salary Level

In accordance with Chapter VI, Article 5, Section A25(e) of the Personnel Practices, "...the salary of the nurse shall be placed at the step in the salary range which corresponds most closely to the salary received by the nurse as of the time of injury. In the event that such a demotion would result in a salary loss of more than ten (10) percent, the nurse's new salary shall be set at the rate closest to but not less than ten percent (10%) below his/her salary as of the time of injury."

d) Training Program

In those cases where the nurse may not have the necessary prior experience or all the required skills but there is reasonable assurance that the nurse will be capable of obtaining them through a designated formal on-the-job training program, the County will make reasonable efforts to place the nurse in a training program.

e) Placement Review

If, after a period on the job, it is demonstrated that the nurse is unable to develop the required skills, knowledge and abilities and/or cannot meet the physical requirements to handle the new position, the nurse will be placed on a leave of absence and the placement process begins again.

f) Promotions

Any position which involves a promotion will call for the normal qualifying procedures, written and/or oral examination. However, if it is found that a nurse meets all the qualifications for a higher paying position and an eligibility list is already in existence, the nurse shall be allowed to take a written and/or oral examination, and, if the nurse qualifies, the nurse's name will be placed on the eligibility list commensurate with his/her score.

g) Referral to Accredited Rehabilitation Agency

In those cases where the County is unable, for one reason or another, to place a nurse in any occupation, that nurse's case will be referred to an accredited rehabilitation agency as approved by the Division of Industrial Accidents for testing, counseling and retraining at either the County's or State's expense.

h) State Legislation

The provisions of this Section shall not apply if State legislation removes from the County the control of training for disabled employees.

Section 13.5 - Short-Term Disability Program

The County shall provide a short-term disability plan at no expense to the County under the same terms and conditions as provided County-wide.

Section 13.6 - Retirement

The County will continue the present benefit contract with PERS which is the 2% at 55 Retirement Plan.

Effective April 11, 2005 the County ceased paying the employee's statutorily required contribution and adjusted the base pay of all employees upwards by 7.49% and implemented an employee self-pay PERS member contribution on a pre-tax basis pursuant to Internal Revenue Code 414(h) (2).

The County has amended its contract with PERS effective December 17, 2007 for the 2.5% at 55 Plan for Miscellaneous employees. In consideration for this amendment, the Association agrees for each nurse covered under this benefit to contribute to PERS, through payroll deduction effective December 17, 2007, an additional amount of 3.931% of PERS reportable gross pay added to the current self-pay member contribution of 7% through June 14, 2009.

Each nurse's payroll deduction of 3.931% includes the 1% member contribution and the 2.931% employer contribution. The 1% member contribution, in addition to the 7% member contribution, shall be deducted for the duration of the Agreement.

Effective June 15, 2009, each nurse, in addition to making the 8% member contribution, shall have a payroll deduction equal to the difference between the employer share for 2.5% at 55 and the employer share for 2% at 55 as computed by PERS for all Miscellaneous employees effective July 1, 2009 provided that the deduction for the employer share will not exceed 2.931%. This deduction shall continue for the duration of the Agreement.

Employees who are hired on or after January 1, 2013, and who are considered "new employees" and who are considered "new members" of PERS, as defined in Government Code section 7522.04 shall not be entitled to the benefits enumerated above. All such employees shall be in the Miscellaneous retirement tier of 2% at age 62 with a minimum retirement age of 52 and final compensation calculated on the highest average of pensionable compensation earned during a period of 36 consecutive months.

The employee contribution rate shall be 50% of the normal cost for the 2% @ age 62 PERS plan expressed as a percentage of payroll as defined in the Public Employees' Pension Reform Act of 2012. The County shall not pay any portion of the employee contribution rate (EMPC.) If the normal cost increases or decreases by more than one quarter of 1% of payroll the employee contribution rate will be adjusted accordingly.

Pursuant to the California Public Employees' Pension Reform Act of 2013 - Government Code Section 7522, employees convicted of certain felonies may be deemed to have forfeited accrued rights and benefits in any public retirement system in which he or she is a member.

Medical Benefits for Retirees

a) For Employees Hired before August 12, 1996:

The County shall contribute an amount equal to the cost of Kaiser retiree-only medical plan premium to the cost of the medical plan of employees who have completed five (5) years service (1,305 days of accrued service) or more with the County and who retire on PERS directly from the County on or after December 5, 1983. Retirees over sixty-five (65) or otherwise eligible for Medicare Part B must be enrolled in such a plan, and the County shall reimburse the retiree for the cost of Medicare Part B premium on a quarterly basis. This reimbursement is subject to the maximum County contribution for retiree medical. The surviving spouse or the same sex domestic partner

of an employee eligible for retiree medical benefits may continue to purchase medical coverage after the death of the retiree.

b) For Employees Hired on or after August 12, 1996:

The County shall contribute an amount equal to the cost of Kaiser retiree-only medical plan premium to the cost of the medical plan of employees who have completed eight (8) years of service (2,088 days of accrued service) or more with the County and who retire on PERS directly from the County on or after December 5, 1983. Retirees over the age of sixty-five (65) or otherwise eligible for Medicare Part B must be enrolled in such a plan and the County shall reimburse the retiree for the cost of Medicare Part B premium on a quarterly basis. This reimbursement is subject to the maximum County contribution for retiree medical. The surviving spouse or the same sex domestic partner of an employee eligible for retiree medical benefits may continue to purchase medical coverage after the death of the retiree.

c) For Employees hired on or after June 19, 2006:

The County shall contribute an amount equal to the cost of Kaiser retiree-only medical plan premium to the cost of the medical plan of employee who have completed ten (10) years of service (2610 days of accrued service) or more with the County and who retire on PERS directly from the County. Retirees over 65 or otherwise eligible for Medicare Part B must be enrolled in such a plan, and the County shall reimburse the retiree for the cost of Medicare Part B premium on a quarterly basis. This reimbursement is subject to the maximum County contribution for retiree medical. The surviving spouse or same sex domestic partner of a employee eligible for retiree medical benefits may continue to purchase medical coverage after the death of the retiree.

Continuous Years of Service

The years of service expressed in Section 13.6 a), b), c) and d) must be continuous service with the County and shall have been completed immediately preceding retirement directly on PERS from the County.

Delayed Enrollment in Retiree Medical Plan

A retiree who otherwise meets the requirements for retiree only medical coverage under the Sections above may choose to delay enrollment in retiree medical coverage. Application and coverage may begin each year at the annual medical insurance open enrollment period or within 30 days of a qualifying event after retirement.

Employee Contribution toward Retiree Medical Obligation Unfunded Liability

Effective with the pay period beginning February 4, 2013, all coded employees shall contribute on a biweekly basis an amount equivalent to 15% of the lowest cost early retiree premium rate. Effective with the pay period beginning June 24 2013, all coded employees shall contribute on a biweekly basis an amount equivalent to 7.5% of the lowest cost early retiree premium rate. Such contributions are to be made on a pre-tax basis, and employees shall have no vested right to the contributions made by the employees. Such contributions shall be used by the County exclusively to offset a portion of the County's annual required contribution amount to the California Employers Retirement Benefit Trust established for the express purpose of meeting the County's other post-employment benefits (OPEB) obligations and shall not be used for any other purpose.

Contributions made between June 23, 2014 and November 9, 2014 shall be rebated to each nurse.

d) For Employees Hired on or After December 08, 2014:

The County shall contribute an amount equal to the cost of Kaiser retiree-only medical plan premium to the cost of the medical plan of workers who have completed fifteen (15) years of service (3915 days of accrued service) or more with the County and who retire on PERS directly from the County. Retirees over 65 or otherwise eligible for Medicare Part B must be enrolled in such a plan, and the County shall reimburse the retiree for the cost of Medicare Part B premium on a quarterly basis. This reimbursement is subject to the maximum County contribution for retiree medical. The surviving spouse or registered domestic partner of a worker eligible for retiree medical benefits may continue to purchase medical coverage after the death of the retiree.

Section 13.7 - Deferred Compensation Plan

The County will continue the present deferred income plan. If the County proposes to change the plan, it shall provide appropriate notice to the Association and the parties shall meet and confer pursuant to Article 20 over said changes.

ARTICLE 14 - USE OF PRIVATE VEHICLES AND MILEAGE PAYMENT

Section 14.1 - Use of Private Vehicles

a) No Requirement

No nurse shall be required as a condition of obtaining or continuing County employment, to possess or provide a private vehicle for use in connection with her/his County employment. Use of County vehicles shall be in accordance with County policies and regulations.

b) Authorization of Use

Departments may authorize the use of private vehicles by their Department nurses, with each Department maintaining a continuous listing of those nurses authorized to use their private vehicles. Each nurse so authorized shall have completed applicable County authorization requirements governing County driver permits and insurance. Nurses not having completed such requirements and thereby not on the listing shall be neither required nor authorized to use their private vehicles.

c) Damage

A nurse whose vehicle is damaged in a collision with another vehicle while driving a personal vehicle on County business shall, following the approval of the Accident Review Board ESA Claims Division or if denied by ESA and subsequently approved on appeal to the Accident Review Board, be reimbursed for such damage not to exceed five hundred dollars (\$500.00) provided:

1. The driver of the other vehicle is responsible for the accident as verified by a police report, and the damages shall be unrecoverable from the other party by reason of lack of liability insurance, or
2. The damage is caused by a hit-run or unidentified driver as verified by a police report, and/or
3. The amount of damage to be reimbursed by the County is not recoverable under any policy of insurance available to the nurse. The County shall be subrogated to the rights of recovery from the responsible party.

Section 14.2 - Mileage Reimbursement for Use of Private Vehicle

Effective September 1, 2000, the rate of reimbursement shall be equal to the "standard mileage rate" for auto expenses established by the Federal Government as the maximum tax-exempt mileage rate. Subsequent to September 2000, the County rate of reimbursement shall be adjusted on the first day of the month that any change by the Federal Government "standard mileage rate" is effective.

Section 14.3 - County Business Travel

Nurses who are required in the performance of their duties to travel shall receive business travel reimbursement in accordance with Santa Clara County Policy.

Section 14.4 - Parking Stickers for Nurses with Disabilities

All nurses determined by the County to be disabled in accordance with standards of the State of California Department of Motor Vehicles will be issued a disabled parking sticker for their private vehicle.

ARTICLE 15 - NURSES IN UNCLASSIFIED POSITIONS

- a) Specially Funded Nurses
All nurses in unclassified coded positions within the Association's bargaining unit shall be subject to and protected by this Agreement and departmental agreements, except as otherwise provided.
- b) Seniority
Time worked in such positions shall apply to seniority for the purposes of departmental agreements, salary increments and all other matters in the same manner for all other unclassified coded positions.
- c) Examinations
Such nurses shall be allowed to participate in examinations in the classified service equivalent to the positions they occupy as well as all open and/or promotional examinations for which they qualify under Merit System Rules.
- d) Career Opportunities
It is the County's intention to encourage and promote career opportunities for regular County nurses. In the interest of equitable treatment and to fulfill its contractual commitment, the County will not fill more than fifty percent (50%) of coded vacancies in a classification with unclassified nurses when regular County nurses are certifiable.
- e) New Programs
Upon final approval by the County and the granting authority of new special programs funded from State and/or Federal sources which create full-time positions of one (1) year's duration or more, the parties agree to meet and confer on:
1. Coverage of such positions by all or any portion of the terms of this Agreement.
 2. The impact the utilization of such positions may have on employees in positions currently covered by this Agreement.

ARTICLE 16 - GRIEVANCE PROCEDURE

County and the Association recognize early settlement of grievances is essential to sound employee-employer relations. The parties seek to establish a mutually satisfactory method for the settlement of grievances of nurses, the Association, or the County. In presenting a grievance, the aggrieved and/or the aggrieved's representative is assured freedom from restraint, interference, coercion, discrimination or reprisal.

Section 16.1 - Grievance Defined

a) Definition

A grievance is defined as an alleged violation, misinterpretation or misapplication of the provisions of this Memorandum of Agreement, Department Memoranda of Agreement and/or Understanding, Merit System Rules, or other County ordinances, resolutions, Policy and/or Procedure Manuals, or alleged infringement of an employee's personal rights (i.e., discrimination, harassment) affecting the working conditions of the nurses covered by this Agreement, except as excluded under Section 16.1(b).

b) Matters Excluded From Consideration Under the Grievance Procedure

1. Disciplinary actions taken under Section 708 of the County Charter except where nurses voluntarily waive their right to appeal such disciplinary actions to the Personnel Board.
2. Probationary release of nurses.
3. Position classification.
4. Merit System Examinations.
5. Items requiring capital expenditure.
6. Items within the scope of representation and subject to the meet and confer process.

Section 16.2 - Grievance Presentation

Nurses shall have the right to present their own grievance or do so through a representative of their own choice. Grievances may also be presented by a group of nurses, by the Association, or by the County. No grievance settlement may be made in violation of an existing rule, ordinance, memorandum of agreement or memorandum of understanding, nor shall any settlement may be made which affects the rights or conditions of other nurses represented by the Association without notification to and consultation with the Association.

The Association shall be provided copies of individual or group grievances and responses to same. Such grievances may not proceed beyond Step One without written concurrence of the Association at each step.

The Association shall have the right to appear and be heard in all individual or group grievances at any step. Upon request by County, the Association shall appear and be heard in such grievances at any step.

Section 16.3 - Procedural Compliance

Association grievances shall comply with all foregoing provisions and procedures. The County shall not be required to reconsider a grievance previously settled with a nurse if renewed by the Association, unless it is alleged that such grievance settlement is in violation of an existing rule, ordinance, memorandum of understanding, or memorandum of agreement.

A grievance is deemed to be presented or filed when it is either received by the Office of Labor Relations if presented in person or by facsimile or by electronic mail; or on the day it is postmarked, whichever occurs first.

A response by the County is deemed to be made when it is either received by the Association when presented in person or by facsimile or by electronic mail; or on the day it is postmarked, whichever occurs first.

Section 16.4 - Informal Resolution/Time Limits

It is agreed that nurses will be encouraged to act promptly through informal discussion with their immediate supervisor on any act, condition or circumstance which is causing nurse dissatisfaction and to seek action to remove the cause of dissatisfaction before it serves as the basis for a formal grievance. Time limits may be extended or waived only by written agreement of the parties.

If either party fails to comply with the grievance time limits, and the matter proceeds to arbitration, the party who missed the time limits, as determined by the arbitrator, shall pay the full cost of the arbitrator.

Section 16.5 - Formal Grievance

a) Step One

Within fifteen (15) working days of the occurrence or discovery of an alleged grievance, the grievance shall be presented in writing to the Office of Labor Relations. The grievance form shall contain information which identifies:

1. The aggrieved;
2. The specific nature of the grievance;
3. The time or place of its occurrence;
4. The rule, law, regulation, or policy alleged to have been violated, improperly interpreted, applied or misapplied;
5. The consideration given or steps taken to secure informal resolution;
6. The corrective action desired; and,
7. The name of any person or representative chosen by the nurse to enter the grievance.

A decision shall be made by the County in writing within fifteen (15) working days of receipt of the grievance. A copy of the decision shall be directed to the person identified in (7) above. A copy shall be sent to the Association and this copy shall dictate time limits.

b) Step Two

If the aggrieved continues to be dissatisfied, the aggrieved may, within fifteen (15) working days after receipt of the first step decision, present a written presentation to be directed to the County Executive's designated representative indicating the aggrieved wishes the grievance to be referred to an impartial arbitrator. The arbitrator shall be advised of and agree to the following provisions:

1. Within ten (10) working days of receipt of the grievance at step two, one (1) arbitrator shall be selected from the panel and a hearing scheduled within thirty (30) calendar days.
2. If the selected arbitrator cannot be scheduled within ninety (90) calendar days the parties will mutually agree to either another arbitrator or extend the time limit for the hearing.
3. Arbitration proceedings shall be recorded but not transcribed except at the request of either party or the arbitrator. Upon mutual agreement, the County and the Association may submit written briefs to the arbitrator for decision in lieu of a hearing.

The arbitrator's compensation and expenses shall be borne equally by the nurse or the Association and the County. Decisions of the arbitrator shall be final and binding.

Section 16.6 - Arbitrators

For the term of this agreement the County and the Union have agreed to the following panel:

Christopher D. Burdick	John Kagel
Katherine Thomson	Alexander Cohn
Matthew Goldberg	Catherine Harris
Barry Winograd	Luella Nelson
Robert Hirsch	

The parties may also mutually agree to choose another arbitrator not on the above list.

Section 16.7 - Arbitration Release Time

The following statement on nurse participation in grievance arbitration hearings is agreed to:

- a) The nurse on whose behalf the grievance has been filed will be granted release time for the entire hearing. Release time to serve as a witness will be granted on a scheduled basis, i.e., when the nurse is scheduled to appear. In the case of a group grievance, release time will be granted for the designated spokesperson for the entire hearing. Release time also will be granted to the appropriate Unit Representative.
- b) Other requests for leave for the purpose of participation in a grievance arbitration hearing will also be granted and charged to the nurse's own leave time - provided the absence does not unduly interfere with the performance of service.

ARTICLE 17 - CONFLICT OF INTEREST

Nurses are to abide by all applicable Federal, State and Local Statutes or contract requirements regarding conflict of interest in outside employment. Nurses intending to engage in outside employment shall file an advance statement of such intent for the approval of the appointing authority.

ARTICLE 18 - NURSING PRACTICE ISSUES

Section 18.1 - Supervision

All Interim Permittees will be directly supervised and will not assume team leader duties. A Clinical Nurse I will not work in charge position except as provided for in Section 8.10 of this Agreement.

Section 18.2 - Conscientious Objector Clause

The rights of patients to receive the necessary nursing care are to be respected. As individuals, licensed nurses hold certain moral, ethical, and religious beliefs and in good conscience may be compelled to refuse involvement with abortions. The licensed nurse must be free to exercise this right without being subjected to ridicule, harassment, coercion, censure, termination, or other forms of discipline. Emergency situations will arise where the immediate nature of the patient's needs will not allow for personnel substitutions. In such circumstances the patient's right to receive the necessary nursing care would take precedence over exercise of the nurse's individual beliefs and rights until other personnel can be provided.

Section 18.3 - Malpractice Protection

The County's obligation to defend and indemnify its officers and employees is prescribed by California Government Code 825 et seq. and 995 et seq. The County shall indemnify and defend nurses in this Unit in accordance with the applicable law when and if they are sued for errors or omissions (malpractice) within the course and scope of their duties, save and except where the applicable law excuses County's obligation to defend (e.g., fraud, malice, etc.). This paragraph and the terms and conditions thereof shall be enforceable, at law in accordance with the applicable law, but shall not be subject to the grievance provision of this Agreement.

Section 18.4 - Inservice Education Program For Nurses

- a) While all nurses are responsible for their own professional growth, Santa Clara Valley Medical Center will maintain a Staff Development Program for nurses, including the following:
1. Provide an organized plan of orienting all newly hired nurses to the objectives, policies, goals, and procedures of the hospital and of nursing service at regularly scheduled intervals.
 2. Provide an organized plan of orienting all nurses to the job descriptions, responsibilities, and work assignments for nursing classifications at regularly scheduled intervals.

3. Keep the nursing staff abreast on a continuing basis of new and expanding nursing care programs and of new techniques, equipment, facilities and concepts of care.
 4. Each nurse must complete both (1) and (2) above before being permanently assigned to a unit and shift. Until completion of the formal orientation, the nurse will be considered as still in a structured learning experience and not part of the unit's regular nursing staff.
- b) In each area, a clinical nurse(s) is responsible for coordinating inservice programs with the Nursing Staff Development. These programs shall be relevant to updating and upgrading skills particular to the unit in order to promote optimal nursing care to each patient.

It is understood that the department has the authority to approve all voluntary attendance at inservice education programs.

Section 18.5 - Staff Meetings

The date, time and location of regularly scheduled staff meetings will be posted seven calendar days in advance. Nurses assigned attendance at meetings, lectures, or inservice courses while off shift will be subject to all overtime provisions. Nurses on shift will be compensated at the regular rate.

Section 18.6 - Professional Performance Committee

- a) The Valley Medical Center Professional Performance Committee shall be composed of nurses currently employed by the hospital. The Committee shall have a representative from each nursing unit, one (1) from each satellite clinic, and one (1) Institution Nurse elected by the nurses from that unit and clinic. All appointed and new positions will be filled by election by October 31 of each year.
- b) Nurses employed by the County recognize their obligation to perform the highest level of nursing care for the patients. The Professional Performance Committee shall act as an advisory body to Nursing Service and Administration. The hospital will make a good faith effort to implement recommendations agreed to by the P.P.C. and the Director of Nursing.
- c) The Committee shall not involve itself in grievances as defined and set forth in this Agreement. The purpose and function shall be as set forth in its bylaws and shall include the following:
1. Recommend nursing policies and procedures to the Nursing Administrator.

2. Review nursing policies and procedures prior to implementation, when possible, except in emergencies.
 3. Maintain representative on Valley Medical Center Nursing Committees as designated by management.
- d) The Nursing Administrator or representative will meet with the P.P.C. at their regularly scheduled meeting when requested. The Nursing Administrator will respond in writing to all written recommendations within thirty (30) days unless extended by mutual agreement.
- e) Attendance at P.P.C. will be voluntary by the elected representative or an alternate. Committee members will be granted release time to attend the meetings. Those members who attend during other than duty time will be granted up to four (4) hours of compensatory time.

Meetings will be held monthly for three (3) hours or more as agreed to by the Nursing Administrator.

Section 18.7 Advanced Practice Professional Performance Committee

- a) The Advanced Practice Professional Performance Committee (APPPC) shall be composed of Nurse Practitioners, Certified Registered Nurse Anesthetists and Clinical Nurse Specialists covered by the contract and employed by the County.
- b) Each APRN within the employ of the County may attend APPPC meetings with prior management approval.
- c) A minimum of (three)(3) Advanced Practice Professionals, (one)(1) RNPA representative and (one)(1) Nursing Administration representative shall make up the board of the APPPC. The position of Chairperson, Vice Chairperson and Secretary will be held by an APRN. All positions are to be elected by the APRN staff only. Necessity for additional seats on the board will be determined by the Chair and Vice-Chair. Duration of appointment to a particular board position shall be determined by the committee. All policies regarding the function of the APPPC shall be placed in writing and submitted to the Chief Nursing Officer and Deputy Director, ACHS/FQHC. A copy of these policies will be kept at the offices of RNPA. The agenda shall be determined and distributed one (1) week in advance. A copy of all minutes shall be forwarded to the Chief Nursing Officer, Deputy Director of ACHS/FQHC and RNPA.
- d) The function of the APPPC shall be as follows:

1. To serve as a forum for discussion of administrative and medical practice issues which arise for APRNs within the SCVHHS.
2. The Chairperson, or designee, of this committee shall serve as a liaison between the committee and the Chief Nursing Officer, the Deputy Director, ACHS/FQHC and the Assistant Medical Director.
3. The development and review of APRN practice protocols prior to the submission of these protocols to the Interdisciplinary Care Committee/Medical Executive Committee.
4. To provide updates on state and federal legal changes to practice.

Section 18.8 - Safety

The County necessarily abides by safety standards established by the State Division of Industrial Safety and pursuant to the Occupational Safety and Health Act.

Section 18.9 - Nursing Practice

If a nurse objects to an assignment on the basis that it exceeds the nurse's professional qualifications and the nurse is unable to resolve the objection with the immediate supervisor, the objection will be noted, in writing utilizing the "Objection to Assignment" form, by the nurse and delivered to the Director of Nursing's office or the appropriate administrator prior to the nurse leaving at the end of the shift. A written response from the Director of Nursing or designee will be forwarded to the nurse.

Section 18.10 - Performance Evaluation

- a) Each nurse shall be subject to a written appraisal of work performance. Performance evaluations are done:
 1. Annually;
 2. Prior to a promotion;
 3. During the probationary period.

Performance evaluations will not be used in the disciplinary process.

- b) The evaluation shall consist of comparison of the nurse's performance against written standards established by Management for:

1. Work Unit competencies;
2. Job classification;
3. Unit role expectations;
4. Any appropriate legal or regulatory requirements.

18.11 - Staffing

The County shall maintain a staffing system for nurses based on the assessment of patient needs, to include the number and the acuity of the patient(s) assigned to a nurse in compliance with applicable state laws and regulations including AB 394 chaptered October 10, 1999. This assessment shall include meal and rest periods when determining staffing needs.

a)Assessment of Patient Acuity

During each shift, bedside nurses shall assess and determine patient acuity on an ongoing basis. The nurse shall consult with the charge nurse or manager as needed.

b)Staffing Decisions

In the absence of the Nurse Manager or Assistant Nurse Manager, the Charge Nurse shall have the authority to make necessary staffing decisions based upon patient acuity and census. Nurses involved in direct patient care are included in the calculation of nurse-to-patient ratios.

c)Staffing Report

Staffing reports shall be submitted by the Nurse Manager by shift and unit to nursing administration reflecting staffing levels for each shift, including beginning, middle and end of shift.

d)Notice of Staffing Levels Concerns

Nurses may report nurse to patient staffing levels that they believe are out of compliance by notifying the next level of management. Should a nurse believe staffing levels cannot be easily remedied, he/she may submit a Notice of Staffing Levels form. Such form shall be submitted to the nurse's charge nurse or immediate supervisor. The Charge nurse or supervisor who receives the form shall note the action(s) taken, if any, to resolve the staffing concern and shall forward the form to the Nurse Manager and the appropriate Nursing Director with a copy to the Chief Nursing Officer and RNPA. Notice of Staffing Levels forms shall be reviewed at the monthly Patient Acuity Task Force meeting. After review at the Patient Acuity Task Force meeting, the nurse reporting the concern shall be informed of the action taken to resolve the staffing concern, if any.

e) Patient Acuity Task Force

The Patient Acuity Task Force shall be comprised of an equal number of management, including the Nurse Manager of Nursing Systems, and RNPA representatives. The Patient Acuity Task Force shall meet on a monthly basis to assess and develop strategies for alleviating staffing concerns within nursing units. The Task Force shall also develop forms to be used as described in (c) and (d) above.

The Patient Classification Team shall include the Nurse Manager of Nursing Systems and one clinical nurse per shift/per unit to meet twice yearly to review inter-rater reliability of the patient classification system to determine whether the system accurately determines patient needs. Members of the Patient Classification Team shall then review and validate with each nurse in the unit that he/she is proficient. The Nurse Manager of Nursing System shall report the results of the twice yearly review to the Patient Acuity Task Force.

f) Dispute Resolution

In the event of a dispute regarding a staffing concern that is not able to be resolved in accordance with sub-section (d), such concern shall be subject to an internal review by the Management Audit Division for the Board of Supervisors when:

- 1) The staffing concern was not de minimis, (i.e. staffing concern was not cured within four (4) hours) and;
- 2) The staffing concern was not able to be resolved in accordance with sub-section (d) at the monthly meeting following the alleged violation and;
- 3) The staffing concern has not been resolved to the satisfaction of a majority of the Patient Acuity Task Force.

The Management Audit Division for the Board of Supervisors shall review the staffing concern and information provided by the Patient Acuity Task Force, Nursing Administration and RNPA and shall report his/her conclusions to the Patient Acuity Task Force and to Nursing Administration. Nursing Administration shall submit such report for the next scheduled Health and Hospital Committee meeting.

g) Section 18.10 is not subject to the grievance and arbitration procedures of this Agreement.

Section 18.12 - Safe Patient Handling

The County shall maintain a safe patient handling policy for all patient care units in acute care facilities in accordance with applicable state and or federal law, including AB1136, as applicable.

Such policy shall address providing nurses with appropriate equipment and staff assistance for moving patients, thereby eliminating, to the extent possible, manual lifting that may cause injuries.

Each nurse is responsible for the observation and direction of the lifting and mobilization of patients, and participates as needed in patient handling. The County will provide uniform training in the handling of patients on the appropriate use of lifting devices, equipment, and body mechanics on an annual basis.

ARTICLE 19 - STRIKES AND LOCKOUTS

During the term of this Agreement, the County agrees that it will not lock out nurses and the Association agrees that it will not engage in any concerted work stoppage. A violation of this Article will result in cessation of Association dues deduction by the County.

ARTICLE 20 - FULL AGREEMENT

It is understood this Agreement represents a complete and final understanding on all negotiable issues between the County and its Departments and the Association. This Agreement supersedes all previous memoranda of understanding or memoranda of agreement between the County and its Departments and the Association except as specifically referred to in this Agreement. All ordinances or rules covering any practice, subject or matter not specifically referred to in this Agreement shall not be superseded, modified or repealed by implication or otherwise by the provisions hereof. The parties, for the term of this Agreement, voluntarily and unqualifiedly agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this Agreement even though such practice, subject or matter may not have been within the knowledge of the parties at the time this Agreement was negotiated and signed. In the event any new practice, subject or matter arises during the term of this Agreement and an action is proposed by the County, the Association shall be afforded all possible notice and shall have the right to meet and confer upon request. In the absence of agreement on such a proposed action, the County reserves the right to take necessary action by management direction.

ARTICLE 21 - SAVINGS CLAUSE

If any provision of this Agreement should be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any provision should be restrained by any tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into negotiations for the sole purpose of arriving at a mutually satisfactory replacement for such provision.

If the State of California notifies the County of Santa Clara that legislation has been implemented which assesses monetary penalties to local governments which settle wages and/or benefits with increases in excess of certain limits, those benefits and/or wages shall not be implemented or continue to be paid. The parties shall immediately enter into negotiations for the sole purpose of arriving at a mutually agreed upon alternative.

The County reserves the right to cease payment or seek repayment of wages and/or benefits upon which the State of California is basing the monetary penalty. The Union reserves the right to contest the legality of the payment cessation or repayment.

It is understood that the purpose of this Section is to ensure that the County does not incur any liability or penalties on either the original agreement provisions, or the negotiated alternate provisions.

ARTICLE 22 - IMPLEMENTATION

It is understood by the County and the Association that to fully implement this Agreement it will be necessary for the County to amend several existing County ordinances, some of which require the approval of the County Personnel Board, so that such ordinances will not conflict with the provisions of this Agreement. The County and the Association agree to cooperate to secure the enactment of such ordinances.

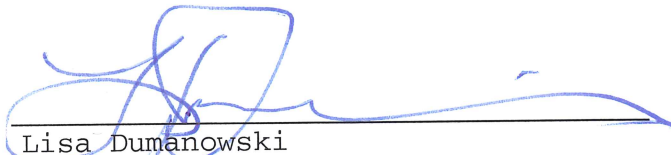
ARTICLE 23 - TERM OF AGREEMENT

This Agreement shall become effective only upon approval by the Board of Supervisors and upon the ratification by the Association, and shall remain in full force and effect to and including November 9, 2014 and from year to year thereafter; provided, however, that either party may serve written notice on the other at least sixty (60) days prior to October 20, 2019, or any subsequent October 19, of its desire to terminate this Agreement or amend any provision thereof.

DATED: 2/23/2015

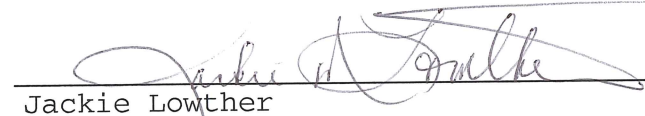
COUNTY of SANTA CLARA

REGISTERED NURSES
PROFESSIONAL ASSOCIATION


Lisa Dumanowski

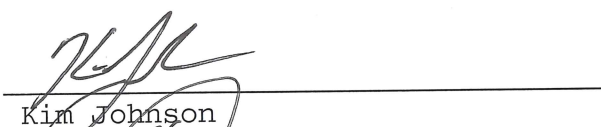

Cynthia Mihulka

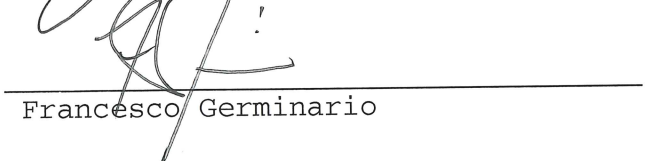

Matthew Cottrell

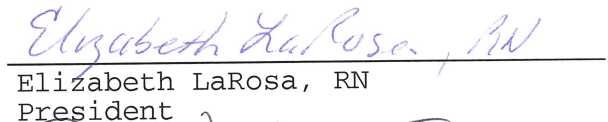

Jackie Lowther

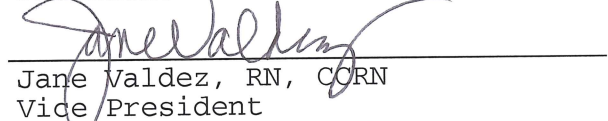

Joyce Van De Pitte

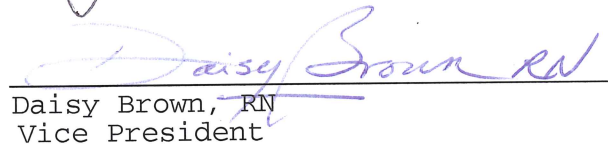

Terry Edmonson

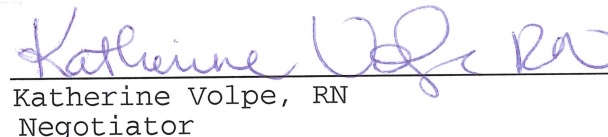

Kim Johnson

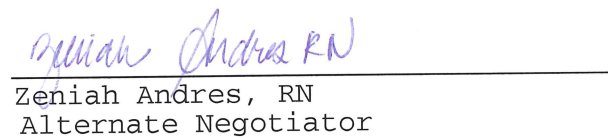

Francesco Germinario


Elizabeth LaRosa, RN
President


Jane Valdez, RN, CORN
Vice President


Daisy Brown, RN
Vice President


Katherine Volpe, RN
Negotiator


Zeniah Andres, RN
Alternate Negotiator

APPENDIX A - RNPA SALARIES

Effective November 10, 2014

Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Assistant Nurse Manager	S11	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	6752.00	10905.78	14629.33
Assistant Nurse Manager - Extra Help	X1J	4682.64	4916.96	5162.72	5420.96	5692.16	---	---	10145.72	12333.01
Assistant Nurse Manager - Step A	S2A	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	6920.64	11178.09	14994.72
Assistant Nurse Manager - Step B	S2B	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	7089.52	11451.26	15360.62
Assistant Nurse Manager - Step C	S2C	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	7258.16	11723.74	15726.01
Certified Registered Nurse Anesthetist	S1V	6887.60	7239.20	7608.96	7997.60	8406.00	8835.28	---	14923.13	19143.10
Certified Registered Nurse Anesthetist - Extra Help	X1K	6408.56	6734.80	7078.80	7440.40	7828.40	---	---	13885.21	16961.53
Certified Registered Nurse Anesthetist - Step A	Y1A	7059.76	7420.16	7799.12	8197.44	8616.16	9056.08	---	15296.14	19621.50
Certified Registered Nurse Anesthetist - Step B	Y1B	7232.08	7601.20	7989.52	8397.44	8826.24	9276.96	---	15669.50	20100.08
Certified Registered Nurse Anesthetist - Step C	Y1C	7404.32	7782.00	8179.60	8597.36	9036.40	9497.76	---	16042.69	20578.48
Clinical Nurse I	S89	3719.52	3905.44	4100.72	4306.64	4522.32	---	---	8058.96	9798.36
Clinical Nurse I - Extra Help	X1A	3445.04	3617.28	3815.20	4006.48	4207.20	---	---	7464.25	9115.60
Clinical Nurse I - Step A	C3A	---	---	4203.36	4414.08	4635.28	---	---	9107.28	10043.10
Clinical Nurse I - Step B	C3B	---	---	4305.92	4521.68	4748.40	---	---	9329.49	10288.20
Clinical Nurse I - Step C	C3C	---	---	4408.40	4629.44	4861.44	---	---	9551.53	10533.12
Clinical Nurse I - U	Q89	3719.52	3905.44	4100.72	4306.64	4522.32	---	---	8058.96	9798.36
Clinical Nurse II	S76	3942.24	4140.24	4347.60	4565.12	4793.52	---	---	8541.52	10385.96
Clinical Nurse II - Extra Help	X1H	3667.68	3851.76	4044.72	4247.12	4459.60	---	---	7946.64	9662.46
Clinical Nurse II - Step A	D0A	4040.88	4243.76	4456.32	4679.20	4913.20	---	---	8755.24	10645.26
Clinical Nurse II - Step B	D0B	4139.36	4347.12	4565.04	4793.44	5033.28	---	---	8968.61	10905.44
Clinical Nurse II - Step C	D0C	4237.92	4450.72	4673.76	4907.44	5152.88	---	---	9182.16	11164.57
Clinical Nurse II - U	Q87	3942.24	4140.24	4347.60	4565.12	4793.52	---	---	8541.52	10385.96
Clinical Nurse II - U - Step A	E1A	4040.88	4243.76	4456.32	4679.20	4913.20	---	---	8755.24	10645.26
Clinical Nurse II - U - Step B	E1B	4139.36	4347.12	4565.04	4793.44	5033.28	---	---	8968.61	10905.44
Clinical Nurse II - U - Step C	E1C	4237.92	4450.72	4673.76	4907.44	5152.88	---	---	9182.16	11164.57
Clinical Nurse III	S75	4347.60	4565.12	4793.52	5033.44	5285.28	5549.36	5826.88	9419.80	12624.90
Clinical Nurse III - Extra Help	X1I	4044.72	4247.12	4459.60	4682.64	4916.96	---	---	8763.56	10653.41
Clinical Nurse III - Step A	S7A	4456.32	4679.20	4913.20	5159.12	5417.20	5688.08	5972.48	9655.36	12940.37
Clinical Nurse III - Step B	S7B	4565.04	4793.44	5033.28	5285.20	5549.36	5826.80	6118.32	9890.92	13256.36
Clinical Nurse III - Step C	S7C	4673.76	4907.44	5152.88	5410.96	5691.52	5965.68	6263.76	10126.48	13571.48

Effective November 10, 2014										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Clinical Nurse III - U	Q86	4347.60	4565.12	4793.52	5033.44	5285.28	5549.36	5826.88	9419.80	12624.90
Clinical Nurse III - U - Step A	Q8A	4456.32	4679.20	4913.20	5159.12	5417.20	5688.08	5972.48	9655.36	12940.37
Clinical Nurse III - U - Step B	Q8B	4565.04	4793.44	5033.28	5285.20	5549.36	5826.80	6118.32	9890.92	13256.36
Clinical Nurse III - U - Step C	Q8C	4673.76	4907.44	5152.88	5410.96	5691.52	5965.68	6263.76	10126.48	13571.48
Clinical Nurse Specialist	S35	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	6752.00	10905.78	14629.33
Clinical Nurse Specialist - Extra Help	X1L	4682.64	4916.96	5162.72	5420.96	5692.16	---	---	10145.72	12333.01
Clinical Nurse Specialist - Step A	S4A	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	6920.64	11178.09	14994.72
Clinical Nurse Specialist - Step B	S4B	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	7089.52	11451.26	15360.62
Clinical Nurse Specialist - Step C	S4C	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	7258.16	11723.74	15726.01
Infection Control Nurse	S04	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	6752.00	10905.78	14629.33
Infection Control Nurse - Extra Help	X1F	4682.64	4916.96	5162.72	5420.96	5692.16	---	---	10145.72	12333.01
Infection Control Nurse - Step A	S0A	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	6920.64	11178.09	14994.72
Infection Control Nurse - Step B	S0B	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	7089.52	11451.26	15360.62
Infection Control Nurse - Step C	S0C	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	7258.16	11723.74	15726.01
Nurse Coordinator	S39	4793.52	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	10385.96	13919.53
Nurse Coordinator - Extra Help	X1M	4459.04	4682.32	4916.56	5162.24	5420.40	---	---	9661.25	11744.20
Nurse Coordinator - Step A	S3A	4913.20	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	10645.26	14267.58
Nurse Coordinator - Step B	S3B	5033.28	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	10905.44	14615.46
Nurse Coordinator - Step C	S3C	5152.88	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	11164.57	14963.69
Nurse Coordinator - U	Q39	4793.52	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	10385.96	13919.53
Nurse Coordinator - U Step A	Q4A	4913.20	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	10645.26	14267.58
Nurse Coordinator - U Step B	Q4B	5033.28	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	10905.44	14615.46
Nurse Coordinator - U Step C	Q4C	5152.88	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	11164.57	14963.69
Nurse Practitioner	S59	5549.36	5826.88	6118.48	6424.40	6752.00	7096.48	7459.12	12023.61	16161.42
Nurse Practitioner - Extra Help	X1N	5162.72	5420.88	5692.16	5976.80	6281.44	---	---	11185.89	13609.78
Nurse Practitioner - Step A	Y0A	5688.08	5972.48	6271.36	6585.04	6920.64	7273.76	7645.36	12324.17	16564.94
Nurse Practitioner - Step B	Y0B	5826.80	6118.32	6424.24	6745.60	7089.52	7451.28	7832.08	12624.73	16969.50
Nurse Practitioner - Step C	Y0C	5965.68	6263.76	6577.28	6906.32	7258.16	7628.64	8018.40	12925.64	17373.20
Per Diem Clinical Nurse	S99	---	63.18/Hrly	---	79.88/Hrly	---	---	---	---	---
Per Diem Nurse Practitioner	S41	---	79.01/Hrly	---	99.89/Hrly	---	---	---	---	---
Per Diem Psychiatric Nurse	S92	---	63.18/Hrly	---	79.88/Hrly	---	---	---	---	---
Psychiatric Nurse I	S58	3904.96	4100.72	4306.64	4522.32	4748.48	---	---	8460.74	10288.37

Effective November 10, 2014										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Psychiatric Nurse I - Step A	D5A	4002.64	4203.36	4414.08	4635.28	4867.04	---	---	8672.38	10545.25
Psychiatric Nurse I - Step B	D5B	4100.24	4305.92	4521.68	4748.40	4985.84	---	---	8883.85	10802.65
Psychiatric Nurse I - Step C	D5C	4197.92	4408.40	4629.44	4861.44	5104.48	---	---	9095.49	11059.70
Psychiatric Nurse II	S57	4347.60	4565.12	4793.52	5033.44	5285.28	5549.36	5826.88	9419.80	12624.90
Psychiatric Nurse II - Extra Help	X1C	4044.72	4247.12	4459.60	4682.64	4916.96	---	---	8763.56	10653.41
Psychiatric Nurse II - Step A	E2A	4456.32	4679.20	4913.20	5159.12	5417.20	5688.08	5972.48	9655.36	12940.37
Psychiatric Nurse II - Step B	E2B	4565.04	4793.44	5033.28	5285.20	5549.36	5826.80	6118.32	9890.92	13256.36
Psychiatric Nurse II - Step C	E2C	4673.76	4907.44	5152.88	5410.96	5691.52	5965.68	6263.76	10126.48	13571.48
Staff Developer	S38	5033.44	5285.28	5549.36	5826.88	6118.48	6424.40	6752.00	10905.78	14629.33
Staff Developer - Extra Help	X1E	5008.72	5259.44	5522.40	5798.56	6088.72	---	---	10852.22	11693.06
Staff Developer - Step A	S5A	5159.12	5417.20	5688.08	5972.48	6271.36	6585.04	6920.64	11178.09	14994.72
Staff Developer - Step B	S5B	5285.20	5549.36	5826.80	6118.32	6424.24	6745.60	7089.52	11451.26	15360.62
Staff Developer - Step C	S5C	5410.96	5681.52	5965.68	6263.76	6577.28	6906.32	7258.16	11723.74	15726.01

APPENDIX A - RNPA SALARIES

Effective November 9, 2015

Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Assistant Nurse Manager	S11	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	6971.44	11260.08	15104.78
Assistant Nurse Manager - Extra Help	X1J	4834.80	5076.72	5330.48	5597.12	5877.12	---	---	10475.40	12733.76
Assistant Nurse Manager - Step A	S2A	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	7145.52	11541.22	15481.96
Assistant Nurse Manager - Step B	S2B	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	7319.92	11823.41	15859.82
Assistant Nurse Manager - Step C	S2C	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	7494.00	12104.73	16237.00
Certified Registered Nurse Anesthetist	S1V	7111.44	7474.40	7856.24	8257.52	8679.12	9122.40	---	15408.12	19765.20
Certified Registered Nurse Anesthetist - Extra Help	X1K	6616.80	6953.68	7308.80	7682.16	8082.80	---	---	14336.40	17512.73
Certified Registered Nurse Anesthetist - Step A	Y1A	7289.20	7661.28	8052.56	8463.84	8896.16	9350.40	---	15793.26	20259.20
Certified Registered Nurse Anesthetist - Step B	Y1B	7467.12	7848.16	8249.12	8670.32	9113.04	9578.40	---	16178.76	20753.20
Certified Registered Nurse Anesthetist - Step C	Y1C	7644.96	8034.88	8445.36	8876.72	9330.08	9806.40	---	16564.08	21247.20
Clinical Nurse I	S89	3840.40	4032.32	4233.92	4446.56	4669.28	---	---	8320.86	10116.77
Clinical Nurse I - Extra Help	X1A	3556.96	3734.80	3939.12	4136.64	4343.92	---	---	7706.74	9411.82
Clinical Nurse I - Step A	C3A	---	---	4339.92	4557.52	4785.92	---	---	9403.16	10369.49
Clinical Nurse I - Step B	C3B	---	---	4445.84	4668.56	4902.72	---	---	9632.65	10622.56
Clinical Nurse I - Step C	C3C	---	---	4551.60	4779.84	5019.36	---	---	9861.80	10875.28
Clinical Nurse I - U	Q89	3840.40	4032.32	4233.92	4446.56	4669.28	---	---	8320.86	10116.77
Clinical Nurse II	S76	4070.32	4274.72	4488.88	4713.44	4949.28	---	---	8819.02	10723.44
Clinical Nurse II - Extra Help	X1H	3786.80	3976.88	4176.16	4385.12	4604.48	---	---	8204.73	9976.37
Clinical Nurse II - Step A	D0A	4172.16	4381.68	4601.12	4831.20	5072.80	---	---	9039.68	10991.06
Clinical Nurse II - Step B	D0B	4273.84	4488.40	4713.36	4949.20	5196.80	---	---	9259.98	11259.73
Clinical Nurse II - Step C	D0C	4375.60	4595.36	4825.60	5066.88	5320.32	---	---	9480.46	11527.36
Clinical Nurse II - U	Q87	4070.32	4274.72	4488.88	4713.44	4949.28	---	---	8819.02	10723.44
Clinical Nurse II - U - Step A	E1A	4172.16	4381.68	4601.12	4831.20	5072.80	---	---	9039.68	10991.06
Clinical Nurse II - U - Step B	E1B	4273.84	4488.40	4713.36	4949.20	5196.80	---	---	9259.98	11259.73
Clinical Nurse II - U - Step C	E1C	4375.60	4595.36	4825.60	5066.88	5320.32	---	---	9480.46	11527.36
Clinical Nurse III	S75	4488.88	4713.44	4949.28	5196.96	5457.04	5729.68	6016.24	9725.90	13035.18
Clinical Nurse III - Extra Help	X1I	4176.16	4385.12	4604.48	4834.80	5076.72	---	---	9048.34	10999.56
Clinical Nurse III - Step A	S7A	4601.12	4831.20	5072.80	5326.72	5593.20	5872.88	6166.56	9969.09	13360.88
Clinical Nurse III - Step B	S7B	4713.36	4949.20	5196.80	5456.96	5729.68	6016.16	6317.12	10212.28	13687.09
Clinical Nurse III - Step C	S7C	4825.60	5066.88	5320.32	5586.80	5876.48	6159.52	6467.28	10455.46	14012.44
Clinical Nurse III - U	Q86	4488.88	4713.44	4949.28	5196.96	5457.04	5729.68	6016.24	9725.90	13035.18

Effective November 9, 2015										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Clinical Nurse III - U - Step B	Q8B	4713.36	4949.20	5196.80	5456.96	5729.68	6016.16	6317.12	10212.28	13687.09
Clinical Nurse III - U - Step C	Q8C	4825.60	5066.88	5320.32	5586.80	5876.48	6159.52	6467.28	10455.46	14012.44
Clinical Nurse Specialist	S35	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	6971.44	11260.08	15104.78
Clinical Nurse Specialist - Extra Help	X1L	4834.80	5076.72	5330.48	5597.12	5877.12	---	---	10475.40	12733.76
Clinical Nurse Specialist - Step A	S4A	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	7145.52	11541.22	15481.96
Clinical Nurse Specialist - Step B	S4B	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	7319.92	11823.41	15859.82
Clinical Nurse Specialist - Step C	S4C	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	7494.00	12104.73	16237.00
Infection Control Nurse	S04	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	6971.44	11260.08	15104.78
Infection Control Nurse - Extra Help	X1F	4834.80	5076.72	5330.48	5597.12	5877.12	---	---	10475.40	12733.76
Infection Control Nurse - Step A	S0A	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	7145.52	11541.22	15481.96
Infection Control Nurse - Step B	S0B	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	7319.92	11823.41	15859.82
Infection Control Nurse - Step C	S0C	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	7494.00	12104.73	16237.00
Nurse Coordinator	S39	4949.28	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	10723.44	14371.76
Nurse Coordinator - Extra Help	X1M	4603.92	4834.48	5076.32	5330.00	5596.56	---	---	9975.16	12125.88
Nurse Coordinator - Step A	S3A	5072.80	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	10991.06	14731.25
Nurse Coordinator - Step B	S3B	5196.80	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	11259.73	15090.40
Nurse Coordinator - Step C	S3C	5320.32	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	11527.36	15449.89
Nurse Coordinator - U	Q39	4949.28	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	10723.44	14371.76
Nurse Coordinator - U Step A	Q4A	5072.80	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	10991.06	14731.25
Nurse Coordinator - U Step B	Q4B	5196.80	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	11259.73	15090.40
Nurse Coordinator - U Step C	Q4C	5320.32	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	11527.36	15449.89
Nurse Practitioner	S59	5729.68	6016.24	6317.28	6633.12	6971.44	7327.04	7701.52	12414.30	16686.62
Nurse Practitioner - Extra Help	X1N	5330.48	5597.04	5877.12	6171.04	6485.52	---	---	11549.37	14051.96
Nurse Practitioner - Step A	Y0A	5872.88	6166.56	6475.12	6799.04	7145.52	7510.08	7893.76	12724.57	17103.14
Nurse Practitioner - Step B	Y0B	6016.16	6317.12	6632.96	6964.80	7319.92	7693.44	8086.56	13035.01	17520.88
Nurse Practitioner - Step C	Y0C	6159.52	6467.28	6791.04	7130.72	7494.00	7876.56	8278.96	13345.62	17937.74
Per Diem Clinical Nurse	S99	---	65.23/Hrly	---	82.48/Hrly	---	---	---	---	---
Per Diem Nurse Practitioner	S41	---	81.58/Hrly	---	103.14/Hrly	---	---	---	---	---
Per Diem Psychiatric Nurse	S92	---	65.23/Hrly	---	82.48/Hrly	---	---	---	---	---
Psychiatric Nurse I	S58	4031.84	4233.92	4446.56	4669.28	4902.80	---	---	8735.65	10622.73
Psychiatric Nurse I - Extra Help	X1B	3750.88	3939.12	4136.64	4343.92	4561.20	---	---	8126.90	9882.60
Psychiatric Nurse I - Step A	D5A	4132.72	4339.92	4557.52	4785.92	5025.20	---	---	8954.22	10887.93
Psychiatric Nurse I - Step B	D5B	4233.44	4445.84	4668.56	4902.72	5147.84	---	---	9172.45	11153.65
Psychiatric Nurse I - Step C	D5C	4334.32	4551.60	4779.84	5019.36	5270.32	---	---	9391.02	11419.02

Effective November 9, 2015										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Psychiatric Nurse II - Extra Help	X1C	4176.16	4385.12	4604.48	4834.80	5076.72	---	---	9048.34	10999.56
Psychiatric Nurse II - Step A	E2A	4601.12	4831.20	5072.80	5326.72	5593.20	5872.88	6166.56	9969.09	13360.88
Psychiatric Nurse II - Step B	E2B	4713.36	4949.20	5196.80	5456.96	5729.68	6016.16	6317.12	10212.28	13687.09
Psychiatric Nurse II - Step C	E2C	4825.60	5066.88	5320.32	5586.80	5876.48	6159.52	6467.28	10455.46	14012.44
Staff Developer	S38	5196.96	5457.04	5729.68	6016.24	6317.28	6633.12	6971.44	11260.08	15104.78
Staff Developer - Extra Help	X1E	4583.84	4813.28	5053.84	5306.64	5572.16	---	---	9931.65	12073.01
Staff Developer - Step A	S5A	5326.72	5593.20	5872.88	6166.56	6475.12	6799.04	7145.52	11541.22	15481.96
Staff Developer - Step B	S5B	5456.96	5729.68	6016.16	6317.12	6632.96	6964.80	7319.92	11823.41	15859.82
Staff Developer - Step C	S5C	5586.80	5866.16	6159.52	6467.28	6791.04	7130.72	7494.00	12104.73	16237.00

APPENDIX A - RNPA SALARIES

Effective October 24, 2016

Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Assistant Nurse Manager	S11	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	7180.56	11597.73	15557.88
Assistant Nurse Manager - Extra Help	X1J	4979.84	5228.96	5490.32	5764.96	6053.36	---	---	10789.65	13115.61
Assistant Nurse Manager - Step A	S2A	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	7359.84	11887.37	15946.32
Assistant Nurse Manager - Step B	S2B	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	7539.44	12178.05	16335.45
Assistant Nurse Manager - Step C	S2C	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	7718.80	12467.86	16724.06
Certified Registered Nurse Anesthetist	S1V	7324.72	7698.56	8091.92	8505.20	8939.44	9396.00	---	15870.22	20358.00
Certified Registered Nurse Anesthetist - Extra Help	X1K	6815.28	7162.24	7528.00	7912.56	8325.28	---	---	14766.44	18038.10
Certified Registered Nurse Anesthetist - Step A	Y1A	7507.84	7891.04	8294.08	8717.68	9163.04	9630.88	---	16266.98	20866.90
Certified Registered Nurse Anesthetist - Step B	Y1B	7691.12	8083.60	8496.56	8930.40	9386.40	9865.68	---	16664.09	21375.64
Certified Registered Nurse Anesthetist - Step C	Y1C	7874.24	8275.92	8698.72	9142.96	9609.92	10100.56	---	17060.85	21884.54
Clinical Nurse I	S89	3955.60	4153.28	4360.88	4579.92	4809.28	---	---	8570.46	10420.10
Clinical Nurse I - Extra Help	X1A	3663.60	3846.80	4057.28	4260.72	4474.16	---	---	7937.80	9694.01
Clinical Nurse I - Step A	C3A	---	---	4470.08	4694.24	4929.44	---	---	9685.17	10680.45
Clinical Nurse I - Step B	C3B	---	---	4579.20	4808.56	5049.76	---	---	9921.60	10941.14
Clinical Nurse I - Step C	C3C	---	---	4688.08	4923.20	5169.92	---	---	10157.50	11201.49
Clinical Nurse I - U	Q89	3955.60	4153.28	4360.88	4579.92	4809.28	---	---	8570.46	10420.10
Clinical Nurse II	S76	4192.40	4402.96	4623.52	4854.80	5097.68	---	---	9083.53	11044.97
Clinical Nurse II - Extra Help	X1H	3900.40	4096.16	4301.44	4516.64	4742.56	---	---	8450.86	10275.54
Clinical Nurse II - Step A	D0A	4297.28	4513.12	4739.12	4976.08	5224.96	---	---	9310.77	11320.74
Clinical Nurse II - Step B	D0B	4402.00	4623.04	4854.72	5097.60	5352.64	---	---	9537.66	11597.38
Clinical Nurse II - Step C	D0C	4506.80	4733.20	4970.32	5218.88	5479.92	---	---	9764.73	11873.16
Clinical Nurse II - U	Q87	4192.40	4402.96	4623.52	4854.80	5097.68	---	---	9083.53	11044.97
Clinical Nurse II - U - Step A	E1A	4297.28	4513.12	4739.12	4976.08	5224.96	---	---	9310.77	11320.74
Clinical Nurse II - U - Step B	E1B	4402.00	4623.04	4854.72	5097.60	5352.64	---	---	9537.66	11597.38
Clinical Nurse II - U - Step C	E1C	4506.80	4733.20	4970.32	5218.88	5479.92	---	---	9764.73	11873.16
Clinical Nurse III	S75	4623.52	4854.80	5097.68	5352.80	5620.72	5901.52	6196.72	10017.62	13426.22
Clinical Nurse III - Extra Help	X1I	4301.44	4516.64	4742.56	4979.84	5228.96	---	---	9319.78	11329.41
Clinical Nurse III - Step A	S7A	4739.12	4976.08	5224.96	5486.48	5760.96	6049.04	6351.52	10268.09	13761.62
Clinical Nurse III - Step B	S7B	4854.72	5097.60	5352.64	5620.64	5901.52	6196.64	6506.56	10518.56	14097.54
Clinical Nurse III - Step C	S7C	4970.32	5218.88	5479.92	5754.40	6052.72	6344.24	6661.28	10769.02	14432.77

Effective October 24, 2016										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Clinical Nurse III - U	Q86	4623.52	4854.80	5097.68	5352.80	5620.72	5901.52	6196.72	10017.62	13426.22
Clinical Nurse III - U - Step A	Q8A	4739.12	4976.08	5224.96	5486.48	5760.96	6049.04	6351.52	10268.09	13761.62
Clinical Nurse III - U - Step B	Q8B	4854.72	5097.60	5352.64	5620.64	5901.52	6196.64	6506.56	10518.56	14097.54
Clinical Nurse III - U - Step C	Q8C	4970.32	5218.88	5479.92	5754.40	6052.72	6344.24	6661.28	10769.02	14432.77
Clinical Nurse Specialist	S35	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	7180.56	11597.73	15557.88
Clinical Nurse Specialist - Extra Help	X1L	4979.84	5228.96	5490.32	5764.96	6053.36	---	---	10789.65	13115.61
Clinical Nurse Specialist - Step A	S4A	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	7359.84	11887.37	15946.32
Clinical Nurse Specialist - Step B	S4B	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	7539.44	12178.05	16335.45
Clinical Nurse Specialist - Step C	S4C	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	7718.80	12467.86	16724.06
Infection Control Nurse	S04	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	7180.56	11597.73	15557.88
Infection Control Nurse - Extra Help	X1F	4979.84	5228.96	5490.32	5764.96	6053.36	---	---	10789.65	13115.61
Infection Control Nurse - Step A	S0A	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	7359.84	11887.37	15946.32
Infection Control Nurse - Step B	S0B	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	7539.44	12178.05	16335.45
Infection Control Nurse - Step C	S0C	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	7718.80	12467.86	16724.06
Nurse Coordinator	S39	5097.68	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	11044.97	14802.84
Nurse Coordinator - Extra Help	X1M	4742.00	4979.44	5228.56	5489.84	5764.40	---	---	10274.33	12489.53
Nurse Coordinator - Step A	S3A	5224.96	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	11320.74	15173.08
Nurse Coordinator - Step B	S3B	5352.64	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	11597.38	15542.97
Nurse Coordinator - Step C	S3C	5479.92	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	11873.16	15913.38
Nurse Coordinator - U	Q39	5097.68	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	11044.97	14802.84
Nurse Coordinator - U Step A	Q4A	5224.96	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	11320.74	15173.08
Nurse Coordinator - U Step B	Q4B	5352.64	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	11597.38	15542.97
Nurse Coordinator - U Step C	Q4C	5479.92	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	11873.16	15913.38
Nurse Practitioner	S59	5901.52	6196.72	6506.72	6832.08	7180.56	7546.80	7932.56	12786.62	17187.21
Nurse Practitioner - Extra Help	X1N	5490.32	5764.88	6053.36	6356.16	6680.08	---	---	11895.69	14473.50
Nurse Practitioner - Step A	Y0A	6049.04	6351.52	6669.36	7002.96	7359.84	7735.36	8130.56	13106.25	17616.21
Nurse Practitioner - Step B	Y0B	6196.64	6506.56	6831.92	7173.68	7539.44	7924.24	8329.12	13426.05	18046.42
Nurse Practitioner - Step C	Y0C	6344.24	6661.28	6994.72	7344.64	7718.80	8112.80	8527.28	13745.85	18475.77
Per Diem Clinical Nurse	S99	---	67.19/Hrly	---	84.95/Hrly	---	---	---	---	---
Per Diem Nurse Practitioner	S41	---	84.02/Hrly	---	106.23/Hrly	---	---	---	---	---
Per Diem Psychiatric Nurse	S92	---	67.19/Hrly	---	84.95/Hrly	---	---	---	---	---
Psychiatric Nurse I	S58	4152.72	4360.88	4579.92	4809.28	5049.84	---	---	8997.56	10941.32

Effective October 24, 2016										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Psychiatric Nurse I - Step A	D5A	4256.64	4470.08	4694.24	4929.44	5175.92	---	---	9222.72	11214.49
Psychiatric Nurse I - Step B	D5B	4360.40	4579.20	4808.56	5049.76	5302.24	---	---	9447.53	11488.18
Psychiatric Nurse I - Step C	D5C	4464.32	4688.08	4923.20	5169.92	5428.40	---	---	9672.69	11761.53
Psychiatric Nurse II	S57	4623.52	4854.80	5097.68	5352.80	5620.72	5901.52	6196.72	10017.62	13426.22
Psychiatric Nurse II - Extra Help	X1C	4301.44	4516.64	4742.56	4979.84	5228.96	---	---	9319.78	11329.41
Psychiatric Nurse II - Step A	E2A	4739.12	4976.08	5224.96	5486.48	5760.96	6049.04	6351.52	10268.09	13761.62
Psychiatric Nurse II - Step B	E2B	4854.72	5097.60	5352.64	5620.64	5901.52	6196.64	6506.56	10518.56	14097.54
Psychiatric Nurse II - Step C	E2C	4970.32	5218.88	5479.92	5754.40	6052.72	6344.24	6661.28	10769.02	14432.77
Staff Developer	S38	5352.80	5620.72	5901.52	6196.72	6506.72	6832.08	7180.56	11597.73	15557.88
Staff Developer - Extra Help	X1E	4721.28	4957.60	5205.44	5465.76	5739.28	---	---	10229.44	12435.10
Staff Developer - Step A	S5A	5486.48	5760.96	6049.04	6351.52	6669.36	7002.96	7359.84	11887.37	15946.32
Staff Developer - Step B	S5B	5620.64	5901.52	6196.64	6506.56	6831.92	7173.68	7539.44	12178.05	16335.45
Staff Developer - Step C	S5C	5754.40	6042.08	6344.24	6661.28	6994.72	7344.64	7718.80	12467.86	16724.06

APPENDIX A - RNPA SALARIES

Effective October 23, 2017

Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Assistant Nurse Manager	S11	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	7395.92	11945.61	16024.49
Assistant Nurse Manager - Extra Help	X1J	5129.20	5385.76	5654.96	5937.84	6234.96	---	---	11113.26	14907.53
Assistant Nurse Manager - Step A	S2A	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	7580.56	12243.92	13509.08
Assistant Nurse Manager - Step B	S2B	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	7765.60	12543.26	16825.46
Assistant Nurse Manager - Step C	S2C	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	7950.32	12841.74	17225.69
Certified Registered Nurse Anesthetist	S1V	7544.40	7929.44	8334.64	8760.32	9207.60	9677.84	---	16346.20	20968.65
Certified Registered Nurse Anesthetist - Extra Help	X1K	7019.68	7377.04	7753.84	8149.92	8574.96	---	---	15209.30	18579.08
Certified Registered Nurse Anesthetist - Step A	Y1A	7733.04	8127.76	8542.88	8979.20	9437.92	9919.76	---	16754.92	21492.81
Certified Registered Nurse Anesthetist - Step B	Y1B	7921.84	8326.08	8751.44	9198.24	9667.92	10161.60	---	17163.98	22016.80
Certified Registered Nurse Anesthetist - Step C	Y1C	8110.40	8524.16	8959.68	9417.20	9898.16	10403.52	---	17572.53	22540.96
Clinical Nurse I	S89	4074.24	4277.84	4491.68	4717.28	4953.52	---	---	8827.52	10732.62
Clinical Nurse I - Extra Help	X1A	3773.44	3962.16	4178.96	4388.48	4608.32	---	---	8175.78	9984.69
Clinical Nurse I - Step A	C3A	---	---	4604.16	4835.04	5077.28	---	---	9975.68	11000.77
Clinical Nurse I - Step B	C3B	---	---	4716.56	4952.80	5201.20	---	---	10219.21	11269.26
Clinical Nurse I - Step C	C3C	---	---	4828.72	5070.88	5324.96	---	---	10462.22	11537.41
Clinical Nurse I - U	Q89	4074.24	4277.84	4491.68	4717.28	4953.52	---	---	8827.52	10732.62
Clinical Nurse II	S76	4318.16	4535.04	4762.16	5000.40	5250.56	---	---	9356.01	11376.21
Clinical Nurse II - Extra Help	X1H	4017.36	4219.04	4430.48	4652.08	4884.80	---	---	8704.28	10583.73
Clinical Nurse II - Step A	D0A	4426.16	4648.48	4881.28	5125.36	5381.68	---	---	9590.01	11660.30
Clinical Nurse II - Step B	D0B	4534.00	4761.68	5000.32	5250.48	5513.20	---	---	9823.66	11945.26
Clinical Nurse II - Step C	D0C	4642.00	4875.12	5119.36	5375.44	5644.24	---	---	10057.66	12229.18
Clinical Nurse II - U	Q87	4318.16	4535.04	4762.16	5000.40	5250.56	---	---	9356.01	11376.21
Clinical Nurse II - U - Step A	E1A	4426.16	4648.48	4881.28	5125.36	5381.68	---	---	9590.01	11660.30
Clinical Nurse II - U - Step B	E1B	4534.00	4761.68	5000.32	5250.48	5513.20	---	---	9823.66	11945.26
Clinical Nurse II - U - Step C	E1C	4642.00	4875.12	5119.36	5375.44	5644.24	---	---	10057.66	12229.18
Clinical Nurse III	S75	4762.16	5000.40	5250.56	5513.36	5789.28	6078.56	6382.56	10318.01	13828.88
Clinical Nurse III - Extra Help	X1I	4430.48	4652.08	4884.80	5129.20	5385.76	---	---	9599.37	11669.14
Clinical Nurse III - Step A	S7A	4881.28	5125.36	5381.68	5651.04	5933.76	6230.48	6542.00	10576.10	14174.33
Clinical Nurse III - Step B	S7B	5000.32	5250.48	5513.20	5789.20	6078.56	6382.48	6701.68	10834.02	14520.30
Clinical Nurse III - Step C	S7C	5119.36	5375.44	5644.24	5926.96	6234.24	6534.56	6861.04	11091.94	14865.58

Effective October 23, 2017										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Clinical Nurse III - U	Q86	4762.16	5000.40	5250.56	5513.36	5789.28	6078.56	6382.56	10318.01	13828.88
Clinical Nurse III - U - Step A	Q8A	4881.28	5125.36	5381.68	5651.04	5933.76	6230.48	6542.00	10576.10	14174.33
Clinical Nurse III - U - Step B	Q8B	5000.32	5250.48	5513.20	5789.20	6078.56	6382.48	6701.68	10834.02	14520.30
Clinical Nurse III - U - Step C	Q8C	5119.36	5375.44	5644.24	5926.96	6234.24	6534.56	6861.04	11091.94	14865.58
Clinical Nurse Specialist	S35	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	7395.92	11945.61	16024.49
Clinical Nurse Specialist - Extra Help	X1L	5129.20	5385.76	5654.96	5937.84	6234.96	---	---	11113.26	13509.08
Clinical Nurse Specialist - Step A	S4A	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	7580.56	12243.92	16424.54
Clinical Nurse Specialist - Step B	S4B	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	7765.60	12543.26	16825.46
Clinical Nurse Specialist - Step C	S4C	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	7950.32	12841.74	17225.69
Infection Control Nurse	S04	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	7395.92	11945.61	16024.49
Infection Control Nurse - Extra Help	X1F	5129.20	5385.76	5654.96	5937.84	6234.96	---	---	11113.26	13509.08
Infection Control Nurse - Step A	S0A	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	7580.56	12243.92	16424.54
Infection Control Nurse - Step B	S0B	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	7765.60	12543.26	16825.46
Infection Control Nurse - Step C	S0C	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	7950.32	12841.74	17225.69
Nurse Coordinator	S39	5250.56	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	11376.21	15246.92
Nurse Coordinator - Extra Help	X1M	4884.24	5128.80	5385.36	5654.48	5937.28	---	---	10582.52	12864.10
Nurse Coordinator - Step A	S3A	5381.68	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	11660.30	15628.25
Nurse Coordinator - Step B	S3B	5513.20	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	11945.26	16009.24
Nurse Coordinator - Step C	S3C	5644.24	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	12229.18	16390.74
Nurse Coordinator - U	Q39	5250.56	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	11376.21	15246.92
Nurse Coordinator - U Step A	Q4A	5381.68	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	11660.30	15628.25
Nurse Coordinator - U Step B	Q4B	5513.20	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	11945.26	16009.24
Nurse Coordinator - U Step C	Q4C	5644.24	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	12229.18	16390.74
Nurse Practitioner	S59	6078.56	6382.56	6701.92	7037.04	7395.92	7773.20	8170.48	13170.21	17702.70
Nurse Practitioner - Extra Help	X1N	5654.96	5937.76	6234.96	6546.80	6880.48	---	---	12252.41	14907.70
Nurse Practitioner - Step A	Y0A	6230.48	6542.00	6869.44	7213.04	7580.56	7967.36	8374.40	13499.37	18144.53
Nurse Practitioner - Step B	Y0B	6382.48	6701.68	7036.80	7388.88	7765.60	8161.92	8578.96	13828.70	18587.74
Nurse Practitioner - Step C	Y0C	6534.56	6861.04	7204.56	7564.96	7950.32	8356.16	8783.04	14158.21	19029.92
Per Diem Clinical Nurse	S99	---	69.21/Hrly	---	87.50/Hrly	---	---	---	---	---
Per Diem Nurse Practitioner	S41	---	86.54/Hrly	---	109.42/Hrly	---	---	---	---	---
Per Diem Psychiatric Nurse	S92	---	69.21/Hrly	---	87.50/Hrly	---	---	---	---	---
Psychiatric Nurse I	S58	4277.28	4491.68	4717.28	4953.52	5201.28	---	---	9267.44	11269.44

Effective October 23, 2017										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Psychiatric Nurse I - Step A	D5A	4384.32	4604.16	4835.04	5077.28	5331.12	---	---	9499.36	11550.76
Psychiatric Nurse I - Step B	D5B	4491.20	4716.56	4952.80	5201.20	5461.28	---	---	9730.93	11832.77
Psychiatric Nurse I - Step C	D5C	4598.24	4828.72	5070.88	5324.96	5591.20	---	---	9962.85	12114.26
Psychiatric Nurse II	S57	4762.16	5000.40	5250.56	5513.36	5789.28	6078.56	6382.56	10318.01	13828.88
Psychiatric Nurse II - Extra Help	X1C	4430.48	4652.08	4884.80	5129.20	5385.76	---	---	9599.37	11669.14
Psychiatric Nurse II - Step A	E2A	4881.28	5125.36	5381.68	5651.04	5933.76	6230.48	6542.00	10576.10	14174.33
Psychiatric Nurse II - Step B	E2B	5000.32	5250.48	5513.20	5789.20	6078.56	6382.48	6701.68	10834.02	14520.30
Psychiatric Nurse II - Step C	E2C	5119.36	5375.44	5644.24	5926.96	6234.24	6534.56	6861.04	11091.94	14865.58
Staff Developer	S38	5513.36	5789.28	6078.56	6382.56	6701.92	7037.04	7395.92	11945.61	16024.49
Staff Developer - Extra Help	X1E	4862.88	5106.32	5361.60	5629.68	5911.44	---	---	10536.24	12808.12
Staff Developer - Step A	S5A	5651.04	5933.76	6230.48	6542.00	6869.44	7213.04	7580.56	12243.92	16424.54
Staff Developer - Step B	S5B	5789.20	6078.56	6382.48	6701.68	7036.80	7388.88	7765.60	12543.26	16825.46
Staff Developer - Step C	S5C	5926.96	6223.28	6534.56	6861.04	7204.56	7564.96	7950.32	12841.74	17225.69

APPENDIX A - RNPA SALARIES

Effective October 22, 2018

Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Max
Assistant Nurse Manager	S11	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	7617.76	12303.89	16505.14
Assistant Nurse Manager - Extra Help	X1J	5283.04	5547.28	5824.56	6115.92	6422.00	---	---	11446.58	13914.33
Assistant Nurse Manager - Step A	S2A	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	7807.92	12611.21	16917.16
Assistant Nurse Manager - Step B	S2B	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	7998.56	12919.40	17330.21
Assistant Nurse Manager - Step C	S2C	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	8188.80	13226.89	17742.40
Certified Registered Nurse Anesthetist	S1V	7770.72	8167.28	8584.64	9023.12	9483.76	9968.16	---	16836.56	21597.68
Certified Registered Nurse Anesthetist - Extra Help	X1K	7230.24	7598.32	7986.40	8394.40	8832.16	---	---	15665.52	19136.34
Certified Registered Nurse Anesthetist - Step A	Y1A	7964.96	8371.52	8799.12	9248.56	9721.04	10217.28	---	17257.41	22137.44
Certified Registered Nurse Anesthetist - Step B	Y1B	8159.44	8575.84	9013.92	9474.16	9957.92	10466.40	---	17678.78	22677.20
Certified Registered Nurse Anesthetist - Step C	Y1C	8353.68	8779.84	9228.40	9699.68	10195.04	10715.60	---	18099.64	23217.13
Clinical Nurse I	S89	4196.40	4406.16	4626.40	4858.72	5102.08	---	---	9092.20	11054.50
Clinical Nurse I - Extra Help	X1A	3886.64	4080.96	4304.32	4520.08	4746.56	---	---	8421.05	10284.21
Clinical Nurse I - Step A	C3A	---	---	4742.24	4980.08	5229.52	---	---	10274.85	11330.62
Clinical Nurse I - Step B	C3B	---	---	4858.00	5101.36	5357.20	---	---	10525.66	11607.26
Clinical Nurse I - Step C	C3C	---	---	4973.52	5222.96	5484.64	---	---	10775.96	11883.38
Clinical Nurse I - U	Q89	4196.40	4406.16	4626.40	4858.72	5102.08	---	---	9092.20	11054.50
Clinical Nurse II	S76	4447.68	4671.04	4904.96	5150.40	5408.00	---	---	9636.64	11717.33
Clinical Nurse II - Extra Help	X1H	4137.84	4345.60	4563.36	4791.60	5031.28	---	---	8965.32	10901.10
Clinical Nurse II - Step A	D0A	4558.88	4787.92	5027.68	5279.12	5543.12	---	---	9877.57	12010.09
Clinical Nurse II - Step B	D0B	4670.00	4904.48	5150.32	5407.92	5678.56	---	---	10118.33	12303.54
Clinical Nurse II - Step C	D0C	4781.20	5021.36	5272.88	5536.64	5813.52	---	---	10359.26	12595.96
Clinical Nurse II - U	Q87	4447.68	4671.04	4904.96	5150.40	5408.00	---	---	9636.64	11717.33
Clinical Nurse II - U - Step A	E1A	4558.88	4787.92	5027.68	5279.12	5543.12	---	---	9877.57	12010.09
Clinical Nurse II - U - Step B	E1B	4670.00	4904.48	5150.32	5407.92	5678.56	---	---	10118.33	12303.54
Clinical Nurse II - U - Step C	E1C	4781.20	5021.36	5272.88	5536.64	5813.52	---	---	10359.26	12595.96
Clinical Nurse III	S75	4904.96	5150.40	5408.00	5678.72	5962.88	6260.88	6574.00	10627.41	14243.66
Clinical Nurse III - Extra Help	X1I	4563.36	4791.60	5031.28	5283.04	5547.28	---	---	9887.28	12019.10
Clinical Nurse III - Step A	S7A	5027.68	5279.12	5543.12	5820.56	6111.76	6417.36	6738.24	10893.30	14599.52
Clinical Nurse III - Step B	S7B	5150.32	5407.92	5678.56	5962.80	6260.88	6573.92	6902.72	11159.02	14955.89
Clinical Nurse III - Step C	S7C	5272.88	5536.64	5813.52	6104.72	6421.20	6730.56	7066.80	11424.57	15311.40

Effective October 22, 2018										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Clinical Nurse III - U	Q86	4904.96	5150.40	5408.00	5678.72	5962.88	6260.88	6574.00	10627.41	14243.66
Clinical Nurse III - U - Step A	Q8A	5027.68	5279.12	5543.12	5820.56	6111.76	6417.36	6738.24	10893.30	14599.52
Clinical Nurse III - U - Step B	Q8B	5150.32	5407.92	5678.56	5962.80	6260.88	6573.92	6902.72	11159.02	14955.89
Clinical Nurse III - U - Step C	Q8C	5272.88	5536.64	5813.52	6104.72	6421.20	6730.56	7066.80	11424.57	15311.40
Clinical Nurse Specialist	S35	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	7617.76	12303.89	16505.14
Clinical Nurse Specialist - Extra Help	X1L	5283.04	5547.28	5824.56	6115.92	6422.00	---	---	11446.58	13914.33
Clinical Nurse Specialist - Step A	S4A	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	7807.92	12611.21	16917.16
Clinical Nurse Specialist - Step B	S4B	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	7998.56	12919.40	17330.21
Clinical Nurse Specialist - Step C	S4C	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	8188.80	13226.89	17742.40
Infection Control Nurse	S04	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	7617.76	12303.89	16505.14
Infection Control Nurse - Extra Help	X1F	5283.04	5547.28	5824.56	6115.92	6422.00	---	---	11446.58	13914.33
Infection Control Nurse - Step A	S0A	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	7807.92	12611.21	16917.16
Infection Control Nurse - Step B	S0B	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	7998.56	12919.40	17330.21
Infection Control Nurse - Step C	S0C	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	8188.80	13226.89	17742.40
Nurse Coordinator	S39	5408.00	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	11717.33	15704.17
Nurse Coordinator - Extra Help	X1M	5030.72	5282.64	5546.88	5824.08	6115.36	---	---	10899.89	13249.94
Nurse Coordinator - Step A	S3A	5543.12	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	12010.09	16096.94
Nurse Coordinator - Step B	S3B	5678.56	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	12303.54	16489.37
Nurse Coordinator - Step C	S3C	5813.52	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	12595.96	16882.32
Nurse Coordinator - U	Q39	5408.00	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	11717.33	15704.17
Nurse Coordinator - U Step A	Q4A	5543.12	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	12010.09	16096.94
Nurse Coordinator - U Step B	Q4B	5678.56	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	12303.54	16489.37
Nurse Coordinator - U Step C	Q4C	5813.52	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	12595.96	16882.32
Nurse Practitioner	S59	6260.88	6574.00	6902.96	7248.08	7617.76	8006.32	8415.52	13565.24	18233.62
Nurse Practitioner - Extra Help	X1N	5824.56	6115.84	6422.00	6743.20	7086.88	---	---	12619.88	15354.90
Nurse Practitioner - Step A	Y0A	6417.36	6738.24	7075.52	7429.36	7807.92	8206.32	8625.60	13904.28	18688.80
Nurse Practitioner - Step B	Y0B	6573.92	6902.72	7247.84	7610.48	7998.56	8406.72	8836.32	14243.49	19145.36
Nurse Practitioner - Step C	Y0C	6730.56	7066.80	7420.64	7791.84	8188.80	8606.80	9046.48	14582.88	19600.70
Per Diem Clinical Nurse	S99	---	71.28/Hrly	---	90.12/Hrly	---	---	---	---	---
Per Diem Nurse Practitioner	S41	---	89.14/Hrly	---	112.70/Hrly	---	---	---	---	---
Per Diem Psychiatric Nurse	S92	---	71.28/Hrly	---	90.12/Hrly	---	---	---	---	---
Psychiatric Nurse I	S58	4405.52	4626.40	4858.72	5102.08	5357.28	---	---	9545.29	11607.44

Effective October 22, 2018										
Job Title	Job Code	Biweekly Step 1	Biweekly Step 2	Biweekly Step 3	Biweekly Step 4	Biweekly Step 5	Biweekly Step 6	Biweekly Step 7	Monthly Min	Monthly Min
Psychiatric Nurse I - Step A	D5A	4515.84	4742.24	4980.08	5229.52	5491.04	---	---	9784.32	11897.25
Psychiatric Nurse I - Step B	D5B	4625.92	4858.00	5101.36	5357.20	5625.04	---	---	10022.82	12187.58
Psychiatric Nurse I - Step C	D5C	4736.16	4973.52	5222.96	5484.64	5758.88	---	---	10261.68	12477.57
Psychiatric Nurse II	S57	4904.96	5150.40	5408.00	5678.72	5962.88	6260.88	6574.00	10627.41	14243.66
Psychiatric Nurse II - Extra Help	X1C	4563.36	4791.60	5031.28	5283.04	5547.28	---	---	9887.28	12019.10
Psychiatric Nurse II - Step A	E2A	5027.68	5279.12	5543.12	5820.56	6111.76	6417.36	6738.24	10893.30	14599.52
Psychiatric Nurse II - Step B	E2B	5150.32	5407.92	5678.56	5962.80	6260.88	6573.92	6902.72	11159.02	14955.89
Psychiatric Nurse II - Step C	E2C	5272.88	5536.64	5813.52	6104.72	6421.20	6730.56	7066.80	11424.57	15311.40
Staff Developer	S38	5678.72	5962.88	6260.88	6574.00	6902.96	7248.08	7617.76	12303.89	16505.14
Staff Developer - Extra Help	X1E	5008.72	5259.44	5522.40	5798.56	6088.72	---	---	10852.22	13192.22
Staff Developer - Step A	S5A	5820.56	6111.76	6417.36	6738.24	7075.52	7429.36	7807.92	12611.21	16917.16
Staff Developer - Step B	S5B	5962.80	6260.88	6573.92	6902.72	7247.84	7610.48	7998.56	12919.40	17330.21
Staff Developer - Step C	S5C	6104.72	6409.92	6730.56	7066.80	7420.64	7791.84	8188.80	13226.89	17742.40

APPENDIX B - CLASSIFICATIONS AND AREAS OF COMPETENCY FOR LAYOFF
PURPOSES ONLY

B.1 - Classifications

Assistant Nurse Manager

Areas of Competency

1. Medical/Surgical
2. Rehabilitation
3. Neonatal Intensive Care, Pediatrics,
Pediatric Intensive Care
4. Critical Care
5. Post Anesthesia Care Unit (PACU),
Ambulatory Surgery Unit (ASU)
6. Transitional Care Neurosurgery Unit, Medical Short Stay
Unit
7. Labor and Delivery
8. Mother Infant Care Center (MICC)
9. Operating Room
10. Ambulatory Care
11. Renal Care Center
12. Psychiatry/Behavioral Health

Clinical Nurse Specialist

Areas of Competency

1. Enterostomal
2. Oncology
3. Psychiatry/Behavioral Health
4. Rehabilitation
5. Maternity
6. Neonatal
7. Pediatric

Staff Developer

Areas of Competency

1. Medical/Surgical
2. Rehabilitation
3. Neonatal Intensive Care, Pediatrics,
Pediatric Intensive Care
4. Critical Care
5. Labor and Delivery
6. Mother Infant Care Center (MICC)
7. Operating Room
8. Ambulatory Care
9. Custody Health Services

10. Psychiatry/Behavioral Health
11. General

Infection Control Nurse

Area of Competency

1. Infection Control

Nurse Coordinator

Areas of Competency

1. HIV/AIDS Services
2. Diabetes Patient Education
3. Dialysis
4. Nursing Information Systems
5. Psychiatry/Behavioral Health, Drug and Alcohol
6. Comprehensive Perinatal Services Program (CPSP)
7. Endoscopy
8. SART
9. Mother Infant Care Center (MICC)
10. Lactation
11. Cardiovascular
12. Anticoagulant
13. Homeless Program
14. Oncology
15. Stroke Coordinator

Clinical Nurse I/II/III

Areas of Competency

1. Medical-Surgical Units
(3 Surgical, 4 Surgical, 4 Medical,
Admission, Discharge, Transfer (ADT) Nurse
2. Rehabilitation (1RHB,
2 RHB, Rehabilitation Trauma Unit RTC2)
3. Neonatal Intensive Care Unit,
Pediatrics, Pediatric Intensive Care Unit
4. Adult Intensive Care Units (MICU, TICU, CCU, SICU), Burn
Unit, Emergency Department, Cardiac Cath Lab,
Interventional Radiology, Resource Nurse, PICC Nurse
5. Post Anesthesia Care Unit (PACU), Ambulatory
Surgery Unit (ASU)
6. Transitional Care Neurosurgery Unit, Medical Short Stay
Unit

7. Labor and Delivery
8. Mother-Infant Care Center (MICC)
9. Operating Room
10. Ambulatory Care
11. Renal Care Center
12. Custody Health Services
13. Coded Float:
Competency areas for coded float nurses are determined based upon the greatest percentage of assignments within Appendix B, Clinical Nurse I, II, III Areas of Competency 1-13 in the preceding twelve (12) months.
In the event of a layoff, those coded floats determined to be competent in the area being laid off will be included in the layoff process.

Psychiatric Nurse I/II

Area of Competency

1. Psychiatry/Behavioral Health, Drug & Alcohol.

Nurse Practitioner

Areas of Competency

1. Family
2. Adult
3. Neonatal Care
4. Pediatric
5. Women's Health
6. Gerontology
7. Psychiatry/Behavioral Health
8. Oncology

B. 2. - Areas of Competency Not Covered

If an area is not covered by this appendix, the parties shall meet and confer on the related areas of competency.

B.3 - Certifications and Specialty Skills

County may retain less senior nurses or nurses in a lower class who have certifications or specialty skills as designated:

1. Chemotherapy Certification on 4 Medical and Infusion Center
2. Open Heart qualified in SICU
3. Intra-aortic Balloon Pump (IABP) Certification in the CCU
4. Cardiac Cath Lab qualified in the Cath Lab
5. Informatics Nurse Certification for Nursing Information Systems Nurse Coordinator positions.

Appendix C
Per Diem and Extra Help Nurses

1. Per Diem (PD) and Extra Help (EH) Nurses are appointments to non-permanent positions established to meet peak load or other unusual work situations.

PD and EH nurses may access sccjobs.org and complete job interest notification(s) to be notified of coded nursing positions that are being posted on an open/competitive basis.

2. PD nurses are required to be available to work at least eight (8) shifts a month, two of which are weekend shifts(if applicable). Four (4) weekend shifts per month may be approved as an alternate schedule to the eight shifts per month work requirement.

Each PD and EH nurse must be available to work one of the three major holidays: Thanksgiving, Christmas or New Year's Day on a rotating basis. Christmas Eve and New Year's Eve will be considered as meeting the holiday requirement for the evening shift. When assigned and worked, extra help and per diem nurses shall be paid at time and one half for all hours worked on two of the three major holidays as noted above.

3. EH nurses are required to be available to work a minimum of four (4) shifts per month, one of which will be a weekend shift.
4. Each PD and EH nurse is expected to float to units within their like area(s) as set forth in Section 8.14 b) however PD/EH nurses are not eligible for the premium pay.
5. No nurse may receive pay in an extra help capacity in the same classification in the same department for more than 1,040 hours in any fiscal year, unless otherwise approved by the Board of Supervisors.
 - a) Should an extension of hours be requested, the County shall provide RNPA at least twenty (20) days' notice in advance of the scheduled Board of

Supervisors meeting. RNPA shall respond within five (5) days of receipt of notice to request to meet and discuss or such request is deemed to have been waived.

- b) If a request to meet is made, the County and RNPA shall meet and discuss for not more than five (5) working days. If concerns are not alleviated or agreement not reached, the County may proceed.
 - c) The Board of Supervisors may proceed without meeting should they determine circumstances justify urgent action. Reasonable advance notice will be provided to the notice with intention to proceed on such basis.
6. Nurses who work as PD or EH shall be compensated on an hourly basis in accordance with the provisions of the County of Santa Clara Salary Ordinance Section B. (3).
7. Overtime is defined as time worked beyond eighty (80) hours on a bi-weekly pay period, or beyond eight (8) hours in any work day except as mutually agreed upon between the County and the Association. Compensation for regular overtime shall be paid in cash at the rate of one and one-half (1 ½) times the regular hourly rate. Compensation for continuous shift overtime shall be paid in cash at the rate of one and one-half (1 ½) times the regular hourly rate for the first four (4) hours of overtime contiguous to the regular shift of a minimum of eight (8) hours and two (2) times the regular hourly rate for any additional hours worked.
8. PD or EH nurses may elect to work an alternate work day of ten (10) or twelve (12) hour shift with mutual agreement of the nurse and management. This schedule shall be a voluntary/optional alternative to an eight (8) hour work day assignment. A PD or EH nurse working an alternate ten (10) or twelve (12) hour shift shall be compensated for each hour worked at the regular hourly base pay. Hours worked in excess of ten (10) or twelve (12) hours of the alternate ten (10) or twelve (12) hour shift, shall be subject to overtime provisions (Appendix C, #7).
9. PD and EH nurses shall be subject to all provisions of Article 1; Article 2; Section 3.1, 3.2, 3.4; Article 4; Section 6.3; Sections 7.1, 7.6, 7.7; Sections 8.3, 8.4, 8.5, 8.9, 8.14 a) 8.14 b) (except for differential); Section 13.7; Article 14; Article 16; Article 17; Sections 18.2, 18.3, 18.4, 18.5, 18.8, 18.9,

18.10 (except for e), 18.11; Article 19; Article 20; Article 21; Article 22 and Article 23 of the Agreement between the County and RNPA and this Appendix.

10. Each PD and EH nurse will be evaluated annually. The evaluation shall consist of a comparison of the nurse's performance against written standards established by Management for:

- 1) Work Unit competencies;
- 2) Job classification;
- 3) Unit role expectations;
- 4) Any appropriate legal or regulatory requirements.

The County and RNPA shall meet within 90 days of agreement to discuss options in assisting extra help and per diem nurses achieve employment in coded positions. Discussions shall include training for assisting extra help and per diem nurses be successful in the testing process and job advancement skills.

The County commits to train managers and supervisors on the effective use of eligible lists, filling temporary vacancies and using the recruitment process including the use of selective certification and alternatives to extra help and per diem including Provisional and Substitute Provisional appointments.

A PD nurse is eligible for and may request a performance salary increase, contingent upon achieving a rating of standard or above in all categories of the performance evaluation and provided that he/she has worked a minimum of 1,040 hours since the last performance increase. An evaluation used for salary increase shall not be older than 90 days. Each PD nurse may only receive one performance salary increase within a one year time frame.

11. The parties acknowledge the value of permanent positions in maintaining quality of patient care while recognizing the need to use an appropriate staffing mix. The staffing mix accounts for flexibility and fluctuations based on peak loads and unusual work situations.

On a monthly basis the County shall provide the Association with a list of all RNPA represented PD and EH nurses names, classification, department and hours worked. Each year during the month of July, the County shall provide the

Association with a summary of all RNPA represented PD and EH hours by name, classification, department, cost center, and hours for the entire preceding fiscal year.

On a quarterly basis the County shall provide the Association with a report on the aggregate staffing mix of permanent, extra help and per diem.

12. The County and the Association shall meet on a quarterly basis during the term of the agreement to review and discuss the use of PD and EH nurses.

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
California Nurses Association, 155 Grand Avenue, Oakland CA 94612

A true and correct copy of the foregoing document entitled (*specify*): California Nurses Association Objection to Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreement with O'Connor Hospital and Saint Louise Regional Hospital

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/16/2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Please see Attachment.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 01/16/2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest M. Robles, U.S. Bankruptcy Court, Roybal Federal Building
255 E. Temple Street, Suite 1560/Courtroom 1568, Los Angeles CA 90012 (via Overnight Mail)

☒ Service information continued on attached page

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

01/26/2019
Date

Rob Craven
Printed Name

/s/ Rob Craven
Signature

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