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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

In Re

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

Debtors and Debtors in
Possession.

CALIFORNIA NURSES
ASSOCIATION (CNA)

Plaintiff,

v.

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

Defendants.

Dist. Case No.: 2:20-cv-02623

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

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

[RELATED TO DOCKET 18]

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

Hearing Date and Time:

Date: June 1, 2020
Time: 1:30 p.m.
Place: Court Room 10A
350 W. 1st Street, 10th Floor
Los Angeles, CA 90012
Judge: Hon. Steven V. Wilson



1 The California Nurses Association (“CNA”) hereby objects to Institutional
 2 Defendants’ *Request for Judicial Notice in Support of Opposition to Plaintiff’s*
 3 *Motion to Withdraw the Reference* (the “RJN”). [Docket No. 18]. Institutional
 4 Defendants are defined as Verity Health System of California, Inc; St. Vincent
 5 Medical Center; St. Vincent Dialysis Center; St. Francis Medical Center; Seton
 6 Medical Center; Verity Holdings, LLC; and DePaul Ventures, LLC.

7 Institutional Defendants seek judicial notice of 29 documents outside the
 8 pleadings. Several of these documents do not qualify for judicial notice because
 9 the factual assertions contained within them are subject to reasonable dispute.
 10 *See CPI Advanced, Inc. v. Kong Byung Woo Comm. Ind., Co., Ltd.*, 135 Fed.
 11 Appx. 81, 83 (9th Cir. June 16, 2005) (Unpub. Disp.) (“Though records of
 12 litigation are subject to judicial notice for some purposes at the pleading
 13 stage, judicial notice is not a proper basis for rejecting factual allegations
 14 appearing in the plaintiff’s complaint.”) (citing *Sears, Roebuck & Co. v.*
 15 *Metropolitan Engravers, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1957)). Specifically,
 16 CNA objects to RJN, Exh. 6 “Declaration of Richard Adcock in Support of
 17 Emergency First Day Motions,” Exh. 13 “Debtors Emergency Motion of the Entry
 18 of an Order: Enforcing the Order Authorizing the Sale to Strategic Global
 19 Management . . .” and Exh. 26 “Debtors Emergency Motion for Authorization to
 20 Close St. Vincent Medical Center” because these pleadings include unilateral
 21 accounts of events surrounding the bankruptcy petition and events that have
 22 transpired in the bankruptcy case, such as the decision to close SVMC and the
 23 plans for it post-closure. *See Khoja v. Orexigen Therapeutics, Inc.*, 889 F.3d 988,
 24 999 (9th Cir. 2018) *cert. denied sub nom. Hagan v. Khoja*, 139 S. Ct. 2515 (2019)
 25 (“[j]ust because the document itself is susceptible to judicial notice does not mean
 26 that every assertion of fact within that document is judicially noticeable for its
 27 truth.”)

1 Additionally, CNA objects to several exhibits (RJN, Exhs. 4-5, 12-15 and
2 18-25) to the extent they are being offered to show that CNA was both aware of
3 certain pleadings filed in the bankruptcy case, reviewed them contemporaneously
4 with their filing date, and understood them to mean that St. Vincent Medical
5 Center's closure was imminent since these facts may not be established from the
6 fact that the pleadings were simply filed in the bankruptcy court.

7 CNA also objects to the extent that Institutional Defendants seek to use
8 these documents to have this Court resolve the merits of the Parties' disputes
9 through CNA's pending Motion to Withdraw the reference. *See American Tel. &*
10 *Tel. co. v. Chateaugay Corp.*, 88 B.R. 581, 587 (S.D.N.Y. 1988) (finding that
11 defendant had inappropriately "jumped to the merits in an attempt to show that the
12 legal issues sought to be withdrawn are well-settled").

13 To the extent that Institutional Defendants seek notice of the fact that these
14 documents were filed in the underlying bankruptcy case, rather than of the
15 contents asserted by the documents or CNA's knowledge and understanding of
16 them, CNA does not object.

17
18
19 Dated: May 11, 2020

Respectfully submitted,

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21 CALIFORNIA NURSES ASSOCIATION
22 LEGAL DEPARTMENT

23 By: /s/ Kyrsten B. Skogstad

24 Kyrsten B. Skogstad

25 Carol A. Igoe

Attorneys for Plaintiff

26 CALIFORNIA NURSES ASSOCIATION
27
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 155 Grand Ave., Oakland, CA 94612.

On May 11, 2020, I served true copies of the following document(s) described as **PLAINTIFF CALIFORNIA NURSES ASSOCIATION'S OPPOSITION TO DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO WITHDRAW THE REFERENCE** on the interested parties in this action as follows:

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On May 11, 2020, I checked the CMIECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice list to receive NEF transmission at the email addresses stated below:

Attorney for Defendants:	Tania M. Moyron
Verity Health Systems	tania.moyron@dentons.com,
of California, Inc. <i>et al.</i>	john.moe@dentons.com,
Richard Adcock	karleen.murphy@dentons.com,
Steven Sharrer	kathryn.howard@dentons.com,
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BY OVERNIGHT MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the California Nurses Association's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the UPS, in a sealed envelope with postage fully prepaid. I am a

1 resident or employed in the county where the mailing occurred. The envelope was
2 placed in the mail at Oakland, California.

3 Office of the United States Trustee
4 915 Wilshire Blvd., Suite 1850
5 Los Angeles, CA 90017

6 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
7 document(s) to be sent from e-mail address kskogstad@calnurses.org to the
8 persons at the e-mail addresses listed in below. I did not receive, within a
9 reasonable time after the transmission, any electronic message or other indication
10 that the transmission was unsuccessful:

11 Attorney for Defendants: Samuel Maizel
12 Verity Health Systems samuel.maizel@dentons.com,
13 of California, Inc. *et al.*
14 Richard Adcock
15 Steven Sharrer

16 Attorney for Defendants: Marco Quazzo
17 Richard Adcock Louise Fernandez, Marcia Raymond
18 Steven Sharrer. mquazzo@bzbm.com
19 lfernandez@bzbm.com
20 mraymond@bzbm.com

21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct and that I am employed in the office
23 of a member of the bar of this Court at whose direction the service was made.

24 Executed on May 11, 2020, at Oakland, California.

25 /s/Tym Tschneaux
26 Tym Tschneaux
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