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("UNAC")
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

12 In re
13 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
14 Debtors and Debtors in Possession

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**OBJECTION OF UNAC TO DEBTORS'
MOTION TO REJECT COLLECTIVE
BARGAINING AGREEMENT**

HEARING: June 3, 2020

TIME: 10:00 a.m.

LOCATION: Courtroom 1568, 255 E.
Temple St., Los Angeles, CA
90012

- 15 ☒ Affects All Debtors
16 ☐ Affects Verity Health System of California, Inc.
17 ☐ Affects O'Connor Hospital
18 ☐ Affects Saint Louise Regional Hospital
19 ☐ Affects St. Francis Medical Center
20 ☐ Affects St. Vincent Medical Center
21 ☐ Affects Seton Medical Center
22 ☐ Affects O'Connor Hospital Foundation
23 ☐ Affects Saint Louise Regional Hospital
Foundation
24 ☐ Affects St. Francis Medical Center of
Lynwood Medical Foundation
25 ☐ Affects St. Vincent Foundation
26 ☐ Affects St. Vincent Dialysis Center, Inc.
27 ☐ Affects Seton Medical Center Foundation
28 ☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors in Possession

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I. PRELIMINARY STATEMENT

This Court previously granted motions for rejection of collective bargaining agreements with respect to the sale of two hospitals to Santa Clara County, in which agreement over modified terms as between the applicable unions and the County was a legal impossibility. Docket No. 1541. There, this Court ruled that “necessary” means “necessary to permit the Debtors to confirm a liquidating plan.” *Id.* Indeed, the only possible outcomes in the Santa Clara County sale were either consensual rejection with a nominal incentive to cooperate (e.g., the severance benefit allowed to Local 20 and CLVNA) or outright rejection of the entire CBA (e.g., SEIU-UHW and CNA).

The question of nonconsensual rejection ultimately did not arise in the SGM sale, as each union negotiated consensual modifications with Verity and SGM. But with the failure of the SGM sale, the Debtors are left to liquidate what remains of their facilities on a piecemeal basis. At the heart of this process is St. Francis Medical Center (“SFMC”), the financial backbone of the Verity system. In turn, the approximately 800 nurses employed at SFMC, represented by United Nurses Associations of California/Union of Health Care Professionals (“UNAC,” or the “Union”) are the operational backbone of that hospital. And despite nine days of bargaining among the Debtors, Prime Health Care Systems (“Prime” or the “Buyer”) and UNAC, these bargaining parties (collectively, the “Bargaining Parties”) are now enmeshed in Verity’s motion to reject the collective bargaining agreement (“CBA”) in effect between SFMC and UNAC (the “Rejection Motion”), pursuant to Bankruptcy Code § 1113.

The legal tests for compliance with the bargaining process mandated by § 1113 are well-established. This Court has already adopted the nine-factor test developed in *In re American Provision Co.*, 44 B.R. 907 (Bankr. D. Minn. 1984). Nevertheless, UNAC acknowledges that, because Congress drafted § 1113 with reorganization in mind, the case law trends toward requiring less from debtors and buyers than from reorganizing debtors. *See, e.g., In re Chicago Const. Specialties, Inc.*, 510 B.R. 205 (Bankr. N.D. Ill. 2014) (“In the context of a liquidation...certain conclusions are tautological.”) Even in a sale, however, the requisite standards but must be complied with in full. *See In re United States Truck Co. Holdings*, 2000

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1 Bankr. LEXIS 1376 (E.D. Mich. 2000) (“A liquidation may change the focus of negotiations, but
2 it does not change the need to discuss and attempt to address its ramifications on employees.”).

3 Through the Rejection Motion, the question this Court must now confront is whether the
4 Debtors’ non-compliance with even these standards has been so blatant as to establish a floor
5 below which a debtor may not sink. Otherwise, the Court would be essentially ruling that, in a
6 liquidating Chapter 11 case, all of § 1113 collapses into one factor: “the Buyer wants it this way.”
7 This is not what § 1113 says.

8 Here, Verity and Prime combined to frustrate what otherwise should have been good faith
9 bargaining, with the goal of driving UNAC contract terms down toward the level of certain small
10 regional or exurban hospitals also owned by Prime. Their means have included an effort to
11 confound the bargaining process - through an unjustified assertion of protection under Federal
12 Rule of Evidence 408 (“FRE 408”), refusal to provide documents and information that are
13 routinely exchanged in § 1113 negotiations, and a shell game in which responsibility for data and
14 accountability for positions taken are shifted between them as convenient. These facts, coupled
15 with outright deception concerning the profitability of SMFC, *without any change in current labor*
16 *costs*, create a record that cannot support a finding of good-faith negotiation by Verity, even in the
17 context of a liquidating Chapter 11 case.

18 II. STATEMENT OF FACTS

19 A. Background

20 The Rejection Motion seeks to upend a long history of cooperative collective bargaining
21 between UNAC and management at SFMC. Nurses voted to join UNAC in 1988 and, after a
22 protracted legal battle, SFMC RNs won their first contract in 1992. Declaration of Maximo
23 Carbuccia, ¶ 13.¹ The Union has renegotiated the SFMC contract eight times since 1992,
24 establishing working standards that allow SFMC to attract and retain highly qualified RNs in a
25

26 _____
27 ¹ Evidence accompanying this Objection shall be referred to as follows: Declaration of Maximo
28 Carbuccia, “Carbuccia Decl., ¶”; Declaration of Jane Carter, “Carter Decl., ¶”; Declaration of
Garrett McCoy, “McCoy Decl., ¶”; Declaration of Kirk Prestegard, “Prestegard Decl., ¶”;
Exhibits to this Objection, “Exhibit “.

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1 difficult-to-recruit area of southeast Los Angeles County. *Id.* The SFMC nurses take great pride
2 in the quality of care and compassion they deliver to their patients and the surrounding
3 communities. *Id.* They are deeply invested in SFMC continuing its mission as an essential safety
4 net provider in LA County, including maintaining all of the medical services the hospital currently
5 provides. SFMC is the only comprehensive, non-profit health care institution serving the more
6 than one million residents of southeast Los Angeles. *Id.*

7 This is not the first occasion in recent years wherein management has demanded
8 concessions from SFMC nurses. UNAC-represented nurses in 2011 agreed to freeze their defined
9 benefit pension plan, and in 2014 agreed to a three-year wage freeze. *Id.*

10 Since Verity began operating SFMC in 2015, the overall system of Verity facilities has
11 suffered financial distress, but SFMC itself has had a positive cash flow, has performed well and
12 served to support the struggling hospitals in the system.

13 **B. The Bargaining Among UNAC/UHCP, Verity and Prime**

14 On April 22, 2020, representatives of UNAC/UHCP met with representatives of Verity and
15 Prime for their first negotiation session. Carbuccion Decl., ¶ 19. Because of the lack of clear
16 communication from representatives of management over the bargaining period, it was difficult to
17 discern what the negotiations were attempting to resolve, or who was speaking for which entity.
18 *Id.*, ¶ 9. The Union intended to negotiate in good faith for a fair successor agreement with Prime
19 on the assumption it was going to take over operation of SFMC, and to avoid the need for Verity
20 to reject the operative CBA.

21 The challenge faced by the Union was that there appeared to be a *fait accompli* prior to that
22 bargaining and without any Union's input, in that the APA governing the successor relationship
23 between Verity and Prime seemed to commit Verity to reject the existing CBA regardless of any
24 efforts the Union might make to collectively bargain and gain an agreement obviating any
25 legitimate basis for such rejection. *Id.*

26 **C. Information Requests**

27 In order to evaluate proposals provided to the Union by management, and to effectively
28 evaluate and craft its own proposals and responses, the Union needed certain information from

1 Prime that it declined to provide; e.g., the cost differentials/savings to be derived by comparison
2 between the operative Verity CBA and the proposed Prime CBA. Carbuccia Decl., ¶ 10; Carter
3 Decl., ¶ 28.

4 In preparation for negotiations, on April 20, 2020, lead UNAC negotiator Maximo
5 Carbuccia emailed the Union's initial RFI ("RFI#1") to An Ruda, an attorney participating in the
6 CBA negotiation on behalf of the Management Parties. Carter Decl., ¶ 8. RFI#1 tracks the
7 information request used by UNAC in most collective bargaining negotiations, including with
8 SFMC. RFI #1 requested cost data under the existing CBA, including the costs of various shift
9 differentials, reimbursements for educational programs jury duty, and on-call status. It also
10 requested documentation of all practices and procedures to determine amounts and distribution of
11 pay, the amount paid for the health insurance premiums under the CBA, and the total costs of
12 bargaining unit health insurance for 2017 through 2019. In anticipation of negotiation with Prime,
13 RFI#1 also requests information about Prime's CBAs (Question XVI), clarification of unpublished
14 schedules to the APA and Prime's process for employee retention and CBA modifications
15 (Question XXIII), anticipated changes in operations and staffing (Question XXIV), and Federal
16 and State tax returns for SFMC and specified affiliate entities (Question XXV). Carter Decl., ¶ 8;
17 Exhibit 2.

18 **D. April 22 Session**

19 At the first negotiation session on April 22, 2020, there were representatives from Verity
20 and Prime management, including counsel and Human Resources. Carbuccia Decl., ¶ 11. The
21 Union was represented by Chief Negotiator Maximo Carbuccia, economist Jane Carter, in-house
22 counsel Pamela Chandran, and several nurses at SFMC who were members and officers of the
23 Union. *Id.*, ¶ 12.

24 At the first session, Carbuccia made an opening statement to acquaint all present with the
25 history and importance of the relationship the Union had established with the workers at SFMC
26 and the community served by the hospital. *Id.*, ¶ 13. Verity counsel Sam Alberts stated that they
27 wanted to move quickly, that they could file a motion for rejection within 30 days of April 9, and
28 so the Bargaining Parties had 30 days to modify or reject the contract. *Id.*, ¶ 15.

1 On April 22, Verity provided the Union with a document comprising Prime's CBA
2 proposal, which did not track the structure and terms of the CBA, but instead tracked terms in
3 effect between UNAC and Prime at small, regional hospitals not at all comparable to SFMC.
4 Carter Decl., ¶ 9. The proposal included massive wage concessions of between 20% and 50% for
5 the nurses in comparison to their SFMC wage levels, and other economic concessions as well.
6 Carbuccia Decl., ¶ 21. The UNAC bargaining committee responded at the bargaining table with
7 "General Questions" concerning specific proposed terms. Ms. Carter orally asked for the
8 following information, through these "General Financial Questions:"

- 9 • What percentage of SFRNA wages and benefits accounted for total labor costs for
10 FYs 16-19? Please identify cost of wages and benefits separately and for each year
11 requested.
- 12 • How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please
13 identify amount per year.
- 14 • What are the outstanding receivables for FY 19?
- 15 • What is the impact of the modified debt? Specifically for FYs 18, 19, and 20.
- 16 • Formal financial audits and reports for FYs 16-19 (not just the amounts reported to the
17 state).
- 18 • FY 20 and 21 financial projections if available.
- 19 • What is included in the "reorganization items" reported in the BK monthly financial
20 statements?
- 21 • Information related to outstanding 401k loans, and its position on whether Prime will
22 take over the current plan or make all employees start a new one. .
- 23 • How much does Prime's proposal save the facility vs. the current costs of the current
24 CBA?

25 Carter Decl., ¶ 10.

26 The Union asked what the cost saving of the proposal was compared to the current CBA,
27 but received no answer. Carbuccia Decl., ¶ 16. Ms. Ruda, a representative of Prime, again
28 mentioned that the 30-day calendar would run out on May 9, and said that "we" would use section

1 1113(e) if the Union didn't agree with Prime. *Id.*

2 During a break, the Union emailed its General Questions pertaining to SFMH's finances
3 and recent economic history, financial audits, receivables. financial projections, Prime's plan for
4 managing the existing 401(k) plan, and again, the amount Prime expected to save with its proposal
5 in comparison to the current SFMC CBA. Carbuccion Decl., ¶ 16; Exhibit 3; Carter Decl., ¶ 9.

6 Mr. Alberts also stated that the "entire negotiation" was in his view under Rule 408 of the
7 Federal Rules of Evidence, and thus privileged and confidential. Carbuccion Decl., ¶ 17.
8 Management was not clear as to the scope and application of its claim of 408 confidentiality and
9 whether it included statements at the table, proposals, and information provided by Verity or
10 Prime in response to the Union's requests. Carter Decl., ¶ 14. Ms. Chandran stated the Union's
11 disagreement with that position, stating that the negotiations themselves were not under Rule 408.
12 Carbuccion Decl., ¶ 17.

13 At the end of the session, Ms. Chandran engaged Mr. Alberts in further discussion of FRE
14 408. Prime's representatives stated they were willing to move forward with knowledge of the
15 disagreement with no one waiving their rights. Also on that day, Mary Schottmiller, another
16 representative of Prime, noted that Prime's proposal was not a take it or leave it proposal. Prime
17 also took the position that it will not adopt the existing pension plan, for financial reasons. *Id.*

18 Jane Carter inquired about the finances of Verity and Prime, and Prime counsel Joel
19 Richlin stated that some of this information was privileged under Rule 408. *Id.*, ¶ 18. Ms. Carter
20 asked for financial audits for SFMC, management stated that no such audit existed. Ms. Ruda
21 reminded everyone that some of the requested information belongs to Verity, and Prime would
22 need to clear its disclosure prior to sharing. In response, Ms. Carter said the Union was not
23 interested in Verity's overall entire financial information, just that specifically pertaining to
24 SFMC. *Id.* The Union was told by management that there was no answer to its questions
25 concerning historical or projected costs of the UNAC bargaining unit, or the cost savings sought
26 through the opening proposal, because cost was not a factor in structuring that proposal. *Id.*

27 Management said that formal financial audits for FY 2016 to 2019 could be shared, but
28 that those audits had not been completed. Carter Decl., ¶ 14. That came as a surprise in light of

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1 publicly available information from the California Office of Statewide Health Planning and
2 Development (“OSHPD”). Carter Decl., ¶ 14. Similarly, management informed the Union that
3 financial projections for FY 2020 and 2021 would not be available until they had been “worked
4 through,” and that the Union would have to make do with the monthly Operating Reports
5 submitted by Verity to the Bankruptcy Court, or with the OSPHD website. Carter Decl., ¶ 14.

6 Between the first session and second one of April 28, the Union made two additional
7 requests for information via email. Carbuccia Decl., ¶ 19; Exhibits 4 and 5.

8 On April 27, 2020, Mr. Carbuccia, by email, provided An Ruda with RFI#3. The 17
9 questions asked by the Union somewhat overlap with the General Financial Questions, and, as
10 with those questions, were intended to permit Union evaluation of the economic consequences of
11 each Management Party proposal, the effect of each Management Party proposal on all creditors,
12 the Debtors and all affected parties so as to evaluate the distribution of the among stakeholders,
13 and whether each proposal was based on the most complete and reliable information available at
14 the time of such proposal. Carter Decl., ¶ 19. Consistent with these principles, RFI#3 also was
15 intended to test the financial viability of SFMC, independent of the entire Verity system. Exhibit
16 5.

17 Prior to the April 28 session, Sam Alberts sent the following email purporting to respond
18 to RFI #1 and RFI #3, essentially declining to produce the requested information:

19 *“[t]he Pending Requests cover the Debtors’ historic operational and employment*
20 *issues and, as such, are not relevant or necessary to UNAC’s evaluation of proposed*
21 *collective bargaining agreement (“CBA”) provided to UNAC by Prime. In fact, the issue*
22 *at hand is whether Prime and UNAC can reach agreement on a new or modified CBA*
23 *under terms agreeable to Prime and UNAC. If that cannot occur within 30 days, the*
24 *Debtors, which will no longer be operating St. Francis Medical Center upon the sale*
25 *closing to Prime, are authorized to seek rejection of its UNAC CBA.*

26 *In addition, the scope of the Pending Requests are so broad that responding to*
27 *them would be unduly burdensome. As you can imagine, the Debtors’ resources are very*
28

1 *limited and, as such, the Debtors are particularly mindful of expenditures at this juncture*
2 *in the Bankruptcy Cases.*

3 *Further, UNAC sought much of the same information from the Debtors in*
4 *connection with the SGM sale as exists in the Pending Requests. As you may recall, the*
5 *SGM-sale related information requests were withdrawn before production when the*
6 *parties reached agreement on the SGM-related modified CBA.*

7 *In light of the above, we would ask that UNAC withdraw the Pending Requests.*
8 *Alternatively, if UNAC wishes to provide an explanation as to why you believe any*
9 *particular Pending Request is relevant to the issue at hand, we will consider it and discuss*
10 *it promptly with UNAC by way of a telephonic conference.’*

11
12 Carter Decl., ¶ 16; Exhibit 8.

13 The other email, addressed to Sandi Marques, contained written responses to the General
14 Questions, but the written responses to the General Financial Questions were generally evasive –
15 “to be determined,” and the like. However, this transmission also included a one-page
16 “Normalized PL Statement” for the period from FY 2017 through TTM March, 2020 (the
17 “Normalized P&L Statement”). Carter Decl., ¶ 17; Exhibit 7.

18 Taken together, Management Party responses to each set of UNAC questions have not
19 permitted evaluation of whether Management Party bargaining proposals have been based on the
20 most complete and reliable information available at the time of each proposal. Carter Decl., ¶ 13.
21 The Management Parties have also refused to provide information that would permit evaluation –
22 much less, assurance – as to whether all creditors, the debtor, and all of the affected parties are
23 treated fairly and equitably. *Id.*

24 **E. April 28 Session**

25 The parties next met in negotiations on April 28, 2020.

26 At this session, the lack of financial transparency or willingness to engage in a bilateral
27 discussion of the CBA issues became clear. In response to questions about audits for Verity or
28 Prime for 2018 or 2019, Ms. Ruda stated there were none. Carbuccia Decl., ¶ 21. Ms. Carter

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1 asked for Prime's financial projections for SFMC, and Martwick and Aleman stated that Prime has
2 no plan to do financial projections. *Id.* Mr. Alberts stated that the financial information relating to
3 the debtors was irrelevant because Prime was purchasing the hospital. *Id.* Ms. Carter asked what
4 the cost of Prime's proposal was, and Martwick said Prime based it on a 16% increase on its
5 Garden Grove contract, and it has no relation to the SFMC contract. *Id.* UNAC asked how much
6 was being asked from SEIU (another union representing workers at SFMC), and from
7 management, and asked how much in cost savings was needed, and Mr. Aleman stated that "cost
8 is not a factor in our proposal." *Id.* Martwick said that in order for us to get to a good faith
9 contract, "we" are using the best language from other UNAC contracts. *Id.*, ¶ 22.

10 After bargaining concluded on April 28, UNAC emailed proposed bargaining sessions for
11 May 12, 14, 19, 21, 26 and 28, and June 2 and 4. *Id.*, ¶ 23. On April 28, the Union received
12 written responses to its General Questions, but no further information concerning requested
13 financial data. *Id.*, ¶ 24; Exhibit 9.

14 **F. May 1 Session**

15 At the May 1 session, the Union presented a partial proposal consisting of seventeen items.
16 including concessions from the current UNAC SFMC contract. Mr. Carbuccion walked the
17 management representatives through the substance of the Union's proposal. Carbuccion Decl., ¶ 26.
18 The parties also discussed future dates for bargaining. Ms. Ruda said they believed they could get
19 the contract done within the 30 days, but after 30 days, "the company can file for a rejection of the
20 contract", and "the company can still be bargaining." *Id.*, ¶ 27. Aside from the fact that it was not
21 clear for whom she was speaking, she declined to commit to more bargaining sessions beyond
22 May 8. *Id.*

23 There was also a discussion about Article 1, the Recognition clause, which is a permissive
24 subject of bargaining about which parties are not required to bargain under federal labor law. *Id.*
25 Ms. Ruda stated that "we" do not believe that the permissive and mandatory subject doctrine
26 applies to bargaining under § 1113. *Id.*

27 **G. May 5 Session**

28 On May 5, the Union made the rest of its proposals, which now comprised a complete

1 contract. Carbuccia Decl., ¶ 28. The new proposals also included adoption of some of Prime's
2 proposed language changing the current SFMC language. *Id.* That morning Prime accepted a few
3 of the Union's earlier proposals. Later that same day, however, the Management Parties stated that
4 they had no counter to the Union's proposals made that day, and will stand on the previous articles
5 it had provided to UNAC. That rejection included declining to accept language UNAC had agreed
6 on. *Id.* Prime was at best unclear as to what language was agreed upon and what was not, and
7 showed no willingness to make movement on any of the new proposals the Union made on the
8 morning of May 5. *Id.*

9 **H. May 5 Information Requests Rejected by Management**

10 Verity stonewalled in responding to the Union's third request for information. The May 5
11 bargaining session featured definitive statements from Verity and Prime concerning their
12 collective refusal to provide information permitting Union evaluation of the economic
13 consequences of each Management Party proposal, the effect of each Management Party proposal
14 on all creditors, the Debtors and all affected parties so as to evaluate whether the economic burden
15 of such proposals was not being unduly borne by UNAC-represented employees, and whether
16 each proposal was based on the most complete and reliable information available at the time of
17 such proposal. Verity and Prime, through color-coded annotations to RFI#3, sought to justify their
18 obstructionist positions in this bargaining session (the "RFI#3 Refutation"; Exhibit 10). Certain
19 themes re-occur throughout the RFI#3 Refutation, as most of UNAC's questions went
20 unanswered. Carter Decl., ¶ 19.

21 In order to comprehend the effect of reductions in UNAC-related labor costs, RFI#3,
22 Question 1 requested SFMC formal financial audits and annual reports for FY 16-19, and
23 projections for FY20 and FY21. Verity responded that this information "is not relevant or
24 necessary to evaluate the proposal and that the production is unduly burdensome..." Exhibit 10.
25 Similarly, RFI#3, Question 3, sought the total labor costs of the UNAC bargaining unit for the
26 same period. Verity responded, *inter alia*, that "There are no projections for FY 20 or 21." *Id.*
27 Similarly, RFI#3, Questions 6 and 14 sought FY 20 and 21 projections for UNAC and other labor
28 units, and clarification of concessions currently sought from other labor groups at SFMC. In

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1 addition to stating confidentiality or ripeness concerns that are inconsistent with the notion of
2 testing for fair equalization of bankruptcy burdens, the Management Parties replied that “[t]he
3 Debtors object to this request on the same basis of relevancy and burden as set forth in response to
4 Request 1.” Moreover, Verity. has not prepared projections, and Prime has stated that it has not
5 prepared projections.” *Id.*

6 It is difficult to believe that a Debtor selling a hospital through the assistance of investment
7 bankers (Cain Brothers) and a data room for potential bidders, or that a successful bidder for such
8 asset, each have not prepared projections relating to labor costs for the nurses staffing that
9 hospital. Carter Decl., ¶ 21. Stating that projections of such costs simply do not exist is not
10 credible. *Id.* RFI#3 Question 15 similarly sought quantification of savings – tied to specific CBA
11 terms – for FY 20 and 21; the Management Parties restated their objections to RFI#3, Question 1.
12 Questions 16 and 17 explored this same issue of cost savings, in connection with Pension benefits
13 and a planned upgrade of SFMC to a Level 1 trauma center; the Management Parties offered the
14 same answer. Carter Decl., ¶ 20. The Management Parties otherwise directed UNAC to public
15 data (RFI#3, Questions 1 and 9), and suggested that certain questions (RFI#3, Questions 4 and 5)
16 could perhaps be addressed with Verity “assistance,” but the tenor of the RFI#3 Refutation
17 indicates this was a hollow prospect. *Id.*

18 The Management Parties declared the request for formal financial audits and annual reports
19 for SFMC for fiscal years 2016-2019 “irrelevant” and not necessary to evaluate the proposal.
20 They took the same position with respect to the Union’s request for total labor cost of the
21 UNAC/UHCP units for the last three fiscal years, and for projections for fiscal years 2020 and
22 2021. They refused to provide the percentage of total costs attributable to SFRNA wages and
23 benefits for fiscal years 2016-2019, or to compare the UNAC unit costs compared with all SFMC
24 labor costs. Carbuccia Decl., ¶ 29; Carter Decl., ¶ 20; Exhibit 10.

25 **I. May 6 Session**

26 On May 6, the Union and Prime reviewed a few non-economic items on which there was
27 agreement: strikes and lockouts, union security, and bulletin boards. The Union made further
28 proposals and explained them. Carbuccia Decl., ¶ 30. Management did not engage in any

1 discussion of those proposals.

2 Ms. Carter persisted with questions relating to economic and financial data, including the
3 cost of one insurance plan compared to the current plan. Carbuccia Decl., ¶ 31; Carter Decl., ¶ 22.
4 In response, Mr. Alberts said that that information was irrelevant, because Prime is purchasing the
5 assets free and clear, and that “we don’t care what the concessions are.” Mr. Alberts stated, in
6 response to Ms. Chandran’s question as to whether it would provide the requested information,
7 that “we will not provide irrelevant information.” Carbuccia Decl., ¶ 31; Carter Decl., ¶ 22. Mr.
8 Alberts stated that “*we did not do projections of costs of (our) proposed contract.*” He again
9 repeated that Prime had not done an analysis as to projected savings for the facility it expected to
10 realize as a result of its proposed contract. Carbuccia Decl., ¶ 31; Carter Decl., ¶ 22.

11 In response to UNAC questions about potential savings from the concessions Prime was
12 seeking, Mr. Alberts stated that he was “having a hard time understanding the relevance of these
13 records. . . At the end of the day what Prime is willing to accept is what it is willing to accept.
14 1113 does have to reflect equal treatment of bargaining units. But that occurs during the rejection
15 of the entire contract.” Carbuccia Decl., ¶ 32. It again declined to produce 2020 or 2021
16 projections for UNAC and other units, or a comparison of UNAC costs across the industry, saying
17 again they were irrelevant. Carbuccia Decl., ¶ 33; Carter Decl., ¶ 20. It refused to provide any
18 information about SFMC’s receivables for fiscal years 2019 and 2020. Finally, it declined to
19 provide information about concessions it was seeking from other employee groups represented
20 and not represented by a union, and how much Prime’s current proposal saved it with respect to
21 several specified cost items in comparison to the current SFMC contract. Carbuccia Decl., ¶ 33;
22 Carter Decl., ¶ 20.

23 There was a further discussion about whether Rule 408 applies, and Ms. Chandran noted
24 that there had not been any desire or request for an NDA after five sessions, and that Prime had
25 offered no legal authority for its position that the Rule applied to cloak the parties’ discussions in
26 secrecy or privilege. Carbuccia Decl., ¶ 34.

27 **J. May 7 Martwick Letter**

28 On May 7, 2020, Mr. Martwick sent the Union a letter on Prime Healthcare letterhead,

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1 complaining about the Union’s position in bargaining. Carbuccia Decl., ¶ 35; Exhibit 11. The
2 first part of the letter purported to show that its position at the table was reasonable, by comparing
3 its proposals to terms UNAC has agreed to at other Prime hospitals. What he did not mention is
4 that those hospitals he chose to compare to SFMC (e.g., Garden Grove) are not remotely similar in
5 operation or responsibilities and tasks performed by the nurses the Union represents there
6 compared to those performed by UNAC-represented nurses at SFMC. *Id.*, ¶ 35. Moreover, he did
7 not mention that SFMC is not losing money. *Id.*

8 In fact, a comparison between SFMC and Garden Grove or Chino is simply inapt, as to
9 operations, qualifications of nurses, locations, and other factors that drive nurse compensation and
10 responsibility. *Id.*, ¶ 36. SFMC is a level 2 trauma center with over 800 nurses. It employs the
11 highest paid nurses in the area, because of their high level of training and experience. *Id.* It
12 provides massive emergency services to the area. Garden Grove and Chino Valley Hospital, on the
13 other hand, are not trauma centers. *Id.* Garden Grove has about 200 nurses and Chino Valley has
14 about 150 nurses. Garden Grove is in Orange County, is not a trauma center, and is a much
15 smaller hospital, with approximately 167 beds, compared to 384 at SFMC. *Id.* In the last contract
16 negotiations with UNAC, Prime had to boost the wages at Garden Grove because they lose nurses
17 to surrounding hospitals with higher pay, but they are still not comparable in compensation to
18 SFMC. *Id.*

19 The second part of Mr. Martwick’s May 7 letter complained about the Union’s alleged
20 refusal to honor “confidential settlement communications” which he again claimed were covered
21 by FRE 408. Carbuccia Decl., ¶ 37. He also incorrectly stated that “Prime has provided all
22 relevant information that is necessary to evaluate our proposals.” Carbuccia Decl., ¶ 37.²

23 Prime did not provide anywhere near “all relevant information” needed to evaluate its
24 proposals. Carbuccia Decl., ¶ 37; Carter Decl., ¶ 13. Prime’s proposals represented a substantial
25 reduction in the current compensation levels for UNAC-represented employees at SFMC (even
26

27 ² As will be explained *infra*, Rule 408 has no place in negotiations that may be tested based on
28 good faith conduct and engagement, and the parties did not agree to any confidentiality regimen
governing their negotiations. Carbuccia Decl., ¶ 37.

1 with the reductions SFMC employees suffered in prior negotiations cycles), which made relevant
2 the Union's requests for information calculating the magnitude of those reductions, and comparing
3 them with actual savings needed by Prime to operate SFMC as a going concern. The Union,
4 through counsel Pamela Chandran, responded to Mr. Martwick by letter of May 8, restating
5 UNAC's continuing objection to assertion of FRE 408, noting that discussion of a non-disclosure
6 agreement ("NDA") had first arisen at the end of the fifth day of bargaining, and contesting any
7 assertion that an NDA would be required in order for bargaining to continue. Carbuccia Decl., ¶
8 37; Exhibit 12.

9 **K. May 8 Session**

10 At the May 8 bargaining session, as a result of the correspondence exchanged there was
11 further discussion of the applicability of Rule 408, with the parties holding to their positions.
12 Carbuccia Decl., ¶ 38. There was also discussion about paid time off ("PTO"), which Prime said
13 would start at zero for all nurses hired by Prime, seniority (Prime took the position that all nurses
14 would have the same seniority date, which effectively erases their accumulated seniority with
15 SFMC), and that it would interview SFMC nurses who applied to work for Prime. It also said that
16 it wanted a full year to evaluate who it would retain in employment, and to be able to lay off
17 people without regard to seniority for that year. *Id.*

18 **L. May 13 Proposal**

19 On May 13, the Union received a proposal from Verity's counsel, addressed to the Union's
20 bankruptcy counsel, Joe Kohanski, cc'd to, among others, Mr. Carbuccia and Pamela Chandran.
21 Carbuccia Decl., ¶ 38; Exhibit 13. The letter says that "this proposal supersedes any and all
22 previously (sic) proposals," and offers a cash-out of accumulated PTO for all employees, and
23 allowed bankruptcy claims for severance to all SFMC employees not hired by Prime, subject to
24 calculation and payment on an "accrual" basis, related to bankruptcy categories of payment. In
25 exchange, the proposal demands that the Union consent to CBA rejection, effective as of sale
26 closing, subject to possible pursuit of 1113(e) relief prior to closing. The letter also states that if
27 "UNAC contests the Rejection or otherwise seeks terms that differ from the above terms," Verity
28 will withdraw the severance benefit. This thus appears to be an erasure of all negotiations that had

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1 preceded it, plus a poison pill in the event UNAC tried, either through negotiation or litigation, to
2 alter the terms of the offer or the state of play in negotiations. This was a take it or leave it offer,
3 and made the negotiations that had preceded it a nullity. This proposal was not consistent with
4 good faith. This letter also requested acceptance by May 18, prior to filing of a motion to reject the
5 CBA.

6 Nevertheless, the Union did not reject the May 13 proposal. Mr. Kohanski requested
7 clarification by letter of May 15 (Carbuccia Decl., ¶ 40), proposing utilization of existing
8 bargaining dates to explore the May 13 proposal, and continuance of the deadline for acceptance
9 to May 26. Exhibit 14. On May 18, Mr. Alberts responded by letter, declining to extend the
10 acceptance date. Carbuccia Decl., ¶ 41; Exhibit 15. Mr Kohanski responded that same day,
11 seeking clarification of the terms for expiration of the May 13 proposal, and noting that
12 appropriate use of an NDA could have been raised much earlier in the bargaining process. *Id.*;
13 Exhibit 16. On the evening of May 19, Verity filed the Rejection Motion. On May 20, Mr.
14 Alberts responded with an incomprehensible letter concerning potential termination of the offer.
15 *Id.*, ¶ 42; Exhibit 17.

16 Meanwhile, UNAC and Prime followed through with bargaining dates on May 19, May 21
17 and May 26. Verity representatives in attendance. UNAC has also requested additional
18 bargaining dates, but has yet to hear back from Verity or Prime. Carbuccia Decl., ¶ 43.

19 III. ARGUMENT

20 A. The Debtors Have Not Negotiated in Good Faith.

21 The nine-factor *American Provision* test is deeply oriented toward evaluating whether
22 negotiations comport with the § 1113(b) mandate that “the trustee shall meet, at reasonable times,
23 with the [union] to confer *in good faith* in attempting to reach mutually satisfactory modifications
24 of such agreement.” 11 U.S.C. § 1113(b)(2) (*emphasis added*). Factor 7 reiterates this standard:
25 “[a]t the meetings, the debtor must confer in good faith in attempting to reach mutually
26 satisfactory modifications of the CBA.” *In re American Provision Co.*, 44 B.R. at 909. Most of
27 the remaining factors (each, a “Factor”), test whether good faith negotiations have indeed
28 occurred, and the Debtor generally bears the burden of proof in demonstrating compliance with

1 these factors. *Id.* at 909-910 (“[S]ince these nine requirements form the bases of the debtor’s
2 motion, the debtor bears the burden of persuasion by the preponderance of the evidence on all nine
3 elements.”); *In re Chi. Constr. Specialties, Inc.*, 510 B.R. 205 (Bankr. N.D. Ill. 2014).

4 Factor 1: “The Debtor must make a formal proposal to the union to modify the CBA.”

5 Factor 2: “The proposal must be based on the most complete and reliable information
6 available at the time of the proposal.”

7
8 Factor 4: “The proposed modifications must assure that all creditors, the debtor, and all
9 of the affected parties are treated fairly and equitably.”

10 Factor 5: “The Debtor must provide the union with all relevant information that is
11 necessary to evaluate the proposal”

12 Factor 6: “Between the time of the making of the proposal and the time of the hearing
13 on approval of the rejection of the existing CBA, the debtor must meet at
14 reasonable times with the Union.”

15 Factor 7: “At the meetings, the debtor must confer in good faith in attempting to reach
16 mutually satisfactory modifications of the CBA.”

17
18 Factor 8: “The Union must have refused to accept the proposal without good cause.”

19 Consideration of these factors cannot be permitted to obscure a fundamental predicate
20 question: why are these negotiations even occurring in the first place?

21 **1. A negotiation process predicated on the need to cut labor costs is**
22 **unjustifiable when SFMC, on a stand-alone basis, is profitable**
23 **without modification of UNAC contract terms.**

24 UNAC acknowledges that case law in connection with asset sales favors a lower bar for
25 debtor compliance with § 1113 than demonstrated in reorganization cases. And given the rate of
26 loss for the Debtors as a whole, the attraction of selling SFMC with no strings attached, so as to
27 realize the value of SFMC as an ongoing enterprise, is understandable.

28 But there is a fundamental truth that gives the lie to this entire process, and which the

1 Debtors and Prime have tried to conceal at the bargaining table: SFMC does not need to cut labor
2 costs to remain profitable.

3 The Debtors have previously acknowledged SFMC profitability. In a March 10, 2020
4 Reply to Objections posed by the SEIU-UHW to the Debtors' Motion to Amend the Key
5 Employee Incentive Plan and Key Employee Retention Plan, the Debtors stated that
6 "SFMC...remains financially viable...(for the operating period from the Petition Date to January
7 202, SFMC's earnings before interest, depreciation and amortization was approximately \$8
8 Million..." Docket No. 4248, p.6 of 20, Note 6.

9 Not surprisingly, the Debtors' monthly Operating Reports consistently demonstrate
10 profitability for SFMC, while each other Verity hospital is losing money. SFMC's monthly
11 Operating Reports have stated positive SFMC operations of \$10.0 million in February 2020 and
12 \$19.4 million in March, 2020 alone. Total operational income (absent reorganization costs) from
13 the Petition Date through March, 2020 shows a positive performance of \$17.9 million. Exhibit 18;
14 Carter Decl., ¶ 25.

15 Consistent with the Operating Reports, publicly available information maintained by the
16 California Office of Statewide Health Planning and Development ("OSPHD") similarly
17 demonstrates a profile of profitability. Carter Decl., ¶¶ 25, 26. According to publicly available
18 information from OSHPD, SFMC recorded positive operations in the last four fiscal years.
19 Specifically, SFMC's state audits report operational income of \$29.9 million (5.6% operating
20 margin) in FY16, \$69.2 million (12.6% operating margin) in FY 17, \$64.4 million (10.5%
21 operating margin) in FY 18, and \$18.7 million (2.99% operating margin) in FY 19. Although
22 reported operations dipped in FY 19, the facility recorded continued profits absent QAF, DSH or
23 other supplemental governmental reimbursements and payments, as explained in further detail
24 below. Exhibit 18; Carter Decl., ¶ 25.

25 Quality Assurance Payments are payments that provide supplemental funding to California
26 hospitals that serve Medi-Cal and uninsured patients and they remained relatively stable from FY
27 16-19. Carter Decl., ¶ 26. Furthermore, specific information on the facility's receipt and future
28 payment of Disproportionate Share Hospital ("DSH") Program payments, a Medi-Cal

1 supplemental payment program, was never articulated nor properly presented by Verity/Prime.

2 Based on the available data, the Union's economist estimates the revenue decline reported
3 in FY 19 to be due to lower census as well as QAF and DSH supplements. *Id.* There is no
4 documentation to account for the impact of COVID-19. *Id.* Nevertheless, public records indicate
5 that SFMC is financially viable, and continues to generate profits with the existing labor structure
6 – including the UNAC CBA – in place.

7 The only financial documentation UNAC received through the bargaining process was the
8 Normalized P&L, a true and correct copy of which is attached as Exhibit 7. Carter Decl., ¶ 25.

9 The Normalized P&L differs significantly from the monthly Operating Reports submitted
10 to the Bankruptcy Court, as well as from data reported to OSHPD. *Id.*, ¶ 27. Per the Normalized
11 P&L, earnings before interest, depreciation, and amortization were \$86.7 million in FY 17, \$12.2
12 million in FY 18, and (\$8.2 million) in FY 19. Although only two fiscal months were provided to
13 UNAC, the Normalized P&L reports EBIDA having dropped dramatically in FY20; March data
14 indicates \$19.9 million in operational deficits. *Id.*

15 There are multiple deficiencies with the information in the P&L. First, management
16 provided only two months of detailed financial data of the current fiscal year. *Id.* This lack of
17 information provides only one month of comparisons – which is far from substantive, nor is it
18 enough to support any prudent estimates. *Id.* Second, the February 2020 Operating Report states
19 revenues of \$65.7 million, which is a \$33.4 million increase from January. Although the
20 Operating Report filed with this Court states operation revenues of \$10.0 million for TTM
21 February, the Normalized P&L reports deficit operations of (\$9.3 million). *Id.* Third, the
22 calculations for March should report positive EBIDA of \$11.2 million, and not the significant
23 deficit of (\$19.9 million) as reported in the Normalized P&L – the calculations presented in the
24 Normalized P&L for TTM March simply do not add up. Fourth, the monthly operations do not
25 match operational performance as submitted to the Bankruptcy Court. *Id.* The Normalized P&L
26 indicates a \$19.9 million deficit for TTM March. According to the Operating Reports, which
27 Management referred UNAC to use for its financial questions, March expenses decreased \$10.7
28 million and revenues were only \$933,000 less. Overall, the Operating Reports show positive

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1 operations of \$18.1 million for the month. This is in sharp contrast to what Management provided
2 to UNAC and stated in the Normalized P&L. *Id.* Again, Management has met the Union's
3 attempts to ask questions with responses to seek publicly available information or broad strokes of
4 data over random periods of time (i.e. "labor costs for FY2017-April 2020 are: \$356,890,827"
5 with no breakdown of year, unit, vendor, etc.). *Id.*

6 Throughout bargaining, Verity has declined to answer UNAC's questions regarding costs
7 and profitability of SFMC. On April 28, 2020, Prime's CFO twice stated that SFMC was not
8 profitable, contrary to what has been said, researched or is believed by UNAC or other parties.
9 Carter Decl., ¶ 28. Further, neither Prime nor Verity have provided UNAC with comparative costs
10 or financial data. On May 5, 2020, Verity even stated that comparisons to similar industry equals
11 were unavailable because they (Verity) didn't have access to such industry comps or standards.
12 Adding insult to injury, Prime agreed with Verity's assertion and rationale of inability – or the
13 lack of any obligation - to provide comparisons, costs, or standards. It is inconceivable that neither
14 the Debtors nor the Buyer have access to data for Level 2 trauma centers similar to SFMC. *Id.*
15 These omissions, combined with the disparities in the available data, are in stark contrast to what
16 has been said by Verity in bankruptcy court filings, operating reports, and filings with the State of
17 California. *Id.*

18 Given SFMC profitability, this entire negotiation presents misuse of the 1113 bargaining
19 paradigm. In *In re Cook United, Inc.*, 50 B.R. 561, 563 (Bankr. N.D. Ohio 1985), the court found
20 that even without projected savings of \$4.1 Million in labor costs through requested reductions in
21 wages, holiday leave and benefits, the proposed changes were not "necessary," as the debtor
22 would still show a positive cash flow of \$1.9 Million. Other cases demonstrate that contract
23 modification or rejection is unwarranted when the debtor in question can show a profit without
24 adjustment of labor costs. See, e.g., *In re Valley Kitchens, Inc.*, 52 B.R. 493, 495 (Bankr. S.D.
25 Ohio 1985 (denying rejection, in part, because debtor failed to connect proposed wage cuts,
26 benefit cuts, new overtime requirements, and promotion standards (among other things) to
27 expected cost savings); *In re Sun Glo Coal Co.*, 144 B.R. 58, 63 (finding that debtor failed to
28 quantify how proposed changes to work rules, layoffs, seniority, and benefits would result in

1 increased productivity).

2 With SFMC clearly capable of generating profits without adjustment to the existing terms
3 and conditions of the UNAC CBA, use of § 1113 to squeeze concessions from UNAC-represented
4 nurses is incorrect. It is particularly inappropriate during a time of pandemic.

5 **2. The conduct of Verity and Prime demonstrates a lack of good**
6 **faith throughout the negotiation process.**

7 To be fair, the Debtors and Prime have satisfied Factor 6, although commencing with the
8 May 19 bargaining session, Verity seems to be sitting as an observer rather than an active
9 participant. Carter Decl., ¶ 6. They also arguably have satisfied Factor 1. Prime offered an
10 opening proposal on the first day of bargaining (Carbuccia Decl., ¶ 16; Carter Decl., ¶ 9), and after
11 six days of bargaining, Verity provided its May 13 “Proposal.” Carbuccia Decl., ¶ 39.
12 Nevertheless, the Debtors and Prime have utterly failed to demonstrate compliance with Factors 2,
13 4, 5, 7, and 8.

14 **3. The bargaining process was corrupted through unwarranted**
15 **assertion of FRE 408 standards.**

16 At the outset of the first negotiation session, Debtor’s counsel took an absurd position that
17 has continued to cloud the conduct of these negotiations. In labor negotiations, it is not
18 uncommon for the bargaining parties to segregate discussions as “on the record,” or “off the
19 record.” Carter Decl., ¶ 23. However, near the beginning of the April 22, 2020 negotiation
20 session, Sam Alberts asserted that all oral discussions would be subject to confidentiality under
21 “FRE 408.” UNAC’s counsel, Pamela Chandran, strenuously objected to this assertion; all
22 Bargaining Parties agreed to reserve their rights, and Prime representatives Richard Martwick and
23 Joel Richlin stated that Prime was still willing to move forward with discussions. During a May 6
24 reprise of the discussion, the concept of a Non-Disclosure Agreement (“NDA”) was first raised
25 among the Bargaining Parties. Exhibits 11 and 12. At the opening of the May 19 bargaining
26 session, Joseph Kohanski, bankruptcy counsel for UNAC, stated UNAC’s willingness to enter into
27 an NDA so long as it was tailored to permit data access for affected UNAC members, who in turn
28 would be bound by the duty of confidentiality. Carter Decl., ¶ 23. Mr. Kohanski also raised the

1 prospect of an NDA in his May 18 letter to Mr. Alberts. Carbuccia Decl., ¶ 41; Exhibit 16.

2 The case law addressing application of § 1113 is replete with business facts and
3 bargaining positions because the statute creates a framework for evaluating the quality of the
4 bargaining process. Many of the Factors specifically mandate disclosure of information and
5 establish benchmarks for performance to facilitate good-faith bargaining. Judicial review under §
6 1113 is, in effect, a condensed version of the process implemented under the National Labor
7 Relations Act, 29 U.S.C. §141 *et seq.* (the “NLRA”), by which compliance with NLRA sections
8 8(a)(5) (29 U.S.C. §158(a)(5) (employer duty to bargain in good faith) and 8(d) (29 U.S.C.
9 §158(d) (union duty to bargain in good faith; bargaining process parameters) is evaluated. Well-
10 developed doctrine concerning “Surface Bargaining” – going through the motions with no intent
11 of achieving agreement – reflects policing of the bargaining process, which obviously requires a
12 degree of transparency that is antithetical to blanket assertion of FRE 408 privilege, in an effort to
13 smother review of bargaining.³

14 _____
15 ³ “Surface bargaining” is defined as "going through the motions of negotiating," without any real
16 intent to reach an agreement. It violates the NLRA's requirement that parties negotiate in "good
17 faith." It is prohibited because, as one commentator explained:

18 “The bargaining status of a union can be destroyed by going through the motions of negotiating
19 almost as easily as by bluntly withholding recognition As long as there are unions weak
20 enough to be talked to death, there will be employers who are tempted to engage in the forms of
21 collective bargaining without the substance.”

22 Cox, "The Duty to Bargain in Good Faith," 71 Harv.L.R. 1401, 1413 (1958). For example, in *K-*
23 *Mart Corp. v. NLRB*, 626 F.2d 704 (9th Cir. 1980), the Ninth Circuit upheld the NLRB’s finding
24 that an employer had engaged in surface bargaining, evidenced in part by its offer of only
25 “meager” increases in an inflationary economic environment. As the Court put it, “we agree with
26 the ALJ's characterization of the wage proposals as ‘meager.’ In an age of double digit inflation,
27 an offer of little or no wage increase is an effort to decrease wages. The ALJ could infer that the
28 company was not bargaining seriously.” *Id* at 707. Another element of the bad faith bargaining of
the employer in *K-Mart* was its failure to provide relevant information requested by the union.

See also, *Garcia ex rel. NLRB v. S&F Mkt. St. Healthcare, LLC*, 2012 U.S. Dist. LEXIS 59578
(C.D. Cal. 2012)(“ . . . the (NLRB) has consistently held that “[a]n inference of bad-faith
bargaining is appropriate when the employer's proposals, taken as a whole, would leave the union
and the employees it represents with substantially fewer rights and less protection than provided
by law without a contract.” *Public Service Co.*, 334 N.L.R.B. 487-88 (2001) (citation omitted).
“The Board ‘must take some cognizance of the reasonableness of the position taken by an
employer in the course of bargaining negotiations’ if it is not to be ‘blinded by empty talk and by
the mere surface motions of collective bargaining.’” *NLRB v. Holmes Tuttle Broadway Ford, Inc.*,

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1 The absurdity of Verity's position is best illustrated by a pair of decisions in the American
2 Airlines bankruptcy. In *In re AMR Corp.* ("AMR I"), 477 B.R. 384, 403 (Bankr. S.D.N.Y. 2012),
3 the debtors presented an exhaustive review of detailed economic testimony, including business
4 plans and projections. Some of the data was redacted by the Court as confidential business
5 information, but the unredacted data in the record, and referred to in the opinion, hugely exceeds
6 what has been presented by the Management Parties. *Id.* at 395. The Court ultimately denied
7 without prejudice the airline's § 1113 motion to reject the collective bargaining agreements, on the
8 grounds that some of the proposed modifications were not justified. *Id.* at 454.

9 Following *AMR I*, several unions settled with the airline. But when the pilots union held
10 out, American Airlines submitted a renewed motion to reject its agreement with the pilots and
11 address the unjustified modifications. *In re AMR Corp.* ("AMR II"), 478 B.R. 599, 601-602
12 (Bankr. S.D.N.Y. 2012). The pilots tried to introduce evidence, inter alia, of post-trial settlement
13 agreements with other unions and non-union employees, as proof that the modifications proposed
14 to the pilots were not necessary for reorganization. *Id.* at 604. The Court found the evidence
15 inadmissible under FRE 408 to the extent it was evidence of a settlement offer, and where the
16 pilots had explicitly agreed that any post-hearing negotiations between the pilots and the airline
17 were confidential discussions subject to FRE 408. *Id.* at 607.

18 Under FRE 408(a), settlement offers are inadmissible to prove liability for, or the
19 invalidity of, a claim or its amount. This prohibition, however, "does not apply if the
20 communication is used to establish a "consequential, material fact" other than the validity or
21 amount of a claim." *Alvarez v. King County Sheriff's Off.*, C06-0023C, 2006 WL 8454989, at *2
22 (W.D. Wash. June 27, 2006). Moreover, FRE 408 "limits the admissibility of evidence; it does
23 not prevent the evidence from being discoverable." *In re Long*, 09-23473, 2014 WL 6788356, at
24

25 465 F.2d 717, 719 (9th Cir. 1972) (quoting *NLRB v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134
26 (1st Cir. 1953)). *And when an employer has sophisticated negotiators who are knowledgeable*
27 *about labor law, there is often little but the substance of the employer's contract proposals to*
28 *indicate that the employer is engaged in surface bargaining. See NLRB v. Wright Motors, Inc.*,
603 F.2d 604, 609-10 (7th Cir. 1979) (holding that "the combination of unrealistically harsh
positions adhered to by the company for six months and the avoidance of bargaining on key
economic issue provides substantial support for the ALJ's conclusion") (emphasis added).

1 *14 (Bankr. D. Kan. Dec. 1, 2014), aff'd, 538 B.R. 108 (D. Kan. 2015).

2 FRE 408 therefore does not provide a blanket of confidentiality covering all statements
3 made during negotiations, and certainly cannot smother evaluation of the collective bargaining
4 process for purposes of § 1113 compliance.⁴ As in *AMR I*, the Court may redact any business
5 information it deems confidential. Likewise, as in *AMR II*, the Court may properly exclude
6 evidence of a settlement offer introduced to prove or disprove the validity or amount of a disputed
7 claim. But Verity counsel has provided no authority supporting assertion that the entirety of
8 negotiations are shielded by FRE 408.⁵ Compared with the welter of data and bargaining
9 information cited throughout *AMR I* and manifold other § 1113 decisions, assertion of FRE 408 is
10 entirely misplaced, and withholding it violates Factor 5.

11 **4. The Debtors and Prime have refused to provide Information**
12 **required to evaluate the Prime proposal, to test whether the**
13 **proposal is based on the most complete and reliable information**
14 **available at the time of the proposal, and to determine whether**
15 **the proposed modifications assure that all creditors, the debtor**
16 **and all of the affected parties are treated fairly and equitably.**

17 Before a debtor may reject a CBA, the Bankruptcy Code requires the debtor to make a
18 proposal to the union based on the most complete and reliable information available at the time of
19 such proposal. 11 U.S.C. § 1113(b)(1)(A). The Bankruptcy Code also requires the debtor to
20 provide the union with “such relevant information as is necessary to evaluate the proposal.” 11
21 U.S.C. § 1113(b)(1)(B). The debtor “must make a proposal firmly grounded in the historical
22 reality of operational economics, an unvarnished evaluation of its current straits, and a thorough
23 analysis of all of the incidents of income and expense that would bear on its ability to maintain a
24 going concern in the future, whether subject to the financial obligations of its collective bargaining
25 agreement(s) or not. The requirement bars a debtor in possession from making a proposal that is

26 ⁴ To the extent Verity counsel drew a distinction between the admissibility of oral and written
statements, this position finds no support in FRE 408.

27 ⁵ See *Tire Hanger Corp. v. Rotary Lift*, 2018 WL 6017001, at *5 (C.D. Cal. Oct. 4, 2018)
28 (admonishing plaintiff for providing no legal support for its claim that defendants’ reference to
settlement negotiations violated FRE 408).

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1 cursory or arbitrary, or one whose specific terms are result-driven in isolation rather than process-
2 derived and based on actual experience.” *In re Karykeion, Inc.*, 435 B.R. 663, 677 (Bankr. C.D.
3 Cal. 2010) (citing *In re Mesaba Aviation, Inc* (“*Mesaba I*”), 341 B.R. 693, 714 (Bankr. D. Minn.
4 2006), *rev’d on other grounds*, 350 BR 435 (D. Minn. 2006). “The data provided by the debtors
5 should reflect an honest effort to compile all data, with no deliberately concealed mistakes.” *In re*
6 *Patriot Coal Corp.*, 493 B.R. at 115 (citing *Ass’n of Flight Attendants–CWA, AFL–CIO v. Mesaba*
7 *Aviation*, (“*Mesaba II*”), 350 B.R. 435, 454 (D. Minn. 2006)). The debtor must provide “the most
8 complete information available at the time and to base its proposal on the information it considers
9 reliable. This requirement by definition excludes hopeful wishes, mere possibilities and
10 speculation.” *In re Karykeion, Inc.*, 435 B.R. at 678. In the context of the *American Provision*
11 factors, these principles are actualized through Factor 5, Factor 2, and Factor 4. Cumulatively,
12 these three Factors coalesce around the “good faith” standard of Factor 7.

13 UNAC recognizes that in the context of a liquidation, the debtors “are not required to state
14 what the “gap” is between their current financial performance and the performance needed to
15 emerge,” and that “the purpose of the proposed labor concessions is to enable the sale, not to fill
16 some hypothetical financial void.” *In re Walter Energy, Inc.*, 542 B.R. 859, 888 (Bankr. N.D. Ala.
17 2015). But even under this more relaxed standard, which of late has been uniquely articulated in
18 the coal industry,⁶ the Debtors have failed to provide the Union with necessary information,
19 including information.

20 The difference between the economic value of an existing CBA and an offer on the
21 bargaining table is perhaps the single most essential issue in evaluating a contract proposal, and
22 was the final query in the “General Financial Questions.” Carter Decl., ¶ 10. However, Verity
23 and Prime refused to provide any guidance. During the April 22 bargaining session, UNAC was
24 told that “cost was not a factor” in the opening proposal, which was structured to hit a pre-

25
26 ⁶ See, e.g., *In re Mission Coal Co., LLC*, 2019 WL 1024933, at *20 (Bankr. N.D. Ala. Mar. 1,
27 2019); *In re Alpha Nat. Resources, Inc.*, 552 B.R. 314, 332 (Bankr. E.D. Va. 2016); *In re Walter*
28 *Energy, Inc.*, 542 B.R. at 887. These cases cluster not only around the common characteristics of
a waning industry with heavy legacy costs and a particular regulatory scheme; the *Mission Coal*
and *Walters Energy* decisions were issued by the same judge.

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1 ordained target – resemblance to UNAC contracts at smaller, regional Prime-owned hospitals –
2 rather than based on savings in the context of SFMC. Carter Decl., ¶ 14. This position was
3 restated at the April 28 session, when questions concerning the cost differential with the existing
4 UNAC CBA were again rebuffed through response that “cost is not a factor in our proposal.”
5 Carbaccia Decl., ¶ 21. Again, at the May 6 session, Mr. Alberts stated that “we did not do
6 projections of costs of [our] proposed contract, and that costs of comparative insurance plans were
7 “irrelevant.” *Carbaccia Decl.*, ¶ 31; Carter Decl., ¶ 22. RFI#3, Question 15 specifically sought
8 guidance on cost differentials, on a line-item basis; Prime and Verity both declined to answer,
9 based on “relevancy” and “burden.” RFI#3 Refutation, Exhibit 10. These refusals to even engage
10 on the question of cost do not comport with Factors 6 (information necessary to evaluate a
11 proposal), or Factor 7 (good faith).

12 Similarly, UNAC was unable to obtain data concerning the costs of its bargaining unit,
13 independent of total labor costs at SFMC. The Operating Reports, and the Normalized P&L, only
14 address total labor costs. RFI#3, Questions 3 and 4 sought total labor costs for the UNAC unit for
15 the last three years, and projected through FY 21; labor costs were not provided on a per-unit
16 basis, due to “relevancy” and “burden,” or due to an assertion that UNAC should be able to derive
17 this answer on its own. RFI#3 Refutation, Exhibit 10.

18 The third American Provision factor – fair and equitable treatment – triggers analysis as to
19 whether union employees are bearing a “disproportionate” share of the debtor’s reorganization
20 costs. See, *In re Kaiser Aluminum Corp.*, 456 F.3d 328, 339-42 (3d Cir. 2006) (differentials in
21 pension plan survivals contravene fair and equitable treatment); *In re Jeflye, Inc.*, 219 B.R. 88, 94
22 (Bankr. E.D. Pa, 1998) (CBA rejection denied as reduction in principals’ salaries not specified,
23 and creditor payments not commensurate with reductions to union members); *In re Salt Creek*
24 *Freightways*, 47 B.R. 835, 838 (Bankr. D. Wy, 1985). Here, RFI#3, Question 14 sought
25 identification of cost savings from other bargaining units, Non-Union units (including retained
26 physicians) and management. The Debtors and Prime again refused to respond based on
27 “relevancy” and “burden,” as well as asserted confidentiality concern for other groups. RFI#3
28 Refutation, Exhibit 10. The Debtors’ failure to provide UNAC with this information leaves the

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1 Union unable to evaluate the equitable character of Debtors' proposal.

2 The question of projected CBA costs and savings over the term of a CBA— as well as the
3 projected financial position of the employer — is of obvious relevance. But the Debtors and Prime
4 refused to provide UNAC with financial projections for the fiscal years 2020 and 2021. RFI#3
5 Refutation, Exhibit 10. As noted by Jane Carter, it is hard to believe that Verity and Prime, as
6 sellers and bidders for SFMC, would not have developed projections toward due diligence with
7 this transaction. Carter Decl., ¶ 21. Even in a liquidation case like *Karykeion*, the debtor provided
8 a projected budget through two weeks after the closing date. *Karykeion*, Docket 811-8, pp. 9, 19,
9 37-38 of 52 (see Declaration of Garrett McCoy). For Verity, 2018 and 2019 financial projections
10 may have been enough to “enable the sale” to SGM. But that sale failed in December 2019.
11 UNAC now faces a sale to Prime, which may close as late as December 31, 2020. Even under the
12 *Walter Energy* standard, the Debtors must provide information which suffices to demonstrate the
13 necessity of the section 1113...relief.” *In re Walter Energy*, 542 B.R. at 888. But the Debtors
14 have not given UNAC financial projections leading up to the date of closing, and thus have not
15 demonstrated that the proposal reflects “those modifications necessary to consummate the going-
16 concern sale.” *Id.* This omission of short-term projections also includes the Debtors' failure to
17 provide UNAC with anticipated revenues upon the re-opening of non-essential procedures
18 suspended due to the COVID-19 pandemic. RFI#3 Refutation, Exhibit 10. Without financial
19 projections through December 31, 2020, UNAC cannot meaningfully evaluate the Debtors'
20 proposal.

21 Unlike liquidating debtors in the coal cases, Verity did not grant UNAC access to its data
22 room. Allowing union access to a data room largely provides the “most complete and reliable
23 information at the time” and “relevant information as is necessary to evaluate the proposal.”
24 Provision of data room access would have been helpful, but Verity has instead opted for
25 evasiveness,⁷ virtually limiting UNAC to public information. Verity's refusal to offer data room
26

27 ⁷ The SGM sale cycle is instructive. Verity and UNAC discussed utilization of an NDA in order
28 to access the data room for that sale. Verity declined UNAC efforts to clarify the relationship
between such access and use of gleaned data for § 1113 purposes. UNAC ultimately tendered an

1 access represents a divergence from the Chapter 11 coal company sale cases, and has thus denied
2 UNAC the full extent of relevant information necessary to evaluate Management Party proposals.

3 In summary, the Management Parties cannot show satisfaction of the second, fourth and
4 fifth American Provision Factors, which in turn defeats any Management Party showing with
5 respect to good faith bargaining, under the seventh Factor.

6 **5. The substantive proposals demonstrate a lack of good faith.**

7 Prime's opening offer destroys decades' worth of economic progress that – even with
8 UNAC's recent concessions and sacrifices – had justifiably made this hospital one of the highest-
9 paying in the Region, while maintaining profitability and revenue that supported the poorer-
10 performing facilities in the Verity system. The proposal, disingenuously advertised as comparable
11 to Prime's substandard CBAs at its other units – none of which offer the size, capacity, high level
12 of professional care and treatment as is provided at SFMC – would cut existing wages by 20-50%,
13 drop the nurses' 401(k) plans, erase nurses' accumulated seniority, and require other non-
14 economic concessions that have nothing to do with the hospital's bottom line. Yet according to
15 Prime, this proposal was made not to achieve cost-savings, but because it had agreed with Verity
16 to accept a collective bargaining relationship only on terms consistent with its subpar
17 establishments elsewhere. In that regard, its take it or leave it deal with Verity effectively made
18 compliance with § 1113 legally impossible.

19 Of course, the Prime opening offer should not have been a surprise. In section 4.9 of the
20 APA, Prime stated its goal to modify “the St. Francis related collective bargaining agreements
21 under terms that are to be substantially consistent with the Purchaser's existing and most current
22 collective bargaining agreements with each such respective labor union...” APA, p.27. This
23 foregone conclusion, in which the APA controls the § 1113 process and outcome, was precisely
24 what UNAC predicted would occur. At the April 9, 2020 hearing on approval of sale of SFMC to
25 Prime, UNAC raised concerns that the structure of the APA impermissibly channels § 1113
26 negotiations to one of two foregone conclusions – the purchaser gets to ratchet SFMC/UNAC
27

28 executed NDA in the form requested by Verity, yet did not gain access to the data room. *See*
Declaration of Kirk M. Prestegard.

1 terms and conditions down to standards that have no rational relationship to the scale,
2 sophistication and economics of operations at SFMC, or the CBA is simply rejected. On that
3 basis, UNAC asked that this Court withhold approval of the APA without a modification to enable
4 a negotiation that was not preordained. Docket No. 4498. The heart of UNAC's objection bears
5 repeating:

6 Based on a UNAC survey of Prime-owned hospitals, the terms and conditions of
7 employment in Prime hospitals are uniformly below the market rate, let alone below the
8 terms for the UNAC unit at SFMC. Wage rates - at all levels of a nurse's seniority in Prime
9 hospitals in Southern California - range from 25-40% below market rates for unionized
10 nurses. In comparison, SFMC's wage rates are currently the highest in Southern
11 California for nurses. If Prime foists the average terms of its collective bargaining
12 agreements on SFMC nurses, this will result in disastrous cuts to nurses' salaries and
13 benefit levels. It will also be inconsistent with Steps 3, 4 and 8 of the *American Provision*
14 test. The Debtors acknowledge that SFMC is profitable. There is no good faith in stating
15 that a Section 1113 negotiation is over if SFMC nurses do not simply knuckle under to
16 demands for extreme concessions, when SFMC demonstrably generates profits at the
17 current wage and benefit levels. There is no good faith negotiation in commencing a
18 Section 1113 negotiation by simply stating that "it's my way or the highway" - accept
19 substandard terms, notwithstanding employer profitability, or face contract termination or
20 rejection.
21

22 Objection, Docket No. 4498, pp. 4-5.

23 This approach to bargaining, which is deeply regressive from the employees' perspective,
24 would not be tolerated by the National Labor Relations Board. *See e.g., Kitsap Tenant Support*
25 *Services*, 366 NLRB No. 98 (2018) (Board can look at substantive proposals to determine bad
26 faith, including substituting one proposal for a less favorable one). Nor is a "take it or leave it"
27 approach -- in which one party shows no interest in composing its differences with the other --
28 acceptable. *See e.g., NLRB v. GE*, 418 F.2d 736, 756 (2d Cir. 1969) (take it or leave it approach is

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1 indicia of bad faith). Section 1113 was intended to *restore* unions' influence at the bankruptcy
2 bargaining table, and imbue the bargaining process with gravity.

3 The damage Verity and Prime ask this Court to inflict is twofold: one part process, one part
4 substance. Part of the motivation for providing for a special rejection process for CBAs in
5 bankruptcy was to ensure that employees were permitted a genuine voice in the fate of their
6 prospective labor relations with respect to transactions over which they have little or no control.
7 *See In re GCI, Inc.*, 131 B.R. 685 (Bk. N.D. Ind. 1991) (court denied § 1113 motion, because the
8 debtor had acted in bad faith in its treatment of its employees). That is, part of the fairness and
9 propriety of possible rejection after a full § 1113 process is having the union's arguments and
10 perspective considered before rejection, instead of afterward or not at all. In this case, however,
11 the APA and Verity/Prime's behavior foreclose a real process where the employees' positions can
12 be accounted for.

13 Prime and Verity have often recited compliance with the terms of the APA as the limit of
14 their duties to UNAC in connection with sale of SFMC. Carbuccion Decl., ¶ 31; Carter Decl., ¶¶
15 22, 28; Exhibits 8 and 10. Rote recitation of APA provisions is no substitute for the body of law
16 that establishes the failure of Verity and Prime to bargain in good faith, *and implies that*
17 *contractual terms trump legal obligations*, therefore mandating denial of the Rejection Motion. It
18 is not unusual for a bankruptcy court to admonish a debtor to return to the bargaining table and
19 adhere to the standards established by § 1113. *See, e.g., In re GCI, supra; In re AMR Corp.*, 477
20 B.R. 384 (S.D.N.Y. 2012). Here, Verity and Prime have demonstrated bad faith. As CBA
21 rejection is slated to occur at closing of the sale, for which the closing deadlines are either
22 September 1 or December 31, 2020, there is plenty of time for genuine bargaining to occur.
23 Verity – and Prime – should be instructed to engage in good-faith bargaining.

24 The integrity of the § 1113 process and the consummation of the APA, along with post-
25 approval misconduct during that period, require denial of the pending motion because Verity, in
26 combination with Prime, has choreographed the evisceration of the current UNAC CBA without
27 engaging in a genuine bilateral process with the Union. This is in stark contrast to the settled
28 notion that § 1113 is designed “to prevent [debtors] from using bankruptcy as a judicial hammer to

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1 break the union.” *New York Typographical Union No. 6 v. Maxwell Newspapers, Inc. (In re*
2 *Maxwell Newspapers, Inc.)*, 981 F.2d 85, 89 (2d Cir. 1992). *See also UFCW, Local 211 v. Family*
3 *Snacks, Inc. (In re Family Snacks, Inc.)*, 257 B.R. 884, 890 (8th Cir. BAP Jan. 31, 2001).

4 Verity and Prime have deconstructed this protection by: 1) structuring the APA to
5 effectively lock in the rejection prior to negotiations; 2) reinforcing that *fait accompli* by failing to
6 provide requested information such as comparative cost-savings and economic projections needed
7 to engage in good faith informed negotiations; 3) making a “take it or leave it” poison pill
8 proposal; 4) insisting upon substantial economic concessions and non-economic concessions not
9 necessary to permit reorganization or sale; and 5) ignoring the sound financial condition of SFMC
10 while rushing to obliterate nurses’ hard-won gains negotiated over almost 30 years.

11 Section 1113 establishes a finite disclosure and negotiation period, setting in motion an
12 expedited form of collective bargaining with several safeguards designed to insure that employers
13 [do] not use Chapter 11 as medicine to rid themselves of corporate indigestion. *Northwest*
14 *Airlines Corp. v. Ass’n of Flight Attendants-CWA (In re Northwest Airlines Corp.)*, 483 F.3d 160,
15 179-80 (2d Cir. 2007) (Jacobs, C.J., concurring) (quoting *Century Brass Prods., Inc. v. United*
16 *Auto., Aero. & Agric. Implement Workers of Am. (In re Century Brass Prods., Inc.)* 795 F.2d 265,
17 272 (2d Cir. 1986)).

18 In *In re Lady H Coal Co.*, 193 B.R. 233, 242 (S.D. W. Va. 1996), the Court admonished a
19 debtor who sought to evade § 1113:

20 The equities [built into the §1113 factors] relate to the success of the reorganization *as*
21 *burdens must be shared by workers, management and creditors with no group favored*
22 *over the other. In re Express Freight Lines, Inc.*, 119 Bankr. 1006, 1017 (Bankr. E.D. Wis.
23 1990). This Court has found that the Debtors' motion to sell substantially all assets is
24 essentially the Debtors' plan of reorganization. *This form of reorganization does not mean*
25 *a debtor can shortcut its duties or take unfair advantage of any particular group, as in this*
26 *case, the employees.* The Court finds that *a debtor has a duty under § 1113 to not obligate*
27 *itself prior to negotiations with its union employees*, which would likely preclude reaching
28 a compromise. "Good faith bargaining is conduct indicating an honest purpose to arrive at

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1 an agreement as the result of the bargaining process". *Matter of Walway Co.*, 69 Bankr. at
2 973. In this case, *the Debtors could not have bargained in good faith as the Debtors were,*
3 *prior to any negotiations with the union, locked into at an agreement where the purchaser*
4 *was not assuming the NBCWA. . . .* (emphasis added).

5 Similarly, Prime and Verity contrived the APA to fashion a hammer to nail the union,
6 Verity posed as the momentary stand-in to make sure Prime could deal the blows to the CBA that
7 it demanded -- regardless of the economic needs of SFMC, which itself is not in distress. In short,
8 Prime doesn't *need* the economic relief it has demanded from Verity, but it wants it. Verity
9 doesn't need the relief, either, because it is getting out of the business, but it is willing to stand in
10 for Prime and do its bidding to hold up its end of the APA. That orchestration defined the seller's
11 and buyer's roles in their deal, but it also destroyed the firewall Congress enacted to protect unions
12 and the employees they represent through § 1113. *See, e.g., In re Maxwell Newspapers, Inc.*, 981
13 F.2d at 90) (reasoning that an order authorizing CBA rejection under section 1113 is "*implicitly*
14 *the product of negotiations* (successful or unsuccessful). The [section 1113 rejection] process
15 ensure[s] that *well-informed and good faith negotiations occur in the market place*, not as part of
16 the judicial process. Reorganization procedures are designed to encourage such a negotiated
17 voluntary modification. Knowing that it cannot turn down an employer's proposal without good
18 cause gives the union an incentive to compromise on modifications of the collective bargaining
19 agreement, so as to prevent its complete rejection. Because the employer has the burden of
20 proving its proposals are necessary, the union is protected from an employer whose proposals may
21 be offered in bad faith"); *In re G & C Foundry Co.*, 2006 Bankr. LEXIS 4582 (N.D. Ohio July 19,
22 2006) ("Congress enacted § 1113 in order to 'reconcile the reorganization imperatives of a
23 Chapter 11 debtor with the collective bargaining interests of organized employees.'").

24 The protections offered to Unions by § 1113 are not insurmountable, but they are meant to
25 be formidable and palpable. Until that protective process has been vindicated, this Court must
26 withhold the rejection sought by Verity, aided and abetted by Prime.

27 **B. UNAC Has Good Cause to Reject All Proposals to Date**

28 The eighth *American Provision* Factor is that "the union must have refused to accept the

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1 proposal without good cause.” *American Provision*, 44 B.R. at 909. Courts in the reorganization
2 context generally have found good cause to reject the debtor’s proposal when the union can
3 demonstrate that the debtor’s financial proposition does not require the requested concessions. *See*
4 *In re Pinnacle Airlines Corp.*, 483 B.R. 381, 423-24 (Bankr. S.D.N.Y. 2012) (finding good cause
5 where the debtor did not adequately justify the extent of its proposed wage cuts, its inferior profit
6 sharing provision, and the lack of movement on its original proposal); *In re Delta Air Lines*, 342
7 B.R. 685, 701 (Bankr. S.D.N.Y. 2006) (finding good cause in light of the disproportionate share of
8 employee sacrifice requested of unit members and the strong likelihood that the debtor’s proposal
9 would produce more than the targeted cost savings); *In re Mesaba Aviation, Inc.*, 341 B.R. 693,
10 755 (Bankr. D. Minn. 2006), *rev’d on other grounds*, 350 B.R. 435 (D. Minn. 2006) (finding good
11 cause where the debtor had not provided enough information to support the overall reduction in
12 labor costs); *In re United States Truck Co. Holdings*, 2000 Bankr. LEXIS 1376, at *88 (Bankr.
13 E.D. Mich. Sep. 29, 2000) (finding good cause where the debtor (1) could afford to pay more on
14 union’s claims than it was offering; (2) failed to differentiate its proposal from more favorable
15 agreements reached with other similarly-situated employees; (3) failed to take seniority into
16 account); *In re Jefley, Inc.*, 219 B.R. 88, 89 (Bankr. E.D. Pa. 1998) (finding good cause where the
17 debtor’s proposal did not reduce the principals’ own salaries or reduce payment to creditors
18 commensurate with the reductions to union members).

19 Courts in liquidation cases have similarly found good cause where the union demonstrated
20 a feasible compromise which would require less sacrifice by the union than the debtor’s proposal.
21 *See In re United States Truck Co. Holdings*, 2000 Bankr. LEXIS 1376, at *88 (Bankr. E.D. Mich.
22 Sep. 29, 2000) (finding good cause where the debtor (1) could afford to pay more on union’s
23 claims than it was offering; (2) failed to differentiate its proposal from more favorable agreements
24 reached with other similarly-situated employees; (3) failed to take seniority into account); *see also*
25 *In re Bruno’s Supermarkets, LLC*, 2009 Bankr. LEXIS 1366, at *56 (Bankr. N.D. Ala. Apr. 27,
26 2009) (finding good cause where the union made a feasible counterproposal, even if it may not
27 have been “the total solution to these parties’ problems”).

28 By either of these standards, UNAC has good cause to reject either the last cohesive

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1 proposal tendered by Prime, or the May 13 “proposal” tendered by Verity. The Management
2 Parties have not even made a showing that wage cuts are necessary at a hospital that is – at a
3 minimum and in the Debtors’ own words – “financially viable” with the present CBA in place.
4 Docket No. 4248, p.6 of 20, Note 6. They have not provided sufficient data required to evaluate
5 any and all proposals. They have outright refused to provide any data indicating that the burden of
6 cost-cutting is being shared in a fair and equitable manner. They have not even provided
7 sufficient data to ensure that proposals are based on “the most complete and reliable information
8 available at the time of the proposal.” These facts certainly trigger failure of the seventh *American*
9 *Provision* factor: bargaining in good faith. With the Management Parties failing to show
10 compliance with Factors 2, 4, 5 and 7, and with UNAC remaining ready, willing, and able to
11 continue negotiations – recall that UNAC still has not heard back from the Management Parties in
12 connection with additional, requested bargaining dates – UNAC certainly satisfies the standard of
13 having “good cause” to reject any of the proffered proposals.

14 C. **The Factors of “Necessity” and the “Balance of the Equities” do not**
15 **Support Rejection of the UNAC CBA.**

16 The remaining *American Provisions* factors to be considered are Factor 3 (proposed
17 modifications must be necessary to permit reorganization), and Factor 9 (the balance of the
18 equities must clearly favor rejection).

19 In approving sale of the Santa Clara hospitals, this Court ruled that “necessary” is best
20 interpreted to mean “necessary to permit the Debtors to confirm a liquidating plan.” Docket No.
21 1541. Taking this as a given leads to considering the balance of the equities.

22 Just as *Truck Drivers Local 807 v. Carey Trans., Inc.* 816 F.2d 82 (2d Cir. 1987)
23 undergirds this Court’s interpretation of “necessity,” *Carey Transportation* also provides a six-part
24 test for balancing of the equities: (i) the likelihood and consequences of a forced liquidation if
25 rejection is not permitted; (ii) the reduced value of creditors’ claims if rejection is not permitted;
26 (iii) the likelihood and consequences of a strike if the CBA is rejected; (iv) the hardship imposed
27 on employees if rejection is allowed; (v) the cost-spreading abilities of various parties, taking into
28 account the number of employees covered by the CBA and how the various employee’s wages and

1 benefits compare with those of others in the industry; and (vi) the good faith of the debtor and the
2 union in dealing with the impact of the debtor's financial condition on its labor obligations. *Id.* at
3 92-93. Additionally, Factor 9 presents a higher burden of proof than the other factors; the balance
4 of the equities must *clearly favor* rejection (emphasis added).

5 With the Santa Clara sales, any balancing of equities was deeply tempered by the statutory
6 impossibility (due to the Meyer-Milias-Brown Act) of the existing nurses' unions continuing as
7 collective bargaining representatives, or of assumption of existing contract terms. Here, these
8 limitations do not apply – the existing CBAs could simply be assumed, or be assumed as
9 consensually modified, which was the CBA mechanic for the aborted SGM sale. Moreover, we
10 now have an interesting reversal of polarity; *instead* of non-profit hospitals being purchased by a
11 governmental entity, a non-profit hospital is being purchased by a for-profit entity. Here, the
12 balance of the equities – particularly on this record – cannot clearly support rejection.

13 This case will culminate in liquidation, either under Chapter 11 or Chapter 7. And the
14 APA recognizes that depending on positions taken by the California Attorney General – whom
15 already has declined to waive rights to impose conditions upon the SFMC sale – the SFMC sale
16 might not close until December 31, 2020. With this timeline in mind, and given that Verity and
17 Prime propose that rejection not occur until closing of the sale, postponing approval of rejection,
18 until good-faith bargaining has occurred, will not affect any “forced liquidation” considerations,
19 nor would such postponement reduce the value of creditor claims.

20 If non-consensual rejection obtains, a strike is highly likely. Verity may well see this as a
21 problem for Prime, but not for the Debtors. But if rejection is approved before good-faith is
22 shown at the bargaining table, then there will be short and medium-term consequences for Verity
23 and its creditors, as nurses know that a strike threat unnecessarily looms, leading to militancy,
24 dissatisfaction, performance problems, staffing issues as disaffected nurses voluntarily leave, or all
25 of the above. And while premature approval of rejection may have consequences for all Verity
26 constituencies, the hardship of such rejection falls primarily on the nurses. Meanwhile the
27 Management Parties have provided *no information whatsoever* to demonstrate that costs are being
28 spread to other parties.

1 The record does show that UNAC-represented nurses enjoy the benefit of a premium
2 contract at SFMC, but it also shows that Prime seeks to drive wages and working conditions down
3 to an “Inland Empire” standard, which is particularly difficult to stomach when the financial
4 viability of SFMC, with present labor contracts in place, is demonstrable.

5 Finally, Verity and Prime have not shown good faith in their negotiations with UNAC.
6 They have shown up to bargain. They have provided information on peripheral issues. But they
7 have been entirely obstructionist when it comes to the essential financial considerations that lie at
8 the heart of the collective bargaining process, and have essentially just been going through the
9 motions. Given these considerations, the balance of the equities – along with consideration of all
10 other *American Provision* factors, clearly favors denial of the Rejection Motion, rather than
11 rejection of the UNAC CBA, until good-faith negotiations have occurred.

12 WHEREFORE, UNAC respectfully requests that this Court defer or deny the Rejection
13 Motion until the Debtors – and Prime – come to the bargaining table in good faith and honor the
14 process envisioned through enactment of Bankruptcy Code § 1113.

15
16 DATED: May 28, 2020

17 JOSEPH A. KOHANSKI
18 IRA L. GOTTLIEB
19 KIRK M. PRESTEGARD
20 BUSH GOTTLIEB, A Law Corporation

21 By: 

22 JOSEPH A. KOHANSKI

23 Attorneys for United Nurses Associations of
24 California/Union of Health Care Professionals
25 (“UNAC”)
26
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California/Union of Health Care Professionals
("UNAC")
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

12 In re

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

15 Debtors and Debtors in Possession

- 16 ☒ Affects All Debtors
- 17 ☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
18 ☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
19 ☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
20 ☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital
21 Foundation
☐ Affects St. Francis Medical Center of
22 Lynwood Medical Foundation
☐ Affects St. Vincent Foundation
23 ☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
24 ☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
25 ☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
26 ☐ Affects De Paul Ventures - San Jose
Dialysis, LLC
27

28 Debtors and Debtors in Possession

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

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

**EXHIBITS TO DECLARATIONS OF
MAXIMO CARBUCCIA AND JANE M.
CARTER, IN SUPPORT OF OBJECTION
BY UNAC TO DEBTORS MOTION TO
REJECT COLLECTIVE BARGAINING
AGREEMENT WITH UNAC**

HEARING: June 3, 2020
TIME: 10:00 a.m.
LOCATION: Ctrm. 1568, 255 E. Temple St.,
Los Angeles, CA 90012

BUSH GOTTLIEB
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260

Index to Exhibits

- 1 1. 2020.03.10 – Verity’s Reply to Oppositions to Verity’s Motion for Entry of Order
2 Amending Key Employee Incentive Plan; Originated with Verity; Filed with Court
- 3 2. 2020.04.20 – Union’s Request for Information #1 (Letter); Originated with Max
4 Carbuccia; Sent to An Nguyen Ruda
- 5 3. 2020.04.22 – Union’s General Contract Questions (Letter); Originated with Max
6 Carbuccia; Sent to Verity-Prime
- 7 4. 2020.04.24 – Union’s Request for Information #2 (Email); Originated with Max
8 Carbuccia; Sent to An Nguyen Ruda
- 9 5. 2020.04.27 – Union’s Request for Information #3 (Letter); Originated with Max
10 Carbuccia; Sent to An Nguyen Ruda
- 11 6. 2020.04.27 – Verity’s Response to Union’s Request for Information #2 (Email);
12 Originated with Sam Alberts; Sent to Max Carbuccia
- 13 7. 2020.04.27 – Saint Francis Medical Center Normalized P&L Analysis (Chart); Originated
14 with Verity; Sent to Union
- 15 8. 2020.04.28 – Verity’s Response to Union’s Requests for Information #1 and #3 (Email);
16 Originated with Sam Alberts; Sent to UNAC
- 17 9. 2020.04.29 – Verity-Prime Response to Union’s General Contract Questions (Letter);
18 Originated with Verity-Prime; Sent to UNAC
- 19 10. 2020.05.05 – Verity-Prime Refutation of Union’s Request for Information #3 (Letter);
20 Originated with Verity-Prime; Sent to UNAC
- 21 11. 2020.05.07 – Prime Letter Regarding Union’s Bargaining Position (Letter); Originated
22 with Rich Martwick; Sent to Max Carbuccia
- 23 12. 2020.05.08 – Union’s Response to Prime’s 2020.05.07 Letter Regarding Union’s
24 Bargaining Position (Letter); Originated With Pamela Chandran; Sent to Rich Martwick
- 25 13. 2020.05.13 – Verity’s § 1113 Proposal to Union (Letter); Originated with Sam Alberts;
26 Sent to Joseph Kohanski
- 27 14. 2020.05.15 – Union’s Clarification Request to Verity Regarding Verity’s 2020.05.13 §
28 1113 Proposal (Letter); Originated with Joseph Kohanski; Sent to Sam Alberts
15. 2020.05.18 – Verity’s Response to Union’s 2020.05.15 Clarification Request (Letter);
Originated with Sam Alberts; Sent to Joseph Kohanski
16. 2020.05.18 – Union’s Response to Verity’s 2020.05.18 Response to Union’s Clarification
Letter (Letter); Originated with Joseph Kohanski; Sent to Sam Alberts
17. 2020.05.20 – Verity’s Response to Union’s 2020.05.18 Response (Letter); Originated with
Sam Alberts; Sent to Joseph Kohanski
18. 2020.05.28 – Saint Francis Medical Center Audited Financial Data for Fiscal Years 2016
through 2019 (Chart); Originated with Jane Carter

Exhibit 1

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

In re

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

Debtors and Debtors In
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☒ Affects All Debtors

- ☐ Affects Verity Health System of
California, Inc.
☐ Affects O'Connor Hospital
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Debtors and Debtors In
Possession.

Lead Case No. 18-20151-ER

Jointly Administered With:

CASE NO.: 2:18-bk-20162-ER
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CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

**DEBTORS' REPLY TO OPPOSITIONS FILED
BY THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS AND SEIU-UHW
TO THE MOTION FOR ENTRY OF AN
ORDER AMENDING KEY EMPLOYEE
INCENTIVE PLAN AND KEY EMPLOYEE
RETENTION PLAN; AND DECLARATION
OF RICHARD G. ADCOCK IN SUPPORT
THEREOF**

[Related Docket No. 4081, 4202, 4203]

Hearing:

Date: March 17, 2020

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

REPLY TO OPPOSITIONS¹

Verity Health System of California, Inc., a California nonprofit benefit corporation and the Debtor herein (“VHS”), and the above-referenced affiliated debtors, the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby file this reply (“Reply”) to *SEIU-UHW’s Opposition to Debtors’ Motion for Entry of An Order Amending Key Employee Incentive Plan and Key Employee Retention Plan* [Docket No. 4202] (the “SEIU-UHW Opposition”) and the *Official Committee of Unsecured Creditors’ Limited Opposition to Debtors’ Motion for Entry of an Order Amending Key Employee Incentive Plan and Key Employee Retention Plan* [Docket No. 4203] (the “Committee Limited Opposition,” and referred to collectively with the SEIU-UHW Opposition as the “Oppositions” and individually an “Opposition”) to the *Debtors’ Notice of Motion and Motion for Entry of Key Employee Incentive Plan and Key Employee Retention Plan; Memorandum of Points and Authorities and Declaration of Richard G. Adcock in Support Thereof* [Docket No. 4081] (the “Motion”). In response to the Oppositions filed by the Official Committee of Unsecured Creditors (the “Committee”) and by Service Employees - United Healthcare Workers West (“SEIU-UHW,” and referred to collectively with the Committee as the “Objectors,” and each an “Objector”) and, in further support for the relief sought by the Motion, the Debtors attach the Declaration of Richard G. Adcock (the “Reply Declaration”) and the Settlement Agreement (as defined herein and attached to the Reply Declaration as **Exhibit “A”**), and state as follows:

I.

INTRODUCTION

The Motion seeks approval of Amendments² to the two previously Court-approved Bonus Programs, the KEIP and the KERP in order to incentivize and reward a select group of employees and managers whose extra efforts remain critical to the successful disposition of the Debtors’

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

² Capitalized terms not defined in this Reply shall have the meaning ascribed to them in the Motion.

1 remaining assets and the Cases more generally. The Objectors have filed Oppositions to the
2 Motion, neither of which is supported by admissible evidence that overrides the Debtors' business
3 judgment or otherwise warrants denial of the requested relief.

4 The Committee, for its part, does not oppose the proposed Amendments *per se*. Rather, it
5 avers that all administrative expense claims should be paid in full. Leaving aside the fact that the
6 Committee represents the interests of prepetition general unsecured claim holders and not the
7 interests of higher priority postpetition administrative claim holders, the stated concern is
8 misplaced. The funds designated for the amended Bonus Programs come in the first instance from
9 the lenders' "Cash Collateral." Yet, even in the absence of this carve-out, the Committee's attempt
10 to condition approval of the Motion on a guaranty that all administrative claims will be paid (a
11 demand that it did not make in response to the original or amended KEIP or KERP) is not an
12 appropriate basis to deny approval of the Amendments. Indeed, the Court just overruled the
13 Committee's same objection in the tentative ruling granting the Debtors' cash collateral stipulation
14 with its prepetition secured lenders. *Tentative Ruling*, March 10, 2020 ("3/10/2020 Tentative
15 Ruling"), at 26 of 51.

16 SEIU-UHW joins in the Committee's administrative claim-based objection and raises two
17 additional arguments: i) "there is no reasonable relationship between the efforts and outcome"
18 particularly with respect to the metric upon which the VHS KEIP is predicated for persons who
19 have not received any bonus to date and ii) the "bonus programs unfairly discriminate against rank
20 and file workers . . ." SEIU-UHW Opposition at 2. SEIU-UHW's arguments are without legitimate
21 support and are contradicted by the evidence in the record, including prior declarations and the
22 supplemental testimony of Richard G. Adcock attached to the Motion. Moreover, the declaration
23 submitted by SEIU-UHW's outside counsel concerning confidential settlement discussions in
24 connection with the closure of St. Vincent Medical Center ("SVMC") add no weight. Leaving
25 aside the impropriety of such disclosure, SEIU-UHW acknowledges that the settlement discussions
26 resulted in a written settlement agreement executed on March 3, 2020 (the "Settlement
27
28

1 Agreement),³ which provides *inter alia*, SEIU-UHW represented employees with prompt payment
2 from a pool of \$500,000 of secured lender collateral and allowed unsecured claims for severance.
3 Settlement Agreement, ¶¶ 2, 5.⁴ Moreover, the consideration provided for under the Settlement
4 Agreement is in addition to the Debtors' prior payment in each employee's final paycheck of
5 remaining postpetition wages and unused postpetition paid time off ("PTO"). Reply Declaration,
6 ¶ 3. Thus, there is no legitimate basis to SEIU-UHW's assertion that the Amendments are
7 prejudicial to "rank and file" employees.⁵ For these and other reasons as noted below, the Court
8 should overrule the Oppositions and grant the Motion.

9 **II.**

10 **REPLY**

11 **A. THE ARGUMENT TO CONDITION OR OTHERWISE DEPRIVE APPROVAL OF**
12 **THE BONUS PROGRAMS PAYMENT OF ALL ADMINISTRATIVE EXPENSES**
13 **IS WITHOUT MERIT.**

14 Both Objectors contend, either directly (as by SEIU-UHW) or more opaquely (as by the
15 Committee), that the Bonus Programs should not be approved unless the Debtors provide sufficient
16 assurances that any and all administrative expenses that may arise will be paid in full. This
17 argument fails for several reasons.

18 First, neither Objector cites to a single case that has conditioned approval of a bonus
19 program on a requirement that all potential administrative expenses that may arise be paid in full.
20 Nor can they because this is not a recognized factor under *In re Dana Corp.*, 358 B.R. 567, 576
21 (Bankr. S.D.N.Y. 2006); *See* Motion, at 15 (citing enumerated factors). In fact, as this Court just
22 recognized:

23 ³ By the time of the filing of this Motion, the Debtors have or are otherwise in the process of filing
24 a motion seeking approval of the Settlement Agreement.

25 ⁴ It should be noted that in the settlement agreements approved by order of this Court entered on
26 December 4, 2019, SEIU and other unions agreed that severance would not be payable until after
27 confirmation of a confirmed plan. [Docket No. 3604], Exhibit 1 to the corresponding *Declaration*
28 *of Richard G. Adcock*, ¶ 7(b). Thus, for SEIU-UHW to assert that the Debtors' failure to pay
severance was somehow prejudicial is without merit. Rather, SEIU-UHW has opted to receive
payment of \$500,000 as soon as possible.

⁵ In fact, SEIU-UHW agreed to "support and not otherwise oppose and sale or disposition of St.
Vincent or its assets." Settlement Agreement, ¶ 13.

The Code's only requirement is that administrative claims be paid in full as of the effective date of a Plan, unless the administrative claimant agrees to different treatment. § 1129(a)(9). In any bankruptcy case, there is always some risk that there will not be sufficient cash available at the confirmation stage to pay all administrative claimants in full. The existence of such risk does not mean that the Debtors are neglecting their fiduciary duties or are failing to operate their businesses prudently.

3/10/2020 Tentative Ruling, at 26 of 51.

Second, the argument is based upon a speculative, hypothetical harm and, as such, does not provide an actual controversy that may be adjudicated, let alone justify denial of the Motion. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (finding that constitutional standing requires a showing of an "injury in fact" that is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical") (internal citations and quotations omitted); *O'Shea v. Littleton*, 414 U.S. 488, 493-94 (1974) ("Plaintiffs in the federal courts must allege some threatened or actual injury resulting from putatively illegal action before a federal court may assume jurisdiction [...] Abstract injury is not enough. It must be alleged that the plaintiff has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged statute or office conduct.") (citations omitted); *Cal. Energy Res. Conservation & Dev. Comm'n v. Johnson*, 807 F.2d 1456, 1463 (9th Cir. 1986) ("A decision at this juncture would resolve a dispute about hypothetical rates. Courts have no business adjudicating the legality of non-events.") (citation omitted); *Shuckett v. DialAmerica Marketing, Inc.*, Case No. 17-cv-2073, 2019 WL 3429184, at *3 (S.D. Cal. Jul. 30, 2019) ("[The] evidence here only supports a finding of conjectural or hypothetical injury, and does not give the Court subject-matter jurisdiction.").

Third, as the representative of general unsecured creditors, the Committee does not have standing to assert the concerns (hypothetical or otherwise) of administrative creditors who they do not represent. The Debtors recognize the general grant to parties-in-interest, including official committees of unsecured creditors, to weigh-in on issues that arise in a bankruptcy case. 11 U.S.C. § 1109(b). Notwithstanding this general grant, however, courts should take into account a party's

1 actual stake when determining what, if any, weight to confer to it. *See In re James Wilson Assocs.*,
2 965 F.2d 160, 170 (7th Cir. 1992) (“[W]e do not think that [§ 1109] was intended to waive other
3 limitations on standing, such as that the claimant be within the class of intended beneficiaries of the
4 statute that he is relying on for his claim, although a literal reading of section 1109(b) would support
5 such an interpretation. We think all the section means is that anyone who has a legally protected
6 interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with
7 respect to any issue to which it pertains.”). Here, the Committee’s Limited Opposition to the
8 Motion should be given little to no weight because the Committee is not charged with the duty to
9 advance the interests of postpetition, administrative claimants; to the contrary, the Committee exists
10 as a function of § 1102 solely to “represent the interests of unsecured creditors.” *In re PG&E Corp.*,
11 Case No. 19-3088-DM, 2019 WL 2482412, at *2 (Bankr. N.D. Cal. May 28, 2019) (“As required
12 by section 1102, the UST appointed the OCUC to represent the interests of unsecured creditors.”);
13 *see also* 11 U.S.C. § 1102(a)(1). There is no question that postpetition, administrative claims are
14 distinct from general unsecured claims, the holders of which are represented by the Committee.
15 *See TreeSource Indus., Inc. v. Midway Engineered Wood Prods., Inc. (In re TreeSource Indus.,*
16 *Inc.)*, 363 F.3d 994, 995 (9th Cir. 2004) (“We must decide whether obligations . . . arose prior to .
17 . . rejection of the lease, and thus should be treated as an administrative expense claim, or upon
18 rejection such that [the] claims . . . are unsecured.”).⁶

19 Fourth, it is worth reemphasizing that the Bonus Programs are, in the first instance, to be
20 paid from the secured lender’s Cash Collateral. This carve-out is the same form of treatment as
21 provided to SEIU-UHW under the Settlement Agreement. As such, SEIU-UHW’s assertion that
22 the Bonus Program is deficient because it may provide some payments in advance of the secured

23 _____
24 ⁶ SEIU-UHW’s standing on this matter is also dubious because it has settled all grievances
25 concerning St. Vincent pursuant to the Settlement Agreement and the only other location where
26 SEIU-UHW currently has represented employees is St. Francis Medical Center (“SFMC”), an entity,
27 which in contrast to SVMC, remains financially viable and the subject of potential sale. *See*
28 *Monthly Operating Report, January 2020* [Docket No. 4198] (for the operating period from the
Petition Date to January 2020, SFMC’s earnings before interest, depreciation and amortization was
approximately \$8 million as compared to SVMC, that reported a loss before interest, depreciation
and amortization of approximately \$93 million); *see also Notice of Sale Procedures, Auction Date*
And Sale Hearing [Docket No. 4167].

lenders receiving full payment (SEIU-UHW Opposition at 2) fails because the parties impacted under such a scenario are the very secured creditors that have consented to the carve-out. *See In re Glob. Home Products, LLC*, 369 B.R. 778, 787 (Bankr. D. Del. 2007) (approving KEIP where KEIP was “part of Debtors’ budget which the DIP lenders, whose money is at risk and whose financial acumen is apparent, approved.”); *In re Aralez Pharm. US Inc.*, 2018 WL 6060356 (Bankr. S.D.N.Y. Nov. 19, 2018) (no objection from secured creditors whose funds would be at risk).

B. SEIU-UHW’S ASSERTION THAT THE VHS SYSTEM KEIP (IN PARTICULAR) IS A “LAY UP” IS WITHOUT MERIT.

Next, SEIU-UHW asserts that the Amendments are improper because the Amendments (namely VHS KEIP bonuses) are not based upon sufficiently “high hurdles.” SEIU-UHW Opposition at 3.

In support, SEIU-UHW attempts to rely upon the decision in *In re Pilgrim’s Pride Corp.*, 401 B.R. 229 (Bankr. N.D. Tex. 2009) for the principle that the Court should apply some amorphous, heightened standard rather than the business judgment test. This argument fails for several reasons. First, this Court, relying on New York and Delaware case authority, has utilized the business judgment test and in doing so recognized that “[t]he majority of courts have found that this [§ 503(c)(3)] standard is no different from the business judgment standard under § 363(b).” *See Hearing Re: [Docket No. 631] Motion /Notice of Motion For Entry of Order Authorizing and Approving (I) Key Employee Incentive Plan, and (II) Key Employee Retention Plan; Memorandum of Points and Authorities In Support Thereof; Declarations of Richard G. Adcock and Christopher J. Kearns Filed Concurrently Herewith* [Docket No. 814, at 53] and *Hearing Re: [Docket No. 3240] Motion Debtors’ Notice of Motion and Motion for Entry of an Order Amending Key Employee Incentive Plan; Memorandum of Points and Authorities In Support Thereof; Declaration of Richard G. Adcock Filed Concurrently Herewith* [Docket No. 3550, at 18-19]. Second, *Pilgrim’s Pride* addressed an issue of a noncompetition agreement. As such, *Pilgrim’s Pride* is distinguishable from the present matter that seeks approval of Amendments to Bonus Programs designed to motivate employees to go above and beyond what is currently required of them, not to merely

1 prevent them from competing.⁷ Moreover, even if this Court were to find *Pilgrim's Pride*
2 applicable, the Debtors have met such standard for the reasons articulated in the Motion and as
3 otherwise provided in the record.

4 Next, SEIU-UHW suggests that the metrics being used for the VHS KEIP are improper
5 because they allow VHS KEIP bonuses to begin at \$600 million in disposition value, or \$310
6 million above the \$290 million received in the Cases to date. In doing so, SEIU-UHW ignores the
7 fact that the original VHS System bonuses began at \$300 million, or \$300 million *less than* the
8 current Amendments. Thus, this hurdle is now actually higher.

9 Further, SEIU-UHW submits no credible evidence or argument for its suggestion that the
10 challenges faced by potential VHS KEIP bonus recipients have been made somehow easier due to
11 the failure to close by Strategic Global Management (“SGM”). To the contrary, the Motion and the
12 supporting Declaration of Adcock demonstrates how and why these challenges are greater now.
13 Motion, at 17 (citing Adcock Decl., ¶ 12 (“In fact, due to SGM’s unexpected refusal to close a sale
14 transaction for substantially all of the Debtors’ remaining non-cash assets, remaining Key
15 Employees are now being called upon to work harder and longer to effectuate Plan B.”)). In fact,
16 in connection with the Debtors’ recent efforts to establish bidding procedures with respect to SFMC,
17 the Court emphasized the need for finality as a guiding consideration in assessing bids. *Order*
18 *Setting the Briefing Schedule to Determine Whether Strategic Global Management Should be*
19 *Disqualified from Participating in the Auction* [Docket No. 4161, at 5-9] (“The Court’s findings
20 regarding the proposed bidding procedures are governed primarily by the need to insure that the
21 Winning Bidder at the Auction closes the Sale ... The Court’s overriding objective is to prevent a
22 bidder who later experiences buyer’s remorse from attempting to withdraw from its obligation to
23 close the Sale [...] [T]he Court will likely not approve any APA provision allowing the Winning
24 Bidder to withdraw based upon flaws or defects it discovers in the Purchased Assets after the Bid
25 Deadline.”) The Court’s stated objective is pragmatic and necessary, but it also may impact who
26 may bid and the value that may be recovered from the sale, thus raising the challenge for the VHS

27 _____
28 ⁷ Notably, despite the additional examination applied by the bankruptcy court in *Pilgrim's Pride*,
that court ultimately deferred to the debtors’ business judgment.

1 KEIP participants. Regardless, the Debtors, in consultation with BRG, carefully selected the target
2 metrics and SEIU-UHW has not rebutted the Debtors' business judgment on theory.

3 As the SGM Sale also demonstrated, sales of distressed healthcare assets are, contrary to
4 SEIU-UHW's assertion, "difficult targets to reach" and "clearly not 'lay-ups.'" SEIU-UHW
5 Opposition at 5 (citation omitted). The only alleged "offer" SEIU-UHW attempts to rely in support
6 of its assertion that the Bonus Programs provide an easy challenge, is from "urbanize.la.post" from
7 a year ago regarding alleged interest in SFMC. SEIU-UHW cannot, however, rely on this hearsay
8 or any conjecture to defeat the Debtors' business judgment regarding the probability of sale terms
9 occurring for their hospitals. *See Decision re First § 1113 Motions* [Docket No. 1541, at 14] ("The
10 Objecting Unions cannot speculate on potential transactions as an alternative without presenting a
11 proposed specific transaction to the Court—which the Unions did not do here.") The Debtors'
12 business judgment should be respected as to the terms and conditions needed to incentivize
13 employees under the Bonus Programs.

14 Finally, it should be recognized that inclusion of \$290 million in prior sale proceeds in the
15 new \$600 million KEIP Bonus metric is akin to the situation in *In re Aralez Pharm. US Inc.*, 18-
16 12425 (MG), 2018 WL 6060356 (Bankr. S.D.N.Y. Nov. 19, 2018). There, Bankruptcy Judge Glenn
17 considered a KEIP that had been developed and crafted weeks before the debtors actually filed their
18 motion seeking approval of the same. In the interim, the debtors performed well on a financial
19 basis and negotiated a stalking horse bid for \$240 million. The debtors thus had already met certain
20 budget metrics and an actual KEIP goal of a sale of \$230 million before their motion was heard.
21 Notwithstanding, Judge Glenn approved the KEIP and ruled:

22 The Committee argues that the KEIP amounts to no more than a
23 "layup." At the evidentiary hearing, the Committee claimed that
24 several of the KEIP targets now appear achievable. They note that
25 the Debtors now have \$240 million of bids in hand and now estimate
26 that they are on track to outperform the DIP Budget by increasing
27 cash flow by \$7-10 million. These figures would translate to
28 payments of 81% of the KEIP Participants' base salaries.

The Court is unpersuaded that the targets are not sufficiently
challenging because some of these targets now appear achievable in
hindsight. The Debtors explain that the KEIP Motion was not filed
until roughly two months after the Petition Date because their post-

petition financing facility required the Debtors to obtain the approval of their post-petition lenders before presenting the KEIP to the Court, and the post-petition lenders asked the Debtors to obtain stalking horse bids before seeking approval of the KEIP. (ECF Doc. 274 ¶ 1.) Once the KEIP Motion was filed, the hearing was delayed further to allow the Debtors to negotiate the terms of the KEIP with the U.S. Trustee. The Court will not punish the Debtors for this delay by discounting the work the KEIP Participants have already performed. The Debtors and their financial advisors developed the KEIP in August 2018 [three months before decision] and the KEIP Participants operated with the understanding that the Debtors would be seeking authority to implement the KEIP. The Court sees no issue with reviewing a KEIP that was designed to incentivize work that is already partially performed. *See In re Mesa Air Grp., Inc.*, 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving incentive plan that awarded payments for services already rendered).

Id. at **4-6 (citations included). Again, there is no legitimate basis to deny the Motion.

C. SEIU-UHW’S ASSERTION OF A LACK OF FAIRNESS FOR “RANK AND FILE” EMPLOYEES IS MISPLACED.

SEIU-UHW’s assertion of fairness is without merit. As noted above, the Settlement Agreement reached on March 3, 2020 provides SEIU-UHW represented employees – who had already received payment in full of all outstanding wages and administrative period unused PTO – the opportunity to receive additional payments from a pool of \$500,000 of secured lender collateral as well as unsecured claims for severance. Moreover, given the fact that SEIU-UHW’s only other remaining employees are located at SFMC – an entity that has continuously remained in better financial condition than SVMC – assertions about prejudicial treatment against “rank and file” SEIU-UHW represented employees are baseless.

SEIU-UHW’s other alleged examples of “unfairness” are both irrelevant and incorrect. The SEIU-UHW Opposition at 2, asserts, “the Debtors stopped making contributions to the employees’ pension plans[]” but forgets to mention that this Court already heard arguments on that issue and held that the mere existence of SEIU-UHW’s CBA does not elevate pay prepetition pension claims to administrative expense obligations. Docket No. 614, at 7 of 8 (“Section 1113 was enacted to protect the existence of collective bargaining agreements in chapter 11 cases, not to re-order the priority scheme set by Congress in § 507.”) (quoting *In re Certified Air Techs, Inc.*, 300 B.R. 355,

369 (Bankr. C.D. Cal. 2003). In fact, contrary to SEIU-UHW’s assertion, the Debtors sought and obtained authority to make pension contributions for employees whose pensions benefits were not frozen. Docket No. 612, at 7, ¶ 24.⁸ Next, SEIU-UHW asserts, “[t]he Debtors failed to pay the severance required under the collective bargaining agreement to employees who lost their jobs at Saint Louise Regional Hospital and O’Connor Hospital, and instead successfully rejected its obligation to pay these modest amounts.” SEIU-UHW Opposition, at 2. Again, SEIU-UHW forgets to mention that it had been offered an opportunity to preserve such severance claims – as provided to two other unions – but chose instead to reject the § 1113 proposal offered by the Debtors in connection with the disposition of those two hospitals to Santa Clara County. *Cf. See* Docket No. 1577 (order reflecting approval of § 1113 rejection of SEIU-UHW CBA, including element that union did not accept proposal for good cause), *with* Docket Nos. 1575 & 1576 (orders granting consensual rejection of collective bargaining agreement with accepting unions).

Finally, it is worth noting that the Settlement Agreement does not place many obligations on SEIU-UHW, but among the few that were agreed upon is a requirement that SEIU-UHW “support and not otherwise oppose any sale or disposition of St. Vincent or its assets.” Settlement Agreement, ¶ 13. Thus, any unfairness resides with SEIU-UHW that seeks to deprive other employees of incentives designed to achieve the best result in connection with “a sale or disposition of St. Vincent” and other Debtors other remaining assets.

III.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (i) granting the Motion, (ii) approving the Amendments, and (iii) granting to the Debtors such other and further relief as the Court may deem just and proper.

⁸ Authorizing Debtors “to continue to pay, in the ordinary course of their business, Employee-related expenses and obligations that accrue postpetition in the ordinary course of the Debtors’ business [including] . . . postpetition contributions for active Employees . . . into defined benefit pension plan[s].” *See also Declaration of Carlos De La Parra In Support of Debtors’ Omnibus Response to Objections to Motion to Pay Employee Wages and Salaries* [Docket No. 310-1].

Dated: March 10, 2020

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

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

Attorneys for Debtors

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit "A"

Settlement Agreement

On this 3 day of March, 2020, and subject to approval by order of the Bankruptcy Court (as defined below), Verity Health Care System of California, Inc. ("VHS"), St. Vincent Medical Center ("SVMC"), St. Vincent Dialysis Center ("SVDC," and referred to with SVMC as "St. Vincent") and their affiliates in chapter 11 bankruptcy (collectively the "Debtors," and individually a "Debtor"), on the one hand, and the Service Employees International Union - United Healthcare Workers West ("SEIU-UHW" and, collectively with the Debtors, the "Parties"), on the other, and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"): 1

Recitals

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

WHEREAS, the Debtors previously obtained an order [Docket No. 1577] (the "SCC CBA Order"), approving the modification of the Collective Bargaining Agreement effective November 1, 2018 - October 31, 2021 (the "CBA"), in order to excise the then-covered O'Connor Hospital ("OCH") and St. Louise Regional Hospital ("SLRH") upon closing of the sale [Docket No. 1153] of these assets to Santa Clara County (the "SCC Closing");

WHEREAS, after the entry of the SCC CBA Order, SEIU-UHW and SVMC and St. Francis Medical Center ("SFMC") remained parties to the CBAs;

WHEREAS, in connection with an approved sale of the Debtors remaining hospital assets to Strategic Global Management, Inc., a California Corporation ("SGM"), the Debtors and SEIU-UHW entered into a Settlement Agreement dated September 17, 2019 (the "Settlement Agreement") with the purpose of resolving all or substantially all material issues in dispute between those parties, providing for the treatment of SEIU-UHW claims, and providing for the modification and assignment of the CBA to SGM upon closing of the transaction to SGM (the "SGM Sale"), which was expected to occur no later than December 5, 2019;

WHEREAS, on November 21, 2019, the Debtors filed an *Omnibus Motion For Approval of 1) Settlement Agreements with Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements To SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief* [Docket No. 3604] (the "Omnibus 4-117 Motion") seeking modification and assignment of the CBA (and collective bargaining agreements with other unions), approval of the Settlement Agreement (and similar settlement agreements with other unions) under (*et. al.*) Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and §§ 1113 and 1114 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code").

WHEREAS, on December 4, 2019, the Court approved the Omnibus § 1113 Motion [Docket No. 3755] (the "First Settlement Order");

WHEREAS, SGM did not close the SGM Sale and the SGM Sale did not otherwise close;

WHEREAS, the September Settlement was conditioned upon the SGM Sale closing and, due to the nonclosing of the SGM Sale, the September Settlement became null and void according to its terms;

WHEREAS, on January 6, 2020, the Debtors filed an *Emergency Motion for Authorization to Close St. Vincent Medical Center; Memorandum of Points and Authorities and Declarations in Support Thereof* [Docket No. 3906] (the "Closure Motion"). The Closure Motion was predicated on several facts, including but not limited to, losses in fiscal year 2019 of approximately \$65 million (which translates to daily cash losses of more than \$175,000) and the absence of a buyer that presented a feasible offer to purchase St. Vincent as a going concern.

WHEREAS, on January 9, 2020, the Court granted the Closure Motion [Docket Nos. 3933 and 3934]. Subsequently, SVMC was closed and no longer provides medical care to patients.

WHEREAS, due to the closure of SVMC, SEIU-UHW represented employees were terminated, some of whom have obtained employment with SFMC;

WHEREAS, due to the closure of SVMC, the Debtors no longer need the CBA to apply to St. Vincent;

WHEREAS, SVMC no longer provides medical care to patients;

WHEREAS, prior to entry of the Settlement Agreement, SEIU-UHW and the Debtors entered into good faith bargaining to resolve all issues concerning the closure of SVMC, which were manifested by a Proposal by the Debtors to SEIU-UHW, which SEIU-UHW accepted (as **Exhibit 1** hereto);

WHEREAS, SEIU-UHW has filed proofs of claim (each a "POC" and, collectively, along with any and all amendments, the "POCs") in the Bankruptcy Cases against the Debtors, which have been designated with the following claims numbers: #4725, #5160, #6186 and #6221 (Verity Medical Foundation), #4723 and #5117 (VHS), #4722 and #5140 (SVMC), #4719 and #5137 (SLRH), #4726 and #5150 (SFMC), #5158 and #4718 (OCH);

NOW THEREFORE, the Parties agree as follows:

Terms

1. Upon Bankruptcy Court approval of this Agreement, the CBA immediately shall be deemed and shall be modified in the form attached hereto as Exhibit 1 (the "Modified CBA") under § 1113 of the Bankruptcy Code (the "Modification") so as to remove all references and application to SVMC.

2. To resolve and settle all claims, controversies, grievances, and unfair labor practice charges related to the closure of SVMC, including, but not limited to, any claims raised under POC #4722 and #5140 or any other POC related to St. Vincent, and under the terms stated below:

A. the Debtors will make payments that total one aggregate amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) (the "Settlement Payment") with respect to and for the benefit of SEIU-UHW and its respective represented bargaining unit employees (including those who were employed on a *per diem* basis) who worked at St. Vincent and are not actively employed by St. Francis Medical Center as of the date of the entry of a Bankruptcy Court order approving the Settlement Agreement (as defined below) (each an "Eligible BU Member" and, collectively, the "Eligible BU Members"); and

B. in the event that the Debtors' effects bargaining/§ 1113 modification settlement payment to SEIU-UHW for the waiver of claims, grievances, and unfair labor practices against the Debtors arising out of or related to the closure of St. Vincent, if any, exceeds \$500,000, the Settlement Payment in this agreement will be adjusted to match that amount.

3. SEIU-UHW will provide the amount for distribution of the Settlement Payments to each Eligible BU Member (each, a "BU Member Share").

4. Each BU Member Share shall be made payable to each Eligible BU Member and be given to SEIU-UHW to be distributed to each Eligible BU Member, only after occurrence of the following:

A. fifteen (15) business days after entry of a Bankruptcy Court order approving the Settlement Agreement (as defined below);

B. eight (8) days after: i) execution and delivery by SEIU-UHW to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims, grievances or unfair labor practices against the Debtors and all related or affiliated entities, owners, principals, agents, employees, officers, directors, agents, attorneys and other professionals (collectively referred to with the Debtors as the "Released Parties") arising out of or related to the closure of St. Vincent, including any claims under the Federal Worker Adjustment and Retraining Notification Act and the California Worker Adjustment and Retraining Notification Act, or any other alleged

violation of state or Federal law, including any alleged claims arising from the CBA (collectively, the “Released Claims”); ii) SEIU-UHW’s withdrawal of any pending unfair labor practice charges related to St. Vincent or its closure; and iii) withdrawal of SEIU-UHW’s information requests concerning St. Vincent. This provision does not affect the ordinary course payment of the full-time guarantee (Article 11) or applicable across the board retroactive increase, which was due under the CBA as on the first full pay period following November 1, 2019. Additionally, the SEIU-UHW general release and waiver does not affect severance claims as outlined in section 5 below; and

C. eight (8) days after execution by an Eligible BU Member and delivery by SEIU-UHW to the Debtors of a waiver and general release (in a form acceptable to the Debtors) of any and all claims against the Released Parties arising out of or related to the closure of St. Vincent, including any Released Claims except for severance claims, for which the employees reserve the right to file as general unsecured claims as outlined in section 5 below.

5. Each Eligible BU Member who provides a timely waiver and release as described in section 4.C. shall receive, in addition to the BU Member Share, an allowed general unsecured claim in the amount otherwise due and owing under the CBA for severance. Any other SEIU-UHW represented employee who was hired by SFMC or another Debtor is entitled to receive an allowed general unsecured claim in the amount otherwise due and owing under the CBA for severance, provided that person executes and delivers a waiver and release that is timely delivered to the Debtors. The amount of general unsecured claims will be provided by the Debtors to SEIU-UHW who will then convey such information to its represented employee members, and thereupon, SEIU-UHW and employees shall have 30 days from the date of delivery of the information to SEIU-UHW to file in the Bankruptcy Court any challenge to the proposed claim amount(s) provided by the Debtors. For the avoidance of doubt, any and all amounts owing for severance will be allowed as a general unsecured claim only, and not as priority claim or administrative expense and no other claim for severance shall exist or otherwise remain.

6. Any BU Member Share that is not cashed or otherwise negotiated within 90 days of issuance shall a) render the BU Member Share void, b) permanently nullify that employee’s status as a BU Eligible Member, and c) cause the amount of the BU Member Share to permanently revert back to the Debtors.

7. Eligible BU Members who do not execute a general release and waiver by April 15, 2020 shall forfeit their BU Member Share which shall permanently revert back to Debtors.

8. SEIU-UHW shall assist and cooperate with Debtors to distribute general releases/waivers to Eligible BU Members.

9. This Agreement does not constitute an admission or concession of liability by the Debtors on account of any Released Claims or claim for severance held by or other obligations that may be allegedly owed to SEIU-UHW or its represented employees.

10. As between SEIU-UHW and the Debtors, to the extent there is any conflict between this Agreement and the CBA or the Modified CBA, this Agreement shall control.

11. The Bankruptcy Court shall retain and have exclusive jurisdiction to address any dispute concerning the terms and interpretation of this Agreement.

12. SEIU-UHW agrees to support any Plan of the Debtors that does not contradict the material terms of this Agreement.

13. SEIU-UHW agrees to support and not otherwise oppose any sale or disposition of St. Vincent or its assets.

14. The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.

15. SEIU-UHW hereby withdraws any outstanding information requests that relate to any claims or issues being resolved by this Agreement, the § 1113 process or St. Vincent.

16. This Agreement is subject to the approval of the Bankruptcy Court. Approval of this Agreement will be sought by motion of the Debtors and affirmatively supported by SEIU-UHW.

17. The terms of this Agreement supersede any prior agreement(s) between the Parties.

18. Any modification of this Agreement must be in writing and approved by both Parties.

19. The Parties expressly agree that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated damages and hereby waive and releases any and all rights under Section 1542 of the California Civil Code as said statute pertains to the claims released hereunder. California Civil Code Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

20. For the avoidance of doubt, the releases noted in paragraphs 4.B and 4.C shall contain language similar to that which is contained in paragraph 19 so as to comply with California Civil Code Section 1542.

21. By executing below, each Party represents that it has the requisite authority to enter into and implement all terms of this Agreement, subject to Bankruptcy Court approval.

ADDED TO

SIGNATURE

By

The Debtors

By

3/3/2024

H20

Exhibit 2



UNAC/UHCP

United Nurses Associations of California/Union of Health Care Professionals

UNAC/UHCP is affiliated with NUHHCE, AFSCME and the AFL-CIO

955 Overland Court, Suite 150, San Dimas, CA 91773-1718

Telephone: (909) 599-8622

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Website: www.unacuhcp.org

An Nguyen Ruda
Bartko Zankel Bunzel
One Embarcadero Center, Suite 800
San Francisco, California 94111

April 20, 2020

RE: UNAC/Verity/Prime - Information Request #1

Dear Ms. Ruda:

In preparation for bargaining at the St. Francis Medical Center (the “Medical Center,” “Employer,” or “Management”), pursuant to Bankruptcy Code section 1113 and section 8(a)(5) of the National Labor Relations Act, the United Nurses Associations of California/Union of Health Care Professionals (the “Union” or “UNAC/UHCP”) requests the following information. Please note that the term “previous contract year” is deemed to mean provisions of the requested information, segregated to track each of the following time periods: (i) the previous contract year, as that term has generally been used as between UNAC and the Medical Center; (ii) for the period between March 3, 2018 and March 2, 2019; and (iii) for the period from March 3, 2019 through March 31, 2020. As used herein, the terms “Buyer” or “Prime” indicate Prime Healthcare Services, Inc. as presumptive purchaser of the Medical Center.

I. The following information in a single Excel spread sheet for each bargaining unit member:

Basic Information

1. Name, first and last.
2. Employee ID.
3. Classification.
4. Shift (Day, Evening, Night, or Split Shift).
5. 8, 10, 12-hour shift or other arrangement.
6. Unit/Department.
7. Most Recent Date of Hire to the employer (and most recent date of hire as a registered nurse if different).
8. Status (Full-time, Part-time, Per-Diem).
9. Current Hourly Base Rate.
10. RN License Date.
11. Years of Experience Date.
12. Years of Experience.

13. Grid & Step
14. Home Address.
15. Telephone Number.
16. Date of Birth.

Shift Differential

1. Total number of hours for which each bargaining unit member received an evening shift differential in the previous contract year, including non-worked hours.
2. Total amount paid to each bargaining unit member for the evening shift differential in the previous contract year.
3. Total number of hours for which each bargaining unit member received a night shift differential in the previous contract year, including non-worked hours.
4. Total amount paid to each bargaining unit member for the night shift differential in the previous contract year.

Charge Differential

1. Total hours each bargaining unit member received a charge differential in the previous contract year.
2. Total amount received by each bargaining unit member for the charge differential in the previous contract year.

Preceptor Differential

1. Total number of hours for which each bargaining unit member received a preceptor differential in the previous contract year.
2. Total amount received by each bargaining unit member for the preceptor differential in the previous contract year.

Bilingual Differential

1. Identify which bargaining unit employees are currently designated to receive the bilingual differential.

Jury Duty Pay

2. Number of hours each bargaining unit member has received jury duty pay in the previous contract year.
3. Amount of jury duty pay received by each bargaining unit member in the previous contract year.

Without Pay

1. Number of hours each bargaining unit member spent on stand-by on behalf of the employer in legal proceedings in the previous contract year.
2. Amount received by each bargaining unit member for time spent on stand-by on behalf of the employer in legal proceedings in the previous contract year.

Holiday Premium

1. Number of hours each employee received a holiday premium of 1.5x regular rate of pay in the previous contract year.
2. Total amount of holiday premium received by each bargaining unit member at 1.5x regular rate of pay in the previous contract year.
3. Number of hours each bargaining unit member received a holiday premium at 2x regular rate of pay in the previous contract year, as a result of working more than 8 hours on Christmas, Thanksgiving, or New Year's.
4. Total amount of holiday premium received by each employee at 2x their regular rate of pay in the previous contract year, as a result of working more than 8 hours on Christmas, Thanksgiving, or New Year's.
5. Number of hours each bargaining unit member received a holiday premium for an additional shift, as a result of also being regularly scheduled to work on a designated premium holiday during the same workweek.
6. Total amount of holiday premium received by each bargaining unit member for working an additional shift during the same workweek that they were also regularly scheduled to work on a holiday.

Educational Reimbursement

1. Amount of education reimbursement received by each bargaining unit member in the previous contract year under Section 2016 of the contract.

Paid Education Leave

2. Total number of hours each bargaining unit member received paid education leave in the previous contract year.
3. Total amount received by each bargaining unit member for paid education leave.

On-Call Pay

1. Total number of hours for which each bargaining unit member received on-call pay

2. Total amount of on-call pay each bargaining unit member received in the previous contract year.

Call-Back Pay

1. Total number of hours for which each bargaining unit member has received call-back pay.
2. Total amount of call-back pay each bargaining unit member received in the previous contract year.

Double-Back Pay

1. Total number hours, in the previous contract year, for which each bargaining unit member has received 2x of their regular rate of pay as a result of being called-back within 24 hours of completing a 12-hour shift (Section 1433 of the contract).
2. Total amount of double-back pay each bargaining unit member has received, in the previous contract year, as a result of being called-back within 24 hours of completing a 12-hour shift (Section 1433 of the contract).

Gross Earnings

1. Gross earnings for two previous contract years and the current contract year to date.

II. In a separate Excel spread sheet, please provide that following information for every instance a bargaining unit member received reporting pay in the previous contract year:

1. Employee Name.
2. Employee ID Number.
3. Base Hourly Rate.
4. List of wage premiums and/or differentials paid during each instance an employee received reporting pay.
5. Total hourly rate paid to each employee during each instance an employee receives reporting pay.
6. Total number of actual hours worked for each instance a bargaining unit member received reporting pay.

III. In a separate Excel spread sheet, please provide that following information for every instance a bargaining unit member received severance pay over the previous three contract years:

1. Employee Name.
2. Employee ID Number.
3. Years of Service.
4. Number of weeks of severance pay received.
5. Hourly rate at which severance pay was paid out.

IV. In a separate Excel spread sheet, please provide the following information for every bargaining unit member who receives a bonus or reimbursement for successfully completing or maintaining a national certification:

Bonuses for Completion of New Certifications

1. Identify which bargaining unit members have received bonuses for completing a new certification in the previous contract year. Provide name and employee ID for each of these bargaining unit members.
2. Name of any new national certifications obtained by each bargaining unit member in the previous contract year.
3. Total amount received by each bargaining unit member for obtaining a new certification in the previous contract year.

Bonuses for Maintaining Certification

1. Identify which bargaining unit members have received bonuses for maintaining certification(s) in the previous contract year. Provide name and employee ID for each of these bargaining unit members.
2. For each employee, name the certification(s) for which he/she is receiving a bonus.
3. Total amount received by each bargaining unit member for maintaining a certification(s) in the previous contract year.

V In a separate Excel spread sheet, please provide the following information regarding the certification and recertification costs incurred by the employer for each bargaining unit member designated as a MICN

1. Bargaining unit member name.
2. Employee ID.
3. Itemized list of all certification and recertification costs incurred by the employer for each bargaining unit member designated as a MICN.

VI. In a separate Excel spread sheet please provide an itemized list for each bargaining member of any additional premium, differential, or other type of pay that is awarded on an hourly basis that is not covered by the previous sections of this information request. This excel spread should include:

1. Bargaining unit member name.
2. Employee ID.
3. Explanation of why each employee qualified for each premium, differential, etc.
4. The rate at which each premium, differential, etc. was paid to each employee in the previous contract year.
5. The number of hours for which each bargaining unit member received each premium, differential, etc. in the previous contract year.
6. Total amount received by each bargaining unit member for each premium, differential, etc. in the previous contract year.

VII. In a separate Excel spread sheet please provide an itemized list of any bonus, reimbursement, or any other payment paid to each bargaining unit member in the previous contract year, that isn't covered by any previous section of this information request. For each instance a bargaining unit member receives such a bonus or reimbursement, please provide the following information:

1. Bargaining unit member name.
2. Employee ID.
3. Description of the bonus or reimbursement received.
4. Date.
5. Amount received.

VIII. A copy of all practices, procedures and methods, utilized in order to determine the amount and distribution of pay, wage and/or other remuneration to bargaining unit members.

IX. Please provide the following information in an Excel spread sheet for health, vision, and dental benefits:

1. Aggregate amount paid by the employer for the health benefit premiums of bargaining unit members for calendar years 2017, 2018, 2019, and 2020 to date.
2. Aggregate amount paid by bargaining unit members health benefit premiums for calendar years 2017, 2018, 2019, and 2020 to date.

3. An Excel sheet with health plan enrollment information for each bargaining unit member for calendar years 2018, 2019, and 2020 to include:

- a. Bargaining unit member name.
- b. Employee ID.
- c. Plan Name.
- d. Level of Coverage.
- e. Premium costs for each bargaining unit member.
- f. Employee Share.
- g. Employer Share.

4. The employer's total cost of health benefits for the bargaining unit in calendar years 2017, 2018, 2019, and 2020 to date.

5. Bargaining unit members total cost of health benefits in calendar years 2017, 2018, 2019, and 2020 to date.

X. An Excel spread sheet with the following information regarding total cost of benefits for the following: AD&D, long-term disability, group life, dependent life, flexible spending accounts, and retirement plan. This spread sheet should be broken down for each bargaining unit member and contain the following information:

1. Employee Name.
2. Employee ID.
3. Type of Benefit.
4. Name of Plan.
5. Level of Coverage.
6. Employee contribution (amount and percentage, if applicable).
7. Employer Contribution or annual cost to employer (amount and percentage, if applicable).

XI. Defined Benefit Retirement Plan: For employees enrolled in the Defined Benefit Retirement Plan please provide the following:

1. Bargaining unit member name.
2. Employee ID.

3. Years of Vested Service.
4. Date of Hire used to calculate employer contribution rate.
5. Employer contribution rate.
6. Total annual cost per bargaining unit member.
7. Total annual paid compensation used to calculate employer contribution rate.
8. Total annual hours used to calculate employer contribution rate.

XII. Defined contribution retirement plan.

1. Bargaining unit member name.
2. Employee ID.
3. The dollar amount and percentage of each employee's eligible wages that the medical center contributed to retirement in the previous contract year.

XIII. Please also provide the following additional information related to all benefit plans which bargaining unit member are either a participant of and/or have the option of participating in. Benefit plans include, but are not limited to, medical, vision, dental, AD&D, long term disability, group life, dependent life, flexible spending accounts, and pension plan/401(k).

1. The number of bargaining unit employees enrolled in each plan.
2. Total budget for each type of benefit and/or plan for the bargaining unit.
3. Plan document.
4. Any trust agreement related to each plan.
5. The latest Summary Plan Description for each plan with all amendments.
6. Any rules and regulations governing the operation of each plan not included above.
7. The last three 5500s filed with the Federal Government.
8. The last three audited financial statements. If no audited financial statement exists for any of these periods, please provide an unaudited financial statement for such period.
9. The last three actuarial reports, if any.
10. The last three Summary Annual Reports distributed to plan participants.
11. The last three Summary of Material Modifications distributed to participants.

12. Any contracts between the plan and any third party including, but not limited to, insurance contracts and contracts with custodians of assets and investment managers.
13. Any policies adopted by the fiduciaries of the plan, including but not limited to, any investment policy, trustee expense policy, cost sharing policy, and funding policy.
14. Any insurance policy and/or bonding policy covering the plan and its fiduciaries.
15. Minutes of any meetings regarding the plan during the last three years.
16. The last Internal Revenue Service determination of the tax qualification for the plan.
17. Any document which shows the current assets of each plan including a description of those assets.
18. Copies of all claims for coverage under the plan made by bargaining unit employees during the last five years as well as copies of any correspondence or other documents with respect to the processing of those claims and the payments of those claims.
19. The name, address and principal contact of the office which administers each plan.

XIV. Our members are interested in having a fair and equitable leave policy whether those leaves are for short or long periods. Such leaves may be for many purposes including funeral, further study, travel, maternity, paternity, family obligations, adoption, illness or recreation. For purposes of bargaining over such an issue we ask that you provide the following information:

1. A copy of all company leave policies.
2. A list of all bargaining unit employees who have taken leave for any period for any purpose within the last five years. For each employee give the name of the employee, employee ID number, the date the leave began, the date the leave ended, and the reason for the leave.
3. With respect to any bargaining unit employee who has been denied any leave for the last five years please give the name of the employee, the date the employee was denied leave and the reason or reasons that the employee was denied such leave.

XV. PTO: In a separate Excel spread sheet please provide the following information for each bargaining unit member. Please provide this information for the previous contract year, as employed throughout this information request, as well as for the second-previous contract year (broken-out separately for each contract year):

1. Bargaining Unit Member Name.
2. Employee ID.
3. Number of PTO days/hours accrued.

4. Accrual Rate.
5. Amount disbursed to bargaining unit members who elect to cash out PTO under Section 1521 of the labor agreement.
6. Amount disbursed to bargaining unit members who elect to cash out PTO under Section 1522 of the labor agreement.
7. Amount disbursed to bargaining unit members who elect to cash out PTO as a result of severance or death.

XVI. Quality Improvement Program: An Excel spread sheet with the following information for the previous contract year:

1. Bargaining unit member name.
2. Amount received for each type of incentive pay.

XVII. Overtime: Please provide the following information in an Excel spread sheet for each bargaining unit member:

1. Bargaining unit member name.
2. Employee ID.
3. Total overtime hours paid at 1.5x the bargaining unit member's regular rate of pay, along with total cost.
4. Total overtime hours paid at 2x the bargaining unit member's regular rate of pay, along with total cost.

XVIII. Copies of all collective bargaining agreements that are currently in effect between: a) this Employer and any union; and b) Prime and any union. We are also asking that you provide copies of all collective bargaining agreements between this Employer and any union, and between Prime and any union, which have expired at any time during the last five years.

XIX. Please provide the following information with respect to so-called "neutrals" with whom the employer does business, and the same information with respect to so-called "neutrals" with whom Prime does business:

1. The complete list of all vendors and suppliers including the names, addresses, nature of products sold or provided, the amount of purchases from said supplier or vendor within the last 12 months and a copy of any agreement with said supplier or vendor.
2. A list of all banks with whom the Employer does business including the addresses of the

banks, the nature of the business with the bank; if there is a loan, the amount of the loan, if there is a checking or savings account, the amount of money in the savings or checking account.

3. The names of all the newspapers, radio stations and/or television stations where you place advertisements, the amount of the advertisements placed during the last year and copies of any agreements which you have with respect to such advertising medium. If you use an advertising agency, a copy of any agreement with the advertising agency, as well as the name and address of the agency.
4. If the Employer leases any equipment or property from anyone, please provide the amount of the lease, the nature of the property leased, as well as a copy of any such lease.
5. If the Employer leases any property, including real property to anyone, the name of the person or entity to whom the property is leased, a description of the property and a copy of any such lease.
6. A list, including the names, addresses and phone numbers of any customers of the employer for the last 12-month period.

XX. Workers Compensation: Although workers' compensation benefits are to a large degree regulated by state law, there are some areas in which the Employer has discretion, and which affect the terms and conditions of employment. In addition, this information is necessary for us to determine whether there is adequate safety in the work site since we must bargain to assure safe working conditions. *See Minnesota Mining & Manufacturing Company, 261 NLRB 27 (1982)*. For each of the factors below, we also request that Prime provide identical information with respect to all hospitals for which it has a collective bargaining agreement with a union; and, with respect to the Medical Center, if Prime intends to change or vary from the existing practice of the Employer in connection with any of the factors below, to provide information sufficient to evaluate the effect of all such changes or variations.

1. The name, address and contact person for the current workers' compensation carrier.
2. The premium for the workers' compensation coverage including any breakdowns or documents showing the way the premium has been computed for the last five years and any information with respect to rebates or dividends.
3. A copy of all on the job accident reports for the last five years.
4. A copy of all workers compensation claims along with a copy of any document which shows any resolution whether by settlement or litigation for any such claim for the last five years.
5. If you paid any penalties for late payment or any other reason, the name of the person to whom such payments were made, the amount of the payments and the reason for such payments for the last five years.

6. A copy of any current workers' compensation policy.
7. Copies of facility-wide OSHA logs covering the past 24 months.

XXI. Please provide copies of all wage surveys, by the Employer and by Prime, conducted during the last five years.

XXII. Please provide:

1. Management's best estimate of unpaid contributions to Retirement Plan A, for the period from August 30, 2018 through March 31, 2020, and of any available information reflecting that portion allocable to vested interests of UNAC-represented employees, with separate sub-allocations for active, retired and terminated such employees.
2. Management's best estimate of unfunded obligations under Retirement Plan A, for the period from inception through March 31, 2020, and of any available information reflecting that portion allocable to vested interests of UNAC-represented employees, with separate sub-allocations for active, retired and terminated such employees.
3. Management's best estimate of potential termination premiums under Retirement Plan A, and of any available information reflecting that portion allocable to vested interests of UNAC-represented employees, with separate sub-allocations for active, retired and terminated such employees.

XXIII. Please provide:

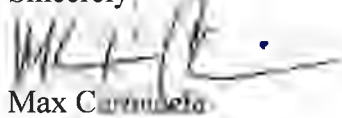
1. Each and every Schedule and Exhibit referenced in that certain Asset Purchase Agreement, dated April 3, 2020 as between the Employer and Prime (the "APA"), including but not limited to Schedule 5.3, pertaining to "Hospital Employees" in APA Section 5.3. *With respect to Schedule 5.3, time is of the essence.*
2. To the extent Prime intends or plans not to hire each and every UNAC-represented employee of the Medical Center, please provide the rules or guidelines that Prime will use in seeking any such reduction in employment of UNAC-represented Employees.
3. Please describe all steps that the Medical Center or Prime has taken, or intends to take, with respect to changes in wages and working conditions for any and all Medical Center employees, other than those represented by UNAC, for the period between the date of this Information Request and December 31, 2021.
4. Specification of each and every modification that Prime seeks in connection with the UNAC/UHCP CBA.

XXIV. Please detail any and all changes contemplated by Prime with respect to the nature, breadth and scope of medical services to be provided at the Medical Center between the date of this information request and December 31, 2021, including but not limited to the anticipated staffing consequences of each such change.

XXV Please provide, for the past three years, all Federal tax returns (Form 990 or Form 1120) and all State tax returns (e.g., California Form FTB 199, California Corporation Franchise Tax Board Income Tax Return Form 100, or analogous State returns for applicable states other than California), for the following entities:

- 1) Verity Health System of California, Inc.
- 2) Saint Louise Regional Hospital
- 3) St. Francis Medical Center
- 4) St. Vincent Medical Center
- 5) Seton Medical Center
- 6) Seton Medical Center Coastsides
- 7) O'Connor Hospital
- 8) Prime Healthcare Services, Inc.

Sincerely,



Max Carmichael

Director of Collective Bargaining

CC: Joe Guzynski, UNAC/UHCP Executive Director
Pamela Chandra, UNAC/UHCP Legal Counsel
Sandi Marques, UNAC/UHCP Staff Representative
Jane Carter, UNAC/UHCP Director of Research, Public Policy, and Regulatory Affairs
Mandy Hartz, UNAC/UHCP Director of Member Engagement
SFRNA Affiliate Officers

Exhibit 3

UNAC/UHCP_SFRNA

April 22, 2020

General Contract Questions:

1. Article 1 – Admitting and Utilization RN not covered? Why? What is your intent with this RN classification/position?
2. Article 1 – Removal of the Charge RN – Why?
 - a. Removal of Clinical Supervisors – Why?
3. Article 4 – explain to me your thinking regarding removal of PD seniority?
 - a. Is it your intent to begin Seniority for all employees at 0 or carryover their Seniority?
4. Article 15 –
 - a. Vacation Accrual
 - i. What will you do with current accrual hours above 440?
 - b. Sick hours
 - i. What will you do with current accrual hours of sick time that is above the proposed levels?
5. Paragraph 204 missing pay for officers doing union work 46hrs/officer and should not suffer lost wages – Is the intent to remove the current long-standing practice?
6. Missing convention language – Why? Prime is already aware of this language and the release time that is needed
7. Paragraph 206-NEO – Are you changing the way NEO currently done? W
8. Right to representation for quality/risk management – Was in your intent to regarding the removal of the language?
9. Notice to employees for discipline 4-24 hrs – Are you planning on not giving notice and flexibility?
10. Providing rep list upon notice of investigation or discipline – The current practice is that HR/management provides the list of representatives to the Employees (that we give to HR/management)?
11. Bulletin board they have 1 and we have 3 – Is your intent to remove the ones that we already have?

12. Paragraph 405- use of seniority to bump into SF from other prime – Please explain your vision regarding the implantation of this language?
13. Paragraph 504 job transfer preference currently by seniority not department – Why the change?
14. Paragraph 817 limit on PCC to be decreased to 6; currently collaborative and involves all directors, HR, and CNO – we have a collaborative system why change it?
15. Paragraph 829 - What's your intent on supervisory duties?
16. Paragraph 1009 process for CAP removed – Why not keep a process that has proven to work effectively?
17. Paragraph 1016 CAP/verbal have always been grieved – this is deviation from our current standards – why the change?
18. Paragraph 1116 Cancel by seniority by rotation and not limited to 2 months – Why the limit?
19. Paragraph 1123 minimal guarantee cancellation when not cancel timely - What's the intent of “patient discharges” as an exemption – please explain further?
20. Intent of p1125 higher bargaining unit classification - please explain further?
21. Rotational shifts - currently do not have rotational shifts – Why the change?
22. Paragraph 1130 proposal does not guarantee weekend off (every other) – please explain further?
23. Paragraph 1131 intent of extra weekend - please explain further?
24. Paragraph 1136 restriction vacation to 2 request – This is major alteration to a major facility that will have massive repercussions – Why is this change needed?
25. Paragraph 1138 intent of vacation committee – please explain how this will work in facility of over 800 RNs?
26. Paragraph 1201 no floating order included or obligation to abide by regulations – please explain further your intent on how you see this work?
27. Paragraph 1302 decrease in charge pay – Please explain your savings with this reduction?
28. Decrease in preceptor pay, no preceptor education - Please explain your savings with this reduction?
29. Correction of pay check errors does not state when correction will occur, currently 24 hours – Will you guarantee a time frame?

30. Intent of decrease in standby pay with trauma and stemi with high call, community higher than offer - Please explain your savings with this reduction?
31. On current loans on retirement what is the intent for pay back – What is your intent?
32. Intent of changing the clinical ladder which is currently comprehensive - Please explain further?
33. Request explanation of health insurance with side by side comparison of current – We need this to understand the full proposal
34. Savings of not having pension? How impacts? Has Prime consider continuing the pension?
35. Article 16 holidays- Please explain your intent?
36. Article 18 decrease in education and national certification intent if wanting to expand to level 1 – How will this help you attained level 1 Trauma certification?

General Financial Questions:

1. What percentage of SFRNA wages and benefits accounted for total labor costs for FYs 16-19? Please identify cost of wages and benefits separately and for each year requested.
2. How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please identify amount per year.
3. What are the outstanding receivables for FY 19?
4. What is the impact of the modified debt? Specifically for FYs 18, 19, and 20.
5. We would like the formal financial audits and reports for FYs 16-19 (not just the amounts reported to the state – your CFO said the financial situation is quite dire for SFMC).
6. We need FY 20 and 21 financial projections if available.
7. What is included in the “reorganization items” reported in the BK monthly financial statements?
8. Prime’s proposal does not address outstanding 401k loans. We had previously addressed this in the last round of restructuring and need to ensure its also part of it.
 - i. Will Prime takeover the current plan or make all employees start a new one?

9. How much does Prime's proposal save the facility vs. the current costs of the current CBA? It was stated that it was 16% higher than Chino and Garden Grove but didn't say about comps to the current SFRNA CBA.

Exhibit 4

Max Carbuccia

From: Max Carbuccia
Sent: Friday, April 24, 2020 3:46 PM
To: An Nguyen Ruda
Cc: Sandi Marques; Jane Carter; Pamela Chandran
Subject: UNAC/UHCP Request for Information #2

An,

UNAC/UHCP is requesting the 2019 audit of St. Francis finances/expenses. This information is needed in order to fully understand and evaluate the proposal management submitted to UNAC/UHCP on April, 22, 2020.

If you have any questions please feel free to contact me.

Thanks

Max Carbuccia
Director of Collective Bargaining
UNAC/UHCP
[5030 Camino de la Siesta, #306](#)
[San Diego, CA 92108](#)
Main #: [619-280-5401](#)
Direct #: [619-610-9512](#)
Fax #: [619-280-7406](#)
max.carbuccia@unacuhcp.org



The mission of UNAC/UHCP is to empower health care professionals to be advocates for UNAC/UHCP members and patients: to create a high quality work environment; to provide economic and professional advancement; and to improve the quality of healthcare.

Exhibit 5



UNAC/UHCP

United Nurses Associations of California/Union of Health Care Professionals

UNAC/UHCP is affiliated with NUTHCT, AFSCME and the AFL-CIO.

955 Overland Court, Suite 150, San Dimas, CA 91773-1718

Telephone: (909) 599-8622

Fax: (909) 599-8655

Website: www.unacuhcp.org

An Nguyen Ruda
Bartko Zankel Bunzel
One Embarcadero Center, Suite 800
San Francisco, California 94111

April 27, 2020

RE: UNAC/Verity/Prime - Information Request #3

Dear Ms. Ruda:

In order to fully evaluate the April 22, 2022 St. Francis Medical Center (the “Medical Center,” “Employer,” or “Management”) proposal, pursuant to Bankruptcy Code section 1113 and section 8(a)(5) of the National Labor Relations Act, the United Nurses Associations of California/Union of Health Care Professionals (the “Union” or “UNAC/UHCP”) requests the following information. UNAC/UHCP recognizes that certain requested information may be sourced from Verity, from Prime, or perhaps both. In the furtherance of good faith bargaining, UNAC expects that Verity will make all efforts to ensure that information sourced from Prime -- particularly, but not limited to, information concerning post-sale operation of SFMC -- will be provided in a timely manner. UNAC reserves all rights and remedies with respect to requested information.

Please provide the following documents:

1. Formal financial audits and annual reports for SFMC for FYs 16-19. Please include all projections for the current fiscal year (FY20) and FY 21.
2. A side-by-side comparison of current vs. proposed health insurance plans.
3. Identify the total labor cost of the UNAC/UHCP units for the last three fiscal years. What are the projections for the current fiscal year (FY 20) and for FY 21. Please identify cost of wages and benefits separately and for each year requested.
4. What percentage of total labor costs are attributable to SFRNA wages and benefits in FYs 16-19?
5. How are UNAC/UHCP unit costs compared with all SFMC labor costs for last three fiscal years?

6. What are the FY 20 and FY 21 projections for UNAC/UHCP and other units? Please include information for other bargaining units, non-union labor and management labor costs.
7. Provide a comparison of UNAC/UHCP Unit labor costs across the industry, including southern California and other comparable Prime facilities.
8. How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please identify amount per year.
9. What are SFMC's outstanding receivables for FY 19 and FY 20? Please identify source(s) and amount(s). Will the financial statements be re-stated to reflect the receipts? If yes, please provide when updated.
10. What is the impact of the modified debt for FYs 18, 19, and 20?
11. What is the expected date to re-open non-essential procedures? What are the projected revenues for re-opening non-essential procedures?
12. Clarify the line item titled "reorganization items" reported in the monthly financial statements filed with the bankruptcy court from filing to date. Include source(s) and cost(s).
13. What is Prime's proposal to address outstanding 401k loans? We had previously addressed this in the last round of restructuring. Will Prime takeover the current plan or make all employees start a new one? If not continuing, what are the savings/costs of the new plan? Is this included in cost/savings comparisons? What is the estimated total outstanding amount owed by UNAC/UHCP members? What is the average amount owed?
14. What concessions are Verity/Prime seeking from other labor groups at SFMC? Please identify savings expected from each of the following groups (identify individually):
 - a. Other bargaining units
 - b. Non-Union units and unions (including retained physicians, etc.)
 - c. Management

15. How much does Prime's proposal save the facility vs. the current costs of the current SFRNA CBA? Specifically identify the following:

- d. Total costs of current CBA vs. Prime's proposal in totality;
- e. Projected savings for the following proposals:
 - i. Decrease in charge pay (Paragraph 1302);
 - ii. Decrease in preceptor pay;
 - iii. Elimination of preceptor education;
 - iv. Decrease in standby pay for trauma and stemi;
 - v. Changes to health insurance;
 - vi. Changes to holidays;
 - vii. Decrease in education and certification;
 - viii. Changes to sick and vacation usage and accrual;

Please provide information requested for the current fiscal year (FY20) and FY 21 projections separately.

16. Given changes to the Pension benefits pursuant to the bankruptcy, what is the cumulative savings from inception of the case through anticipated Prime closing of 9/1/2020?

- f. What is the UNAC/UHCP Unit portion of such saving?
- g. What is the value of such saving, for the UNAC/UHCP Unit, from 9/1/2020 through 12/31/2021?

17. What are the anticipated impacts, including costs and/or savings, for Prime's projected upgrade to a Level 1 trauma center? How will UNAC/UHCP members be affected by this upgrade? Will UNAC/UHCP members be faced with hardships, changes to terms of employment, trainings/education, re-deployment, displacement, etc. Please also include a projected timeline.

Sincerely,



Max Carbuccia
Director of Collective Bargaining

CC: Joe Guzynski, UNAC/UHCP Executive Director
Pamela Chandra, UNAC/UHCP Legal Counsel
Sandi Marques, UNAC/UHCP Staff Representative
Jane Carter, UNAC/UHCP Director of Research, Public Policy, and Regulatory Affairs
Mandy Hartz, UNAC/UHCP Director of Member Engagement
SFRNA Affiliate Officers

Exhibit 6

Ashlie Kennedy

From: Jane Carter <Jane.Carter@unacuhcp.org>
Sent: Tuesday, May 26, 2020 8:40 PM
To: Joe Kohanski
Subject: FW: UNAC/UHCP Request for Information #2

From: Alberts, Sam J. <sam.alberts@dentons.com>
Sent: Monday, April 27, 2020 10:44 AM
To: Max Carbuccia <Max.Carbuccia@unacuhcp.org>; Jane Carter <Jane.Carter@unacuhcp.org>; Pamela Chandran <Pamela.Chandran@unacuhcp.org>; Sandi Marques <Sandi.Marques@unacuhcp.org>
Cc: An Nguyen Ruda (aruda@BZBM.com) <aruda@BZBM.com>; Sharrer, Steve <SteveSharrer@verity.org>; Joel Richlin (PHMI) <JRichlin@primehealthcare.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>
Subject: FW: UNAC/UHCP Request for Information #2

Dear Mr. Carbuccia:

In response to your information request in connection with the CBA proposal and § 1113 process, please note that there are no audited financials for SFMC after 2017. Nevertheless, below are links to the Monthly Operating Reports for Debtors, including SFMC, filed in the Bankruptcy Court and otherwise available on the Bankruptcy Court docket and the KCC website.

If you have any questions, feel free to advise.

Thank you.

Regards,

Sam

<u>Ref#</u>	<u>Monthly Operating Report</u>	<u>URL</u>
1	September 2018	https://www.kccllc.net/verityhealth/document/1820151181105000000000032
2	October 2018	https://www.kccllc.net/verityhealth/document/1820151181130000000000019
3	November 2018	https://www.kccllc.net/verityhealth/document/1820151181231000000000012
4	December 2018	https://www.kccllc.net/verityhealth/document/1820151190204000000000002
5	January 2019	https://www.kccllc.net/verityhealth/document/1820151190228000000000028
6	February 2019	https://www.kccllc.net/verityhealth/document/1820151190402000000000025
7	March 2019	https://www.kccllc.net/verityhealth/document/1820151190430000000000009
8	April 2019	https://www.kccllc.net/verityhealth/document/1820151190531000000000005
9	May 2019	https://www.kccllc.net/verityhealth/document/1820151190701000000000036
10	June 2019	https://www.kccllc.net/verityhealth/document/1820151190731000000000006
11	July 2019	https://www.kccllc.net/verityhealth/document/1820151190830000000000002
12	August 2019	https://www.kccllc.net/verityhealth/document/1820151191003000000000010
13	September 2019	https://www.kccllc.net/verityhealth/document/1820151191031000000000009

14	October 2019	https://www.kccllc.net/verityhealth/document/18201511912020000000000004
15	November 2019	https://www.kccllc.net/verityhealth/document/18201512001070000000000011
16	December 2019	https://www.kccllc.net/verityhealth/document/18201512002030000000000005
17	January 2020	https://www.kccllc.net/verityhealth/document/18201512003020000000000010
18	February 2020	https://www.kccllc.net/verityhealth/document/18201512004010000000000001



Sam J. Alberts
Partner

Our **COVID-19 Client Resources Hub** is available to the public, part of Dentons' global commitment to help our clients and our communities navigate this pandemic's legal and business challenges.

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From: Max Carbuccia <Max.Carbuccia@unacuhcp.org>

Sent: Friday, April 24, 2020 3:46 PM

To: An Nguyen Ruda <aruda@BZBM.com>

Cc: Sandi Marques <Sandi.Marques@unacuhcp.org>; Jane Carter <Jane.Carter@unacuhcp.org>; Pamela Chandran <Pamela.Chandran@unacuhcp.org>

Subject: UNAC/UHCP Request for Information #2

An,

UNAC/UHCP is requesting the 2019 audit of St. Francis finances/expenses. This information is needed in order to fully understand and evaluate the proposal management submitted to UNAC/UHCP on April, 22, 2020.

If you have any questions please feel free to contact me.

Thanks

Max Carbuccia
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☐ The mission of UNAC/UHCP is to empower health care professionals to be advocates for UNAC/UHCP members and patients: to create a high quality work environment; to provide economic and professional advancement; and to improve the quality of healthcare.

Exhibit 7

SFMC - Normalized PL Analysis						Variance FY 17 to TTM	
As of 3/31/20						Feb 2020	
Calendar Year Basis						\$	%
	FY17	FY18	FY19	TTM Feb 20	TTM March 20		
Total Gross Revenue	1,839,289,972	1,941,599,469	1,866,956,767	1,873,379,617	1,851,978,348		
Total Contractual Allowances	(1,569,161,373)	(1,672,479,228)	(1,641,488,976)	(1,651,664,917)	(1,637,767,278)		
Total Net Patient Revenues	270,128,599	269,120,241	225,467,791	221,714,700	214,211,070		
QAF Revenues	120,182,646	83,487,930	108,235,365	129,234,106	163,052,498		
DSH Revenues (Medi-Cal)	39,444,552	33,299,404	35,514,323	34,882,985	34,567,311		
Trauma Revenues	18,396,208	6,584,900	16,863,633	18,306,259	17,149,068		
Net Patient Revenues	448,152,005	392,492,475	386,081,112	404,138,050	428,979,947		
Other Revenues	1,669,444	1,768,943	3,365,059	3,444,835	3,409,998		
Capitation Revenues	93,621,061	101,261,130	107,947,653	110,953,925	110,639,954		
Contribution Revenues	3,595,309	3,379,367	4,234,238	4,187,062	4,224,725		
Total Revenues	547,037,819	498,901,915	501,628,062	522,723,872	547,254,624	\$ (24,313,947)	-4.4%
Total Revenues Less:							
QAF Revenues	(120,182,646)	(83,487,930)	(108,235,365)	(129,234,106)	(163,052,498)	e)	
d) Claims Expense	(59,613,193)	(67,778,979)	(72,897,353)	(76,302,619)	(77,939,184)		
Net QAF Benefit	83,604,049	52,206,170	80,218,537	88,713,127	88,200,000	a)	
Adjusted Total Revenues for Ratios	450,846,029	399,841,176	400,713,881	405,900,274	394,462,942		
Salaries and Wages	150,029,363	166,101,772	176,361,998	177,736,734	177,955,847		
Registry Labor	9,103,356	7,925,028	7,899,633	8,530,506	8,477,594		
Contract Labor	2,166,531	1,520,527	1,341,885	1,502,620	1,540,082		
b) Corporate Services	21,064,216	19,036,383	22,289,749	21,361,291	20,426,523		
b) Integrity Management Services	18,580,092	12,707,624	-	-	-		
b) VBS and SO Allocation	3,305,388	4,584,260	5,030,575	5,198,081	5,067,459		
Taxes and Benefits	44,284,771	46,300,332	52,352,958	53,544,133	54,117,493		
Total Labor	248,533,717	258,175,926	265,276,798	267,873,365	267,584,998	\$ 19,339,648	7.8%
% of Adjusted Total Revenues	55%	65%	66%	66%	68%		
Total Medical Fees	15,196,225	14,578,816	14,960,656	15,189,801	15,270,486	\$ (6,424)	0.0%
% of Adjusted Total Revenues	3%	4%	4%	4%	4%		
Total Supplies	39,933,354	41,539,611	44,178,341	43,797,410	43,147,669	\$ 3,864,056	9.7%
% of Adjusted Total Revenues	9%	10%	11%	11%	11%		
Professional Fees	1,507,720	880,945	975,670	1,443,152	1,521,994		
% of Adjusted Total Revenues	0.33%	0.22%	0.24%	0.36%	0.39%		
Claims Expense	59,613,193	67,778,979	72,897,353	76,302,619	77,939,184		
b) IT Purchased Services	15,169,451	15,731,292	16,251,086	16,564,146	16,330,745		
b) PFS Outsource Net Expense	6,329,850	9,752,380	7,544,438	8,049,395	7,717,386		
b) Other Purchased Services	42,032	64,817	51,778	47,379	40,779		
Total Corporate Allocations	21,541,333	25,548,489	23,847,302	24,660,920	24,088,910		
% of Adjusted Total Revenues	4.78%	6.39%	5.95%	6.08%	6.11%		
Purchased Services	23,248,283	21,430,679	17,847,333	18,617,819	19,307,912		
% of Adjusted Total Revenues	5.16%	5.36%	4.45%	4.59%	4.89%		
QAF Expense	36,578,597	31,281,760	28,016,828	39,695,968	43,728,270		
Rent Expense	3,874,757	5,007,782	5,514,593	5,748,642	5,752,004		
Insurance Expense	5,053,420	4,822,633	6,653,510	8,567,231	8,613,295		
Utilities Expense	3,410,021	3,599,798	3,918,800	3,899,503	3,780,628		
Other Expense	1,885,145	4,690,705	2,527,027	2,367,903	2,380,453		
Reorganization Expense	-	7,394,686	23,195,373	23,873,668	22,954,306		
Total Operating Expense	460,375,765	486,730,809	509,809,584	532,038,001	536,070,109	\$ 71,662,236	15.6%
EBIDA	86,662,054	12,171,106	(8,181,522)	(9,314,129)	(19,939,713)	\$ (95,976,183)	-110.7%
Interest (\$300M * 7.5%)	22,500,000	22,500,000	22,500,000	22,500,000	22,500,000		
EBDA	64,162,054	(10,328,894)	(30,681,522)	(31,814,129)	(42,439,713)	\$ (95,976,183)	-149.6%
Annual Required Cap Ex (3% * Adj Total Revenue)	13,525,381	11,995,235	12,021,416	12,177,008	11,833,888		
EBDA after Cash Outlay for CapEX	\$ 50,636,673	\$ (22,324,129)	\$ (42,702,938)	\$ (43,991,137)	\$ (54,273,601)	\$ (94,627,810)	-186.9%
Net QAF	83,604,049	52,206,170	80,218,537	89,538,138	88,200,000	a)	
EBDA after Cash Outlay for CapEX <Net Ben QAF>	\$ (32,967,376)	\$ (74,530,299)	\$ (122,921,475)	\$ (133,529,275)	\$ (142,473,601)		

Footnotes	
a)	Average annualized QAF 6 Net Benefit
b)	Included in historically reported Corporate Allocation Total. TTM 3/2020 \$ 49,582,892
c)	No Used
d)	Capitation expense included in revenue to align with capitation revenue and persent Capiation net benefit
e)	Cash recognition of QAF revenue and expense excluded. Average annualized QAF 6 net benefit (a)) included to accurately

Exhibit 8

From: [Alberts, Sam J.](#)
To: [Max Carbuccia](#); [Jane Carter](#); [Pamela Chandran](#); [Sandi Marques](#)
Cc: [An Nguyen Ruda \(aruda@BZBM.com\)](#); [Sharrer, Steve](#); [Joel Richlin \(PHM\)](#); [Maizel, Samuel R.](#); [Moyron, Tania M.](#)
Subject: RE: UNAC/UHCP Request for Information #1 and #3
Date: Tuesday, April 28, 2020 8:56:30 AM
Attachments: [image001.png](#)

Dear Mr. Carbucci and Ms. Marques,

By separate email to Ms. Marques sent this morning, the Debtors forwarded information provided to us from Prime that is responsive to questions posed in writing by UNAC. By virtue of that production and the Debtors' productions yesterday to UNAC of the Debtors' Monthly Operating Reports and the Slide deck presentation made by Prime last week, we believe the Debtors have provided all "relevant information necessary to evaluate the proposal" in accordance with Bankruptcy Code § 1113.

We appreciate that UNAC has propounded additional requests contained within UNAC's 1st RFI and UNAC's 3rd RFI (collectively, the "Pending Requests"). However, the Pending Requests cover the Debtors' historic operational and employment issues and, as such, are not relevant or necessary to UNAC's evaluation of proposed collective bargaining agreement ("CBA") provided to UNAC by Prime. In fact, the issue at hand is whether Prime and UNAC can reach agreement on a new or modified CBA under terms agreeable to Prime and UNAC. If that cannot occur within 30 days, the Debtors, which will no longer be operating St. Francis Medical Center upon the sale closing to Prime, are authorized to seek rejection of its UNAC CBA.

In addition, the scope of the Pending Requests are so broad that responding to them would be unduly burdensome. As you can imagine, the Debtors' resources are very limited and, as such, the Debtors are particularly mindful of expenditures at this juncture in the Bankruptcy Cases.

Further, UNAC sought much of the same information from the Debtors in connection with the SGM sale as exists in the Pending Requests. As you may recall, the SGM-sale related information requests were withdrawn before production when the parties reached agreement on the SGM-related modified CBA.

In light of the above, we would ask that UNAC withdraw the Pending Requests. Alternatively, if UNAC wishes to provide an explanation as to why you believe any particular Pending Request is relevant to the issue at hand, we will consider it and discuss it promptly with UNAC by way of a telephonic conference.

Thank you.

Sam



Sam J. Alberts
Partner

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From: Alberts, Sam J.

Sent: Monday, April 27, 2020 1:44 PM

To: 'max.carbuccion@unacuhcp.org' <max.carbuccion@unacuhcp.org>; 'Jane Carter' <Jane.Carter@unacuhcp.org>; 'Pamela.Chandran@unacuhcp.org' <Pamela.Chandran@unacuhcp.org>; 'Sandi.Marques@unacuhcp.org' <Sandi.Marques@unacuhcp.org>

Cc: An Nguyen Ruda (aruda@BZBM.com) <aruda@BZBM.com>; Sharrer, Steve <SteveSharrer@verity.org>; Joel Richlin (PHMI) <JRichlin@primehealthcare.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>

Subject: FW: UNAC/UHCP Request for Information #2

Dear Mr. Carbuccion:

In response to your information request in connection with the CBA proposal and § 1113 process, please note that there are no audited financials for SFMC after 2017. Nevertheless, below are links to the Monthly Operating Reports for Debtors, including SFMC, filed in the Bankruptcy Court and otherwise available on the Bankruptcy Court docket and the KCC website.

If you have any questions, feel free to advise.

Thank you.

Regards,

Sam

<u>Ref#</u>	<u>Monthly Operating Report</u>	<u>URL</u>
1	September 2018	https://www.kccllc.net/verityhealth/document/1820151181105000000000032
2	October 2018	https://www.kccllc.net/verityhealth/document/1820151181130000000000019
3	November 2018	https://www.kccllc.net/verityhealth/document/1820151181231000000000012
4	December 2018	https://www.kccllc.net/verityhealth/document/1820151190204000000000002
5	January 2019	https://www.kccllc.net/verityhealth/document/18201511902280000000000028
6	February 2019	https://www.kccllc.net/verityhealth/document/18201511904020000000000025
7	March 2019	https://www.kccllc.net/verityhealth/document/18201511904300000000000009
8	April 2019	https://www.kccllc.net/verityhealth/document/18201511905310000000000005
9	May 2019	https://www.kccllc.net/verityhealth/document/18201511907010000000000036
10	June 2019	https://www.kccllc.net/verityhealth/document/18201511907310000000000006
11	July 2019	https://www.kccllc.net/verityhealth/document/18201511908300000000000002
12	August 2019	https://www.kccllc.net/verityhealth/document/18201511910030000000000010
13	September 2019	https://www.kccllc.net/verityhealth/document/18201511910310000000000009
14	October 2019	https://www.kccllc.net/verityhealth/document/18201511912020000000000004
15	November 2019	https://www.kccllc.net/verityhealth/document/18201512001070000000000011
16	December 2019	https://www.kccllc.net/verityhealth/document/18201512002030000000000005
17	January 2020	https://www.kccllc.net/verityhealth/document/18201512003020000000000010
18	February 2020	https://www.kccllc.net/verityhealth/document/18201512004010000000000001

From: Max Carbuccion <Max.Carbuccion@unacuhcp.org>

Sent: Friday, April 24, 2020 3:46 PM

To: An Nguyen Ruda <aruda@BZBM.com>

Cc: Sandi Marques <Sandi.Marques@unacuhcp.org>; Jane Carter <Jane.Carter@unacuhcp.org>; Pamela Chandran <Pamela.Chandran@unacuhcp.org>

Subject: UNAC/UHCP Request for Information #2

An,

UNAC/UHCP is requesting the 2019 audit of St. Francis finances/expenses. This information is needed in order to fully understand and evaluate the proposal management submitted to UNAC/UHCP on April, 22, 2020.

If you have any questions please feel free to contact me.

Thanks

Max Carbuccia
Director of Collective Bargaining
UNAC/UHCP
[5030 Camino de la Siesta, #306](#)
[San Diego, CA 92108](#)
Main #: [619-280-5401](#)
Direct #: [619-610-9512](#)
Fax #: [619-280-7406](#)
max.carbuccia@unacuhcp.org

☐ The mission of UNAC/UHCP is to empower health care professionals to be advocates for UNAC/UHCP members and patients; to create a high quality work environment; to provide economic and professional advancement; and to improve the quality of healthcare.

Exhibit 9

UNAC/UHCP_SFRNA

April 22, 2020

General Contract Questions:

1. Article 1 – Admitting and Utilization RN not covered? Why? What is your intent with this RN classification/position? Prime agrees that if Admitting and Utilization RN positions are included in the current bargaining unit, they will continue to be included in the modified collective bargaining agreement. Please propose recognition language for Prime’s review.
2. Article 1 – Removal of the Charge RN – Why? Prime’s position is Charge Nurses are “supervisors” as defined under the National Labor Relations Act and therefore are not included in the modified collective bargaining agreement.
 - a. Removal of Clinical Supervisors – Why? Prime’s position is that “supervisors” as defined under the National Labor Relations Act are not part of the bargaining unit.
3. Article 4 – explain to me your thinking regarding removal of PD seniority?
 - a. Is it your intent to begin Seniority for all employees at 0 or carryover their Seniority? Prime agrees to retain employees’ seniority for bidding and benefit purposes only.
4. Article 15 –
 - a. Vacation Accrual
 - i. What will you do with current accrual hours above 440? Verity is obligated to pay out PTO under their existing employment contracts and in compliance with applicable law at close. All employees hired by Prime will be hired under new employment contracts.
 - b. Sick hours
 - i. What will you do with current accrual hours of sick time that is above the proposed levels? Verity is obligated to pay out PTO under their existing employment contracts and in compliance with applicable law at close. All employees hired by Prime will be hired under new employment contracts.

5. Paragraph 204 missing pay for officers doing union work 46hrs/officer and should not suffer lost wages – Is the intent to remove the current long-standing practice? **Prime's position is that the union should pay officers for union work, not the employer.**
6. Missing convention language – Why? Prime is already aware of this language and the release time that is needed. **Please propose convention language for Prime's review.**
7. Paragraph 206-NEO – Are you changing the way NEO currently done? **Please propose NEO language for Prime's review.**
8. Right to representation for quality/risk management – Was in your intent to regarding the removal of the language? **Please propose representation for quality/risk management language for Prime's review.**
9. Notice to employees for discipline 4-24 hrs. – Are you planning on not giving notice and flexibility? **Please propose notification language for Prime's review.**
10. Providing rep list upon notice of investigation or discipline – The current practice is that HR/management provides the list of representatives to the Employees (that we give to HR/management)? **Please propose list of representatives language for Prime's review.**
11. Bulletin board they have 1 and we have 3 – Is your intent to remove the ones that we already have? **Prime would be amenable that this section can remain in a modified collective bargaining agreement. Please propose bulletin board language for Prime's review.**
12. Paragraph 405- use of seniority to bump into SF from other prime – Please explain your vision regarding the implantation of this language? **Prime would be amenable to retain employees' seniority for bidding and benefit purposes only.**
13. Paragraph 504 job transfer preference currently by seniority not department – Why the change? **Prime would be amenable to retain employees' seniority for bidding and benefit purposes only.**

14. Paragraph 817 limit on PCC to be decreased to 6; currently collaborative and involves all directors, HR, and CNO – we have a collaborative system why change it? Please propose PCC language for Prime’s review.
15. Paragraph 829 - What’s your intent on supervisory duties? Prime’s position on “supervisory duties” is as defined under the National Labor Relations Act.
16. Paragraph 1009 process for CAP removed – Why not keep a process that has proven to work effectively? Prime agrees that this section can remain in a modified collective bargaining agreement, based on the union’s assurances that this process is effective.
17. Paragraph 1016 CAP/verbal have always been grieved – this is deviation from our current standards – why the change? Prime agrees that this section can remain in a modified collective bargaining agreement, based on the union’s assurances that this process is effective.
18. Paragraph 1116 Cancel by seniority by rotation and not limited to 2 months – Why the limit? Prime’s position is that two (2) months is an appropriate timeframe for record keeping purposes for over 800 RNs.
19. Paragraph 1123 minimal guarantee cancellation when not cancel timely - What’s the intent of “patient discharges” as an exemption – please explain further? In the occasion that substantial patient discharges take place at one time, Prime maintains that the minimum guarantee would not apply.
20. Intent of p1125 higher bargaining unit classification - please explain further? Prime’s position is that in the event a bargaining unit member assumes interim leadership duties, the RN will be compensated at the rate of the higher classification for the interim period.

21. Rotational shifts - currently do not have rotational shifts – Why the change? Prime's position is that UNAC agreed to this at Garden Grove.
22. Paragraph 1130 proposal does not guarantee weekend off (every other) – please explain further? Prime's position is that UNAC agreed to this at Garden Grove.
23. Paragraph 1131 intent of extra weekend - please explain further? Prime's position is that UNAC agreed to this at Garden Grove.
24. Paragraph 1136 restriction vacation to 2 request – This is major alteration to a major facility that will have massive repercussions – Why is this change needed? Prime's position is that UNAC agreed to this at Garden Grove.
25. Paragraph 1138 intent of vacation committee – please explain how this will work in facility of over 800 RNs? Please propose revised language or a request for removal, for Prime's review.
26. Paragraph 1201 no floating order included or obligation to abide by regulations – please explain further your intent on how you see this work? Prime's position is that all nurses will be floated as long as they possess the appropriate competencies.
27. Paragraph 1302 decrease in charge pay – Please explain your savings with this reduction? This will be determined with our ongoing discussions.
28. Decrease in preceptor pay, no preceptor education - Please explain your savings with this reduction? This will be determined with our ongoing discussions.
29. Correction of pay check errors does not state when correction will occur, currently 24 hours – Will you guarantee a time frame? 48 hours.

30. Intent of decrease in standby pay with trauma and stemi with high call, community higher than offer - Please explain your savings with this reduction? **This will be determined with our ongoing discussions.**
31. On current loans on retirement what is the intent for pay back – What is your intent? **Prime offers a 401(k) which allows new hires to roll over a pre-existing 403(b) plan, including loans.**
32. Intent of changing the clinical ladder which is currently comprehensive - Please explain further? **Prime would be amenable to a clinical ladder that is approved by the bargaining unit if there is no monetary value attached and the three-tier bonus program is utilized.**
33. Request explanation of health insurance with side by side comparison of current – We need this to understand the full proposal. **Prime will provide the benefits guide and SPD.**
34. Savings of not having pension? How impacts? Has Prime consider continuing the pension? **Prime is not acquiring any pension plan.**
35. Article 16 holidays- Please explain your intent? **Prime's position is that UNAC agreed to this at Garden Grove.**
36. Article 18 decrease in education and national certification intent if wanting to expand to level 1 – How will this help you attained level 1 Trauma certification? **Please propose education and certification language for Prime's review.**

General Financial Questions: (A Ruda Note: the questions below are subject to further discussion)

1. What percentage of SFRNA wages and benefits accounted for total labor costs for FYs16-19? Please identify cost of wages and benefits separately and for each year requested. **Reconciliation to be provided.**

2. How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please identify amount per year. *See provided trended Income Statement.*
3. What are the outstanding receivables for FY 19? *Physician Offices and Other Rental Revenue.*
4. What is the impact of the modified debt? Specifically for FYs 18, 19, and 20. *Please explain. Debt Service not included in historical EBITDA calculations.*
5. We would like the formal financial audits and reports for FYs 16-19 (not just the amounts reported to the state – your CFO said the financial situation is quite dire for SFMC). *To be discussed with Verity.*
6. We need FY 20 and 21 financial projections if available. *Not available.*
7. What is included in the “reorganization items” reported in the BK monthly financial statements? *Various expense items. Reconciliation to be provided.*
8. Prime’s proposal does not address outstanding 401k loans. We had previously addressed this in the last round of restructuring and need to ensure its also part of it.
 - i. Will Prime takeover the current plan or make all employees start a new one? *Prime has a 401(k) plan. A 403(b) plan (balances or loans) cannot be merged with a 401(k) plan. However, Prime’s 401(k) plan permits new hires to roll over balances from 403(b) plans, including loans.*
9. How much does Prime’s proposal save the facility vs. the current costs of the current CBA? It was stated that it was 16% higher than Chino and Garden Grove but didn’t say about comps to the current SFRNA CBA. *To be determined.*

Exhibit 10



UNAC/UHCP

United Nurses Associations of California/Union of Health Care Professionals
UNAC/UHCP is affiliated with NUHHCE, AFSCME and the AFL-CIO

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An Nguyen Ruda
Bartko Zankel Bunzel
One Embarcadero Center, Suite 800
San Francisco, California 94111

April 27, 2020

RE: UNAC/Verity/Prime - Information Request #3

Dear Ms. Ruda:

In order to fully evaluate the April 22, 2022 St. Francis Medical Center (the “Medical Center,” “Employer,” or “Management”) proposal, pursuant to Bankruptcy Code section 1113 and section 8(a)(5) of the National Labor Relations Act, the United Nurses Associations of California/Union of Health Care Professionals (the “Union” or “UNAC/UHCP”) requests the following information. UNAC/UHCP recognizes that certain requested information may be sourced from Verity, from Prime, or perhaps both. In the furtherance of good faith bargaining, UNAC expects that Verity will make all efforts to ensure that information sourced from Prime -- particularly, but not limited to, information concerning post-sale operation of SFMC -- will be provided in a timely manner. UNAC reserves all rights and remedies with respect to requested information.

Please provide the following documents:

1. Formal financial audits and annual reports for SFMC for FYs 16-19. Please include all projections for the current fiscal year (FY20) and FY21.

Verity Response: The Debtors object to this request on the basis that the information requested is not relevant or necessary to evaluate the proposal and that the production demand is unduly burdensome. Notwithstanding this objection, and as set forth below, the Debtors have provided UNAC with links to filed and publicly available Monthly Operating Reports filed in the Bankruptcy Case. For prior years, financial reports are posted on EMMA and publicly available.

On April 9, 2020, the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) entered certain *Order (A) Authorizing the Sale of*

Certain of the Debtors' Assets to Prime Healthcare Services, Inc., Pursuant to the APA Attached Hereto Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and (C) Granting Related Relief (the "Sale Order") in the Chapter 11 Bankruptcy Cases of *In re Verity System of California, Inc. et al.*, being jointly administered under Lead Case. No. 2:18-bk-20151-ER (the "Bankruptcy Case"). Pursuant to the Sale Order, the Bankruptcy Court approved that certain Asset Purchase Agreement (the "APA") dated April 3, 2020, by and between St. Francis Medical Center ("SFMC"), Verity Holdings, LLC ("Holdings") and Verity Health System of California, Inc., ("VHS" and referred to together with SFMC and Holdings as the "Sellers") and Prime Healthcare Services, Inc. ("Prime" or the "Purchaser") with respect to the sale of assets of SFMC.

APA § 4.9, titled "Contract with Unions" addresses the Sellers and Purchasers agreement with respect to collective bargaining agreements ("CBAs").

APA § 4.9(a) provides, in relevant part: "The applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchasers and unions and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union. . . . The Parties recognize that Seller's failure to conclude a successor collective bargaining agreement shall not be a breach of Sellers' obligation under this Agreement or otherwise excuse Purchaser's obligations under this Agreement."

Section 4.9(b) provides: "On or before the date that is thirty (30) days after the Sale Order Date [April 9, 2020], the negotiations pursuant to Section 4.9(a) shall have resulted in each, such labor unions, agreeing to either (i) either modification of the St. Francis related collective bargaining agreements under terms that are to be substantially consistent with the Purchaser's existing and most current collective bargaining agreements with each such respective labor union, and that settle all liabilities under the existing Seller collective bargaining agreements that shall be assigned to Purchaser, provided that there are shall be no cure obligations to the Sellers or (ii) enter into new collective bargaining agreements that are substantially consistent with the Purchaser's existing collective bargaining agreements with each such respective labor union; provided, that if Purchaser and each labor union have not entered into such agreements described in (i) or (ii) above, or have entered into an agreement under (ii), then Sellers shall have the absolute right to file or take any other action to reject and terminate any such collective bargaining agreement and, in such event, the Bankruptcy Court shall have entered an order granting Sellers' requested rejection of such collective bargaining agreement prior to the Closing Date. In no event will Sellers be liable for any obligations in respect of settlements described in this section."

The 30th day after the Sale Order Date is May 9, 2020.

The request, to the extent it seeks information about Debtors' historic and future operations is irrelevant in light of terms and requirements of the APA, the scope and

purpose of the subject transaction and the acquisition of SFMC's assets by Purchaser. Further, the costs and time required to provide responses to such requests are unduly burdensome.

Further, the Debtors have previously informed UNAC that there are no audited financials for FY 18-19 responsive to the request. However, the Debtors have provided UNAC with links to filed and publicly available Monthly Operating Reports filed in the Bankruptcy Case. Reports for prior years are publicly available on EMMA.

Prime agrees with the objection asserted by Debtors above and refers UNAC to its own responses which provided relevant financial data.

2. A side-by-side comparison of current vs. proposed health insurance plans.

UNAC already has the health insurance plans provided by SFMC. Prime has stated that the information to prepare this has been provided to UNAC. Therefore, UNAC is in a position to prepare a side-by-side comparison and requesting the Debtors' to perform this task is unduly burdensome. UNAC should also have the health insurance information for Prime.

3. Identify the total labor cost of the UNAC/UHCP units for the last three fiscal years. What are the projections for the current fiscal year (FY 20) and for FY 21. Please identify cost of wages and benefits separately and for each year requested.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. The Labor Costs for FY2017-April 2020 are: \$356,890,827. Benefits costs over the same time period are: \$28,590,321.

There are no projections for FY 20 or 21. The Debtors are in chapter 11 with limited resources and focused on winding-down after confirmation of a chapter 11 plan.

4. What percentage of total labor costs are attributable to SFRNA wages and benefits in FYs16-19?

See No. 3. UNAC can derive this information from No. 3 response. If UNAC needs assistance, please let Verity know and it will assist with FY 18-19, and 20 year to date.

5. How are UNAC/UHCP unit costs compared with all SFMC labor costs for last three fiscal years?

See No. 3. UNAC can derive this information from No. 3 response. If UNAC needs assistance, please let Verity know and it will assist with FY 18-19, and 20 year to date.

6. What are the FY 20 and FY 21 projections for UNAC/UHCP and other units? Please include information for other bargaining units, non-union labor and management labor costs.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. See also response to Request 3. Moreover, Verity has not prepared projections, and Prime has stated that it has not prepared projections.

7. Provide a comparison of UNAC/UHCP Unit labor costs across the industry, including southern California and other comparable Prime facilities.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Moreover, Verity is not able to provide this information to due lack of access to industry costs.

Prime agrees with the objection asserted by Debtors.

8. How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please identify amount per year.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Notwithstanding this objection, Prime provided such information to UNAC thereby satisfying the request. Response completed.

9. What are SFMC's outstanding receivables for FY 19 and FY 20? Please identify source(s) and amount(s). Will the financial statements be re-stated to reflect the receipts? If yes, please provide when updated.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Notwithstanding this objection, the Debtors have provided UNAC with links to all filed and publicly available Monthly Operating Reports. Revenue received by the Debtor is in the P & L provided by Prime and which was produced on April 28, 2020.

10. What is the impact of the modified debt for FYs 18, 19, and 20?

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. The request is also objectionable because it is ambiguous as to the meaning of "impact," including on whom.

11. What is the expected date to re-open non-essential procedures? What are the projected revenues for re-opening non-essential procedures?

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Answered verbally during April 28, 2020 session. Unknown.

12. Clarify the line item titled “reorganization items” reported in the monthly financial statements filed with the bankruptcy court from filing to date. Include source(s) and cost(s).

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Notwithstanding this objection, reorganization items, includes fees paid to the Office of the United States Trustee, and fees and expenses paid to professionals of the Debtors, the Official Committee of Unsecured Creditors and the secured lenders.

13. What is Prime’s proposal to address outstanding 401k loans? We had previously addressed this in the last round of restructuring. Will Prime takeover the current plan or make all employees start a new one? If not continuing, what are the savings/costs of the new plan? Is this included in cost/savings comparisons? What is the estimated total outstanding amount owed by UNAC/UHCP members? What is the average amount owed?

Answered by Prime verbally at last session on April 28, 2020

14. What concessions are Verity/Prime seeking from other labor groups at SFMC? Please identify savings expected from each of the following groups (identify individually):

- a. Other bargaining units
- b. Non-Union units and unions (including retained physicians, etc.)
- c. Management

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. The request also seeks information that is confidential, may not exist and is otherwise not ripe for disclosure. Similar to the negotiations that occurred in the context of the SGM transaction in 2019, negotiations with unions and the Purchaser are confidential. If a resolution is reached with a particular union, the terms may be publicly disclosed in Court papers at the appropriate time.

Prime agrees with the objection asserted by Debtors.

15. How much does Prime’s proposal save the facility vs. the current costs of the current SFRNA CBA? Specifically identify the following:

- d. Total costs of current CBA vs. Prime’s proposal in totality;
- e. Projected savings for the following proposals:
 - i. Decrease in charge pay (Paragraph 1302);
 - ii. Decrease in preceptor pay;
 - iii. Elimination of preceptor education;
 - iv. Decrease in standby pay for trauma andstemi;
 - v. Changes to health insurance;
 - vi. Changes to holidays;
 - vii. Decrease in education and certification;
 - viii. Changes to sick and vacation usage and accrual;

Please provide information requested for the current fiscal year (FY20) and FY 21 projections separately.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Prime agrees with the objection asserted by Debtors.

16. Given changes to the Pension benefits pursuant to the bankruptcy, what is the cumulative savings from inception of the case through anticipated Prime closing of 9/1/2020?

f. What is the UNAC/UHCP Unit portion of such saving?

g. What is the value of such saving, for the UNAC/UHCP Unit, from 9/1/2020 through 12/31/2021?

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Notwithstanding this objection, the Debtors have continued to make contributions to the defined contribution plan relevant to UNAC represented employees.

17. What are the anticipated impacts, including costs and/or savings, for Prime's projected upgrade to a Level 1 trauma center? How will UNAC/UHCP members be affected by this upgrade? Will UNAC/UHCP members be faced with hardships, changes to terms of employment, trainings/education, re-deployment, displacement, etc. Please also include a projected timeline.

The Debtors object to this request on the same basis of relevancy and burden as set forth in response to Request 1. Notwithstanding this objection, the request was answered by Suzanne Richards of Prime to UNAC at the April 28, 2020 session.

Sincerely,



Max Carbuccia
Director of Collective Bargaining

CC: Joe Guzynski, UNAC/UHCP Executive Director
Pamela Chandra, UNAC/UHCP Legal Counsel
Sandi Marques, UNAC/UHCP Staff Representative
Jane Carter, UNAC/UHCP Director of Research, Public Policy, and Regulatory Affairs
Mandy Hartz, UNAC/UHCP Director of Member Engagement
SFRNA Affiliate Officers

Exhibit 11



Prime Healthcare

Saving hospitals. Saving jobs. Saving lives.

May 7, 2020

TRANSMITTED VIA ELECTRONIC MAIL BY VERITY'S CHIEF NEGOTIATOR

Max Carbuccia
Director of Collective Bargaining
UNAC/UHCP
5030 Camino de la Siesta, #306
San Diego, CA 92108
Main #: 619-280-5401
Direct #: 619-610-9512
Fax #: 619-280-7406
Email: max.carbuccia@unacuhcp.org

RE: ST. FRANCIS MEDICAL CENTER – LYNNWOOD, CALIFORNIA:
UNAC COLLECTIVE BARGAINING AGREEMENT NEGOTIATIONS WITH
COURT APPROVED PURCHASER PRIME HEALTHCARE

Dear Max:

We were extremely disappointed in the direction taken yesterday by UNAC in the collective bargaining negotiations under Bankruptcy Code Section 1113. Since the parties first meeting in April, Prime has been negotiating with UNAC in good faith in accordance with the Asset Purchase Agreement (“APA”) that was approved by the Bankruptcy Court. We were hopeful that we could reach an agreement with UNAC on a CBA that is substantially consistent with Prime’s existing CBAs with UNAC in the timeframe allotted for negotiations in the APA. As of this Saturday, Verity has the absolute right to seek rejection of the existing collective bargaining agreement pursuant to Section 1113 of the Bankruptcy Code. (APA, § 4.9(b).)

As a show of good faith, Prime’s initial proposal was assembled with many of the sections of Prime’s current agreement with UNAC at Garden Grove that are most favorable to the union. As UNAC has itself publicized, the Garden Grove agreement provides “wage increase in year one from a minimum of 3% to a maximum of 46%,” “PD rates increased to \$48 for regular and \$50 for specialty unit,” “PD wage increase of 3% in both years two and three,” “[m]aintained quality, affordable health benefits,” “[g]ained paid time for mandatory education,” “improved language on cancellation tracking,” “protection from mandatory split or rotating shifts,” “[u]pdated terms and improved protections on holidays; health and safety; leave of absence; subcontracting; and union security,” and protection from “scope of practice and job duties against impacts from new technology.”¹

¹ <https://unacuhcp.org/garden-grove-bargaining-update-new-contract-ratified/>



Not only did Prime select some of the most favorable terms for UNAC from our agreements for our initial offer, but we also took the existing wage scale at Garden Grove (which is higher than the wage scale at Chino) and added 16% more to that scale over the next three years. The Garden Grove wage scale is on average 27% higher than Chino's current regular wage scales and on average 14% higher than Centinela current regular wage scales for other nurses. This is particularly significant because Centinela is a more relevant comparison to St. Francis based on geographical proximity, and we could have proposed utilizing Centinela wage scales.

In light of Prime's good faith offers, we are particularly disappointed that UNAC is refusing to honor the confidentiality of this court process which is protected as confidential settlement communications and covered under Federal Rule of Evidence 408. Both Verity and Prime made their position on the confidentiality of this process clear on the first day of bargaining and we reserved all rights in this regard. Moreover, all information provided by Verity's Chief Negotiator has been expressly provided under this expectation of confidentiality. Pursuant to our obligation under Section 1113 of the Bankruptcy Code, Prime has provided all relevant information that is necessary to evaluate our proposals. This includes confidential financial and operational information and documents, both orally during negotiations, and passed through Verity's Chief Negotiator. Verity has similarly provided substantial financial and operational information to UNAC both directly through their Chief Negotiator, and by reference to publicly available court filings. Because of UNAC's assertion that it will not honor the confidentiality of this process, Prime hereby requests that UNAC agree to a confidentiality agreement before it provides any further confidential information. If UNAC is unwilling to enter such an agreement, then Prime may be unable to provide further confidential information and will take each request under consideration when it is made. We are very concerned that UNAC's refusal to honor the parties' expectation of confidentiality will have a chilling effect on future negotiations.

We are hopeful that UNAC will change its current negotiating strategy on Friday, May 8, and bargain in good faith. If that happens, we believe we can make substantial progress and avoid a situation where Verity has to pursue rejection of the current CBA.

We look forward to working with you tomorrow in good faith to reach agreement on a collective bargaining agreement between Prime and UNAC at St. Francis.

Very Truly Yours,

/s/ Rich Martwick

Rich Martwick
Assistant General Counsel – Labor
Prime Healthcare Services
Direct: 734-458-4528
Cell: 404-386-9983
Email: rmartwick@primehealthcare.com

Exhibit 12

From: [Pamela Chandran](#)
To: rmartwick@primehealthcare.com
Cc: [An Nguyen Ruda](#); [Max Carbuccia](#); [Jane Carter](#); [Sandi Marques](#)
Subject: SFMC Sec. 1113 negotiations - response to your letter
Date: Friday, May 8, 2020 8:16:38 AM
Attachments: [image001.png](#)

Dear Rich,

Max Carbuccia forwarded to me your letter that An Nguyen Ruda emailed to him.

UNAC/UHCP's response to your letter can be summarized as follows:

1. From the first day of bargaining, on April 22, 2020, UNAC/UHCP disagreed with the assertion made by Verity and by Prime that FRE 408 applied to these negotiations. You, Prime, and Verity have been on notice for five bargaining sessions that the Union did not agree that these negotiations were confidential, with the exception of off-the-record conversations. I asked on that first day for case law or citations that supported your claim that FRE 408 applied; neither Prime nor Verity provided me with any then, nor did either of you provide any to me yesterday when I followed up. I notice that you did not include any supportive case law or citations in this letter, either. UNAC/UHCP continues to disagree that FRE 408 applies to our negotiations. Review of reported cases evaluating Sec. 1113 negotiations demonstrates far broader publication of business plans, bargaining terms, and sensitive facts than anything presented by Verity and Prime. These cases evaluate the sufficiency and substance of Debtor information in evaluating whether bargaining has proceeded in good faith. Again, if you have case law supporting your position, please provide it.
2. Despite the Union's offer of additional bargaining dates, we have only one more bargaining session scheduled, for tomorrow. After that, as Verity has warned us since our first day of bargaining, it will file a motion to reject our collective bargaining agreement with Saint Francis (yet, still has pushed back on adding additional bargaining dates despite its and your obligation to continuing bargaining after filing the motion). It's a bit late in the day for a threatening letter regarding confidentiality, especially since the Union has comported with all of its obligations under Sec. 1113.
3. With respect to the information that you've provided, you have given us little more than links to monthly Operating Reports filed with the Bankruptcy Court, which we've already reviewed in the normal course of preparation for these negotiations, and which are not sufficiently detailed to permit evaluation of the Verity/Prime proposals. In these negotiations, you have certainly not provided any "confidential financial and operational information and documents." Additionally, UNAC/UHCP maintains – as we've said across the table and in written communications – that Verity and Prime have failed to provide the Union with requested information required under Sec. 1113.
4. If Verity and/or Prime premise continued Sec. 1113 negotiations on the Union's

confidentiality or, as you request, signing of a confidentiality agreement, the Union will file a ULP against SFMC. As with our last ULP against SFMC (in which the Hospital's insistence on FRE 408 confidentiality played a role), we expect to – again – prevail.

UNAC/UHCP's disagreement with Prime's and Verity's unsupported position on confidentiality stems from the principle that the rejection analysis under Sec. 1113 necessarily includes evaluation of the good faith of the parties at the table. The only way to assess the character of the parties' bargaining positions as they develop is to examine the content of the proposals and the parties' communications at and away from the table, which were never confidential and which become public with the filing of the parties' rejection motion pleadings.

See you at 10 a.m.

Regards,

Pamela Chandran

Legal Counsel | UNAC/UHCP

955 Overland Ct. Ste. 150 | San Dimas, CA 91773

T: (909) 451-0610 | F: (909) 599-8655

She/her/hers

pamela.chandran@unacuhcp.org



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Exhibit 13

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United States大成 Salans FMC SNR Denton McKenna Long
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May 13, 2020

TRANSMITTED VIA ELECTRONIC MAIL

Joseph Kohanski
Bush Gottlieb
801 N. Brand Boulevard
Glendale, CA 92103
Email: jkohanski@bushgottlieb.com

RE: Bankruptcy Code § 1113 Proposal Concerning Rejection and Termination of Collective Bargaining Agreement:

Dear Joe:

As you are aware, Verity Health System of California, Inc., (“VHS”), St. Francis Medical Center (“SFMC”) and affiliates (collectively, the “Debtors”) are debtors and debtors in possession in separate cases filed under chapter 11 of title 11 U.S.C. § 101-1532 (the “Bankruptcy Code”) on August 31, 2018 (the “Petition Date”) pending under Lead Case No. 2:18-bk-20151-ER (collectively, the “Bankruptcy Cases”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”). This communication constitutes a proposal (the “Proposal”) made in accordance with § 1113 of the Bankruptcy Code to St. Francis Registered Nurses Association, United Nurses Association of California/Union of Health Care Professionals, NUHHCE AFSCME AFL-CIO (collectively “UNAC”) concerning the rejection and termination of the *Labor Management Collective Bargaining Agreement* effective from December 29, 2017 to December 29, 2021 (the “CBA”). This proposal supersedes any and all previously proposals.

Background

On April 9, 2020, the Bankruptcy Court entered that certain Order (A) Authorizing the Sale of Certain of the Debtors’ Assets to Prime Healthcare Services, Inc., Pursuant to the APA Attached Hereto Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and (C) Granting Related Relief (the “Sale Order”). Under the Sale Order, the Bankruptcy Court approved that certain Asset Purchase Agreement (the “APA”) dated April 3, 2020, by and between SFMC, VHS and Verity Holdings, LLC (“Holdings,” and referred to together with SFMC and VHS as the “Sellers”) and Prime Healthcare Services, Inc. (“Prime” or the “Purchaser”) with respect to the sale of assets of SFMC. Of relevance:

APA § 4.9, titled “Contract with Unions,” addresses the treatment of collective bargaining agreements (“CBAs”).

APA § 4.9(a) provides, in relevant part, “The applicable Sellers shall use commercially reasonable efforts to initiate discussions with Purchasers and unions and conduct discussions to renegotiate each collective bargaining agreement currently in effect with each applicable union.. ..The Parties recognize that Seller’s failure to conclude a successor collective bargaining agreement shall not be a breach of Sellers’ obligation under this Agreement or otherwise excuse Purchaser’s obligations under this Agreement.”

APA § 4.9(b) provides, “On or before the date that is thirty (30) days after the Sale Order Date [April 9, 2020], the negotiations pursuant to Section 4.9(a) shall have resulted in each, such labor unions, agreeing to either (i) either modification of the St. Francis related collective bargaining agreements under terms that are to be substantially consistent with the Purchaser’s existing and most current collective bargaining agreements with each such respective labor union, and that settle all liabilities under the existing Seller collective bargaining agreements that shall be assigned to Purchaser, provided that there are shall be no cure obligations to the Sellers or (ii) enter into new collective bargaining agreements that are substantially consistent with the Purchaser’s existing collective bargaining agreements with each such respective labor union; provided, that if Purchaser and each labor union have not entered into such agreements described in (i) or (ii) above, or have entered into an agreement under (ii), then Sellers shall have the absolute right to file or take any other action to reject and terminate any such collective bargaining agreement and, in such event, the Bankruptcy Court shall have entered an order granting Sellers’ requested rejection of such collective bargaining agreement prior to the Closing Date. In no event will Sellers be liable for any obligations in respect of settlements described in this section.”

May 9, 2020, was the 30th day after the Sale Order. Between April 9 and May 9, 2020, the Sellers facilitated discussions between Prime and UNAC. In connection with those discussions, Prime delivered a written collective bargaining agreement to UNAC under terms that Prime asserts are substantially consistent with the Purchaser’s existing and most current collective bargaining agreements with UNAC (the “Proposed CBA”). UNAC did not accept the terms of Proposed CBA and did not otherwise reach agreement with Prime on any terms prior to or after May 9, 2020.

In accordance with the terms of APA § 4.9(b), because May 9, 2020 has occurred without any agreement on a collective bargaining agreement between Prime and UNAC, “Sellers shall have the absolute right to file or take any other action to reject and terminate any such collective bargaining agreement.”

Sellers have all through the process informed UNAC of their intent to reject should the Buyer and UNAC fail to reach agreement, and this intent was reiterated on May 8, 2020 at the close of the negotiation session. As communicated previously, and as the Bankruptcy Court has held, the Debtors estates’ cannot be bound or burdened by CBAs that cover facilities that the Debtors are selling.

Proposal

1. Debtors seek the rejection and termination of the CBA and all terms contained therein effective immediately on the Closing of the Sale contemplated under the APA (the “Rejection”).

2. In the that UNAC consents to the Rejection, the Debtors will provide UNAC employees who are not offered employment by Prime (or any of its operating affiliates) no later than the date of Closing, an allowed claim for severance calculated under the “accrual method”—meaning severance earned but not yet paid will be calculated on per diem basis from the date of the employee’s retention by SFMC to the earlier of the date of their termination or the Closing—and treated as follows: 1) amounts earned on and after Petition Date through the date of termination or the Closing (whichever is earlier) will receive administrative status; 2) amounts earned after March 4, 2018 and through the day prior to the Petition Date will receive priority claim status up to any remaining balance under § 507(a)(4) (up to a maximum of \$12,850 per employee), with any excess granted general unsecured claim status; and 3) amounts earned prior to March 4, 2018 will receive general unsecured claim status. The administrative and priority claim portions will be paid within 30 business days of the effective date of a confirmed Bankruptcy Plan (as defined in such plan or confirmation order, and referred to herein as the “Bankruptcy Plan Effective Date”), provided, further, that payment of severance to an employee is contingent on that employee executing a written general release in a form acceptable to UNAC and the Debtors (the “Severance Benefit”). Please note, this claim treatment mirrors the treatment of severance provided under the settlement agreement dated September 17, 2019 (the “Prior Settlement Agreement”) in connection with the envisioned transaction with Strategic Global Management, Inc. (“SGM”), sought by motion [Docket. No. 3604] and approved by the Bankruptcy Court on December 4, 2019 [Docket No.3755] and rendered a nullity by its by SGM’s failure to close the related purchase transaction.

3. All unused PTO as of Closing of the Sale to Prime will be calculated under the accrual method and satisfied from the “PTO Amount,” defined under APA § 1.1(a)(v) as “Cash payment for accrued vacation and other paid time off of the Sellers’ employees at Closing (the ‘PTO Amount’) (which as of October 31, 2019, had an aggregate value of approximately Ten Million Dollars (\$10,000,000)[.]”

4. Nothing prevents the Debtors from seeking interim modification and relief from any provision of the CBA prior to the Closing in accordance with § 1113(e) of the Bankruptcy Code.

In the event that UNAC contests the Rejection or otherwise seeks terms that differ from the above terms, the Debtors withdraw the Severance Benefit and the Debtors will not agree to provide any other severance benefit to any SFMC employed UNAC represented employees. Please note, a similar outcome occurred after SEIU-UHW and California Nurses Association contested the § 1113 relief requested in connection with the sale of assets of O’Connor Hospital and Saint Louise Regional Hospital to Santa Clara County (as opposed to unions that agreed to the Debtors proposals that obtain severance benefits for members who were not rehired by Santa Clara County).

The Debtors request that you accept this Proposal prior to the close of business on May 18, 2020. If the Proposal is not accepted by May 18, 2020, the Debtors will seek the Rejection of the CBA by formal motion filed in accordance with § 1113.

If you have any questions, please feel free to contact me directly. Further, we are available to meet with you (virtually) to the extent that it would be productive.

Sincerely,



Sam J. Alberts

cc: via email

Max Carbuccia
Pamela Chandran
Rich Adcock
Steven Sharrer
Peter Chadwick
Samuel Maizel
Tonia Moyron
An Ruda
Luzann Fernandez
Casey Doherty
David Galfus

Exhibit 14

**BUSH GOTTLIEB
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12010-28001

May 15, 2020

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VIA ELECTRONIC TRANSMISSION

Sam J. Alberts
Partner
Dentons US LLP
1900 K Street, NW
Washington, DC 20006
Sam.Alberts@Dentons.com

Re: Your Section 1113 Letter-Proposal, dated May 13, 2020

Dear Sam:

On behalf of the St. Francis Registered Nurses Association, United Nurses Association of California/Union of Health Care Professionals, NUHHCE AFSCME AFL-CIO (collectively, "UNAC" or the "Union"), this is to advise you that the Union is considering the terms stated in your Letter-Proposal of May 13, 2020 (the "May 13 Proposal"), in connection with ongoing bargaining as among UNAC, Verity Health Systems of California, St. Francis Medical Center and affiliates (collectively, the "Debtors"), and Prime Healthcare Services ("Prime").

Without waiving or qualifying UNAC positions articulated to date, we believe the May 13 Proposal merits genuine discussion. However, it also reflects a dramatic change in direction. The Union will need some clarification with respect to implementation and effects, particularly as between the Debtors and Prime, before the UNAC bargaining committee can determine the appropriate course of action.

We also note that as of May 8, An Ruda had accepted additional bargaining dates of May 19, May 21 and May 26.

UNAC therefore proposes that the May 19 and May 21 dates be utilized for clarification and discussion with respect to the May 13 Proposal, or of the bargaining process in general, and that the deadline for UNAC's response to the May 13 Proposal be extended through the close of business on Tuesday, May 26: immediately after the Memorial Day weekend.

VIA ELECTRONIC TRANSMISSION

Sam J. Alberts
May 15, 2020
Page 2

The applicable Asset Purchase Agreement (“APA”) provides for alternative closing deadlines of September 1, 2020 or December 31, 2020, depending on issues pertaining to the California Attorney General. The current, Court-approved cash collateral budget reflects a steady line item for the costs of “Payroll/Payroll Tax” through July 18. [DI 4669, p. 40 of 42] Given these facts, deferring a Section 1113 Motion by one week, to facilitate discussion that conceivably could obviate a contested motion, would appear advantageous to all concerned parties and interests.

Please let us know, at your earliest convenience, if this schedule is acceptable to your clients.

Thank you for your anticipated prompt attention.

Very truly yours,

Bush Gottlieb
A Law Corporation



Joseph A. Kohanski

cc (via Email): Tania Moyon
Max Carbuccia
Pamela Chandran
Jane Carter
Samuel R. Maizel
An Nguyen Ruda
Joel Richlin
Louise Ann Fernandez
Rich Adcock
Peter Chadwick
David Galfus
Steve Sharrer
Casey W. Doherty
Gary Gertler
Ira Gottlieb

Exhibit 15

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12010-28001

May 18, 2020

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VIA ELECTRONIC TRANSMISSION

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Re: Your May 18, 2020 Letter, with Reference to your May 13, 2020 Letter re Bankruptcy Code s. 1113 CBA Rejection Proposal

Dear Sam:

This letter is in response to your letter of earlier today (the “May 18 Verity Letter”), which responded to my letter to you of May 15, 2020 (the “Initial UNAC Response”), which in turn responded to your letter of May 13, 2020 (the “May 13 Proposal”), in connection with negotiations and procedures, pursuant to Bankruptcy Code s. 1113, as among Verity, Prime and UNAC.

As stated in the Initial UNAC Response, UNAC is unable to respond to the May 13 Proposal by the close of business today. UNAC does, however, welcome continuing dialog in connection with that proposal, as with overall negotiations, and therefore requests clarification on the following points:

1. Is there an expiration date, or a set of expiration events, to the May 13 Proposal? The May 13 Proposal implies that it comes off the table if not accepted by the close of business today, and expressly states that if “UNAC contests the Rejection, or otherwise seeks terms that differ from the above terms, the Debtors withdraw the Severance Benefit and the Debtors will not agree to provide any other severance benefit to any SFMC employed UNAC represented employees.” However, the May 18 Verity Letter states that “...the Debtors will remain available to discuss with [UNAC] the terms of our s. 1113 Proposal, provide UNAC with any information necessary for you to evaluate the s. 1113 Proposal...or any counterproposal you may wish to present to the Debtors prior to the final hearing on the s. 1113 Motion.” Please confirm that

VIA ELECTRONIC TRANSMISSION

Sam J. Alberts

May 18, 2020

Page 2

Verity no longer takes the May 13 position that any counterproposal will trigger withdrawal of the May 13 Proposal, or further consideration of severance benefits. Consistent with your present assertion of availability to discuss any counterproposal prior to the final hearing on the s. 1113 Motion, please confirm that the May 13 Proposal, or continuing consideration of severance benefits will remain open through that date. Is the viability of the May 13 Proposal, or continuing consideration of severance benefits, affected if UNAC objects to the s. 1113 Motion, to any degree?

2. The May 13 Proposal adverts to settlements with certain unions in connection with the Santa Clara County hospital sales, with respect to “severance benefits for members who were not rehired by Santa Clara County.” Toward advancement of a common understanding of the May 13 Proposal, UNAC requests that Verity prepare a draft stipulation, along the lines of the stipulations filed with the Bankruptcy Court in connection with the California Licensed Vocational Nurses Association [D.I. 1372] and IFPTE Local 20 [D.I. 1373], redlined to indicate variance between those stipulations and a stipulation intended to memorialize and implement the May 13 Proposal. This could be a very useful document in exploring consensual resolution.

3. The May 13 Proposal states that it “supersedes any and all previously [*sic*] proposals.” Can you please reconcile or explain this statement, insofar as the May 18 Verity Letter refers to continuing negotiations “to aid Prime and UNAC in reaching the terms of a new collective bargaining agreement that would take effect on or after closing of the Prime sale? What, precisely, is being “superseded?”

4. Along the same lines, does Verity envision no role in these continuing negotiations? With whom has UNAC been negotiating, and with whom will UNAC continue negotiations?

Finally, while I have not been at the bargaining table with Verity and Prime, I must respond to your email, earlier today, stating that UNAC has issued “recent, repeated statements that it considers no communication confidential...” I believe you incorrectly state UNAC’s positions on confidentiality and privilege. UNAC correctly resisted efforts to smother review of the bargaining process with an unwarranted and unsupportable assertion of FRE 408 privilege to all oral statements across the table. If Verity or Prime were poised to provide genuinely confidential information, then an NDA tailored to the bargaining realities of the situation could have been considered. Regrettably, Verity first raised the question of an NDA toward the end of the fourth day of bargaining. Should bargaining continue, this is a discussion that could perhaps be pursued.

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VIA ELECTRONIC TRANSMISSION

Sam J. Alberts

May 18, 2020

Page 3

UNAC looks forward to your timely response to the questions posed above, but also reserves all rights and remedies, at law or equity, in connection with any and all disputes with Verity, or with Prime.

Very truly yours,

Bush Gottlieb

A Law Corporation



Joseph A. Kohanski

cc (via Email): Max Carbuccia

Pamela Chandran

Jane Carter

Samuel R. Maizel

Tania Moyon

An Nguyen Ruda

Joel Richlin

Louise Ann Fernandez

Rich Adcock

Peter Chadwick

David Galfus

Steve Sharrer

Casey W. Doherty

Gary Gertler

Ira Gottlieb

Exhibit 16

Sam J. Alberts
PartnerSam.Alberts@Dentons.com
D 202 408 7004
M 202 321 0777Dentons US LLP
1900 K Street, NW
Washington, DC 20006
United States大成 Salans FMC SNR Denton McKenna Long
dentons.com

May 18, 2020

TRANSMITTED VIA ELECTRONIC MAIL

Joseph Kohanski
Bush Gottlieb
801 N. Brand Boulevard
Glendale, CA 92103
Email: jkohanski@bushgottlieb.com

RE: Bankruptcy Code § 1113 Proposal Concerning Rejection and Termination of Collective Bargaining Agreement:

Dear Joe:

This letter is in response to your letter delivered to me on Friday, May 15, 2020, at approximately 8:30 p.m. (Eastern). Your letter responded to the proposal sent on behalf of the Debtors to UNAC on May 13, 2020, in accordance with § 1113 of the Bankruptcy Code, seeking rejection and termination of the *Labor Management Collective Bargaining Agreement* effective from December 29, 2017 to December 29, 2021 (the “CBA”) effective upon closing of the sale of assets to Prime under the Bankruptcy Court approved APA (the “§ 1113 Proposal”).

In your letter you note that “the May 13, Proposal merits genuine discussion.” You also request that May 19, May 21 and May 26 be reserved for such discussion. Please be advised that May 19, May 21 and May 26 have been reserved for Prime and UNAC to discuss the terms of a new CBA that would, if reached, come into effect upon or after the closing of the sale of assets of St. Francis Medical Center (“SFMC”) to Prime under the APA. Under the terms of the APA, the Sellers’ obligation to facilitate discussions and negotiations between Prime and UNAC expired on May 9, 2020, which was the 30th day after the Sale Order. APA, § 4.09(b). Notwithstanding such expiration and, without waiver thereof, the Sellers have authorized Ms. Ruda to participate in those Prime and UNAC’s May 19, 21 and May 26 discussions to aid Prime and UNAC in reaching the terms of a new collective bargaining agreement that would take effect on or after closing of the Prime sale.

We believe the terms of the § 1113 Proposal are straight-forward and warrant little explanation. However, to the extent discussions would assist UNAC in understanding our § 1113 Proposal, we are available. We ask, however, that you submit your questions in writing sufficiently in advance of such discussions so we may consider them, especially as all meetings will be virtual and it will be helpful to know what questions or concerns UNAC has with the § 1113 Proposed itself (as opposed to UNAC’s go forward negotiations with Prime on the terms of a new CBA).

Further, given the terms of the APA and the costs incurred to date, the Debtors believe it is important to proceed under a formal § 1113 motion and that rejection and termination be granted as soon as practical, effective upon closing of the Prime sale. As such, as stated in my letter of May 13, 2020, absent acceptance of our § 1113 Proposal by close of business today, we intend to file a formal § 1113 motion, which we plan to do tomorrow. Notwithstanding such filing, the Debtors will remain available to discuss with you the terms of our § 1113 Proposal, provide UNAC with any relevant information necessary for you to evaluate the § 1113 Proposal (although we believe all information has been provided, through either filings or informal and formal responses to information requests from UNAC), or any counterproposal you may wish to present to the Debtors prior to the final hearing on the § 1113 motion.

If you have any questions, please feel free to contact me directly. Further, we are available to meet with you (virtually) to the extent that it would be productive.

Sincerely,



Sam J. Alberts

cc: via email

Max Carbuccia
Pamela Chandran
Rich Adcock
Steven Sharrer
Joel Richlin
Peter Chadwick
Samuel Maizel
Tonia Moyron
An Ruda
Luzann Fernandez
Casey Doherty
David Galfus

Exhibit 17

Sam J. Alberts
Partner

Sam.Alberts@Dentons.com
D 202 408 7004
M 202 321 0777

Dentons US LLP
1900 K Street, NW
Washington, DC 20006
United States

大成 Salans FMC SNR Denton McKenna Long
dentons.com

May 20, 2020

TRANSMITTED VIA ELECTRONIC MAIL

Joseph Kohanski
Bush Gottlieb
801 N. Brand Boulevard
Glendale, CA 92103
Email: jkohanski@bushgottlieb.com

RE: Bankruptcy Code § 1113 Proposal Concerning Rejection and Termination of Collective Bargaining Agreement:

Dear Joe:

This letter is in response to your letter delivered to me on Monday, May 18, 2020, at approximately 10:34 p.m. (Eastern). Capitalized terms not defined in this letter are defined in our prior communications.

Your letter begins by stating that UNAC is unable to respond to the § 1113 Proposal delivered to it on May 13, 2020.

With respect to your requests for clarification and information, please note the following:

1. *“Is there an expiration date, or a set of expiration events to the May 13 Proposal?”* Due to UNAC’s refusal to accept the § 1113 Proposal by May 18, 2020, yesterday the Debtors filed a motion under § 1113 seeking rejection and termination the *Labor Management Collective Bargaining Agreement*, effective from December 29, 2017 to December 29, 2021 (the “CBA”), effective upon closing of the sale of assets to Prime under the Bankruptcy Court approved APA (the “§ 1113 Motion”) [Docket No. 4742. Notwithstanding the filing of the § 1113 Motion, the Debtors are prepared to reach agreement under the same economic terms as contained in the § 1113 Proposal in the event that UNAC promptly agrees to the consensual rejection and termination of the CBA. However, in the event that UNAC does not timely agree or otherwise requires the Debtors to expend resources to litigate the §1113 Motion, the Debtors will seek nonconsensual rejection and termination of the CBA. We believe that the economic terms of the § 1113 Proposal that are conditioned on consensual rejection and termination provide a better outcome for UNAC members than nonconsensual rejection and termination.

2. UNAC has requested that the Debtors create a redline of “a stipulation intended to memorialize and implement the May 13 Proposal” against the stipulations reached between the Debtors and CLVNA and Local 20 in connection with the Santa Clara County sale. Please be advised that in the event that UNAC accepts the § 1113 Proposal terms, the Debtor will reduce the agreement to a form of settlement agreement or stipulation, akin to the process performed in

connection with the SGM transaction. As such, there is no redline able to be created at this time. However, the CLVNA and Local 20 stipulations are publicly available for viewing on the KCC website. *See* Docket Nos. 1372 and 1373.

3. UNAC wants to understand what previous proposal or proposals are being superseded by the § 1113 Proposal. The answer is any and all proposals UNAC alleges were made previously by the Debtors concerning rejection and termination of the CBA, including but not limited to, proposals made in the context of the SGM transaction.

4. *“Along the same lines, does Verity envision no role in these continued negotiations? With whom has UNAC been negotiating, and with whom will UNAC continue negotiations?”*

In response to the first question, no. The Debtors have advised UNAC that they are available to discuss the terms contained in its § 1113 Proposal and the § 1113 Motion. We ask that you put your questions in writing in advance of any such discussions.

With respect to the second question, we assume that the first part of the question refers to the discussions with Prime and the Debtors during period of April 9 and May 9, 2020. As you know, during that period, UNAC, Prime and the Debtors participated in several meetings and negotiations, all of which focused on whether the terms could be reached on a collective bargaining agreement that would govern the relationship between Prime and UNAC upon the closing of the Prime SFMC acquisition. As you also know, those negotiations failed to produce an agreement within the 30 day period under the APA § 4.09(b). Notwithstanding expiration of that 30 day period, nothing prevents UNAC and Prime from reaching an agreement on the terms of a new CBA. Moreover, although the Debtors are under no obligation to participate in any post-May 9, 2020 discussions and, without extension of the 30 day period containing in APA § 4.09(b), the Debtors have agreed that An Ruda may join the three scheduled May 2020 discussion dates to assist UNAC and Prime in reaching an agreement.

With respect to your question concerning the use of sensitive or confidential information and use of an NDA, we ask that UNAC refrain from disclosing such information prior to reaching agreement on the terms of an NDA or UNAC's recognition of another restriction acceptable to the Debtors. In addition, in the event UNAC wishes to file any sensitive and confidential information in Court, we ask that it does so under seal.

INTENTIONALLY LEFT BLANK



Similar to UNAC, the Debtors reserve all of their rights and remedies, and further preserve all of their claims and defenses.

Sincerely,

Sam J. Alberts

cc: via email

Max Carbuccia
Pamela Chandran
Rich Adcock
Steven Sharrer
Joel Richlin
Peter Chadwick
Samuel Maizel
Tonia Moyron
An Ruda
Luzann Fernandez
Casey Doherty
David Galfus

Exhibit 18

SFMC AUDITED FINANCIALS	FY 2016	FY 2017	FY 2018	FY 2019
Operating Revenues				
Net Patient Revenue	451,126,605	525,691,564	573,239,344	527,500,723
Other operating revenue	3,828,322	2,128,596	1,951,513	1,720,483
Total operating revenues	\$ 454,954,927	\$ 527,820,160	\$ 575,190,857	\$ 529,221,206
Operating Expenses				
Expenses	429,594,350	461,182,231	514,663,838	513,416,642
Total Expenses	\$ 429,594,350	\$ 461,182,231	\$ 514,663,838	\$ 513,416,642
Net Operating Income (Loss)	\$ 25,360,577	\$ 66,637,929	\$ 60,527,019	\$ 15,804,564
Non-Operating Revenue (Expenses)				
Non-operating Revenues	4,017,367	2,911,085	4,396,468	3,979,797
Non-operating Expenses	493,484	(350,288)	(575,586)	(1,124,757)
Income Taxes				
Extraordinary Items				
Other indicated in notes				
Total Non-Operational Income	\$ 4,510,851	\$ 2,560,797	\$ 3,820,882	\$ 2,855,040
Net Income	\$ 29,871,428	\$ 69,198,726	\$ 64,347,901	\$ 18,659,604
Operational Margin	5.57%	12.63%	10.52%	2.99%
Census Days	92,158	103,599	105,438	100,308
QAF				
DSH	\$ 29,676,523	\$ 29,991,390	\$ 21,970,902	\$ 27,016,273

REVENUES	FY 2016	FY 2017	FY 2018	FY 2019	FY16-FY19	FY 16-18
	454,954,927	527,820,160	575,190,857	529,221,206		
Difference		72,865,233	47,370,697	(45,969,651)	74,266,279	120,235,930
% change		16.02%	8.97%	-7.99%	16.32%	26.43%
EXPENSES	FY 2016	FY 2017	FY 2018	FY 2019	FY16-FY19	FY 16-18
	429,594,350	461,182,231	514,663,838	513,416,642		
Difference		31,587,881	53,481,607	(1,247,196)	83,822,292	85,069,488
% change		7.35%	11.60%	-0.24%	19.51%	18.70%

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Attorneys for United Nurses Associations of
California/Union of Health Care Professionals
("UNAC")

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

In re

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

Debtors and Debtors in Possession

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

Debtors and Debtors in Possession

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**DECLARATION OF JANE CARTER IN
SUPPORT OF UNAC'S OBJECTION TO
DEBTOR'S MOTION TO REJECT
COLLECTIVE BARGAINING
AGREEMENT**

HEARING: June 3, 2020
TIME: 10:00 a.m.
LOCATION: Courtroom 1568, 255 E.
Temple St., Los Angeles, CA
90012

BUSH GOTTLIEB
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260

1 I, Jane M. Carter, declare as follows:

2 1. I have personal knowledge of the matters stated in this declaration, and if called as
3 a witness I could and would testify competently thereto under oath.

4 2. I submit this declaration in support of the objection (the “Objection”) filed by the
5 United Nurses Associations of California/Union of Health Care Professionals, NUHHCE
6 AFSCME AFL-CIO (“UNAC,” or the “Union”) to the Debtors’ Motion Under §1113 of the
7 Bankruptcy Code to Reject Collective Bargaining Agreement with UNAC (the “Rejection
8 Motion”).¹ UNAC represents over 32,000 registered nurses and other health care professionals,
9 including approximately 800 registered nurses at Lynwood-based St. Francis Medical Center
10 (“SFMC” or “the Hospital”).

11 3. I am currently the Director of Research, Public Policy and Regulatory Affairs for
12 UNAC/UHCP, and commenced this position on April 1, 2020

13 4. Prior to joining UNAC, I have spent 15 years in the labor movement, in research or
14 regulatory policy positions. From January, 2013 until March, 2020, I was a Labor Economist III
15 at the American Federation of State, County and Municipal Employees (“AFSCME”), based in
16 Washington, D.C. In this role, I evaluated a variety of narrative and statistical data to prepare
17 reports and studies involving labor relations issues, and provided assistance to affiliates during
18 federal and state legislative hearings, contract negotiations, impasse resolution proceedings,
19 organizing and political campaigns, and other union activities. A primary aspect of my position
20 was to conduct financial and budgetary analysis for affiliates, including employer ability to pay
21 appropriate wages, or acknowledgement of lack of funds. During the City of Detroit bankruptcy,
22 I provided supportive data analysis to our department staff. I also served as the chief negotiator
23 for affiliates across the country, including Anaheim CA (AFSCME Council 36), Louisiana
24 AFSCME Council 17, and Anchorage, AK, Local 52. I have successfully negotiated significant
25 wage increases, removal of detrimental language, and improvement of worker protections.

26 5. I hold an M.S. in Environmental Policy and Management from Oklahoma State
27 _____

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the
Objection.

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Glendale, California 91203-1260

1 University, with a focus on the Economics of Eastern European environmental and nuclear policy,
2 and a B.A. from Oklahoma State University, in Political Science and Russian.

3 6. I have attended all bargaining sessions among St. Francis Medical Center
4 (“SFMC”) and Verity Health Systems, LLC (collectively, “Verity”), UNAC, and Prime
5 Healthcare (“Prime”) (together, collectively, the “Bargaining Parties”) since the bankruptcy court
6 approved an APA between Verity and Prime, and the Bargaining Parties initiated negotiations (the
7 CBA Negotiations”) toward modification of the existing collective bargaining agreement (the
8 “CBA”) in effect between SFMC and UNAC. These dates include April 22, April 28, May 1,
9 May 5, May 6, and May 8, 2020. There have been additional bargaining dates – May 19, May 21,
10 and May 26, but these dates have had a different character as Verity has largely been deferential to
11 Prime with respect to potential contract terms and the overall conduct of the negotiation process.

12 7. During the CBA Negotiations, I have focused on the economic questions arising
13 from the proposed modification of the CBA, and on requests for information (each, an “RFI”)
14 posed by UNAC to Verity or Prime (collectively, the “Management Parties”), in order to evaluate:
15 a) the economic impact and consequences of each Management Party proposal; b) the effect of
16 each Management Party proposal on all creditors, the Debtors and all affected parties, so as to
17 evaluate whether the economic burden of such proposals was not being unduly borne by UNAC-
18 represented employees; and c) whether each proposal was based on the most complete and reliable
19 information available at the time of such proposal. This Declaration likewise focuses on
20 Management Party responses to these economic questions, and does not purport to tally all
21 questions or responses as among the Bargaining Parties.

22 8. In preparation for negotiations, on April 20, 2020, lead UNAC negotiator Max
23 Carbuccia emailed the Union’s initial RFI (“RFI#1”) to An Ruda, an attorney participating in the
24 CBA Negotiation on behalf of the Management Parties RFI#1 tracks the information request used
25 by UNAC in most collective bargaining negotiations, including with St. Francis. RFI therefore
26 requested cost data under the existing CBA, including the costs of various shift differentials,
27 reimbursements for educational programs jury duty, and on-call status, He also requested
28 documentation of all practices and procedures to determine amounts and distribution of pay, the

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1 amount paid for the health insurance premiums under the CBA,, and the total costs of bargaining
2 unit health insurance for 2017 through 2019. In anticipation of negotiation with Prime, RFI#1 also
3 requests information about Prime's collective bargaining agreements (Question XVI), clarification
4 of unpublished schedules to the APA and Prime's process for employee retention and CBA
5 modifications (QuestionXXIII), anticipated changes in operations and staffing (Question XXIV),
6 and Federal and State tax returns for SFMC and specified affiliate entities. (Question XXV) A true
7 and correct copy of RFI#1is attached as Exhibit 2.

8 9. During the April 22 session, the Management Parties proffered proposed
9 modifications to the CBA that did not track the structure and terms of the CBA, but instead
10 tracked terms in effect between UNAC and Prime at small, regional hospitals not at all comparable
11 to SFMC. The UNAC bargaining committee responded at the bargaining table with "General
12 Questions" concerning specific proposed terms. Mr. Carbuccia emailed this set of General
13 Questions to Ms. Ruda during a break. In addition to these General Questions, which were
14 immediately responsive to the April 22 proposal, During a break in the April 22 CBA Negotiation,
15 Mr. Carbuccia emailed a set of "General Questions" - including what came to be known as the
16 "General Financial Questions" – to Ms. Ruda. The General Questions were developed by the
17 UNAC bargaining committee in response to the opening proposal presented at the bargaining
18 table, and the General Financial Questions had been developed in a generalized context. A true
19 and correct copy of the General Questions is attached as Exhibit 3.

20 10. During the April 22 bargaining session, I orally posed the General Financial
21 Questions, which relate to the overall economic consequences of the opening proposal, the
22 proposal, and to the general financial viability of SFMC as a stand-alone institution no longer
23 yoked to the other hospitals in the Verity Health System:

- 24 • What percentage of SFRNA wages and benefits accounted for total labor costs for FYs16-19?
25 Please identify cost of wages and benefits separately and for each year requested.
- 26 • How much DSH funding/reimbursement did SFMC receive in FYs 16-19? Please identify
27 amount per year.
- 28 • What are the outstanding receivables for FY 19?
- What is the impact of the modified debt? Specifically for FYs 18, 19, and 20.

- We would like the formal financial audits and reports for FYs 16-19 (not just the amounts reported to the state – your CFO said the financial situation is quite dire for SFMC).
- We need FY 20 and 21 financial projections if available.
- What is included in the “reorganization items” reported in the BK monthly financial statements?
- Prime’s proposal does not address outstanding 401k loans. We had previously addressed this in the last round of restructuring and need to ensure its also part of it.
- Will Prime takeover the current plan or make all employees start a new one?
- How much does Prime’s proposal save the facility vs. the current costs of the current CBA? [Suzanne Richards, for Prime] said it was 16% higher than Chino and Garden Grove but didn’t say anything about comps to the current SFRNA CBA.

11. On April 24, 2020, Mr. Carbuccia emailed RFI#2 to An Ruda: a request for SFMC’s audited FY 2019 financial statement. A true and correct copy of this transmission is attached as Exhibit 4.

12. On April 27, 2020, Mr. Carbuccia, by email, provided An Ruda with RFI#3. The 17 questions asked by the Union somewhat overlap with the “General Financial Questions, and, as with those questions, were intended to permit Union evaluation of the economic consequences of each Management Party proposal, the effect of each Management Party proposal on all creditors, the Debtors and all affected parties so as to evaluate whether the economic burden of such proposals was not being unduly borne by UNAC-represented employees, and whether each proposal was based on the most complete and reliable information available at the time of such proposal. Consistent with these principles, RFI#3 also was intended to test the financial viability of SFMC, independent of the entire Verity system. A true and correct copy of RFI#3 is attached as Exhibit 5.

13. Taken together, Management Party responses to each set of UNAC questions have not permitted evaluation of whether Management Party bargaining proposals have been based on the most complete and reliable information available at the time of each proposal. The Management Parties have also refused to provide information that would permit evaluation – much less, assurance – as to whether all creditors, the debtor, and all of the affected parties are treated fairly and equitably. And the Management Parties have refused to provide UNAC with relevant information that would be necessary to evaluate each Management Party proposal.

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1 14. During the April 22 bargaining session, Management Party counsel – primarily
2 Sam Alberts asserted that Federal Rule of Evidence 408 (“FRE 408”) would govern these
3 negotiations; it was unclear as to whether he intended FRE 408 to cover oral communications, or
4 all communications, and it was asserted that some of the information we sought through the
5 General Financial Questions would be subject to FRE 408. UNAC’s legal counsel, Pamela
6 Chandran, contested application of FRE 408 to the conduct of the bargaining process. I later
7 presented the General Financial Questions, and noted that our requests were specific to SMFC
8 rather than to Verity or Prime; I received no response. I was told that there was no answer to our
9 questions concerning historical or projected costs of the UNAC bargaining unit, or the cost
10 savings sought through the opening proposal, because cost was not a factor in structuring that
11 proposal. I was told that formal financial audits for FY 2016 to 2019 could be shared, but that
12 audits had not been completed, which is a surprise in light of publicly available information from
13 the California Office of Statewide Health Planning and Development (“OSHPD”). I was also told
14 that financial projections for FY 2020 and 2021 would not be available until they had been
15 “worked through,” and that I would have to make do with the monthly Operating Reports
16 submitted by Verity to the Bankruptcy Court, or with the OSHPD website.

17 15. On April 27, Sam Alberts emailed a reply to RFI#2, re-stating that there were no
18 SFMC or Verity audited financial statements after FY 2017, and providing links to the monthly
19 Operating Reports, through February, 2020. A true and correct copy of this email is attached as
20 Exhibit 6.

21 16. Prior to the April 28 bargaining session, Sam Alberts sent two emails that are
22 relevant to provision of financial information. One of these, addressed to Mr. Carbuccia, provided
23 an omnibus response to RFI#1 and RFI#3 that amounts to a general denial of information.

24
25 "the Pending Requests cover the Debtors’ historic operational and employment issues and, as such, are not
26 relevant or necessary to UNAC’s evaluation of proposed collective bargaining agreement (“CBA”)
27 provided to UNAC by Prime. In fact, the issue at hand is whether Prime and UNAC can reach agreement
28 on a new or modified CBA under terms agreeable to Prime and UNAC. If that cannot occur within 30
days, the Debtors, which will no longer be operating St. Francis Medical Center upon the sale closing to
Prime, are authorized to seek rejection of its UNAC CBA.

1 In addition, the scope of the Pending Requests are so broad that responding to them would be unduly
2 burdensome. As you can imagine, the Debtors' resources are very limited and, as such, the Debtors are
particularly mindful of expenditures at this juncture in the Bankruptcy Cases.

3 Further, UNAC sought much of the same information from the Debtors in connection with the SGM sale
4 as exists in the Pending Requests. As you may recall, the SGM-sale related information requests were
withdrawn before production when the parties reached agreement on the SGM-related modified CBA.

5
6 In light of the above, we would ask that UNAC withdraw the Pending Requests. Alternatively, if UNAC
wishes to provide an explanation as to why you believe any particular Pending Request is relevant to the
7 issue at hand, we will consider it and discuss it promptly with UNAC by way of a telephonic conference.
A true and correct copy of this message is attached as Exhibit 8.

8 17. The other email, addressed to Sandi Marques, contained written responses to the
9 General Questions, but the written responses to the General Financial Questions were generally
10 evasive – “to be determined,” and the like. However, this transmission also included a one-page
11 “Normalized P&L Statement” for the period from FY119, TTM Feb 20-March20 (the “4/28
12 P&L”), which is further addressed in Paragraph 27, below. A true and correct copy of this email,
13 omitting the Normalized P&L, is attached as Exhibit 7.

14 18. Nevertheless, during the April 28 bargaining session, I followed up on the Union
15 requests for information. I reiterated our request for financial projections, but Prime's CFO stated
16 that Prime had no plan to do financial projections. I asked about the cost savings anticipated from
17 the Management Parties' proposal; Prime representatives stated that the actual cost of the existing
18 CBA was not a factor in their proposal, which was built out from existing UNAC contracts at
19 small Prime hospitals rather than based on changes to the existing CBA. Sam Alberts asserted that
20 any questions about Debtor financials were irrelevant because Prime would be purchasing the
21 hospital. An Ruda acknowledged that UNAC was also inquiring as to total cost savings sought
22 from all SFMC employee groups and management, but told UNAC that this question would have
23 to be discussed with Prime.

24 19. The May 5 bargaining session featured definitive statements from Verity and Prime
25 concerning their collective refusal to provide information permitting Union evaluation of the
26 economic consequences of each Management Party proposal, the effect of each Management Party
27 proposal on all creditors, the Debtors and all affected parties so as to evaluate whether the
28 economic burden of such proposals was not being unduly borne by UNAC-represented employees,

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1 and whether each proposal was based on the most complete and reliable information available at
2 the time of such proposal. Exhibit 10 is a true and correct copy of a document emailed to coincide
3 with this bargaining session (the “RFI#3 Refutation”), by which Verity and Prime, through color-
4 coded annotations to RFI#3, sought to justify their positions. Certain themes re-occur throughout
5 the RFI#3 Refutation, as most of UNAC’s questions went unanswered.

6 20. In order to comprehend the effect of reductions in UNAC-related labor costs,
7 RFI#3, Question 1 requested SFMC formal financial audits and annual reports for FY 16-19, and
8 projections for FY20 and FY21. Verity responded that this information “is not relevant or
9 necessary to evaluate the proposal and that the production is unduly burdensome...” Similarly,
10 RFI#3, Question 3, sought the total labor costs of the UNAC bargaining unit for the same period.
11 Verity responded, *inter alia*, that “There are no projections for FY 20 or 21.” Similarly, while
12 RFI#3, Questions 6 and 14 sought FY 20 and 21 projections for UNAC and other labor units, and
13 clarification of concessions currently sought from other labor groups at SFMC. In addition to
14 stating confidentiality or ripeness concerns that are inconsistent with the notion of testing for fair
15 equalization of bankruptcy burdens, the Management Parties replied that “[t]he Debtors object to
16 this request on the same basis of relevancy and burden as set forth in response to Request
17 1....Moreover, Verity. has not prepared projections, and Prime has stated that it has not prepared
18 projections.” RFI#3 Question 15 similarly sought quantification of savings – tied to specific CBA
19 terms – for FY 20 and 21; the Management Parties restated their objections to RFI#3, Question 1.
20 Questions 16 and 17 explored this same issue of cost savings, in connection with Pension benefits
21 and a planned upgrade of SFMC to a Level 1 trauma center; the Management Parties offered the
22 same answer. The Management Parties otherwise directed UNAC to public data (RFI#3,
23 Questions 1 and 9), and suggested that certain questions (RFI#3, Questions 4 and 5) could perhaps
24 be addressed with Verity “assistance,” but the tenor of the RFI#3 Refutation indicates this was a
25 hollow prospect.

26 21. It is difficult to believe that a Debtor selling a hospital through the assistance of
27 investment bankers (Cain Brothers) and a data room for potential bidders, or that a successful
28 bidder for such asset, each have not prepared projections relating to labor costs for the nurses

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1 staffing that hospital. Whether or not UNAC's request is "burdensome" might present a legal
2 question, but in this context, stating that projections of such costs simply do not exist is difficult to
3 believe.

4 22. The Management Parties' insistence on withholding vital information was further
5 reinforced by the May 6 bargaining session, during which Mr. Alberts repeatedly restated
6 assertions that UNAC interests in the value of contract concessions were "irrelevant," because
7 Prime would be purchasing SFMC "free and clear, and that Verity "did not care" about the value
8 of CBA concessions. Alberts again stated that the Debtors are not projecting "after this year," and
9 Verity and Prime both restated that they have not projected or costed out the savings that would
10 occur under the CBA modification proposals. My questions concerning the savings to be realized
11 from changes in pension benefits – both directly through the bankruptcy, and through a new
12 contract with Prime – were rebuffed.

13 23. Given my experience as a labor negotiator, I have a long-standing professional
14 interest in the conduct of collective bargaining negotiations, and of Section 1113 rejection
15 negotiations. I am not aware of any such negotiations ever being conditioned on an understanding
16 that all oral content of the negotiations would be subject to some kind of legal privilege. In labor
17 negotiations, it is not uncommon for the bargaining parties to segregate discussions as "on the
18 record," or "off the record." However, near the beginning of the April 22, 2020 negotiation
19 session, Sam Alberts, asserted that all oral discussions would be subject to confidentiality under
20 "FRE 408." UNAC's counsel Pamela Chandran, strenuously objected to this assertion, and , all
21 Bargaining Parties agreed to reserve their rights, and Prime representatives Richard Martwick and
22 Joel Richlin stated that Prime was still willing to move forward with discussions. Mr. Alberts and
23 Ms. Chandran engaged in a similar discussion toward the end of the May 6, 2020 bargaining
24 session. During this discussion, the concept of a Non-Disclosure Agreement ("NDA") was first
25 raised among the Bargaining Parties. At the opening of a May 19 bargaining session, Joseph
26 Kohanski, bankruptcy counsel for UNAC, stated UNAC willingness to enter into an NDA so long
27 as it was tailored to permit data access for affected UNAC members, who in turn would be bound
28 by the duty of confidentiality.

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24. As a labor economist, I am deeply concerned by the nature and quality of the economic information provided by the Management Parties to date. Beyond the above-referenced information shortfalls that degrade the collective bargaining process, there are alarming discrepancies between publicly available documentation of SFMC's financial condition, and data presented – orally and in writing – at the bargaining table.

25. The Debtors have previously acknowledged SFMC profitability. In a March 10, 2020 Reply to Objections posed by the SEIU-UHW to the Debtors' Motion to Amend the Key Employee Incentive Plan and Key Employee Retention Plan, the Debtors stated that "SFMC...remains financially viable...(for the operating period from the Petition Date to January 202, SFMC's earnings before interest, depreciation and amortization was approximately \$8 Million..." [D.I. 4248, p.6 of 20, Note 6]. Not surprisingly, the Debtors' monthly Operating Reports, filed with this Court, consistently demonstrate profitability for SFMC, while each other Verity hospital is losing money. SFMC's monthly Operating Reports have stated positive SFMC operations of \$10.0 million in February, 2020 and \$19.4 million in March, 2020 alone. Total operational income (absent reorganization costs) from the Petition Date through March, 2020 shows a positive performance of \$17.9 million. Consistent with the Operating Reports, publicly available information maintained by the California Office of Statewide Health Planning and Development ("OSPHD") similarly demonstrates a profile of profitability.² According to publicly available information from OSHPD, SFMC recorded positive operations in the last four fiscal years. Specifically, SFMC's state audits report operational income of \$29.9 million (5.6% operating margin) in FY16, \$69.2 million (12.6% operating margin) in FY 17, \$64.4 million (10.5% operating margin) in FY 18, and \$18.7 million (2.99% operating margin) in FY 19. Although reported operations dipped in FY 19, the facility recorded continued profits absent QAF,

² This material can be accessed through the following link:[https://oshpdca.opengov.com/transparency#/11643/accountType=balanceSheet&embed=n&b
reakdown=types¤tYearAmount=cumulative¤tYearPeriod=years&graph=stacked&le
gendSort=desc&proration=true&saved_view=null&selection=34B6227E4AEC4DDC63A71AE7F
CBF18EC&projections=null&projectionType=null&highlighting=null&highlightingVariance=nul
l&year=NaN&selectedDataSetIndex=null&fiscal_start=earliest&fiscal_end=latest](https://oshpdca.opengov.com/transparency#/11643/accountType=balanceSheet&embed=n&breakdown=types¤tYearAmount=cumulative¤tYearPeriod=years&graph=stacked&legendSort=desc&proration=true&saved_view=null&selection=34B6227E4AEC4DDC63A71AE7FCBF18EC&projections=null&projectionType=null&highlighting=null&highlightingVariance=null&year=NaN&selectedDataSetIndex=null&fiscal_start=earliest&fiscal_end=latest)

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1 DSH or other supplemental governmental reimbursements and payments, as explained in further
2 detail below.

3 26. Through the OSHPD, SFMC's "Summary of Individual Disclosure Report"
4 ("SIDR") identifies significant positive operations every fiscal year since FY 16, with operating
5 margins of more than ten percent in the previous two fiscal years. I have summarized this
6 material in a spreadsheet, a true and correct copy of which is attached as Exhibit 18. Although
7 SFMC's reported revenues dipped \$5.9 million in FY 19, the facility experienced overall total
8 revenue increases of \$73.4 million, or 16.3 percent, from FYs 16-19. Importantly, however,
9 Quality Assurance Payments remain relatively stable from FY 16-19, absent the notable dip of
10 more than \$8 million in FY 2018 from FY 17. QAF payments provide funding for supplemental
11 payments to California hospitals that serve Medi-Cal and uninsured patients and are dependent on
12 legislatively approved funding formulas. Furthermore, specific information on the facility's receipt
13 and future payment of Disproportionate Share Hospital (DSH) Program payments, a Medi-Cal
14 supplemental payment program, was never articulated nor properly presented by Verity/Prime.
15 (Importantly, these funding streams are also highly political and dependent on whimsical natures
16 of legislative bodies (federal and state). Based on the available data, I estimate the revenue decline
17 reported in FY 19 to be due to lower census as well as QAF and DSH supplements. \ There is no
18 documentation to account for the impact of COVID-19. Nevertheless, public records indicate that
19 SFMC is financially viable, and continues to generate profits with the existing labor structure –
20 including the UNAC CBA – in place.

21 27. The only financial documentation UNAC received through the bargaining process
22 was the Normalized P&L, a true and correct copy of which is attached as Exhibit 7. Upon
23 review, it did not appropriately articulate the financial health of the facility. Therefore, the Union
24 sought additional information, including state transparency data/audits as well as other filings with
25 the bankruptcy court. The Normalized P&L differs significantly from the monthly Operating
26 Reports submitted to the Bankruptcy Court, as well as from data reported to OSHPD. Per the
27 Normalized P&L, earnings before interest, depreciation, and amortization were \$86.7 million in
28 FY 17, \$12.2 million in FY 18, and (\$8.2 million) in FY 19. Although only two fiscal months

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1 were provided to UNAC, the Normalized P&L reports EBIDA having dropped dramatically in
2 FY20; March data indicates \$19.9 million in operational deficits. There are multiple deficiencies
3 with the information in the P&L. First, management provided only two months of detailed
4 financial data of the current fiscal year. This lack of information provides only one month of
5 comparisons – which is far from substantive, nor is it enough to support any prudent estimates.
6 Second, the February 2020 Operating Report states revenues of \$65.7 million, which is a \$33.4
7 million increase from January. Although the Operating Report filed with this Court states
8 operation revenues of \$10.0 million for TTM February, the Normalized P&L reports deficit
9 operations of (\$9.3 million). Third, the calculations for March should report positive EBIDA of
10 \$11.2 million, and not the significant deficit of (\$19.9 million) as reported in the Normalized P&L
11 – the calculations presented in the Normalized P&L for TTM March simply do not add up. Fourth,
12 the monthly operations do not match operational performance as submitted to the Bankruptcy
13 Court. The Normalized P&L indicates a \$19.9 million deficit for TTM March. According to the
14 Operating Reports, which Management referred UNAC to use for its financial questions, March
15 expenses decreased \$10.7 million and revenues were only \$933,000 less. Overall, the Operating
16 Reports show positive operations of \$18.1 million for the month. This is in sharp contrast to what
17 Management provided to UNAC and stated in the Normalized P&L. Again, Management has met
18 the Union’s attempts to ask questions with responses to seek publicly available information or
19 broad strokes of data over random periods of time (i.e. “labor costs for FY2017-April 2020 are:
20 \$356,890,827” with no breakdown of year, unit, vendor, etc.)

21 28. Throughout bargaining, Verity and Prime have declined to answer the Union’s
22 questions regarding costs and profitability of SFMC. On April 28, 2020, Prime’s CFO twice
23 stated that SFMC was not profitable, contrary to what has been said, researched or is believed by
24 UNAC or other parties. Further, neither Prime nor Verity have provided UNAC with any
25 substantial, qualitative, explicit or comparative costs or financial data. On May 5, 2020, Verity
26 even stated that comparisons to similar industry equals were unavailable because they (Verity)
27 didn’t have access to such industry comps or standards. Adding insult to injury, Prime agreed
28 with Verity’s assertion and rationale of inability – or the lack of any obligation - to provide

1 comparisons, costs, or standards. It is inconceivable that neither the Debtors nor the Buyer have
2 access to data for Level 2 trauma centers similar to SFMC. These omissions, combined with the
3 disparities in the available data, are in stark contrast to what has been said by Verity in bankruptcy
4 court filings, including its response to SEIU/UHW and its monthly operating reports, and filings
5 with the State of California.

6 I declare under penalty of perjury, under the laws of the United States and the state of
7 California, that the foregoing is true and correct.

8
9 Executed this 29th day of May, 2020, in San Dimas, California

10
11
12 
13 _____
14 Jane M. Carter

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("UNAC")
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**
12

13 In re

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

15 Debtors and Debtors in Possession
16

17 ☒ Affects All Debtors

- 18 ☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
19 ☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
20 ☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
21 ☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital
22 Foundation
☐ Affects St. Francis Medical Center of
23 Lynwood Medical Foundation
☐ Affects St. Vincent Foundation
24 ☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
25 ☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
26 ☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
27 ☐ Affects De Paul Ventures - San Jose
Dialysis, LLC
28

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**DECLARATION OF MAXIMO
CARBUCCIA IN SUPPORT OF UNAC'S
RESPONSE TO DEBTOR'S MOTION TO
REJECT COLLECTIVE BARGAINING
AGREEMENT
HEARING: JUNE 3, 2020
TIME: 10:00 a.m.**

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Debtors and Debtors in Possession

**Courtroom 1568, 255 E. Temple St.
Los Angeles, California**

I, Maximo Carbuccion, declare as follows:

1. I have personal knowledge of the matters stated in this declaration, and if called as a witness I could and would testify competently thereto under oath.

2. I submit this declaration in support of The United Nurses Associations of California/Union of Health Care Professionals ("UNAC/UHCP") response to the debtors' Motion Under §1113 of the Bankruptcy Code to Reject Collective Bargaining Agreement, which represents over 32,000 registered nurses and other health care professionals. The Union represents roughly 850 registered nurses at Lynwood-based St. Francis Medical Center ("SFMC" or "the Hospital").

3. I have at all relevant times and currently serve as Director of Collective Bargaining and Chief/Lead Negotiator for St. Francis 1113 modification negotiations.

4. I have over 20 years' experience working for labor organizations as a representative for working people, all in the healthcare and homecare industries. I have been employed by UNAC/UHCP since August 2013. I was hired as Assistant Director for Representation, and promoted to Director of Collective Bargaining in January 2014. I have negotiated Prime contracts at Garden Grove Hospital (current and prior contract) and I negotiated the current SFMC contract with Verity. In addition to the Prime Garden Grove and St. Francis contracts, I have negotiated contracts for UNAC/UHCP-represented employees at Fountain Valley (Tenet), and in Kaiser National Negotiations, and was lead negotiator for a Kaiser Permanente contract for Midwives and Wound, Ostomy and Continence Nurses ("KPMWON"). I have also overseen negotiations at Balboa Naval Medical Center, Bear Valley Hospital (public hospital), Lakewood Medical Center, and Parkview Hospital.

5. Prior to my employment with UNAC/UHCP I was a Staff Representative with the California Nurses Association ("CNA") from 2007 to 2013. In that capacity, I negotiated contracts with Prime at Alvarado Hospital in San Diego and at St. Mary's Regional Hospital in Reno, Nevada. I also negotiated contracts for CNA-represented nurses and ancillary staff at

1 Palomar Pomerado Hospital (public hospital). I also negotiated for CNA-represented nurses at Tri-
2 City Medical Center (public hospital), and for nurses employed by the County of Sacramento.

3 6. I was the Political Director for United Domestic Workers, AFSCME.

4 7. In 1997 I received a Bachelor's Degree in Political Science from Queens
5 College, CUNY. New York City.

6 8. I have attended numerous bargaining training sessions while at the
7 California Nurses Association and most recently with UNAC/UHCP I attended and assisted with
8 the bargaining training that was put together with the Industrial Relations School at Cornell
9 University for our staff.

10 The Bargaining Among UNAC/UHCP, Verity and Prime

11 9. On April 22, 2020, representatives of UNAC/UHCP met with
12 representatives of Verity and Prime (collectively, "management") for our first negotiation session.
13 As I will explain in what follows, because of the lack of clear communication from representatives
14 of management over the bargaining period, it was difficult to discern what the negotiations were
15 attempting to resolve, or who was speaking for which entity. For the Union's part, it was our
16 intent to negotiate in good faith for a fair successor agreement with Prime on the assumption it
17 was going to take over operation of SFMC, and to avoid the need for Verity to reject the operative
18 collective bargaining agreement ("CBA"). We faced a challenge, however, and what appears to be
19 a *fait accompli* contrary to the principles of good faith bargaining and my understanding of the
20 safeguards enacted in bankruptcy code section 1113, in that the APA governing the successor
21 relationship between Verity and Prime seemed to commit Verity to reject the existing CBA
22 regardless of any efforts the Union might make to collectively bargain and gain an agreement
23 obviating any legitimate basis for such rejection.

24 10. In that regard, in order to properly evaluate proposals provided to us by
25 management, and to effectively evaluate and craft our own proposals and responses, we needed
26 certain information from Prime that it declined to provide, e.g., the cost differentials/savings to be
27 derived by comparison between the operative Verity CBA and the proposed Prime CBA.

28

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April 22 session

11. At the first negotiation session among the parties that took place on April 22, 2020, the following people were present: Sam J. Alberts, bankruptcy attorney for Verity, Suzanne Richards, head of the transition team for Prime, Mary Schottmiller, in-house counsel for Prime, Steve Aleman, CFO for Prime, Rich Martwick and Joel Richlin, Legal Counsel for Prime, An Nguyen Ruda, Verity attorney and lead negotiator, Steve Sharrer, Verity's Chief Human Resources Officer, and Louise Ann ("Luzann") Fernandez, Verity attorney and note taker for An Ruda.

12. For the Union in addition to me were Sandi Marques, Jane Carter, economist, Pamela Chandran, in-house counsel for UNAC, and Maria Rosa, Maria Nunez, Ana Bergeron, Ahsan Haque, & Scott Byington, all members of the bargaining committee and registered nurses at SFMC.

13. At the first session, I made an opening statement to acquaint all present with the history and importance of the relationship that the Union had established with the workers at SFMC and the community served by the Hospital. The following statements I made at the table are true and accurate:

a) We have a long history at St. Francis. Nurses voted to join UNAC/UHCP in 1988 and, after a protracted legal battle, St. Francis RNs won their first contract in 1992.

b) We have renegotiated the St. Francis contract eight times since 1992, establishing working standards that allow St. Francis to attract and retain highly qualified RNs in a difficult-to-recruit area of southeast Los Angeles County.

c) The St. Francis nurses take great pride in the quality of care and compassion they deliver to their patients and the surrounding communities every day.

d) The St. Francis RNs are deeply invested in St. Francis continuing its well-established mission as an essential safety net provider in LA County, including maintaining all of the medical services that the Hospital currently provides.

e) St. Francis is the only comprehensive, non-profit health care

1 institution serving the more than one million residents of southeast Los Angeles.

2 f) UNAC/UHCP-represented nurses in 2011 agreed to freeze their
3 defined benefit pension plan, and in 2014 agreed to a three-year wage freeze.

4 14. Of particular significance for this proceeding, since Verity began operating
5 St. Francis in 2015, the overall system of Verity facilities has suffered financial distress, but St.
6 Francis itself has had a positive cash flow, has performed well and served to support the struggling
7 hospitals in the system.

8 15. In response, Mr. Alberts stated that they wanted to move quickly, that they
9 could file a motion for rejection within 30 days of April 9, and so we had 30 days to modify or
10 reject the contract.

11 16. On April 22, Verity provided the Union with a document comprising
12 Prime's CBA proposal. I asked what the cost saving of the proposal was compared to the current
13 CBA, but received no answer. Ms. Ruda again mentioned that the 30-day calendar would run out
14 on May 9, and said that "we" would use section 1113(e) if the Union didn't agree with Prime.
15 During a break, the Union emailed its first request for information pertaining to SFMC's finances
16 and recent economic history, financial audits, receivables, financial projections, Prime's plan for
17 managing the existing 401(k) plan, and again, the amount Prime expected to save with its proposal
18 in comparison to the current SFMC CBA. A true and correct copy of that emailed information
19 request is attached to the Union's response as Exhibit 3.

20 17. Mr. Alberts also stated that the "entire negotiation" was in his view under
21 Rule 408 of the Federal Rules of Evidence, which he stated made all the discussions across the
22 table, communications between the parties and exchanges of proposals privileged and confidential.
23 Ms. Chandran stated the Union's disagreement with that position, stating that the negotiations
24 themselves were not under Rule 408. At the end of the day on April 22, Ms. Chandran engaged
25 Mr. Alberts in a further discussion of Rule 408, Mr. Alberts reiterated his position that the rule
26 applied, and Ms. Chandran stated the Union's disagreement on that point. Joel Richlin, counsel for
27 Prime, stated that Prime believed that 408 applies but they were willing to move forward with the
28 knowledge of the disagreement and no one is waiving their rights. Also on that day, Mary

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1 Schottmiller noted that Prime's proposal was not a take it or leave it proposal. Prime also took the
2 position that it will not adopt the existing pension plan, for financial reasons.

3 18. Jane Carter asked questions about the finances of Verity and Prime, and
4 Joel Richlin (Prime legal counsel) stated that some of the information was privileged under Rule
5 408. She asked for financial audits for SFMC, and we were informed that no such audit existed.
6 Ms. Ruda reminded everyone that some of the requested information belongs to Verity, and Prime
7 would need to clear its disclosure prior to sharing. In response, Ms. Carter said the Union was not
8 interested in Verity's overall entire financial information, just that specifically pertaining to
9 SFMC. Ms. Ruda said she didn't have authority to disclose, but would follow up.

10 19. Between the first session and second one of April 28, the Union made two
11 additional requests for information via email. True and correct copies of those requests are
12 attached to the Union's Response as Exhibits 4 and 5. On April 23, the Union received partial
13 answers to some of its general questions about the Prime CBA proposal.

14 April 28 session

15 20. The parties next met in negotiations on April 28, 2020. Present for Prime
16 were Hazel Ganay, Arti Dhuper, Joel Richlin, Steve Aleman, Mary Schottmiller, and Rich
17 Martwick; present for Verity were An Nguyen Ruda, Steve Sharrer, and Sam Alberts. The
18 Union's representatives were the same on this day as they were on April 22.

19 21. At this session, the lack of financial transparency or willingness to engage
20 in a bilateral discussion of the CBA issues became clear. In response to my questions about audits
21 for Verity or Prime for 2018 or 2019, Ms. Ruda stated there were none. Ms. Carter asked for
22 Prime's financial projections for SFMC, and Mr. Martwick and Mr. Aleman stated that *Prime has*
23 *no plan to do financial projections*. Mr. Alberts stated that the financial information relating to the
24 debtors was irrelevant because Prime was purchasing the hospital. Ms. Carter asked what the cost
25 of Prime's proposal was, and Mr. Martwick said Prime based it on a 16% increase on wages in the
26 Garden Grove contract over the course of three years, and it has no relation to the SFMC contract.
27 We asked how much was being asked from SEIU (another union representing workers at SFMC),
28 and from management, and asked how much in cost savings was needed, and Mr. Aleman stated

1 that "*cost is not a factor in our proposal.*" In fact, based on the limited information we have been
2 provided, we estimate that Prime's opening proposal represented a massive cut of between 20%
3 and 50% on wages in relation to the compensation paid to the nurses under the current SFMC
4 CBA. In addition, Prime proposed reductions in On-Call pay, Relief Charge Differentials, and a
5 cut to the current Clinical Ladder.

6 22. Mr. Martwick said that in order for us to get to a good faith contract, "we"
7 are using the best language from the two other contracts between Prime and UNAC at other
8 unrelated facilities.

9 23. After the conclusion of bargaining on April 28, the Union emailed proposed
10 dates for bargaining sessions for May 12, 14, 19, 21, 26 and 28, and June 2 and 4.

11 24. On April 29, the Union received responses to its general contract questions,
12 but no further information concerning requested financial data.

13
14 May 1 session

15 25. The next bargaining session took place on May 1. At the table for
16 management were Ms. Ruda, Ms. Fernandez, Elizabeth Ferguson (an attorney from Ms. Ruda's
17 firm who was observing the proceedings), Mr. Sharrer, Sam Maizel (Verity bankruptcy lawyer),
18 Suzanne Richard, Hazel Ganay, Antonio Montenegro, Ms. Schottmiller, Shirley Kim (Vice
19 President of Claims and Operations for Prime), Ms. Dhuper, Mr. Richlin, and Mr. Aleman. The
20 Union's bargaining committee consisted of the same people as before.

21 26. At this session the Union presented a partial proposal consisting of
22 seventeen items. including concessions from the current UNAC SFMC contract. I walked the
23 management representatives through the substance of our proposal.

24 27. In addition to that, we had a discussion about future dates for bargaining.
25 Ms. Ruda said they believed they could get the contract done within the 30 days, but after 30 days,
26 "the company can file for a rejection of the contract", and "the company can still be bargaining."
27 Aside from the fact that it was not clear for whom she was speaking, she declined to commit to
28 more bargaining sessions beyond May 8. We also had a discussion about Article 1, the

1 Recognition clause, which is a permissive subject of bargaining about which parties are not
2 required to bargain under federal labor law. Ms. Ruda stated that “we” do not believe that the
3 permissive and mandatory subject doctrine applies to bargaining under section 1113.

4 May 5 session

5 28. In attendance on May 5 for the Union were Max Carbuccia, Jane Carter,
6 Pamela Chandran, Sandi Marques, Ana Bergeron, Maria Nunez, Maria Rosa, Ahsan Haque, and
7 Scott Byington, For management, in attendance were: Verity - An Nguyen Ruda, Steve Sharrer,
8 Sam Alberts, Luzann Fernandez, and Kimiko, an observer from Ms. Ruda’s firm. For Prime: Mary
9 Schottmiller, Rich Martwick, Suzanne Richards, Steve Aleman, Hazel Ganay (HR Prime). Prior to
10 meeting, Ms. Ruda sent the Union Prime’s counterproposals and responses to the Union’s RFI #3.
11 The Union sent Prime its counterproposals. On that day, the Union made the rest of its proposals,
12 which now comprised a complete contract. The new proposals also included adoption of some of
13 Prime’s proposed language changing the current SFMC language. That morning Prime accepted a
14 few of the Union’s earlier proposals. Later that same day, however, management stated that it had
15 no counter to the Union’s proposals made that day, and would stand on the previous articles it had
16 provided to UNAC. That rejection included declining to accept language UNAC had agreed on.
17 Prime was at best unclear as to what language was agreed upon and what was not, and showed no
18 willingness to make movement on any of the new proposals the Union made on the morning of
19 May 5. Prime proposed to change the size of the bargaining unit, and start all nurses with zero
20 seniority.

21
22 May 5 Information Requests

23 29. Verity stonewalled in responding to the Union’s third request for
24 information. It declared the request for formal financial audits and annual reports for SFMC for
25 fiscal years 2016-2019 “irrelevant” and not necessary to evaluate the proposal. It took the same
26 position with respect to the Union’s request for total labor cost of the UNAC/UHCP units for the
27 last three fiscal years, and for projections for fiscal years 2020 and 2021. It refused to provide the
28 percentage of total costs attributable to UNAC wages and benefits for fiscal years 2016-2019, or to

1 compare the UNAC unit costs compared with all SFMC labor costs.

2

3 May 6 session

4 30. On May 6, the same participants were present for all parties as were present
5 on May 5, except Kimiko was not present. On that day, the Union and Prime reviewed a few non-
6 economic items on which there was agreement: strikes and lockouts, union security, and bulletin
7 boards. The Union made further proposals and explained them. Management did not engage in any
8 discussion of those proposals.

9 31. Ms. Carter persisted with questions relating to economic and financial data,
10 including the cost of one insurance plan compared to the current plan. In response, Mr. Alberts
11 said that that information was irrelevant, because Prime is purchasing the assets free and clear, and
12 that “we don’t care what the concessions are.” Mr. Alberts stated, in response to Ms. Chandran’s
13 question as to whether it would provide the requested information, that “we will not provide
14 irrelevant information.” Mr. Alberts stated that “*we did not do projections of costs of (our)*
15 *proposed contract.*” It again repeated that Prime had not done an analysis as to projected savings
16 for the facility it expected to realize as a result of its proposed contract.

17 32. In response to the Union persisting with questions about potential savings
18 from the concessions Prime was seeking, Mr. Alberts stated that he was “having a hard time
19 understanding the relevance of these records. . . At the end of the day what Prime is willing to
20 accept is what it is willing to accept. 1113 does have to reflect equal treatment of bargaining units.
21 But that occurs during the rejection of the entire contract.”

22 33. It again declined to produce 2020 or 2021 projections for UNAC and other
23 units, or a comparison of UNAC costs across the industry, saying again they were irrelevant. It
24 refused to provide any information about SFMC’s receivables for fiscal years 2019 and 2020.
25 Finally, it declined to provide information about concessions it was seeking from other employee
26 groups represented and not represented by a union, and how much Prime’s current proposal saved
27 it with respect to several specified cost items in comparison to the current SFMC contract. .

28 34. There was a further discussion about whether Rule 408 applies. Sam

1 Alberts said that if the Union refused to give assurances that it would not discuss bargaining in a
2 public forum, that Prime/Verity would possibly seek an NDA or a court order. Ms. Chandran
3 noted that there had not been any mention, desire or request for an NDA after five bargaining
4 sessions, and that Prime had offered no legal authority for its position that the Rule applied to
5 cloak the parties' discussions in secrecy or privilege.

6 35. On May 7, 2020, I received a letter from Mr. Martwick on Prime Healthcare
7 letterhead, complaining about the Union's position in bargaining. A true copy of that letter is
8 attached as Exhibit 11. The first part of the letter purported to show that its position at the table
9 was reasonable, by comparing its proposals to terms UNAC has agreed to at other Prime hospitals.
10 What he did not mention is that those hospitals he chose to compare to SFMC (e.g., Garden
11 Grove) are not remotely similar in operation or responsibilities and tasks performed by the nurses
12 the Union represents there compared to those performed by UNAC-represented nurses at SFMC.
13 Moreover, he did not mention that SFMC is not losing money.

14 36. In fact, a comparison between SFMC and Garden Grove or Chino Valley is
15 simply inapt, as to operations, qualifications of nurses, locations, and other factors relevant to
16 nurse compensation and responsibility. St. Francis is a level 2 trauma center with over 800 nurses.
17 It has the highest paid Registered Nurses in the area, because of the high level of training and
18 experienced personnel that is needed to operate it. It provides massive emergency services to the
19 area. Garden Grove and Chino Valley Hospital, on the other hand, are not trauma centers. Garden
20 Grove has about 200 nurses and Chino Valley has about 150 nurses. Garden Grove is in Orange
21 County, is not a trauma center, and is a much smaller hospital, with approximately 167 beds,
22 compared to 384 at SFMC. In the last contract negotiations with UNAC, Prime had to boost the
23 wages at Garden Grove because they lose nurses to surrounding hospitals with higher pay, but
24 they are still not comparable in compensation to SFMC. Chino Valley Hospital has only
25 approximately 126 beds, is in Riverside county and the wages it offers are far below that of St.
26 Francis because of location and level of medical treatment that Chino provides to the public, and
27 because Chino Valley Hospital and UNAC settled their first collective bargaining agreement in
28 December 2019.

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1 37. The second part of Mr. Martwick's May 7 letter complained about the
2 Union's alleged refusal to honor "confidential settlement communications" which he again
3 claimed were covered by Federal Rule of Evidence 408. He also incorrectly stated that "Prime has
4 provided all relevant information that is necessary to evaluate our proposals." First, as noted
5 above, in all of my experience as a labor negotiator, I have never heard of Rule 408 applying to
6 collective bargaining negotiations, and thus placing a shroud over the parties' discussions. Nor did
7 the parties agree in these negotiations to a confidentiality regimen, applying either to discussions
8 across the table or information received in response to the Union's requests. The parties were
9 supposed to be negotiating for a collective bargaining agreement. If there is agreement, and later a
10 dispute about what the language agreed upon meant (either in arbitration or in a court dispute), the
11 parties will routinely refer to and present the statements made by each party across the table to
12 help the decisionmaker decide what the parties' contemporaneous intent was, and thus, to
13 determine the true meaning of the agreed-upon contract language. Those statements cannot be
14 treated as privileged and confidential without mutual agreement, which did not occur in these
15 negotiations.

16 Nor, as I have noted above, did Prime provide anywhere near "all relevant information"
17 needed to evaluate its proposals. Prime's proposals represented a substantial reduction in the
18 current compensation levels afforded to UNAC-represented employees at SFMC (even with the
19 reductions SFMC employees suffered in prior negotiations cycles), which made relevant the
20 Union's requests for information calculating the magnitude of those reductions, and comparing
21 them to what actual savings Prime needed to operate SFMC as a going concern. The Union
22 responded to Mr. Martwick by letter of May 8. A true and correct copy of that letter is attached to
23 the Union's response as Exhibit 12.

24 May 8 session

25 38. At the May 8 bargaining session, as a result of the correspondence
26 exchanged there was further discussion of the applicability of Rule 408, with the parties holding to
27 their positions. There was also discussion about paid time off ("PTO"), which Prime said would
28 start at zero for all nurses hired by Prime. There was discussion about seniority (Prime took the

1 position that all nurses would have the same seniority date), and that it would interview SFMC
2 nurses who applied to work for Prime at the facility. It also said that it wanted a full year to
3 evaluate who it would retain in employment, and to be able to lay off people without regard to
4 seniority for that year.

5 May 13 proposal

6 39. On May 13, the Union received a proposal from Prime's counsel, addressed
7 to the Union's bankruptcy counsel, Joe Kohanski, copied to, among others, me and Pamela
8 Chandran. A true and correct copy of that letter is attached to the Union's response as Exhibit 13.
9 The letter says that "this proposal supersedes any and all previously (sic) proposals." In essence,
10 the proposal offers a cashout of accumulated PTO for all employees based on the "accrual
11 method", and allowed bankruptcy claims for severance to all SFMC employees not hired by
12 Prime. In exchange, the proposal demands that the Union consent to CBA rejection, effective as of
13 sale closing, subject to possible pursuit of 1113(e) relief prior to closing. The letter also states that
14 if "UNAC contests the Rejection or otherwise seeks terms that differ from the above terms",
15 Verity will withdraw the severance benefit. This thus appears to be an erasure of all negotiations
16 that had preceded it, plus a poison pill in the event UNAC tried, either through negotiation or
17 litigation, to alter the terms of the offer or the state of play in negotiations. This was a take it or
18 leave it offer, and made the negotiations that had preceded it a nullity. This proposal was not
19 consistent with good faith.

20 40. Nevertheless, the Union did not reject the May 13 proposal out of hand, but
21 sought clarification and further description of it and its consequences. Through Mr. Kohanski, the
22 Union sent that clarification request by letter of May 15, proposing utilization of
23 existing bargaining dates to explore the May 13 proposal, and continuance of the deadline for
24 acceptance to May 26. Exhibit 14.

25 41. On May 18, Mr. Alberts responded by letter, declining to
26 extend the acceptance date. A true and correct copy of that letter is attached to the Union's
27 Objection as Exhibit 15. Mr. Kohanski responded that same day, seeking clarification of the
28 terms for expiration of the May 13 proposal, and noting that appropriate use of an NDA could

1 have been raised much earlier in the bargaining process. A true and correct copy of that letter is
2 attached to the Union's Objection as Exhibit 16.

3 42. On May 20, Mr. Alberts responded with a letter that UNAC found to be
4 incoherent or incomprehensible, pertaining to the potential termination of the May 13 offer.

5 43. Meanwhile, UNAC and Prime agreed to bargaining dates on May
6 19, May 21 and May 26. Verity had representatives in attendance. UNAC has also requested
7 additional bargaining dates, but has yet to hear back from Verity or Prime. The Verity May 13
8 proposal is not acceptable to the Union. We are continuing to negotiate with Prime, but those
9 negotiations are hampered by the bad faith conduct of Verity and Prime.

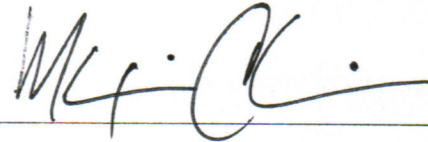
10 44. The gambit engaged in by Verity and Prime negates the notion of good faith
11 bargaining and my understanding of the basic protections that are supposed to be afforded to
12 unions under section 1113. Both entities have been at the table, but neither has been willing to
13 engage in a true negotiation, involving a genuine give and take, and an engagement in reasoning as
14 occurs in good faith negotiations, and that can lead to a mutual solution to the labor issues central
15 to the productive operation of a hospital. Verity and Prime have agreed in their APA (to which no
16 union was a party, of course), prior to any negotiations with any union, that Prime will simply not
17 accept or even modify the current SFMC-UNAC CBA, or anything close to it, and will walk away
18 from SFMC without what amount to major economic concessions by UNAC (and other unions on
19 the property). That is essentially a *fait accompli* arrived at prior to bargaining with the union
20 without any input from the organization with the duty and responsibility to represent the workers
21 upon whom Verity and Prime have agreed to inflict economic harm.

22 Verity has declined to provide information that, in concessions bargaining, is needed to
23 identify and propose costs savings that will do the least harm to employees. Meanwhile, Prime has
24 also declined to provide such information, even as it demands those harsh concessions. At the
25 same time, it is claiming that its rigid position as purchaser doesn't have to do with the costs
26 involved, but instead is based on the idea of consistency with other Prime hospitals that are simply
27 not comparable in operation to SFMC, as explained above. That is, noting SFMC's sound
28 economic condition at this time, Prime doesn't *need* the economic relief it has demanded from

1 Verity in the APA, but it *wants* it. Verity doesn't *need* the relief, either, because it is getting out of
2 the business. Without relief in bargaining that UNAC is trying to accomplish while Verity and
3 Prime combine to reject it, the employees represented by UNAC become the victims of a
4 transaction they had no part in and a process that is rigged against them by the APA that is *not*
5 driven by economic necessity with respect to the SFMC.

6
7 I declare under penalty of perjury under the laws of the United States of America, 28
8 U.S.C. §1746, that the foregoing is true and correct and was executed by me on May 28, 2020 at
9 Chula Vista, California.

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A handwritten signature in black ink, appearing to read 'Maximo Carbuccia', is written over a horizontal line.

Maximo Carbuccia

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Attorneys for United Nurses Associations of
California/Union of Health Care Professionals
("UNAC")

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

In re

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

Debtors and Debtors in Possession

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

Debtors and Debtors in Possession

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**DECLARATION OF KIRK M.
PRESTEGARD IN SUPPORT OF UNAC'S
OBJECTION TO DEBTOR'S MOTION
TO REJECT COLLECTIVE
BARGAINING AGREEMENT**

HEARING: June 3, 2020
TIME: 10:00 a.m.
LOCATION: Courtroom 1568, 255 E.
Temple St., Los Angeles, CA
90012

BUSH GOTTLIEB
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260

1 I, Kirk Prestegard, declare as follows:

2 1. I have personal knowledge of the matters stated in this declaration, and if called as
3 a witness I could and would testify competently thereto under oath.

4 2. I submit this declaration in support of the objection (the “Objection”) filed by the
5 United Nurses Associations of California/Union of Health Care Professionals, NUHHCE
6 AFSCME AFL-CIO (“UNAC,” or the “Union”) to the Debtors’ Motion Under §1113 of the
7 Bankruptcy Code to Reject Collective Bargaining Agreement with UNAC (the “Rejection
8 Motion”).¹

9 3. I am an associate with Bush Gottlieb, a Law Corporation. I have worked with that
10 firm since graduating from Loyola Law School in June 2013, and gained admission to the
11 California State Bar in December 2013. Much of my legal work is with pension funds and health
12 plans in a number of private and public sector settings, including funds and plans subject to the
13 Employee Retirement Insurance and Savings Act of 1974 (“ERISA”). This work often includes
14 litigation to collect unpaid health and pension contributions, including situations encompassing
15 insolvency and bankruptcy law.

16 4. Along with other attorneys in my firm, I have been working with UNAC since the
17 Debtors first filed their voluntary petition for relief under chapter 11 of the Bankruptcy Code on
18 August 31, 2018.

19 5. After the sale of certain Verity facilities to the County of Santa Clara, I assisted
20 with analysis and monitoring of the Debtors’ efforts to sell its remaining hospital assets (the
21 “Spring 2019 Sale”), including St. Francis Medical Center (“SFMC”). As an element of our
22 representation of UNAC, I corresponded with Sam Alberts, a lawyer representing Verity, with
23 respect to development of a confidentiality agreement that would facilitate UNAC’s review of the
24 “data room” made available to prospective bidders that also had executed nondisclosure
25 agreements in connection with the Spring 2019 Sale. Mr. Alberts provided a copy of the Debtors’
26 form confidentiality agreement on February 20, 2019 (“Verity Form CA”), which was presented
27 _____

28 ¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the
Objection.

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1 as identical to that provided to other labor unions with an interest in the Spring 2019 Sale.

2 6. On March 1, 2019, knowing that the Debtors were likely to commence with
3 proceedings under Bankruptcy Code § 1113 to reject the UNAC collective bargaining agreement
4 with SFMC, I followed up with Mr. Alberts and proposed edits to the Verity Form CA that would
5 extend the use of reviewed data to UNAC's evaluation of any subsequent proposals proffered by
6 the Debtors pursuant to Section 1113, and that would make clearer the applicability of the Verity
7 Form CA to the Section 1113 negotiation process generally.

8 7. On March 3, we followed up with an email to Mr. Alberts, and on March 6, we
9 received an email back from Mr. Alberts stating the Debtors' terms for sharing information about
10 the Spring 2019 Sale process with UNAC, including contact with potential bidders:

- 11 1. If the union executes a Confidentiality Agreement ("CA"), it may receive:
 - 12 a. IOIs/LOIs, in a form and at the time acceptable to the IOI/LOI party
13 and Debtor; that is, with name, IOI/LOI terms redacted in whole,
14 part or not at all.
 - 15 b. the opportunity to review actual bids received, at Cain. At that
16 review, a union will be able to take notes, but cannot take copies out
17 of the room or photograph copies of the bids;
 - 18 c. the opportunity to send one representative to the auction, who may
19 at that time communicate with bidders;
- 20 2. If a union does not execute a CA, it may receive:
 - 21 a. redacted forms of IOIs/LOIs at a time acceptable to the IOI/LOI
22 party and Debtors;
 - 23 b. bids, after Verity has selected the winning bid.

24 Further on March 6, 2019, with respect to the Verity Form CA, Mr. Alberts again refused to
25 consider the clarifying edits I proposed, and maintained that "the Debtors have utilized this form it
26 sent to you and is not comfortable varying from it." A true and correct copy of the March 6 email
27 exchange with Mr. Alberts is attached as Exhibit 1.

28 8. On March 19, Mr. Alberts emailed to inquire about the status of the confidentiality
agreement. On March 20, we proposed a lesser revision. Later that day, Mr. Alberts responded by
stating that "the Debtor is not amenable to varying from the forms agreed upon with other unions."
A true and correct copy of the March 20 emails is attached as Exhibit 2.

Executed on the 28th day of May, 2020, at Woodland Hills, California.

DECLARATION OF KIRK M. PRESTEGARD

Exhibit 1

Ashlie Kennedy

From: Alberts, Sam J. <sam.alberts@dentons.com>
Sent: Wednesday, March 6, 2019 2:21 PM
To: Kirk Prestegard
Cc: Joe Kohanski; Maizel, Samuel R.; Moyron, Tania M.
Subject: Re: Verity BKR/UNAC
Attachments: image001.png

Kirk,

I am still away on international travel but wanted to get back to you on a few things.

First, the Debtors are considering UNAC's request to file a master proof of claim on behalf of members. Once it takes a position on the matter, I will revert back to you.

Second, with respect to the sales process, the Debtors are amenable to proceeding as follows:

1. If the union executes a Confidentiality Agreement ("CA"), it may receive:
 - a. IOIs/LOIs, in a form and at the time acceptable to the IOI/LOI party and Debtor; that is, with name, IOI/LOI terms redacted in whole, part or not at all.
 - b. the opportunity to review actual bids received, at Cain. At that review, a union will be able to take notes, but cannot take copies out of the room or photograph copies of the bids;
 - c. the opportunity to send one representative to the auction, who may at that time communicate with bidders;
2. If a union does not execute a CA, it may receive:
 - a. redacted forms of IOIs/LOIs at a time acceptable to the IOI/LOI party and Debtors;
 - b. bids, after Verity has selected the winning bid.
3. With respect to the CA, the Debtors have utilized this form it sent to you and is not comfortable varying from it.

Please feel free to contact me if you further questions.

Regards,

Sam

[<https://protect-us.mimecast.com/s/p9ATCW6wALsDQX7F65i5B?domain=logo.dentons.com>]

Sam J. Alberts
Partner

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Website<<https://protect-us.mimecast.com/s/4rmsCYEQDWtAvpRT9csqa?domain=dentons.com>>

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From: "Sam J. Alberts" <sam.alberts@dentons.com>

Date: Sunday, March 3, 2019 at 1:21 PM

To: 'Kirk Prestegard' <kprestegard@bushgottlieb.com>

Cc: Joe Kohanski <kohanski@bushgottlieb.com>, "Maizel, Samuel R." <samuel.maizel@dentons.com>, "Moyron, Tania M." <tania.moyron@dentons.com>

Subject: RE: Verity BKR/UNAC

Kirk,

My apologies for the delayed response. I was out of pocket last week. I am happy to speak with you today if you desire or early next week.

Regards,

Sam

[<https://protect-us.mimecast.com/s/p9ATCW6wALsDQX7F65i5B?domain=logo.dentons.com>]

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Partner

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From: Kirk Prestegard <kprestegard@bushgottlieb.com>
Sent: Wednesday, February 27, 2019 10:21 PM
To: Alberts, Sam J. <sam.alberts@dentons.com>
Cc: Joe Kohanski <kohanski@bushgottlieb.com>
Subject: Verity BKR/UNAC

Sam –

Do you have some time tomorrow or Friday for a quick to chat about the UNAC confidentiality agreement and a proof of claim matter? Tomorrow, I have windows from 9-11:30 am and again from about 3:30-4:30 pm (Pacific). On Friday, my best availability is 10:30 am – 12:30 pm, and anytime after 2:30 pm (Pacific). Please let me know if any of these times work for you.

Best Regards,
Kirk

Kirk M. Prestegard
Bush Gottlieb, a Law Corporation
801 North Brand Boulevard, Suite 950, Glendale, CA 91203 Direct (818) 973-3234 | Main (818) 973-3200 <https://protect-us.mimecast.com/s/fcHVCZ6wEYsQw8ZFyzvUX?domain=bushgottlieb.com><<https://protect-us.mimecast.com/s/PwivC1wYkWCq0BvIYNXPL?domain=bushgottlieb.com>>

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Exhibit 2

Ashlie Kennedy

From: Alberts, Sam J. <sam.alberts@dentons.com>
Sent: Wednesday, March 20, 2019 10:21 AM
To: Kirk Prestegard; Joe Kohanski
Cc: Steve Sharrer (SteveSharrer@verity.org); 'krusso@nelsonhardiman.com'; Maizel, Samuel R.; Moyron, Tania M.; Jim Moloney (jmoloney@cainbrothers.com); Hallberg, Ethan S
Subject: Re: Verity BKR/UNAC
Attachments: image001.png; image002.png

Kirk

The Debtor is not amenable to varying from the forms agreed upon with other unions.

[<https://protect-us.mimecast.com/s/yaiZC82or1TYyO4snCzrW?domain=logo.dentons.com>]

Sam J. Alberts
Partner

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Website<https://protect-us.mimecast.com/s/32s4C0R2jYFmAJPf27y_5?domain=dentons.com>

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Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF
Partners > 大成

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From: Kirk Prestegard <kprestegard@bushgottlieb.com>

Date: Wednesday, March 20, 2019 at 1:13 PM

To: "Sam J. Alberts" <sam.alberts@dentons.com>, Joe Kohanski <kohanski@bushgottlieb.com>

Cc: Steve Sharrer <SteveSharrer@verity.org>, "'krusso@nelsonhardiman.com'" <krusso@nelsonhardiman.com>, "Maizel, Samuel R." <samuel.maizel@dentons.com>, "Moyron, Tania M." <tania.moyron@dentons.com>, Jim Moloney <jmoloney@cainbrothers.com>, Ethan Hallberg <ehallberg@cainbrothers.com>

Subject: RE: Verity BKR/UNAC

Sam -

Thank you for getting back in touch with us regarding the confidentiality agreement. While we still have concerns that much of the key language in the CA inadequately tracks the circumstances of these proceedings, we understand the Debtor's reluctance to vary the basic form. That being said, and subject to client approval, we ask that a clarifying footnote be included along the lines of the following:

For the avoidance of doubt, the Parties agree that this confidentiality agreement (1) pertains only to information obtained during the sale process, and (2) does not limit the ability of UNAC to obtain additional information in the context of negotiating a collective bargaining agreement with the ultimate Buyer.

To be clear, this is for clarification purposes only and is not intended to otherwise modify any provision of the CA, or to weaken pars. 3 and 4 specifically, if that is a concern.

Best Regards,
Kirk

Kirk M. Prestegard
Bush Gottlieb, a Law Corporation
801 North Brand Boulevard, Suite 950, Glendale, CA 91203 Direct (818) 973-3234 | Main (818) 973-3200 <https://protect-us.mimecast.com/s/N7u-CgJxWZIGzPQT3aA0R?domain=bushgottlieb.com><<https://protect-us.mimecast.com/s/NogBCjRvWZFRxINf1As0A?domain=bushgottlieb.com>>

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From: Alberts, Sam J. <sam.alberts@dentons.com>

Sent: Tuesday, March 19, 2019 2:59 PM

To: Joe Kohanski <kohanski@bushgottlieb.com>; Kirk Prestegard <kprestegard@bushgottlieb.com>

Cc: Steve Sharrer (SteveSharrer@verity.org) <SteveSharrer@verity.org>; 'krusso@nelsonhardiman.com' <krusso@nelsonhardiman.com>; Maizel, Samuel R. <samuel.maizel@dentons.com>; Moyron, Tania M. <tania.moyron@dentons.com>; Jim Moloney (jmoloney@cainbrothers.com) <jmoloney@cainbrothers.com>; Hallberg, Ethan S <ehallberg@cainbrothers.com>
Subject: RE: Verity BKR/UNAC

Dear Joe and Kirk,

To my knowledge, UNAC has not yet executed the Confidentiality Agreement (CA). Other unions have done so. Please be advised that without an executed CA we cannot share bid information or permit UNAC to send a representative to the auction.

Regards,

Sam

[<https://protect-us.mimecast.com/s/yaiZC82or1TYyO4snCzrW?domain=logo.dentons.com>]

Sam J. Alberts
Partner

D +1 202 408 7004 | M +1 202 321 0777 | US Internal 27004
sam.alberts@dentons.com<<mailto:sam.alberts@dentons.com>>
Bio<<https://protect-us.mimecast.com/s/H6HuC9rpv1h2wR7cEDyaG?domain=dentons.com>> |
Website<https://protect-us.mimecast.com/s/32s4C0R2jYFmAJPf27y_5?domain=dentons.com>

Dentons US LLP
1900 K Street, NW, Washington, DC 20006

Hamilton Harrison & Mathews > Mardemootoo Balgobin > HPRP > Zain & Co. > Delany Law > Dinner Martin > Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成

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From: Alberts, Sam J. <sam.alberts@dentons.com<<mailto:sam.alberts@dentons.com>>>
Sent: Wednesday, March 06, 2019 5:21 PM
To: 'Kirk Prestegard' <kprestegard@bushgottlieb.com<<mailto:kprestegard@bushgottlieb.com>>>
Cc: Joe Kohanski <kohanski@bushgottlieb.com<<mailto:kohanski@bushgottlieb.com>>>; Maizel, Samuel R. <samuel.maizel@dentons.com<<mailto:samuel.maizel@dentons.com>>>; Moyron, Tania M. <tania.moyron@dentons.com<<mailto:tania.moyron@dentons.com>>>

Subject: Re: Verity BKR/UNAC

Kirk,

I am still away on international travel but wanted to get back to you on a few things.

First, the Debtors are considering UNAC's request to file a master proof of claim on behalf of members. Once it takes a position on the matter, I will revert back to you.

Second, with respect to the sales process, the Debtors are amenable to proceeding as follows:

1. If the union executes a Confidentiality Agreement ("CA"), it may receive:
 - a. IOIs/LOIs, in a form and at the time acceptable to the IOI/LOI party and Debtor; that is, with name, IOI/LOI terms redacted in whole, part or not at all.
 - b. the opportunity to review actual bids received, at Cain. At that review, a union will be able to take notes, but cannot take copies out of the room or photograph copies of the bids;
 - c. the opportunity to send one representative to the auction, who may at that time communicate with bidders;
2. If a union does not execute a CA, it may receive:
 - a. redacted forms of IOIs/LOIs at a time acceptable to the IOI/LOI party and Debtors;
 - b. bids, after Verity has selected the winning bid.
3. With respect to the CA, the Debtors have utilized this form it sent to you and is not comfortable varying from it.

Please feel free to contact me if you further questions.

Regards,

Sam

From: "Sam J. Alberts" <sam.alberts@dentons.com<mailto:sam.alberts@dentons.com>>
Date: Sunday, March 3, 2019 at 1:21 PM
To: 'Kirk Prestegard' <kprestegard@bushgottlieb.com<mailto:kprestegard@bushgottlieb.com>>
Cc: Joe Kohanski <kohanski@bushgottlieb.com<mailto:kohanski@bushgottlieb.com>>, "Maizel, Samuel R." <samuel.maizel@dentons.com<mailto:samuel.maizel@dentons.com>>, "Moyron, Tania M." <tania.moyron@dentons.com<mailto:tania.moyron@dentons.com>>
Subject: RE: Verity BKR/UNAC

Kirk,

My apologies for the delayed response. I was out of pocket last week. I am happy to speak with you today if you desire or early next week.

Regards,

Sam

[<https://protect-us.mimecast.com/s/yaiZC82or1TYyO4snCzrW?domain=logo.dentons.com>]

Sam J. Alberts

Partner

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Bio<<https://protect-us.mimecast.com/s/H6HuC9rpv1h2wR7cEDyaG?domain=dentons.com>> |
Website<https://protect-us.mimecast.com/s/32s4C0R2jYFmAJPF27y_5?domain=dentons.com>

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Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF
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From: Kirk Prestegard <kprestegard@bushgottlieb.com<mailto:kprestegard@bushgottlieb.com>>
Sent: Wednesday, February 27, 2019 10:21 PM
To: Alberts, Sam J. <sam.alberts@dentons.com<mailto:sam.alberts@dentons.com>>
Cc: Joe Kohanski <kohanski@bushgottlieb.com<mailto:kohanski@bushgottlieb.com>>
Subject: Verity BKR/UNAC

Sam –

Do you have some time tomorrow or Friday for a quick to chat about the UNAC confidentiality agreement and a proof of claim matter? Tomorrow, I have windows from 9-11:30 am and again from about 3:30-4:30 pm (Pacific). On Friday, my best availability is 10:30 am – 12:30 pm, and anytime after 2:30 pm (Pacific). Please let me know if any of these times work for you.

Best Regards,
Kirk

Kirk M. Prestegard
Bush Gottlieb, a Law Corporation
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<https://protect-us.mimecast.com/s/NogBCjRvWZFRxINf1As0A?domain=bushgottlieb.com>>

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Exhibit 3

Ashlie Kennedy

From: Kirk Prestegard
Sent: Monday, April 1, 2019 4:46 PM
To: Alberts, Sam J.
Cc: Joe Kohanski
Subject: Verity BKR - UNAC confidentiality agreement
Attachments: Legal_008.pdf

Sam –

Attached is a copy of the confidentiality agreement, executed by UNAC.

Best Regards,
Kirk

Kirk M. Prestegard
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Direct (818) 973-3234 | Main (818) 973-3200
www.bushgottlieb.com

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February 14, 2019

Confidential

Confidentiality Agreement

United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL- ("UNAC," "you" or "your") has expressed an interest in obtaining certain confidential information involving the sale process with respect to Verity Health System of California, Inc. and its affiliates (collectively, the "**Company**") being conducted in the United State Bankruptcy Court for the Central District of California (the "**Court**") in the Company's pending chapter 11 Bankruptcy Cases. In particular, you have requested to receive names of parties who have expressed an interest in acquiring Company's assets or who have or may in the future may submit a bid (the "**Sale Process**") in order to evaluate any Company proposal to modify, reject and otherwise terminate one or more collective bargaining agreements under Bankruptcy Code § 1113 and/or § 1114 (a "**Proposal**"), along with copies of expressions of interest and/or bids. This agreement (the "**Agreement**") sets forth the terms and conditions on which any such information may be provided. Cain Brothers, a division of KeyBanc Capital Markets Inc. ("**Advisor**"), is acting as the advisor to the Company in connection with sales of assets and is acting as the Company's agent with respect to this Agreement.

1. As a condition to your being furnished information on the Sale Process, you agree to treat any information concerning the Sales Process, including the name of any party who has expressed an interest in assets of the Company, its affiliates and subsidiaries, regardless of the form in which such information is communicated or maintained, together with notes, reports, analyses, compilations, studies or other documents that contain or otherwise reflect such information (collectively, the "**Evaluation Material**") in accordance with the provisions of this Agreement. The term "**Evaluation Material**" does not include information that (i) was or becomes generally available to the public other than as a result of any action or inaction by you or your directors, officers, employees, agents, affiliates or advisors (collectively "**Representatives**") in violation of this Agreement; (ii) was or becomes available to you on a non-confidential basis from a source other than the Company or its representatives, provided that such source is not known by you, after reasonable inquiry, to be bound by an obligation of confidentiality to the Company; (iii) was within your possession prior to its being furnished to you by or on behalf of the Company (as can be demonstrated by your files and records in existence prior to such date), provided that the source of such information was not known by you to be bound by an obligation of confidentiality to the Company in respect thereof; or (iv) is independently developed by your employees with no access to the Evaluation Material and without use of or reference to Evaluation Material. As used in this Agreement, the term "**person**" shall refer to any individual, corporation, company, partnership, trust, limited liability company or other entity.

2. You and your Representatives will use the Evaluation Material solely for the purpose of evaluating a Proposal. By producing the Evaluation Material, you acknowledge that the Company is not admitting to the relevance of any Evaluation Material with respect to the Proposal. You further acknowledge that the Company does not waive the right to decline to produce Evaluation Material, including the name of any party who may have expressed an interest in acquiring Company assets who has declined to permit the Company to disclose its name, copies or portions of copies of indications of interest, letters of intent, bids or related materials.

UP
3/29/19

3. Except as expressly permitted by the terms of this Agreement or with the written consent of the Company, you and your Representatives will not disclose the Evaluation Material to any other person and will keep the Evaluation Material confidential; provided that the Evaluation Material may be disclosed to your Representatives who need to know such information for the purposes of assisting or advising you in connection with your evaluation of the Proposal and Motion. You agree to inform any Representatives receiving Evaluation Material of the confidential nature of such Evaluation Material and that by receiving such Evaluation Material they are required to comply with the terms of this Agreement applicable to Representatives. You shall be responsible to the Company for any action or failure to act that would constitute a breach or violation of this Agreement by your Representative and shall, at your sole expense, take all reasonable measures (including legal proceedings) to restrain such Representatives from prohibited or unauthorized use or disclosure of Evaluation Material.

4. For the avoidance of doubt, you are not permitted and agree that neither you nor any of your Representatives will, in any manner, disclose (a) the name of any party who has expressed an interest of any bidder or potential bidder, (b) the contents or terms of any expression of interest or bid or (c) other Evaluation Material, to any other individual or person who has expressed an interest or is a bidder or potential bidder or who is a representative, agent, employee, director, officer, contractor, professional or counsel of such individual or entity, without the express, prior written permission of the Company.

5. In the event that you or your Representatives are requested or required by law, regulation, regulatory authority, judicial or governmental order or investigative demand, subpoena or similar process to disclose any Evaluation Material, you will provide the Company with prompt written notice of such request or requirement and the documents requested thereby so that the Company may seek an appropriate protective order. In the event the Company determines to seek such protective order or other remedy, you or your Representative, as applicable, will cooperate with the Company in seeking such protective order or other remedy. If, failing the entry of a protective order, you or your Representative, as applicable, is upon the advice of counsel, compelled to disclose Evaluation Material, you or your Representative, as applicable, may disclose that portion of the Evaluation Material that is compelled to be disclosed and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to that portion of the Evaluation Material that is being disclosed. In any event, you and your Representatives will not oppose action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Evaluation Material.

6. You may file Evaluation Material with the Court, but only under Seal.

7. At any time upon the Company's request, you and your Representatives shall promptly deliver to the Company or destroy all tangible Evaluation Material (including, without limitation, electronic copies) furnished by or on behalf of the Company and you and your Representatives shall destroy all other tangible Evaluation Material. Destruction of Evaluation Material in compliance with this Agreement shall be confirmed by you in writing. Notwithstanding the foregoing provisions of this paragraph to the contrary, you may retain such copies of Evaluation Material solely to the extent necessary to meet legal or regulatory requirements or such copies as are created pursuant to automatic archiving and back up procedures, provided that, notwithstanding the expiration or termination of this Agreement, such retained copies shall remain subject to the obligations of confidentiality and non-use under this Agreement for a period ending on the date that is the earlier of (i) five years after the date of this Agreement or (ii) such date as such copies are no longer retained. In no event shall you or any of your Representatives be deemed, by virtue of this

ul
3/29/19

Agreement, to have acquired any right, license or interest of any kind or nature whatsoever, in or to, any Evaluation Material furnished by or on behalf of the Company.

8. You acknowledge and agree that none of the Company or any of its directors, officers, managers, members, stockholders, employees, affiliates, representatives, or agents, including Advisor (collectively "**Company Parties**") is making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material or any other information provided to you or your Representatives by or on behalf of the Company in connection with matters contemplated hereby. None of the Company or any other Company Party will have any liability or legal obligation of any kind to you or any other person or entity resulting from use of or reliance on the Evaluation Material by you or any of your Representatives. You also agree that neither the Company nor Advisor will be obligated to pay any fees on your behalf to any attorneys, advisors, or other parties claiming to represent you.

9. You further acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Agreement by you or your Representative and that the Company shall be entitled to injunctive or other equitable relief as a remedy for any such breach or threatened breach, and you further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for your breach of this Agreement, but shall be in addition to all other remedies available at law or equity to the Company.

10. In the event of any litigation regarding or arising from this Agreement, if the Court (which will have jurisdiction over all disputes concerning this Agreement) determines that you or your Representatives have breached this Agreement, the Company shall be entitled to recover its reasonable expenses, attorneys' and experts' fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein.

11. This Agreement is governed by the laws of the State of California without regard to conflict of laws principles. Any action brought in connection with this Agreement shall be brought in the Court, which is located in the City of Los Angeles, and the parties hereto hereby irrevocably consent to the jurisdiction of Court.

12. The obligations under this Agreement shall terminate two (2) years after the date hereof, except as otherwise explicitly stated herein.

13. No modification of or amendment to this Agreement shall be binding unless in writing and executed by both parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. No failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The terms, conditions and covenants of this Agreement shall be binding upon you, your successors and permitted assigns, and are for the benefit of the Company, its successors and assigns, and Advisor. This Agreement may not be assigned by you without the prior written consent of the Company.

14. The terms of this Agreement shall control over any additional purported confidentiality requirements imposed by any information memorandum, web-based database or similar repository of Evaluation Material to which you are, or any of your Representatives is, granted access in connection with this Agreement or the evaluation of the Proposal and Motion,

notwithstanding acceptance of such an information memorandum or submission of an electronic signature, "clicking" on an "I Agree" icon or other indication of assent to such additional confidentiality conditions, it being understood and agreed that the confidentiality obligations with respect to the Evaluation Material are exclusively governed by this Agreement and may not be modified except by an agreement executed by the parties hereto in accordance with the preceding paragraph.

15. This Agreement may be executed in one or more counterparts, either in manual or in electronic copy, each of which shall be an original, with the same effect as if the signatures thereto were manually executed upon one instrument.

16. If you are in agreement with the foregoing, please so indicate by signing and returning one copy of this Agreement, whereupon it will constitute our agreement with respect to the subject matter hereof as of the date first written above.

Very truly yours,

Cain Brothers, a division of KeyBanc Capital Markets Inc.

Project Phoenix

Signature: William Rouse
Print Name: William Rouse
Title: EXECUTIVE DIRECTOR, UNAC/UKCP
MARCH 29, 2019

CONFIRMED AND AGREED TO BY:

[_____]

Signature: _____
Print Name: _____
Title: _____
Date: _____

JOSEPH A. KOHANSKI (SBN 143505)
jkohanski@bushgottlieb.com
IRA L. GOTTLIEB (SBN 103236)
igottlieb@bushgottlieb.com
KIRK M. PRESTEGARD (SBN 291942)
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BUSH GOTTLIEB
A Law Corporation
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260
Telephone: (818) 973-3200
Facsimile: (818) 973-3201

Attorneys for United Nurses Associations of
California/Union of Health Care Professionals
("UNAC")

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

In re

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

Debtors and Debtors in Possession

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

Debtors and Debtors in Possession

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

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

Chapter 11 Cases
Hon. Judge Ernest M. Robles

**DECLARATION OF GARRETT MCCOY
IN SUPPORT OF UNAC'S OBJECTION
TO DEBTOR'S MOTION TO REJECT
COLLECTIVE BARGAINING
AGREEMENT**

HEARING: June 3, 2020
TIME: 10:00 a.m.
LOCATION: Courtroom 1568, 255 E.
Temple St., Los Angeles, CA
90012

BUSH GOTTLIEB
801 North Brand Boulevard, Suite 950
Glendale, California 91203-1260

1 I, Garrett A. McCoy, declare as follows:

2 1. I have personal knowledge of the matters stated in this declaration, and if called as
3 a witness I could and would testify competently thereto under oath.

4 2. I submit this declaration in support of the objection (the "Objection") filed by the
5 United Nurses Associations of California/Union of Health Care Professionals, NUHHCE
6 AFSCME AFL-CIO ("UNAC," or the "Union") to the Debtors' Motion Under §1113 of the
7 Bankruptcy Code to Reject Collective Bargaining Agreement with UNAC.

8 3. I am an associate with Bush Gottlieb, a Law Corporation. I have worked with that
9 firm since graduating from UCLA School of Law in May 2018, and gained admission to the
10 California State Bar in December 2018. My legal practice has centered on representing labor
11 unions, and I have performed extensive work on behalf of union Taft-Hartley Trust funds. This
12 work often includes collection unpaid health and pension contributions, including situations
13 encompassing insolvency and bankruptcy law.

14 4. Between April 13, 2020 and May 27, 2020, as an element of our representation of
15 UNAC, I reviewed the dockets and filings of various prior Bankruptcy Code Section 1113
16 proceedings, including the case *In re Karykeion, Inc.*, 435 B.R. 663 (Bankr. C.D. Cal. 2010)
17 ("*Karykeion*").

18 5. A true and correct copy of Docket No. 811-8 of the *Karykeion* docket is attached
19 hereto as Exhibit 1.

20
21 I declare under penalty of perjury, under the laws of the United States and the state of
22 California, that the foregoing is true and correct.

23
24 Executed on the 28th day of May, 2020, at Pasadena, California.

25
26
27 
Garrett A. McCoy

Exhibit 1

EXHIBIT D

1 WEISS & SPEES, LLP

2 Michael H. Weiss (State Bar No. 107481)

3 Laura J. Meltzer (State Bar No. 151889)

4 1925 Century Park East, Suite 650

5 Los Angeles, California 90067

6 Tel: (424) 245-3100

7 Fax: (424) 245-3199

8 mw@weissandspees.com

9 Attorneys for Debtor and Debtor in Possession

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SAN FERNANDO VALLEY DIVISION

13 In re

) Case No.: 01:08-bk-17254-MT

14 KARYKEION, Inc., a California corporation,
15 DBA COMMUNITY AND MISSION

) Chapter 11

16 HOSPITAL OF HUNTINGTON PARK, DBA
17 PHYSICIANS SUPER CENTERS, INC.,

) DEBTOR'S NOTICE OF EMERGENCY
) MOTION AND EMERGENCY MOTION
) FOR ORDER MODIFYING SEVENTH
) INTERIM ORDER AUTHORIZING USE
) OF CASH COLLATERAL AND
) PAYMENT OF ADEQUATE
) PROTECTION; DECLARATIONS OF
) DANIEL J. ANSEL AND LAURA J.
) MELTZER; EXHIBITS

18 Debtor.

) Hearing:

) Date: January 19, 2010

) Time: 1:30 p.m.

) Ctrm: 302

) 21041 Burbank Blvd.

) Woodland Hills, CA 91367

PLEASE TAKE NOTICE: at the time and place noted above, and pursuant to 11 U.S.C. § 363(c)(2)(B), Karykeion Inc., debtor and debtor in possession ("Debtor"), shall and does hereby move for Emergency Motion for Order Modifying Seventh Interim Order Authorizing Use of Cash Collateral and Adequate protection Payments (the "Motion") to cover the ordinary and necessary operating expenses incurred by Debtor to maintain the property of the estate and Debtor's business operations from January 29, 2010, and to extend Debtor's authority to use cash collateral through March 31, 2010 (the "Modified Seventh Interim Period").

PLEASE TAKE FURTHER NOTICE that any opposition to this Motion must be filed and served no later than the time of the Hearing on the Motion.

This Motion is based upon the attached declaration of Daniel Ansel ("Ansel Decl."), along with the points and authorities set forth below:

In support of this Motion, Debtor alleges:

1. Debtor filed its petition for relief under chapter 11 of the Bankruptcy Code on September 22, 2008 (the "Petition Date").

2. This Court has jurisdiction of this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(M).

3. Debtor's current authority to use cash collateral expires on January 29, 2010.

4. On December 10, 2009, the Court conducted a hearing on Debtor's further motion to use cash collateral. On December 30, 2009 the Court entered its Seventh Interim Order Authorizing Debtor's Continued Use Cash Collateral and Providing for Adequate Protection [Docket No. 706] until January 29, 2010 (the "Seventh Interim Order"), and set a hearing for further use of cash collateral on January 25, 2010.

5. By this Motion Debtor seeks an Order modifying the Seventh Interim Order governing use of cash collateral and adequate protection payments as set forth herein.

6. Pursuant to the Seventh Interim Order, Debtor is currently required to make the following payments:

///
///

Creditor	Payments	Dates
CHHP, Inc.	\$30,000.00	12/23/2009
	\$30,000.00	01/06/2010
	\$30,000.00	01/20/2010
HPDG	\$12,000.00	12/16/2009
	\$12,000.00	01/27/2010
Cardinal*	\$7,500.00	12/30/2009
	\$7,500.00	01/27/2010
Sterling*	\$38,623.00	12/30/2009
	\$38,623.00	01/27/2010
CDC*	\$17,710.15	12/30/2009
	\$17,710.15	01/27/2010

* None of these creditors has an interest in Debtor's cash collateral.

7. Debtor proposes to modify the Seventh Interim Order so as to suspend the above payments through March 31, 2010 to enable Debtor to maximize its ability to maintain and continue operations pending completion of its proposed sale (the "Sale") to Avanti Health System, LLC ("Avanti"). A copy of the Memorandum of Understanding for that Sale is attached as Exhibit "A". Declaration of Daniel J. Ansel ("Ansel Decl."), ¶ 2

8. Debtor believes that the proceeds of the Avanti sale will be approximately \$4,250,000 and those proceeds will be distributed as follows:

CHHP, Inc.	\$2,545,062.61	See computation attached as Exhibit "B"
Administrative Claims recovered from Mulroe and Affordable Housing	\$1,092,025.88	See computation attached as Exhibit "C"
Huntington Park Doctor's Group ("HPDG")	\$302,231.11	See computation attached as Exhibit "D"
Cardinal Health	\$16,330.31	
Total	\$3,955,649.91	
Balance to estate	\$294,350.09	

The amount payable to CHHP, Inc. assumes a payment on March 31, 2009 and that its claim is "undefaulted" under Code § 1124(2). The payment to HPDG is 85% of its allowed claim pursuant to the Stipulation Allowing Secured Claim. The payment to Cardinal Health is based upon the pre-petition value of Debtor's accounts receivables, inventory and equipment to be \$4,800,000,

1 less (i) CHHP's prepetition claim of \$3,377,882,30, (ii) Mulroe's pre-petition claim of
2 \$962,377.79 plus post-petition interest (per its proof of claim) and HPDG's claim of \$
3 \$380,909.60 per the HPDG Stipulation, less \$62,500 of adequate protection payments to Cardinal
4 Health. Ansel Decl., ¶ 3.

5 9. There are no payments to Business Loan Conduit No. 2, LLC, a Delaware
6 corporation, as assignee of Community Reinvestment Fund, Inc., a Minnesota corporation, as
7 assignee of CDC Direct Capital, a California corporation ("CDC") or to Sterling Bank because
8 neither has an interest in Debtor's cash collateral.

9 Ansel Decl., ¶ 4.

10 10. Debtor estimates that the amount of available cash on the Effective Date
11 will be \$0.00. Ansel Decl., ¶ 5.

12 11. Attached as Exhibit "E" hereto is a proposed budget for Debtor's
13 operations through March 31, 2010. The projections set forth in Exhibit "E" are based on
14 the following additional assumptions:

- 15 • Debtor experiences no delay in Medi-Cal payments.
- 16 • Debtor receives a bridge loan of approximately \$1,000,000 from Avanti.
- 17 • There is no material change in the average daily patient census or in the payer
18 mix.
- 19 • All costs are based on historical numbers for the period January 1, 2009
20 through December 31, 2009, unless Debtor has actual knowledge of the
21 expense amount.

22 Ansel Decl. ¶ 6.

23 12. Attached as Exhibit "F" is a table outlining the variances in revenue and expenses
24 between the cash collateral budget previously approved and the actual amounts incurred during
25 December of 2009. With respect to receipts, favorable variances, *i.e.*, increased receipts, are noted
26 as positive numbers and adverse variance are noted as negative numbers (in parentheses "()").
27 Similarly, with respect to disbursements, favorable variances, *i.e.*, decreased disbursements, are
28 noted as positive numbers; whereas adverse variances are noted as negative numbers (in
parentheses "()"). A brief explanation of significant items follows:

- a. *Beginning Cash Balance* variance of approximately (\$368,000) reflects non-receipt of bridge loan of \$418,000 originally budgeted in November.
- b. *Patient Revenue* variance of approximately (\$76,000) reflects seasonal lag in collections.
- c. *Total Cash Receipts* variance of approximately (\$446,000) reflects non-receipt of bridge loan of \$418,000 re-budgeted in December.
- d. *Salaries and Wages* variance of approximately (\$193,000) reflects timing of payroll taxes from November payroll of approximately \$168,000.
- e. *Employee Benefits* variance of approximately (\$46,500) reflects timing of employer portion of payroll taxes from November payroll of approximately \$60,000.
- f. *Insurance: Worker's Comp* of approximately \$36,366 reflects non-payment of prior month budgeted amount.
- g. *Purchased Services: Radiology* variance of approximately (\$46,000) reflects payment in arrears to tele-radiologist group.
- h. *Insurance* variance of approximately (\$56,700) reflects payment of self retention obligations under Directors and Officers policy that was not budgeted.
- i. *Ending Cash Balance* variance of approximately (\$1,085,000) is primarily due to non-receipt of bridge loan (\$836,000) as well as timing of payment of payroll taxes (\$168,000).

Ansel Decl. ¶ 7.

1 WHEREFORE, Debtor prays the Court enter an order Modifying the Seventh Interim
2 Order as aforesaid and authorizing Debtor to use cash collateral in accordance with the Budget
3 attached hereto as Exhibit "E" and for such other relief as the Court may deem appropriate under
4 the circumstances.

Dated: January 14, 2010

WEISS & SPEES, LLP

By: /s/ Michael H. Weiss

Michael H. Weiss

Attorneys for Debtor and Debtor-in-Possession

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DECLARATION OF DANIEL J. ANSEL

I, DANIEL J. ANSEL, declare as follows:

1. I am the Interim CEO/CFO & Chief Restructuring Officer of Karykeion, Inc., debtor and debtor-in-possession ("Debtor"). I am making this declaration in support of Debtor's Emergency Motion for Order Modifying Seventh Interim Order Authorizing Use of Cash Collateral and Payment of Adequate Protection (the "Motion"). Unless stated otherwise, all capitalized terms used here have the same meaning ascribed to them in the Motion. I have personal knowledge of the facts set forth herein, except where stated as being on information and belief and if called upon to do so, I could competently testify thereto. My testimony herein is based upon the business records of Debtor which I know to be made in the ordinary course of business by its employees in the ordinary course and scope of their duties at or about the time of the transaction they purport to record.

2. Debtor proposes to modify the Seventh Interim Order so as to suspend the above payments through March 31, 2010 to enable Debtor to maximize its ability to maintain and continue operations pending completion of its proposed sale (the "Sale") to Avanti Health System, LLC ("Avanti"). A copy of the Memorandum of Understanding for that Sale is attached as Exhibit "A".

3. Debtor believes that the proceeds of the Avanti sale will be approximately \$4,250,000 and those proceeds will be distributed as follows:

CHHP, Inc.	\$2,545,062.61	See computation attached as Exhibit "B"
Administrative Claims recovered from Mulroe and Affordable Housing	\$1,092,025.88	See computation attached as Exhibit "C"
Huntington Park Doctor's Group ("HPDG")	\$302,231.11	See computation attached as Exhibit "D"
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Balance to estate	\$294,350.09	

The amount payable to CHHP, Inc. assumes a payment on March 31, 2009 and that its claim is "undefaulted" under Code § 1124(2). The payment to HPDG is 85% of its allowed claim pursuant to the Stipulation Allowing Secured Claim. The payment to Cardinal Health is based upon the pre-petition value of Debtor's accounts receivables, inventory and equipment to be \$4,800,000,

1 less (i) CHHP's prepetition claim of \$3,377,882.30, (ii) Mulroe's pre-petition claim of
2 \$962,377.79 plus post-petition interest (per its proof of claim) and HPDG's claim of \$
3 \$380,909.60 per the HPDG Stipulation, less \$62,500 of adequate protection payments paid to
4 Cardinal Health.

5 4. There are no payments to CDC or to Sterling Bank because neither has an interest
6 in Debtor's cash collateral.

7 5. Debtor estimates that the amount of available cash on the Effective Date will be
8 \$0.00.

9 6. Zach Ansel assisted me in the preparation of Exhibits "E" and "F" attached hereto.
10 Exhibit "E" sets forth a projected budget for the period beginning January 30, 2010, through
11 March 31, 2010. The projections set forth in Exhibit "E" are based upon the following additional
12 assumptions:

- 13 • Debtor experiences no delay in Medi-Cal payments.
- 14 • Debtor receives a bridge loan of approximately \$1,000,000 from Avanti.
- 15 • There is no material change in the average daily patient census or in the payer mix.
- 16 • All costs are based on historical numbers for the period January 1, 2009 through
17 December 31, 2009, unless Debtor has actual knowledge of the expense amount.

18 7. Exhibit "F" sets forth the variances between the projected budget revenues and
19 expenditures and the actual amounts. With respect to receipts, favorable variances, *i.e.*, increased
20 receipts, are noted as positive numbers and adverse variance are noted as negative numbers (in
21 parentheses "(""). Similarly, with respect to disbursements, favorable variances, *i.e.*, decreased
22 disbursements, are noted as positive numbers; whereas adverse variances are noted as negative
23 numbers (in parentheses "(""). A brief explanation of significant items follows:

- 24 • *Beginning Cash Balance* variance of approximately (\$368,000) reflects non-receipt
25 of bridge loan of \$418,000 originally budgeted in November.
- 26 • *Patient Revenue* variance of approximately (\$76,000) reflects seasonal lag in
27 collections.
- 28 • *Total Cash Receipts* variance of approximately (\$446,000) reflects non-receipt of
bridge loan of \$418,000 re-budgeted in December.

• *Salaries and Wages* variance of approximately (\$193,000) reflects timing of payroll taxes from November payroll of approximately \$168,000.

• *Employee Benefits* variance of approximately (\$46,500) reflects timing of employer portion of payroll taxes from November payroll of approximately \$60,000.

• *Insurance: Worker's Comp* of approximately \$36,366 reflects non-payment of prior month budgeted amount.

• *Purchased Services: Radiology* variance of approximately (\$46,000) reflects payment in arrears to tele-radiologist group.

• *Insurance* variance of approximately (\$56,700) reflects payment of self retention obligations under Directors and Officers policy that was not budgeted.

• *Ending Cash Balance* variance of approximately (\$1,085,000) is primarily due to non-receipt of bridge loan (\$836,000) as well as timing of payment of payroll taxes (\$168,000).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I executed this declaration in Los Angeles, California on January 14, 2010.

/S/ Daniel J. Ansel
DANIEL J. ANSEL

DECLARATION OF LAURA J. MELTZER

I, LAURA J. MELTZER, declare as follows:

1. I am a member of the State Bar of California and a partner in Weiss & Spees, LLP, attorneys for Debtor. I make this declaration in support of Debtor's Emergency Motion for Order Modifying Seventh Interim Order Authorizing Use of Cash Collateral and Payment of Adequate Protection (the "Motion"). Unless stated otherwise, all capitalized terms used here have the same meaning ascribed to them in the Motion. I have personal knowledge of the facts set forth herein, and if called upon to do so, I could competently testify thereto.

2. Attached as Exhibit "G" are the pages of the Proof of Claim filed by Mulroe where Mulroe has computed the amount of its claim. Attached as Exhibit "H" are the pages of the Proof of Claim filed by CHHP where CHHP has computed the amount of its claim. Both Exhibits were downloaded from the official claims register in this case.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I executed this declaration in Los Angeles, California on January 16, 2010.


LAURA J. MELTZER

Exhibit "A"

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into on the 12th day of January 2010 (the "Effective Date"), by and between the Karykeion, Inc. ("Seller"), currently the Debtor in Possession in *In re Karykeion, Inc.*, Chapter 11 Case No. 2:bk-08-17254-MT (the "Case"), currently pending in the United States Bankruptcy Court for the Central District of California, San Fernando Valley Division (the "Bankruptcy Court") and Avanti Health System, LLC and/or its designated assignee ("Purchaser") for the purpose of setting forth the understandings that have been reached by the parties regarding the proposed acquisition by Purchaser of assets of Seller. Seller and Purchaser are sometimes referred to collectively as the "Parties" and individually as "Party."

Recitals

A. Seller engages in the business of delivering acute care and other health services (collectively, the "Hospital Businesses") to the public through a hospital known as Community and Mission Hospital of Huntington Park. The Hospital Businesses are operated through two facilities: (i) ("Community Hospital"), located at 2623 East Slauson Avenue, Huntington Park, CA 90255, and (ii) ("Mission Hospital") located at 3111 East Florence Avenue, Huntington Park, CA 90255. Seller has filed a voluntary Chapter 11 petition under the United States Bankruptcy Code ("Code"), 11 U.S.C. §§ 101 *et seq.*

B. Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, substantially all of the assets with respect to the operation of the Hospital Businesses at Community Hospital for the consideration and upon the terms and conditions summarized in this MOU and attached exhibits (the "Acquisition"). Purchaser's intent is to: (i) purchase substantially all of the assets of Seller related to the Hospital Businesses operated through Community Hospital (subject to specified exclusions) ("Acquired Assets") pursuant to confirmation of a Plan of Reorganization under the Code by Seller; (ii) provide Bridge Financing to Seller not to exceed One Million Dollars (\$1,000,000.00), which shall be applied against the aggregate purchase price to allow Seller to meet its current pending obligations; (iii) operate the Hospital Businesses post-confirmation under an Interim Lease and Management Agreement with Seller until certain contingencies have been met, including the payment of any and all funds payable to Seller under the Medi-Cal Hospital Provider Rate Stabilization Act ("AB 1383 Funds") for a period not to exceed fifteen (15) months (the "Interim Management Period"); and (iv) acquire an option to purchase and or operate the Hospital Businesses related to Mission Hospital pursuant to a right of first refusal ("ROFR") on specified terms and conditions. The purchase of the Hospital Businesses related to Community Hospital shall be effected on the terms and conditions set forth in a definitive asset purchase agreement ("Agreement"). Purchaser does not intend to acquire Seller's license to operate the Hospital Businesses (the "License") in connection with the acquisition of the Purchased Assets and such License is specifically excluded from the Acquired Assets. If Purchaser decides to exercise the ROFR to acquire the assets related to the Hospital Businesses operated through Mission Hospital, or operate Mission Hospital under an agreement with a third party, Purchaser shall have the right, but not the obligation, to acquire and or utilize the License and or Seller's Medicare and Medi-Cal Providers numbers and agreements ("Provider Agreements") as part of that transaction.

Unless specifically provided herein, all references to the Acquired Assets and the Hospital Business in this MOU shall relate only to those of Community Hospital.

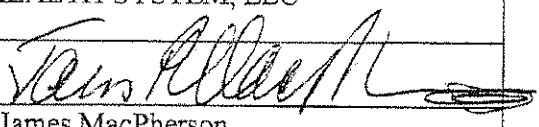
C. Seller has specifically requested that Purchaser assume its current collective bargaining agreements. However, Purchaser has explicitly rejected that demand. Seller reasonably believes that the only way to preserve its assets and to keep the Hospital Business intact is to enter into this MOU on the terms and conditions set forth below and in the attached term sheet.

Terms

1. **Terms and Process.** The Term Sheet which is attached to this MOU ("Term Sheet"), the terms of which are hereby incorporated herein, describes certain proposed terms and conditions of the Acquisition. Within the framework established by this MOU, the Parties each agree to use good faith, diligent efforts to complete, as applicable to each party, necessary financial schedules and related diligence review materials, and to review and provide input on same, and to negotiate, finalize and enter into a mutually acceptable form of Agreement, on terms generally consistent with the terms of this MOU, or as otherwise agreed by the parties, and to reasonably resolve any other issues not addressed herein, by the Closing Date (the "Completion Period").
2. **Conduct of Business.** During the Completion Period, Seller shall operate the Hospital Businesses in the usual, regular and ordinary course consistent with customary business practices in the industry, and not enter into agreements or transactions or incur obligations that would or could reasonably be expected to have a material adverse impact on the assets, operations, financial condition, or business prospects of Seller or the Hospital Businesses or Seller's ability to close the transactions contemplated by the Parties. Notwithstanding the foregoing, Purchaser acknowledges that Seller is in bankruptcy and nothing contained in this paragraph 2 shall be deemed to prohibit Seller from executing its plan of reorganization or engaging in any activities related to the bankruptcy process which might not otherwise be considered in the ordinary course of business.
3. **Existing Agreement.** The parties shall continue to be bound by that certain Letter Agreement between Seller and Purchaser addressing the confidentiality of evaluation materials and exclusive dealing (the "Confidentiality Agreement") in connection with the dealings contemplated by this MOU.
4. **Governing Law.** This MOU is governed by and shall be interpreted under the laws of the State of California without giving effect to any choice of law principles.
5. **Effect of MOU.** Except for the commitments set forth in Sections 2, 3 and 4, and the second sentence of Section 1 above, which shall be the legally binding obligation of both Parties, this MOU shall not create any binding legal obligations between the Parties, and each Party reserves the right to approve or disapprove the definitive Agreement and to address the results of any diligence in connection with developing a definitive Agreement.

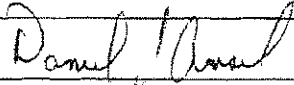
This MOU may be signed in two or more counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together will constitute one and the same agreement. This MOU may not be modified except by a writing signed by all of the parties hereto.

IN WITNESS WHEREOF, this MOU has been entered into as of the day and year first above written.

PURCHASER:	
AVANTI HEALTH SYSTEM, LLC	
By:	
Name:	James MacPherson
Its:	Managing Member
SELLER:	
Karykeion, Inc.	
By:	
Name:	Daniel J. Ansel
Its:	Chief Restructuring Officer

This MOU may be signed in two or more counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together will constitute one and the same agreement. This MOU may not be modified except by a writing signed by all of the parties hereto.

IN WITNESS WHEREOF, this MOU has been entered into as of the day and year first above written.

PURCHASER: AVANTI HEALTH SYSTEM, LLC	
By:	
Name:	James MacPherson
Its:	Managing Member
SELLER: Karykeion, Inc.	
By:	
Name:	Daniel J. Ansel
Its:	Chief Restructuring Officer

Term Sheet for Acquisition

1. **Definitions.** Any capitalized terms used, but not otherwise defined in this Term Sheet shall have the meaning, if any, given to such term in the attached MOU or in Schedule 1 attached at the end of this Term Sheet.

2. **Acquired Assets.** Unless specifically excluded herein, Purchaser will acquire substantially all of the assets of Seller used in, or related to, the Hospital Businesses, free and clear of all liens and encumbrances (except permitted liens) (collectively, "Acquired Assets"). The Acquired Assets will include, without limitation: (a) owned or leased real property and improvements related to Community Hospital including the lease for Community Hospital itself, and the lease for the administrative offices located at 5800-5806 Pacific Avenue, Huntington Park, California 90255 (the "Administrative Offices") (collectively these two leases are referred to herein as the "Leases"); (b) owned and or leased personal property and other tangible assets, including without limitation, furniture, fixtures, equipment, supplies, drugs, etc.; (c) rights under all Assigned Contracts, agreements and other intangible rights, including without limitation all assignable intellectual property and licenses, and good will associated with the Hospital Businesses except as otherwise mutually agreed; (d) all accounts receivables associated with the Hospital Businesses including but not limited to Disproportionate Share Hospital ("DSH") payments, Distressed Hospital Fund payments, and or other grants or proceeds from governmental entities, subject to the provisions of paragraph 8, below; (e) records associated with the Hospital Businesses, subject to reasonable and customary records retention requirements and rights of access in order to fulfill Seller's legal obligations; and (f) a ROFR with respect to Mission Hospital.

3. **Excluded Assets.** The Acquired Assets will *exclude* the following: (a) rights related to Seller's Benefit Plans and Excluded Contracts; (b) cash received as part of the Purchase Price; (c) cash on hand as of the Closing Date, as defined in paragraph 9, below; (d) organizational documents; (e) the names and web addresses associated with Seller other than as necessary for Purchaser to operate the Hospital Businesses; (f) all AB 1383 Funds payable to Seller, if any, whenever paid and to whomever paid; (g) any collective bargaining agreements between Seller and any labor union, including without limitation collective bargaining agreements between Seller and the Service Employees International Union and between Seller and the California Nurses Association (collectively, the "Labor Agreements"), and any obligations arising under those agreements; (h) any rights to recover transfers under Code §§ 544-551; (i) litigation rights against any third parties; (j) any affirmative defenses, counterclaims and rights of offset to any claims which may be asserted by any person or entity against Seller; provided that such rights shall be shared between Seller and Purchaser according to their interests, as will be further addressed in the Agreement; (k) any contracts or leases related to the Hospital Businesses which are not included in the Assigned Contracts; (l) the license to operate the Hospital Businesses at both Community Hospital and Mission Hospital; (m) Seller's Medicare and Medi-Cal provider agreements; (n) any assets related to the Hospital Businesses associated with Mission Hospital; and (o) the Medical Office Building located at 3100 East Florence Avenue, Huntington Park, CA 90255 (the "MOB") (collectively, the "Excluded Assets").



4. **Option Right and Right of First Refusal.** Should Seller, in the future, elect to sell any or all of the assets related to the Hospital Businesses associated with Mission Hospital, the MOB and any and all owned or leased personal property and other tangible assets, including without limitation, furniture, fixtures, equipment, supplies, drugs, accounts receivables, etc. related to Mission Hospital and or the MOB, Seller must first offer those assets for sale to Purchaser, and Purchaser shall have the right to overbid any prospective third party buyer before the assets are sold to a third party (the "ROFR"). Purchaser's overbid must: (a) exceed the aggregate purchase price being offered by such third party buyer including any liability assumptions; (b) be exercised within no less than forty-five (45) business days from the date on which Seller delivers a copy of the third party offer to Purchaser, subject to any earlier date as may be set by the Bankruptcy Court in connection with such sale; (c) be on financing terms and conditions substantially similar or superior to the third party offer; and (d) provide for delivery of the entire purchase price on the date of closing. The ROFR shall be considered part of the Acquired Assets. In the event that Purchaser exercises its ROFR to acquire Mission Hospital or enters into an agreement with a third party to act as operator of Mission Hospital, it shall have the right, but not the obligation, to acquire the License and the Provider Agreements or otherwise operate Mission Hospital under such License and Provider Agreements. Seller agrees that it will not accept an offer with respect to the purchase of or operation of the Hospital Businesses associated with Mission Hospital and the MOB if such offer is made by an entity affiliated or controlled by either Dr. Edward Rubin or Mitchell Rubin ("Rubin Parties"). Notwithstanding the foregoing, Purchaser acknowledges that the Rubin Parties or entities associated with or controlled by the Rubin Parties own or have an interest in some or all of the Hospital Business and assets of both Community Hospital and Mission Hospital as of the date of this MOU.

5. **Bridge Financing.** Purchaser agrees to provide Seller with interim financing as needed pursuant to section 364(c) of the Code in a total amount not to exceed One Million Dollars (\$1,000,000.00) ("Bridge Financing") provided that the Bankruptcy Court enters an order authorizing the loan and provides Purchaser with the protections available under section 364(c)(1) and (c)(2) or (c)(3) of the Code, and only pursuant to a thirteen (13) week budget acceptable to Purchaser, in its absolute discretion. The Bridge Financing shall accrue interest at a rate of ten percent (10%) per annum, payable monthly. The Bridge Financing is subject to approval by Siemens Financial Services, Inc. ("Siemens"), which must be provided no later than January 25, 2010 or such later date as is mutually agreed to by the Parties. The Bridge Financing shall be treated as an advance against the Purchase Price Consideration, but in the event the transactions contemplated herein fail to occur, then all principal and accrued but unpaid interest shall be repaid by Seller no later than the earlier of (a) one hundred twenty (120) days after the Bridge Financing is approved by the Bankruptcy Court; or (b) confirmation of a plan of reorganization by Seller. The final terms of the Bridge Financing shall include all customary terms for loans of this nature including but not limited to those related to remedies on default and such as default interest or reimbursement of collection expenses.

6. **Purchase As Is, Where Is.** The Parties acknowledge that except for any warranties expressly provided by Seller in the Agreement, the Acquired Assets will be sold and transferred to Purchaser on an "AS IS, WHERE IS" basis with all faults and with no warranties of habitability or fitness for a particular purpose or with respect to the current financial condition of the Hospital Businesses, any and all of which warranties (both express and implied) Seller will disclaim, except as otherwise provided in paragraphs 2 and 16.



7. **Purchase Price Consideration.** The aggregate purchase consideration for the purchase of the Acquired Assets shall be a maximum of Five Million, Five Hundred and Fifty-Five Thousand Dollars (\$5,550,000) consisting of the following ("Purchase Price Consideration"):

a. Cash. Payment by Purchaser of cash in an amount of Five Million, Two Hundred and Fifty Thousand Dollars (\$5,250,000.00) reduced by any: (i) unpaid principal and accrued interest due under the Bridge Financing provided by Purchaser to Seller prior to the Determination Date; (ii) cure and other related payments, including indemnification obligations, made by Purchaser in connection with Assigned Contracts; and (iii) the amount by which Seller's Eligible Receivables are determined to be less than Four Million, Five Hundred Thousand Dollars (\$4,500,000.00) in accordance with the provisions of paragraph 8 below ("Accounts Receivable Adjustment").

b. Assumed Employee Liabilities. Purchaser shall assume the following liabilities ("Assumed Employee Liabilities") in an aggregate amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) ("Employee Liability Cap") as part of the Purchase Price Consideration: (i) unpaid priority wages owed to current employees who are offered and accept employment with Purchaser, in its absolute discretion; (ii) accumulated paid time off ("PTO") hours to current employees who are offered and accept employment with Purchaser in its absolute discretion; and (iii) unfunded 401(k) account obligations owed by Seller to current employees who are offered and accept employment with Purchaser in its absolute discretion. The decision as to the dollar allocation of the Employee Liability Cap among the Employee Assumed Liabilities shall be Purchaser's, provided that it shall be allocated first to PTO obligations.

8. **Accounts Receivable.**

a. For purposes of calculating the Accounts Receivable Adjustment, "Eligible Receivables" shall be deemed to be the value of Seller's accounts receivables associated with the Hospital Businesses, which Siemens deems as eligible to be collateral for lending to Purchaser.

b. Twenty-five percent (25%) of any Distressed Hospital Fund payments in excess of One Million Dollars (\$1,000,000.00) which accrued prior to the Closing Date, but are paid after the Closing Date shall be paid to Seller, provided however, that Seller must use such funds for payment of costs associated with resolving issues related the reopening of Mission Hospital, including, but not limited to, the sale or lease of Mission Hospital and or capital expenditures with respect to Mission Hospital. The provisions of this paragraph are subject to any conditions or requirements imposed by the California Medical Assistance Commission in connection with any Distressed Hospital Fund payments.

9. **Closing.** The Parties shall seek to proceed to the closing of the transactions contemplated in the Agreement ("Closing") by March 15, 2010 ("Closing Date"), provided that all conditions precedent and other matters required to be completed by or on the Closing Date have been or will be completed. If such conditions and other matters are not completed, such Closing Date shall be extended until such conditions and other matters are completed, subject to the parties' termination rights as addressed below.



10. **Interim Management Arrangements.**

a. Upon the Closing Date, Purchaser will leaseback the Acquired Assets to Seller ("Interim Lease") and Seller will engage Purchaser to manage Community Hospital to the extent and in the manner legally permissible under the terms of a management agreement ("Management Agreement") (collectively, the "Lease and Management Agreement") until the later to occur of (i) payment of all sums due under AB 1383; (ii) Purchaser's receipt of any and all necessary licenses to operate Community Hospital; (iii) Purchaser's receipt of CMS Medicare certification for the Hospital or (iv) fifteen (15) months from the Closing Date ("Interim Management Period") or such lesser period to which the Parties agree assuming all of the conditions in paragraphs (i) through (iii) have been satisfied or waived by the Parties. Purchaser shall have the right to extend the Interim Management Period, at its reasonable discretion. The Management Agreement shall provide that Purchaser shall be paid a management fee equivalent to gross revenues derived from the Hospital Businesses arising after the Closing Date and that Purchaser shall assume all obligations, liabilities and risks of loss relating to the Hospital Businesses arising after the Closing Date. The total cost to Seller under the Interim Lease shall be a rent of One Dollar (\$1.00) per month.

b. Purchaser will indemnify, defend and hold Seller harmless from (i) any and all losses incurred based on the operation by Purchaser of the Hospital Businesses and other acts or omissions of Purchaser during the Interim Management Period; (ii) from all third-party claims arising under or in connection with the Interim Lease and Management Agreement or the operation of the Hospital Businesses by Purchaser during the Interim Management Period, but not resulting from the acts or omissions of Seller and Seller's agents, employees, and affiliates; and (iii) any costs arising after the Closing Date attributable to the termination of Seller's collective bargaining agreements. Seller will indemnify, defend and hold Purchaser harmless from any and all losses incurred or penalties imposed based on the operation by Seller of the Hospital Businesses before the Interim Management Period and from all third party claims arising under or in connection with the acts or omissions of Seller or the operation by Seller of the Hospital Business prior to the Interim Management Period.

c. Seller will pay Purchaser an additional fee of Fifty Thousand Dollars (\$50,000.00) per month during the Interim Management Period payable only from Seller's AB 1383 Funds, if any, until the earlier of (i) payment of all sums to which Seller is entitled under AB 1383 or (ii) termination of the Interim Management Agreement. Seller agrees to escrow, pursuant to an escrow agreement to be jointly agreed to by the Parties and held by an escrow agent agreeable to the Parties, AB 1383 funds received during the Interim Management Period to ensure that it has sufficient funds to satisfy any obligations arising upon it by this paragraph 10(c). Purchaser shall have a first lien on all AB 1383 Funds in the aforesaid escrowed funds until such time that all obligations of Seller under the Interim Management Agreement have been satisfied.

d. Seller shall have the later of: (i) five (5) business days after the delivery of the Interim Lease and Management Agreement; and (ii) five (5) business days prior to the date on which the parties agree that the Bridge Financing will be advanced, to approve the Interim Lease and Management Agreement, which approval it shall not be unreasonably withheld.



e. Notwithstanding any other provision of this Agreement, the Parties agree that any expenses incurred by Seller which are attributable to proceedings in the Bankruptcy Court arising as a result of termination of Seller's Collective Bargaining Agreements shall be the responsibility of Seller. If Purchaser elects to participate in such proceedings it shall bear its own expenses.

11. Closing Deliveries.

a. **Seller's Deliveries.** At Closing, Seller shall deliver, or cause to be delivered, deliveries of the types which are customary in sale transactions of the type contemplated hereby, including without limitation: (i) all documents from Seller and third parties necessary to transfer and assign the Acquired Assets; (ii) all documents needed to clear the Acquired Assets of any liens or encumbrances (except permitted liens); and (iii) other applicable ancillary agreements and documents.

b. **Purchaser's Deliveries.** At Closing, Purchaser shall deliver, or cause to be delivered, deliveries of the types which are customary in sale transactions of the type contemplated hereby, including without limitation: (i) the Cash Purchase Price and all other documents constituting part of the Purchase Price Consideration; (ii) all documents necessary to take transfer and assignment of the Acquired Assets and assume Assumed Obligations ("Assumption Documents"); and (iii) other applicable ancillary agreements and documents.

12. Liabilities.

a. **Assumed Liabilities.** At Closing, Purchaser shall assume the following obligations ("Assumed Obligations"):

i. Assumed Employee Liabilities assumed pursuant to the provisions of paragraph 7b. as part of the Purchase Price Consideration.

ii. All obligations arising from Assigned Leases and Contracts, which may include the lease for Community Hospital and the Administrative Offices and any cure payments required to be paid under the Chapter 11 Proceedings in order for Purchaser to assume any Assigned Contracts it has selected. Any cure payments made by Purchaser shall constitute an adjustment to the Purchase Price Consideration pursuant to paragraph 7a.

iii. All costs and expenses associated with operating the Acquired Assets and Hospital Businesses post Closing, and any costs and expenses arising after the implementation of the Interim Management Agreement;

iv. Any other obligations which Purchaser has agreed to assume as part of the Purchase Price; and

v. Any other obligations which the parties mutually agree Purchaser shall assume in connection with the Agreement.

b. **Excluded Liabilities.** Purchaser shall not assume and shall have no liability for the following ("Excluded Liabilities"):

- i. Any liabilities not expressly reflected in Assumed Obligations, and liabilities arising from any claims based on claims of fraudulent or illegal billing, related to periods prior to the Closing;
- ii. Any liabilities related to any contracts or other assets not transferred to Purchaser;
- iii. Any liabilities related to Seller's Collective Bargaining Agreements and any Benefit Plans other than expressly assumed obligations;
- iv. Any liabilities related to the operations of the Hospital Businesses prior to the Closing, other than Assumed Liabilities set forth above;
- v. Any liabilities related to Seller's consulting fees to London Pacific Company, Eric Weissman, or related parties; and
- vi. Other liabilities as mutually agreed.

13. **Certain Covenants of Seller.** Among other customary covenants, Seller shall provide the following covenants of the Agreement:

a. **Continuing Access.** Upon execution and continuing until Closing, Seller shall afford Purchaser and its agents, representatives, consultants and investors reasonable access on a daily basis to the Acquired Assets and documents and information with respect to the Acquired Assets and Hospital Businesses for purposes of conducting further due diligence and other pre-closing activities. Reasonable access to Community Hospital shall include on-site inspections and discussions with the management of Community Hospital.

b. **Conduct of Hospital Businesses.** Seller will agree to carry on the Hospital Businesses in substantially the same manner as presently conducted and in accordance with applicable non-bankruptcy law, and will only take actions which are in the ordinary course of business and customary within the industry, except for customary qualifications, actions required under the Code or as otherwise agreed by the parties. In addition, the Parties shall develop a reasonable process by which Seller shall keep Purchaser apprised of the operations of the Hospital Businesses and compliance by Seller with the covenants contemplated by this Section.

c. **Contract Consents.** Seller shall use its reasonable commercial efforts to obtain the assignment consents from the third parties to all material Assigned Contracts which, by the terms of the Assigned Contracts, require such consent to the assignment. As part of such efforts, the Parties shall use good faith efforts to cause Seller to be released from applicable Assumed Obligations as part of such consents. If, in connection with any proposed Assigned Contract, the other party (other than Seller) challenges the proposed assumption of such Assigned Contract, Seller shall not be obligated to litigate such challenges, in order to transfer such Assigned Contract, unless Purchaser agrees to cover Seller's reasonable legal fees and costs in connection with such litigation; provided that if Purchaser elects to cover such legal fees and costs, it will be given the opportunity to control and/or participate in such litigation. In such event, Purchaser shall defend, indemnify and hold Seller harmless of and from any fees, costs, expenses and other liability with respect to such litigation, including any settlement or judgment



therein; the costs of Seller paid by Purchaser while assuming these responsibilities shall be offset against the Purchase Price Consideration or reimbursed out of the funds escrowed from the Quality Assurance Funds Fees.

d. **No Shop; Specific Performance; Break-Up Fee.** Seller shall not offer, solicit or consider offers, hold discussions or enter into any agreement, concerning the sale, lease or other disposition of the Hospital Businesses or the Acquired Assets for purposes of soliciting overbids. In the event that all conditions and contingencies to Closing, including all financing contingencies, required to be met have been met or waived by the Parties by the agreed deadlines and provided that Purchaser is not otherwise in material breach under the Agreement which has not been timely cured, the Parties agree that if this provision is violated by Seller Purchaser, at its option, will have the right either to compel performance of the Agreement or to be paid Three Hundred Fifty Thousand Dollars (\$350,000.00) in liquidated damages as a break-up fee to reimburse Purchaser for its costs and expenses estimated to be incurred in connection with the purchase and sale contemplated herein. Nothing in this paragraph shall be construed so as to preclude Seller, during the period prior to all contingencies having been removed, from soliciting, entertaining or considering offers, holding discussions or entering into any agreement, concerning the financing, sale, lease or other disposition of the Hospital Businesses or the Acquired Assets solely for purposes of having a back-up offer or bridge financing in the event that Purchaser cannot close.

e. **Plan of Reorganization.** Seller shall use its best efforts to develop, undertake all necessary filings in connection with, and seek approval of, a Plan of Reorganization in connection with the Chapter 11 Proceedings, which is consistent with the terms of the Agreement ("Plan of Reorganization"). The Plan of Reorganization shall address the whole transaction contemplated by the Agreement and shall be conditioned on those conditions described herein. Seller shall consult and cooperate with Purchaser in connection with its efforts in connection with the Plan of Reorganization and Purchaser will reasonably support and cooperate with Seller on the Plan of Reorganization.

f. **Seller's Efforts to Close.** Seller shall use its reasonable commercial efforts to satisfy all of the conditions precedent to its or Purchaser's obligations under the Agreement to the extent that Seller's action or inaction can control or influence the satisfaction of such condition including but not limited to assisting Purchaser as necessary or appropriate in the completion and filing of necessary documents and information relating to certification and licensing of Community Hospital.

14. **Certain Covenants of Purchaser.** Among other customary covenants, Purchaser shall provide the following covenants in the Agreement:

a. **Governmental Authorizations.** Prior to the Closing Date, Purchaser will use its reasonable commercial efforts to obtain, as promptly as practicable, all material Governmental Authorizations required of Purchaser to consummate the transactions contemplated hereby and to operate the Hospital Businesses after Closing.

b. **Purchaser's Efforts to Close.** Purchaser shall use its reasonable commercial efforts to satisfy all of the conditions precedent to its or Seller's obligations under the Agreement



to the extent that Purchaser's action or inaction can control or influence the satisfaction of conditions.

c. **Hired Employees.** Purchaser shall make offers of employment to a substantial portion of the persons who are employees of Seller with respect to the operation of the Hospital Businesses as Purchaser deems appropriate and who submit full and complete applications for employment to Purchaser and successfully pass all screening and background checks as are required by Purchaser in compliance with all applicable non-bankruptcy laws (collectively "Hospital Businesses' Employees"). Purchaser shall make reasonable, good faith efforts to offer any of the Hospital Businesses' Employees who accept an offer of employment with Purchaser ("Hired Employees") positions with part-time or full-time status comparable to the status they held with Seller. Such positions will be offered at wages, benefits and other employment conditions as reasonably determined by Purchaser to be consistent with the customary rates and conditions imposed at East Los Angeles Doctors Hospital. Purchaser and Seller shall use their best efforts to obtain consents from all Hired Employees to the transfer of the Hired Employees' vested unpaid priority wages, PTO, and unfunded 401(k) account obligations to Purchaser, in a total amount not to exceed Three Hundred Thousand Dollars (\$300,000.00).

d. **Labor Contracts.** Purchaser shall not take assignment of Labor Agreements to which Seller is a party.

e. **Contract Consents.** Purchaser shall use its reasonable commercial efforts to cooperate with Seller to obtain the consents from the third parties under all material Assigned Contracts which, by their terms, require such consent to the assignment. As part of such efforts, the Parties shall use good faith efforts to cause Seller to be released from applicable Assumed Obligations as part of such consents.

f. **Charity Care Policies.** Purchaser shall maintain charity care policies at the Hospital which are fully compliant with all applicable laws, as such may change from time to time, and any operations of Community Hospital shall be conducted in a manner materially consistent with such charity care policies.

g. **Certain Surveys and Other Activities.** Purchaser shall have the right to undertake certain diligence surveys after the Effective Date of the Agreement, including and environmental survey, appraisal surveys and activities, and an ALTA Survey; provided that Purchaser must complete, and raise any issues arising out of, such surveys within sixty (60) days after the Effective Date (except for any Phase II environmental investigations which may be required, for which Purchaser shall have an additional thirty (30) days).

h. **Defense of Claims Challenging Transaction.** In the event any litigation is commenced seeking to enjoin or challenge the validity of, or Seller's authority to enter into or perform pursuant to, the transactions contemplated by the MOU or addressed in the definitive Agreement ("Challenging Litigation"), Seller will seek an order from the Bankruptcy Court confirming Seller's authority and the validity of the proposed transaction.



15. **Representations and Warranties.** Seller shall provide representations and warranties that all licenses and permits necessary for the operation of Community Hospital are current and the Parties shall provide all other representations and warranties as are reasonable for transactions of the type covered by the MOU.

16. **Conditions Precedent to Obligations of Seller.** Seller's obligations to sell the Acquired Assets and to close the transactions as contemplated by the Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Seller prior to the Closing:

a. **Signing and Delivery of Instruments.** Purchaser shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to the provisions of the Agreement and any related agreement.

b. **Unfavorable Action or Proceeding.** On the Closing Date, no orders, decrees, judgments, temporary restraining orders or injunctions of any court or governmental body shall be in effect, which could prevent the consummation of the transactions contemplated in the Agreement.

c. **Performance of Covenants.** Purchaser shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by it on or prior to the Closing Date.

d. **Governmental Authorizations.** Purchaser shall have obtained all Governmental Authorizations necessary or required for completion of the transactions contemplated by the Agreement including reasonable assurances that any Governmental Authorizations not actually issued as of the Closing will be issued following Closing, subject to the use of Interim Lease and Management Agreement, as addressed above.

e. **Representations.** The representations and warranties of Purchaser contained in the Agreement shall be true and correct in all respects, except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect on Purchaser's ability to consummate the transactions.

f. **Schedules.** The provisions of the schedules to be attached to the Agreement by Purchaser after the Effective Date, if any, shall be acceptable to Seller in its reasonable discretion; provided, however, that Purchaser shall be deemed to have obtained Seller's approval to any such material updates of the schedules if Purchaser gives Seller written notice of an update and Purchaser does not receive from Seller a written notice of objection to such action within ten (10) business days after Seller receives Purchaser's written notice.

g. **Capital Requirements.** No later than noon on (i) January 25, 2010 (the "Bridge Financing Deadline"), Purchaser shall provide Seller, through its attorney, as addressed below, reasonable evidence that Purchaser has a written approval from Siemens to permit Purchaser to provide the Bridge Financing, and (ii) March 1, 2010 (the "Financing Deadline"), Purchaser shall provide Seller, through its attorney, as addressed below, reasonable evidence that Purchaser has a written approval from Siemens to permit Purchaser to close the transactions provided for in the Agreement. For purposes of the preceding, a lender's "Commitment"



constitutes a commercially reasonable letter by such lender to make a loan to Purchaser or Purchaser's Affiliate, in such form and with such conditions and qualifications as can be reasonably expected for such a lender letter prior to payment by Purchaser of a commitment fee. Because the information to be provided by Purchaser pursuant to this section will be confidential, the evidence required to be provided by Purchaser hereunder shall only be provided for review by (and not for copying by) Seller's legal counsel. If Purchaser is unable, by close of business on the Financing Deadline, to produce documents evidencing the approval of Siemens to close the transactions provided for in the Agreement, then Seller shall have the right, in its reasonable discretion, to terminate the Agreement upon five (5) business days prior written notice to Purchaser (during which period Purchaser shall have the opportunity to cure), without liability unless such failure is caused by Seller's failure to perform its material obligations under the Agreement. If there are any disputes between Seller and Purchaser concerning the compliance by any party with the provisions and requirements of this Section prior to the Closing Date, such dispute shall be resolved by the Bankruptcy Court, whereas any other dispute concerning the Parties' respective rights and duties after the Closing Date shall be resolved in the manner set forth in the Agreement.

17. **Conditions Precedent to Obligations of Purchaser.** Purchaser's obligation to purchase the Acquired Assets and to close the transactions contemplated by the Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser in whole or in part at or prior to the Closing.

a. **Governmental Authorizations.** Purchaser shall have obtained all Governmental Authorizations that are necessary or required for completion of the transactions contemplated by the Agreement including reasonable assurances that any Governmental Authorizations not actually issued as of the Closing will be issued following Closing, subject to the use of Interim Lease and Management Agreement.

b. **Signing and Delivery of Instruments.** Seller shall have executed and delivered all documents, instruments and certificates required to be executed and delivered pursuant to all of the provisions of the Agreement and related agreements.

c. **Performance of Covenants.** Seller shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Seller on or prior to the Closing Date.

d. **Unfavorable Action or Proceeding.** On the Closing Date, no orders, decrees, judgments, temporary restraining orders or injunctions of any court or governmental body shall be in effect, which could prevent the consummation of the transactions contemplated in the Agreement.

e. **Material Adverse Effect.** There has not been a change, or new circumstances, having a Material Adverse Effect, provided however, that Purchaser acknowledges that Seller's filing of the Chapter 11 Proceeding is not, in and of itself, a Material Adverse Effect as defined in the Agreement; provided that (i) Seller takes no action in the Chapter 11 Proceedings to reject or otherwise terminate the Agreement, or any Related Agreement, contrary to its or their terms; and (ii) Seller or the Bankruptcy Court takes no action



to interfere with Purchaser's rights under the Agreement, or the orderly Closing of the transactions contemplated herein, or which otherwise causes a Material Adverse Effect.

f. **Representations.** The representations and warranties of Seller contained in the Agreement shall be true and correct in all respects, except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect on Purchaser's ability to consummate the transactions, except as to changes occurring in the ordinary course of business of the Hospital Businesses after the date of the Agreement which do not violate any covenant of Seller under the Agreement and do not have a Material Adverse Effect.

g. **Exhibits and Schedules.** The Parties contemplate that Seller will, prior to the Closing Date, and likely as part of Purchaser's due diligence, provide Purchaser schedules and exhibits which will be attached to the final Agreement between the Parties, and that those exhibits and schedules will have to be updated by Seller after the Effective Date. Such updates, if any, shall be acceptable to Purchaser in its reasonable discretion; provided, however, that Seller shall be deemed to have obtained Purchaser's approval to any such updates of the schedules if Seller gives Purchaser written notice of an update and Seller does not receive from Purchaser a written notice of objection to such action within ten (10) business days after Purchaser receives Seller's written notice.

h. **Permits and Program Participation.** Unless either Party elects to enter into the Interim Lease and Management Agreement as addressed above, Purchaser shall have obtained, or received reasonable assurance that it shall obtain prior to the Closing Date all Governmental Authorizations.

i. **Tax Matters.** Seller shall have delivered to Purchaser a duly executed certificate of non-foreign status in the form required by Internal Revenue Code § 1445.

j. **Public Approval.** Seller shall have received all governmental approvals as legally required for Seller to consummate the transactions contemplated by the Agreement, subject to the other conditions and terms of the Agreement, in the event such governmental approvals are not obtained.

k. **Plan of Reorganization.** The Plan of Reorganization shall have been approved by the Bankruptcy Court prior to Closing.

l. **Purchaser's Lender Consents.** Purchaser must have received written consent of Siemens to complete the transactions contemplated by this Agreement.

m. **Rejection of Collective Bargaining Agreements.** Seller shall have received an order of the Bankruptcy Court approving the rejection of all of its Collective Bargaining Agreements pursuant to Code § 1113 prior to the Closing Date. In no event shall Purchaser be required to operate the Hospital Businesses at any time under the terms of the Collective Bargaining Agreements.



18. **Termination and Termination Consequences.**

a. **Termination.** The Agreement may be terminated at any time prior to Closing:

- i. By the mutual written consent of the Parties;
- ii. By Purchaser based on Seller's breach (which shall include Seller's failure to obtain the order of the Bankruptcy Court set forth in paragraph 17.m, above) which has not been cured by Seller within thirty (30) days after service by Purchaser upon Seller of a written notice of default; in which event Purchaser shall have an allowed administrative claim in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) in the Chapter 11 Proceedings. However, for purposes of this Section, if Seller's performance is prevented, hindered or delayed by reason of any Force Majeure, such performance obligation of Seller shall be excused so long as and to the extent that such cause(s) prevent or delay Seller's performance;
- iii. By Purchaser if any of the conditions precedent to Purchaser's obligations have not been satisfied as of the Closing Date or if satisfaction of any such conditions precedent is or becomes impossible, and Purchaser has not waived such (provided that the failure to satisfy the applicable condition or conditions has occurred by reasons not caused by the failure of Purchaser to comply with its obligations under the Agreement);
- iv. By Seller if any of the conditions precedent to Seller's obligations have not been satisfied as of the Closing Date or if satisfaction of any of such conditions precedent is or becomes impossible, and Seller has not waived such (provided that the failure to satisfy the applicable condition or conditions has occurred by reasons not caused by the failure of Seller to comply with its obligations under the Agreement);
- v. By Purchaser, upon the timely delivery of a termination notice to Seller in accordance with a permitted termination by Purchaser in the event of (i) damages to, or condemnation of, the Acquired Assets prior to Closing, or (ii) as a result of timely disapprovals, which are not corrected by Seller, in connection with environmental surveys, appraisals or title matters;
- vi. By Purchaser if the Bankruptcy Court in the Chapter 11 Case expressly declines to grant or approve a motion by Seller to approve the Agreement, if it is determined by Seller or any court of competent jurisdiction that such approval is required for purposes of the enforceability of Seller's obligations under the Agreement, or the Bankruptcy Court rejects or challenges the authority of Seller to enter into or consummate the Agreement or the enforceability of the Agreement against Seller.

b. **Termination Consequences.** If the Agreement is terminated, all further obligations of the parties under the Agreement shall terminate, except for continuing covenants which are customary or otherwise agreed by the Parties, except as otherwise addressed above. If Seller shall have committed any material breach or default and has failed to pay the liquidated damages specified in paragraph 18(a)(ii), then Purchaser need not terminate the Agreement but may seek to specifically enforce Seller's obligations under the Agreement.



Schedule 1 to Term Sheet

Definitions

“Assigned Contracts” means all contracts and leases which Purchaser elects to have assigned to Purchaser, after Seller provides a listing of, and copies of, all material contracts to Purchaser for its review, and a listing of Seller’s understanding of any cure amounts that will be required to assume such contracts through the Chapter 11 Proceeding, in order to effectuate such assignment to Purchaser.

“Chapter 11 Proceedings” shall mean the proceeding filed by Seller pursuant to Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court, Central District of California, San Fernando Valley Division, assigned case No. 08-bk-17254-MT.

“Excluded Contracts” shall mean those contracts of Seller of which Purchaser does not take assignment after having had an opportunity to review the same.

“Force Majeure” shall mean an act of God, war declared or undeclared, general army mobilization, blockade, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm, flood, explosion, telecommunications disruption, electricity blackout, personnel strike, and any other cause whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the party affected.

“Material Adverse Effect” means, with respect to Company, an aggregate and overall adverse effect on the financial condition, business, assets or results of operations of Company taken as a whole.



Exhibit “B”

Principal - 05/01/06

Amount: \$ 1,868,087.50

Days elapsed: 1338

From	To	Prime	Prime + 5%	Days	Interest
5/1/2006	5/9/2006	7.75%	12.75%	9	\$ 5,954.53
5/10/2006	6/28/2006	8.00%	13.00%	50	\$ 33,729.36
6/29/2006	9/17/2007	8.25%	13.25%	446	\$ 306,651.75
9/18/2007	10/30/2007	7.75%	12.75%	43	\$ 28,449.42
10/31/2007	12/10/2007	7.50%	12.50%	41	\$ 26,594.30
12/11/2007	1/21/2008	7.25%	12.25%	42	\$ 26,698.08
1/22/2008	1/29/2008	6.50%	11.50%	8	\$ 4,774.00
1/30/2008	3/17/2008	6.00%	11.00%	48	\$ 27,398.62
3/18/2008	4/29/2008	5.25%	10.25%	43	\$ 22,871.10
4/30/2008	10/10/2008	5.00%	10.00%	164	\$ 85,101.76
10/11/2008	10/29/2008	4.50%	9.50%	18	\$ 8,873.42
10/30/2008	12/16/2008	4.00%	9.00%	47	\$ 21,950.03
12/17/2008	3/31/2010	3.50%	8.50%	469	\$ 206,864.74
Interest at contract rate					\$ 805,911.11
IT services claim					\$ 501,064.00
Attorneys' fee					\$ 150,000.00
Total claim					\$ 3,325,062.61
Less Adequate protection					\$ (780,000.00)
Total claim					\$ 2,545,062.61

Exhibit “C”

Mulroe Secured Claim Computation:

Principal as of 9/22/08	\$ 962,377.88
Daily Interest @ 9%	\$ 233.60
Days elapsed until 3/31/10	555
Post-petition interest	\$ 129,648.00
Total Due	\$ 1,092,025.88

Exhibit “D”

Computation of Secured Claim of Huntington Park Doctors Group

Principal:		Interest @10% compounded monthly		AP Pmts	
3/8/2006	\$ 250,000.00	\$	2,083.33	\$	-
4/8/2006	\$ 252,083.33	\$	2,100.69	\$	-
5/8/2006	\$ 254,184.03	\$	2,118.20	\$	-
6/8/2006	\$ 256,302.23	\$	2,135.85	\$	-
7/8/2006	\$ 258,438.08	\$	2,153.65	\$	-
8/8/2006	\$ 260,591.73	\$	2,171.60	\$	-
9/8/2006	\$ 262,763.33	\$	2,189.69	\$	-
10/8/2006	\$ 264,953.02	\$	2,207.94	\$	-
11/8/2006	\$ 267,160.96	\$	2,226.34	\$	-
12/8/2006	\$ 269,387.31	\$	2,244.89	\$	-
1/8/2007	\$ 271,632.20	\$	2,263.60	\$	-
2/8/2007	\$ 273,895.80	\$	2,282.47	\$	-
3/8/2007	\$ 276,178.27	\$	2,301.49	\$	-
4/8/2007	\$ 278,479.75	\$	2,320.66	\$	-
5/8/2007	\$ 280,800.42	\$	2,340.00	\$	-
6/8/2007	\$ 283,140.42	\$	2,359.50	\$	-
7/8/2007	\$ 285,499.92	\$	2,379.17	\$	-
8/8/2007	\$ 287,879.09	\$	2,398.99	\$	-
9/8/2007	\$ 290,278.08	\$	2,418.98	\$	-
10/8/2007	\$ 292,697.07	\$	2,439.14	\$	-
11/8/2007	\$ 295,136.21	\$	2,459.47	\$	-
12/8/2007	\$ 297,595.68	\$	2,479.96	\$	-
1/8/2008	\$ 300,075.64	\$	2,500.63	\$	-
2/8/2008	\$ 302,576.27	\$	2,521.47	\$	-
3/8/2008	\$ 305,097.74	\$	2,542.48	\$	-
4/8/2008	\$ 307,640.22	\$	2,563.67	\$	-
5/8/2008	\$ 310,203.89	\$	2,585.03	\$	-
6/8/2008	\$ 312,788.92	\$	2,606.57	\$	-
7/8/2008	\$ 315,395.50	\$	2,628.30	\$	-
8/8/2008	\$ 318,023.79	\$	2,650.20	\$	-
9/8/2008	\$ 320,673.99	\$	2,672.28	\$	-
10/8/2008	\$ 323,346.27	\$	2,694.55	\$	-
11/8/2008	\$ 326,040.83	\$	2,717.01	\$	-
12/8/2008	\$ 328,757.83	\$	2,739.65	\$	-
1/8/2009	\$ 331,497.48	\$	2,762.48	\$	-
2/8/2009	\$ 334,259.96	\$	2,785.50	\$	-
3/8/2009	\$ 337,045.46	\$	2,808.71	\$	-
4/8/2009	\$ 327,854.17	\$	2,732.12	\$	(12,000.00)
5/8/2009	\$ 294,586.29	\$	2,454.89	\$	(36,000.00)
6/8/2009	\$ 285,041.18	\$	2,375.34	\$	(12,000.00)
7/8/2009	\$ 294,586.29	\$	2,454.89	\$	(12,000.00)
8/8/2009	\$ 285,041.18	\$	2,375.34	\$	-
9/8/2009	\$ 287,416.52	\$	2,395.14	\$	(6,000.00)
10/8/2009	\$ 283,811.66	\$	2,365.10	\$	(6,000.00)
11/8/2009	\$ 280,176.75	\$	2,334.81	\$	(12,000.00)
12/8/2009	\$ 270,511.56	\$	2,254.26		
1/8/2010	\$ 272,765.82	\$	2,273.05		
2/8/2010	\$ 275,038.87	\$	2,291.99		
3/8/2010	\$ 277,330.86				

Claim on Effective date:	\$ 277,330.86
Pre-bankruptcy Fees	\$ 78,235.15
Total Claim	\$ 355,566.01
Prepayment @ 85%	\$ 302,231.11

Exhibit “E”

COMMUNITY HOSPITAL HUNTINGTON PARK
13 WEEK CASH FLOW PROJECTION - WITH BRIDGE LOAN

	Actual 7/3/2009 Week 1	Actual 7/10/2009 Week 2	Actual 7/17/2009 Week 3	Actual 7/24/2009 Week 4	Actual 7/31/2009 Week 5	Actual 8/7/2009 Week 6	Actual 8/14/2009 Week 7	Actual 8/21/2009 Week 8	Actual 8/28/2009 Week 9	Actual 9/4/2009 Week 10	Actual 9/11/2009 Week 11	Actual 9/18/2009 Week 12	Actual 9/25/2009 Week 13	Actual 10/2/2009 Week 14	Actual 10/9/2009 Week 15
CASH RECEIPTS	455,783	700,249	331,955	790,642	625,977	492,244	628,061	476,643	523,210	510,897	463,527	714,291	645,774	349,005	521,581
Bridge Loan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Less: Recoupments	-	-	-	-	(16,090)	-	628,061	-	(16,053)	-	-	-	(19,577)	-	-
TOTAL CASH RECEIPTS	455,783	700,249	331,955	790,642	609,887	492,244	628,061	476,643	513,157	510,897	463,527	714,291	626,197	349,005	521,581
Salaries & Wages	39,179	570,616	185,692	781,447	48,501	651,243	188,743	506,885	203,915	559,615	186,886	540,508	19,379	516,982	8,220
Employee Benefits	6,000	-	-	-	77,271	-	28,814	-	-	30,582	-	491	325,685	134,848	196,240
Contracted Labor	1,718	3,585	3,988	10,187	-	2,874	7,490	-	-	-	-	6,755	-	-	5,700
Physician Fees	67,225	46,910	45,175	9,289	-	44,410	56,025	47,045	2,160	58,895	44,250	47,650	8,210	45,402	17,770
Consulting Fees	7,812	6,750	17,765	10,850	20,398	56,092	7,669	6,750	26,727	17,260	17,671	68,229	800	20,373	17,770
Marketing	969	15,000	2,000	279	-	15,000	-	28,500	2,806	20,000	-	32,630	-	23,500	125,401
Supplies	25,209	77,896	77,749	71,248	13,902	40,860	18,430	64,787	108,595	23,863	35,518	106,066	28,815	62,349	111,770
Purchased Services	59,886	51,034	88,525	68,856	18,766	36,872	44,399	35,611	38,467	63,694	35,196	75,863	71,263	29,867	39,770
Equipment Leases	10,401	-	60	-	5,875	-	-	-	1,145	2,000	-	-	1,575	3,832	-
Insurance	90,038	-	-	-	75,435	-	-	-	-	-	-	-	-	-	-
Repairs & Maintenance	4,946	4,627	3,144	1,060	1,554	-	5,358	-	447	-	-	8,186	3,537	720	-
Rent	17,222	-	-	-	-	41,407	-	-	-	41,407	-	-	-	44,407	-
Utilities	241	478	4,791	358	32,114	-	3,034	-	31,116	5,923	-	955	561	29,522	-
Adaptive Protection Payments	89,710	-	15,000	25,000	15,000	15,000	22,500	15,000	15,000	-	-	15,000	-	15,000	-
Other Expenses	2,040	-	17,145	300	-	-	-	-	-	-	-	13,004	3,877	711	-
Taxes and Licenses	2,223	-	17,145	-	-	-	-	-	-	-	200	-	-	-	-
Chapter 11 Expenses	8,000	93,000	-	-	-	8,000	-	-	-	8,000	-	-	-	-	-
Capital Expenditures	-	-	-	3,780	-	-	18,573	60,000	-	15,527	-	22,487	15,527	-	-
TOTAL OUTFLOWS	432,789	873,333	445,203	989,096	331,419	881,206	408,221	795,772	437,425	837,780	320,202	936,835	477,129	927,512	507,540
NET WEEKLY CASH FLOW	22,994	(173,084)	(113,248)	(198,454)	278,468	(388,962)	219,841	(319,129)	75,732	(326,883)	143,325	(222,544)	149,068	(578,507)	(5,959)
CASH BALANCE	1,559,457	1,386,374	1,270,638	1,072,183	1,344,652	955,699	1,175,530	854,405	939,137	603,254	746,579	524,036	673,104	511,974	1,515,915

COMMUNITY HOSPITAL HUNTINGTON PARK
 13 WEEK CASH FLOW PROJECTION - WITH BRIDGE LOAN

	Actual 10/16/2009 Week 16	Actual 10/23/2009 Week 17	Actual 10/30/2009 Week 18	Actual 11/6/2009 Week 19	Actual 11/13/2009 Week 20	Actual 11/20/2009 Week 21	Actual 11/27/2009 Week 22	Actual 12/4/2009 Week 23	Actual 12/11/2009 Week 24	Actual 12/18/2009 Week 25	Actual 12/25/2009 Week 26	Actual 1/1/2010 Week 27
CASH RECEIPTS	629,341	495,865	2,228,207	479,356	434,856	677,062	435,651	546,529	335,788	353,991	645,428	603,968
Bridge Loan	-	-	(19,577)	-	-	-	(19,577)	-	-	-	(19,577)	-
Less: Recoupments	-	-	2,208,630	-	-	677,062	418,074	546,529	335,788	353,991	625,851	603,968
TOTAL CASH RECEIPTS	629,341	495,865	2,208,630	479,356	434,856	677,062	418,074	546,529	335,788	353,991	625,851	603,968
Salaries & Wages	522,891	790	579,157	30,096	675,927	39,062	553,974	168,129	602,915	181,637	539,305	109,081
Employee Benefits	5,118	183,601	43,948	374,336	51,977	-	526	59,704	103,349	51,480	968	47,992
Contracted Labor	72,243	700	-	47,125	37,375	53,370	4,165	-	-	5,985	-	-
Physician Fees	16,250	43,239	82,588	34,646	5,000	7,500	22,302	34,610	26,356	7,500	-	4,879
Consulting Fees	23,500	-	20,379	4,378	1,422	23,500	-	26,509	3,498	25,000	-	(1,000)
Marketing	21,009	56,280	110,804	28,776	59,009	33,013	78,412	29,631	51,070	25,211	-	43,866
Supplies	42,769	92,901	56,038	86,147	81,727	63,086	90,632	98,335	144,582	26,456	32,602	23,300
Purchased Services	4,834	4,471	2,701	-	-	3,835	188	-	-	-	-	4,031
Equipment Leases	-	9,365	5,829	-	-	-	-	-	28,388	-	-	28,388
Insurance	-	-	9,073	923	1,840	4,386	2,995	2,995	4,485	1,765	-	-
Repairs & Maintenance	-	-	3,000	41,407	-	-	-	44,407	-	-	-	-
Rent	-	-	45,524	1,581	15,617	32,872	167	-	-	1,443	-	-
Utilities	-	-	30,000	37,210	30,000	-	65,680	-	-	42,000	-	-
Adequate Protection Payments	15,000	-	-	-	-	-	-	-	-	-	-	-
Other Expenses	4,108	1,470	17,087	2,940	2,277	13,802	7,639	4,728	319	-	5,859	1,040
Taxes and Licenses	-	1,904	1,518	600	15,653	1,202	1,072	-	97,628	-	-	378
Chapter 11 Expenses	-	8,000	105,707	8,000	-	-	88	150,000	8,000	-	-	-
Capital Expenditures	-	18,573	-	-	14,978	25,573	1,642	-	1,549	-	-	-
TOTAL OUTFLOWS	733,317	421,293	1,126,369	598,187	592,803	304,200	855,790	664,626	1,124,473	368,517	946,481	279,735
NET WEEKLY CASH FLOW	(103,976)	74,572	1,082,261	(218,831)	(557,947)	375,862	(438,715)	(117,997)	(788,685)	(14,526)	(20,630)	324,233
CASH BALANCE	923,825	998,297	2,080,524	1,861,713	1,303,766	1,679,628	1,239,913	1,121,916	333,231	318,704	298,074	622,307

Exhibit “F”

Community and Mission Hospital of Huntington Park
Cash Flow: Budget vs. Actual

	<u>Actual</u>	<u>December Budget</u>	<u>Variance</u>
BEGINNING CASH BALANCE	1,239,913	1,608,187	(368,274) Reflects non-receipt of bridge loan budgeted in Nov
Adjustment to Book Balance			
TOTAL ADJUSTED CASH BALANCE			
<u>CASH RECEIPTS</u>			
Patient Revenue	2,438,545	2,512,528	(75,982) Reflects seasonal collections lag
DSH Revenue	-	-	-
Distressed Hospital Revenue	-	-	-
Other Revenue	49,259	62,500	(13,241)
Bridge Loan / Repayment	-	418,000	-
Recoupment - Medicare 2007 DSH Audit	(19,577)	(39,154)	19,577
Recoupment - Medicare 2008 DSH	-	-	-
Recoupment - HealthNet Overpayment	-	(41,667)	41,667
Recoupment - Medicare Cost Report	-	-	-
Delay in Medi-Cal Payments	-	-	-
TOTAL CASH RECEIPTS	2,466,227	2,912,207	(445,980) Reflects non-receipt of bridge loan re-budgeted in Dec
<u>OUTFLOWS</u>			
Salaries & Wages	1,601,087	1,407,921	(193,167)
Deferred Wages	-	24,498	24,498
Employee Benefits	263,514	217,040	(46,474)
Insurance: Workers' Comp	-	36,366	(36,366) Reflects non-payment of Nov budgeted amt
Contracted Labor	-	-	-
Contracted Labor: Accountemps	-	-	-
Contracted Labor: Other	-	-	-
Contracted Labor: Coding Spec	5,985	7,061	1,076
Physician Fees	-	-	-
Physician Fee: Payment Plans	6,125	-	(6,125)

Physician Fees: Directorship Stipends	46,000	48,000	2,000	
Physician Fees: On Call Panel	86,590	93,450	6,860	
Deferred Physician Fees	-	-	-	
Pass Through of UMS Cash Collections	9,481	-	(9,481)	
Consulting Fees	-	-	-	
Consulting Fees: (Other) Managed Care & Cost Reports	9,500	9,500	-	
Consulting Fees: Fulcrum	14,737	-	(14,737)	Reflects Nov and Dec payment made in Dec
Consulting Fees: D&A Mgt	35,281	35,200	(81)	
Consulting Fees: M. Rubin	15,000	15,000	-	
Consulting Fees: LPCA	11,619	21,000	9,381	
Marketing	-	-	-	
ROQ Management	40,000	40,000	-	
Consulting Fees: Bertha Anderson	9,009	7,000	(2,009)	
Joint Advertising: San Miguel	-	3,750	3,750	
Misc. Marketing Expenses	3,998	5,500	1,502	
Supplies	-	-	-	
Supplies: Medical	139,070	168,040	28,970	
Supplies: Non-Medical	34,109	52,058	17,949	
Purchased Services	-	-	-	
Purchased Services: Business Office	3,110	12,837	9,727	
Purchased Services: Dialysis	7,710	7,605	(105)	
Purchased Services: EEG	1,700	1,200	(500)	
Purchased Services: EVS	52,134	32,400	(19,734)	First payment of Jan made in Dec
Purchased Services: IS	4,500	4,500	-	
Purchased Services: Lab	46,724	40,000	(6,724)	
Purchased Services: Laundry	6,339	7,070	732	
Purchased Services: Other	3,378	6,463	3,086	
Purchased Services: Patient Nutrition	21,319	16,498	(4,821)	
Purchased Services: Pest Control	-	339	339	
Purchased Services: Radiology	113,836	68,136	(45,700)	Reflects budgeted amt being understated and one payment made in Jan
Purchased Services: Respiratory	1,078	991	(87)	
Purchased Services: Software Maintenance & License	-	22,991	22,991	Reflects payment for Dec being made in Jan
Purchased Services: Sterile Processing	-	3,928	3,928	
Purchased Services: Transcription	3,315	9,820	6,505	

Purchased Services: Ultrasound	58,670	60,457	1,788	
Purchased Services: Document Shredding	1,464	1,613	149	
Equipment	-	-	-	
Equipment Purchase	-	-	-	
Equipment Leases	4,031	8,238	4,207	
Equipment Leases - Hasler	-	-	-	
Insurance	-	-	-	
Insurance: General Liability	56,796	-	(56,796)	Self retention payments on D&O policy not budgeted
Repairs & Maintenance	-	-	-	
Repairs & Maintenance	8,465	14,267	5,802	
Repairs & Maintenance: Contract	800	8,000	7,200	
Rent	-	-	-	
Rent: Administration (CH)	24,185	23,255	(930)	
Rent: Community Hospital	10,000	10,000	-	
Rent: Parking Lot (CH)	5,000	5,000	-	
Rent: Parking Lot (MH)	2,222	2,222	-	
Rent: Physician Relocation (CH)	3,000	3,000	-	
Utilities	1,443	15,394	13,951	Reflects Dec budgeted amt being paid in Jan
Adequate Protection Payments	-	-	-	
Adequate Protection Payments: Sterling Bank	-	-	-	
Adequate Protection Payments: CDC	-	-	-	
Adequate Protection Payments: Cardinal	-	-	-	
Adequate Protection Payments: HPDG	12,000	12,000	-	
Adequate Protection Payments: Tenet	30,000	30,000	-	
Other Expenses	-	-	-	
Bank Charges	2,872	1,621	(1,251)	
Other Expenses: Patient Refunds	3,352	-	(3,352)	
Petty Cash	4,693	3,200	(1,493)	
Postage & Delivery	1,040	687	(353)	
Transportation	-	-	-	
Storage	-	5,531	5,531	
Taxes and Licenses	98,006	143,629	(3,351)	
Chapter 11 Expenses	-	-	-	
Bankruptcy: Professional Fees	158,000	-	(158,000)	Reflects budgeted amt for Nov being paid in Dec and Dec

Bankruptcy: US Trustee Fees	-	-	-	
Capital Expenditures	-	-	-	
Digital Radiology Equipment (Freedom Imaging)	-	-	-	
CT Trailer (DBRS)	-	18,944	18,944	
PACS System (Keystone)	-	-	-	
ICU Monitor (3 West Capital Inc)	1,542	-	(1,542)	
RIS (Enterprise Funding Group)	-	-	-	
Nurse Call System (Simplex Grinnell)	-	-	-	
Microbiology Analyzer (Biomerieux)	8	7,000	6,992	
Lab Information System (Antek)	-	12,430	18,644	
	-	-	-	
TOTAL OUTFLOWS	3,083,833	2,812,650	(386,674)	Reflects timing of payroll taxes and BK fees
	(617,606)	99,557	(717,163)	Reflects non-receipt of bridge loan and timing of payroll
NET CASH FLOW				
	622,307	1,707,744	(1,085,437)	Reflects non-receipt of bridge loan budgeted twice and the
ENDING CASH BALANCE				

Exhibit “G”

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

ITEMIZED PRE-PETITION STATEMENT OF ACCOUNT

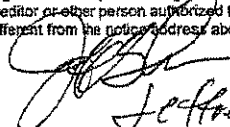
AMOUNTS PAST DUE AS OF PETITION DATE

Unpaid Principal	\$947,368.31*
Interest from 8/15/2008 to 9/22/2008 at 9% per annum (at a daily rate of \$233.60)	\$8,876.80
Legal Fees	\$6,132.77
<u>Total:</u>	<u>\$962,377.88</u>

* Per Exhibit "A" to Settlement Agreement

Exhibit “H”

B1b (Official Form 10 (12/07))

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: Karykelon, Inc.		Case Number: 1:08-bk-17254-MT
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): CHHP, Inc.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: CHHP, Inc. c/o Ivan L. Kallick of Manatt, Phelps & Phillips, LLP 11355 West Olympic Boulevard Los Angeles, California 90064		
Telephone number: (310) 312-4000		
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number:		
1. Amount of Claim as of Date Case Filed: \$ <u>3,377,882.30</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: <u>Secured loan - see attached</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, If any: \$ _____ Basis for perfection: <u>UCC-1 - see attached</u> Amount of Secured Claim: \$ <u>3,377,882.30</u> Amount Unsecured: \$ <u>0.00</u>		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <u>See attached.</u>		
Date: <u>1-9-09</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of this creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="text-align: center;">  <u>Jeffrey Sherman</u> Vice President & Treasurer </div>	
FOR COURT USE ONLY		

Attachment to Proof of Claim of CHHP, Inc.

In re Karykeion, Inc.
U.S.B.C. Case No. 1:08-bk-17254-MT

1. Attached are copies of some of the relevant documents related to the secured claim of CHHP, Inc. Other documents are voluminous and may be subject to certain confidentiality requirements. A request for such other or further documents may be made to counsel for CHHP, Inc. as follows:

Ivan L. Kallick
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064
Telephone: 310-312-4000
Telecopy: 310-312-4224
E-mail: ikallick@manatt.com

2. Based upon statements of the debtor, CHHP, Inc. is fully secured.

3. The calculation of the amount owed is as follows:

Principal:	\$	1,868,087.50
Interest:	\$	1,008,730.80
IT Services:	\$	<u>501,064.00</u>

Total	\$	3,377,882.30.
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4. The amount of \$3,377,882.30 does not include attorneys' fees or costs of CHHP, Inc.

5. CHHP, Inc. acknowledges that it has been receiving adequate protection payments under and pursuant to an order of the United States Bankruptcy Court.

In re: KARYKEION, INC.,

CHAPTER 11

Debtor(s).

CASE NUMBER 1:08-BK-17254-MT

PROOF OF SERVICE OF DOCUMENT

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

1925 Century Park East, Suite 650, Los Angeles, CA 90067

A true and correct copy of the foregoing document described as NOTICE OF EMERGENCY MOTION AND DEBTOR'S EMERGENCY MOTION FOR ORDER MODIFYING SEVENTH INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND PAYMENT OF ADEQUATE PROTECTION; DECLARATIONS OF DANIEL J. ANSEL AND LAURA J. MELTZER; EXHIBITS will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On January 5, 2010 checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

See attached NEF Service List

II. SERVED BY U. S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On ____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

U.S. Mail

See attached Service List

III. SERVED BY EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on January 14, 2010 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

See attached Email Service List

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

January 14, 2010 Laura J. Meltzer

/s/

Date

Type Name

Signature

Mailing Information for Case 1:08-bk-17254-MT

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive e-mail notices for this case.

- Simon Aron saron@wrslawyers.com
- Theresa W Bangert tbangert@sheppardmullin.com
- J Scott Bovitz bovitz@bovitz-spitzer.com
- Katherine Bunker kate.bunker@usdoj.gov
- Young K Chang bklaw3@yahoo.com
- Brian D Fittipaldi brian.fittipaldi@usdoj.gov
- Jeffrey K Garfinkle bkgroup@buchalter.com, jgarfinkle@buchalter.com
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- Ivan L Kallick ikallick@manatt.com, ihernandez@manatt.com
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- Elissa Miller emiller@sulmeyerlaw.com
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- Adam M Starr starra@gtlaw.com
- Derrick Talerico dtalerico@loeb.com, kpresson@loeb.com; ljurich@loeb.com
- United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
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A true and correct copy of the foregoing document entitled (*specify*): OBJECTION OF UNAC TO DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENT, EXHIBITS TO DECLARATIONS OF MAXIMO CARBUCCIA AND JANE M. CARTER, IN SUPPORT OF OBJECTION BY UNAC TO DEBTORS MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS WITH UNAC, ETC will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 5/28/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached Service List

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

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

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 5/28/2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Overnight Mail:

Debtor:

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

Debtor's Counsel:

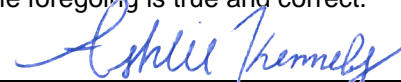
Samuel R. Maizel, Tania M. Moyron, DENTON US LLP, 601 South Figueroa St. Suite 2500, Los Angeles, CA 90017

☐ Service information continued on attached page

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

5/28/2020
Date

Ashlie Kennedy
Printed Name


Signature

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