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

In re

LEAD CASE NO.: 2:18-bk-20151-ER

VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,  
Debtors and Debtors in Possession.

CHAPTER: 11  
JOINTLY ADMINISTERED WITH:

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

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

Debtors and Debtors in Possession.

**AMENDED NOTICE OF APPEAL OF  
ORDER CONFIRMING MODIFIED  
SECOND AMENDED JOINT CHAPTER  
11 PLAN OF LIQUIDATION (DATED  
JULY 2, 2020) OF THE DEBTORS, THE  
PREPETITION SECURED CREDITORS,  
AND THE COMMITTEE [Doc. No. 5504],  
AS MODIFIED BY THE ORDER  
SUSTAINING IN PART AND**



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**OVERRULING IN PART STRATEGIC  
GLOBAL MANAGEMENT, INC.'S  
OBJECTION TO THE FORM OF THE  
ORDER CONFIRMING THE MODIFIED  
SECOND AMENDED PLAN [Doc. No.  
6036]**

1           **PLEASE TAKE NOTICE** that Appellant Strategic Global Management, Inc. (“SGM”  
2 or “Appellant”) previously appealed<sup>1</sup> the Bankruptcy Court’s “*Order Confirming Modified*  
3 *Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and*  
4 *the Prepetition Secured Creditors*” [Doc. No. 5504] entered on August 14, 2020 (the  
5 “Confirmation Order”). The Confirmation Order is attached as **Exhibit “1”** hereto.

6           This Amended Notice of Appeal is being filed in SGM’s appeal of the Confirmation  
7 Order, pending in the United States District Court for the Central District of California as case  
8 number 2:20-cv-07632-DSF (the “Appeal”), to clarify that SGM is appealing the Confirmation  
9 Order entered on August 14, 2020, **as modified** subsequently by the Bankruptcy Court’s “*Order*  
10 *Sustaining In Part And Overruling In Part Strategic Global Management, Inc.’s Objection To*  
11 *The Form Of The Order Confirming The Modified Second Amended Plan*” [Doc. No. 6036] (the  
12 “Modification Order”), and accompanying memorandum decision [Doc. No. 6035] (the  
13 “Modification Decision”). True and correct copies of the Modification Order and Modification  
14 Decision are attached as **Exhibits “2” and “3”** respectively hereto.

15           By way of background, and in chronological order: (1) on August 14, 2020, the  
16 Bankruptcy Court entered the Confirmation Order; (2) on August 14, 2020, SGM submitted its  
17 “*Limited Objection . . . To Form Of*” the Confirmation Order (the “Limited Objection”); (3) on  
18 August 20, 2020, SGM filed its notice of appeal of the Confirmation Order [Doc. No. 5552]; (4)  
19 on August 25, 2020, the Bankruptcy Court entered its “*Order on Strategic Global Management,*  
20 *Inc.’s Objection to the Form of the Order Confirming the Modified Second Amended Plan* [Doc.  
21 No. 5566] which, among other things provided the Debtors and SGM each with an opportunity to  
22 respond to certain issues related to SGM’s Limited Objection; and, (5) on September 3, 2020 (and  
23 after certain briefs were filed by the Debtors and SGM), the Bankruptcy Court entered the  
24 Modification Order to modify the Confirmation Order.

25           Although SGM is not appealing the Modification Order, SGM is submitting this  
26 Amended Notice of Appeal to clarify that it is appealing the Confirmation Order, as subsequently

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28 <sup>1</sup> See (Doc. No. 5552) (Notice of Appeal).

modified by the Modification Order. SGM has already filed its statement of issues and designation of record in the Appeal [Doc. No. 6055]<sup>2</sup> (the “Designations”), and the record is the same as what was previously designated. SGM hereby re-designates the items listed in the Designations, and will additionally designate the Modification Decision and Modification Order, attached as Exhibits “2” and “3” hereto, as part of the record in the Appeal.

The parties to the Appeal of the Confirmation Order, and the names and addresses of their respective attorneys are as follows:

<u>Party</u>	<u>Attorney</u>
<b>Strategic Global Management, Inc.</b>	GARY E. KLAUSNER PHILIP A. GASTEIER JEFFREY S. KWONG LEVENE, NEALE, BENDER, YOO & BRILL L.L.P. 10250 Constellation Boulevard Suite 1700 Los Angeles, CA 90067 Telephone: (310) 229-1234  and  KEVIN D. RISING L. RACHEL LERMAN JOEL R. MEYER BARNES & THORNBURG LLP. 2029 Century Park East Suite 300 Los Angeles, CA 90067-2904 Telephone: (310) 284-3871
<b>Verity Health Systems of California, Inc. et al., the Chapter 11 Debtors and Debtors In Possession</b>	SAMUEL R. MAIZEL TANIA M. MOYRON NICHOLAS A. KOFFROTH DENTONS US LLP 601 South Figueroa Street, Suite 2500 Los Angeles, California 90017-5704
<b>UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo Bank, National Association, as Indenture Trustee</b>	PAUL J. RICOTTA DANIEL S. BLECK MINTZ, LEVIN, COHN, FERRIS, GLOVSKY

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<sup>2</sup> See also (Distr. Ct. Appeal, Doc. No. 12).

	AND POPEO, P.C. One Financial Center Boston, Massachusetts 02111
<b>U.S. Bank National Association solely in its capacity, as the note indenture trustee and as the collateral agent under the note indenture relating to the 2015 Working Capital Notes</b>	NATHAN F. COCO MEGAN M. PREUSKER MCDERMOTT WILL & EMERY LLP 444 West Lake Street Chicago, Illinois 60606-0029
<b>U.S. Bank National Association solely in its capacity, as the note indenture trustee and as the collateral agent under the note indenture relating to the 2017 Working Capital Notes</b>	CLARK T. WHITMORE JASON REED MASLON LLP 90 South Seventh Street Minneapolis, Minnesota 55402-4140
<b>Verity MOB Financing, LLC and Verity MOB Financing II, LLC</b>	BRUCE S. BENNETT BENJAMIN ROSENBLUM PETER S. SABA JONES DAY LLP 250 Vesey Street New York, New York 10281
<b>Plan Liquidating Trust and Howard Grobstein, Liquidating Trustee</b>	GREGORY A. BRAY MARK SHINDERMAN JAMES C. BEHRENS MILBANK LLP 2029 Century Park East 33rd Floor Los Angeles, California 90067

SGM has already elected to have the Appeal be heard by the District Court (where it is pending) rather than by the Bankruptcy Appellate Panel.

Dated: September 17, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: /s/ Gary E. Klausner  
Gary E. Klausner  
Philip A. Gasteier  
Jeffrey S. Kwong

1 Dated: September 17, 2020

BARNES & THORNBURG LLP

2 By: /s/ Kevin D. Rising

3 Kevin D. Rising

4 L. Rachel Lerman

5 Joel R. Meyer

Counsel for Strategic Global Management, Inc.

**EXHIBIT “1”**

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

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

☒ Affects Verity Health System of  
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☒ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital/  
Foundation

☐ Affects St. Francis Medical Center of  
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center, Inc.

☐ Affects Seton Medical Center Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☒ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose  
Dialysis, LLC

Debtors and Debtors In Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER

Case No. 2:18-bk-20163-ER

Case No. 2:18-bk-20164-ER

Case No. 2:18-bk-20165-ER

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Case No. 2:18-bk-20179-ER

Case No. 2:18-bk-20180-ER

Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

**ORDER CONFIRMING MODIFIED SECOND  
AMENDED JOINT CHAPTER 11 PLAN OF  
LIQUIDATION (DATED JULY 2, 2020) OF THE  
DEBTORS, THE PREPETITION SECURED  
CREDITORS, AND THE COMMITTEE**

Hearing:

Date: August 12, 2020

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA



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Unsecured Creditors

Verity Health System of California, Inc. (“**VHS**”) and its affiliated Debtors in these Chapter 11 Cases (collectively, the “**Debtors**”),<sup>1</sup> in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”) and the other plan proponents listed on the previous page (collectively, the “**Plan Proponents**”) having proposed the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors and the Committee* [Docket No. 5466] (the “**Plan**,”)<sup>2</sup> the Court having conducted a hearing to consider confirmation of the Plan (“**Confirmation**”) on August 12, 2020 (the “**Confirmation Hearing**”); the Court having considered: (i) the (a) *Affidavit of Service of Solicitation Materials* [Docket No. 5346] (the “**KCC Service Affidavit**”), (b) *Certification of Andreas A. Estrada (of Kurtzman Carson Consultants LLC) With Respect to the Tabulation of Votes on the Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Lenders and the Committee* [Docket No. 5371] (the “**Voting Declaration**”), (c) the *Affidavit of Publication of the Notice of (I) Approval of the Disclosure Statement, (II) Deadline for Voting on the Plan, (III) Hearing to Consider Confirmation of the Plan, (IV) Deadline for Filing Objections to Confirmation of the Plan, and (V) Deadline for Filing Administrative Expense Claims in the Los Angeles Times, San Francisco Chronicle, San Jose Mercury News and USA Today* [Docket No. 5358], (d) the *Declaration of Peter Chadwick in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 5385] (the “**Chadwick Declaration**”), and (e) the *Declaration of Rich Adcock in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 5385] (the “**Adcock Declaration**”), each admitted into evidence at the Confirmation Hearing; (ii) the arguments of counsel presented at the Confirmation Hearing, (iii) the *Memorandum of Law in Support of Confirmation of the*

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<sup>1</sup> In addition to VHS the Debtors are as follows: (i) O’Connor Hospital, (ii) St. Louise Regional Hospital, (iii) St. Francis Medical Center, (iv) St. Vincent Medical Center, (v) Seton Medical Center, (vi) O’Connor Hospital Foundation, (vii) Saint Louise Regional Hospital Foundation, (viii) St. Francis Medical Center of Lynwood Foundation, (ix) St. Vincent Foundation, (x) St. Vincent Dialysis Center, Inc., (xi) Seton Medical Center Foundation, (xii) Verity Business Services, (xiii) Verity Medical Foundation, (xiv) Verity Holdings, LLC, (xv) De Paul Ventures, LLC and (xvi) De Paul Ventures - San Jose Dialysis, LLC. There are certain affiliates of VHS who are not Debtors.

<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Plan.

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1 *Second Amended Joint Chapter 11 Plan of Liquidation* (the “**Confirmation Brief**”) [Docket No.  
2 5385]; (iv) the additional responses and supplements filed in support of the Plan and  
3 Confirmation Brief [Docket Nos. 5419, 5425, 5443, 5455, 5456, 5468]; and (v) the objections  
4 [Docket Nos. 5231, 5268, 5281, 5407, 5282, 5288, 5448, 5197, 5292, 5294, 5326, 5337, 5339,  
5 5445, 5341, 5342, 5343, 5417] (the “**Objections**”) to the Plan, and any withdrawals or  
6 settlements thereof; and the Court having taken judicial notice of the entire docket of the Debtors’  
7 Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, and all  
8 pleadings and other documents filed, all orders entered, and evidence and arguments made,  
9 proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11  
10 Cases; and the Court having found that due and proper notice has been given with respect to the  
11 Confirmation Hearing and the deadlines and procedures for filing objections to the Plan; and the  
12 Court having heard the statements and arguments made by counsel in respect of Confirmation of  
13 the Plan, and all objections to Confirmation (including, without limitation, any of the settlements  
14 to be approved pursuant to the Plan) having been withdrawn, resolved as stated on the record or  
15 overruled; and the appearance of all interested parties having been duly noted in the record of the  
16 Confirmation Hearing; and for the reasons set forth in the Court’s ruling [Docket No. 5475] (the  
17 “**Ruling**”), which the Court adopts as its final ruling and which is incorporated herein by  
18 reference, upon the record of the Confirmation Hearing, and after due deliberation thereon, and  
19 sufficient cause appearing therefor;

20 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21 IT IS HEREBY FOUND AND CONCLUDED, that<sup>3</sup>:

22 **JURISDICTION AND VENUE**

23 A. The Court has jurisdiction over this matter and these Chapter 11 Cases pursuant to  
24 28 U.S.C. § 1334.

25 \_\_\_\_\_  
26 <sup>3</sup> The findings of fact and conclusions of law set forth herein shall constitute findings of fact and  
27 conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by  
28 Bankruptcy Rule 9014. To the extent any of the orders of this Bankruptcy Court constitute  
findings of fact or conclusions of law, they are adopted as such. To the extent any of the findings  
of fact or conclusions of law constitute an order of this Bankruptcy Court, they are adopted as  
such.

1 B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C.  
2 § 157(b)(2)(L), this Court has jurisdiction to enter a final order with respect thereto, and this  
3 Court's exercise of such jurisdiction is constitutional in all respects. The Court has exclusive  
4 jurisdiction to determine whether the Plan complies with the applicable provisions of title 11 of  
5 the United States Code, 11 U.S.C. §§ 101 *et seq.* as amended (the "**Bankruptcy Code**"),<sup>4</sup> and  
6 should be confirmed.

7 C. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

8 D. The Debtors are proper Debtors under § 109, and the Plan Proponents are proper  
9 proponents of the Plan under § 1121(a).

10 **COMPLIANCE WITH BANKRUPTCY RULE 3016**

11 E. The Plan is dated and identifies the entities submitting and filing it, thereby  
12 complying with Bankruptcy Rule 3016(a). The filing of the Disclosure Statement complied with  
13 Bankruptcy Rule 3016(b).

14 **PROPER NOTICE**

15 F. As described below and as evidenced by the KCC Service Affidavit, due, adequate  
16 and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement, and the  
17 Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan and with  
18 respect to confirmation was given in compliance with applicable law, including, without  
19 limitation, the Bankruptcy Rules, and no other or further notice is or shall be required.

20 **STANDARDS FOR CONFIRMATION UNDER § 1129 OF THE BANKRUPTCY CODE**

21 G. The Plan Proponents have met their burden of proving the elements of §§ 1129(a)  
22 and 1129(b) by a preponderance of the evidence, which is the applicable evidentiary standard for  
23 confirmation of the Plan. Further, the Plan Proponents have proven the elements of §§ 1129(a)  
24 and 1129(b) by clear and convincing evidence. The evidentiary record of the Confirmation  
25 Hearing supports the findings of fact and conclusions of law set forth in the following paragraphs.

26 \_\_\_\_\_  
27 <sup>4</sup> All references to "§" are to sections of the Bankruptcy Code; all references to "**Bankruptcy**  
28 **Rules**" are to provisions of the Federal Rules of Bankruptcy Practice; all references to "**LBR**" are  
to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the  
Central District of California.

1 H. § 1129(a)(1). The Plan complies with each applicable provision of the Bankruptcy  
2 Code. Pursuant to §§ 1122(a) and 1123(a)(1), Section 3 of the Plan provides for the separate  
3 classification of Claims into thirteen Classes or Sub Classes, based on reasonable and appropriate  
4 differences in the legal nature or priority of such Claims (other than Administrative Claims,  
5 Professional Claims, Statutory Fees (including U.S. Trustee Fees), and Priority Tax Claims,  
6 which are addressed in Section 2 of the Plan and which are not required to be designated as  
7 separate Classes pursuant to § 1123(a)(1)). In particular, the Plan complies with the requirements  
8 of §§ 1122 and 1123 as follows:

- 9 1. In accordance with § 1122(a), Section 3 of the Plan classifies each Claim  
10 against the Debtors into a Class containing only substantially similar Claims;
- 11 2. In accordance with § 1123(a)(1), Section 3 of the Plan properly classifies  
12 all Claims that require classification. With respect to Claims classified in Classes  
13 8, 9 and 10, the Debtors have provided proof of a legitimate reason for the separate  
14 classification of such Claims, and such classification is justified. Separate  
15 classification was not done for any improper purpose and does not unfairly  
16 discriminate between or among holders of Claims;
- 17 3. In accordance with § 1123(a)(2), Section 3 of the Plan properly identifies  
18 and describes each Class of Claims that is not Impaired under the Plan;
- 19 4. In accordance with § 1123(a)(3), Section 4 of the Plan properly identifies  
20 and describes the treatment of each Class of Claims that is Impaired under the  
21 Plan;
- 22 5. In accordance with § 1123(a)(4), the Plan provides the same treatment for  
23 each Claim within a particular Class unless the holder of such a Claim has agreed  
24 to less favorable treatment;
- 25 6. In accordance with § 1123(a)(5), the Plan, including the Plan Supplement,  
26 provides, in detail, adequate and proper means for its implementation;
- 27 7. In accordance with § 1123(a)(6), i.e., that, if a debtor is a corporation, its  
28 plan must prohibit the issuance of nonvoting equity securities, the Debtors, as  
nonprofit entities, will not issue any stock or other securities under the Plan and  
therefore the Plan comports with § 1123(a)(6);
8. In accordance with § 1123(a)(7), the provisions of the Plan regarding the  
manner of selection of directors of Post-Effective Date Debtors are consistent with  
the interests of creditors and equity security holders (of which there are none) and  
with public policy;



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9. In accordance with § 1123(b)(1), Sections 3 and 4 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims;

10. In accordance with § 1123(b)(2), Section 11 of the Plan provides for the assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases of the Debtors that have not been previously assumed, assumed and assigned, or rejected pursuant to § 365 and orders of the Court;

11. In accordance with §§ 363 and 1123(b)(3) and Bankruptcy Rule 9019, the Plan provides for the good faith compromise of all Claims and controversies relating to the contractual, legal, and subordination rights that a holder of any Claim may have with respect to any Allowed Claim or any distribution to be made on account of such an Allowed Claim, including, but not limited to, approval of the Creditor Settlement Agreements as set forth in Section 7 of the Plan. Section 6 of the Plan further provides, in accordance with § 1123(b)(3), that the Liquidating Trust (with respect to the Liquidating Trust Assets) or the Post-Effective Date Debtors (with respect to the Operating Assets) will retain and may enforce any claims, demands, rights, defenses and Causes of Action that any Debtor or Post-Effective Date Debtor may hold against any entity, to the extent not expressly released under the Plan;

12. In accordance with § 1123(b)(5), Section 3 of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in Classes 1 through 11;

13. In accordance with § 1123(b)(6), the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code; and

14. In accordance with § 1123(d), Section 11 of the Plan provides for the satisfaction of cure amounts associated with each Executory Agreement to be assumed pursuant to the Plan in accordance with § 365(b)(1). All cure amounts will be determined in accordance with the underlying agreements and applicable law.

I. **§ 1129(a)(2).** The Plan Proponents have complied with all applicable provisions as required by § 1129(a)(2), including §§ 1122, 1123, 1124, 1125, 1126, 1127, and 1128, and Bankruptcy Rules 3017, 3018, and 3019, and all other applicable rules, laws and regulations with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, acceptances or rejections of the Plan were solicited in good faith and in compliance with the requirements of §§ 1125 and 1126 as follows:

1. In compliance with the *Order Granting Joint Motion for an Order Approving (I) Proposed Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Notice and Objection Procedures for Confirmation of Amended*

1 *Joint Plan, (IV) Setting Administrative Claims Bar Date; and (V) Granting Related*  
2 *Relief* entered on July 2, 2020 [Docket No. 4997] (the “**Disclosure Statement**

3 **Order**”), on July 8, 2020, the Plan Proponents, through their claims and noticing

4 agent, Kurtzman Carson Consultants LLC (“KCC”), caused copies of the

5 following materials to be served on all holders of Claims in Classes that were

6 entitled to vote to accept or reject the Plan (i.e., Claims in Classes 2 through 10);

7 *see* KCC Service Affidavit:

- 8 • a written notice (the “**Confirmation Hearing Notice**”) of (a) the
- 9 Court’s approval of the Disclosure Statement, (b) the voting deadline, (c)
- 10 the date and time of the Confirmation Hearing, and (d) the Confirmation
- 11 objection deadline;
- 12 • the Disclosure Statement (together with the exhibits thereto,
- 13 including the Plan and the Disclosure Statement Order) in electronic
- 14 format; and
- 15 • the appropriate form of Ballot with a postage prepaid return
- 16 envelope.

17 2. In compliance with the Disclosure Statement Order, on July 8, 2020, the

18 Plan Proponents, through KCC, caused a copy of the notice of non-voting status to

19 be served on all holders of Claims and Interests in the non-voting classes (i.e.,

20 Classes 1A, 1B, 11, and 12). *See* KCC Service Affidavit at ¶ 15).

21 3. In compliance with the Disclosure Statement Order, on July 8, 2020, the

22 Plan Proponents, through KCC, caused a copy of the Confirmation Hearing Notice

23 to be served on all parties in the creditor database maintained by KCC not

24 otherwise served pursuant to paragraphs 1 and 2 above, including, but not limited

25 to, (a) all non-Debtor parties to Executory Agreements, and (b) all holders of

26 Administrative Claims and Priority Tax Claims. *See* KCC Service Affidavit at ¶

27 14.

28 4. In compliance with the Disclosure Statement Order, on July 8, 2020, the

Plan Proponents, through KCC, caused copies of the Disclosure Statement

(together with the exhibits thereto, including the Plan and the Disclosure Statement

Order) and the Confirmation Hearing Notice, to be served on the parties who have

requested notice of pleadings in this case. *See* KCC Service Affidavit at ¶¶ 16-17.

5. On the dates indicated below, the Plan Proponents filed (and made

available on the Debtors’ restructuring website at [www.kccllc.net/Verityhealth](http://www.kccllc.net/Verityhealth))

the following Plan Supplement documents:

- (a) the identity of the members of the Post-Effective Date Committee,
- filed on August 10, 2020 [Docket No. 5443];
- (b) the form of Liquidating Trust Agreement, filed on August 10, 2020
- [Docket No. 5443]; and

(c) the Plan Settlement, filed on August 5, 2020, as may be amended or supplemented in a Plan Supplement.

6. The Plan Proponents have set forth the process to select the initial Liquidating Trustee and the members serving on the Post-Effective Date Board of Directors. The Plan further provides that the Liquidating Trustee shall serve as an officer of the Post-Effective Date Debtors. *See* Plan § 6.5(a), (b)(iv). The Plan Proponents will disclose the identities of these individuals once they are selected, and prior to the Effective Date, in a Plan Supplement filed prior to the Effective Date. *See id.* § 1.130. The process for the selection of the Liquidating Trustee and the members of the Post-Effective Date Board of Directors is consistent with the best interests of creditors and public policy and satisfies the requirements of § 1129(a)(5).

7. In the interest of clarifying and consensually resolving outstanding issues and informal objections to confirmation of the Plan, the Plan Proponents have made certain non-material modifications to the Plan (the “Non-Material Modifications”) as set forth more fully in the Confirmation Brief and related Plan Supplements.

8. The Confirmation Hearing Notice provided due and proper notice of the Confirmation Hearing and all relevant dates, deadlines, procedures and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the voting deadline, the objection deadline, the time, date and place of the Confirmation Hearing and the release provisions in the Plan.

9. All persons entitled to receive notice of the Disclosure Statement, the Plan, and the Confirmation Hearing have received proper, timely and adequate notice in accordance with the Disclosure Statement Order, applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto.

10. The Plan Proponents solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order. Accordingly, the Plan Proponents are entitled to the protections afforded by § 1125(e) and the exculpation provisions set forth in § 13.7 of the Plan.

11. Claims in Classes 1A and 1B under the Plan are unimpaired, and such Classes are deemed to have accepted the Plan pursuant to § 1126(f).

12. The Plan was voted on by all Classes of Impaired Claims that were entitled to vote pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order (i.e., Classes 2 through 10).

13. KCC has made a final determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting



1 Claims in Classes 2 through 10 under the Plan. *See* Voting Declaration at ¶ 11 and  
2 Exhibit A thereto.

3 14. Each of Classes 2, 3, 4, 5, 6, 7, 8, 9, and 10 has accepted the Plan because  
4 holders of Claims in such Classes of at least two-thirds in amount and a majority  
5 in number of the Claims in such Classes actually voted to accept the Plan. *See*  
6 Voting Declaration, at ¶ 12 and Exhibit A thereto.

7 J. **Section 1129(a)(3).** The Plan has been proposed in good faith and not by any  
8 means forbidden by law. The Chapter 11 Cases were filed in good faith and consistent with the  
9 purposes of the Bankruptcy Code. The Plan fairly achieves a result consistent with the objectives  
10 and purposes of the Bankruptcy Code. In so finding, the Court has considered the totality of the  
11 circumstances in these Chapter 11 Cases. The Plan is the result of extensive good-faith, arms'  
12 length negotiations by and among the Plan Proponents and certain of their principal  
13 constituencies, and their respective representatives, and reflects substantial input from the  
14 principal constituencies having an interest in the Chapter 11 Cases and, as evidenced by the  
15 overwhelming acceptance of the Plan, achieves the goal of a consensual chapter 11 plan pursuant  
16 to the requirements of the Bankruptcy Code. The Plan Proponents and each of their respective  
17 officers, directors, employees, advisors, and professionals (i) acted in good faith in negotiating,  
18 formulating, and proposing, where applicable, the Plan and agreements, compromises,  
19 settlements, transactions, and transfers contemplated thereby, and (ii) will be acting in good faith  
20 in proceeding to (a) consummate the Plan and the agreements, compromises, settlements,  
21 transactions, transfers, and documentation contemplated by the Plan, including, but not limited to,  
22 the Plan Supplement documents, and (b) take any actions authorized and directed or contemplated  
23 by this Order. Thus, the Plan satisfies the requirements of § 1129(a)(3).

24 K. **§ 1129(a)(4).** The Plan provides that Professional Claims submitted by  
25 professionals for services incurred prior to the Effective Date will be entitled to payment only if  
26 they are approved by, or are subject to the approval of, the Bankruptcy Court as reasonable,  
27 thereby satisfying the requirements of § 1129(a)(4).

28 L. **§ 1129(a)(5).** The Plan Proponents have disclosed, or will disclose prior to the  
Effective Date, in one or more Plan Supplements, the identities of the Liquidating Trustee, the

1 directors of the Post-Effective Date Board of Directors, and the Post-Effective Date Committee.  
2 The Post-Effective Date Board of Directors and the members of the Post-Effective Date  
3 Committee will not be compensated and the compensation of the Liquidating Trustee will be  
4 consistent with the Liquidating Trust Agreement. Based on the procedures to select the proposed  
5 Liquidating Trustee and directors for the Post-Effective Date Debtors, each as set forth in a Plan  
6 Supplement, the Liquidating Trustee and directors for the Post-Effective Date Debtors will be and  
7 are qualified to perform the services required of them under the Plan and their appointment to, or  
8 continuance in, such offices is consistent with the interests of holders of Claims and with public  
9 policy. The Plan Proponents have therefore satisfied the requirements of § 1129(a)(5).

10 M. § 1129(a)(6). The Plan does not provide for any changes in rates that require  
11 regulatory approval of any governmental agency and therefore, the requirements of § 1129(a)(6)  
12 are inapplicable to confirmation of the Plan.

13 N. § 1129(a)(7). The liquidation analysis set forth in Exhibit A to the Disclosure  
14 Statement and other evidence proffered or adduced at or prior to the Confirmation Hearing, or in  
15 the Adcock Declaration and the Chadwick Declaration in connection with the Confirmation  
16 Hearing: (a) are reasonable, persuasive, accurate and credible; (b) utilize reasonable and  
17 appropriate methodologies and assumptions; (c) have not been controverted by any other  
18 evidence; and (d) establish that each holder of a Claim in an Impaired Class either (i) has  
19 accepted the Plan, or (ii) will receive or retain under the Plan, on account of such Claim property  
20 of a value, as of the Effective Date of the Plan, that is not less than the amount that it would  
21 receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

22 O. § 1129(a)(8). Classes 1A and 1B are not Impaired and are conclusively presumed  
23 to have accepted the Plan under § 1126(f). As set forth in the Voting Declaration, each of Classes  
24 2 through 10 have each voted to accept the Plan. The Plan therefore satisfies § 1129(a)(8).

25 P. § 1129(a)(9). The Plan provides treatment for Administrative Claims, Priority Tax  
26 Claims, and Priority Non-Tax Claims that is consistent with the requirements of § 1129(a)(9).

1 Q. § 1129(a)(10). The Plan has been accepted by all classes of Impaired Claims that  
2 are entitled to vote on the Plan (i.e., Classes 2 through 10), determined without including any  
3 acceptance of the Plan by any “insider.” See Voting Declaration, Exhibit A.

4 R. § 1129(a)(11). The Plan is feasible, within the meaning of § 1129(a)(11). The  
5 projections of the liquidity and financial information, including, without limitation, the  
6 projections of the Debtors as of the Effective Date, are reasonable and made in good faith. The  
7 evidence provided in support of the Plan or adduced by the Debtors or other Plan Proponents at,  
8 or before, the Confirmation Hearing or in the Chadwick Declaration and the Adcock Declaration:  
9 (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was  
10 prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and  
11 assumptions; and (c) has not been controverted by any other admissible evidence. The Plan  
12 Proponents have demonstrated a reasonable assurance of the Plan’s prospects for success.  
13 Further, the Bankruptcy Court (i) considered the potential Administrative Claims based on the  
14 asserted Requests for Payment, (ii) estimated the aggregate amount of asserted Requests for  
15 Payment only for the purpose of determining whether the Plan can be confirmed pursuant to §  
16 1129, and, (iii) based thereon, concludes that the proposed Administrative Claims Reserve set  
17 forth in the supplement [Docket No. 5468] (the “Confirmation Supplement”) filed by the  
18 Debtors is adequate, as set forth in Section 24 hereof.

19 S. § 1129(a)(12). The Plan provides that fees payable pursuant to 28 U.S.C. § 1930  
20 will be paid by the Debtors on or before the Effective Date. After the Effective Date, all fees  
21 payable pursuant to 28 U.S.C. § 1930 will be paid by the Liquidating Trust until the earlier of the  
22 conversion or dismissal of the applicable Chapter 11 Case under § 1112, or the closing of the  
23 applicable Chapter 11 Case pursuant to § 350(a).

24 T. § 1129(a)(13). The Debtors are not obligated to pay any retiree benefits pursuant  
25 to § 1114, and therefore, the requirements of § 1129(a)(13) are inapplicable to confirmation of the  
26 Plan.

1 U. §§ 1129(a)(14) and (15). The Debtors do not owe any domestic support  
2 obligations and are not individuals. Therefore, the requirements of §§ 1129(a)(14) and  
3 1129(a)(15) are inapplicable to confirmation of the Plan.

4 V. § 1129(a)(16). The Plan satisfies § 1129(a)(16) and any applicable non-  
5 bankruptcy law that governs transfers of property under a plan to be made by a nonprofit entity.  
6 Section 1129(a)(16) does not require the Bankruptcy Court to remand or refer any proceeding,  
7 issue, or controversy to any court other than the Bankruptcy Court or to require the approval of  
8 any court (including, without limitation, any California court under the Nonprofit Laws) other  
9 than the Bankruptcy Court for any prior, current, or future transfer of property. Therefore,  
10 because the Plan contains the Bankruptcy Court's approval of any prior, current, or future  
11 property transfers, the Plan satisfies the requirements of § 1129(a)(16).

12 W. § 1129(b). Because all Classes of Claims are either deemed to accept or voted to  
13 accept the Plan, § 1129(b) is inapplicable.

14 X. § 1129(c). The Plan (including previous versions thereof) is the only plan that has  
15 been filed in these Chapter 11 Cases that has been found to satisfy the requirements of  
16 subsections (a) of § 1129. Accordingly, confirmation of the Plan complies with the requirements  
17 of § 1129(c).

18 Y. § 1129(d). No party in interest has requested that the Court deny Confirmation of  
19 the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the  
20 avoidance of the application of § 5 of the Securities Act, and the principal purpose of the Plan is  
21 not such avoidance. Accordingly, the Plan satisfies the requirements of § 1129(d).

22 Z. § 1129(e). None of these Chapter 11 Cases is a small business case within the  
23 meaning of the Bankruptcy Code.

24 AA. Based upon the foregoing and all other pleadings and evidence proffered or  
25 adduced at or prior to the Confirmation Hearing, the Plan and the Plan Proponents satisfy the  
26 requirements for confirmation set forth in § 1129.

**MODIFICATIONS TO THE PLAN**

BB. The Non-Material Modifications do not materially or adversely affect or change the treatment of any Claim against any Debtor. The Non-Material Modifications do not require additional disclosure under § 1125 or the re-solicitation of acceptances or rejections of the Plan under § 1126.

CC. The filing of the Plan and Non-Material Modifications constitute due and sufficient notice thereof under the circumstances of the Chapter 11 Cases. Accordingly, the Plan is properly before the Bankruptcy Court, and all votes cast with respect to the Plan prior to the Non-Material Modifications shall be binding and shall apply with respect to the Plan.

**IMPLEMENTATION OF THE PLAN**

DD. All documents and agreements necessary to implement the Plan, including, but not limited to, the Plan Supplement documents, are essential elements of the Plan and consummation of each agreement is in the best interests of the Debtors, the Estates, and Holders of Claims. The Debtors and, where applicable, the other Plan Proponents, have exercised reasonable business judgment in determining to enter into the contemplated agreements, and the agreements have been negotiated in good faith, at arms'-length, are fair and reasonable, and shall, upon execution and upon the occurrence of the Effective Date, constitute legal, valid, binding, enforceable, and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms. Pursuant to § 1142(a), the Plan Supplement documents, and any other agreements necessary to implement the Plan will apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

**CONDITIONS TO THE CONFIRMATION OF THE PLAN**

EE. Each of the conditions precedent to entry of this Order has been satisfied in accordance with Section 12.1 of the Plan.

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

FF. Pursuant to §§ 365 and 1123(b)(2), upon the occurrence of the Effective Date, Section 11 of the Plan provides for the assumption, assumption and assignment, or rejection of certain Executory Agreements. The Plan Proponents' determinations regarding the assumption,

1 assumption and assignment, or rejection of Executory Agreements are based on and within the  
2 sound business judgment of the Plan Proponents, are necessary to the implementation of the Plan,  
3 and are in the best interests of the Debtors, their Estates, Holders of Claims and other parties in  
4 interest in the Chapter 11 Cases. The Plan Proponents may elect to file a “Schedule of Assumed  
5 Contracts” as part of their the Plan Supplement (as it may be amended or supplemented) prior to  
6 the Effective Date and will provide notice to counterparties of the Debtors’ determinations  
7 regarding the assumption, assumption and assignment, or rejection of Executory Agreements and  
8 any related Cure amounts. The Plan Proponents are authorized to make modifications to the  
9 Schedule of Assumed Contracts as provided for in the Plan.

#### 10 **THE SETTLEMENTS UNDER THE PLAN**

11 GG. The Plan settles numerous litigable issues in the Chapter 11 Cases pursuant to  
12 Bankruptcy Rule 9019 and §§ 363 and 1123. These settlements are in consideration for the  
13 distributions and other benefits provided under the Plan. Any other compromise and settlement  
14 provisions of the Plan and the Plan itself constitute a compromise of all Claims or Causes of  
15 Action relating to the contractual, legal and subordination rights that a Holder of a Claim may  
16 have with respect to any Allowed Claim or any distribution to be made on account of such an  
17 Allowed Claim.

18 HH. In consideration of the Creditor Settlement Agreements of numerous disputed  
19 Claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and § 1123 and in  
20 consideration for the distributions, releases, and other benefits provided under the Plan, the  
21 provisions of the Plan shall upon the Effective Date constitute a good-faith compromise and  
22 settlement as reflected therein and in the Creditor Settlement Agreements arising from or related  
23 to a variety of asserted secured, administrative, priority, and general unsecured claims. The entry  
24 of this Confirmation Order constitutes the Court’s approval of each of the Creditor Settlement  
25 Agreements and all other compromises and settlements provided for in the Plan. The Court finds  
26 that such compromises and settlements are in the best interests of the Debtors, their estates,  
27 creditors, and other parties in interest, and are fair, equitable, and within the range of  
28 reasonableness and consistent with the Debtors’ reasonable business judgment.

II. In reaching its decision on the substantive fairness of the Creditor Settlement Agreements and the Plan, the Court considered the following factors for each such settlement: (i) the balance between the litigation's probability of success and the Creditor Settlement Agreements' future benefits; (ii) the likelihood of complex and protracted litigation and the risk and difficulty of collecting on the judgment; (iii) the proportion of creditors and parties in interest that support the Creditor Settlement Agreements; (iv) the competency of counsel reviewing the Creditor Settlement Agreements; (v) the nature and breadth of releases to be obtained by officers and directors; and (vi) the extent to which the Creditor Settlement Agreements are the product of arm's length bargaining.

#### **DEEMED SUBSTANTIVE CONSOLIDATION**

JJ. As set forth more fully in the Disclosure Statement, the Plan provides for the "deemed" substantive consolidation of the Debtors. The Disclosure Statement sets forth (i) the legal requirements to establish deemed substantive consolidation, and (ii) the factual bases supporting the Debtors' request for deemed substantive consolidation, which are fully incorporated herein by this reference. The Plan Proponents did not receive objections to the deemed substantive consolidation of the Debtors. Based on the foregoing, the deemed substantive consolidation of the Debtors set forth in the Plan is appropriate because, as set forth more fully in the Ruling, the Debtors satisfy the requirements for deemed substantive consolidation set forth in *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 (9th Cir. 2000), including, among other things, that (1) the Debtors' secured lenders dealt with the Debtors as a single economic unit, and (2) the Debtors' affairs are so entangled that consolidation will benefit all creditors.

#### **RELEASES, EXCULPATIONS AND INJUNCTIONS OF RELEASED PARTIES**

KK. Each non-Debtor Released Party that will benefit from the releases, exculpations, and related injunctions set forth in the Plan (collectively, the "**Plan Releases**") either shares an identity of interest with the Debtors, was instrumental to the successful prosecution of the Chapter 11 Cases, and/or provided a substantial contribution to the Debtors, which value provided a significant benefit to the Debtors' estates and general unsecured creditors, and which will allow



1 for distributions that would not otherwise be available but for the contributions made by such  
2 non-Debtor parties. The releases in Section 13.5 of the Plan are, individually and collectively,  
3 integral to, and necessary for the successful implementation of, the Plan and are supported by  
4 reasonable consideration.

### 5 WAIVER OF STAY

6 LL. Under the circumstances, it is appropriate that the 14-day stay imposed by  
7 Bankruptcy Rules 3020(e) and 7062(a) be waived.

### 8 II. ORDER

9 BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF  
10 LAW, IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED AS  
11 FOLLOWS:

12 1. Confirmation of the Plan. The Plan (including the Plan Supplement) and each of  
13 its provisions (whether or not specifically set forth and approved in this Order), including, but not  
14 limited to, the deemed substantive consolidation of the Debtors, is and are CONFIRMED in each  
15 and every respect, pursuant to § 1129, and the terms of the Plan and the Plan Supplement are  
16 incorporated by reference into, and are an integral part of, this order (“Confirmation Order”),  
17 provided, however, that if there is any direct conflict between the terms of the Plan and the terms  
18 of this Confirmation Order, the terms of this Confirmation Order shall control. The Effective  
19 Date of the Plan shall occur on the date when the conditions set forth in Section 12.2 of the Plan  
20 have been satisfied or, if applicable, have been waived in accordance with Section 12.3 of the  
21 Plan. The failure to specifically include or to refer to any particular article, section, or provision  
22 of the Plan, Plan Supplement, or any related document in this Order shall not diminish or impair  
23 the effectiveness of such article, section, or provision, it being the intent of the Court that this  
24 Confirmation Order confirm the Plan and any related documents in their entirety.

25 2. Notice. Notice of the Confirmation Hearing complied with the terms of the  
26 Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of the  
27 Chapter 11 Cases, and was in compliance with the provisions of applicable law, including,  
28 without limitation, the Bankruptcy Code, the Bankruptcy Rules, and the LBRs. In addition, the



1 procedures to provide notice of any Schedule of Assumed Contracts to all counterparties to  
2 Executory Agreements with the Debtors are adequate and sufficient, in substantial compliance  
3 with the Disclosure Statement Order and Bankruptcy Rules 2002(b), 3017 and 3020(b), and no  
4 other or further notice is or shall be required (other than as expressly provided for in the Plan for  
5 any amendments to the Schedule of Assumed Contracts).

6 3. **Objections.** The Objections to confirmation of the Plan are OVERRULED in  
7 their entirety except as otherwise set forth herein.

8 4. **Plan Classification Controlling.** The terms of the Plan shall solely govern the  
9 classification of Claims for purposes of the distributions to be made thereunder. The  
10 classifications set forth on the Ballots tendered to or returned by the holders of Claims in  
11 connection with voting on the Plan pursuant to the Disclosure Statement Order: (a) were set forth  
12 on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily  
13 represent, and in no event shall be deemed to modify or otherwise affect, the actual classification  
14 of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder  
15 of a Claim as representing the actual classification of such Claim under the Plan for distribution  
16 purposes; and (d) shall not be binding on the Plan Proponents, Post-Effective Date Debtors, or  
17 Liquidating Trust except for voting purposes.

18 5. **Order Binding on All Parties.** Notwithstanding Bankruptcy Rules 3020(e) or  
19 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and this Order  
20 shall be immediately binding upon, and inure to the benefit of: (a) the Plan Proponents; (b) Post-  
21 Effective Date Debtors; (c) the Liquidating Trust; (d) any and all holders of Claims (irrespective  
22 of whether such Claims are impaired under the Plan or whether the Holders of such Claims  
23 accepted, rejected or are deemed to have accepted, or rejected the Plan); (e) any other person  
24 giving, acquiring, or receiving property under the Plan; (f) any and all non-Debtor parties to  
25 Executory Agreements with any of the Debtors; and (g) the respective heirs, executors,  
26 administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys,  
27 beneficiaries, guardians, successors, or assigns, if any, of any of the foregoing. On the Effective  
28

1 Date, all settlements, compromises, releases, waivers, discharges, exculpations, and injunctions  
2 set forth in the Plan shall be effective and binding on all Persons.

3 6. **Other Essential Documents and Agreements.** The form of documents  
4 comprising the Plan Supplement, any other agreements, instruments, certificates, or documents  
5 related thereto, and the transactions contemplated by each of the foregoing are approved and,  
6 upon execution and delivery of the agreements and documents relating thereto by the applicable  
7 parties, shall be in full force and effect and valid, binding, and enforceable in accordance with  
8 their terms without the need for any further notice to or action, order, or approval of this Court, or  
9 other act or action under applicable law, regulation, order, or rule. The Plan Proponents, and after  
10 the Effective Date, Post-Effective Date Debtors and/or the Liquidating Trustee (as may be  
11 applicable), are authorized, without further approval of this Court or any other party, to execute  
12 and deliver all agreements, documents, instruments, securities, and certificates relating to such  
13 agreements and perform their obligations thereunder, including, without limitation, payment of all  
14 fees due thereunder or in connection therewith.

15 7. **Unclassified Claims.** On and after the Effective Date, the treatment of the  
16 Unclassified Claims of the Debtors shall be effectuated pursuant to Section 2 of the Plan, which is  
17 specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

18 (a) **Administrative Claims Bar Date.** Pursuant to Section 2.1 of the Plan,  
19 and except as otherwise provided in Section 2 of the Plan, requests for payment of Administrative  
20 Claims were required to be filed by July 29, 2020 (unless such date was extended by stipulation  
21 with a specific potential administrative creditor) (the “**Administrative Claims Bar Date**”).  
22 Holders of Administrative Claims that were required to, but ~~do~~ did not, file and serve a request  
23 for payment of such Administrative Claims by the Administrative Claims Bar Date shall be  
24 forever barred, estopped and enjoined from asserting such Administrative Claims against the  
25 Debtors or their property and such Administrative Claims shall be deemed discharged as of the  
26 Effective Date. For the avoidance of doubt, Administrative Claims that arise in the ordinary  
27 course of the Debtors’ ongoing business are not subject to the Administrative Claims Bar Date  
28 and shall be paid in the ordinary course of business in accordance with the terms and conditions

1 of any agreements governing, instruments evidencing, or other documents relating to such  
2 transactions.

3 (b) **Professional Claims Incurred Prior to the Effective Date.** Pursuant to  
4 Section 2.2 of the Plan, all entities seeking an award by the Bankruptcy Court of a Professional  
5 Claim (other than the Ordinary Course Professionals) shall file their respective final applications  
6 for allowance of compensation for services rendered and reimbursement of expenses incurred by  
7 the date that is sixty (60) after the Effective Date, and shall receive, in full satisfaction of such  
8 Claim, Cash in an amount equal to 100% of such amounts as are allowed by the Bankruptcy  
9 Court promptly after the date an order relating to any such Professional Claim is entered or upon  
10 such other terms as may be mutually agreed-upon between the Holder of such Professional Claim  
11 and the Liquidating Trustee and the Post-Effective Date Debtors. Objections to any final  
12 applications covering Professional Claims must be filed and served on the Post-Effective Date  
13 Debtors and the Liquidating Trustee and the requesting party no later than ninety (90) days after  
14 the Effective Date (unless otherwise agreed to by the requesting Professional). Ordinary Course  
15 Professionals must submit a final invoice for their services no later than thirty (30) days after the  
16 Effective Date and may continue to receive payment of compensation and reimbursement of  
17 expenses for services rendered to the Debtors without further Bankruptcy Court review or  
18 approval (except as provided for in the Ordinary Course Professionals Order).

19 (c) **Interim Fee Procedures.** Other than as set forth herein or in the Plan, the  
20 procedures set forth in the Order Authorizing Interim Fee Procedures (the “**Interim**  
21 **Compensation Order**”) [Docket No. 661] shall remain in effect with respect to services rendered  
22 and expenses incurred through the Effective Date. Notwithstanding anything to the contrary in  
23 the Plan or this Confirmation Order, the Post-Effective Date Debtors and the Liquidating Trustee  
24 (as applicable) are authorized to pay compensation for services rendered or reimbursement of  
25 expenses incurred on or after the Effective Date in the ordinary course of business and without  
26 the need for Bankruptcy Court approval or a holdback.

27 (d) **Statutory Fees.** Pursuant to Section 2.3 of the Plan, all fees required to be  
28 paid by 28 U.S.C. § 1930(a)(6) and any interest thereon (“**U.S. Trustee Fees**”) shall be paid by

the Liquidating Trustee in the ordinary course of business until the closing, dismissal or conversion of these Chapter 11 Cases to another chapter of the Bankruptcy Code. Any unpaid U.S. Trustee Fees that accrued before the Effective Date shall be paid no later than thirty (30) days after the Effective Date.

8. **Post-Effective Date Governance.** On and after the Effective Date, the post-Effective Date governance of the Debtors shall be effectuated pursuant to Section 5 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **Continued Corporate Existence and Vesting of Assets.** Pursuant to Section 5 of the Plan, and except as set forth in the Plan: (i) on the Effective Date, all of the Debtors shall be deemed dissolved without the requirement of any further actions or approvals, and their interests and rights shall be vested for all purposes in the Post-Effective Date Debtors, and all of the interests in such Debtors shall be cancelled and terminated; and (ii) on and after the Effective Date, the Debtors shall continue in existence as the Post-Effective Date Debtors and, pursuant to the Plan, retain their nonprofit status, with all of the powers of such a legal entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution, or otherwise) pursuant to the Plan and without necessity of any further approvals under any other applicable laws. On and after the Effective Date, Post-Effective Date Debtors shall continue in existence, subject only to those restrictions expressly imposed by the Plan or this Confirmation Order as well as the documents and instruments executed and delivered in connection with the Plan, including the documents, exhibits, instruments, and other materials constituting the Plan Supplement. Without limiting the foregoing, Post-Effective Date Debtors may pay the charges that they incur from and after the Effective Date for Professional Claims, disbursements, expenses or related support services without application to, or the approval of, the Court, in accordance with the Plan. On the Effective Date, all current directors of the Debtors shall be deemed discharged of and from all further authority, duties, responsibilities and obligations related to, arising from, and in connection with or related to their services as such through and including the Effective Date.

(b) **Dissolution of the Committee.** Pursuant to Section 7.11(a) of the Plan, on the Effective Date, the Committee shall be dissolved (except with respect to any Professional compensation matters), and the members, employees, agents, advisors, affiliates, and representatives (including, without limitation, attorneys, financial advisors, or other professionals) of each thereof shall thereupon be released from and discharged of and from all further authority, duties, responsibilities, and obligations related thereto, arising from and in connection with or related to the Chapter 11 Cases; provided, however, that obligations arising under confidentiality agreements, joint interest agreements, and protective orders; if any, entered during the Chapter 11 Cases shall remain in full force and effect according to their terms.

(c) **Formation of the Post-Effective Date Committee.** Pursuant to Section 7.11(b) of the Plan, on the Effective Date, the Post-Effective Date Committee shall be appointed. The members that shall serve on the Post-Effective Date Committee were selected by the Committee and have been disclosed in the Plan Supplement.

9. **Means for Implementation of the Plan.** On and after the Effective Date, the Plan's implementation shall be effectuated pursuant to Section 7 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **The Creditor Settlement Agreements.** Pursuant to Section 7.1 of the Plan, Bankruptcy Rule 9019, and § 1123(b)(3), the entry of this Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of each of the Creditor Settlement Agreements and the finding that (i) entering into each of the Creditor Settlement Agreements is in the best interests of the Debtors, their Estates, and their Claim Holders, (ii) each of the Creditor Settlement Agreements is fair, equitable, and reasonable, and (iii) each of the Creditor Settlement Agreements meets all the standards set forth in Bankruptcy Rule 9019 and § 1123(b)(3). Notwithstanding anything to the contrary set forth in the Plan, all distributions contemplated by each Creditor Settlement Agreement shall be made only in accordance with the terms of the respective Creditor Settlement Agreement.

(b) **No Further Court Authorization.** Pursuant to Section 7.5 of the Plan, and except as provided in the Plan or this Confirmation Order, on and after the Effective Date, the

1 Post-Effective Date Debtors shall not be required to obtain any approvals from the Bankruptcy  
2 Court, any court or governmental body and/or provide any notices or seek approvals under the  
3 Nonprofit Laws to implement the terms of the Plan, including, without limitation, the subsequent  
4 Transfer of any Operating Assets retained by the Post-Effective Date Debtors.

5 (c) Except as set forth in the Plan, all actions authorized to be taken pursuant  
6 to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Confirmation  
7 Order, without further application to, or order of, this Court, or further action by the respective  
8 trustees, directors, or members of the Post-Effective Date Debtors and the Liquidating Trust.

9 (d) To the extent that, under applicable non-bankruptcy law, any of the  
10 foregoing actions would otherwise require the consent or approval of the directors of any of the  
11 Debtors, Post-Effective Date Debtors, or the Liquidating Trust, this Confirmation Order shall,  
12 pursuant to § 1142, constitute such consent or approval, and such actions are deemed to have  
13 been taken by unanimous action of the directors of the appropriate Debtor, the Post-Effective  
14 Date Debtors, or the Liquidating Trust, unless the Plan expressly provides that such party must  
15 provide such consent after the Effective Date.

16 (e) Each federal, state, commonwealth, local, foreign, or other governmental  
17 agency is hereby directed and authorized to accept any and all documents, mortgages, and  
18 instruments necessary or appropriate to effectuate, implement, or consummate the transactions  
19 contemplated by the Plan and this Confirmation Order.

20 (f) All transactions effected by the Debtors during the pendency of the Chapter  
21 11 Cases from the Petition Date through the Confirmation Date are approved and ratified.

22 (g) **Preservation of Insurance.** Nothing in the Plan shall diminish, impair, or  
23 otherwise affect distributions from the proceeds or the enforceability of any insurance policies  
24 that may cover (a) Claims by any Debtor, or (b) Claims against any Debtor or covered Persons  
25 thereunder, pursuant to Section 7.14 of the Plan.

26 10. **Plan Distributions.** On and after the Effective Date, distributions on account of  
27 Allowed Claims and the resolution and treatment of Disputed Claims shall be effectuated  
28 pursuant to Sections 8 and 10 of the Plan, which are specifically approved in all respects, are



1 incorporated herein in their entirety, and are so ordered. The record date for making distributions  
2 under the Plan shall be the date of entry of this Confirmation Order.

3 11. **Procedures for Treating and Resolving Disputed Claims.** On and after the  
4 Effective Date, the procedures for the treatment and resolution of Disputed Claims shall be  
5 effectuated pursuant to Section 10 of the Plan, which is specifically approved in all respects, is  
6 incorporated herein in its entirety, and is so ordered.

7 12. **Resolution of Disputed Claims.** The Liquidating Trustee shall have the right to  
8 file, settle, compromise, withdraw, or litigate objections to certain Claims pursuant to the  
9 Disputed Claims resolution procedures outlined in Section 10 of the Plan. The Liquidating  
10 Trustee may settle, compromise, or withdraw any objections or proceedings without Court  
11 approval or may seek Court approval without notice to any Person.

12 13. **Executory Contracts and Unexpired Leases.** On and after the Effective Date,  
13 the treatment of Executory Agreements shall be effectuated pursuant to Section 11 of the Plan,  
14 which is specifically approved in all respects, is incorporated herein in its entirety, and is so  
15 ordered.

16 (a) **General Treatment.** Pursuant to Section 11.1 of the Plan, on the Effective  
17 Date, all Executory Agreements to which any Debtor is a party shall be deemed rejected as of the  
18 Effective Date and will receive a Notice of Rejection of Executory Agreement, substantially in  
19 the form annexed hereto as **Exhibit "A,"** except for those Executory Agreements that (a) have  
20 been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant  
21 to the Rejection Procedures), (b) are the subject of a separate motion to assume, assume and  
22 assign, or reject filed under § 365 on or before the Effective Date, or (c) are specifically  
23 designated as a contract or lease to be assumed on any Schedule of Assumed Contracts and no  
24 timely objection to the proposed assumption has been filed, provided, however, that the Plan  
25 Proponents reserve the right to amend the Plan Supplement at any time. If the party to the  
26 Executory Agreement listed to be assumed in any Schedule of Assumed Contracts wishes to  
27 object to the proposed assumption (including with respect to the cure amounts), it shall do so  
28 within thirty (30) days from the service of the Schedule of Assumed Contracts.

(b) **Cure of Defaults.** Except to the extent that a different treatment has been agreed to by the non-Debtor party or parties to any Executory Agreement to be assumed pursuant to Section 11.1 of the Plan, the Debtors will, pursuant to the provisions of §§ 1123(a)(5)(G) and 1123(b)(2) and consistent with the requirements of § 365, within thirty (30) days after (i) the Effective Date or (ii) the date of the filing of the Plan Supplement listing an Executory Agreement, file with the Bankruptcy Court and serve on counterparties to Executory Agreements to be assumed, a notice listing the cure amounts of all such Executory Agreements. The scheduled cure amount (if any) shall be binding absent any timely objection to such scheduled amount. If there are any timely objections to the cure amounts filed, the Bankruptcy Court shall hold a hearing. Notwithstanding the foregoing, at all times through the date that is fifteen (15) days after the Bankruptcy Court enters a Final Order resolving and fixing the amount of a disputed cure amount, the Debtors, the Liquidating Trustee, or the Post-Effective Date Debtors (as applicable) shall have the right to remove such Executory Agreement from the Schedule of Assumed Contracts and such Executory Agreement shall be deemed rejected.

(c) **Bar Date for Rejection Damages.** Pursuant to Section 11.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court no later than thirty (30) days after the later of (a) the Effective Date or (b) the date of the Debtors' notice of determination to reject an Executory Agreement. Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

14. **Conditions Precedent to the Effective Date.** On and after the Effective Date, the conditions precedent to the Confirmation of the Plan, the conditions precedent to the Effective Date, and the waiver provisions therefor pursuant to Section 12 of the Plan are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

15. **Effect of Confirmation.** On and after the Effective Date, the Plan shall be effectuated pursuant to Section 13 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.



(a) **Vesting of Assets.** Upon the Effective Date, pursuant to Section 13.1 of the Plan and §§ 1141(b) and (c), (i) the Liquidating Trust Assets shall vest in the Liquidating Trust and (ii) the Operating Assets shall vest in the Post-Effective Date Debtors, in each case free and clear of all Claims, liens, encumbrances, charges, and other interests, subject to the obligations of the parties under the Plan and the Liquidating Trust.

(b) **General Settlement of Claims and Interests.** Pursuant to Section 13.3 of the Plan, unless otherwise authorized by another order of the Bankruptcy Court, pursuant to § 1123(b)(3) and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Causes of Actions relating to the rights that a Holder of a Claim may have against the Debtors with respect to any Allowed Claim or any distribution to be made pursuant to the Plan on account of any Allowed Claim. Unless otherwise authorized, the entry of this Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such Causes of Action and the Bankruptcy Court's finding that all such Causes of Action are in the best interests of the Debtors, their Estates, their respective property, and Claim Holders and are fair, equitable and reasonable

(c) **Plan Releases, Injunctions, and Exculpation.** The Plan release and injunction provisions set forth in Sections 13.4 through 13.7 of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party.

(d) **Releases.** The Plan release provisions set forth in Section 13.5 of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered, and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

(i) **Releases Of Debtors.** As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of

1 action, and liabilities whatsoever, against the Debtors arising from or related to the Debtors' pre-  
2 and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of  
any nature except for as provided in the Plan or this Confirmation Order.

3 (ii) Settlement Releases. Pursuant to § 1123(b)(3)(A) and the Plan  
4 Settlement, as of the Effective Date, for good and valuable consideration, the adequacy of which  
5 is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be  
6 deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments,  
7 damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the  
Settlement Released Parties arising from or related to the Settlement Released Parties' pre- and/or  
post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any  
nature except for as provided in the Plan or this Confirmation Order.

8 (iii) Limitation Of Claims Against the Liquidating Trust. As of the  
9 Effective Date, except as provided in the Plan or this Confirmation Order, all Persons shall be  
10 precluded from asserting against the Liquidating Trust any other or further Claims, obligations,  
11 suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever,  
relating to the Debtors or any Interest in the Debtors based upon any acts, omissions or liabilities,  
transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date.

12 (iv) Debtors' Releases. Pursuant to § 1123(b), and except as otherwise  
13 specifically provided in the Plan, for good and valuable consideration, including the service of the  
14 Released Parties to facilitate the expeditious liquidation of the Debtors and the consummation of  
the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties  
are deemed released and discharged by the Debtors and their Estates from any and all claims,  
15 obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever,  
16 including any derivative claims asserted or assertable on behalf of the Debtors, whether known or  
unknown, foreseen, or unforeseen, existing or herein after arising in law, equity, or otherwise,  
17 that the Debtors or their Estates would have been legally entitled to assert in their own right  
(whether individually or collectively) or on behalf of the Holder of any Claim or other Person,  
18 based on or relating to, or in any manner arising from, in whole or in part, the operation of the  
Debtors prior to or during the Chapter 11 Cases, the transactions or events giving rise to any  
19 Claim that is treated in the Plan, the business or contractual arrangements between the Debtors  
and any Released Party, the restructuring of Claims before or during the Chapter 11 Cases, the  
20 marketing and the sale of Assets of the Debtors, the negotiation, formulation, or preparation of  
the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents,  
21 other than a Claim against a Released Party arising out of the gross negligence or willful  
misconduct of any such person or entity. Claims against any Released Party that are released  
22 pursuant to Section 13.5(d) of the Plan shall be deemed waived and relinquished by the Plan for  
23 purposes of Section 13.9 of the Plan.

24 (v) **WAIVER OF LIMITATIONS ON RELEASES. THE LAWS OF**  
25 **SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542) PROVIDE, IN**  
26 **WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES NOT EXTEND TO**  
27 **CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST**  
28 **IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
**KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER DECISION**  
**TO RELEASE. THE RELEASING PARTIES IN SECTIONS 13.5 (a)-(c) OF THE PLAN**

1 ***ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY MAY HAVE UNDER SUCH***  
2 ***STATE LAWS AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW***  
3 ***PRINCIPLES OF SIMILAR EFFECT.***

4 (e) **General Injunction.** The Plan Injunction provision set forth in Section  
5 13.6(a) of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered,  
6 and shall be immediately effective on the Effective Date of the Plan without further order or  
7 action on the part of the Court or any other party:

8 Except as otherwise expressly provided herein, all Persons that have held,  
9 currently hold or may hold a Claim against the Debtors are permanently enjoined on and  
10 after the Effective Date from taking any action in furtherance of such Claim or any other  
11 Cause of Action released and discharged under the Plan, including, without limitation, the  
12 following actions against any Released Party: (a) commencing, conducting or continuing  
13 in any manner, directly or indirectly, any action or other proceeding with respect to a  
14 Claim; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner  
15 or by any means, whether directly or indirectly, any judgment, award, decree or order with  
16 respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly or  
17 indirectly, any lien or encumbrance of any kind with respect to a Claim; (d) asserting any  
18 setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any  
19 debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the  
20 Liquidating Trust with respect to a Claim; or (e) commencing, conducting or continuing  
21 any proceeding that does not conform to or comply with or is contradictory to the  
22 provisions of the Plan; provided, however, that nothing in this injunction shall (i) limit the  
23 Holder of an Insured Claim from receiving the treatment set forth in Class 9; or (ii)  
24 preclude the Holders of Claims against the Debtors from enforcing any obligations of the  
25 Debtors, the Post-Effective Date Debtors, the Liquidating Trust, or the Liquidating  
26 Trustee under the Plan and the contracts, instruments, releases and other agreements  
27 delivered in connection herewith, including, without limitation, the Confirmation Order,  
28 or any other order of the Bankruptcy Court in the Chapter 11 Cases. By accepting a  
distribution made pursuant to the Plan, each Holder of an Allowed Claim shall be deemed  
to have specifically consented to the injunctions set forth in this Section.

29 (f) **Other Injunctions.** The Plan Injunction provision set forth in Section  
30 13.6(b) of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered,  
31 and shall be immediately effective on the Effective Date of the Plan without further order or  
32 action on the part of the Court or any other party:

33 The Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date  
34 Committee, the Post-Effective Date Board of Directors, or the Liquidating Trust and their  
35 respective members, directors, officers, agents, attorneys, advisors or employees shall not  
36 be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Post-  
37 Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating  
38

Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except those acts found by Final Order to arise out of its or their willful misconduct, gross negligence, fraud, and/or criminal conduct, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of the Post-Effective Date Board of Directors, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except for any actions or inactions found by Final Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct. Any indemnification claim of the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee and the other parties entitled to indemnification under this subsection shall be satisfied from either (i) the Liquidating Trust Assets (with respect to all claims, other than those claims related to the Operating Assets), or (ii) the Operating Assets (with respect to all claims related to the Operating Assets). The parties subject to Section 13.6(b) of the Plan shall be entitled to rely, in good faith, on the advice of retained professionals, if any.

(g) **Exculpation.** The Plan Exculpation provision set forth in Section 13.7 of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered, and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

To the maximum extent permitted by applicable law, each Released Party shall not have or incur any liability for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the marketing and the sale of Assets of the Debtors, the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, or the property to be distributed under the Plan), or each Released Party's exercise or discharge of any powers and duties set forth in the Plan, except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each Released Party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Without limitation of the foregoing, each such Released Party shall be released and exculpated from any and all Causes of Action that any Person is entitled to assert in its own right or on behalf of any other Person, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in any way relating to the subject matter of this Section.

16. **Preservation of Causes of Action.** Pursuant to Section 13.9 of the Plan, and except as provided in Section 7.1 of the Plan, nothing contained in this Plan shall be deemed a waiver or relinquishment of any claims or Causes of Action of the Debtors that are not settled with respect to Allowed Claims or specifically waived or relinquished by this Plan, which shall

1 vest in the Liquidating Trust, subject to any existing valid and perfected security interest or lien in  
2 such Causes of Action. The Causes of Action preserved hereunder include, without limitation,  
3 claims, rights or other causes of action:

4 (a) against vendors, suppliers of goods or services (including attorneys,  
5 accountants, consultants or other professional service providers), utilities, contract counterparties,  
6 and other parties for, including but not limited to: (A) services rendered; (B) over- and under-  
7 payments, back charges, duplicate payments, improper holdbacks, deposits, warranties,  
8 guarantees, indemnities, setoff or recoupment; (C) failure to fully perform or to condition  
9 performance on additional requirements under contracts with any one or more of the Debtors; (D)  
10 wrongful or improper termination, suspension of services or supply of goods, or failure to meet  
11 other contractual or regulatory obligations; (E) indemnification and/or warranty claims; or (F)  
12 turnover causes of action arising under §§ 542 or 543;

13 (b) against landlords or lessors, including, without limitation, for erroneous  
14 charges, overpayments, returns of security deposits, indemnification, or for environmental claims;

15 (c) arising against current or former tenants or lessees, including, without  
16 limitation, for non-payment of rent, damages, and holdover proceedings;

17 (d) arising from damage to Debtors' property;

18 (e) relating to claims, rights, or other causes of action the Debtors may have to  
19 interplead third parties in actions commenced against any of the Debtors;

20 (f) for collection of a debt owed to any of the Debtors;

21 (g) against insurance carriers, reinsurance carriers, underwriters or surety bond  
22 issuers relating to coverage, indemnity, contribution, reimbursement or other matters;

23 (h) relating to pending litigation, including, without limitation, litigation  
24 related to the SGM Claims and any other claims or causes of action related thereto, and the suits,  
25 administrative proceedings, executions, garnishments, and attachments listed in Attachment 4a to  
26 each of the Debtors' Statements of Financial Affairs;

27 (i) arising from claims against health plans;

28 (j) that constitute Avoidance Actions;



(k) arising under or relating to any and/or all asset purchase agreements and related sale documents (including, without limitation, any leases) entered into during these Chapter 11 Cases, including, but not limited to, enforcement of such agreements by the Debtors' Estates and/or breaches of any and/or all such agreements by the applicable non-Debtor parties (including, without limitation, the purchasers of the Debtors' assets under such agreements and any and all principals and/or guarantors of the obligations under or relating to such agreements);

(l) all claims against Integrity Healthcare, LLC and BlueMountain Capital Management LLC; and

(m) relating to the Operating Assets.

The Liquidating Trustee, the Post-Effective Date Committee, and the Post-Effective Date Debtors shall have, retain, reserve and be entitled to assert all such claims, rights of setoff and other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by the Plan may be asserted by the Liquidating Trustee and the Post-Effective Date Committee on their behalf after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

On and after the Effective Date, in accordance with § 1123(b) and the terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall retain and have the exclusive right to prosecute, abandon, settle or release any or all Causes of Action without the need to obtain approval or further relief from the Bankruptcy Court.

17. **Specific Stipulations Regarding the Plan.**

(a) SGM

The following language is included in this Confirmation Order as agreed between the Plan Proponents and SGM:

The Plan Proponents acknowledge that SGM disputes the Debtors' claim to the Nonrefundable Deposit, and SGM contends that the Nonrefundable Deposit must be returned to SGM. The Debtors and the Plan Proponents dispute the contentions and claims of SGM to the Nonrefundable Deposit, and contend that the Nonrefundable

1 Deposit is an asset of the Debtors' estates, free and clear of any rights or claims of SGM,  
2 and should be distributed in accordance with the Plan. As provided in the Plan, on the  
3 Effective Date, all rights of the Debtors against SGM, including, without limitation, all  
4 rights to recover the Nonrefundable Deposit, are being transferred to the Liquidating  
5 Trust. The Liquidating Trust shall not distribute the Nonrefundable Deposit to creditors in  
6 accordance with the Plan or take any other action which would reduce or dissipate the  
7 Nonrefundable Deposit, unless permitted by a judgment or an order entered by the District  
8 Court having jurisdiction over the Adversary Proceeding, and such judgment or order has  
9 not been stayed. In the event an appeal is taken from any such judgment or order, the party  
10 taking the appeal shall have the right to seek a stay pursuant to the applicable Federal  
11 Rules of Civil Procedure and Federal Rules of Appellate Procedure. Nothing contained in  
12 the Plan or the Disclosure Statement shall modify, alter or change the rights of the Debtors  
13 and the Liquidating Trust, on the one hand, and SGM, on the other hand, to any claim or  
14 rights to the Nonrefundable Deposit. All such claims and rights are expressly reserved  
15 and preserved.

16 Further, the Releases of Debtors set forth in Section 15(d)(i) of this Confirmation Order  
17 and in Section 13.5(a) of the Plan shall not apply to any counterclaim that may be asserted by  
18 SGM against the Debtors in the SGM Action, currently pending before the District Court.

19 (b) Integrity

20 Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the  
21 transfer of any claim or Cause of Action to the Liquidating Trust shall not impair Integrity  
22 Healthcare, LLC's or its current and former affiliates' respective existing rights, defenses, claims,  
23 counterclaims, rights of setoff or recoupment applicable to, arising out of, or relating to, any such  
24 claim or Cause of Action transferred to the Liquidating Trust.

25 (c) Infor

26 Prior to the Petition Date, Infor (US), Inc., previously doing business as Infinium Software,  
27 Inc. ("Infor"), entered into a number of agreements (the "Infor Agreements") with VHS,  
28 pursuant to which Infor granted to VHS certain non-exclusive, non-transferrable licenses to use  
copyrighted software and computer programs owned by Infor (collectively, the "Infor  
Software"). The Infor Agreements include, without limitation, the *Master Software License  
Agreement No. 2002-4384, Dated August 30, 2002 (Together With The Schedules Thereto, As  
Amended)* (the "MSLA"). Notwithstanding anything to the contrary contained in this  
Confirmation Order, the Plan, the Plan Supplement, or any other document related thereto, the  
Debtors' licenses to access and use the Infor Software shall remain in place until December 31,

2020, at which point the MSLA shall be terminated. The cost for this three-month extension for the access and use of the Infor Software by the Debtors for the sole and exclusive benefit of the Debtors and their estates is \$24,000, which amount and applicable tax shall be paid by the Debtors to Infor pursuant to the terms of the applicable invoice. Absent timely payment of this amount by the Debtors, the MSLA shall terminate immediately and the Debtors shall comply with the termination obligations set forth in the following sentence. Unless extended by the mutual agreement of the Debtors and Infor, on or before December 31, 2020, the Debtors shall: (i) remove all copies of any on-premises Infor Software and any portions thereof from assets of the Debtors and cease accessing and using any hosted Infor Software; (ii) destroy all copies of the Infor Software contained in the Debtors' assets and related documentation and delete all access codes; and, (iii) certify to Infor in writing that the Debtors have complied with the foregoing subparagraphs (i) and (ii). Absent prior written consent, after December 31, 2020, the Infor Software shall not be transferred to or used in any way by or for the benefit of the Debtors, their estates, the Liquidating Trustee, the Liquidating Trust, or any of their respective employees, independent contractors, professionals, representatives, agents, successors, or assigns. The release, injunction, exculpation, recourse, and other provisions of the Plan, the Confirmation Order, and any other Plan-related document shall not in any way impair, impact, or otherwise affect Infor's rights, claims, defenses, and remedies as to any Debtor or any other party whether arising under Infor's contracts with the Debtors or third parties and/or applicable non-bankruptcy law that may arise on or after July 30, 2020.

(d) Aetna

On August 4, 2020, the Court entered an order [Docket No. 5350] approving the *Stipulation Among Debtors, Creditors Committee and Aetna Life Insurance Company for Resolution of Plan Objection* [Docket No. 5338] (the "Aetna Stipulation").<sup>5</sup> In accordance with the order approving the Aetna Stipulation, for good cause shown and after reasonable notice, Aetna's objection to the Plan is resolved as follows:

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<sup>5</sup> All capitalized terms used in this paragraph have the meaning set forth in the Aetna Stipulation.



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The Aetna/Holdings Amended Claim shall be an allowed General Unsecured Claim under Class 8 of the Plan in the amount of \$6,366,000.00 and shall not be subject to reconsideration, objection, reduction, increase, counterclaim, subordination, offset or recoupment, and shall be deemed allowed without necessity of any further filings or amendments, including any proof of claim. The Debtors and the Estates shall be deemed to have waived and released any Causes of Action against Aetna in connection with the Investment and/or the Guarantee, and any such Causes of Action shall neither be vested in the Liquidating Trust nor constitute Liquidating Trust Assets. Notwithstanding the foregoing, Aetna, the Debtors and the Estates shall continue to have: (a) any rights or defenses under any Aetna Agreement, (b) any rights or defenses to pursue or recover any Variances, and (c) any rights relating to assumption, assignment or rejection of any Aetna Agreement pursuant to § 365 (subject to any prior order of the Bankruptcy Court). Notwithstanding anything to the contrary in the Plan or this Confirmation Order, (i) Aetna's defenses of setoff or recoupment under, and subject to the provisions of, the Aetna Agreements shall not be impaired, and nothing in the Plan or this Confirmation Order shall prevent Aetna from asserting any defense, counterclaims, or offset against any claims brought against it to the extent that such defense, counterclaim, or offset would otherwise be available to Aetna under applicable law, provided, that, the substantive consolidation of the Estates pursuant to Section 7.2 of the Plan shall not be construed to permit Aetna to exercise any defenses of setoff or recoupment under the Aetna Agreements as if the Debtors were a unitary entity, and (ii) Section 10.2(b) of the Plan shall not apply to any Claims asserted by Aetna, including the Aetna/Holdings Amended Claim, the Prepetition Overpayment Claims and the Post-Petition Overpayment Claims. The Bankruptcy Court shall retain jurisdiction to hear and resolve any disputes related to the foregoing.

(e) AppleCare

The Debtors and AppleCare Medical Group, Inc., AppleCare Medical Group St. Francis, Inc., and AppleCare Medical Management, LLC (collectively, "AppleCare") have agreed to resolve the AppleCare's objection [Docket No. 5339] (the "AppleCare Objection")<sup>6</sup> to the Plan as follows:

The Debtors shall reserve in the Administrative Claims Reserve the amount of \$9.5 million on account of the its amended motion for the allowance of an administrative expense [Docket Nos. 5455] ("AppleCare Administrative Expense"). The Debtors and the Estates shall be deemed to have waived and released any Causes of Action against AppleCare under §§ 547, 549 and 550, and any such Causes of Action shall neither be vested in the Liquidating Trust nor constitute Liquidating Trust Assets. The Debtors, the Estates and AppleCare each reserve all rights and defenses with respect to: (a) the allowance of the AppleCare Administrative Claim; (b) the characterization—as either a General Unsecured Claim or an Administrative Claim—of unpaid amounts due to AppleCare for 20% of the CMS risk adjustment sweep revenue; and (c) the past or future

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<sup>6</sup> All capitalized terms used in this paragraph ~~has~~ have the meaning set forth in the AppleCare Objection or the Plan, as applicable.

inclusion of CMS risk adjustment sweep revenue in the risk pools under the Risk Sharing Agreements. Notwithstanding rejection of the Management Agreement, the parties' post-termination rights under such agreement shall not be affected. SFMC elects, in accordance with Section 4.2 of the Management Agreement, to have AppleCare Medical Management, LLC perform the run-out services described thereunder on mutually acceptable terms consistent with the terms of the Management Agreement. Based on the foregoing, the AppleCare Objection is deemed withdrawn with prejudice.

(f) Payor Objections

The following shall apply to the confirmation objections filed by UnitedHealthcare Insurance Company (collectively, with its affiliates, subsidiaries and parents, "United") [Docket No. 5326] (the "United Objection"), SCAN Health Plan ("SCAN") [Docket No. 5337] (the "SCAN Objection"), and California Physicians' Service dba Blue Shield of California, and Blue Shield of California Promise Health Plan f/k/a Care 1st Health Plan (collectively, "Blue Shield") [Docket No. 5417] (the "Blue Shield Objection"), the informal objection (the "Humana Objection") asserted by Humana Insurance Company and Humana Health Plan, Inc. (together with their affiliates and subsidiaries, "Humana"), and the informal objection (the "Kaiser Objection") and, together with the United Objection, the SCAN Objection, the Blue Shield Objection, and the Humana Objection, the "Payor Objections") asserted by Kaiser Foundation Hospitals ("Kaiser" and together with United, SCAN, Blue Shield, and Kaiser, the "Payors"), which shall be resolved as follows:<sup>7</sup>

(i) Preservation of Defenses. Notwithstanding anything to the contrary in the Plan or this Order, each Payor's defenses (including any asserted rights of setoff or recoupment) under, and subject to the provisions of, each applicable Payor Agreement shall not be impaired and nothing in the Plan or this Order shall prevent such Payor from asserting any defense, counterclaim, recoupment or offset against any claims asserted by a Debtor under an applicable Payor Agreement to the extent that such defense, counterclaim, recoupment or offset would otherwise be available to such Payor under the Bankruptcy Code or applicable law, provided that, the substantive consolidation of the Estates pursuant to Section 7.2 of the Plan shall not be construed to permit any Payor to exercise any defenses of setoff or recoupment under an applicable Payor Agreement as if the Debtors were a unitary entity.

(ii) Acceleration of Overpayment Reconciliation.

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<sup>7</sup> The Payors and certain of the Debtors are parties to various fee-for-service, capitation or other facility participation agreements under which the Debtors are compensated for covered medical services provided to patients enrolled under the health benefit plans offered or administered by each Payor under the applicable agreement (collectively, the "Payor Agreements").

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1 A. United. The Debtors shall submit claims for reimbursement  
2 under the applicable Payor Agreement between United and SFMC and between United and Seton  
3 within 60 days following the closing date of the sales of such hospitals. United shall identify and  
4 finally liquidate any overpayments made on account of all covered medical services provided by  
5 such hospitals under such agreements prior to such closing dates within 120 days following such  
6 closing dates. The foregoing timetable for reconciliation of overpayments under the applicable  
7 Payor Agreement between United and Seton shall be deemed to supersede the corresponding  
8 deadlines set forth in the *Stipulation Between Seton Medical Center and UnitedHealthcare*  
9 *Insurance Company Regarding Cure Objection* [Docket No. 5352], filed on August 4, 2020,  
10 approved by order [Docket No. 5357] of the Court, entered on August 5, 2020.

11 B. SCAN. The Debtors shall submit claims for reimbursement  
12 under the applicable Payor Agreement between SCAN and SFMC and between SCAN and Seton  
13 within 60 days following the closing date of the sales of such hospitals. SCAN shall identify and  
14 finally liquidate any overpayments made on account of all covered medical services provided by  
15 such hospitals under such agreements prior to such closing dates within 120 days following such  
16 closing dates.

17 C. Blue Shield. The Debtors shall submit claims for  
18 reimbursement under the applicable Payor Agreement between Blue Shield and SFMC and  
19 between Blue Shield and Seton within 60 days following the closing date of the sales of such  
20 hospitals. Blue Shield shall identify and finally liquidate any overpayments made on account of  
21 all covered medical services provided by such hospitals under such agreements prior to such  
22 closing dates within 120 days following such closing dates.

23 D. Humana. The Debtors shall submit claims for  
24 reimbursement under the applicable Payor Agreement between Humana and SFMC and between  
25 Humana and Seton within 60 days following the closing date of the sales of such  
26 hospitals. Humana shall identify and finally liquidate any overpayments made on account of all  
27 covered medical services provided by such hospitals under such agreements prior to such closing  
28 dates within 120 days following such closing dates.

E. Kaiser. The Debtors shall submit claims for reimbursement  
under the applicable Payor Agreement between Kaiser and SFMC and between Kaiser and Seton  
within 60 days following the closing date of the sales of such hospitals. Kaiser shall identify and  
finally liquidate any overpayments made on account of all covered medical services provided by  
such hospitals under such agreements prior to such closing dates within 120 days following such  
closing dates.

(iii) Withdrawal of Payor Objections. Each of the Payor Objections  
shall be deemed withdrawn with prejudice.

(g) Premier

The objection [Docket No. 5343] filed by Premier, Inc. ("Premier") is resolved and withdrawn. The Other Injunction provided under Section 13.6(b) of the Plan does not preclude Premier from asserting a claim against the Post-Effective Date Debtors relating to any alleged or asserted post-Effective Date breach of the Premier settlement agreement as previously approved by entry of an order of this Court [Docket No.2461].

18. **SFMC Asset Purchase Agreement.** Notwithstanding anything contained in the Plan to the contrary, nothing in the Plan shall be deemed to affect the obligations of the parties under the SFMC Asset Purchase Agreement.

19. **Retention of Jurisdiction.** Unless otherwise provided in the Plan or in this Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases as is legally permissible, including jurisdiction over those matters and issues described in Section 14.1 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

20. **Miscellaneous Provisions.** The miscellaneous provisions of Section 15 of the Plan are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

21. **Severability.** Pursuant to Section 15.7 of the Plan, in the event that the Bankruptcy Court determines, prior to the Effective Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistently with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. This Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the

Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

22. **Binding Effect of Prior Orders.** Pursuant to § 1141, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder, and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, Post-Effective Date Debtors, the Liquidating Trust, and their respective successors and assigns.

23. **Notice of Confirmation of the Plan.** Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Debtors or Post-Effective Date Debtors will serve a notice of the entry of this Order substantially in the form of **Exhibit “B”** attached hereto and incorporated herein by reference (the **“Confirmation Notice”**), to all parties in the creditor database maintained by KCC, no later than five (5) Business Days after the Confirmation Date; provided, however, that the Debtors or the Post-Effective Date Debtors will serve the Confirmation Notice only on the record Holders of Claims as of the Confirmation Date. The Debtors will publish the Confirmation Notice once in Los Angeles Times and San Francisco Chronicle as soon as reasonably practicable after the Confirmation Date, but no later than five (5) Business Days after the Confirmation Date. As soon as practicable after the entry of this Order, the Debtors will make copies of this Order and the Confirmation Notice available on the Debtors’ restructuring website at <http://www.kccllc.net/VerityHealth>. As soon as practicable after the occurrence of the Effective Date pursuant to the terms of the Plan, the Debtors will serve the notice of Effective Date, substantially in the form attached hereto as **Exhibit “C”** (the **“Notice of Effective Date”**) on all parties served with the Confirmation Notice.

24. **Reserves.** Pursuant to Section 17(a) of this Confirmation Order and Section 15.3 of the Plan, and as set forth in Exhibit D to the Confirmation Supplement [Docket No. 5468], (i) the amount of the Administrative Claims Reserve established pursuant to Section 15.3 of the Plan shall be \$52,749,000; and (ii) on the Effective Date, the Debtors shall transfer the entire



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1 Nonrefundable Deposit in the amount of \$30,000,000 to the Liquidating Trust, which shall  
2 continue to be held in a segregated escrow account by the Liquidating Trust pursuant to Section  
3 17(a) of this Confirmation Order in order to satisfy any Administrative Claim of SGM that may  
4 become Allowed after the Effective Date. Excluding any Administrative Claim of SGM that may  
5 become Allowed after the Effective Date, the amount of the Administrative Claims Reserve is  
6 sufficient to satisfy any unpaid Administrative Claims that are Allowed as of the Effective Date  
7 and any unpaid Administrative Claims that may become Allowed after the Effective Date. The  
8 amount of the Nonrefundable Deposit is sufficient to satisfy any Administrative Claim of SGM  
9 that may become Allowed after the Effective Date. No claimant having an Administrative Claim  
10 that is currently Allowed or that becomes Allowed shall have any recourse to the Nonrefundable  
11 Deposit to satisfy any portion of such Allowed Administrative Claim; provided, that, if the  
12 Administrative Claim of SGM becomes Allowed pursuant to Section 17(a) of this Confirmation  
13 Order, SGM shall have recourse to the Nonrefundable Deposit to satisfy such Claim.

14 25. **Modification of the Plan.** Pursuant to Section 15.5 of the Plan, the Plan  
15 Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules,  
16 to amend or modify the Plan at any time prior to the entry of this Confirmation Order. After the  
17 entry of this Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court,  
18 amend or modify this Plan, in accordance with § 1127(b), or remedy any defect or omission or  
19 reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the  
20 purpose and intent of this Plan. A Holder of an Allowed Claim that is deemed to have accepted  
21 this Plan shall be deemed to have accepted this Plan as modified if the proposed modification  
22 does not materially and adversely change the treatment of the Claim of such holder.  
23 Notwithstanding the foregoing, the Plan Proponents are authorized to file Plan Supplements on or  
24 before the Effective Date of the Plan.

25 26. **Governing Law.** Pursuant to Section 15.11 of the Plan, except to the extent that  
26 the Bankruptcy Code or Bankruptcy Rules are applicable, the rights, duties and obligations  
27 arising under the Plan shall be governed by, and construed and enforced in accordance with, the  
28 laws of the State of California, without giving effect to the principles of conflict of laws thereof;

provided however that the foregoing shall not be deemed to require compliance with Nonprofit Laws with respect to any obligations, rights or entitlements under or in furtherance of the Plan.

27. **Notice.** Except as otherwise provided in the Plan and this Order, as of the Effective Date, notice of all subsequent pleadings in the Chapter 11 Cases shall be limited to counsel to the Plan Proponents, counsel to the Post-Effective Date Committee, the U.S. Trustee, and any party known to be directly affected by the relief sought.

28. **References to Plan.** Any document related to the Plan that refers to a chapter 11 plan of the Plan Proponents other than the Plan confirmed by this Order shall be, and it hereby is, deemed to be modified such that the reference to a chapter 11 plan of the Plan Proponents in such document shall mean the Plan confirmed by this Order, as appropriate.

29. **Reconciliation of Inconsistencies.** Without intending to modify any prior Order of this Court (or any agreement, instrument or document addressed by any prior Order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement, instrument, or document). In the event of any inconsistency between the Plan or any agreement, instrument, or document intended to implement the Plan, on the one hand, and this Order, on the other, the provisions of this Order shall govern.

30. **Automatic Stay.** Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to §§ 105 or 362 or any order of this Court and extant on the date of entry of this Confirmation Order (excluding any injunctions or stays contained in the Plan or this Confirmation Order) shall remain in full force and effect until the Closing of the Chapter 11 Cases. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

31. **Order Effective Immediately.** Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, the stay provided for under Bankruptcy Rule 3020(e) shall be waived and this Order shall be effective and enforceable immediately upon entry. The Plan Proponents are authorized to consummate the Plan and the transactions contemplated thereby immediately after

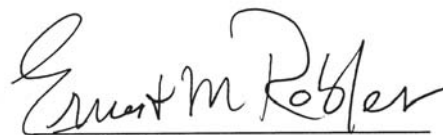


entry of this Order and upon, or concurrently with, satisfaction of the conditions set forth in the Plan.

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(213) 623-9300

Date: August 14, 2020



Ernest M. Robles  
United States Bankruptcy Judge

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**Exhibit A**

**Form of Notice of Rejection of Executory Agreement**

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Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

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

Debtors and Debtors In Possession.

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;

☒ Affects All Debtors

- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
- ☐ Affects O'Connor Hospital Foundation
- ☐ Affects Saint Louise Regional Hospital Foundation
- ☐ Affects St. Francis Medical Center of Lynwood Foundation
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- ☐ 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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**NOTICE OF REJECTION OF EXECUTORY AGREEMENTS**

Debtors and Debtors In Possession.

DENTONS US LLP  
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PLEASE TAKE NOTICE OF THE FOLLOWING:

**REJECTION OF EXECUTORY AGREEMENTS**

1. By Order dated August \_\_, 2020 [Docket No. \_\_] (the “Confirmation Order”), the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) confirmed the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5466] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”)<sup>8</sup> filed by Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor” and, collectively, the “Debtors”), the Prepetition Secured Creditors, and the Official Committee of Unsecured Creditors (the Committee, and, together with the Debtors and the Prepetition Secured Creditors, the “Plan Proponents”), as satisfying the requirements of § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. On \_\_\_\_, 2020, the Effective Date of the Plan occurred and the Plan was substantially consummated.

**3. YOU ARE OR MIGHT BE A COUNTERPARTY TO AN EXECUTORY AGREEMENT DEEMED REJECTED BY THE PLAN AS OF THE EFFECTIVE DATE.**

4. **Rejection of Executory Agreements.** Pursuant to Section 11.1 of the Plan, on the Effective Date, all Executory Agreements to which any Debtor is a party shall be deemed rejected as of the Effective Date, other than those Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to the Rejection Procedures), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, or (c) are specifically designated as a contract or lease to be assumed on any Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed, provided, however, that the Plan Proponents reserve the right to amend the Plan Supplement at any time.

5. **Bar Date for Rejection Damages.** Pursuant to Section 11.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as otherwise provided for in the Debtors’ notice of rejection) no later than thirty (30) days after the Effective Date (*i.e.*, \_\_\_\_, 2020). Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

6. **Viewing the Plan and Confirmation Order.** The Plan and the Confirmation Order may be obtained: (a) via download from the Bankruptcy Court’s website at [ecf.cacb.uscourts.gov](http://ecf.cacb.uscourts.gov) for registered users of the PACER and/or CM/ECF systems; (b) via download from [www.kccllc.net/verityhealth](http://www.kccllc.net/verityhealth); or (c) by (i) written request to Verity Health c/o KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245, or (ii) e-mail request to [verityinfo@kccllc.com](mailto:verityinfo@kccllc.com).

<sup>8</sup> Capitalized terms used but not otherwise defined herein have the definitions set forth in the Plan.

1 Dated: \_\_\_\_\_, 2020

DENTONS US LLP

2  
3 By: \_\_\_\_\_

Samuel R. Maizel

Tania M. Moyron

Nicholas A. Koffroth

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5 Counsel to the *Debtors and Debtors In*  
6 *Possession*  
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**Exhibit B**

**Form of Confirmation Notice**

DENTONS US LLP  
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Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

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

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

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

Debtors and Debtors In Possession.

Jointly administered with:  
Case No. 2:18-bk-20162-ER;  
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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;

☒ Affects All Debtors

- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
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- ☐ 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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**NOTICE OF CONFIRMATION OF MODIFIED  
SECOND AMENDED JOINT CHAPTER 11  
PLAN OF LIQUIDATION (DATED JULY 2,  
2020) OF THE DEBTORS, THE PREPETITION  
SECURED CREDITORS, AND THE  
COMMITTEE**

Debtors and Debtors In Possession.

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LOS ANGELES, CALIFORNIA 90017-5704  
(213) 623-9300



PLEASE TAKE NOTICE OF THE FOLLOWING:

**CONFIRMATION OF MODIFIED SECOND AMENDED JOINT CHAPTER 11 PLAN  
OF LIQUIDATION (DATED JULY 2, 2020) OF THE DEBTORS, THE PREPETITION  
SECURED CREDITORS, AND THE COMMITTEE**

1. By Order dated August \_\_, 2020 [Docket No. \_\_] (the “Confirmation Order”), the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) confirmed the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5466] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”)<sup>9</sup> filed by Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor” and, collectively, the “Debtors”), the Prepetition Secured Creditors, and the Official Committee of Unsecured Creditors (the Committee, and, together with the Debtors and the Prepetition Secured Creditors, the “Plan Proponents”), as satisfying the requirements of § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. The Plan and the Confirmation Order may be obtained: (a) via download from the Bankruptcy Court’s website at [ecf.cacb.uscourts.gov](http://ecf.cacb.uscourts.gov) for registered users of the PACER and/or CM/ECF systems; (b) via download from [www.kccllc.net/verityhealth](http://www.kccllc.net/verityhealth); or (c) by written request to Verity Health c/o KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245.

Dated: August \_\_, 2020

DENTONS US LLP

By: \_\_\_\_\_

Samuel R. Maizel  
Tania M. Moyron  
Nicholas A. Koffroth

Counsel to the Debtors and Debtors In Possession

<sup>9</sup> Capitalized terms used but not otherwise defined herein have the definitions set forth in the Plan.

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**Exhibit C**

**Form of Notice of Effective Date**

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

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Los Angeles, California 90017-5704  
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and  
Debtors In Possession

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

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

Debtors and Debtors In Possession.

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;

☒ Affects All Debtors

- ☐ Affects O'Connor Hospital
- ☐ Affects Saint Louise Regional Hospital
- ☐ Affects St. Francis Medical Center
- ☐ Affects St. Vincent Medical Center
- ☐ Affects Seton Medical Center
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- ☐ Affects St. Francis Medical Center of Lynwood Foundation
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- ☐ 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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**NOTICE OF OCCURRENCE OF EFFECTIVE  
DATE OF MODIFIED SECOND AMENDED  
JOINT CHAPTER 11 PLAN OF LIQUIDATION  
(DATED JULY 2, 2020) OF THE DEBTORS,  
THE PREPETITION SECURED CREDITORS,  
AND THE COMMITTEE**

Debtors and Debtors In Possession.

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

PLEASE TAKE NOTICE OF THE FOLLOWING:

**OCCURRENCE OF EFFECTIVE DATE OF MODIFIED SECOND AMENDED JOINT  
CHAPTER 11 PLAN OF LIQUIDATION (DATED JULY 2, 2020) OF THE DEBTORS,  
THE PREPETITION SECURED CREDITORS, AND THE COMMITTEE**

1. By Order dated August \_\_, 2020 [Docket No. \_\_] (the “Confirmation Order”), the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) confirmed the *Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5466] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”)<sup>10</sup> filed by Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor” and, collectively, the “Debtors”), the Prepetition Secured Creditors, and the Official Committee of Unsecured Creditors (the Committee, and, together with the Debtors and the Prepetition Secured Creditors, the “Plan Proponents”), as satisfying the requirements of § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. **Effective Date.** On \_\_\_\_, 2020, the Effective Date of the Plan occurred and the Plan was substantially consummated. All conditions precedent to the Effective Date of the Plan set forth in Section 12.2 of the Plan have either been satisfied or waived in accordance with the Plan and the Confirmation Order.

3. **Bar Date for Rejection Damages.** Pursuant to Section 11.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court (or as otherwise provided for in the Debtors’ notice of rejection) no later than thirty (30) days after the Effective Date (*i.e.*, \_\_\_\_, 2020). Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

4. **Bar Date for Professional Claims.** Pursuant to Section 2.2 of the Plan, all Professionals seeking an award by the Bankruptcy Court of a Professional Claim (other than the Ordinary Course Professionals) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is sixty (60) days after the Effective Date (*i.e.*, \_\_\_\_, 2020). Objections to any final applications covering Professional Claims must be filed and served on the Post-Effective Date Debtors, the Liquidating Trustee, and the requesting Professional no later than ninety (90) days after the Effective Date (unless otherwise agreed by the requesting Professional).

5. **Releases, Injunctions, and Exculpation:** Pursuant to the Confirmation Order, the releases set forth in Section 13.5 of the Plan, the injunctions set forth in Section 13.6 of the Plan, and the exculpation provisions set forth in Section 13.7 of the Plan are now in full force and effect.

6. **Viewing the Plan and Confirmation Order.** The Plan and the Confirmation Order may be obtained: (a) via download from the Bankruptcy Court’s website at [ecf.cacb.uscourts.gov](http://ecf.cacb.uscourts.gov) for registered users of the PACER and/or CM/ECF systems; (b) via download from [www.kccllc.net/verityhealth](http://www.kccllc.net/verityhealth); or (c) by written request to Verity Health c/o KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245.

<sup>10</sup> Capitalized terms used but not otherwise defined herein have the definitions set forth in the Plan.

1 Dated: \_\_\_\_\_, 2020

DENTONS US LLP

2  
3 By: \_\_\_\_\_

Samuel R. Maizel

Tania M. Moyron

Nicholas A. Koffroth

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5 Counsel to the *Debtors and Debtors In*  
6 *Possession*

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

**EXHIBIT “2”**



FILED & ENTERED

SEP 03 2020

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

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
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- ☐ 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  
Chapter: 11

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;  
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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.

**ORDER SUSTAINING IN PART AND  
OVERRULING IN PART STRATEGIC GLOBAL  
MANAGEMENT, INC.'S OBJECTION TO THE  
FORM OF THE ORDER CONFIRMING THE  
MODIFIED SECOND AMENDED PLAN**

[RELATES TO DOC. NO. 5566]

[No hearing required pursuant to Federal Rule of Civil  
Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]



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For the reasons set forth in the concurrently-issued *Memorandum of Decision Sustaining in Part and Overruling in Part Strategic Global Management, Inc.’s Objection to the Form of the Order Confirming the Modified Second Amended Plan* (the “Memorandum”), the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Preliminary Findings<sup>1</sup> are adopted to the extent set forth in the Memorandum.
- 2) The Confirmation Order and Plan shall be deemed amended such that the term “Nonrefundable Deposit” is replaced with the term “Deposit.”
- 3) The Confirmation Order shall be deemed amended such that the language on page 32<sup>2</sup> of the Confirmation Order at lines 10–12 is stricken and replaced with the following:

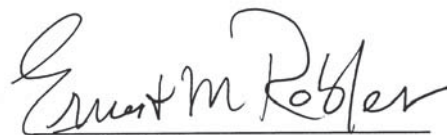
Further, the Releases of Debtors set forth in Section 15(d)(i) of this Confirmation Order and Section 13.5(a) of the Plan shall not apply to (a) any counterclaim that may be asserted by SGM against the Debtors or the Liquidating Trustee as successor-in-interest to the Debtors in the SGM Action, currently pending before the District Court or to (b) any of SGM’s claims and defenses against the Debtors or the Liquidating Trustee as successor-in-interest to the Debtors in the SGM Action.

The General Injunction set forth in Section 15(e) of this Confirmation Order and Section 13.6(a) of the Plan shall not apply to (a) SGM’s claims and defenses against the Debtors or the Liquidating Trustee as successor-in-interest to the Debtors in the SGM Action or (b) any counterclaim that may be asserted by SGM against the Debtors or the Liquidating Trustee as successor-in-interest to the Debtors in the SGM Action.

IT IS SO ORDERED.

###

Date: September 3, 2020



Ernest M. Robles  
United States Bankruptcy Judge

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<sup>1</sup> Capitalized terms not defined herein have the meaning set forth in the Memorandum.

<sup>2</sup> Page citations are to the docket pagination which appears at the top of each page, not to the document’s internal pagination.

**EXHIBIT “3”**

FILED & ENTERED

SEP 03 2020

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

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.
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- ☐ Affects De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors in Possession.

Lead Case No.: 2:18-bk-20151-ER  
Chapter: 11

Jointly Administered With:

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Case No. 2:18-bk-20163-ER;  
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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.

**MEMORANDUM OF DECISION SUSTAINING IN PART AND OVERRULING IN PART STRATEGIC GLOBAL MANAGEMENT, INC.'S OBJECTION TO THE FORM OF THE ORDER CONFIRMING THE MODIFIED SECOND AMENDED PLAN**

[RELATES TO DOC. NO. 5566]

[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]



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On August 12, 2020, the Court conducted a hearing on the Debtors' motion to confirm the *Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Doc. No. 5468, Ex. A] (the "Plan," and the hearing on confirmation of the Plan, the "Confirmation Hearing"). On August 12, 2020, the Court issued a ruling setting forth the reasons why the Plan would be confirmed [Doc. No. 5475] (the "Ruling"). On August 14, 2020, the Court entered an order confirming the Plan. *See* Doc. No. 5504 (the "Confirmation Order").

On August 14, 2020, Strategic Global Management, Inc. ("SGM") filed an objection to the form of the Confirmation Order, in which SGM requested the modification of certain provisions in the Confirmation Order and the inclusion of additional language in the Confirmation Order. *See* Doc. No. 5506 (the "SGM Objection"). On August 16, 2020, the Debtors filed a response to the SGM Objection, in which the Debtors argued that no changes to the Confirmation Order were warranted. On August 20, 2020, SGM filed a Notice of Appeal of the Confirmation Order. *See* Doc. No. 5552 (the "Notice of Appeal").

On August 25, 2020, the Court issued an *Order on Strategic Global Management, Inc.'s Objection to the Form of the Order Confirming the Modified Second Amended Plan* [Doc. No. 5566] (the "Order"), attached hereto as **Exhibit A** and incorporated in full by reference. The Order set forth the Court's preliminary findings (the "Preliminary Findings") on the SGM Objection and provided the parties an opportunity to respond thereto. Having reviewed the responses to the Preliminary Findings filed by the Debtors [Doc. No. 6016] and SGM [Doc. No. 6031], the Court adopts the Preliminary Findings, subject to the modifications set forth herein.

#### **A. The Court Has Jurisdiction to Rule Upon the SGM Objection Notwithstanding the Notice of Appeal**

The Court must first determine whether the Notice of Appeal has divested the Court of jurisdiction to rule upon the SGM Objection. Generally, the "filing of a notice of appeal ... divests the ... court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). However, under Bankruptcy Rule 8002(b),<sup>1</sup> the filing of certain post-judgment motions tolls the effectiveness of a notice of appeal. Bankruptcy Rule 8002(b)(1)(A) authorizes a party to file a motion "to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment." If a party files a notice of appeal while a Rule 7052 motion remains pending, the notice of appeal does not take effect until after an order disposing of the Rule 7052 motion has been entered. Bankruptcy Rule 8002(b)(2).

The SGM Objection constitutes a Rule 7052 motion to amend or make additional findings within the meaning of Bankruptcy Rule 8002(b)(1)(A). The Confirmation Order contains findings of fact and conclusions of law made pursuant to Bankruptcy Rule 7052. *See* Confirmation Order at n.3 ("The findings of fact and conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made

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<sup>1</sup> Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

applicable to this proceeding by Bankruptcy Rule 9014.”). Through the SGM Objection, SGM seeks modification of the conclusions of law that are set forth in the Confirmation Order at ¶ 17.<sup>2</sup> Specifically, SGM seeks (a) changes to the language in ¶ 17 of the Confirmation Order and (b) the inclusion of additional language in ¶ 17.

Because the SGM Objection is a Rule 7052 motion to amend the Confirmation Order, the Notice of Appeal will not take effect until the Court rules upon the SGM Objection. Therefore, the Court finds that it has jurisdiction to rule upon the SGM Objection. *See In re Adelphia Commc’ns Corp.*, 327 B.R. 175, 178 (Bankr. S.D.N.Y. 2005) (holding that under Bankruptcy Rule 8002(b), the court had jurisdiction to decide a Rule 7052 motion notwithstanding the filing of a notice of appeal).

SGM disagrees with the Court’s treatment of the SGM Objection as a Rule 7052 motion to amend or make additional findings. SGM states that its objection

did not request that the Court amend its findings, only that the Confirmation Order be amended to conform to the findings contained in the [Ruling], which was incorporated in the Confirmation Order. The [SGM Objection], while not addressing the accuracy of the findings contained in the Ruling, pointed out that certain aspects of the Confirmation Order relating to SGM did not conform to the Ruling.

Doc. No. 6031 at 3.<sup>3</sup>

SGM’s opposition to treatment of the SGM Objection as a Rule 7052 motion cannot be squared with the fact that the SGM Objection seeks modifications to the conclusions of law set forth in ¶ 17 of the Confirmation Order. In addition, even after filing the Notice of Appeal, SGM has continued to pursue its attempts to obtain modification of the Confirmation Order.<sup>4</sup> The Court lacks jurisdiction to rule upon the SGM Objection unless it is treated as a Rule 7052 motion. Therefore, SGM’s opposition to treatment of the SGM Objection as a Rule 7052 motion is inconsistent with its continued attempts to obtain modification of the Confirmation Order. For these reasons, SGM’s opposition to treatment of the SGM Objection as a Rule 7052 motion is overruled.

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<sup>2</sup> The Confirmation Order is divided into two sections. Section I is captioned “Findings of Fact and Conclusions of Law.” Section II is captioned “Order.” The decretal language set forth in Section II is based upon the findings of fact and conclusions of law set forth in Section I. *See* Confirmation Order at p. 17 (“Based on the foregoing findings of fact and conclusions of law, it is therefore hereby ordered, adjudged, and decreed as follows ....”). Although the decretal language to which SGM objects is contained in Section II, that language is appropriately construed as a conclusion of law, since it is predicated upon the conclusions of law set forth in Section I.

<sup>3</sup> Page citations are to the docket pagination which appears at the top of each page, not to the document’s internal pagination.

<sup>4</sup> SGM filed its response to the Court’s Preliminary Findings subsequent to the filing of the Notice of Appeal. In that response, SGM presented arguments as to why the additional language proposed by the Court in the Preliminary Findings should be further amended.



**B. The Court Will Rule Upon the SGM Objection By Way of a Separate Order, as Opposed to Entering an Amended Confirmation Order and Requiring the Debtors to File an Amended Plan**

The Debtors request that the Court rule upon the SGM Objection by way of a separate order, as opposed to entering an amended Confirmation Order and requiring the filing of an amended Plan. SGM opposes the request, asserting that it will create more ambiguity and potentially the need for two appeals.

The Court finds it appropriate to dispose of the SGM Objection by way of a separate order. First, the Plan and Confirmation Order contemplate modifications to both documents by entry of a separate order if the modifications are not material within the context of the Plan. *See* Confirmation Order at ¶ 21; Plan at § 15.7. The issues raised by the SGM Objection are material within the context of the litigation between the Debtors and SGM currently pending before the U.S. District Court for the Central District of California (the “District Court”), Case No. 2:19-cv-00613-DSF (the “SGM Action”), but are not material within the context of the Plan, which provides for the distribution of hundreds of millions of dollars to thousands of creditors.

Second, requiring entry of an amended Confirmation Order and the filing of an Amended Plan would impose significant costs upon the Debtors without any corresponding benefit to creditors and the estates. As required by the Confirmation Order, the Debtors have served a *Notice of Confirmation of Modified Amended Joint Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Doc. No. 5507] (the “Confirmation Notice”) upon more than 40,000 creditors. The Confirmation Notice refers creditors to the Plan and Confirmation Order. *See* Confirmation Notice at ¶ 1. Resolving the SGM Objection by way of an amended Plan and amended Confirmation Order would require the Debtors to re-serve the Confirmation Notice. That would be a pointless exercise, given that the amendments addressed herein are not material to the Plan.

Third, requiring entry of an amended Confirmation Order and the filing of an Amended Plan would disrupt implementation of the Plan. The Plan keys various dates to the date of entry of the Confirmation Order. *See* Plan at § 7.13 (requiring the Liquidating Trustee to provide certain notices if requested prior to entry of the Confirmation Order); *id.* at § 12.2 (making entry of the Confirmation Order a condition precedent to the Plan’s Effective Date).

Fourth, requiring entry of an amended Confirmation Order could generate disputes regarding the finality of the Confirmation Order. Finality of the Confirmation Order is a critical component of the Plan Settlement upon which the entirety of the Plan is predicated. Avoiding any disputes which could disrupt the effectuation of the Plan Settlement is therefore of paramount importance. Entry of the order disposing of the SGM Objection does not materially alter the findings of fact and conclusions of law set forth in the Confirmation Order. Where, as here, an amended order is entered that does not materially alter the findings and conclusions in the original order, the deadline to appeal is measured from the date of entry of the original order.<sup>5</sup> *See, e.g., In re Sousa*, 795 F.2d 855, 857 (9th Cir. 1986) (measuring the deadline to appeal from the date of entry of the original order, rather than the amended order, because there was “no material discrepancy between the original findings and conclusions and the amended findings and conclusions”).

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<sup>5</sup> Of course, the ultimate arbiter of the timeliness of any appeal of the Confirmation Order is the Court hearing the appeal (either the District Court or the Bankruptcy Appellate Panel). However, it is not the Court’s intent that entry of the order disposing of the SGM Objection toll the August 28, 2020 deadline to appeal the Confirmation Order.

**C. The Court Adopts ¶ B of the Preliminary Findings**

Neither the Debtors or SGM oppose ¶ B of the Preliminary Findings, in which the Court provided notice of its intent to require use of the term “Deposit” in lieu of “Nonrefundable Deposit” in the Plan and Confirmation Order. Therefore, for the reasons set forth in ¶ B of the Preliminary Findings, the Plan and Confirmation Order shall be deemed amended to replace the term “Nonrefundable Deposit” with the term “Deposit.”

**D. The Court Adopts ¶¶ C–D of the Preliminary Findings, Except that the Additional Language Proposed by the Court Shall Be Modified to Reflect the Role of the Liquidating Trustee in the SGM Action**

The Debtors do not oppose ¶¶ C–D of the Preliminary Findings, which contains proposed language stating that certain injunctive provisions in the Plan shall not prejudice SGM’s ability to pursue its claims, defenses, and counterclaims in the SGM Action.

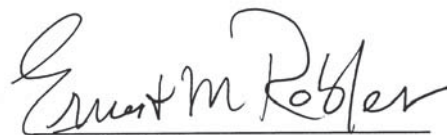
SGM notes that the Plan provides for the assignment of the Debtors’ claims in the SGM Action to the Liquidating Trustee, and on that basis requests that the proposed language be amended to reflect the Liquidating Trustee’s role in the SGM Action. The Court finds the clarification requested by SGM to be appropriate. Subject to this clarification, the Court adopts ¶¶ C–D of the Preliminary Findings.

**E. Conclusion**

The Court will prepare and enter an order consistent with this Memorandum of Decision.

###

Date: September 3, 2020



Ernest M. Robles  
United States Bankruptcy Judge

## Exhibit A—Order

Case 2:18-bk-20151-ER Doc 5566 Filed 08/25/20 Entered 08/25/20 12:33:47 Desc  
Main Document Page 1 of 8



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  
Chapter: 11

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.

**ORDER ON STRATEGIC GLOBAL  
MANAGEMENT, INC.'S OBJECTION TO THE  
FORM OF THE ORDER CONFIRMING THE  
MODIFIED SECOND AMENDED PLAN**

**[RELATES TO DOC. NO. 5506]**

[No hearing required pursuant to Federal Rule of Civil  
Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

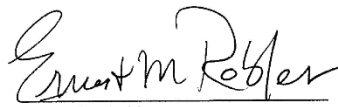
The Court has reviewed the *Limited Objection of Strategic Global Management, Inc. to Form of Order Confirming Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Doc. No. 5506] (the “SGM Objection”) and the Debtors’ response thereto [Doc. No. 5456]. Subject to the opportunity of interested parties to respond, the Court is prepared to rule upon the SGM Objection as set forth in the *Preliminary Findings* attached hereto as **Exhibit A**. Based upon the foregoing, and good cause appearing therefor, the Court **HEREBY ORDERS AS FOLLOWS:**

- 1) The Debtors shall file a written response to the *Preliminary Findings* by no later than **Friday, August 28, 2020**. Any interested party may also file a response by the same deadline.
- 2) The response of Strategic Global Management, Inc. (“SGM”) to the *Preliminary Findings* and to any responses filed pursuant to ¶ 1 shall be submitted by no later than **Tuesday, September 1, 2020**.
- 3) The matter shall stand submitted as of **Tuesday, September 1, 2020**. In the event a hearing is required, the parties will be so notified.

IT IS SO ORDERED.

###

Date: August 25, 2020

  
Ernest M. Robles  
United States Bankruptcy Judge

### Exhibit A—Preliminary Findings

On August 12, 2020, the Court conducted a hearing on the Debtors' motion to confirm the *Modified Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Doc. No. 5468, Ex. A] (the "Plan," and the hearing on confirmation of the Plan, the "Confirmation Hearing"). On August 12, 2020, the Court issued a ruling setting forth the reasons why the Plan would be confirmed [Doc. No. 5475] (the "Ruling"). On August 14, 2020, the Court entered an order confirming the Plan. *See* Doc. No. 5504 (the "Confirmation Order").

On August 14, 2020, Strategic Global Management, Inc. ("SGM") filed an objection to the form of the Confirmation Order, in which SGM requested the modification of certain provisions in the Confirmation Order and the inclusion of additional language in the Confirmation Order. *See* Doc. No. 5506 (the "SGM Objection"). On August 16, 2020, the Debtors filed a response to the SGM Objection, in which the Debtors argued that no changes to the Confirmation Order were warranted. On August 20, 2020, SGM filed a Notice of Appeal of the Confirmation Order. *See* Doc. No. 5552 (the "Notice of Appeal").

#### **A. The Court is Prepared to Find that it Has Jurisdiction to Rule Upon the SGM Objection Notwithstanding the Notice of Appeal**

The Court must first determine whether the Notice of Appeal has divested the Court of jurisdiction to rule upon the SGM Objection. Generally, the "filing of a notice of appeal ... divests the ... court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). However, under Bankruptcy Rule 8002(b),<sup>1</sup> the filing of certain post-judgment motions tolls the effectiveness of a notice of appeal. Bankruptcy Rule 8002(b)(1)(A) authorizes a party to file a motion "to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment." If a party files a notice of appeal while a Rule 7052 motion remains pending, the notice of appeal does not take effect until after an order disposing of the Rule 7052 motion has been entered. Bankruptcy Rule 8002(b)(2).

The SGM Objection constitutes a Rule 7052 motion to amend or make additional findings within the meaning of Bankruptcy Rule 8002(b)(1)(A). The Confirmation Order contains findings of fact and conclusions of law made pursuant to Bankruptcy Rule 7052. *See* Confirmation Order at n.3. Through the SGM Objection, SGM seeks modification of the Confirmation Order's findings of fact and conclusions of law. Specifically, SGM seeks (a) changes to the language in ¶ 17 of the Confirmation Order and (b) the inclusion of additional language in ¶ 17.

Because the SGM Objection is a Rule 7052 motion to amend the Confirmation Order, the Notice of Appeal will not take effect until the Court rules upon the SGM Objection. Therefore, the Court is prepared to find that it has jurisdiction to rule upon the SGM Objection. *See In re*

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<sup>1</sup> Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.



*Adelphia Commc'ns Corp.*, 327 B.R. 175, 178 (Bankr. S.D.N.Y. 2005) (holding that under Bankruptcy Rule 8002(b), the court had jurisdiction to decide a Rule 7052 motion notwithstanding the filing of a notice of appeal).

**B. The Court Is Prepared to Require the Debtors to Modify the Plan and Confirmation Order to Replace the Term “Nonrefundable Deposit” with the Term “Deposit”**

In connection with the hearing on the Disclosure Statement, the Debtors and SGM stipulated to include certain language in the Confirmation Order pertaining to the treatment of a \$30 million deposit that SGM had made in connection with an Asset Purchase Agreement providing for SGM's acquisition of four of the Debtors' hospitals. Litigation regarding the parties' rights in the deposit is currently pending before the U.S. District Court for the Central District of California (the “District Court”), Case No. 2:19-cv-00613-DSF (the “SGM Action”). The stipulated language referred to the \$30 million deposit as “the Deposit.” The Plan and the Confirmation Order refer to the \$30 million deposit as “the Nonrefundable Deposit.” See Plan at § 13.11; Confirmation Order at ¶ 17(a).

SGM asserts that the use of the term “Nonrefundable Deposit”—as opposed to the term “Deposit”—is an improper attempt to influence the outcome of the SGM Action and to prejudice SGM's rights therein. The Debtors argue that the use of the defined term “Nonrefundable Deposit” does not alter the substantive rights embodied in the stipulated language.

It does not appear to the Court that use of the term “Nonrefundable Deposit,” instead of “Deposit,” could have any effect upon the Plan's provisions pertaining to the deposit, or could in any way prejudice SGM's rights in the SGM Action. The Plan unambiguously defines “Nonrefundable Deposit” as “the deposit set forth in the SGM Asset Purchase Agreement.” Plan at § 13.11. Nonetheless, the language in the Plan and Confirmation Order is not consistent with the language to which the parties stipulated. The Debtors should not have unilaterally modified the stipulated language absent SGM's consent.

The Court is prepared to require the Debtors to modify the Plan and Confirmation Order so that the \$30 million deposit is referred to as the “Deposit,” not as the “Nonrefundable Deposit.”

**C. The Court Is Prepared to Reconsider Its Finding that the SGM Admin Claim is Not a “Claim” as Defined in the Plan**

At the Confirmation Hearing, SGM asserted various objections to confirmation of the Plan, including that the injunctions and releases provided for in the Plan would prejudice SGM's ability to defend itself in the SGM Action and to prosecute its counterclaim (the “SGM Counterclaim”). SGM argued that § 13.6 of the Plan would prevent it from asserting offset and recoupment rights in the SGM Action.<sup>2</sup> In response to SGM's opposition, the Debtors asserted that § 13.6 did not apply to SGM, because § 13.6 applied only to entities holding a “Claim,” which, according to the Debtors, did not include SGM because “Claim” was “defined in the Plan to refer to prepetition claims only.”<sup>3</sup> (There is no dispute that SGM's claims arise post-petition.)

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<sup>2</sup> See Doc. No. 5448 at 11. (Page citations are to the docket pagination which appears at the top of each page, not to the document's internal pagination.)

<sup>3</sup> See Doc. No. 5385 at 95 (“SGM argues that their defenses to payment being asserted in the Adversary Proceeding are improperly cut off in the Plan, because it transfers causes of action but bars rights of setoff or recoupment. But it ignores the actual language of the Plan, which raises those issues only with regard to a *Claim*. (Plan § 13.6). Thus, the provisions to which SGM

The Court relied upon the Debtors' representation regarding the Plan's definition of "Claim" to overrule SGM's objection to § 13.6 of the Plan:

The provision to which SGM objects prohibits "Persons that have held, currently hold or may hold a Claim against the Debtors" from "asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the Liquidating Trust *with respect to a Claim* ...." (emphasis added). . . . [T]he term "Claim" does not encompass the SGM Admin Claim. The Plan's setoff and recoupment provisions will therefore have no effect upon SGM's ability to defend itself in the [SGM Action] or prosecute the SGM Counterclaim.

Ruling at 27.

The Confirmation Order and Plan contain releases,<sup>4</sup> injunctions,<sup>5</sup> and a "No Recourse"<sup>6</sup> provision. The scope of these provisions is defined in part by reference to the term "Claim." The Confirmation Order states that the release set forth in § 15(d)(i) of the Confirmation Order and § 13.5(a) of the Plan does not apply to the SGM Action or the SGM Counterclaim,<sup>7</sup> but does not contain comparable language regarding the inapplicability of (a) the releases set forth in § 15(d)(ii) of the Confirmation Order and § 13.5(b) of the Plan, (b) the injunction set forth in § 15(e)(1) of the Confirmation Order and § 13.6 of the Plan, or (c) the "No Recourse" provision set forth in § 13.8 of the Plan. SGM asserts that the Confirmation Order must contain language providing that § 15(d)(ii) and § 15(e)(1) of the Confirmation Order and § 13.8 of the Plan do not apply to it. SGM argues that these provisions are inapplicable because SGM does not hold a "Claim" as that term is defined in the Plan. The additional language proposed by SGM is as follows:

Notwithstanding anything else in the Plan or this Confirmation Order, the release, injunction, exculpation, recourse, and other provisions of the Plan, the Confirmation Order, and any other Plan-related document shall not in any way impair, impact, or otherwise affect SGM's rights, claims, defenses, counterclaims, rights of setoff or recoupment and remedies in connection with the defense of the SGM Claims and the prosecution of SGM's counter-claims in the Adversary Proceeding, or operate to release, limit, or impair any rights and claims of SGM against any person or entity.

SGM Objection at Ex. A.

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objects do not apply to SGM, which is not a holder of a Claim, as that term is defined in the Plan to refer to prepetition claims only.").

<sup>4</sup> See Plan at § 13.5 and Confirmation Order at § 15(d)(i)–(iv).

<sup>5</sup> See Plan at § 13.6(a)–(b) and Confirmation Order at § 15(e)–(f).

<sup>6</sup> See Plan at § 13.8.

<sup>7</sup> See Confirmation Order at § 17(a) ("Further, the Releases of Debtors set forth in Section 15(d)(i) of this Confirmation Order and Section 13.5(a) of the Plan shall not apply to any counterclaim that may be asserted by SGM against the Debtors in the SGM Action, currently pending before the District Court.").



The Debtors object to the additional language proposed by SGM. Debtors assert that by proposing the additional language, SGM is attempting to reargue the scope of the Plan's releases and injunctions.

Resolution of the SGM Objection requires the Court to reconsider the Ruling's finding that that the term "Claim," as defined in the Plan, does not encompass the SGM Admin Claim because that claim arises post-petition.<sup>8</sup> Within the context of a Bankruptcy Rule 7052 motion such as the SGM Objection, "the court may amend its findings—or make additional findings—and may amend the judgment according," Bankruptcy Rule 7052(b). Here, amendment is appropriate because notwithstanding the Debtors' representation to the contrary, the Plan's definition of "Claim" is not limited to prepetition claims. The Plan defines "Claim" in the same way that term is defined in the Bankruptcy Code—that is, "Claim" means:

- a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

§ 101(5).

The Bankruptcy Code's definition of "Claim" does not distinguish between prepetition rights to payment and post-petition rights to payment, which under certain conditions qualify as administrative claims. *See MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002) (stating that "various provisions of the Bankruptcy Code reveal that Congress viewed expenses of administration as merely one specialized type of claim"); *see also ASM Capital, LP v. Ames Dep't Stores, Inc. (In re Ames Dep't Stores, Inc.)*, 582 F.3d 422, 427 (2d Cir. 2009) (stating that "requests for payment of administrative expenses under section 503 are 'claims' within the meaning of the Bankruptcy Code").

In addition, maintaining the finding that "Claim" does not encompass the SGM Admin Claim, because the Plan's definition of "Claim" refers only to prepetition claims, would render many of the Plan's provisions nonsensical. For example, in §§ 2.1 and 2.2, the Plan specifies the treatment provided to the "Holder of an Allowed Administrative Claim" and the "Holder of [a] Professional Claim." Both types of claims arise post-petition. Many of the classes of claims under the Plan—including the Secured 2017 Revenue Notes Claims, the Secured 2015 Revenue Notes Claims, the Secured MOB I Financing Claims, and the Secured MOB II Financing Claims—are entitled to receive accrued but unpaid postpetition interest on account of their claims.

Therefore, the Court is prepared to adopt an alternative basis for its finding that § 13.6 of the Plan does not prejudice SGM's setoff and recoupment rights in the SGM Action. The Debtors have represented that the Plan's "releases, exculpations, and injunctions are not intended to interfere with the pending SGM litigation or SGM's ... counterclaims asserted against the

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<sup>8</sup> As discussed in greater detail below, the Court does not reconsider its ultimate conclusion that the Plan's "setoff and recoupment provisions will ... have no effect upon SGM's ability to defend itself in the [SGM Action] or prosecute the SGM Counterclaim." Ruling 27. The Court reconsiders only the reasoning supporting that conclusion.

Debtors,” and that the Debtors “will make such clarification if requested by the Bankruptcy Court.”<sup>9</sup> Instead of finding that § 13.6 does not apply based upon the scope of the term “Claim,” the Court is prepared to require the Debtors to include the following additional clarifying language at the end of § 17(a) in the Confirmation Order:

The General Injunction set forth in Section 15(e) of this Confirmation Order and Section 13.6(a) of the Plan shall not apply to (a) SGM’s claims and defenses against the Debtors in the SGM Action or (b) any counterclaim that may be asserted by SGM against the Debtors in the SGM Action.

Section 13.6(a) of the Plan also enjoins SGM from taking certain actions in furtherance of its claims against any “Released Party,” defined as “the Estates, the Debtors, the Committee, the members of the Committee, the Indenture Trustees and their affiliates, and each current and/or former member, manager, officer, director, employee, counsel, advisor, professional, or agents of each of the foregoing who were employed or otherwise serving in such capacity before or after the Petition Date.” Plan at § 1.147. The Court is not prepared to modify the Confirmation Order to relieve SGM of the effects of § 13.6(a) of the Plan as to Released Parties other than the Debtors. The protections granted to the Released Parties were a key component of the comprehensive settlement among the Debtors, the Prepetition Secured Creditors, and the Committee which is the cornerstone of the Plan.

Section 17(a) of the Confirmation Order provides that “the Releases of Debtors set forth in Section 15(d)(i) of this Confirmation Order and in Section 13.5(a) of the Plan shall not apply to any counterclaim that may be asserted by SGM against the Debtors in the SGM Action, currently pending before the District Court.” Because this language is limited to the effect of the Releases of Debtors on the *counterclaim* in the SGM Action, the Confirmation Order could be read to restrict SGM’s ability to assert claims and defenses in the SGM Action against the Debtors apart from the counterclaim. To eliminate any confusion, the Court is prepared require the Debtors to modify the language as follows (modifications in **bold**):

Further, the Releases of Debtors set forth in Section 15(d)(i) of this Confirmation Order and Section 13.5(a) of the Plan shall not apply to **(a)** any counterclaim that may be asserted by SGM against the Debtors in the SGM Action, currently pending before the District Court **or to (b) any of SGM’s claims and defenses against the Debtors in the SGM Action.**

**D. The Court is Prepared to Overrule SGM’s Request for the Inclusion of Additional Language in the Confirmation Order**

SGM’s rationale for including its proposed additional language in the Confirmation Order is that the SGM Admin Claim is not a “Claim” as defined in the Plan. In view of the finding that the SGM Admin Claim does constitute a “Claim” for Plan purposes, there is no basis for including SGM’s proposed additional language in the Confirmation Order. The Court is prepared to overrule SGM’s request for the inclusion of the additional language.

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<sup>9</sup> See Doc. No. 5385 at 97–98.

**E. No Stay of the Confirmation Order Pending Resolution of the Issues Set Forth Herein is Necessary**

No stay of the Confirmation Order is in effect. The Court does not find it appropriate to order a stay of the Confirmation Order pending resolution of the issues discussed herein. The instant dispute is limited to the effect of the Plan and Confirmation Order's releases, injunctions, and "No Recourse" provision upon SGM. Regardless of how this dispute is resolved, it will not materially affect the Debtors' ability to implement the Plan's provisions for the distribution of assets to creditors through the Liquidating Trust. There is no reason why that distribution should be delayed pending resolution of the dispute between the Debtors and SGM regarding the Plan's releases and injunctions.

## 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 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **AMENDED NOTICE OF APPEAL OF ORDER CONFIRMING MODIFIED SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION (DATED JULY 2, 2020) OF THE DEBTORS, THE PREPETITION SECURED CREDITORS, AND THE COMMITTEE [Doc. No. 5504], AS MODIFIED BY THE ORDER SUSTAINING IN PART AND OVERRULING IN PART STRATEGIC GLOBAL MANAGEMENT, INC.'S OBJECTION TO THE FORM OF THE ORDER CONFIRMING THE MODIFIED SECOND AMENDED PLAN [Doc. No. 6036]** 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 **September 17, 2020**, I checked the CM/ECF docket for this bankruptcy case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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

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2. **SERVED BY UNITED STATES MAIL:** On **September 17, 2020**, 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) **September 17, 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.

**Courtesy Copy Served via Overnight Mail**

The Honorable Ernest M. Robles  
United States Bankruptcy Court  
255 E. Temple Street, Suite 1560  
Los Angeles, CA 90012

☐ 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.

September 17, 2020

*Date*

Lisa Masse

*Printed Name*

/s/ Lisa Masse

*Signature*