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

11 In re
12 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
13 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;

- 14 Affects All Debtors
15 Affects O'Connor Hospital
16 Affects Saint Louise Regional Hospital
17 Affects St. Francis Medical Center
18 Affects St. Vincent Medical Center
19 Affects Seton Medical Center
20 Affects O'Connor Hospital Foundation
21 Affects Saint Louise Regional Hospital
Foundation
22 Affects St. Francis Medical Center of
Lynwood Foundation
23 Affects St. Vincent Foundation
24 Affects St. Vincent Dialysis Center, Inc.
25 Affects Seton Medical Center Foundation
26 Affects Verity Business Services
27 Affects Verity Medical Foundation
28 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

**POST-EFFECTIVE DATE DEBTORS AND LIQUIDATING
TRUSTEE'S EVIDENTIARY OBJECTION AND MOTION
TO STRIKE NEW EVIDENCE PRESENTED IN REPLY;
ALTERNATIVELY REQUEST FOR SUR-REPLY; AND
RESPONSE TO PRIME'S EVIDENTIARY OBJECTIONS
[Re: Docket Nos. 6645, 6662, 6669]**

Hearing Date and Time:
Date: October 6, 2021
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012

Debtors and Debtors In Possession.

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1 **OBJECTION AND MOTION TO STRIKE NEW EVIDENCE**

2 Verity Health System of California, Inc. (“VHS”), Saint Francis Medical Center (“SFMC”)
3 and certain affiliated debtors (collectively, prior to the effective date of the Joint Plan (defined
4 below), the “Debtors” and after the effective date, the “Post Effective Date Debtors”) and the
5 Liquidating Trustee (the “Liquidating Trustee”) of the VHS Liquidating Trust (the “Liquidating
6 Trust”), established pursuant to the Modified Second Amended Joint Chapter 11 Plan of
7 Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Official
8 Committee of Unsecured Creditors (the “Committee”) [Docket No. 5466] (the “Joint Plan”)
9 confirmed by the order [Docket No. 5504] (the “Confirmation Order”) entered August 14, 2020,
10 and that certain Liquidating Trust Agreement, dated as of September 5, 2020 [Docket No. 6043]
11 (the “Trust Agreement”), in the above-captioned chapter 11 bankruptcy cases (the “Cases”), hereby
12 object to the nine exhibits and three declarations submitted as new evidence in *Prime Healthcare*
13 *Services, Inc.’s Reply to Post-Effective Date Debtors and Liquidating Trustee’s Memorandum in*
14 *Opposition to Prime Healthcare Services, Inc.’s Motion to Enforce Provisions of the Asset*
15 *Purchase Agreement Pertaining to Accounts Receivable Adjustment* (the “Reply”) [Docket No.
16 6669], filed by Prime Healthcare Services, Inc. (“Prime”) on September 28, 2021, which the Post-
17 Effective Date Debtors and Liquidating Trustee have not had an opportunity to address, and all of
18 which contravene the Local Bankruptcy Rules for the United States Bankruptcy Court for the
19 Central District of California (“LBR”). Alternatively, the Post-Effective Date Debtors and
20 Liquidating Trustee request leave to file a sur-reply and supplement the evidence submitted in
21 response to *Prime Healthcare Services, Inc.’s Motion to Enforce Provisions of the Asset Purchase*
22 *Agreement Pertaining to Accounts Receivable Adjustment* [Docket No. 6645].

23 1. The Post-Effective Date Debtors and Liquidating Trustee, on the one hand, and
24 Prime, on the other hand, dispute the amounts of certain accounts receivable adjustments that Prime
25 asserts and is attempting to enforce. This includes approximately \$11.9 million related to “LA
26 County Trauma” funding that Prime collected on SFMC’s behalf but is not willing to credit it to
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1 SFMC, and an additional \$5.1 million in receivables not collected based on Prime not collecting at
2 or remotely near SFMC’s historical collection rates.

3 2. Under LBR 9013-1(g)(1) and (4), evidence attached to a reply memorandum must
4 respond directly to the opposition documents, but new arguments or matters raised for the first time
5 in reply documents will not be considered. *See also* 9013-1(c)(3)(A) (requiring “copies of all
6 photographs and documentary evidence that the moving party intends to submit in support of the
7 motion” to be filed and served with the motion). When new evidence or information is raised in a
8 reply brief, because the opposing party has no opportunity to address such evidence, courts have
9 discretion to strike such new material. *Tovar .v. U.S. Postal Serv.*, 3 F. 3d 1271, 1273 n.3 (9th Cir.
10 1993). Alternatively, the Court may continue the matter or authorize a sur-reply. *See Provenz v.*
11 *Miller*, 102 F. 3d 1478, 1483 (9th Cir. 1996).

12 3. Because the Post-Effective Debtors and Liquidating Trustee have not had an
13 opportunity to address the new evidence submitted, they request that the Court strike the nine new
14 exhibits and three supplemental declarations or, in the alternative, permit the Post-Effective Date
15 Debtors and Liquidating Trustee to file a sur-reply and submit additional evidence that addresses
16 Prime’s new evidence.

17 4. In particular, Prime’s nine new exhibits and the bulk of the supplemental declaration
18 of Joel Richlin raise a new argument not raised previously, in either the Motion or the memorandum
19 in opposition thereto filed by the Post-Effective Date Debtors and the Liquidating Trustee on
20 September 21, 2021 [Doc. 6662] (the “Opposition”): that the parties actually and intentionally
21 negotiated to carve out trauma payments from the accounts receivable reconciliation process. In
22 their initial Motion and exhibits submitted therewith (namely Prime’s Exhibits 2, 4 and 5), Prime’s
23 position has been that the APA was clear on its face about what receivables should be included and
24 what should not. But they also raised parole evidence matters, suggesting that Prime’s principals
25 had not made statements agreeing to calculate receivables consistent with the A/R Target Amount
26 spreadsheet exchanged between the parties. Richlin Decl. at ¶¶8-9 and Aleman Decl. at ¶12 [Doc.
27 6645 at 40-41 and 53]. In the Opposition, the Post-Effective Date Debtors and Liquidating Trustee
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1 responded and presented evidence, including the declaration of Peter Chadwick (the “Chadwick
2 Declaration”), to challenge Prime’s position and to demonstrate that the A/R Target Amount indeed
3 included trauma payments. Now, literally for the first time since Prime raised this issue in its
4 January 25, 2021 correspondence (Prime’s Exhibit 2), Prime contends that the parties actively and
5 knowingly negotiated to exclude trauma payments from the accounts receivable reconciliation
6 process, and it even chastises the Post-Effective Date Debtors for failing to inform the Court of the
7 parties’ negotiations. [*See, e.g.*, Doc. 6659 at 1-2]

8 5. But this is a new argument impermissibly raised in a reply brief. Prime’s own
9 Motion Exhibits 2, 4 and 5 demonstrate that while Prime asserted the APA was unambiguous, at
10 no time did it assert that the parties actively and knowingly negotiated for this supposedly
11 unambiguous position. The original declaration of Joel Richlin attached to the Motion is also silent
12 on this matter. Furthermore, the new exhibits submitted, Prime’s Exhibits 8-16, amply demonstrate
13 that the parties most certainly negotiated COVID-19 related issues, but none of the new exhibits
14 demonstrate that the parties actively and knowingly intended to carve out the trauma payments or
15 provide a multi-million dollar windfall to Prime to alleviate risk concerns Prime supposedly had.
16 Indeed, despite the new arguments and evidence, Prime does not offer the Court any explanation
17 for what possible meaning “Other Receivables” offers in the final APA, as it is used nowhere in
18 the document. As such, The Post-Effective Date Debtors and Liquidating Trustee object to Prime’s
19 new evidence without being able to provide additional evidence about exactly what the parties
20 did—and did not—negotiate as they were attempting to close on the APA.

21 6. Regarding Prime’s collection efforts, Prime submits a declaration of Ana Goff and
22 a supplemental declaration of Steve Aleman. While Prime’s reply arguments here respond to the
23 Post-Effective Date Debtors and Liquidating Trustee’s arguments, it contends, at least in part, that
24 it still does not understand or cannot replicate financial data the Post-Effective Date Debtors and
25 Liquidating Trustee provided to the Court. As such, the Post-Effective Date Debtors and
26 Liquidating Trustee request an opportunity to respond to all this new evidence as well.

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III RESPONSE TO PRIME’S EVIDENTIARY OBJECTIONS

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2 Prime objects to aspects of the Chadwick Declaration, and Prime also objects to Exhibit
3 “C” attached to the Opposition, which is identified in footnote 21 of the Opposition as the SFMC
4 Gross to Net A/R Spreadsheet (the “A/R Target Spreadsheet”) showing the \$61 million A/R Target
5 Amount at issue with respect to the inclusion or exclusion of trauma payments. None of the
6 objections are well-founded.

7 1. Prime first objects to the Chadwick Declaration statements describing the A/R
8 Target Spreadsheet based on Fed. R. Evid. 1008 that Mr. Chadwick’s statements are not the best
9 evidence of the schedule. Of course, the Post-Effective Date Debtors and Liquidating Trustee also
10 attached the schedule itself and while Prime objects to that as well, they do not contend that the
11 document is other than as identified, and do not provide the Court with some other or different
12 document to contradict Exhibit “C” or the Chadwick Declaration.

13 2. Prime also objects to a supposed lack of personal knowledge about Exhibit “C”. But
14 Mr. Chadwick adequately describes his role and base of knowledge about events of these chapter
15 11 cases and with the circumstances surrounding the April 3, 2020 Asset Purchase Agreement,
16 including that his testimony here is based upon his personal knowledge, review of relevant
17 documents and information made available to him by his colleagues, Debtors and Post-Effective
18 Date Debtors. Chadwick Decl. at ¶¶2-5, 11 and 14.

19 3. Prime objects to the relevance of Mr. Chadwick’s testimony about Exhibit “C” and
20 the A/R Target Amount, and references Fed. R. Evid. 403, suggesting that the testimony is
21 somehow not relevant and unduly prejudicial. The relevance of the testimony and Exhibit “C”
22 could not be clearer, as both the Motion and the Opposition constantly reference the \$61 million
23 A/R Target Amount and whether trauma payments were to be included or excluded. Certainly a
24 document showing the derivation of the \$61 million figure and that includes a line item for trauma
25 payments affects the probability and credibility of a number of the statements the parties are both
26 making about the inclusion or exclusion of trauma payments in the accounts receivable
27 reconciliation process.

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1 4. Prime objects that Mr. Chadwick’s statements regarding the A/R Target Amount are
2 inappropriate opinion testimony, but nothing in the Chadwick Declaration presents scientific,
3 technical or other specialized knowledge and his declaration explicitly states that he is testifying
4 based on his own personal knowledge.

5 5. Prime objects to Exhibit “C” itself, claiming the spreadsheet is not authenticated, is
6 irrelevant and unduly prejudicial. Mr. Chadwick testifies that he has personal knowledge of the
7 events surrounding the APA and is testifying from personal knowledge, and he identifies Exhibit
8 “C” as a true and accurate copy of the A/R Target Spreadsheet showing the \$61 million A/R Target
9 Amount. Prime does not challenge Mr. Chadwick’s knowledge of any other documents presented
10 and does not claim that Exhibit “C” is inaccurate or is not the “right” document. Given the
11 circumstances of these chapter 11 cases, Prime’s complaints that Mr. Chadwick does not describe
12 whether he actually drafted the document itself or participated in negotiations with Prime does not
13 question whether he knows this is the schedule supplied to Prime. Prime’s objections as to
14 relevance have been addressed above with respect to Mr. Chadwick’s testimony about the schedule,
15 and are thus incorporated here.

16 6. The Post-Effective Date Debtors and Liquidating Trustee withdraw lines 24:24-25:4
17 of paragraph 17 of the Chadwick Declaration and will file a supplemental declaration regarding a
18 correction to the same.

19 7. Prime objects to the Chadwick Declaration at ¶ 14, lines 20-25 regarding a statement
20 made by Steve Aleman solely on the basis of Fed. R. Evid. 408. This topic, and the statements of
21 Mr. Aleman, were initially raised by Prime in its motion and in the Declarations of Joel Richlin
22 (¶ 9) and Steve Aleman (¶ 12) and Prime’s Exhibits 5 and 6 in support of its own Motion. The door
23 to this evidence was opened by Prime.

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1 Dated: October 4, 2021

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