

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

Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In Re

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

Debtors and Debtors in Possession.

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

) CHAPTER 11

) **OBJECTION BY CREDITOR**
) **CALIFORNIA NURSES ASSOCIATION**
) **TO MOTION FOR ENTRY OF FINAL**
) **ORDER: (I) AUTHORIZING THE**
) **DEBTORS TO (A) PAY PREPETITION**
) **EMPLOYEE WAGES AND SALARIES,**
) **AND (B) PAY AND HONOR EMPLOYEE**
) **BENEFITS AND OTHER WORKFORCE**
) **OBLIGATIONS; AND (II)**
) **AUTHORIZING AND DIRECTING THE**
) **APPLICABLE BANK TO PAY ALL**
) **CHECKS AND ELECTRONIC PAYMENT**
) **REQUESTS MADE BY THE DEBTORS**
) **RELATING TO THE FOREGOING**
) **[Docs. 22, 75]**

- 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

) Emergency Hearing:

) Date: October 3, 2018

) Time: 10:00 AM

) Place: Courtroom 1568

) U.S. Bankruptcy Court

) 255 East Temple Street

) Los Angeles, CA 90012

) Judge: The Honorable Ernest M. Robles

Debtors and Debtors in Possession.



1 The California Nurses Association (“CNA”), a creditor and party in interest in the
2 Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the
3 “Debtors”), submits this objection (the “Objection”) to the *Motion for Entry of Final Order: (1)*
4 *Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and*
5 *Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and*
6 *Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by*
7 *the Debtors Relating to the Foregoing* (the “First Day Wage Order”). In support of this
8 Objection, CNA respectfully represents as follows:

9 **BACKGROUND**

10 1. On August 31, 2018 (the “Commencement Date”), the Debtors each commenced
11 a voluntary case under Chapter 11 of title 11 of the United States Code (the “Bankruptcy
12 Code”).

13 2. The Debtors have been authorized to remain in possession of their property and
14 continue in operation and management of their businesses as debtors-in-possession pursuant to
15 sections 1107(a) and 1108 of the Bankruptcy Code.

16 3. On the Commencement Date, Debtors filed an *Emergency Motion of Debtors for*
17 *Entry of Order: (1) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and*
18 *Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II)*
19 *Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment*
20 *Requests Made by the Debtors Relating to the Foregoing* (the “Emergency Motion”) [Doc. 22].

21 4. On September 5, 2018, the Court granted the Emergency Motion pending a final
22 hearing on it on October 3, 2018 [Doc. 75].

23 5. CNA represents approximately 1,500 of the Debtors’ registered nurse employees
24 at four of the Debtors’ entities: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital
25 (“SLRH”), St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”),
26 including Seton Medical Center Coastside campus (“SMCC”). The Debtors and CNA are
27 parties to a total of four collective bargaining agreements (“CBAs”) that define the respective
28 rights of the Debtors and CNA-represented employees, including, without limitation, pay,

1 working conditions and health and welfare and pension benefits payable to CNA-represented
2 employees (“CNA members”).

3 6. In compensation for their ongoing service to Debtors, CNA members employed
4 at OCH, SLRH, SMC and SMCC are presently accruing new benefits in a multiemployer
5 defined benefit pension plan sponsored by Debtors called the Retirement Plan for Hospital
6 Employees (the “RPHE”).

7 7. In compensation for their ongoing service to Debtors, CNA members employed
8 at SVMC are presently accruing new benefits in a single-employer defined benefit pension plan
9 sponsored by Debtors called Verity Retirement Plan A (“Plan A”).

10 8. In addition to CNA members, many of Debtors’ other employees are represented
11 by other unions, *e.g.*, the Service Employees International Union (“SEIU”), National Union of
12 Healthcare Workers (“NUHW”), United Nurses Association of California (“UNAC”), and the
13 International Union of Operating Engineers, Stationary Local No. 39 (“Local 39 Stationary
14 Engineers”).

15 **PRELIMINARY STATEMENT**

16 9. CNA objects to the First Day Wage Order on the grounds that, as currently
17 drafted, it provides preferential treatment to the members of certain unions, specifically SEIU
18 and Local 39 Stationary Engineers while neglecting the rights of CNA members and other
19 unions. Such disparate treatment will negatively affect the morale of Debtor’s registered nurses
20 and impact Debtors’ ability to efficiently operate their businesses during reorganization. The
21 discrepancies in treatment among the various unions can be addressed through modifying
22 Paragraphs 4, 7, 21 and 23 of the First Day Wage Order as noted below.

23 **OBJECTION**

24 10. CNA respectfully requests revision of Paragraph 4 of the First Day Wage Order
25 since it implies that only SEIU members have a right to object to payroll errors regarding the
26 prepetition Wages covered by the Order. The Order also confusingly singles out the SEIU
27 CBA as the only CBA to which Debtors are required to honor. This drafting is misleading
28 since Debtors are required to honor all CBAs unless this Court permits their rejection through

1 an appropriate § 1113 motion by Debtors. Additionally, all non-SEIU represented employees
2 should maintain all rights under state and federal law, as well as their own CBAs, to challenge
3 any payroll errors. Accordingly, CNA requests the following additions to Paragraph 41:

4 “4. To honor the collective bargaining agreements (“CBA”) with SEIU, and
5 remedy, through payment, any error identified by any Employee represented by SEIU
6 regarding payroll made on August 30, 2018 on account of prepetition Wages; provided,
7 however, that the Employee shall identify such errors within 24 hours of payroll in
8 accordance with the CBA. For the avoidance of doubt, Debtors will honor all valid
9 CBAs to which it is a party and non-SEIU represented employees retain all rights to
10 challenge payroll errors made regarding such prepetition Wages under state and federal
11 law, and any applicable collectively bargained grievance processes.”

12 11. CNA objects to Paragraph 7 of the First Day Wage Order on the grounds that it
13 privileges the pension obligations owed to the Local 39 Stationary Engineers Pension Plan over
14 those owed to the other retirement plans to which Debtor contributes, as well as offers special
15 treatment to the SEIU Training and Upgrade Fund. As demonstrated in Paragraph 35 of the
16 Emergency Motion [Doc. 22, p. 14:16-25], the \$176,524 Debtors requested be made available
17 to pay such “Union Obligations” is predominantly (and possibly entirely) an estimate of
18 monthly contributions due to the Local 39 Stationary Engineers Pension Trust. The description
19 of this cost makes no mention of whether this amount is due to a prepetition priority claim,
20 subject to the priority dollar cap limit contained in Bankruptcy Code section 507(a)(5), or a
21 postpetition claim entitled to administrative priority. To the extent, the amount claimed is due
22 to a prepetition priority claim, it is more appropriately included with the other pension plan
23 prepetition priority claims in Paragraph 21 of the Order where it states these plan payments are
24 subject to the priority cap. Conversely, to the extent this amount is for postpetition

25

26

27

28

¹ Throughout this Objection, CNA has struck through words it requests that this Court delete and double-underlined words it wishes to have added. All single-underlined words and so underlined in the Order as currently drafted.

1 administrative expenses related to pension accruals for active employees, this amount is already
2 explicitly provided for in Paragraph 23 of the Order.

3 12. Additionally, Paragraph 35 of the Emergency Motion also refers to contributions
4 that are owed to the SEIU Training and Upgrade Fund that are due in February 2019 as part of
5 the “Union Obligations” and states that this amount is “not currently owing.” Based on the
6 Emergency Motion, it is unclear what, if any, part of the \$176, 524 is related to contributions
7 due to this Training and Upgrade Fund. Furthermore, it is unclear which of these amounts
8 relate to prepetition priority claims and so subject to the priority cap limit or postpetition
9 administrative expenses. CNA does not object to the payment of contributions to the Training
10 and Upgrade Fund, but it should be made on the same basis as payments to the other employee
11 benefit plans based on whether the amount due is a prepetition priority claim, a postpetition
12 administrative expense, or a combination thereof.

13 13. Accordingly, rather than state ambiguously that “Union Obligations” will be
14 paid, Paragraph 7 of the First Day Wage Order should be amended to explicitly state whether it
15 refers to prepetition priority claims subject to the cap or administrative expenses paid in the
16 ordinary cost of business that relate to the SEIU Training and Upgrade Fund. No reference
17 should be made to the Stationary Engineers Local 39 Pension Plan since treatment of
18 contributions to that plan are more appropriately addressed under Paragraphs 21 and 23 with all
19 of the other defined benefit pension plans. Therefore, CNA requests that Paragraph 7 be
20 deleted in its entirety and replaced with the following sentence:

21 “7. To honor and pay all accrued and unpaid prepetition contributions due to the
22 SEIU Training and Upgrade Fund, subject to the extent there is availability under the
23 priority cap of §§ 507(a)(4) and (a)(5). To continue to pay in ordinary course of their
24 business, postpetition contributions to the SEIU Training and Upgrade Fund.”

25 14. CNA seeks modification of Paragraph 21 of the First Day Wage Order so that it
26 mirrors the language in the preceding paragraphs regarding prepetition obligations and requires
27 payment of these expenses, as opposed to merely permitting them as it is currently drafted.
28 Specifically, CNA respectfully requests the following modifications noted below so that that all

1 pension plan prepetition priority claims are treated in the same manner as other prepetition
2 priority claims related to employee wages and benefits. CNA also requests the deletion of the
3 word “of” in the last clause for clarity:

4 “21. To the extent not expressly identified above, prepetition wages and benefits,
5 including contributions that may be due or arise on all defined contribution plans and
6 defined benefit plans, ~~may~~ shall be paid as a priority claim to the extent there is
7 availability ~~of~~ under the priority cap of §§ 507(a)(4) and (a)(5);”

8 15. CNA seeks modification of Paragraph 23 of the First Day Wage Order to also
9 include reference to the Pension Plans in which CNA members are actively earning new
10 benefits, in addition to the Stationary Engineers Local 39 Pension Plan which is already
11 incorporated into this paragraph. Such claims due to new new accruals earned postpetition are
12 entitled to administrative priority. *PBGC v. Sunarhauserman*, 126 F.3d 811, 819 (6th Cir.
13 1997). Accordingly, CNA seeks the following revision of Paragraph 23:

14 “23. To continue to pay, in the ordinary course of their business, Employee-related
15 expenses and obligations that accrue postpetition in the ordinary course of Debtors’
16 business. For the avoidance of doubt, this includes postpetition contributions for active
17 Employees into the Local 39 Stationary Engineers defined benefit pension plan and
18 trust and contributions for active California Nurses Association Represented Employees
19 accruing new benefits into the Retirement Plan for Hospital Employees and Verity
20 Health System Retirement Plan A.”

21 16. CNA also objects to the First Day Wage Order to the extent that it does not
22 contemplate payments due to Plan A or the RPHE for funding obligations necessary to
23 maintain these pension plans. CNA supports the objections raised by SEIU in this matter
24 which state that the failure to fund these pension obligations violates existing CBAs which
25 Debtors are obligated to adhere to until rejected pursuant to §1113. *SEIU-UHW’s Objections*
26 *to Motion for Order (1) Authorizing the Debtors to (A) Pay Prepetition Employees Wages and*
27 *Salaries, etc.* [Doc. 213, pp. 6-9]. CNA also supports the objections raised by RPHE to the
28 *Motion for A Final Order Regarding Postpetition Financing* [Doc. 31] which demonstrates

1 that contributions necessary to meet funding obligations are entitled to administrative expense
2 priority [Doc. 218, pp. 4-6].
3

4 Wherefore, CNA respectfully requests that the Order be modified in accordance with
5 this Objection.
6

7 Dated: September 19, 2018

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

8

9

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

In re: Verity Health Systems of California, Inc.
Case No. 2:18-bk-20151-ER

I am over the age of 18 years, employed in the County of Alameda, and not a party to the within action. My business address is 155 Grand Avenue, Oakland, California 94612.

I certify that on September 19, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Bankruptcy Court, Central District of California, by using the CM/ECF System.

Participants in the matter who are registered CM/ECF users will be served by the Court's CM/ECF system.

I further certify that some of the participants in the matter are not registered CM/ECF users. On September 19, 2018, I served the following non-CM/ECF participants by First Class United States Mail:

Sam J Alberts
DENTONS US LLP
1900 K Street NW
Washington, DC 20006

Alicia Berry California Attorney General
300 South Spring St Ste 1702
Los Angeles, CA 90013

Daniel S Bleck Mintz, Levin, et al
One Financial Center
Boston, MA 02111

Nathan F Coco McDermott Will & Emery
444 West Lake Street
Chicago, IL 60606-0029

Ian A Hammel
Mintz Levin Cohn Ferris Glovsky & Popeo
One Financial Center
Boston, MA 02111

1 Donald R Kirk
2 Carlton Fields Jordan Burt, P.A.
3 4221 W. Boy Scout Blvd., Suite 1000
4 Tampa, FL 33607-5780

5 Claude D Montgomery
6 Dentons US LLP
7 1221 Avenue of the Americas
8 New York, NY 10020-1001

9 Megan Preusker
10 McDermott Will & Emery
11 444 West Lake Street
12 Chicago, IL 60606-0029

13 Jason Reed
14 Maslon LLP
15 3300 Wells Fargo Center
16 90 S Seventh St
17 Minneapolis, MN 55402

18 Paul J Ricotta
19 Mintz Levin Cohn Ferris Glovsky and Pope
20 Chrysler Center
21 666 Third Ave
22 New York, NY 10017

23 Ryan Schultz
24 Fox Swibel Levin & Carroll LLP
25 200 W. Madison Street, Suite 3000
26 Chicago, IL 60606

27 Clark Whitmore
28 Maslon LLP
3300 Wells Fargo Center
90 S 7th St
Minneapolis, MN 55402

John Ryan Yant
Carlton Fields Jordan Burt, P.A.
4221 W. Boy Scout Blvd., Suite 1000
Tampa, FL 33607-5780

s/ Rob Craven

Rob Craven