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California/Union of Health Care Professionals  
("UNAC")

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

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

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

Debtors and Debtors in Possession

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

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

Hon. Ernest M. Robles

**LIMITED OBJECTION OF UNAC TO  
DEBTORS' MOTION FOR ENTRY OF  
FINAL ORDER TO PAY PREPETITION  
EMPLOYEE WAGES, ETC.**

Date: October 3, 2018  
Time: 10:00 a.m.  
Crtrm: Courtroom 1568  
255 East Temple Street  
Los Angeles, CA 90012



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1 The United Nurses Associations of California/Union of Health Care Professionals  
2 (“UNAC”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-  
3 captioned debtors-in-possession (collectively, the “Debtors”), respectfully object to the Debtors’  
4 *Motion for Entry of Final Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee*  
5 *Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce*  
6 *Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay all Checks and*  
7 *Electronic Payment Requests Made by the Debtors Relating to the Foregoing* (the “First Day  
8 Wage Motion”). UNAC-represented employees of the Debtors obviously are advantaged by  
9 Debtor authority to pay wages and benefits throughout the bankruptcy, particularly with respect to  
10 reach-back on pre-petition wage payments in process when the Debtors’ petitions were filed. But  
11 UNAC must object to the lack of clarity concerning Debtors’ intentions or scope of payment  
12 authority with respect to certain pension plan benefits inuring to the benefit of UNAC-represented  
13 employees, and also to certain provisions of the First Day Wage Order that could be interpreted as  
14 providing rights for some – but not all – of the Debtors’ union-represented employees.

15 **BACKGROUND**

16 1. Since 1992, UNAC has represented a unit of 850 nurses, all of whom provide  
17 services to the Debtors at its St. Francis Medical Center facility.

18 2. The current iteration of the collective bargaining agreement (“CBA”) in effect  
19 between UNAC and St. Francis Medical Center is effective from December 29, 2017 through  
20 December 29, 2021.

21 3. In addition to wages and working conditions, the CBA mandates payment of  
22 pension benefits for UNAC-represented employees, as partial compensation for their services to  
23 the Debtors. Articles 1901 through 1913 of the CBA establish the rights of UNAC-represented  
24 employees in a defined benefit plan generally known as the Verity Health System Retirement  
25 Plan A (“Retirement Plan A”), which is characterized as having been “frozen” since January 1,  
26 2012. UNAC understands that Retirement Plan A encompasses employees represented by unions  
27 in addition to UNAC; specifically, the Service Employees International Union, United Health  
28 Care Workers-West (“SEIU-UHW”) and the California Nurses Association (“CNA”).

1 4. Articles 1914 through 1923 of the CBA establish the rights of UNAC-represented  
2 employees in a specific defined contribution plan, “fully funded by the employer,” known as the  
3 “Retirement Plan Account” (the “RPA”), and apparently intended as a substitute for the frozen  
4 Retirement Plan A. The CBA further describes the rights of UNAC-represented employees in  
5 other defined contribution plans, some with employer-matching components, but funded primarily  
6 by employee contributions (collectively, the “Miscellaneous Defined Contribution Plans”).

7 5. On August 31, 2018 (the “Petition Date”), each Debtor commenced a voluntary  
8 case under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

9 6. On September 5, 2018, this Court granted an order (the “First Day Wage Order”)  
10 approving the First Day Wage Motion on an interim basis [Docket No. 75], pending a final  
11 hearing on October 3, 2018.

12 **OBJECTION**

13 7. Bankruptcy Code section 1113 is the exclusive means by which a debtor may reject  
14 or modify a collective bargaining agreement in chapter 11 cases. If a CBA is not rejected or  
15 modified in accordance with section 1113, the debtor’s obligations pursuant to such CBAs  
16 continue post-petition, right through and beyond confirmation. Post-petition claims arising out of  
17 a CBA – such as payments to a pension plan – are entitled to priority status as administrative  
18 expense claims and must be paid. *In re World Sales, Inc.*, 183 B.R. 872 (B.A.P. 9th Cir. 1995).

19 8. UNAC objects to the First Day Wage Motion and First Day Wage Order (as  
20 applicable on a final basis) to the extent they do not clearly provide for payment of pension  
21 benefits for UNAC-represented employees in connection with Retirement Plan A, the RPA, or any  
22 other pension vehicle applicable to UNAC-represented employees. Payment of pension benefits is  
23 a critical element of the compensation package negotiated by UNAC with the Debtors, and  
24 UNAC-represented employees should not be subjected to uncertainty or non-payment of this  
25 compensation, even while they are continuing to provide services for the benefit of the Debtors.  
26 Any non-payment of pension benefits violates the CBA, and post-petition non-payment is  
27 tantamount to unilateral modification of the CBA, which is impermissible under Bankruptcy Code  
28 section 1113. And any consequent diminution of employee morale, particularly for professional

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workers providing critical care to Debtors' patients, would reflect a poor business decision that fails to maximize Debtors' value, and frustrates performance of Debtors' ultimate health care mission.

9. Any Final Order on the First Day Wage Motion should therefore explicitly provide for payment of Debtors' pension obligations to UNAC-represented employees: as post-petition claims payable in full under Bankruptcy Code section 1113(f) and as administrative expenses under Bankruptcy Code section 503(b)(1)(a)(i); as priority claims under Bankruptcy Code section 507(a)(5) for applicable claims accruing within 180 days prior to the Petition Date; and on any other basis this Court may choose to recognize with respect to other, existing defaults.

10. Any Final Order on the First Day Wage Motion also should be modified so as to provide that union rights and remedies pertaining to each of the Debtors' collective bargaining units are stated and honored in equal measure across the entire union-represented group. In its objection to the First Day Wage Motion and Final Order [Docket No. 229], CNA identified several provisions in the First Day Wage Order that appear to provide superior rights to Debtors' employees working under collective bargaining agreements with the SEIU-UHW, or with the International Union of Operating Engineers, Stationary Local No. 39 (the "Local 39 Stationary Engineers"). For the reasons stated by CNA, UNAC joins in urging revision of Paragraphs 4, 7, 21 and 23 of the First Day Wage Order. Beyond the morale issues that would be created by such discrepancies across these various bargaining units, selective protection of CBA rights in effect constitutes impermissible unilateral modification of CBA terms for those contracts that are not accorded equal consideration. Unless rooted in explicit differentials among Debtors' collective bargaining agreements, this sort of disparate treatment is inconsistent with the fundamental bankruptcy principle of equal treatment for all members of a given creditor class. *See, e.g.*, 11 U.S.C. § 1122(a).

11. In this vein, UNAC proposes that CNA's proposed edit to Paragraph 23 be further amended, so as to reflect UNAC interests:

"23. To continue to pay, in the ordinary course of their business, Employee-related expenses and obligations that accrue postpetition in the ordinary course of business. For

1 the avoidance of doubt, this includes postpetition contributions for active Employees into  
2 the Local 39 Stationary Engineers defined benefit pension plan and trust and contributions  
3 for active California Nurses Association Represented Employees and UNAC-represented  
4 Employees accruing new benefits into the Retirement Plan for Hospital Employees, Verity  
5 Health System Retirement Plan A, or the Retirement Plan Account, as applicable.  
6 (italicized emphasis added).

7 WHEREFORE, UNAC respectfully requests that any Final Order on the First Day Wage  
8 Motion provide for (i) the fullest possible protection of pension benefits for UNAC-represented  
9 employees; (ii) equal enforcement rights and claim characterization under each and all of the  
10 Debtors' collective bargaining agreements; and (iii) such other relief as this Court might find just  
11 and proper.

12  
13 DATED: September 25, 2018

BUSH GOTTlieb, A Law Corporation

14  
15 By: /s/ Joseph A. Kohanski  
16 JOSEPH A. KOHANSKI  
17 Attorneys for United Nurses Associations of  
18 California/Union of Health Care Professionals  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**801 N. Brand Blvd. suite 950, Glendale, CA 91203**

A true and correct copy of the foregoing document entitled (*specify*): **LIMITED OBJECTION OF UNAC TO DEBTORS' MOTION FOR ENTRY OF FINAL ORDER TO PAY PREPETITION EMPLOYEE WAGES, ETC.**

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 25, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On **September 25, 2018**, 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 **September 25, 2018**, 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.

**SERVED BY PERSONAL DELIVERY**

Honorable Ernest M. Robles  
United States Bankruptcy Court  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1560/Courtroom 1568  
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 25, 2018      Nelly Guzman  
Date                      Printed Name

/s/Nelly Guzman  
Signature

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