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

9 In re

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

12 Debtors and Debtors In
13 Possession.

14 Affects All Debtors

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

29 Debtors and Debtors In
30 Possession.

Lead Case No. 18-20151-ER

Jointly Administered With:

- CASE NO.: 2:18-bk-20162-ER
- CASE NO.: 2:18-bk-20163-ER
- CASE NO.: 2:18-bk-20164-ER
- CASE NO.: 2:18-bk-20165-ER
- CASE NO.: 2:18-bk-20167-ER
- CASE NO.: 2:18-bk-20168-ER
- CASE NO.: 2:18-bk-20169-ER
- CASE NO.: 2:18-bk-20171-ER
- CASE NO.: 2:18-bk-20172-ER
- CASE NO.: 2:18-bk-20173-ER
- CASE NO.: 2:18-bk-20175-ER
- CASE NO.: 2:18-bk-20176-ER
- CASE NO.: 2:18-bk-20178-ER
- CASE NO.: 2:18-bk-20179-ER
- CASE NO.: 2:18-bk-20180-ER
- CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

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

[Related Docket No. 4081, 4202, 4203]

Hearing:

Date: March 17, 2020

Time: 10:00 a.m.

Location: Courtroom 1568

255 E. Temple St., Los Angeles, CA

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REPLY TO OPPOSITIONS¹

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

I.

INTRODUCTION

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

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

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

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

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

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

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

9 **II.**

10 **REPLY**

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

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

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

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

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

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

1
2 The Code’s only requirement is that administrative claims be paid
3 in full as of the effective date of a Plan, unless the administrative
4 claimant agrees to different treatment. § 1129(a)(9). In any
5 bankruptcy case, there is always some risk that there will not be
6 sufficient cash available at the confirmation stage to pay all
7 administrative claimants in full. The existence of such risk does not
8 mean that the Debtors are neglecting their fiduciary duties or are
9 failing to operate their businesses prudently.

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

11
12 Second, the argument is based upon a speculative, hypothetical harm and, as such, does not
13 provide an actual controversy that may be adjudicated, let alone justify denial of the Motion. *See,*
14 *e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (finding that constitutional
15 standing requires a showing of an “injury in fact” that is “an invasion of a legally protected interest
16 which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical”)
17 (internal citations and quotations omitted); *O’Shea v. Littleton*, 414 U.S. 488, 493-94 (1974)
18 (“Plaintiffs in the federal courts must allege some threatened or actual injury resulting from
19 putatively illegal action before a federal court may assume jurisdiction [...] Abstract injury is not
20 enough. It must be alleged that the plaintiff has sustained or is immediately in danger of sustaining
21 some direct injury as the result of the challenged statute or office conduct.”) (citations omitted);
22 *Cal. Energy Res. Conservation & Dev. Comm’n v. Johnson*, 807 F.2d 1456, 1463 (9th Cir. 1986)
23 (“A decision at this juncture would resolve a dispute about hypothetical rates. Courts have no
24 business adjudicating the legality of non-events.”) (citation omitted); *Shuckett v. DialAmerica*
25 *Marketing, Inc.*, Case No. 17-cv-2073, 2019 WL 3429184, at *3 (S.D. Cal. Jul. 30, 2019) (“[The]
26 evidence here only supports a finding of conjectural or hypothetical injury, and does not give the
27 Court subject-matter jurisdiction.”).

28
29 Third, as the representative of general unsecured creditors, the Committee does not have
30 standing to assert the concerns (hypothetical or otherwise) of administrative creditors who they do
31 not represent. The Debtors recognize the general grant to parties-in-interest, including official
32 committees of unsecured creditors, to weigh-in on issues that arise in a bankruptcy case. 11 U.S.C.
33 § 1109(b). Notwithstanding this general grant, however, courts should take into account a party’s

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

19 Fourth, it is worth reemphasizing that the Bonus Programs are, in the first instance, to be
20 paid from the secured lender’s Cash Collateral. This carve-out is the same form of treatment as
21 provided to SEIU-UHW under the Settlement Agreement. As such, SEIU-UHW’s assertion that
22 the Bonus Program is deficient because it may provide some payments in advance of the secured
23

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

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

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

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

12 In support, SEIU-UHW attempts to rely upon the decision in *In re Pilgrim’s Pride Corp.*,
13 401 B.R. 229 (Bankr. N.D. Tex. 2009) for the principle that the Court should apply some
14 amorphous, heightened standard rather than the business judgment test. This argument fails for
15 several reasons. First, this Court, relying on New York and Delaware case authority, has utilized
16 the business judgment test and in doing so recognized that “[t]he majority of courts have found that
17 this [§ 503(c)(3)] standard is no different from the business judgment standard under § 363(b).”
18 *See Hearing Re: [Docket No. 631] Motion /Notice of Motion For Entry of Order Authorizing and*
19 *Approving (I) Key Employee Incentive Plan, and (II) Key Employee Retention Plan; Memorandum*
20 *of Points and Authorities In Support Thereof; Declarations of Richard G. Adcock and Christopher*
21 *J. Kearns Filed Concurrently Herewith [Docket No. 814, at 53] and Hearing Re: [Docket No. 3240]*
22 *Motion Debtors’ Notice of Motion and Motion for Entry of an Order Amending Key Employee*
23 *Incentive Plan; Memorandum of Points and Authorities In Support Thereof; Declaration of Richard*
24 *G. Adcock Filed Concurrently Herewith [Docket No. 3550, at 18-19].* Second, *Pilgrim’s Pride*
25 addressed an issue of a noncompetition agreement. As such, *Pilgrim’s Pride* is distinguishable
26 from the present matter that seeks approval of Amendments to Bonus Programs designed to
27 motivate employees to go above and beyond what is currently required of them, not to merely
28

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

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

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

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

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

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

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

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

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

1 petition financing facility required the Debtors to obtain the
2 approval of their post-petition lenders before presenting the KEIP to
3 the Court, and the post-petition lenders asked the Debtors to obtain
4 stalking horse bids before seeking approval of the KEIP. (ECF Doc.
5 274 ¶ 1.) Once the KEIP Motion was filed, the hearing was delayed
6 further to allow the Debtors to negotiate the terms of the KEIP with
7 the U.S. Trustee. The Court will not punish the Debtors for this delay
8 by discounting the work the KEIP Participants have already
9 performed. The Debtors and their financial advisors developed the
10 KEIP in August 2018 [three months before decision] and the KEIP
11 Participants operated with the understanding that the Debtors would
12 be seeking authority to implement the KEIP. The Court sees no issue
13 with reviewing a KEIP that was designed to incentivize work that is
14 already partially performed. *See In re Mesa Air Grp., Inc.*, 2010 WL
15 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving
16 incentive plan that awarded payments for services already
17 rendered).

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

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

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

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

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1 369 (Bankr. C.D. Cal. 2003). In fact, contrary to SEIU-UHW’s assertion, the Debtors sought and
2 obtained authority to make pension contributions for employees whose pensions benefits were not
3 frozen. Docket No. 612, at 7, ¶ 24.⁸ Next, SEIU-UHW asserts, “[t]he Debtors failed to pay the
4 severance required under the collective bargaining agreement to employees who lost their jobs at
5 Saint Louise Regional Hospital and O’Connor Hospital, and instead successfully rejected its
6 obligation to pay these modest amounts.” SEIU-UHW Opposition, at 2. Again, SEIU-UHW
7 forgets to mention that it had been offered an opportunity to preserve such severance claims – as
8 provided to two other unions –but chose instead to reject the § 1113 proposal offered by the Debtors
9 in connection with the disposition of those two hospitals to Santa Clara County. *Cf. See* Docket
10 No. 1577 (order reflecting approval of § 1113 rejection of SEIU-UHW CBA, including element
11 that union did not accept proposal for good cause), *with* Docket Nos. 1575 & 1576 (orders granting
12 consensual rejection of collective bargaining agreement with accepting unions).

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

19 **III.**

20 **CONCLUSION**

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

24
25
26 _____
27 ⁸ Authorizing Debtors “to continue to pay, in the ordinary course of their business, Employee-
28 related expenses and obligations that accrue postpetition in the ordinary course of the Debtors’
business [including] . . . postpetition contributions for active Employees . . . into defined benefit
pension plan[s].” *See also Declaration of Carlos De La Parra In Support of Debtors’ Omnibus
Response to Objections to Motion to Pay Employee Wages and Salaries* [Docket No. 310-1].

1 Dated: March 10, 2020

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DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

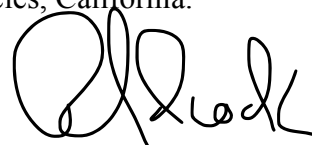
1. I make this declaration (the "Declaration") in support of the *Debtors' Motion for Entry of Order Amending Key Employee Incentive Plan and Key Employee Retention Plan* (the "Motion") and the reply attached hereto. Unless otherwise defined, capitalized terms used herein shall have the same meaning as in the Motion and the Reply to which this Declaration is attached.

2. At the time of their separation of employment from St. Vincent, all employees, including those represented by SEIU-UHW, received all postpetition unpaid wages and unused postpetition paid time off.

3. Attached hereto as **Exhibit "A"** is a copy of the March 3, 2020 Settlement Agreement.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 10th day of March 2020, at Los Angeles, California.



RICHARD G. ADCOCK

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

Exhibit "A"

Settlement Agreement

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

Recitals

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, SVMC no longer provides medical care to patients;

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

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

NOW THEREFORE, the Parties agree as follows:

Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AGREED TO:


SEIU-UHW

By:



The Debtors

By:


3/3/2020