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Attorneys for Medline Industries, Inc.

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

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

- 13
- 
- 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.  
 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

Chapter 11 Cases

Hon. Ernest M. Robles

**MEDLINE INDUSTRIES, INC.'S  
MOTION TO COMPEL PAYMENT OF  
ADMINISTRATIVE CLAIM, OR IN  
THE ALTERNATIVE, TO DISALLOW  
FURTHER PAYMENT OF  
PROFESSIONAL FEES**



1  
2 **TO THE HONORABLE ERNEST M. ROBLES, UNITED STATES BANKRUPTCY**  
3 **JUDGE; THE DEBTORS; AND ALL OTHER INTERESTED PARTIES:**

4 Medline Industries, Inc. ("Medline"), by its undersigned counsel, respectfully submits this  
5 Motion to Compel Payment of Medline's Administrative Claim, or in the Alternative, to Disallow  
6 Further Payment of Professional Fees (the "Motion to 'Compel'") and states as follows:

7 **I.**  
8 **STATEMENT OF RELEVANT FACTS**

9 1. On August 31, 2018 ("Petition Date"), Verity Health System of California, Inc.  
10 ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the  
11 above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), each filed a voluntary  
12 petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

13 2. On February 20, 2019, the Debtors filed *Debtors' Notice and Motion for Approval*  
14 *of Compromise with Medline Industries, Inc. Pursuant to Federal Rule of Bankruptcy Procedure*  
15 *9019; Declarations of Richard G. Adcock and Peter C. Chadwick in Support Thereof* [Docket No.  
16 1591] (the "9019 Motion") seeking this Court's approval of that certain settlement agreement  
17 between the Debtors and Medline attached as Exhibit A to the 9019 Motion (the "Settlement  
18 Agreement").

19 3. On March 22, 2019, the Court entered the *Order Granting Debtors' Motion for*  
20 *Approval of Compromise with Medline Industries, Inc. Pursuant to Federal Rule of Bankruptcy*  
21 *Procedure 9019* [Docket No. 1887] (the "9019 Order") approving and authorizing entry into the  
22 Settlement Agreement.

23 4. Copies of the 9019 Motion and 9019 Order are attached hereto as Exhibit A.

24 5. Additionally, pursuant to *The Final Order Granting Debtors' Emergency Motion*  
25 *for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors*

1 [Docket No.436] (the “Critical Vendor Order”), the Debtors and Medline entered into two separate  
2 letter agreements (the “Critical Vendor Agreements”): (i) a critical vendor agreement dated  
3 September 17, 2018, under which Medline agreed to continue to supply goods to the Debtors on  
4 “Customary Trade Terms” in exchange for partial payment of Medline’s agreed trade claim  
5 totaling \$3,535,025.00; and (ii) a critical vendor agreement, dated November 27, 2018, under  
6 which Medline agreed to continue to provide services under the Daughters of Charity Health  
7 System Master Purchase Agreement dated as of December 1, 2015 (as amended on May 1, 2017  
8 to, among other things, substitute the Debtors for Daughters of Charity Health System as a party)  
9 (the “TexCap Agreement”) in exchange for partial payment of Medline’s agreed claim under the  
10 TexCap Agreement in the amount of \$314,167.72.

11  
12 6. Pursuant to the Critical Vendor Agreements, the Debtors and Medline agreed that  
13 (i) Medline holds a valid administrative priority claim against the Debtors pursuant to Section  
14 503(b)(9) of the Bankruptcy Code in the amount of \$1,281,126 (as reduced by payment from the  
15 Debtors, the “Section 503(b)(9) Claim”) and (ii) “[t]he Section 503(b)(9) Claim shall be an allowed  
16 administrative expense claim in the Bankruptcy Cases and paid upon the effective date of a plan  
17 of reorganization, or earlier at the Debtors’ discretion, and in accordance with the applicable  
18 provisions of the Bankruptcy Code and orders of the Bankruptcy Court.”

19 7. On October 4, 2019, Medline filed *Medline Industries, Inc.’s Protective*  
20 *Application for Allowance of Administrative Claim Under 11 U.S.C. §§ 503(a) and (b)* [Docket  
21 No. 3229] (the “Protective Application”).

22 8. Since filing the Protective Application, on April 20, 2020, the Debtors paid Medline  
23 \$265,216.15 of the Section 503(b)(9) Claim, leaving a balance of \$1,015,909.90.  
24  
25

1  
2 **II.**  
3 **JURISDICTION**

4 9. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334.  
5 Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding  
6 pursuant to 28 U.S.C. §157(b). The statutory predicates for the relief sought by the motion is 11  
7 U.S.C. § 503(a) and (b).

8 **III.**  
9 **DISCUSSION**

10 10. Pursuant to the Settlement Agreement and the 9019 Order, the Section 503(b)(9)  
11 Claim constitutes an allowed claim. At the time Medline entered into the Critical Vendor  
12 Agreements, Medline never anticipated that these cases would continue to languish for almost two  
13 years, nor did Medline believe that the Debtors would not confirm a plan and withhold payment  
14 of the Section 503(b)(9) Claim for well over a year from entry of the 9019 Order. Unfortunately,  
15 that is exactly what has occurred here. To the surprise and detriment of Medline, however, the  
16 Debtors continue to pay other administrative claims, including professional fees, that are *pari*  
17 *passu* with Medline's Section 503(b)(9) Claim.

18 11. Medline, as a critical vendor of the Debtors, has provided goods in a timely and  
19 efficient manner, as the Debtors have requested. Even currently, during this unprecedented  
20 COVID-19 pandemic, Medline has gone above and beyond to ensure the Debtors receive the  
21 medical supplies and equipment needed to safely operate these facilities under extraordinary  
22 conditions. Yet, the Debtors do not believe it is appropriate to pay the remaining balance of  
23 Medline's Section 503(b)(9) Claim, when they have the funds to do so. In fact the Debtors appear  
24 to believe the opposite, paying only a small portion of Medline's Section 503(b)(9) Claim and  
25

1 refusing to pay the remaining balance, while at the same time continuing to pay professionals in  
2 these cases.

3 12. To put it simply, the Debtors are sitting on over \$130 million from the proceeds of  
4 the sale of St. Vincent Medical Center and St. Vincent Dialysis Center, which closed in April 2020.

5 13. There is zero justification for the Debtors to withhold payment of Medline's Section  
6 503(b)(9) Claim at this point in these cases. In fact, the total of all allowed 503(b)(9) claims in  
7 these cases is only approximately \$7 million. A small fraction of the Debtors' current available  
8 cash.

9 14. The Debtors do not have a crystal ball to predict the success or failure of these  
10 cases. After almost two years in bankruptcy, administrative solvency remains uncertain. Medline  
11 should not bear the risk of less than full payment if the Debtors are ultimately rendered  
12 administratively insolvent. During the month of March 2020 alone, the Debtors had operating  
13 disbursements of over \$75 million [Docket No. 4657]. There is no reason the Debtors should not  
14 be compelled to pay Medline's Section 503(b)(9) Claim, which is minuscule when compared to  
15 the disbursements reflected in the Debtors' operating budget.

16 15. Other courts have held that where a claimant timely files a request for payment of  
17 an administrative expense under section 503 of the Bankruptcy Code, the timing of the payment  
18 of that administrative expense claim is left to the discretion of the Court. *In re Garden Ridge*  
19 *Corporation*, 323 B.R. 136 (Bankr.D.Del.2005); *In re Colortex Industries, Inc.*, 19 F.3d 1371,  
20 1348 (11th Cir. 1994); *In re Continental Airlines, Inc.*, 146 B.R. 520, 531 (Bankr. D. Del.1992).

21 16. "In making this determination, one of the chief factors courts consider is  
22 bankruptcy's goal of an orderly and equal distribution among creditors and the need to prevent a  
23 race to a debtor's assets." *In re HQ Global Holdings, Inc.*, 282 B.R. 169 (Bankr.D.Del.2002).  
24  
25

1 Distributions to administrative claimants are generally disallowed prior to confirmation if there is  
2 a showing that the bankruptcy estate may not be able to pay all of the administrative expenses in  
3 full. *Id.*

4 17. If there is no risk of administrative insolvency, the Debtors should be compelled by  
5 the Court to pay Medline's allowed Section 503(b)(9) Claim immediately. If the Debtors believe  
6 there is a risk of administrative insolvency, the Court should disallow further payments of all other  
7 administrative claims, including all further professional fees in these cases.

8 18. At an absolute minimum, Medline's allowed Section 503(b)(9) Claim must be  
9 treated *pari passu* with all other administrative claims in these cases, including claims for  
10 professional fees. An examination of relevant law on the subject reveals the axiomatic principle  
11 that all administrative expenses are on equal footing. *See generally In re Plastech Eng'g*, 394 B.R.  
12 147 (Bankr. E.D. Mich. 2008); *see also In re HQ Global Holdings, Inc.*, 282 B.R. 169, 173 (Bankr.  
13 D. Del. 2002) (citing *In re Standard Furniture*, 3 B.R. 527, 532 (Bankr. S.D. Cal. 1980)). It follows  
14 that Medline's allowed Section 503(b)(9) Claim should be treated equally with estate professional  
15 fees and all other administrative expense claims.  
16

17 19. By way of illustration, in *In re Townsends, Inc.*, et al., Case No. 10-14092 (CSS)  
18 (Bankr. D. Del.), the committee objected to the entry of a final DIP financing order, arguing, in  
19 part, that the debtors' chapter 11 cases were administratively insolvent because the budget did not  
20 include sufficient funding to pay all the administrative claims. Of particular concern to the  
21 *Townsends* court was the fact that the debtors had proposed to pay most—but not all—  
22 administrative claims in full. After learning that the budget did not provide for the *pari passu*  
23 treatment of all administrative expense claims, the Court stated:  
24

25 Well, we've got a problem. Not going to run an administratively insolvent estate.  
There are benefits to the current administrative claims that are accruing . . . . So

1 certainly I would have a problem running any case that was administratively  
2 insolvent. But one that is both administratively insolvent and prefers one set of  
3 administrative creditors over another is doubly troubling. So that's -- well, I'm  
4 not going to do it. . . . [T]o go in with a path forward that indicates . . . that a certain  
type of administrative expense claim won't get paid in full but yet others will, I  
just -- I can't run that kind of case.

5 Hr'g Tr., *In re Townsends, Inc., et al.*, Case No. 10-14092 (CSS) (Bankr. D. Del.), Jan. 21, 2011  
6 at 23:25–24:9; 24:18-22.

7 20. Additionally, in *In re Chips'N Twigs, Inc.*, 58 B.R. 109 (Bankr. E.D. Pa. 1986), the  
8 court denied the applications for payment of certain estate professionals because “[q]uite simply,  
9 interim fees can be paid only when it is reasonably clear that the assets of the estate will be  
10 sufficient to pay all administrative expenses. The majority of the cases addressing this issue have  
11 thus concluded.” 58 B.R. at 112. *See also In re Western Farmers Assoc.*, 13 B.R. 132, 136 (Bankr.  
12 W.D. Wa. 1981) (holding that “[a]ll expenses of administration . . . are on a parity”); *cf. In re*  
13 *Gherman*, 114 B.R. 305 (Bankr. S.D. Fla. 1990) (interim compensation would be allowed, subject  
14 to duty to later disgorge such amounts if it is determined that insufficient funds existed to similarly  
15 pay other administrative claims); *cf. Stump v. Creel & Atwood, P.C. (In re Lockwood Corp.)*, 216  
16 B.R. 628, 635 (Bankr. D. Neb. 1997) (“[t]he clear majority of courts that have addressed this issue  
17 have uniformly held a cause of action for disgorgement does exist if the chapter 7 estate is  
18 administratively insolvent”); *cf. In re Vernon Sand & Gravel*, 109 B.R. 255 (Bankr. N.D. Ohio  
19 1989) (bankruptcy court can require professional fees to be disgorged to achieve prorated  
20 deduction when there are insufficient funds to pay Chapter 11 administrative expenses).

21  
22 21. The Debtors' continued conduct of paying other administrative creditors, including  
23 professionals, while ignoring Medline's allowed Section 503(b)(9) Claim essentially allows the  
24 Debtors to cherry-pick which administrative claims will be satisfied and which will not be  
25 satisfied. This is not only unreasonable and egregiously unfair, but also contravenes the priority

1 scheme set forth in the Bankruptcy Code. Providing certain administrative creditors *de facto*  
2 superpriority status over others without any justification for such relief under section 364 of the  
3 Bankruptcy Code is not permissible.

4 **IV.**  
5 **CONCLUSION**

6 **WHEREFORE**, based on the foregoing, Medline respectfully requests that this  
7 Court direct the Debtors to immediately pay the balance of Medline's Section 503(b)(9) Claim, or  
8 in the alternative, disallow any further payment to professionals in these cases, and grant such  
9 further relief as the Court deems just and appropriate.

10 Dated: May 20, 2020

11 By: /s/ Robert M. Hirsh  
12 Robert M. Hirsh (admitted *pro hac vice*)  
13 Leiv Blad Jr. (SBN 151353)  
14 **LOWENSTEIN SANDLER LLP**  
15 Attorneys for Medline Industries, Inc.



# **EXHIBIT A**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into by and between the following parties (together, the “Parties”):

A. Debtors: Verity Health System of California, Inc. and its affiliated debtors jointly administered under Bankruptcy Case No. 2:18-bk-20151-ER (Bankr. C.D. Cal.) (the “Debtors”), represented by its counsel, Dentons US LLP; and

B. Vendor: Medline Industries, Inc. (“Medline”), represented by its counsel, Arent Fox LLP.

## RECITALS

A. On August 31, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief, thereby commencing their bankruptcy cases (the “Bankruptcy Cases”), under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”).

B. On the Petition Date, the Debtors filed a motion requesting the Bankruptcy Court’s authority to pay certain prepetition claims of suppliers and service providers (collectively, the “Critical Suppliers” and each a “Critical Supplier”) that are critical to patient care and to avoid immediate and irreparable harm to the Debtors’ operations. The Bankruptcy Court entered a final order (the “The Critical Supplier Order”) authorizing the Debtors, under certain conditions, to pay prepetition claims of Critical Suppliers in an aggregate amount up to \$20 million.

C. Medline has supplied the Debtors with medical goods prior to and since the Petition Date. In addition, Medline and the Debtors are parties to an agreement for textile processing and replacement under the Daughters of Charity Health System Master Purchase Agreement dated as of December 1, 2015 (as amended on May 1, 2017 to, among other things, substitute the Debtors for Daughters of Charity Health System as a party) (the “Tex Cap Agreement”).

D. Medline was deemed a Critical Supplier by the Debtors and has entered into agreements with the Debtors under the Critical Supplier Order, pursuant to which Medline has agreed to continue to supply goods and services to Debtors, including under the Tex Cap Agreement, in exchange for, among other things, payment of a portion of its Aggregate Pre-Petition Claim (defined below).

E. In connection with the negotiations for Medline’s status as a Critical Supplier, the Debtors and Medline have agreed that, in addition to the Payments (defined below), Debtors and Medline will resolve certain other matters relating to Medline’s claims for goods and services supplied prior to the Petition Date, the terms of which are incorporated herein.

**NOW, THEREFORE**, pursuant to the Critical Supplier Order and the agreements reached in connection therewith, and in consideration of the mutual covenants, agreements and promises set forth herein, and for other good and valuable considerations, the receipt and

sufficiency of which are hereby acknowledges, the Parties, intending to be legally bound as provided for herein, hereby agree as follows.

**1. The Agreement.**

**1.1.** The Debtors agree that Medline holds a valid prepetition, unsecured claim in the aggregate amount of \$3,849,192.72 (the "Aggregate Prepetition Claim"), which amount includes an (i) unsecured claim in the aggregate amount of \$314,167.72 for amounts due under the TexCap Agreement (the "TexCap Claim") and (ii) \$3,535,025 for amounts due other than under the Tex Cap Agreement (the "Non-TexCap Claim").

**1.2.** The Aggregate Prepetition Claim includes a valid administrative priority claim pursuant to Section 503(b)(9) of the Bankruptcy Code in the amount of \$1,281,126 (the "Section 503(b)(9) Claim").

**1.3.** The Section 503(b)(9) Claim shall be an allowed administrative expense claim in the Bankruptcy Cases and paid upon the effective date of a plan of reorganization, or earlier at the Debtors' discretion, and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

**1.4.** After deducting the Section 503(b)(9) Claim from the Aggregate Prepetition Claim, Medline holds a remaining prepetition general unsecured claim in the amount of \$2,568,066.72 (the "Remaining Prepetition Claim"). The Remaining Prepetition Claim shall subject to the following treatment:

- 1.4.1. In three separate payments, the Debtors have paid Medline \$1,236,950 of the Remaining Prepetition Claim (collectively, the "Payments") as payments to a Critical Supplier pursuant to the Critical Supplier Order. In exchange for the Payments, Medline has agreed to continue to supply goods and services to Debtors during these Bankruptcy Cases on the terms and conditions set forth in this Agreement.
- 1.4.2. After deducting the Payments from the Remaining Prepetition Claim, Medline retains a general unsecured claim against the Debtors in the amount of \$1,331,116.72 (the "Allowed GUC"). The Allowed GUC shall be an allowed general unsecured claim in the Bankruptcy Cases pursuant to Section 502 of the Bankruptcy Code and subject to payment and treatment as such in any plan of reorganization approved in the Bankruptcy Cases and/or in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.
- 1.4.3. Medline agrees that other than the claims included in the Aggregate Prepetition Claim, it holds no other prepetition claims against Debtors and agrees to be bound by the treatment of Aggregate Prepetition Claim as set forth in this Agreement. Except as provided herein, Medline shall not assert or prosecute against Debtors any prepetition claim other than the Allowed GUC and the Section 503(b)(9) Claim. Except for any unpaid portion of the Aggregate Prepetition Claim, Medline hereby expressly releases Debtors from any claims whatsoever arising

prior to the petition date, whether known, unknown, liquidated, unliquidated, contingent or otherwise.

**1.5.** During the Bankruptcy Cases, Medline agrees to continue to supply goods and services to Debtors on customary trade terms, practices and programs in existence between Medline and Debtors (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, normal product mix and availability and other applicable terms and programs), which were most favorable to the Debtors and in effect between Medline and Debtors on a historical basis for the period within one-hundred eighty (180) days of the Petition Date (the "Customary Trade Terms"), except as set forth herein or as mutually agreed to by Debtors and Medline;

**1.6.** Notwithstanding any Customary Trade Terms to the contrary, Medline shall supply debtors during the course of the Bankruptcy Cases on net 45 day payment terms.

**1.7.** All avoidance actions and other causes of action arising under Chapter 5 of the Bankruptcy Code, including, but not limited to, claims or causes of action pursuant to Sections 547 and 548 of the Bankruptcy Code, are waived by the Debtors, their bankruptcy estates, any and all successors, chapter 7 trustees, and any post-confirmation creditor litigation trust.

**1.8.** Medline shall not file or otherwise assert against the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien ("Lien") or claim for reclamation ("Reclamation Claim"), regardless of the statute or other legal authority upon which such Lien or Reclamation Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to Medline by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date and, to the extent Medline has already obtained or otherwise asserted such a Lien or Reclamation Claim, Medline shall take (at its own expense) whatever actions are necessary to remove such Lien or withdraw such Reclamation Claim unless and until its participation in the Critical Supplier protocol authorized by the Order is terminated or this agreement is terminated.

**1.9.** In the event of an assumption and/or assignment of the Medline contracts, whether pursuant to a sale of the Debtors' assets or otherwise, neither party waives any rights under Section 365 of the Bankruptcy Code or any other rights and defenses.

**1.10.** If Medline voluntarily ceases to participate as a Critical Supplier pursuant to the Critical Supplier Order or otherwise is found by a final order of the Bankruptcy Court to be in breach of this Agreement, including by failure to supply Debtors on Customary Trade Terms, the Payments, or any portion thereof received by Medline, will be deemed to be a voidable postpetition transfers pursuant to Bankruptcy Code § 549(a) and Medline will immediately repay to the Debtors the Payments to the extent that the aggregate amount of such Payments exceeds any postpetition obligations then owing to Medline for goods and/or services provided under this Agreement, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims, or other defense

**1.11.** Notwithstanding Section 1.9 above, if the Debtors shall be in default under

this Agreement, Medline shall have no obligation to supply goods and/or services to the Debtors on Customary Trade Terms (as modified herein) until the Debtors cure such default and Medline shall have the right to terminate this Agreement upon written notice to the Debtors detailing the Debtors' defaults hereunder (which the Debtors shall have the right to dispute) and the Debtors failure to cure such default within five (5) business days of such notice, in which event Medline may retain the Payment and any other sums paid to it hereunder.

**1.12.** The Bankruptcy Court has jurisdiction over any dispute arising from or relating to this Agreement, the Critical Supplier Order, or Medline's participation as Critical Supplier under the Critical Supplier Order.

**1.13.** Except as to the claims and interests expressly preserved in this Agreement, the Parties acknowledge that there is a risk that subsequent to the execution of this Agreement, Medline will discover claims or incur or suffer loss, damage or injuries which are in some way caused by or related to the matters released herein, but which are unknown and unanticipated as of the execution date of this Agreement.

1.13.1. Medline hereby assumes the above-mentioned risks and acknowledges that this general release of claims SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED CLAIMS ARISING FROM THE MATTERS RELEASED HEREIN, AS WELL AS THOSE KNOWN AND ANTICIPATED.

1.13.2. Accordingly, Medline hereby expressly waives all its rights under Section 1542 of the California Civil Code as well as under any other statutes or common law principles of similar effect. For information, Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTORS.

1.13.3. Medline hereby represents, warrants and acknowledges that it has sought the advice of legal counsel of its choice with respect to this Agreement, this Section 1.13, and specifically with respect to the significance of its waiver of its rights under Section 1542 of the California Civil Code.

**1.14.** Nothing contained in this Agreement is intended or shall be deemed to release, waive or otherwise impair any claims of Medline or its successors or assigns, against: (1) any insurance carrier of Medline; and (2) any person or entity released by any of the parties to this Agreement to the extent they are acting in any capacity other than in connection to their business dealings with the Debtors. In addition, and for avoidance of doubt, nothing in this Agreement releases any person or entity not identified or described in this Agreement as being a person or entity receiving a release.

1.15. In the event that any party released hereunder asserts any released claim against any other released party, then any and all releases hereunder shall be null and void as to the asserting party.

## 2. Miscellaneous Provisions.

2.1. The Parties executing this Agreement do so without admitting any fault or liability whatsoever. No term or condition of this Agreement is intended to be or shall be deemed or construed as an expression of fault or liability.

2.2. This Agreement contains the entirety of the agreement reached among the Parties pertaining to the subject matter set forth herein. This Agreement supersedes all prior and contemporaneous oral and written Agreements and discussions between or among the Parties except as set forth herein. This Agreement, or any provision hereof, may not be waived, amended or revoked, or the ongoing obligations of any Party terminated, except by a further writing signed by all such Parties.

2.3. This Agreement is the product of negotiation by and among the Parties, executed voluntarily and without duress or undue influence on the part of or on behalf of any Party hereto. Each of the Parties acknowledges that it has had the opportunity to be represented by its own independent counsel in connection with this Agreement and the transactions contemplated by or referred to in this Agreement. Hence, in any construction to be made of this thereof, the same shall not be construed against any Party.

2.4. This Agreement may be executed in any number of counterparts, a complete set of which shall constitute a duly executed original, and fax or electronic signatures shall be treated as originals for all purposes irrespective of any jurisdiction's best evidence rule.

2.5. The failure or delay on the part of any Party to enforce or exercise at any time any of the provisions, rights or remedies in this Agreement shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Agreement or any part hereof, or the right of such Party to thereafter enforce each and every such provision, right or remedy. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

2.6. Each Party shall pay its own attorneys' fees, costs and expenses in connection with the preparation, negotiation and execution of this Agreement. However, in the event of any breach or default of any of the terms and provisions of this Agreement or any disputes regarding interpretation or enforcement of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, in addition to any other award.

2.7. The Parties hereby agree to the following process regarding approval and consummation of this Agreement:

2.7.1. The Debtors shall submit this Agreement to the Bankruptcy Court for final approval in accordance with Federal Rule of Bankruptcy Procedure 9019 within five (5) days of the date of execution of the Agreement by both parties (the "Execution Date").

2.7.2. Medline shall support entry of an order approving the Agreement in good faith, including, among other things, by not objecting to or otherwise commencing any proceeding or taking any other action opposing the terms or implementation of this Agreement or any order approving this Agreement, except as may be consistent with the terms hereof.

2.7.3. If the Bankruptcy Court declines to approve this Agreement despite the best efforts of the Parties to obtain such approval, then (1) this Agreement and its representations and statements shall be null and void and of no force or effect, (2) the Parties' respective rights shall be fully reserved and the Parties shall be restored to their respective positions, *status quo ante*, as existing immediately prior to the Execution Date without prejudice to the passage of time; and (3) unless Medline agrees to continue to supply the Debtors as a Critical Supplier pursuant to the Critical Supplier Order notwithstanding the Bankruptcy Court's failure to approve the Agreement, Medline shall return the Payment to Debtors, in accordance with Section 1.9 of this Agreement.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed and delivered as of the Execution Date.

Dated: February \_\_, 2019

Verity Health System (Debtor)

By:

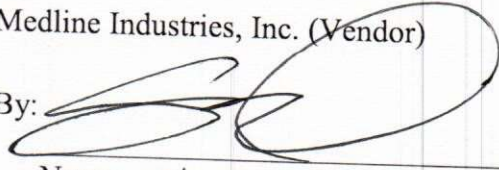
\_\_\_\_\_  
Name:

Title:

Dated: February 20, 2019

Medline Industries, Inc. (Vendor)

By:



\_\_\_\_\_  
Name: *Shane Reed*

Title: *Director, AIR Services*

**APPROVED AS TO FORM AND CONTENT:**

DENTONS US LLP  
SAMUEL R. MAIZEL  
JOHN A. MOE, II  
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By: \_\_\_\_\_

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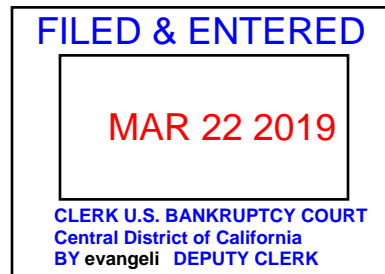
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7 Attorneys for the Chapter 11 Debtors and  
 8 Debtors In Possession

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

DENTONS US LLP  
 601 SOUTH FIGUEROA STREET, SUITE 2500  
 LOS ANGELES, CALIFORNIA 90017-5704  
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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

- 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 ASC, LLC

- 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-20171-ER

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**ORDER GRANTING DEBTORS' MOTION FOR APPROVAL OF COMPROMISE WITH MEDLINE INDUSTRIES, INC. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 [RELATED DOCKET NO. 1591]**

HEARING:

Date: March 13, 2019  
 Time: 10:00 a.m.  
 Place: Courtroom 1568, 255 E. Temple St., Los Angeles, CA

DENTONS US LLP  
601 SOUTH FIGUEROA STREET, SUITE 2500  
LOS ANGELES, CALIFORNIA 90017-5704  
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1           The Debtors’ Motion for Approval of Compromise with Medline Industries, Inc. Pursuant  
2 to Federal Rule of Bankruptcy Procedure 9019 [Docket No. 1591] (the “Motion”) seeking approval  
3 of that settlement agreement between Verity Health System of California, Inc. and certain of its  
4 affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively,  
5 the “Debtors”), on one hand, and Medline Industries Inc. (“Medline”), on the other, attached to the  
6 Motion as Exhibit “A,” (the “Settlement Agreement”) came for hearing before the Court on March  
7 13, 2019 (the “Hearing”).

8           The Court, having reviewed the Motion and the Memorandum of Points and Authorities, the  
9 Settlement Agreement, the Declarations of Peter C. Chadwick and Richard G. Adcock in support of  
10 the Motion, the *Declaration of Richard G. Adcock in Support of First-Day Motions* [Docket No. 8],  
11 the *Final Order Granting Debtors' Emergency Motion For Entry Of An Order Authorizing Debtors*  
12 *To Honor Prepetition Obligations To Critical Vendors* [Docket No. 436] (the “Critical Vendor  
13 Order”) and the *Official Committee of Unsecured Creditors’ Response to Debtors’ Notice and*  
14 *Motion for Approval of Compromise with Medline Industries, Inc. Pursuant to Federal Rule of*  
15 *Bankruptcy Procedure 9019* [Docket No. 1697], and no other objection or response having been  
16 filed, it further appearing that proper notice of the Motion had been provided, and for the reasons  
17 set forth in the Court’s tentative ruling [Docket. No. 1789], which the Court adopts as its final ruling  
18 and which is incorporated herein by reference and good and sufficient cause having been shown,

19           **IT IS HEREBY ORDERED:**

20           1.       The Motion is GRANTED in its entirety and the Settlement Agreement is  
21 APPROVED in its entirety.

22           2.       This Court has jurisdiction over any dispute arising from or relating to the Settlement  
23 Agreement, the Critical Vendor Order, or Medline’s participation as Critical Supplier as defined and  
24 under the Critical Vendor Order.

25           3.       The Debtors and Medline are each authorized to take all actions and execute all  
26 documents and instruments that they deem necessary or appropriate to implement and effectuate the  
27 transactions contemplated by the Settlement Agreement.

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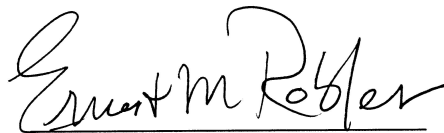
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**IT IS SO ORDERED.**

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

Date: March 22, 2019



Ernest M. Robles  
United States Bankruptcy Judge