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Attorneys for the Chapter 11 Debtors and Debtors In Possession

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 O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose 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. Judge Ernest M. Robles

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF SECOND AMENDED JOINT CHAPTER 11 PLAN (DATED JULY 2, 2020) OF THE DEBTORS, THE COMMITTEE, AND PREPETITION SECURED CREDITORS

[RELATES TO DOCKET NOS. 4993, 4997, 5231, 5268, 5281, 5282, 5288, 5292, 5293, 5294]

Hearing Date and Time:
Date: August 12, 2020
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple Street
Los [illegible]

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Verity Health System of California, Inc. ("VHS") and the affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a "Debtor" and, collectively, the "Debtors"), with the support of the Official Committee of Unsecured Creditors (the "Committee"), UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo Bank, National Association, as Indenture Trustee for the 2005 Bonds, U.S. Bank National Association solely in its capacity, as the note indenture trustee and as the collateral agent under the note indenture relating to the 2015 Working Capital Notes and the 2017 Working Capital Notes, Verity MOB Financing, LLC and Verity MOB Financing II, LLC (collectively, the "Plan Proponents"), hereby file this brief in support of confirmation of the *Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 4993], as may be amended and supplemented from time to time (the "Plan")[1] and reply to the objections filed by various creditors [Docket Nos. 5231, 5268, 5281, 5282, 5288, 5292, 5293, 5294] (collectively, the "Objections") to confirmation of the Plan (collectively, the "Confirmation Brief"),[2] and, in support of the Confirmation Brief, the Debtors submit the *Declaration of Richard G. Adcock* (the "*Adcock Decl.*"), the *Declaration of Peter C. Chadwick* (the "Chadwick Decl."), and respectfully state as follows:

I.

INTRODUCTION

The Plan represents the culmination of nearly two years of the Debtors' strenuous efforts in these Chapter 11 Cases to preserve critical patient care for underserved communities, preserve over 7,000 jobs, and maximize the value of the Debtors' Estates for all stakeholders. Since the Petition Date, the Debtors and their management, advisors, stakeholders, community members, and employees, among others, have worked tirelessly to achieve their mission to maintain the

[1] Unless otherwise provided herein, all capitalized terms have the definitions set forth in the Plan.

[2] The Confirmation Brief shall also constitute the Debtors' notice and request for permission to file a brief or memorandum of law exceeding 35 pages, which the Bankruptcy Court may determine on notice without a hearing, pursuant to LBR 9013-1(p)(11). *See also* LBR 9013-2(b).

Debtors' hospital operations; preserve the going-concern value of the Debtors' Hospitals; and, most importantly, to protect the health and wellbeing of the patients who are treated at the Hospitals and the jobs of the Debtors' employees. *See* Docket No. 8 at 25. Their efforts were not without significant and unexpected challenges—including being forced to a "Plan B" after a purchaser refused to close the sale of four of the Hospitals in 2019 and the ongoing effects of the COVID-19 pandemic in 2020. Nevertheless, the Debtors repeatedly overcame each obstacle, while continuing to operate their Hospitals, satisfy their obligations in these Cases, and steadfastly work with their constituents to sell their hospitals, negotiate and structure the Plan, and conclude these Chapter 11 Cases.

The Plan is the result of the successful and substantial negotiations of major constituents in these Chapter 11 Cases: the Debtors, the Prepetition Secured Creditors, and the Committee. The Plan Settlement, a central feature of the Plan, has paved the way for the Debtors and major constituencies in these Chapter 11 Cases to reach a consensual and expeditious resolution, resolve litigation, and offer the best recovery possible to parties-in-interest in these Chapter 11 Cases. The Plan maximizes the value of the ultimate recoveries to all creditor groups on a fair and equitable basis, settles significant claims against the Debtors on terms that are fair, reasonable, and in the best interests of the Debtors' Estates and creditors, and provides for a recovery to the holders of the Allowed General Unsecured Claims. In recognition of these extraordinary efforts and the fair and equitable results, the Plan has been overwhelmingly accepted by all Voting Classes.

Further reflecting the consensual nature of these Chapter 11 Cases, the Plan Proponents received only a handful of objections to confirmation by the objection deadline.[3] This is a testament to Verity and its Hospital affiliates that, to a fault, have worked tirelessly to satisfy their mission to the poor, their employees, and tens of thousands of vendors, suppliers, and other trade creditors postpetition. Not surprisingly, most Objections are on behalf of a few litigious

[3] The Plan Proponents have received additional objections [Docket Nos. 5326, 5337, 5339, 5341, 5342, 5343] from a limited universe of creditors subject to stipulated extensions of the confirmation objection deadline. The Plan Proponents reserve all rights to respond to such objections, or any other objections.

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claimants, who assert disputed administrative claims. As set forth more fully below, these Objections should be overruled because the Plan meets all requirements necessary for confirmation under the Bankruptcy Code. The Debtors analyze each requirement of § 1129 to aid the Bankruptcy Court's independent review and satisfy their burden as Plan Proponents. However, notably, the Objections are primarily limited to §§ 524(e), 1123(b)(3)(A), 1129(a)(9), and 1129(a)(11) (solely in connection with objections received from claimants holding disputed administrative claims), and concede that the Plan satisfies the majority of the Bankruptcy Code's confirmation requirements.

The Plan Proponents will file an amended Plan (the "Amended Plan"), prior to the Confirmation Hearing, to address various informal objections and provide the following non-material modifications and clarifications to the Plan: (i) the inclusion of language concerning the Deposit to which the Plan Proponents agreed; and (ii) the clarification of language concerning the treatment of Class 9 Insurance Claims raised by Federal Insurance Company, ACE American Insurance Company, Illinois Union Insurance Company, and Old Republic Insurance Company. Further, the Plan Proponents have agreed to revise the Confirmation Order to address certain language requested by Prime, Integrity Healthcare, LLC ("Integrity"), and Infor (US), Inc. ("Infor"). As set forth more fully below, these non-material modifications will not require resolicitation of the Plan and do not alter the substantive rights of Holders of Claims treated under the Plan.

Based on the foregoing, and as set forth below, the Plan is proposed in good faith and confirmation is warranted as a matter of law. Further, each Voting Class voted to accept the Plan. Accordingly, the Plan Proponents submit that the Court should enter the Confirmation Order substantially in the form attached hereto as **Exhibit "A."**

II.

FACTUAL BACKGROUND

A. General Background

1. On August 31, 2018 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the commencement of their

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Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.[4]

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that, on the Petition Date, operated St. Francis Medical Center ("SFMC"), O'Connor Hospital ("OCH"), Saint Louise Regional Hospital ("SLRH"), St. Vincent Medical Center ("SVMC"), and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, "Seton" and, together with St. Francis, OCH, SLRH, and SVMC, the "Verity Hospitals").

3. As of the Petition Date, VHS, the Verity Hospitals, and their affiliated entities operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *See* First-Day Decl., at 4, ¶ 12. Additional background facts on the Debtors, including an overview of the Debtors' business, information on the Debtors' capital structure and additional events leading up to these chapter 11 Cases, are set forth in the First-Day Declaration.

4. On September 14, 2018, the Office of the United States Trustee appointed the Committee [Docket No. 197].

5. A detailed description of the Debtors' businesses, capital structure, and the events leading to and occurring since the commencement of these Chapter 11 Cases is contained in the Disclosure Statement and the *Declaration of Richard G. Adcock in Support of Emergency First-Day Motions* [Docket No. 8].

B. Plan Overview

6. The Plan essentially implements a comprehensive settlement and compromise between the Debtors, the holders of the Secured 2005 Revenue Bond Claims, the Committee, and

[4] All references to "§" are to sections of the Bankruptcy Code; all references to "Bankruptcy Rules" are to provisions of the Federal Rules of Bankruptcy Practice; all references to "LBR" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

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other Prepetition Secured Creditors, which enables the Plan to become effective in these Chapter 11 Cases immediately after the sale of the Debtors' remaining Hospital assets, ends the incurrence and expenditure of continuing administrative expenses of the Debtors, permits cash payments to be made to certain creditors on or about the Effective Date of the Plan, or thereafter, and resolves the remaining litigation pending against the Prepetition Secured Creditors in these proceedings. More specifically, the comprehensive settlement provides for the following cash payments to be made on or about the Effective Date of the Plan: (i) full payment of the claims of the Prepetition Secured Creditors other than the holders of Secured 2005 Revenue Bond Claims; (ii) partial payment of the Secured 2005 Revenue Bond Claims in an amount not less than $124.2 million; (iii) full payment of all Allowed Mechanics Lien Claims; and (iv) full payment of all Allowed Administrative Claims. In return for the agreement by the Holders of the Secured 2005 Revenue Bond Claims to accept a partial payment of their claims on the Effective Date and to allow full payment of the Allowed Administrative Claims and Mechanics Lien Claims on or about the Effective Date, the following shall occur: (i) the Committee shall dismiss with prejudice Adversary Proceeding Nos. 2:19-ap-01165-ER and 2:19-ap-01166-ER against the Prepetition Secured Creditors, and waive preserved claims against Verity MOB Financing LLC and Verity MOB Financing II LLC; and (ii) the Plan shall create a Liquidating Trust to collect, liquidate and realize upon the Debtors' remaining assets, which Liquidating Trust shall issue (x) First Priority Trust Beneficial Interests to the 2005 Revenue Bonds Trustee in the amount of the unpaid deficiency of the Secured 2005 Revenue Bond Claims which remains outstanding after the initial payment on the Effective Date with respect to the 2005 Revenue Bond Claims, and (y) Second Priority Trust Beneficial Interests for the benefit all holders of Allowed General Unsecured Claims. As the Debtors' remaining assets are collected, the Liquidating Trust shall make payments to the 2005 Revenue Bonds Trustee, as holder of the First Priority Trust Beneficial Interests for the benefit of the holders of the Secured 2005 Revenue Bond Claims, until such Interests are paid in full, with interest; thereafter, the Liquidating Trust shall make payments to holders of Second Priority Trust Beneficial Interests until the holders thereof are paid in full. The Plan also provides that, after the Effective Date, the Liquidating Trustee will oversee the

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operations of the Post-Effective Date Debtors during the Sale Leaseback Period in accordance with the Interim Agreements and the Transition Services Agreements as more fully described herein.

7. In order to confirm the Plan, the Plan Proponents have requested that the Bankruptcy Court approve and implement the terms of (i) the Plan, (ii) the Creditor Settlement Agreements, including the Plan Settlement, and (iii) other documents necessary to effectuate the Plan.

8. The Plan deems the Debtors substantively consolidated for the purposes of Claim allowance and distribution, which treats the Debtors' assets and liabilities as if they were pooled without actually merging the Debtor entities.

9. The Plan describes the specific treatment of all Claims and the distribution of proceeds to Holders of Allowed Claims. As set forth in Section 2 of the Plan, except for Administrative Claims, Professional Claims, and Priority Tax Claims, which are not required to be classified, all Claims and Interests are divided into Classes under the Plan, as follows.

10. The Plan classifies the following Claims as unimpaired and deemed to have accepted the Plan (and thus not entitled to vote on the Plan): Classes 1A (Priority Non-Tax Claims) and 1B (Secured PACE Financing Claims). These Classes are anticipated to recover 100% of their Allowed Claims.

11. The Plan classifies the following Claims as impaired and entitled to vote on the Plan: Classes 2 (Secured 2017 Revenue Notes Claims), 3 (Secured 2015 Notes Revenue Claims), 4 (Secured 2005 Revenue Bond Claims), 5 (Secured MOB Financing Claims), 6 (Secured MOB II Financing Claims), 7 (Secured Mechanics Lien Claims), 8 (General Unsecured Claims), 9 (Insured Claims), and 10 (2016 Data Breach Claim). Classes 2, 3, 4, 5, 6, and 7 are anticipated to recover 100% of their Allowed Claims, with the recovery by Class 4 to be realized, in part, on the Effective Date of the Plan, and the remainder to be realized over time as the Debtors' assets are liquidated by the Liquidating Trust.

12. The Plan classifies the following Claims as impaired and deemed to have rejected the Plan (and thus not entitled to vote on the Plan): Classes 11 (Subordinated General Unsecured

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Claims) and 12 (Interests). These Claims and Interests are anticipated not to receive any recovery from the Debtors under the Plan.

C. The Disclosure Statement and Solicitation

13. On June 16, 2020, the Debtors filed a joint motion [Docket No. 4881] seeking approval of the Disclosure Statement and procedures for the solicitation and tabulation of votes to accept or reject the Plan (the "Disclosure Statement Motion"), including proposed solicitation procedures (the "Solicitation Procedures") and vote tabulation procedures (the "Tabulation Procedures"). Subsequently, on July 2, 2020, the Plan Proponents filed their Plan and Disclosure Statement, which were amended to address certain modifications and informal objections.

14. On July 2, 2020, the Bankruptcy Court entered an order [Docket No. 4997] (the "Disclosure Statement Order") following the hearing on the Disclosure Statement Motion, which, among other things, granted the Disclosure Statement Motion and approved the Disclosure Statement, the Solicitation Procedures, and the Tabulation Procedures.

15. On or before July 9, 2020, the Plan Proponents, through their noticing and claims agent, Kurtzman Carson Consultants LLC ("KCC"), timely mailed a solicitation package (the "Solicitation Package") to holders of claims entitled to vote on the Plan (*i.e.*, 21 days prior to the deadline to objection to Plan confirmation and the Voting Deadline, and 34 days prior to the hearing on confirmation of the Plan). *See Declaration of Service of Solicitation Materials* at [Docket No. 5346]. On July 14, 2020, the Plan Proponents also published notice of the hearing on confirmation of the Plan in the following newspapers: *Los Angeles Times*, *San Francisco Chronicle*, *San Jose Mercury News*, and *USA Today*. *See* Docket No. 5358.

16. The Plan Proponents will also file certain documents constituting the Plan supplement (as may be amended, modified, or supplemented from time to time, the "Plan Supplement"). The Plan Supplement will be filed prior to the Effective Date in accordance with the Plan and any consensual extensions of the deadlines set forth therein. *See* Plan § 1.130 (providing for Plan Supplement filing deadlines "unless otherwise extended with the consent of the Plan Proponents").

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D. Vote Tabulation

17. The deadline to file objections to the Plan was July 30, 2020, and the deadline for all holders of Claims entitled to vote on the Plan to cast their Ballots was June 30, 2020, at 4:00 p.m. (Pacific Time) (the "Voting Deadline"). *See* Disclosure Stmt. Order at 7. All classes of creditors entitled to vote have voted in favor of confirmation. Concurrently herewith, the Debtors filed the Voting Declaration and reports of their Court-appointed voting and claims agent, KCC.

18. After the Voting Deadline, KCC tabulated the votes to accept or reject the Plan reflected in the Ballots received on or before the Voting Deadline. *See Certification of Andres A. Estrada with Respect to the Tabulation of Votes on the Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5371] (the "Voting Declaration") at ¶¶ 12-13, Exs. A-C. As set forth in the Voting Declaration and the table below, each class eligible to vote on the Plan (the "Voting Classes") overwhelmingly voted to accept the Plan:

CLASS	ACCEPTING				REJECTING			
	Ballot Count	Ballot Count (%)	Dollar Amount	Dollar Amount (%)	Ballot Count	Ballot Count (%)	Dollar Amount	Dollar Amount (%)
2	1	100%	$42,000,000	100%	0	0%	$0	0%
3	7	100%	$115,000,000	100%	0	0%	$0	0%
4	258	97.73%	$220,140,000	99.93%	6	2.27%	$160,000	0.07%
5	1	100%	$46,363,096	100%	0	0%	$0	0%
6	1	100%	$20,061,919	100%	0	0%	$0	0%
7	6	100%	$2,297,784.72	100%	0	0%	$0	0%
8	736	94.72%	$680,890,848.03	82.47%	41	5.28%	$144,764,358.43	17.53%
9	14	87.5%	$15	71.43%	2	12.5%	$6	28.57%
10	36	90%	$541,676.21	94.01%	4	10%	$34,492	5.99%

19. The hearing on Plan confirmation (the "Confirmation Hearing") is scheduled to take place on August 12, 2020, at 10:00 a.m. (Pacific Time).

III.

JURISDICTION, VENUE, AND STATUTORY PREDICATES

The Bankruptcy Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Plan Proponents seek, in part, an order confirming the Plan. The statutory predicates for this relief are §§ 1122, 1123, 1125, 1126, 1127, 1129. The Plan Proponents also seek, in part, an order of the Court approving the Plan Settlement. The statutory predicates for this relief are §§ 363 and 105, and Bankruptcy Rule 9019.

IV.

THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION

To confirm the Plan, the Plan Proponents must demonstrate by a preponderance of the evidence that they have satisfied the provisions of § 1129. *See In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 653 (9th Cir. 1997) ("The bankruptcy court ***must*** confirm a Chapter 11 debtor's plan . . . if the debtor proves by a preponderance of the evidence" that the plan meets the requirements of § 1129.) (emphasis added); *see also Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters., Ltd. II (In re Briscoe Enters., Ltd. II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."). The Plan Proponents submit that the Plan complies with all relevant sections of the Bankruptcy Code, including §§ 1122, 1123, 1125, 1126, 1127, and 1129, as well as the Bankruptcy Rules and applicable non-bankruptcy law. This memorandum addresses each requirement individually.

A. The Plan Complies with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)).

Section 1129(a)(1) requires that a chapter 11 plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of § 1129(a)(1) explains that this provision encompasses the requirements of §§ 1122 and 1123 including, principally, rules governing classification of claims and interests and the contents of a chapter 11 plan. S. Rep. No. 95-989, at 126 (1978); H.R. Rep. No. 95-595, at 412 (1977); *see also Kane v.*

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Johns-Manville Corp. (In re Johns-Manville Corp.), 843 F.2d 636, 648-49 (2d Cir. 1988) (suggesting Congress intended the phrase "'applicable provisions' in [§ 1129(a)(1)] to mean provisions of Chapter 11 . . . such as section 1122"); *see also In re Mirant Corp.*, No. 03-46590, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (noting that objective of § 1129(a)(1) is to assure compliance with sections of Bankruptcy Code governing classification and contents of a plan); 7 *Collier on Bankruptcy* ¶ 1129.02 (Richard Levin & Henry J. Sommer eds., 16th ed.). As explained below, the Plan complies with §§ 1122 and 1123 in all respects.

1. *The Plan Satisfies the Classification Requirements of § 1122.*

Section 1122 of the Bankruptcy Code governs the classification of claims and interests. Section 1122(a) requires that a plan "place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class." The Ninth Circuit has recognized that, under § 1122, plan proponents have significant flexibility to place similar claims into different classes, provided there is a rational basis for doing so. *See Barakat v. Life Ins. Co. of Va. (In re Barakat)*, 99 F.3d 1520, 1524–25 (9th Cir. 1996); *see also In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016) ("A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly."). For example, courts have allowed separate classification where there are good business reasons for separate classification. *See Barakat*, 99 F.3d at 1524-25 (holding that substantially similar claims may be classified separately if there is a "legitimate business or economic justification" for doing so).

Section 3 of the Plan provides for the separate classification of Claims and Interests into thirteen different Classes based upon differences in the legal or factual nature of those Claims and Interests or other relevant and objective criteria. Each of the Claims and Interests in a particular Class under the Plan is substantially similar to the other Claims and Interests in such Class, and the classification structure is necessary to implement certain aspects of the Plan. Valid and sound factual and legal reasons exist for the separate classification of Claims and Interests, including, but not limited to the fact that each of the Claims and Interests in a particular Class are substantially

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similar to the other Claims or Interests in such Class and therefore the classification scheme does not discriminate unfairly between or among holders of such Claims or Interests.

Specifically, the Plan divides the classified Claims and Interests into the following Classes:

All Debtors			
Class	**Designation**	**Impairment**	**Entitled to Vote**
1A	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
1B	Secured PACE Tax Financing Claims	Not Impaired	No (deemed to accept)
2	Secured 2017 Revenue Notes Claims	Impaired	Yes
3	Secured 2015 Revenue Notes Claims	Impaired	Yes
4	Secured 2005 Revenue Bond Claims	Impaired	Yes
5	Secured MOB I Financing Claims	Impaired	Yes
6	Secured MOB II Financing Claims	Impaired	Yes
7	Secured Mechanics Lien Claims	Impaired	Yes
8	General Unsecured Claims	Impaired	Yes
9	Insured Claims	Impaired	Yes
10	2016 Data Breach Claims	Impaired	Yes
11	Subordinated General Unsecured Claims	Impaired	No (deemed to reject)
12	Interests	Impaired	No (deemed to reject)

Administrative Claims, Professional Claims, Statutory Fees, and Priority Tax Claims (the "Unclassified Claims") are not classified and are separately treated under Section 2 of the Plan.

Finally, the classification structure was not designed to gerrymander the Classes to create an impaired accepting Class. This is evident in part based on the fact that each class voted overwhelmingly to accept the Plan. Further, Classes 2, 3, 4, 5, and 6 are impaired Classes entitled to vote on the Plan. The Holders of Class 2, 3, 4, 5, and 6 Claims are participants in the Plan Settlement and the Plan Proponents knew, at the time of Plan formulation, that the Holders of such Claims would vote to accept the Plan pursuant to the agreements set forth in the Plan Settlement. The Plan Proponents therefore had no motivation to gerrymander the Classes to obtain an impaired accepting Class. Accordingly, the Plan Proponents submit that the Plan fully complies with the requirements of § 1122.

2. *The Plan Satisfies the Seven Mandatory Plan Requirements of § 1123(a)(1)-(a)(7).*

Section 1123(a) requires that the contents of a chapter 11 plan: (i) designate classes of claims and interests; (ii) specify unimpaired classes of claims and interests; (iii) specify treatment

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of impaired classes of claims and interests; (iv) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest; (v) provide adequate means for the plan's implementation; (vi) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (vii) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan.

The Plan satisfies the mandatory plan requirements set forth in § 1123(a). Sections 2, 3 and 4 of the Plan satisfy the first three requirements of § 1123(a) by designating Classes of Claims, as required by § 1123(a)(1), specifying the Classes of Claims that are Unimpaired under the Plan, as required by §1123(a)(2), and specifying the treatment of each Class of Claims that is impaired, as required by § 1123(a)(3). The Plan also satisfies § 1123(a)(4)—the fourth mandatory requirement—because the treatment of each Allowed Claim within a Class is the same as the treatment of each other Allowed Claim in that Class, unless the holder of a Claim consents to less favorable treatment on account of its Claim.

The provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement of § 1123(a). *See* § 1123(a)(5). The provisions of Sections 5, 6, and 7 of the Plan, along with the Plan Supplement, relate to, among other things: (i) the dissolution of certain Debtors and the continued existence of the Post-Effective Date Debtors and the membership of the Post-Effective Date Board of Directors; (ii) the establishment of the Liquidating Trust; (iii) the identity of the Liquidating Trustee and the identity of the Post-Effective Date Committee; (iv) funding the distribution to creditors; (v) the establishment of operating accounts for the Post-Effective Date Debtors and the transfer of certain funds into the Liquidating Trust; (vi) provisions for certain reserves in the Liquidating Trust; and (vii) the preservation and/or destruction and abandonment of books and records in accordance with applicable law.

The sixth requirement of § 1123(a)—*i.e.*, that if a debtor is a corporation, its plan must prohibit the issuance of nonvoting equity securities—is also met. *See* § 1123(a)(6). The Debtors,

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which are nonprofit public benefit corporation, will not issue any stock or other securities under the Plan. Thus, the Plan comports with § 1123(a)(6). *See In re St. Mary's Hosp., Passaic, N.J.*, No. 09-15619, 2010 WL 5126151, at *4 (Bankr. D.N.J. Feb. 2, 2010) ("Sections 1123(a)(6) and (a)(7) of the Bankruptcy Code are not applicable to this case, as the Debtor is a non-stock, not-for-profit corporation.").

Finally, the Plan fulfills the seventh requirement in § 1123(a), which requires that the Plan provisions with respect to the manner of selection of any officer, director, or trustee "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7). Section 5.9 of the Plan provides for the appointment of a three-member Post-Effective Date Board of Directors of VHS, which shall also serve and remain as the members of the subsidiary boards and any other boards required to be in existence. The initial Post-Effective Date Board of Directors shall be designated in a Plan Supplement. *See* Plan § 1.130 (authorizing the Plan Proponents to disclose the identity of the Post-Effective Date Board of Directors in a Plan Supplement to be filed any time prior to the Effective Date).

The Plan Proponents will also disclose the identities of the Liquidating Trustee and the Post-Effective Date Committee in a Plan Supplement. *See also* Plan § 1.130 (authorizing the Plan Proponents to file the identity of the Liquidating Trustee and Post-Effective Date Committee 14 days prior to the Ballot Deadline "unless otherwise extended with the consent of the Plan Proponents"). All of the relevant parties required to provide input and/or consent of the selections of the individuals serving in the roles described in this paragraph, as well as the manner of selection of officers and the Post-Effective Date Board of Directors, is consistent with public policy and the interests of creditors. The Debtors' Plan is also in compliance with the requirement that the selection of any officer, director, or trustee be made in the interests of equity security holders because the Plan does not provide for the creation of any equity security interests. *See* 11 U.S.C. § 1123(a)(7); *see also St. Mary's Hosp., Passaic, N.J.*, 2010 WL 5126151, at *4 (finding § 1123(a)(7) inapplicable to nonprofit entities).

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B. The Plan Proponents Have Complied with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)).

Section 1129(a)(2) requires that the proponent of a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. The legislative history to § 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in § 1125 and the plan acceptance requirements set forth in § 1126. *See In re Johns-Manville Corp.,* 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the [Bankruptcy] Code."); *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988) ("Section 1129(a)(2) in turn requires that the proponent of the plan complies with the applicable provisions of Title 11."); *see also* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."). The Plan Proponents have complied with these provisions, including §§ 1121, 1125, 1126, and 1127, as well as Bankruptcy Rules 3017 and 3018, by carrying out the Solicitation Procedures approved by the Court in its Disclosure Statement Order.

1. The Plan Proponents Are Authorized to File the Joint Plan Under § 1121.

Section 1121(c) provides that "[a]ny party in interest including the debtor . . . a creditors' committee, [or] . . . a creditor . . . may file a plan." 11 U.S.C. § 1121(c). Since the Debtors, the Committee, and the Prepetition Secured Creditors are co-proponents of the Plan, and the Plan Proponents are all clearly parties in interest as expressly contemplated by § 1121(c), the requirements of § 1121 are satisfied.

2. The Plan Proponents Complied with the Disclosure Statement and Solicitation Requirements of § 1125.

Section 1125(b) prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as

containing adequate information." 11 U.S.C. § 1125(b). The purpose of § 1125 is to ensure that parties-in-interest are fully informed on the condition of the Debtors, the means for implementation of the Plan, and the treatment of all classes of Claims and Interests so they may make an informed decision on whether to accept or reject the Plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) ("At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate information about the plan before the creditor is asked for a vote."); *In re Art & Architecture Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal. Mar. 18, 2016) ("The primary purpose of a disclosure statement is to give creditors and interest holders the information they need to decide whether to accept the plan.") (citing *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re Arnold*, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

The Plan Proponents have satisfied § 1125. Upon the filing of the first amended joint plan [Docket No. 4879] and related disclosure statement [Docket No. 4880] on June 16, 2020, the Plan Proponents sought relief [Docket No. 4885] on shortened notice that adjusted the notice periods for approval of the disclosure statement and confirmation of the Plan in order to meet the deadlines negotiated with the Plan Proponents for the Effective Date of the Plan. The Court approved this schedule on June 17, 2020 [Docket No. 4889].

Thereafter, on July 2, 2020, the Plan Proponents filed the Plan and Disclosure Statement, which incorporated certain revisions to address comments received from objecting parties and the Plan Proponents. On July 2, 2020, the Court entered the Disclosure Statement Order, approving the Disclosure Statement as containing adequate information, and approving the Solicitation and Tabulation Procedures. *See* Disclosure Statement Order ¶¶ C, 2, 19, 25. The Disclosure Statement Order approved the contents of the Solicitation Packages that the Plan Proponents provided to holders of Claims in Voting Classes and the timing and method of delivery of the Solicitation Packages. *See id.* ¶¶ 5-18. As detailed in the Voting Declaration, the Plan Proponents complied in all respects with the Solicitation Procedures as outlined in the Disclosure Statement Order, including their compliance with service requirements and not soliciting acceptance of the

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Plan from any creditor prior to sending the Solicitation Packages that contained the Court-approved Disclosure Statement. *See* Voting Decl. at ¶¶ 7-10.

3. *The Debtors Complied with the Plan Acceptance Requirements of § 1126.*

Section 1126 provides that only holders of claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. 11 U.S.C. § 1126. Sections 1126(c) and (d) specify the requirements for acceptance of a plan by a class of claims. Specifically, § 1126(c) provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.

Id.

Classes 1A and 1B are Unimpaired under the Plan. Pursuant to § 1126(f), holders of Claims in the Unimpaired Classes are not entitled to vote on the Plan and are conclusively deemed to have accepted the Plan.

Classes 11 and 12 are Impaired under the Plan, and, pursuant to § 1126(f), are not entitled to vote on the Plan because they are conclusively deemed to have rejected the Plan

The Plan Proponents solicited votes on the Plan from the Voting Classes—that is, the holders of all Allowed Claims in each Impaired Class entitled to receive distributions under the Plan: Classes 2 through 10. As noted above, the Voting Deadline occurred on July 30, 2020, at 4:00 p.m. (Pacific Time), and the Voting Declaration details the results of the voting process in accordance with § 1126, in which the Plan was overwhelmingly supported by the holders of Claims in each Voting Class. Based on the foregoing, the Plan Proponents' solicitation of votes on the Plan was undertaken in conformity with § 1126 and the Disclosure Statement Order.

4. *The Non-Material Modifications to the Plan Comply with § 1127.*

In the interest of clarifying and consensually resolving outstanding issues and informal objections to confirmation of the Plan, the Debtors have made certain non-material modifications to the Plan (the "Non-Material Modifications"). Prior to the Confirmation Hearing, the Plan

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Proponents will file a revised version of the Plan to reflect certain non-material and technical changes that do not materially or adversely affect the treatment of any holder of a Claim under the Plan. In addition, the Plan Proponents will file a redline comparison of the Plan incorporating the Non-Material Modifications to the prior version of the Plan.

Section 1127 allows a plan proponent to modify the plan "at any time" before confirmation. Specifically, § 1127 provides:

> (a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan . . . .
>
> (d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

11 U.S.C. § 1127(a), (d). Accordingly, bankruptcy courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedures or vote resolicitation. *See, e.g.*, *Enron Corp. v. New Power Co. (In re New Power Co.)*, 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); *In re Am. Solar King Corp.*, 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (stating that "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.") (citation omitted); *In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I*, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) (all creditors were deemed to have accepted plan as modified because "[n]one of the changes negatively affects the repayment of creditors, the length of the [p]lan, or the protected property interests of parties in interest.").

In addition, Bankruptcy Rule 3019, designed to implement § 1127(d), in turn, provides in relevant part that:

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> In a . . . chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Bankruptcy Rule 3019(a).

The Plan Proponents received certain informal comments prior to the applicable objection deadline. In response, the Plan Proponents addressed these issues with certain revisions to the Plan and Confirmation Order. The Non-Material Modifications primarily consist of the following changes: (i) the inclusion of language concerning the Deposit to which the Plan Proponents agreed; and (ii) the clarification of language concerning the treatment of Class 9 Insurance Claims raised by Federal Insurance Company, ACE American Insurance Company, Illinois Union Insurance Company, and Old Republic Insurance Company.

The requirements of § 1127(d) have been satisfied because all creditors in these Chapter 11 Cases have notice of the Confirmation Hearing, and will have an opportunity to object to the Non-Material Modifications at that time. *See Citicorp Acceptance Co., Inc. v. Ruti-Sweetwater (In re Sweetwater)*, 57 B.R. 354, 358 (D. Utah 1985) (creditors who had knowledge of pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan). Accordingly, because the Non-Material Modifications (and those that may be made prior to or at the Confirmation Hearing), are non-material and do not materially or adversely affect the treatment of any creditor that has previously accepted the Plan, and the Plan, as modified, continues to comply with the requirements of §§ 1122 and 1123, no further solicitation is required.

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).

Section 1129(a)(3) provides that a court may confirm a plan only if the plan is proposed "in good faith and not by any means forbidden by law." Section 1129(a)(3) does not define good faith in the context of proposing a plan of liquidation. However, the Ninth Circuit defined that

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standard in the case of *In re Sylmar Plaza, L.P.*, 314 F.3d 1070 (9th Cir. 2002), by holding that "a plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code." *Id.* at 1074; *accord Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989); *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984). The Ninth Circuit in *Sylmar Plaza* further held that "the requisite good faith determination is based on the totality of the circumstances." *Id.* at 1074; *accord Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988).

A Court in this District adopted the same Ninth Circuit standards for good faith in proposing a plan of reorganization in the case of *In re Howard Marshall*, 298 B.R. 670, 675-676 (Bankr. C.D. Cal. 2003). In the *Marshall* case, the Court found that "the good faith evaluation must be made on a case by case basis." *Id.* at 676; *see also Sylmar Plaza*, 314 F.3d at 1075; *Jorgensen*, 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986). The Court further held that "this court must make its own independent evaluation of the debtors' good faith for the purpose of plan confirmation" and that "[p]art of the good faith analysis is that the plan must deal with the creditors in a fundamentally fair manner." *Id.* at 676; *see also Jorgensen*, 66 B.R. at 108-09. However, a plan proponent need not consider every feasible alternative form of plan, so long as the proposed plan meets the requirements of §1129(a). *Id.* at 676; *see In re General Teamsters, Warehousemen & Helpers Union Local*, 890, 225 B.R. 719, 729 (Bankr. N.D. Cal. 1998).

Good faith for purposes of § 1129(a)(3) may be found where the plan is supported by key creditor constituencies, or was the result of extensive arm's-length negotiations with creditors. *See In re Chemtura Corp.*, 439 B.R. 561, 608-09 (Bankr. S.D.N.Y. 2010) (finding good faith requirement met because, among other things, the debtor negotiated and reached agreements with several parties-in-interest to put forward a chapter 11 plan which "in the aggregate demonstrate a good faith effort on the part of the debtor to consider the needs and concerns of all major constituencies in this case") (quotation marks and citation omitted); *In re Leslie Fay Cos.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("The fact that the plan is proposed by the committee as well as the debtors is strong evidence that the plan is proposed in good faith."); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996) (finding that chapter 11 plan was

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proposed in good faith when, among other things, it was based on extensive arm's-length negotiations among plan proponents and other parties-in interest).

Here, the Plan is the product of months of extensive arm's-length independent and interrelated negotiations among the Debtors, the Committee, and the Prepetition Secured Creditors. Further, the Plan incorporates agreed language and settlements among a diverse group of additional creditors, including the PBGC and certain Holders of Class 9 Insured Claims. These negotiations were difficult and addressed complex legal and factual issues. These settlements and compromises on some of the largest creditors' claims provided for allowed administrative and priority creditors to receive a distribution under the Plan on or soon after the Effective Date and ultimately also allow for a distribution to unsecured creditors. This facilitated the best possible recovery for all creditors under the totality of the circumstances. As a result of these compromises, the Plan has the support of each Class of Claims. The support from each of these constituencies evidences the Plan Proponents' good faith and good intentions in proposing the Plan, and the totality of circumstances surrounding its formulation clearly promotes the purposes of the Bankruptcy Code.

Additionally, Bankruptcy Rule 3020(b)(2) provides that the Court may determine that a plan proponent proposed a plan in good faith and not by any means forbidden by law, without receiving evidence, if no party in interest has timely objected to the plan proponent's good faith. *See* Bankruptcy Rule 3020(b)(2) ("If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issue."); *see also In re Warren*, 89 B.R. 87, 91 (B.A.P. 9th Cir. 1988) ("Rule 3020(b)(2) states that without objection the court "may" find that the plan was filed in good faith without receiving evidence."). No party has objected to the good faith of the Plan Proponents in proposing the Plan. The Plan Proponents therefore submit that the requirements of § 1129(a)(3) have been satisfied.

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D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (11 U.S.C. § 1129(a)(4)).

Section 1129(a)(4) requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, be subject to Court approval as reasonable. *See, e.g.*, *In re Worldcom, Inc.*, 2003 WL 23861928, at *53-54 (Bankr. S.D.N.Y. Oct. 31, 2003); *Drexel*, 138 B.R. at 760; *In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (holding that requirements of section 1129(a)(4) were satisfied where plan provided for payment of only "allowed" administrative expenses). Here, the Plan mandates that all payments (except for ordinary course payments on account of Administrative Claims) made by the Debtors for services, costs, or expenses in connection with these Chapter 11 Cases before the Effective Date, including all Professional Claims, must be approved by, or are subject to the approval of, the Bankruptcy Court as reasonable. *See* Plan §§ 2.1, 2.2.

The Plan makes clear that such Professional Claims are contingent on Bankruptcy Court approval and sets forth a procedure for Holders of Professional Claims to submit applications for allowance of compensation for services rendered and reimbursement of expenses with the Bankruptcy Court. Compensation Claims

> shall only shall receive, in full satisfaction of such Claim, Cash in an amount equal to 100% of such Allowed Professional Claim promptly after entry of an order of the Bankruptcy Court allowing such Claim or upon such other terms as may be mutually agreed-upon between the Holder of such Professional Claim[.]

Plan § 2.2. Pursuant to the Plan, professionals asserting a Professional Claim for services rendered before the Effective Date must file a request for final allowance of such Professional Claim no later than 60 days after the Effective Date. In addition, Section 14 of the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. Accordingly, the Plan complies with the requirements of § 1129(a)(4).

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E. Post-Effective Date Directors and Officers Will Be Disclosed Prior to the Effective Date and Their Appointment Is Consistent with Public Policy (11 U.S.C. § 1129(a)(5)).

Section 1129(a)(5)(A)(i) provides that a court may confirm a plan only if the plan proponent discloses 'the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer of voting trustee of the debtor . . . or a successor to the Debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to, or continuance of a director, officer or voting trustee be "consistent with the best interests of creditors and equity holders and with public policy." *In re Produce Hawaii, Inc.*, 41 B.R. 301, 304 (Bankr. D. Haw. 1984); *In re Parks Lumber Co., Inc.*, 19 B.R. 285, 291 (Bankr. W.D. La. 1982). Section 1129(a)(5)(B) provides that a Court may confirm a plan only if the plan proponent discloses "the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider."

Courts have found that where post-confirmation officers or directors have not been selected and identified pre-confirmation, even the disclosure of the identities of known officers and directors and the manner in which additional individuals will be selected may be sufficient to satisfy the requirements of § 1129(a)(5). *See, e.g., In re Charter Commc'ns*, 419 B.R. 221, 260 n.30 (Bankr. S.D.N.Y. 2009) ("To the extent the Plan's satisfaction of 11 U.S.C. § 1129(a)(5) remains at issue, the Court concludes that this confirmation standard is satisfied. It is undisputed that two out of the eleven seats on the Debtors' board of directors remain vacant. Although section 1129(a)(5) requires the plan to identify all directors of the reorganized entity, that provision is satisfied by the Debtors' disclosure at this time of the identities of the *known* directors.") (internal citation omitted; emphasis in original) (citing *In re Am. Solar King Corp.*, 90 B.R. at 808, 815 (Bankr. W.D. Tex. 1988) ("The debtor's inability to specifically identify future board members does not mean that the debtor has fallen short of the requirement imposed in subsection (a)(5)(A)(i) . . . .")); *In re AG Consultants Grain Div., Inc.*, 77 B.R. 665, 669 (Bankr. N.D. Ind. 1987) (holding that debtor complied with section 1129(a)(5) despite fact that it did not specifically reveal identity and affiliation of any individuals who would serve after confirmation,

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in the absence of a proper objection); *In re Eagle Bus Mfg., Inc.*, 134 B.R. 584, 599 (Bankr. S.D. Tex. 1991) (finding sufficient disclosure of officer and director identities "to the extent known as of the Hearing."), *aff'd*, 158 B.R. 421 (S.D. Tex. 1993).

The Plan Proponents have set forth the process to select the initial Liquidating Trustee, members of the Post-Effective Date Committee, and Post-Effective Date Board of Directors. The Plan further provides that the Liquidating Trustee shall serve as an officer of the Post-Effective Date Debtors. *See* Plan § 6.5(b)(iv). The Plan Proponents will disclose the identities of these individuals once they are selected, and prior to the Effective Date, in a Plan Supplement filed prior to the Effective Date. *See id.* § 1.130. The Plan Proponents submit that the selection of the Liquidating Trustee, the members of the Post-Effective Date Committee, and the members of the Post-Effective Date Board of Directors is consistent with the best interests of creditors and public policy.

Further, the process set forth in the Plan for selecting the Liquidating Trustee, with the Post-Effective Date Board of Directors and the Post-Effective Date Committee having certain an oversight roles, complies with §1129(a)(5)(A)(ii), which essentially asks the Bankruptcy Court to ensure that the post-confirmation governance of a debtor is in "good hands." The Plan also establishes procedures for the resignation, termination, and replacement of directors to ensure continuity of governance. Accordingly, the Plan Proponents have satisfied the requirements of § 1129(a)(5).

F. The Plan Does Not Require Governmental Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6)).

Section 1129(a)(6) permits confirmation of a chapter 11 plan only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. *See* 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable here because the Plan does not provide for any rate changes.

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G. The Plan Is in the Best Interests of Creditors and Interest Holders (11 U.S.C. § 1129(a)(7)).

The "best interests of creditors" test of § 1129(a)(7) requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time. *See* 11 U.S.C. § 1129(a)(7).

It is not at all clear that this test applies in the bankruptcy of a nonprofit company. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy Code and state law may preclude or restrict the forced sale of a nonprofit's assets. 11 U.S.C. §§ 1112(c), 303. By way of example, under § 1112(c), a nonprofit's creditors cannot force a nonprofit to convert its chapter 11 case to a chapter 7, nor under § 303 can they file an involuntary petition against a nonprofit. Similarly, state statutes impose stringent requirements on the transfer or sale of a nonprofit debtor's assets, *see, e.g.*, CAL. CORP. CODE §§ 5913, 7913, 9633 5, and the involuntary dissolution of a nonprofit, *see, e.g.*, CAL. CORP. CODE §§ 6510-6519, 8510-8519, 9680.

Assuming, *arguendo*, that the Best Interest Test applies to nonprofits, the Plan Proponents have satisfied the Best Interest Test with respect to Classes 2, 3, 5, 6, and 7 because such Classes have unanimously voted to accept the Plan. *See, supra*, Section II.D. (setting forth the vote tabulation); *see* 11 U.S.C. § 1129(a)(7)(i) (providing that the Best Interest Test is satisfied when, "[w]ith respect to each impaired class of claims or interests[,] each holder of a claim or interest of such class has accepted the plan.").

Further, all creditors will receive more under the Plan than if the case were converted to chapter 7, particularly considering that there are two operating general acute care hospitals (St. Francis and Seton) post-effective date until the buyers obtain their licenses pursuant to the relevant agreements. Generally, in a chapter 7 case, (i) the debtor's assets are usually sold by a chapter 7 trustee,(ii) secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien, (iii) administrative claims are paid thereafter, (iv) unsecured creditors are paid after administrative claims from any remaining sales proceeds, according to their rights to

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priority, (v) unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims, and (vi) finally, interest holders receive the balance that remains after all creditors are paid, if any.

Here, in the event of a conversion of the Chapter 11 Cases to chapter 7, one or more chapter 7 trustees would be appointed to administer the Debtors' assets. Such chapter 7 trustee(s) would be completely unfamiliar with the vast complexities of these Chapter 11 Cases and would be under a statutory duty to liquidate the Debtors' assets as expeditiously as possible. *See* 11 U.S.C. § 704(a)(1).

Since the Bankruptcy Code does not automatically authorize the chapter 7 trustee to operate the Debtors' businesses following a conversion to chapter 7, the chapter 7 trustee would be required to seek authority to continue operating the Debtors after obtaining approval from the U.S. Trustee to make such request. *See, e.g.*, 11 U.S.C. § 721 ("The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate."); Executive Office for the United States Trustee, *Handbook for Chapter 7 Trustees*, U.S. Dept. of Justice at 4-30 (Oct. 1, 2012) ("The trustee must consult with the United States Trustee prior to seeking authority to operate the business[.]"). The chapter 7 trustee's discretion to move for an operating order under § 721, and the willingness of the U.S. Trustee and Court to grant such request, presents significant potential risks to creditor recoveries in chapter 7 for several important reasons. First, the Interim Agreements contemplate the continued operation of SFMC and Seton following the Effective Date, which a cessation of operations following conversion to chapter 7 would violate, and result in estate liability, under the Interim Agreements, SFMC Asset Purchase Agreement, and/or Seton Asset Purchase Agreement. Second, the Plan contemplates the Post-Effective Date Debtors' continued operation following the Effective Date to recovery QAF Payments and other receivables that represent significant sources of post-Effective Date recovery to the Debtors' Estates. Thus, the risk that the Debtors would not continue to operate in a hypothetical chapter 7 case represents a substantial risk to creditor recoveries as compared to the Plan. That a chapter 7 trustee would seek and obtain an operating order is a significant assumption of the projected

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chapter 7 recoveries in the Liquidation Analysis attached to the Disclosure Statement as Exhibit "A".

Following the appointment of a chapter 7 trustee, the chapter 7 trustee would presumably hire new professionals who are equally unfamiliar with the vast complexities of these Chapter 11 Cases. If the chapter 7 trustee is authorized to continue operating the Debtors, the chapter 7 trustee would likely retain healthcare operations advisors to assist in the management of the Debtors' hospitals. A change in management of the Debtors, alone, would represent a monumental task for the chapter 7 trustee and professionals, and would require quick familiarization with hospital operations, QAF Payments and other receivables, status of the SFMC Sale and Seton Sale, the Debtors' ongoing litigation, among a litany of other historically complex issues. Regardless whether the chapter 7 trustee continues operations, the chapter 7 trustee would likely retain attorneys, financial advisors, and other professionals to engage in the complicated process of liquidating the Debtors' assets and providing distributions to creditors. The Debtors anticipate that this process would be lengthy and costly given the Debtors' complex structure and liabilities, particularly without the more streamlined substantive consolidation of the Debtors' assets and liabilities proposed under the Plan. The Debtors estimate, for purposes of the Liquidation Analysis, that the chapter 7 trustee's liquidation and distribution efforts would take at least four years from the date of conversion, but, as with other complex cases, the period is likely to be substantially longer.

The result of a chapter 7 trustee's appointment is the employment a substantial number of professionals unfamiliar with these complex Chapter 11 Cases would be the incurrence of an extraordinary amount of additional professional fees. By contrast, the Debtors' professionals are skilled and already intimately familiar with these Chapter 11 Cases, continuing with their current roles. Other than the treatment of the Secured 2005 Revenue Bond Claims, a portion of which (the 2005 Revenue Bonds Diminution Claim) the Master Trustee and the 2005 Revenue Bonds Trustee have agreed to defer in order to allow the Debtors the ability to satisfy all Allowed Administrative Claims on the Effective Date, the treatment of creditors in the context of chapter 7 liquidations would be the same as they are under the Plan. Through the significant cost savings of

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the confirmed Plan as compared to conversion to chapter 7, holders of allowed claims will receive more under the Plan than they would receive in converted chapter 7 bankruptcies (and certainly at least as much under the Plan).

The advantages of finishing a liquidation in chapter 11 are not just "common knowledge" among professionals. Experts have also concluded that conversion to chapter 7 offers few advantages over liquidation in chapter 11: cases converted from chapter 11 to chapter 7 take significantly longer to resolve than a "pure" chapter 11 liquidation, and such cases require similar, if not greater, fees, and in the end provide creditors with statistically lower recovery rates—often zero—than a comparable Chapter 11 procedure. *See* Arturo Bris, Ivo Welch and Ning Zhu, *The Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, 61(3) THE JOURNAL OF FINANCE 1253-1303 (Feb. 2006). As discussed in more detail in the Liquidation Analysis attached as Exhibit A to the Disclosure Statement, the Debtors have satisfied the "Best Interest Test." Accordingly, § 1129(a)(7) is satisfied because the Plan provides fair and equitable treatment of all classes of creditors and the greatest feasible recovery to all creditors.

H. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(8)).

Section 1129(a)(8) requires that each class of claims or interests must either accept the plan or be unimpaired. *See* 11 U.S.C. § 1129(a)(8). Pursuant to § 1126(c), a class of *claims* accepts a plan if holders of at least two-thirds in amount and more than one-half in number of the allowed claims in that class vote to accept the plan. *See* 11 U.S.C. § 1126(c). A class that is not impaired under a plan is conclusively presumed to have accepted the plan. *See* 11 U.S.C. § 1126(f). On the other hand, a class is deemed to reject a plan if the plan provides that the claims of that class do not receive or retain any property under the plan on account of such claims or interests. *See* 11 U.S.C. § 1126(g).

The Voting Declaration reflects that the Plan has been accepted by all Classes. First, Classes 1A and 1B are unimpaired by the Plan and, thus, are deemed to accept the Plan. Second, all Voting Classes voted to accept the Plan as follows:

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Class	Description	Percentage Accepting in Number	Percentage Accepting in Dollar Amount
2	Secured 2017 Revenue Notes Claims	100%	100%
3	Secured Revenue 2015 Note Claims	100%	100%
4	Secured 2005 Revenue Bond Claims	98.04%	99.93%
5	Secured MOB I Financing Claims	100%	100%
6	Secured MOB II Financing Claims	100%	100%
7	Secured Mechanics Lien Claims	100%	100%
8	General Unsecured Claims	94.72%	82.47%
9	Insured Claims	87.50%	71.43%
10	2016 Data Breach Claims	90%	94.01%

Third, the only two classes deemed to reject the Plan—Class 11 Subordinated General Unsecured Claims and Class 12 Interests—are "vacant classes." Pursuant to Section 3.5 of the Plan,

> [a]ny Class of Claims, as of the commencement of the Confirmation Hearing, that does not have at least one (1) Holder of a Claim in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

Plan § 3.5. Accordingly, because all Classes of Claims either accept the Plan or are unimpaired, the Plan complies with the requirements of § 1129(a)(8).

I. The Plan Complies with Statutorily Mandated Payment of Priority Claims (11 U.S.C. § 1129(a)(9)).

Section 1129(a)(9) requires that persons holding allowed claims entitled to priority under § 507(a) receive specified cash payments under the Plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, § 1129(a)(9) sets forth the treatment the Plan must provide. Under Section 2.1 of the Plan, holders of Allowed Administrative Claims under § 503(b) shall receive Cash in full and final satisfaction of their Allowed Administrative Claims on the Effective Date or as soon as reasonably practicable thereafter, except to the extent the Debtors or the Post-Effective Date Debtors, as applicable, and a holder of an Allowed Administrative Claim against a Debtor agree to less favorable treatment of such Allowed Administrative Claim. *See* Plan § 2.1. Consequently, the Plan Proponents submit that § 1129(a)(9) is satisfied because the Plan provides for the payment of all Allowed Administrative

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Claims on the Effective Date, except to the extent the Holder of such Claim has agreed to different treatment.

Further, the Plan contemplates the establishment of the Administrative Claims Reserve. *See id.* § 15.3. Pursuant to Section 15.3 of the Plan, the Debtors request that the Bankruptcy Court establish the Administrative Claims Reserve in the amount of approximately $80.7 million, which includes the $30 million SGM non-refundable deposit (the "Deposit"). *See* Chadwick Decl. at ¶¶ 33-46; *see also* **Exhibit "C."** The Debtors have proposed to reserve the full face amount of the majority of asserted Administrative Claims that will ***not*** be Allowed on the Effective Date, in accordance with Section 15.3. *See* Chadwick Decl. at ¶¶ 33.b., 41. Many of these fully reserved Administrative Claims represent claims the Debtors already pay in the ordinary course of business. *See id.* The proposed Administrative Claims Reserve further reserves for the remaining handful of Disputed Administrative Claims not Allowed on the Petition Date—just not for the full face amount of the asserted Disputed Administrative Claim. *See id.* at ¶¶ 34, 36. Consequently, the Debtors submit that the Administrative Claim Reserve is sufficient, under the circumstances. *See* Plan § 15.3; *see also* Chadwick Decl. Finally, the Debtors attach hereto the Liquidating Trust Reserve as **Exhibit "D."** Based upon the Debtors' current projection, the amount of $80.7 million is an appropriate reserve, as set forth in the Chadwick Declaration.

Pursuant to Section 4.1 of the Plan, all Allowed Priority Non-Tax Claims under § 507(a), unless otherwise agreed, shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the later of the Effective Date and the date that is fourteen (14) Days after the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim. *See* Plan § 4.1. The Plan also satisfies the requirements of § 1129(a)(9)(C) in respect of the treatment of Priority Tax Claims under § 507(a)(8). Pursuant to Section 2.4 of the Plan and except as otherwise may be agreed, holders of Allowed Priority Tax Claims shall receive, at the option of the Plan Proponents or Liquidating Trustee: (i) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, and (b) the first Business Day after the date that is thirty (30) calendar days after the date such

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Priority Tax Claim becomes an Allowed Priority Tax Claim; or (ii) equal annual Cash payments in an aggregate amount equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate pursuant to § 511, over a period not exceeding five (5) years from and after the Petition Date. As with Administrative Claims, the Plan also contemplates the establishment of the Disputed Unclassified Claims and Disputed Class 1A Claims Reserves, which authorize the Liquidating Trustee to reserve on account of Disputed Priority Non-Tax Claims and Priority Claims. *See* Plan § 7.9(a).

Based upon the foregoing, the Plan satisfies the requirements of § 1129(a)(9).

J. Each Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders (11 U.S.C. § 1129(a)(10)).

Section 1129(a)(10) provides that, if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. *See* 11 U.S.C. § 1129(a)(10); *see also In re Station Casinos, Inc*., 2011 WL 6012089, at ¶ 118 (Bankr. D. Nev. July 28, 2011) ("The bankruptcy courts that have expressly considered the matter have uniformly held that compliance with Section 1129(a)(10) is tested on a per-plan basis, not on a per-debtor basis, and that Section 1129(a)(10) therefore does not require an accepting impaired class for each debtor under a joint plan."). As set forth above, all Voting Classes (none of which contain insiders) are impaired and have accepted the Plan. Therefore, the Voting Declaration confirms that the Plan satisfies § 1129(a)(10).

K. The Plan Is Feasible (11 U.S.C. § 1129(a)(11)).

Section 1129(a)(11) requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors, unless such liquidation or reorganization is proposed in the plan. As described below, the Plan is feasible within the meaning of this provision.

The feasibility test set forth in § 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See Johns-Manville Corp.*, 843 F.2d at 649. The key element of feasibility is whether there is a reasonable probability that the

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provisions of the plan can be performed. As noted by the United States Court of Appeals for the Ninth Circuit: "The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors and equity security holders more under a proposed plan than the Debtors can possibly attain after confirmation." *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] at 1129–34 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility, and the mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

As set forth herein, the uncontroverted evidence demonstrates that the Plan is feasible. *See* Chadwick Decl. ¶ 18. As more specifically discussed below in response to certain non-meritorious objections raised by claimants that do not hold Allowed Administrative Claims, the Plan also satisfies § 1129(a)(11) because the Plan Proponents' feasibility analysis considers the possible effect of certain litigation. Even though the Plan is not required to provide a mechanism for addressing the claims of claimants who may subsequently recover judgments against the Debtors, the Debtors have provided more than sufficient reserves to address any such claims. *See In re RCS Capital Dev., LLC*, BAP No. AZ-12-1626-JuTaAh, 2013 WL 3619172, *8 (B.A.P. 9th Cir. July 16, 2013) (unpublished); *In re Harbin*, 486 F.3d 510, 519 (9th Cir. 2007); *see also* discussion, *infra*. Followed to its logical conclusion, the objecting claimants' arguments would require debtors to reserve for 100% of the face amount of any filed request for payment regardless of allowance, i.e., the worst case scenario. Such a result would preclude debtors from ever confirm a Plan and is inconsistent with the Bankruptcy Code. Consequently, as further discussed below, these claims do not render the Plan infeasible. Accordingly, the Plan satisfies the feasibility requirement set forth in § 1129(a)(11).

L. The Plan Provides for the Payment of All Fees under 28 U.S.C. § 1930 (11 U.S.C. § 1129(a)(12)).

Section 1129(a)(12) requires that, as a condition precedent to the confirmation of a plan, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on

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confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with § 1129(a)(12) by providing for the payment in full, in Cash, any Statutory Fees due and owing at the time of confirmation. *See* Plan § 2.3. The Plan further provides that any Statutory Fees accruing after the Effective Date "shall be paid by the Liquidating Trustee in the ordinary course of business until the closing, dismissal or conversion of these Chapter 11 Cases to another chapter of the Bankruptcy Code." *Id.* Accordingly, the Plan satisfies the requirements of § 1129(a)(12).

M. The Plan Provides for the Payment of Retiree Benefits (11 U.S.C. § 1129(a)(13)).

Section 1129(a)(13) provides that a court may confirm a plan only if "[t]he plan provides for the continuation after its effective date of payment of all retiree benefits . . . for the duration of the period the debtor has obligated itself to provide such benefits." *See* 11 U.S.C. § 1129(a)(13). This provision is inapplicable as the Debtors will not have any ongoing retiree benefit obligations as of the Effective Date.

N. Sections 1129(a)(14) and 1129(a)(15) Do Not Apply to the Plan.

Section 1129(a)(14) relates to the payment of domestic support obligations and § 1129(a)(15) applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. 11 U.S.C. §§ 1129(a)(14), (a)(15). Neither of these provisions applies to the Debtors. The Debtors are not subject to any domestic support obligations, and therefore, the requirements of § 1129(a)(14) do not apply. Further, none of the Debtors are an "individual" and, therefore, the requirements of § 1129(a)(15) do not apply.

O. The Plan Provides that Any Transfer of Property will Be in Compliance with Applicable Non-Bankruptcy Law, Subject to Bankruptcy Court Oversight (11 U.S.C. § 1129(a)(16)).

Section 1129(a)(16) provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." The legislative history of § 1129(a)(16) demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." *See* H.R. REP. 109-31(I), 145, 2005 WL 832198, 121, 2005

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U.S.C.C.A.N. 88, 203-04 (2005). Because, according to the legislative history of § 1129(a)(16), "[n]othing in [1129(a)(16)] may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property," *id.*, and because the Plan provides for the Bankruptcy Court's approval of, or otherwise authorizes, any property transfers, the Plan satisfies the requirements of § 1129(a)(16).

P. The Principal Purpose of the Plan Is Not Avoidance of Taxes (11 U.S.C. § 1129(d)).

Section 1129(d) of the Bankruptcy Code states "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no holder of Priority Tax Claims has thus far raised any objection arguing that the Plan Proponents have proposed the Plan to either avoid taxes or the application of section 5 of the Securities Act of 1933, and the Plan Proponents do not anticipate any such objections will be filed, particularly as all Priority Tax Claims will be paid in full pursuant to the Plan. Moreover, the Plan Proponents are nonprofit, tax-exempt entities. The Debtors therefore submit that the Plan satisfies the requirements of § 1129(d).

V.

THE DISCRETIONARY CONTENTS OF THE PLAN SHOULD BE APPROVED

Section 1123(b) sets forth additional provisions that may be included in a chapter 11 plan. The Plan includes certain such additional provisions. By way of example, the Plan provides for the approval of the Plan Settlement and the PBGC Settlement, pursuant to § 1123(b)(3)(A). *See* Plan § 7.1. Further, the Plan proposes treatment for executory contracts and unexpired leases and seeks to implement release, exculpation, and injunction provisions. *See id.* §§ 11, 13. As discussed below, each of these provisions is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest in these Chapter 11 Cases.

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A. The Plan Settlement and PBGC Settlement Should Be Approved Pursuant to § 1123(b)(3)(A).

The Plan Settlement and the PBGC Settlements (collectively, the "Creditor Settlement Agreements") comprise an essential foundation of the Plan because they settle numerous secured, administrative, priority, and/or unsecured claims between the Debtors, their Prepetition Secured Creditors, the Committee, and the PBGC which would otherwise be the subject of potentially costly and protracted litigation. The Creditor Settlement Agreements also allow for payment of all allowed Unclassified Claims and Priority Non-Tax Claims against each Estate and an opportunity for a distribution to the holders of all General Unsecured Claims. Importantly, absent the approval of the Creditor Settlement Agreements, the administrative solvency of the Debtors is not assured.

1. *The Facts Underlying the Creditor Settlement Agreements.*

The facts underlying the Creditor Settlement Agreements are incorporated herein by this reference. The facts underlying the Plan Settlement are set forth more fully in Section VI.A. hereof, which addresses the Plan Proponents' separate request for approval of the Plan Settlement under Bankruptcy Rule 9019, as set forth in the Plan. *See* Plan § 7.1(a).

The facts underlying the PBGC Settlement are set forth in the *Debtors' (A) Notice and Motion to Approve Settlement Between Debtors and Pension Benefit Guaranty Corporation (PBGC) and (B) Limited Response to Motion of PBGC for Allowance and Payment of Administrative Expense Claims* [Docket No. 5051] (the "PBGC 9019 Motion"). On July 29, 2020, the Court entered its ruling [Docket No. 5232] (the "PBGC 9019 Ruling") granting the PBGC 9019 Motion and approving the PBGC Settlement pursuant to Bankruptcy Rule 9019, which is incorporated by reference into the order [Docket No. 5329] (the "PBGC 9019 Order") granting the PBGC 9019 Motion.

The Plan Proponents have not received any objection to approval of the Creditor Settlement Agreements, except for a single objection to the Settlement Releases contemplated by the Creditor Settlement Agreements, which is discussed in greater detail in Sections V.C. and VIII.G. hereof. *See* SGM Obj. at 22-23 (asserting, without analysis, that "the Debtors have not

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shown why it is appropriate, or necessary for creditors of the Debtors to release and discharge these parties on account of their pre- and post-petition conduct").

2. *The Legal Standard for Approval of the Creditor Settlement Agreements under § 1123(b)(3)(A).*

Section 1123(b)(3)(A) provides that a plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). When evaluating plan settlements pursuant to § 1123(b), courts typically consider the standards used to evaluate settlements under Bankruptcy Rule 9019, i.e., the settlement must be "fair and equitable" and in the best interests of the estate. *See Prot. Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (superseded by statute on other grounds); *In re WCI Cable, Inc.*, 282 B.R. 457, 469 (Bankr. D. Ore. 2002) (evaluating a settlement pursuant to § 1123(b) under the factors applicable to settlements under Bankruptcy Rule 9019 set forth in *In re A & C Properties*, 784 F.2d 1377, 1381–82 (9th Cir.1986)); *In re Best Prods. Co.*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994) ("[W]hether the claim is compromised as part of the plan or pursuant to a separate motion, the standards for approval of the compromise are the same. The settlement must be 'fair and equitable,' . . . and be in the best interest of the estate.") (internal citations omitted); *but see Pac. Gas & Elec. Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) ("Given that section 1123(b)(3)(A) permits a plan of reorganization to include settlements, and given the overwhelming votes in favor of the Plan, such review might be unnecessary.").

Further, as set forth in Section VI., below, the Plan Proponents have met the standard required for approval of the Plan Settlement under the applicable *A&C Properties* factors because it is fair, equitable, and in the best interests of the estate. Given the complexities of the Chapter 11 Cases, the impact on creditor recoveries in the event that the Plan Settlement between the Debtors, the Prepetition Secured Creditors, and the Committee is not approved, and the fair and equitable result to constituents in these Chapter 11 Cases, the Plan Settlement meets the requirements for approval under Rule 9019, as applied to settlements under § 1123(b)(3)(A). Most notably, no party objected to the Plan Proponent's request for approval of the Plan Settlement under Bankruptcy Rule 9019 as set forth in the Plan. *See* Plan § 7.1(a). For the reasons set forth herein,

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and analyzed more fully below, the Plan Settlement should be approved pursuant to § 1123(b)(3)(A).

Further, as set forth above, the Court approved the PBGC Settlement as requested in the Debtors' PBGC 9019 Motion. The PBGC 9019 Motion and the PBGC 9019 Ruling addressed the factors set forth in *A&C Properties*. *See* PBGC Mot. at 8-11; PBGC Ruling at 4-5. As the Bankruptcy Court observed, no parties filed objections to the PBGC Motion. *See* PBGC Ruling at 4 ("The Committee does not object to the Settlement Agreement, and no creditors have objected to the Settlement Agreement."). The Bankruptcy Court's findings concerning the *A&C Properties* factors and Bankruptcy Rule 9019 analysis is, therefore, preclusive and dispositive as to the Bankruptcy Court's analysis of the PBGC Settlement under § 1123(b)(3)(A). *See Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (Issue preclusion forecloses "'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim."); *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) ("For the doctrine to apply, the issue in question must have been 'decided explicitly or by necessary implication in [the] previous disposition.'"). Accordingly, for the reasons set forth in the PBGC 9019 Motion, the PBGC 9019 Ruling, and the PBGC 9019 Order, the Plan Proponents submit that the Bankruptcy Court may also approve the PBGC Settlement incorporated in the Plan, pursuant to § 1123(b)(3)(A).

B. The Assumption and Assignment or Rejection of the Executory Contracts and Unexpired Leases under the Plan Should Be Approved.

Section 11.1 of the Plan provides for the rejection of all executory contracts and unexpired leases ("Executory Agreements") that exist between the Debtors and any other person or entity prior to the Petition Date on the Effective Date except for Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, or (c) are specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed. The Schedule of Assumed Contracts, which will be filed

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prior to the Effective Date, will identify Executory Agreements to be assumed by the Debtors pursuant to the Plan.

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *Durkin v. Benedor Corp. (In re G.I. Indust., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision") (citing *NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 523 (1984)); *see also In re Chi-Feng Huang,* 23 B.R.798, 800 (B.A.P. 9th Cir. 1982). The debtor's exercise of its business judgment is entitled to deference. *See In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007) ("[I]n evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.") (citing *Navellier v. Sletten,* 262 F.3d 923, 946 n. 12 (9th Cir. 2001); *FDIC v. Castetter,* 184 F.3d 1040, 1043 (9th Cir.1999); *In re Chi–Feng Huang,* 23 B.R. at 801).

The Debtors reviewed and analyzed their Executory Agreements. In their business judgment, the Debtors may conclude that certain of their Executory Agreements should be assumed on the Effective Date to ensure the Post-Effective Date Debtors' seamless transition into the Post-Effective Date period and certain other Executory Agreements may be required to ensure that the value of the Liquidating Trust Assets are maximized. Likewise, the Debtors have determined that it is in their best interest to reject all other Executory Agreements under the Plan as they are no longer providing a benefit to the Estates. Accordingly, for all of the foregoing reasons, the proposed assumption or rejection of Executory Agreements should be approved in connection with confirmation.

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C. The Plan's Release, Injunction and Exculpation Provisions Are Appropriate and Should Be Approved.

The Plan provides for the release of certain causes of action of the Debtors, releases by holders of Claims, and the exculpation of certain parties for their acts during the Chapter 11 Cases. These provisions are proper because, among other things, they are the product of arm's-length negotiations and have been critical to obtaining the support of various constituencies for the Plan.

1. *The Releases of the Debtors.*

Section 13.5(a) of the Plan provides that all Holders of Claims will release the Debtors from liabilities associated with the Debtors' prepetition or postpetition actions "except for as provided in this Plan or the Confirmation Order." *See* Plan § 13.5(a). The Plan simply confirms that all prepetition and postpetition claims that have been—or could have been—asserted against the Debtors through the Effective Date will be either treated through the Plan and Confirmation Order or subject to release. The Releases of the Debtors provides no more limitation on creditors than, for example, the Bar Date Orders, which preclude creditors from asserting Claims against the Debtors or filing Requests for Payment beyond the applicable Bar Date.

2. *The Debtors' Releases.*

Pursuant to Section 13.5(d) of the Plan, the Debtors shall release the Released Parties[5] from any and all Causes of Action held by, assertable on behalf of, or derivative of the Debtors, in

[5] Section 1.147 of the Plan provides as follows:

> ***Released Party*** means, individually and collectively, the Estates, the Debtors, the Committee, the members of the Committee, the Indenture Trustees and their affiliates, and each current and/or former member, manager, officer, director, employee, counsel, advisor, professional, or agents of each of the foregoing who were employed or otherwise serving in such capacity before or after the Petition Date.

Further, Section 1.174 of the Plan provides as follows:

> ***Settlement Released Parties*** means, collectively, the parties to the Plan Settlement and the PBGC Settlement who are the beneficiaries of a limited or general release under the Plan Settlement and the

{footnote continued}

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any way relating to the Debtors the operation of the Debtors prior to or during the Chapter 11 Cases, the transactions or events giving rise to any Claim that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims before or during the Chapter 11 Cases, the marketing and the sale of Assets of the Debtors, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents, other than a Claim against a Released Party arising out of the gross negligence or willful misconduct of any such person or entity (the "Debtor Releases").

It is well-established that debtors are authorized to settle or release their claims in a chapter 11 plan. *See In re Pac. Gas & Elec.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) ("Given that section 1123(b)(3)(A) permits a plan of reorganization to include settlements, and given the overwhelming votes in favor of the Plan, such review [under Rule 9019] might be unnecessary. Nevertheless . . . [t]he court will discuss the releases as if Rule 9019 governs"); *In re Aina Le'a, Inc.,* No. BR 17-00611, 2019 WL 2274909, at *12 (Bankr. D. Haw. May 24, 2019) ("The releases of Claims and Rights of Action by the Debtor described herein and in the Plan, in accordance with section 1123(b) of the Bankruptcy Code (the 'Debtor's Release'), represent a valid exercise of the Debtor's business judgment under Bankruptcy Rule 9019."). Section 1123(b)(3)(A) specifically provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). A plan that proposes to release a claim or cause of action belonging to a debtor is considered a "settlement" for purposes of satisfying § 1123(b)(3)(A). Settlements pursuant to a plan are generally subject to the same "reasonable business judgment" standard applied to settlements under Bankruptcy Rule 9019. *See WCI Cable, Inc.*, 282 B.R. at 469 (evaluating a settlement pursuant to § 1123(b) under

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> PBGC Settlement, respectively, solely to the extent of such limited or general release, as provided in this Plan.

The releases granted to the Settlement Released Parties, pursuant to § 1123(b)(3)(A), are addressed in greater detail, above.

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the factors applicable to settlements under Bankruptcy Rule 9019 set forth in *In re A & C Properties*).

First, the Debtors are not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. As discussed, below, the Committee has analyzed certain claims against the Prepetition Secured Creditors, which are to be released pursuant to the Plan Settlement; however, the Committee has agreed that it is in the best interests of the Debtors' estates and creditors not to pursue such litigation under the Plan Settlement. Therefore, it is not possible to place any probability of success on such litigation given that no viable litigation has even been identified.

Second, the Debtor Releases have the support of every major creditor constituent in these Chapter 11 Cases. As discussed above, as part of the Creditor Settlement Agreements, the Settlement Released Parties and the Committee have agreed to support the Plan, including the Debtor Releases. The Plan reflects the settlement and resolution of numerous complex issues, and the Debtor Releases are an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan. Further, each Voting Class has overwhelmingly voted to accept the Plan, including the Debtor Releases set forth therein.

Third, the Debtor Releases are in the best interests of the Debtors' creditors. In the absence of any viable claims against any of the Released Parties, pursuing claims against the Released Parties would be a costly and futile exercise that would only distract the Liquidating Trustee from its primary obligation of managing Post-Effective Date Debtors and the Liquidating Trust. The Debtor Releases will eliminate the potential for post-effective date litigation against directors and officers that could directly and indirectly threaten the Post-Effective Date Debtors' ability to function effectively by virtue of indemnification agreements and the cost and distraction of potential third-party discovery.

Fourth, each of the Released Parties afforded significant value to the Debtors, played an integral role in the formulation of the Plan, and expended significant time and resources analyzing and negotiating the issues involved therein and leading the Debtors through a complex chapter 11 process.

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Fifth, the Debtor Releases are similar in scope to those approved by this Court and courts in this district. *See, e.g.*, *In re FirstFed Fin. Corp.*, No. 2:10-bk-12927-ER, Docket No. 514 at 9 (Bankr. C.D. Cal. Nov. 13, 2012) (approving debtor releases). Accordingly, the Plan Proponents submit that the Debtor Releases are consistent with applicable law, represent a valid settlement of whatever Claims the Debtors may have against the Released Parties pursuant to § 1123(b)(3)(A), represent a valid exercise of the Debtors' business judgment, and should be approved.

3. *The Injunctions.*

Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a). The Court may issue an injunction in connection with plan confirmation in furtherance of a settlement or in the interest of the Debtors' estates. *See WCI Cable, Inc.*, 282 B.R. at 469 ("Section 105(a) can be used with respect to the injunction provisions of the WCI Plan only to the extent necessary and appropriate to carry out the terms of an approved settlement.") (citing *In re Dow Corning Corp.*, 255 B.R. 445, 478 (E.D. Mich. 2000)); *see also In re Rohnert Park Auto Parts, Inc.,*113 B.R. 610, 615 (B.A.P. 9th Cir. 1990) ("[S]ection 105 permits the court to issue both preliminary and permanent injunctions after confirmation of a plan to protect the debtor and the administration of the bankruptcy estate[.]"). As discussed herein, the equities favor imposition of the injunctive provisions of the Plan because, among other things, the Plan presents the best possible recovery to creditors (as evidenced by the overwhelming votes in support of the Plan) and the injunctions are necessary components to the Creditor Settlement Agreements that form the cornerstone of the Plan.

Courts in this District, including this Bankruptcy Court, regularly confirm liquidating plans with permanent injunctive provisions similar to those set forth in the General Injunction and the Other Injunctions provisions of the Plan. *See, e.g.*, *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, No. 2:16-bk-17463-ER, Docket No. 1372 at 15 (Bankr. C.D. Cal. Sept. 18, 2018) (approving injunctions, releases, and exculpations, including a permanent injunction against "all entities who have held, hold, or may hold Claims against the Debtor, the Debtor's property, the Debtor's Estate, the Liquidating Trust and/or the Liquidating Trustee"); *In re T Asset Acquisition Co., LLC*,

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No. 2:09-bk-31853-ER, Docket No. 741 at 4-5 (Bankr. C.D. Cal. June 6, 2011) (confirming liquidating plan and permanently enjoining "all Entities that have held, currently hold, or may hold a Claim that is satisfied or Interest that is terminated pursuant to the terms of the Plan" from taking certain actions); *In re SCI Real Estate Invs., LLC*, Case No. 2:11-bk-15975-PC, Docket No. 186 at 18 (Bankr. C.D. Cal. June 15, 2012) (providing for discharge of debtors and liquidating debtors and permanent injunction against "the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability"); *In re Danville Land Invs., LLC*, Case No. 2:11-bk-62685-DS, Docket No. 150 at 8 (Bankr. C.D. Cal. May 23, 2013) (confirming liquidating plan providing for permanent injunction). Further, the Other Injunctions, which apply to protect the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, the Post-Effective Date Board of Directors, the Liquidating Trust and related persons in their official capacities, are consistent with Ninth Circuit precedent applying the *Barton* doctrine to the successor representatives of the debtors' estates involved in liquidation under a plan. *See In re Crown Vantage, Inc.*, 421 F.3d 963, 973 (9th Cir. 2005) ("[A]s part of a liquidating Chapter 11 reorganization proceeding, the bankruptcy court chose the mechanism of a liquidating trust to liquidate and distribute the assets of the estate. The bankruptcy court retained jurisdiction over the case. In this context, the Liquidating Trustee is the 'functional equivalent' of the bankruptcy trustee and is entitled to *Barton* protection.").

4. *The Exculpation.*

Exculpation of estate fiduciaries and Plan Proponents is customary and permissible in chapter 11. Indeed, the Ninth Circuit has approved exculpation provisions that extend to plan proponents, including non-debtor plan proponents. *See Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020) (approving exculpation of debtor's largest creditor that became a plan "proponent through its direct participation in the negotiations that preceded the adoption of the Plan"); *see also In re Yellowstone Mountain Club*, 460 B.R. at 277 (approving exculpation that extended to "the Debtors, Committee [of Unsecured Creditors], Credit Suisse and CrossHarbor, who all became, in essence, plan proponents"); *In re Lighthouse Lodge, LLC*, No. 09-52610-RLE, 2010

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WL 4053984, at *6, *9 (Bankr. N.D. Cal. Oct. 14, 2010) ("This release of liability except from gross negligence or willful misconduct has been extended to plan proponents other than a committee."); *In re W. Asbestos Co.*, 313 B.R. 832, 846-47 (Bankr. N.D. Cal. 2003) (approving provision that released claims against the Plan Proponents other than the Debtors).

Plan exculpations may also extend to non-estate fiduciaries when the exculpated parties make substantial contributions to the reorganization, the exculpations are important to such parties' participation in the reorganization efforts, and the exculpations are limited "in both scope and time" to actions related to the chapter 11 cases. *See In re Yellowstone Mountain Club*, 460 B.R. at 272; *Meritage Homes of Nev. Inc. v. JPMorgan Chase Bank, N.A. (In re S. Edge LLC)*, 478 B.R. 403, 415-16 (D. Nev. 2012) (approving exculpation of third party nondebtors because exculpation "sets a standard of care to be applied in the bankruptcy proceeding" and "does not improperly release third party nondebtors"); *Lazo v. Roberts*, No. CV15-7037-CAS(PJWx), 2016 WL 738273, at *7 (C.D. Cal. Feb. 22, 2016) ("Increasingly, however, [t]he trend among bankruptcy courts [more generally] has been to confirm chapter 11 plans with express discharge or indemnification provisions for nondebtors if they meet certain tailored criteria or overall necessity. This overall trend is evident in the Ninth Circuit.") (internal quotation marks and citations omitted); *see also In re Stearns Holdings, LLC*, 607 B.R. 781, 790 (Bankr. S.D.N.Y. 2019) (holding that exculpation could extend to parties "who make a substantial contribution to a debtor's reorganization and play an integral role in building consensus in support of a debtor's restructuring"). And exculpation clauses are without a doubt essential in cases like this one that are heavily litigated. *See In re Yellowstone Mountain Club*, 460 B.R. at 274 ("An exculpation clause in this case was certainly advisable given the litigious posture of the parties.").

The exculpation provision in the Plan appropriately excludes willful misconduct, gross negligence, fraud, or criminal conduct, and there is no requirement that breaches of professional duties be excluded from a plan exculpation provision. *See In re W. Asbestos Co.*, 313 B.R. at 846 (approving provision that "neither the Plan Proponents nor any of their agents, including their attorneys, shall be liable, *other than for willful misconduct*, with respect to any action or omission

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prior to the effective date in connection with the Debtors' operations, the Plan, or the conduct of the bankruptcy case") (emphasis added).

The exculpation provision the Court upheld in *Blixseth* is particularly instructive. *See* 961 F.3d 1074. There, as here, the exculpation provision was limited both temporally and in scope to actions related to the reorganization; specifically, "any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the formulation, negotiation, implementation, confirmation or consummation of this Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into during the Chapter 11 Cases or otherwise created in connection with this Plan." *Id.* at 1078-79. Furthermore, like here, the exculpation clause extended to major stakeholders, including the provider of debtor in possession financing and the largest creditor in the case, who had negotiated the plan, leading the plan to be essentially a collaborative effort, of which the exculpation was a "cornerstone." *Id.*; *see also Yellowstone Mountain Club*, 460 B.R. at 277. The exculpation clause also similarly covered the various agents, professionals, and other related parties of the exculpated parties—specifically, "with respect to each of the foregoing Persons, each of their respective directors, officers, employees, agents . . . representatives, shareholders, partners, members, attorneys, investment bankers, restructuring consultants and financial advisors." 460 B.R. at 267. Here, the Plan exculpation extends to the major stakeholders in this case who entered into settlements with the Debtors to allow the Plan to become effective and collaborated with the Debtors in the countless hours of negotiation that culminated in reaching the Creditor Settlement Agreements that became the "cornerstones" of the Plan. Finally, as with the exculpation in *Blixseth*, the Plan exculpation excludes willful misconduct and gross negligence. *Compare* 961 F.3d at 1079 *with* Plan § 13.7. Accordingly, the Bankruptcy Court should approve the Plan's release, injunction and exculpation provisions.

5. *The Creditor Settlement Agreement Releases Are Appropriate and Necessary.*

A material condition of the Plan Settlement and the PBGC Settlement are that Confirmation Order provide the Settlement Released Parties with the same releases, exculpations, and injunctions available to the Released Parties under the Plan to prevent Holders of Claims from

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asserting, commencing, pursuing, or prosecuting any claims related to the Settlement Released Parties' pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature except for as provided in the Plan or the Confirmation Order. Without the Settlement Releases, the Settlement Released Parties will not be bound by the terms of the Creditor Settlement Agreements, which resolve, among other things, complex litigation between the Committee (on behalf of the Debtors' estates) and the Prepetition Secured Creditors, significant claims held by the PBGC against the estates, and the deferred treatment of the 2005 Revenue Bonds Diminution Claim that will allow for the Plan to become effective.

The Settlement Releases are fair, equitable, and permissible. The Settlement Released Parties have made significant contributions to the success of these Chapter 11 Cases, including, in certain instances, compromising their claims to reach settlements that furthered the resolution of these Chapter 11 Cases, financing the Debtors' operation during these Chapter 11 Cases, and otherwise supporting the Debtors' intensive efforts and negotiations to build near-universal consensus behind the Plan—a result which benefits all parties in interest and preserves the value-maximizing recoveries set forth in the Plan. The Settlement Releases thus appropriately offer certain protections to parties that constructively participated in the Debtors' restructuring, and should be approved as fair, reasonable, and equitable. As set forth below, the releases are permissible under § 524(e) because they do not effectuate a release of debts on which the Settlement Released Parties are co-liable with the Debtors. *See Blixseth*, 961 F.3d at 1081-84. Indeed, this Court has previously approved releases, exculpations, and injunctions in connection with a plan settlement. *See, e.g.*, *In re First Reg'l Bancorp*, Case No. 2:12-bk-31372-ER, Docket No. 257 at 7 (Bankr. C.D. Cal. Aug. 23, 2013) (confirming liquidating chapter 11 plan and granting releases and exculpation pursuant to Bankruptcy Rule 9019 motion contained in plan); *In re First Fed. Fin. Corp.*, Case No. 2:10-bk-12927-ER, Docket No. 514 at 9-11 (Bankr. C.D. Cal. Nov. 13, 2012) (approving plan settlement pursuant to § 363 and Bankruptcy Rule 9019 that included release, exculpation and injunctive provisions).

Further, the Bankruptcy Court has already approved the releases set forth in the PBGC Settlement pursuant to the PBGC Ruling. The Bankruptcy Court's approval of the releases set

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forth in the PBGC Settlement are now law of the case and issue preclusive both as to the PBGC Settlement and the Plan Settlement. *See Taylor v. Sturgell,* 553 U.S. 880, 892 (2008) (Issue preclusion forecloses "'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim."); *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000) ("For the doctrine to apply, the issue in question must have been 'decided explicitly or by necessary implication in [the] previous disposition.'"); *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988), *amended*, 860 F.2d 357 (9th Cir. 1988) ("Under the 'law of the case' doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case."). Accordingly, as set forth further below, the Settlement Releases Parties are entitled to the releases set forth in the Plan and in the Creditor Settlement Agreements, pursuant to § 1123(a)(2)(A).

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VI.

THE PLAN SETTLEMENT SHOULD BE APPROVED UNDER BANKRUPTCY RULE 9019

As set forth in the Plan, the Plan Proponents requested that the entry of the Confirmation Order constitute the Bankruptcy Court's approval, as of the Effective Date, of the Plan Settlement by and between the Debtors, the Prepetition Secured Creditors, and the Committee, pursuant to Bankruptcy Rule 9019, as set forth more fully in the draft settlement agreement (the "Settlement Agreement") attached hereto as **Exhibit "B."** The Plan Proponents submitted that (i) entering into the Plan Settlement is in the best interests of the Debtors, their Estates, and their creditors, (ii) the Plan Settlement is fair, equitable and reasonable, and (iii) the Plan Settlement meets all the standards set forth in Bankruptcy Rule 9019. The Plan Proponents did not receive objections to the Court's approval of the Plan Settlement pursuant to Bankruptcy Rule 9019. Accordingly, for the reasons set forth below, the Plan Proponents submit that the Bankruptcy Court should approve the Plan Settlement pursuant to Bankruptcy Rule 9019.

A. The Facts Underlying the Plan Settlement.

1. *The Prepetition Secured Credit Facilities.*

As of the Petition Date, the Debtors were indebted and liable to each of the Prepetition Secured Creditors as follows:

- The Master Trustee with respect to the MTI Obligations (defined below) securing the repayment by the Obligated Group (defined below) of its loan obligations with respect to: (a) the 2005 Series A, G and H Revenue Bonds; (b) the 2015 Revenue Notes; and (c) the 2017 Revenue Notes. The joint and several obligations issued under the Master Indenture by the Obligated Group Members in respect of the 2005 Series A, G and H Revenue Bonds, 2015 Revenue Notes, and the 2017 Revenue Notes are collectively referred to as the "MTI Obligations."

- Wells Fargo as the bond indenture trustee under the bond indentures relating to the 2005 Series A, G and H Revenue Bonds (the "2005 Revenue Bonds Trustee").

- U.S. Bank as the note indenture trustee and as the collateral agent under each of the note indentures relating to the 2015 Revenue Notes and the 2017 Revenue Notes, respectively (in such capacities the "2015 Notes Trustee" and the "2017 Notes Trustee").

- The MTI Obligations are jointly and severally secured by, *inter alia*, security interests granted to the Master Trustee in the prepetition accounts of, and mortgages on the principal real estate assets of, the members of the Obligated Group. The MTI Obligations are also the subject of an Amended and Restated Intercreditor Agreement dated December 1, 2017 (the "Intercreditor Agreement") pursuant to which the Master Trustee, the 2005 Revenue Bonds Trustee, the 2015 Notes Trustee, the 2017 Notes Trustee, and VHS agreed to the prior payment of the 2015 Revenue Notes and 2017 Revenue Notes under certain conditions and pursuant to grants of certain collateral liens and deeds of trust.

- The 2015 Notes Trustee and the 2017 Notes Trustee also have been granted prepetition first priority liens upon and security interests in the Obligated Group's accounts and by deeds of trust on the principal real estate assets and equipment of SLRH and SFMC. The 2017 Notes Trustee also has been granted a deed of trust, dated as of December 1, 2017, by Holdings in certain real property and equipment located in San Mateo, California to further secure the 2017 Revenue Notes.

- The MOB Lenders hold security interests in Holdings' accounts, including rents and pursuant to deeds of trust on medical office buildings owned by Holdings (the "MOB Financing"). The MTI Obligations, the Obligated Group's loan obligations with respect to the Working Capital Notes, and the MOB Financing are each referred to herein as a "Prepetition Secured Obligation;" the prepetition interests (including the liens and security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are each referred to herein as such Prepetition Secured Creditor's "Prepetition Lien."

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- Certain of the collateral securing the MTI Obligations and the MOB Financing has been sold by the Debtors pursuant to orders approving such sales entered by the Bankruptcy Court, with certain of the Sales Proceeds (as defined in the Final DIP Order) either being held in the Escrow Deposit Accounts (as defined in the Final DIP Order) as required by the Final DIP Order or utilized pursuant to the Cash Collateral Stipulations (as defined below). As of the date of this Agreement, the Obligated Parties have closed sales of collateral pursuant to the SCC Sale Order[6] and the St. Vincent Sale Order.[7] The Obligated Parties have been authorized to sell, but have not yet consummated the sale of, assets constituting collateral securing the MTI Obligations pursuant to the SFMC Sale Order and the Seton Sale Order.

2. *The DIP Financing.*

On the Petition Date, the Debtors filed the *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* (the "DIP Financing Motion"). Pursuant to the DIP Financing Motion, the Debtors sought, among other things, entry of an order authorizing the Debtors to enter into a senior secured, superpriority debtor in possession financing facility (the "DIP Facility") with Ally Bank, a subsidiary of Ally Financial, Inc. under the Debtors In Possession Revolving Credit Agreement, dated as of September 7, 2018 (as amended, supplemented, or otherwise modified and in effect from time to time, and, together with all other agreements, documents, notes certificates, and instruments executed and/or delivered with, to or in favor of the DIP Lender, the "DIP Financing"). On October 4, 2018, the Court entered the Final DIP Order granting the DIP Financing Motion on a final basis.

[6] The "SCC Sale Order" refers to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief*, dated December 27, 2018 [Docket No. 1153].

[7] The "St. Vincent Sale Order" refers to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to the Chan Soon-Shiong Family Foundation or Its Designee(s) Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and (C) Granting Related Relief*, dated April 10, 2020 [Docket No. 4530].

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Paragraph 5(e) of the Final DIP Order granted the Committee standing and authority to challenge the validity, enforceability and amount of the Prepetition Secured Obligation and the Prepetition Liens (subject to the limitations set forth in the Final DIP Order, a "Challenge"). *See* Final DIP Order at ¶ 5(e). Paragraph 5(e) of the Final DIP Order further provided that Prepetition Collateral, VMF Collateral, or their proceeds could not be used to investigate or prosecute Challenge claims against the Prepetition Secured Creditors; provided, however, that the Committee was authorized to investigate the existence of such Challenge claims and have allowed fees paid from the Prepetition Collateral or VMF Collateral and the proceeds of the DIP Facility up to the amount of $250,000, as set forth more fully in the Final DIP Order (the "Investigation Budget") and the Debtors' reservations of rights [Docket Nos. 3896, 4287]. *See id.*

3. *The Adversary Proceedings.*

On June 13, 2019, the Committee filed a *Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 1] against U.S. Bank, as defendant, which initiated an adversary proceeding before the Bankruptcy Court captioned *Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. v. U.S. Bank National Association*, Adv. Case No. 2:19-ap-01165-ER (Bankr. C.D. Cal.) (the "U.S. Bank Adversary Proceeding"). On September 11, 2019, the Committee filed the *First Amended Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 30]. On September 30, 2019, U.S. Bank filed a motion [Adv. Docket No. 39] to dismiss the amended complaint. The motion to dismiss is fully briefed and the hearing thereon has been held in abeyance by order [Adv. Docket No. 53] of the Bankruptcy Court pending a request of any party to the U.S. Bank Adversary Proceeding or further order of the Bankruptcy Court.

On June 13, 2019, the Committee filed a *Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 1] against UMB Bank, as defendant, which initiated an adversary proceeding before the Bankruptcy Court captioned *Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. v. UMB Bank National Association*, Adv. Case No. 2:19-ap-01166-ER (Bankr. C.D. Cal.) (the "UMB Bank

Adversary Proceeding" and, together with the U.S. Bank Adversary Proceeding, the "Adversary Proceedings"). On September 11, 2019, the Committee filed the *First Amended Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 28]. On September 30, 2019, UMB Bank filed a motion [Adv. Docket No. 37] to dismiss the amended complaint. The motion to dismiss is fully briefed and the hearing thereon has been held in abeyance by order [Adv. Docket No. 53] of the Bankruptcy Court pending a request of any party to the UMB Bank Adversary Proceeding or further order of the Bankruptcy Court.

4. *The MOB Lenders Challenge Deadline.*

The Bankruptcy Court has approved stipulations [Docket Nos. 1045, 1047, 1248, 1249, 1309, 1310, 1389, 1390, 1626, 1627, 1944, 1945, 2363, 2364, 2484, 2485, 2548, 2549, 2582, 2583, 2610, 2611, 3014, 3015, 3209, 3210, 3543, 3544, 3770, 3771, 3904, 3905, 3966, 3967, 4110, 4111, 4288, 4289, 4589, 4590, 4739, 4740, 4903, 4904, 5126, 5127] (the "Challenge Stipulations") continuing the deadline for the Committee to file a Challenge (the "Challenge Deadline") with respect to the MOB Lenders. The current deadline for the Committee to file such Challenge is August 31, 2020. See Docket Nos. 5136, 5138.

5. *The Cash Collateral Stipulations.*

On August 28, 2019, the Debtors filed the *Debtors' Notice of Motion and Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash Collateral and (B) Granting Adequate Protection to Prepetition Secured Creditors* [Docket No. 2962] (as modified by Docket No. 2968, the "Cash Collateral Motion"). As set forth more fully in the Cash Collateral Motion, the Debtors sought, pursuant to the terms of a consensual proposed order (the "Cash Collateral Agreement"), authority to, among other things, (i) continue use of "Escrowed Cash Collateral" (as defined in the Cash Collateral Agreement), (ii) grant liens on postpetition accounts and inventory as adequate protection to the Prepetition Secured Creditors, and (iii) pay off the DIP Financing. On September 6, 2019, the Court entered the Final Order (A) Authorizing Continued Use of Cash Collateral, (B) Granting Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief [Docket No. 3022] (the "Supplemental Cash Collateral Order") granting the Cash Collateral Motion and approving the terms of the Cash Collateral Agreement. The Bankruptcy Court has

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approved [Docket Nos. 3883, 4028, 4187, 4670, 5151] (together with the Supplemental Cash Collateral Order, the "Cash Collateral Orders") stipulations [Docket Nos. 3872, 4019, 4184, 4669, 5150] to amend the Supplemental Cash Collateral Order to, among other things, extend the Debtors' consensual use of cash collateral. The Debtors are currently authorized to use cash collateral through September 6, 2020, 2020. See Docket No. 5151.

6. *Summary of the Plan Settlement.*

Section 7.1(a) of the Plan sets forth, and Article VII(B)(1) of the Disclosure Statement describes, the principle terms of a Plan Settlement, whereby the Parties have agreed, among other things, to resolve all issues and disputes among the Parties and obtain the support of the Parties for the prompt, consensual confirmation of the Plan. The Settlement Agreement sets forth the final and complete terms of the Plan Settlement.

The principal terms of the Settlement Agreement can be summarized as follows:[8]

- The Parties agree to support the Plan and entry of the Confirmation Order, including any future modifications that do not contradict the material terms of the Settlement Agreement;
- Class 2 Secured 2017 Revenue Notes Claims, Class 3 Secured 2015 Revenue Notes Claims, Class 4 Secured 2005 Revenue Bond Claims, Class 5 Secured MOB I Financing Claims, Class 6 Secured MOB II Financing Claims, and Class 8 General Unsecured Claims will be treated in accordance with the terms of the Plan;
- All rights held by the 2017 Revenue Bond Trustee, 2015 Revenue Bond Trustee, 2005 Revenue Bonds Trustee, and/or the Master Trustee under the Intercreditor Agreement shall be deemed satisfied, waived or released by the treatment provided in the Settlement Agreement and the Plan;
- On the Effective Date, the Debtors shall pay, or reserve for, all Allowed and allowable Administrative Claims not otherwise paid in the ordinary course of the Debtors' operations;
- On the Effective Date, or as soon thereafter as is reasonably practicable, the Committee shall dismiss the Adversary Proceedings with prejudice and all further rights of the Committee with respect to the claims raised in the Adversary

[8] This is a summary only. Reference should be made to the complete Settlement Agreement attached hereto as **Exhibit "B."** The terms of the Settlement Agreement shall control over the terms of this summary in all instances.

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Proceedings shall be waived, released, and terminated with prejudice pursuant to mutual releases;

- Any and all rights of the Committee to pursue claims against the MOB Lenders pursuant to the Final DIP Order and/or the Cash Collateral Orders shall be waived, released, and terminated with prejudice pursuant to mutual releases;
- The Debtors and the Prepetition Secured Creditors shall waive any objection to the fees and expenses incurred by the Committee's advisors which exceed the limitations set in these cases for investigating and prosecuting claims against the Prepetition Secured Creditors, and all further rights of the Debtors and the Prepetition Secured Creditors with respect to such objections shall be waived, released, and terminated with prejudice pursuant to mutual releases;
- The Confirmation Order shall include certain findings of fact and conclusions of law, as more specifically enumerated in the Settlement Agreement; and
- The Parties agree to mutual releases.

The Settlement Agreement is also subject to various conditions, including Bankruptcy Court approval, confirmation and effectiveness of the Plan, and the closing of both the SFMC Sale and the Seton Sale.

The Debtors believe that the Settlement Agreement is fair, equitable, and reasonable and, therefore, is in the best interests of the estates and creditors. *See* Adcock Decl. at ¶ 5. The Settlement Agreement is subject to various conditions, including Bankruptcy Court approval of the Settlement Agreement, the Plan Effective Date having occurred on or before September 5, 2020, and neither the order approving the Settlement Agreement nor the Confirmation Order being subject to a stay as of the Plan Effective Date. *Id.*, ¶ 4. The Settlement Agreement (i) avoids both protracted and uncertain litigation between and among various Parties, (ii) agrees to certain modification of priority in order to ensure that all Allowed and allowable Administrative Claims will be paid, (iii) avoids further administrative burden to the estates through early resolution of any potential disputes between the Parties concerning their respective claims and rights associated with the chapter 11 cases as a whole, and the Committee's fees and certain pending adversary proceedings, and (iv) garners support of confirmation of the Plan and exit from these Chapter 11 Cases. *Id*.

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B. The Plan Settlement Should Be Approved Pursuant to Bankruptcy Rule 9019.

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. Fed. R. Bankr. P. 9019(a). Section 105(a) of the Bankruptcy Code further provides the Court with the discretion to issue any order that is necessary or appropriate to carry out the purposes of the Bankruptcy Code. 11 U.S.C. § 105(a). The law strongly encourages compromise. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Amer*., 141 Cal. App. 4th 46, 62 (Cal. 2006); *United States v. McInnes*, 556 F.2d 436, 440 (9th Cir. 1977) ("We are committed to the rule that the law favors and encourages compromise settlements."). Additionally, compromises are favored in bankruptcy so as to minimize litigation and expedite a bankruptcy estate's administration. *See Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied sub nom, Martin v. Robinson*, 479 U.S. 854 (1986).

This Court has great latitude in approving compromise agreements as long as it finds that the compromise is fair and equitable. *Id*. at 1382; s*ee also Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988); *In re Mickey Thompson Entm't Grp., Inc*., 292 B.R. 415 (B.A.P. 9th Cir. 2003). In determining the fairness, reasonableness and adequacy of a proposed settlement, the Court must consider the following factors: "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *A & C Props.*, 784 F.2d at 1380-81.

The first factor requires an inquiry into the probability of success in litigation, because the purpose of a compromise agreement between a debtor and a creditor is to allow the parties to avoid the expenses and burdens associated with litigation. *Id*. Here, litigation between and among the parties would involve several uncertainties. First, the Settlement Agreement resolves so many causes of action, both active (*e.g.*, the Adversary Proceedings) and potential (*i.e.*, through waiver and mutual release), that it is impossible to quantify the probability of success overall. Second, the complex nature of all the Parties' actual and potential claims against each other exposes all

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Parties to additional uncertainty as to success. *See, e.g.*, U.S. Bank Adversary Proceeding, Adv. Docket Nos. 1, 39; UMB Bank Adversary Proceeding, Adv. Docket Nos. 1, 37.

The second factor raises the difficulty of collection. As discussed relating to the previous factor, the complex nature of the Parties' claims, rights, and theories, makes the possibility of an appeal more than likely, but almost guaranteed even if the Debtors were to obtain a favorable result. Frankly, the Debtors cannot afford the time required to continue participating in that process, especially for the cumulative uncertainty of ultimate success. The issue of collection is further complicated by this being a settlement to resolve the treatment of multiple classes of claims against the Debtors under the Plan, and therefore implicating not just "collection," but creditor recoveries and distribution.

Third, the Court must consider the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it. The first factor again overlaps significantly with this third factor, as the uncertainty of success in litigation is due in large part to the complexity of the issues. However, in addition to the complexity and uncertainty of the various Claims themselves, the Settlement Agreement reflects the extensive amount of time the Debtors and the other Parties have spent engaging in discussions reconciling their known Claims and formulating the joint Plan in the best interest of all Parties and their constituents. The Parties' support for the Plan and Confirmation Order, as agreed in the Settlement Agreement, is more than a material element of the agreement, but is a major cornerstone of the Plan and these cases. Without the Plan Settlement, not only could there be additional complicated litigation regarding the impact of the Plan on treatment of the Parties' Claims, but the Plan itself would no longer work as filed and solicited, thereby costing the estates immeasurable time, effort, expense, and confidence. *See, e.g.,* Plan § 12.2 (approval of the Plan Settlement pursuant to Rule 9019 is a condition precedent to the Effective Date); *see also Pac. Gas & Elec. Co*., 304 B.R. at 418 (finding the third factor satisfied where the settlement resolved confirmation issues and "[t]he court is quite familiar with the battles on the Original Plan, the disclosure statement hearings and subsequent appeals, the contested confirmation hearings[.]"). Avoiding this type of uncertain litigation is paramount at this stage of the Cases. As to the expense, inconvenience, and delay of this litigation, the Court is

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aware of the significant cash burn in these Cases. *See, e.g.*, Application, Docket No. 4885, at 2 ("[T]he Debtors' estates have historically lost $450,000 a day, so that every additional day of delay in confirming the Plan decreases creditor recoveries."); Memorandum of Decision, Docket No. 3632, at 2 ("The Debtors are sustaining operational losses of approximately $450,000 per day."). Losing the time required for this type of litigation—including the inevitable appeal(s)—is inefficient, not in the best interest of the estates, and undermines the Debtors' plan and settlement efforts. This factor on its own militates in favor of prompt resolution and approval of the Settlement Agreement.

Finally—generally—the benchmark in determining the propriety of a settlement is whether the settlement is in the best interests of the estate and its creditors. *In re Energy Cooperative, Inc*., 886 F.2d 921, 927 (7th Cir. 1989). To be approved, the settlement need not represent the highest possible return to the estate, but merely must fall within the range of "reasonableness." *In re Walsh Constr., Inc*., 669 F.2d 1325, 1328 (9th Cir. 1992). In making this determination, the bankruptcy court need not conduct a trial or even a "mini-trial" on the merits. *Id*. This settlement is clearly in the best interest of creditors because it involves all major stakeholders, and resolves the largest claims against the Debtors' estates. By gaining all Parties' buy-in to the Plan, overall general creditor recoveries are enhanced.

Thus, an approved settlement will "be in the best interests of the estate" if it is "reasonable, given the particular circumstances of the case." *Mickey Thompson*, 292 B.R. at 420. To that end, "court[s] generally give[] deference to a [debtor's] business judgment in deciding whether to settle a matter," although the debtor "has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved." *Id*.; *see also In re Zarate*, 2015 WL 8482887, at *8 (B.A.P. 9th Cir. Dec. 9, 2015) ("[T]he [debtor] must be permitted to use his business acumen and judgment in the best interest of the estate.").

Here, the Debtors exercised their reasonable business judgment in entering into the Settlement Agreement, which is in the best interests of the estates. Adcock Declaration at ¶ 5. The Debtors engaged in extensive, arms-length negotiations with the other Parties over the terms of the Settlement Agreement and, by extension, the Plan. *Id.* at ¶ 6. Significantly, the Settlement

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Agreement avoids disputes and relieves the Debtors of any further administrative burden associated with resolving the Parties' claims and causes of action. *Id*. In the absence of the Settlement Agreement, the Parties may be forced into expensive—and uncertain—litigation to resolve any dispute, not to mention uncertainty as to the future of the Plan. *Id*.; *see also* Plan § 12.2 (approval of the Plan Settlement pursuant to Rule 9019 is a condition precedent to the Effective Date). In that vein, the Settlement Agreement provides for the immediate realization of material benefits to the estates and all creditors in the form of support of major stakeholders for the success of the Plan. Adcock Declaration at ¶ 6.

For all the reasons set forth herein, the Plan Proponents request that the Confirmation Order (i) approve the Settlement Agreement pursuant to §§ 363 and 105 and Bankruptcy Rule 9019; and (ii) constitute the Bankruptcy Court's finding that (a) entering into the Plan Settlement is in the best interests of the Debtors, their Estates, and their creditors, (b) the Plan Settlement is fair, equitable and reasonable, and (c) the Plan Settlement meets all the standards set forth in Bankruptcy Rule 9019.

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VII.

THE DEEMED SUBSTANTIVE CONSOLIDATION OF THE DEBTORS SHOULD BE APPROVED

As set forth more fully in the Disclosure Statement, the Plan provides for the "deemed" substantive consolidation of the Debtors. The Disclosure Statement sets forth (i) the legal requirements to establish deemed substantive consolidation, and (ii) the factual bases supporting the Debtors' request for deemed substantive consolidation, which are fully incorporated herein by this reference. As set forth in the Plan, the Disclosure Statement and the Plan are deemed a motion requesting that the Bankruptcy Court approve the deemed substantive consolidation contemplated by the Plan at the Confirmation Hearing. The Disclosure Statement provided that objections to the proposed deemed substantive consolidation must be made in writing on or before the deadline to object to confirmation of the Plan.

The Plan Proponents did not receive objections to the deemed substantive consolidation of the Debtors. Accordingly, for the reasons set forth in the Disclosure Statement, the Plan

Proponents respectfully request that the Bankruptcy Court approve the deemed substantive consolidation of the Debtors.

VIII.

THE OBJECTIONS SHOULD BE OVERRULED

A. The Cigna Objection Is Moot

Cigna Healthcare of California, Inc., Cigna Health and Life Insurance Company, Life Insurance Company of North America, Cigna Dental Health of California, Inc., Cigna Dental Health Plan of Arizona, Inc., and Cigna Dental Health of Texas, Inc. (collectively, "Cigna") filed the *Objection of Cigna Entities to Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5231] (the "Cigna Objection"). Cigna asserts that the Plan cannot be confirmed if the Debtors do not file "written notice of its irrevocable decision as to whether or not the Debtors propose to assume or reject each of the Cigna Contracts propose to assume or reject each of the Cigna Contracts." *See* Cigna Obj. at 3 (citing Plan § 11.1). Cigna further reserves its right to object to any irrevocable assumption designation based on the cure amount and adequate assurance of future performance. *See id.*

On August 5, 2020, the Debtors filed the *Notice re Irrevocable Designation Concerning Assumption and Assignment of Cigna Contracts* [Docket No. 5370] (the "Designation Notice"). The Designation Notice irrevocably designates one hospital services agreement (the "Hospital Services Agreement") for assumption and irrevocably designates all other Cigna Contracts for rejection. *See* Designation Notice. Further, Cigna has already received a final notice [Docket No. 5266] of the assumption and assignment of the Hospital Services Agreement in connection with the Seton Sale. Accordingly, the Designation Notice satisfies the requirements of Section 11.1 of the Plan and the balance of the Cigna Objection should be overruled as moot given that the Debtors do not propose to assume Cigna Contracts under the Plan.

B. Seoul Medical Group, Inc.'s Claims Have Been Settled

Seoul Medical Group, Inc. ("SMG") filed *Creditor Seoul Medical Group, Inc.'s Notice of Reservation of Rights to Object to the Debtors' Confirmation of Their Second Amended Chapter*

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11 Plan [Docket No. 5268] (the "SMG Reservation of Rights"). The SMG Reservation of Rights purports to reserve SMG's rights to file an objection to Confirmation in the event that the Court does not approve the Debtors' motion [Docket No. 5124] to approve a settlement with SMG (the "SMG Settlement"). To the extent the Court approves the SMG Settlement, the Plan Proponents submit that the SMG Reservation of Rights should be overruled as moot. The Plan Proponents further reserve the right to respond to the SMG Reservation of Rights or any other objection raised by SMG based upon, among other things, SMG's failure to extend the deadline to file a confirmation objection.

C. The Infor Objection Has Been Informally Resolved

Infor filed the *Limited Objection and Reservation of Rights of Infor (US), Inc. with Respect to the Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 5282] (the "Infor Objection"), which the parties have resolved pursuant to an agreement to include certain language in the Confirmation Order. Accordingly, the Infor Objection is moot.

D. The Attorney General's Objection Related to Sale, Not Plan, Issues Should Be Denied

The California Attorney General ("Attorney General") filed the *Objection of California Attorney General to Confirmation of "Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee"* [Docket No. 5294] (the "Attorney General Objection"). The Attorney General objects to the Plan to the extent confirmation will affect the pending dispute between the Attorney General and the Debtors concerning the "Additional Conditions" imposed by the Attorney General on the SFMC Sale. *See* Attorney General Objection at 4. The Attorney General requests certain language confirming that the Confirmation Order will not affect this dispute. *See id.* at 5-6. However, the Debtors' motion [Docket No. 5199] to authorize the SFMC Sale free and clear of Additional Conditions is set for hearing at the same date and time as the Confirmation Hearing. *See* Docket No. 5206. Accordingly, the Plan Proponents anticipate that the matter will be resolved prior to the Confirmation Hearing and that the Attorney General's request for language preserving the dispute will be moot prior to entry of the Confirmation Order.

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To the extent the Court considers the request for the addition of language to the Plan reserving rights for the Attorney General, the request should be denied. First, the Attorney General's reference to stipulations previously entered into between the Debtors and the Attorney General are irrelevant. Confirmation of the Plan represents the culmination of these Chapter 11 Cases, and, in that aspect, is fundamentally different from the prior orders to which the Attorney General refers. Parties need finality and assurance of what has been decided before they can begin to consummate a plan, especially this Plan, where hundreds of millions of dollars will be disbursed.

Second, the matters being considered are not matters of first impression. The issues before the Bankruptcy Court at the upcoming hearing, scheduled on August 12, have already been the subject of prior rulings by the Bankruptcy Court in these Chapter 11 Cases, and other cases. The issues raised in the Attorney General Objection relate to the alleged uncertainty over the decision as to whether the conditions imposed by the Attorney General are interests in property which can be stripped off in a sale pursuant to § 363. But, there is little, if any, uncertainty over that issue. The Bankruptcy Court has previously held, in these Chapter 11 Cases, that the conditions are interests in property which can be stripped off in a § 363 sale. *See* Memorandum of Decision Granting Debtors' Emergency Motion to Enforce the Sale Order, Oct. 23, 2019 [Doc. No. 3446] (the "Enforcement Memorandum"); *see also In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 825–26 (Bankr. C.D. Cal. 2017), *appeal dismissed,* No. 2:16-BK-17463-ER, 2018 WL 1229989 (C.D. Cal. Jan. 19, 2018). As the Enforcement Memorandum noted, the Attorney General's arguments that his conditions cannot be stripped off are barred by ***both*** the law of the case doctrine ***and*** the doctrine of issue preclusion. The Court concluded in the Enforcement Memorandum that "[t]he Attorney General is precluded from relitigating the issue of whether his claimed authority to impose conditions on the SGM Sale is an "interest in … property." Enforcement Mem., at 8. And, this was ***before*** the comprehensive discussion of the limits on the Attorney General's powers in the Enforcement Memorandum itself which followed the rulings on law of the case and issue preclusion. Thus, the Attorney General's request for additional language

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in the Plan should be denied, because the issues sought to be preserved by that language have already been decided by this Bankruptcy Court.

E. The Health Net Objection Should Be Overruled Because the Attorney General Condition Can Be Satisfied

Health Net of California, Inc. ("Health Net") filed the *Objection of Health Net of California, Inc. to Confirmation of Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5292] (the "Health Net Objection"), which sets forth Health Net's objection to confirmation of the Plan on the grounds that the decision not to assume and assign the Agreement as part of the SFMC Sale to Prime will violate the Attorney General's conditions for the transfer. Essentially, Health Net argues that: (a) a condition to confirmation of the Plan is the closing of the SFMC Sale; (b) a condition to closing of the SFMC Sale is the "maintenance" of a commercial Medi-Cal managed care plan offered by Health Net; and (c) the "maintenance" of coverage can only be accomplished by an assignment of the existing Agreement. Health Net's argument flounders on the third leg of this syllogism.

A careful reading of the Attorney General's conditions (excerpted at page 7 of the Objection), reveals that SFMC's existing May 2008 Agreement with Health Net is nowhere mentioned. Instead, the AG merely requires that Prime offer substantially the same services as currently provided "by other similarly situated hospitals." Naturally, this can be done by a new arrangement between Health Net and Prime. Indeed, Prime fully expects to have such arrangements in place and effective for the very first day following the Closing date. *See* Adcock Decl. ¶ 7 ("Prime is in advanced discussions with Health Net, and expects to consummate a new agreement, for maintenance of commercial Medi-Cal services with no gap in coverage.").

Not only does Health Net misconstrue the Attorney General's condition, it also undoubtedly appreciates a key reason that Prime may have declined to take an assignment of the Agreement (in addition to the outdated rate structure under the Agreement, among other potential concerns with a contract that was originally entered into in 2008). The Agreement is

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extraordinarily complex.[9] It includes traditional commercial (i.e., private), Medicare and Medi-Cal payor plans. In turn, the various plans include both fee-for-service (FFS) and capitation programs. The FFS programs include multiple different benefit levels including Preferred Provider Organization (PPO), Exclusive Provider Organization (EPO), Point of Service (POS), and Leased PPO. The capitation programs includes Medi-Cal, Senior (also known as Medicare Advantage) and Cal Medi-Connect (combined Medi-Cal and Medicare) payors. Furthermore, these capitation programs include patients assigned a primary care physician affiliated with six different IPA medical groups. Each IPA enjoys distinct financial terms involving both Health Net and SFMC.

The Health Net Objection seems purposefully opaque on this subject and, at various places, provides a somewhat misleading picture of the Agreement.[10] As noted, the Agreement not only covers beneficiaries of the Medi-Cal coverage sought by the Attorney General, but also contains—in the same, integrated contract—multiple additional plan offerings beyond the scope of the conditions imposed by the Attorney General. These include both fee-for-service and capitated arrangements for a Medicare Advantage product and a California Medi-Connect product, among others. Each of these plan offerings covers a separate and distinct population of Health Net enrollees.

Health Net's position that only an assignment of the entire Agreement can meet the Attorney General's conditions would, of course, obligate Prime to provide covered services under ***all*** of the health benefit plans that are subsumed within the Agreement. Although Health Net does not refer to any cases on this topic (preferring instead to focus on its feasibility argument), Health Net certainly understands that black letter law only authorizes the assumption of "the entire contract" and generally does not authorize the debtor to pick and choose among its terms,

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[9] There are over 23 amendments since the original effective date of the Agreement on May 1, 2008.

[10] *See, e.g.,* Health Net Objection at 2, 3 (the Agreement "is inclusive of, but not limited to, the Medi-Cal product); at 3 (SFMC provides covered services to Health Net's members enrolled in the "various Benefit Programs offered under the Agreement, including Medi-Cal …").

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schedules or exhibits. Thus, when a debtor assumes a contract, it does so with all the burdens of the contract. See, e.g., *In re Plitt Amusement Co.,* 230 B.R. 837, 840 (Bankr. C.D. Cal. 1999). The only exception is for a contract that is not actually a single, integrated agreement. *See, e.g.*, *In re Pollock*, 139 B.R. 938, 940 (B.A.P. 9th Cir. 1992) (the question whether multiple obligations in an agreement or transaction are severable is a question of state law).

Health Net presumably understands this bedrock principle. The Debtors have previously requested Health Net's assent to terminate discreet plan offerings under the Agreement only to be rebuffed on the grounds the Agreement "is not subject to partial termination." *See* **Exhibit "E"** (letter dated November 27, 2019, from Health Net to SFMC). This has had the effect of saddling the Debtors with ongoing obligations under plan offerings that are no longer financially viable, for a variety of reasons. Health Net's position would require Prime to undertake responsibility for the entire enrolled population of the Agreement, not that smaller subset of Medi-Cal beneficiaries that the Attorney General condition is attempting to protect.

Prime has declined an assignment of the entire Agreement and Health Net has refused to disentangle the multiple plan products and beneficiary populations included under the Agreement. As a result, the Debtors have no choice but to reject the entire Agreement as of the Closing Date of the sale of SFMC to Prime. This outcome, however, does not mean the applicable Attorney General's conditions is incapable of satisfaction. Assumption and assignment of the existing Agreement so that it continues in force on Day One post-Closing is not required by the Attorney General conditions. The Attorney General conditions require only that Prime maintain and have a Medi-Cal managed care contract with Health Net subject to certain additional requirements. Prime stands ready to enter into a new, standalone Medi-Cal commercial plan agreement with Health Net on reasonable and customary terms in satisfaction of the applicable Attorney General condition. *See* Adcock Decl. ¶ 7. Hence, Prime's decision to decline an assignment of the entire Agreement does not pose an impediment to closing the SFMC Sale. To the contrary, the Attorney General condition can be satisfied as long as Health Net is willing and able to negotiate with Prime in good faith and enter into a Medi-Cal commercial plan agreement with Prime on the same

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terms and conditions as other similarly situated hospitals. As a result, the Plan remains feasible and the Health Net Objection should be overruled.

F. The SGM Objection Offers Neither Argument Nor Evidence to Defeat Confirmation and Should Be Overruled

1. *Summary*

In an attempt to block confirmation to further its litigation strategy, Strategic Global Management, Inc. ("SGM") ignores the plain language of the Bankruptcy Code and stretches Ninth Circuit precedent to a breaking point. SGM's arguments are fatally flawed and must be rejected for at least five reasons:

- First, the plain language of § 1129(a)(9) only requires that a plan provide for payment in full of administrative claims that *have been allowed*. SGM does not hold an administrative claim, let alone an *allowed* one.
- Second, Ninth Circuit precedent requires the Bankruptcy Court to exercise its discretion in evaluating feasibility in light of the SGM litigation under § 1129(a)(11). While SGM concedes the foregoing, SGM attempts to create a jurisdictional "catch 22" by periodically conflating claim consideration for purposes of feasibility under § 1129(a)(11) with claim estimation under § 502(c), whereby it suggests the Bankruptcy Court simultaneously must and cannot make necessary determinations. To the extent that SGM is arguing that the Bankruptcy Court cannot merely consider the litigation as part of its feasibility determination because the District Court has jurisdiction over the adversary proceeding, SGM is incorrect. Bankruptcy courts routinely consider litigation claims where other courts have jurisdiction over the claims as part of their feasibility determination.
- Third, even though the Plan itself is not required "to provide a mechanism for addressing the claims of creditors who may subsequently recover large judgments against the debtor," the Debtors have agreed to set aside the $30 million non-refundable Deposit as discussed in the Disclosure Statement and Plan, which is a more than sufficient reserve under the circumstances. Using Ninth Circuit

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litigation valuation principles, $30 million is almost double the present value of the litigation on the basis of a 50% "coin toss" likelihood of success. Thus, the existence of the SGM litigation does not render the Plan infeasible and provides no basis to withhold confirmation of the Plan.

- Fourth, SGM has not provided any evidence of entitlement to any reserve, let alone a reserve in excess of the $30 million non-refundable Deposit. SGM filed no evidence that establishes the validity of its objection, or the amount of their alleged counterclaims consisting of speculative, contingent attorney's fees and interest to which they would only be entitled on a favorable judgment.
- Fifth, SGM's remaining arguments attacking how the Plan treats offset and recoupment, priorities, professional claims, releases, exculpations, and injunctions misread and/or mischaracterize both the relevant law and the Plan itself. SGM has failed to prove how or why these Plan provisions are impermissible or should not be confirmed.

At bottom, SGM's objection [Docket No. 5228] (the "SGM Objection") reveals itself as the latest tactic in SGM's selfish strategy of seeking to block the sale of the Debtors' remaining hospitals to any other purchaser and prevent the Debtors from securing relief under the Bankruptcy Code, and should be overruled.

2. *Additional SGM Background*

On January 8, 2019, SGM executed an asset purchase agreement (the "SGM APA") with the Debtors, and thereby committed itself to acquire SFMC, SVMC, and Seton (the "Remaining Hospitals") for the amount of $610,000,000, plus assumption of certain liabilities, and payment of cure costs associated with any assumed leases, contracts and assumption of other obligations. *See* Docket No. 2305. On May 2, 2019, the Bankruptcy Court entered an order [Docket No. 2306] approving SGM as the purchaser of the Remaining Hospitals.

In December 2019, SGM refused to close on its agreed purchase of the Debtors' four remaining hospitals, despite all conditions precedent to the closing having occurred. *See, e.g.,* Docket No. 3723. That same month, the Debtors received permission to pursue alternative

disposition of the hospitals, given their inability to continue operating them. *See* Docket No. 3784. At the end of the month, the Debtors terminated the APA to work on effectuating such alternatives. *See* Docket No. 3899. SGM never objected to any of these alternatives. This Court presided over the parties' entire relationship.

In January 2020, the Debtors commenced an adversary proceeding against SGM for breaching its obligations under the APA, which was subsequently withdrawn by the District Court (the "Adversary Proceeding"). *See* Adv. No. 2:20-ap-01001-ER (Bankr. C.D. Cal. Jan. 3, 2020); CV 20-613 DSF (C.D. Cal. Mar. 5, 2020). On August 4, 2020, the District Court entered an order [Adv. Docket No. 56] (the "Denial Order") denying SGM's motion to dismiss the Debtors' claims against SGM. A true and correct copy of the Denial Order is attached hereto as **Exhibit "F."**

The Plan provides for the treatment of the Debtors' claims and litigation against SGM; and the Disclosure Statement describes the Adversary Proceeding in detail, including the parties' disagreement regarding the Deposit paid pursuant to the SGM APA.

Further, after the filing of the Disclosure Statement and the initial plan, per SGM's request, the Debtors and co-Plan Proponents included the following language:

> The Plan shall be amended to provide, and the Confirmation Order shall state, that the Liquidating Trust shall not distribute the Deposit to creditors in accordance with the Plan or take any other action which would reduce or dissipate the Deposit, unless permitted by a judgment or an order entered by the District Court having jurisdiction over the Adversary Proceeding, and such judgment or order has not been stayed."

Disclosure Statement, at 43.

On July 10, 2020, SGM filed its counterclaims [Adv. Docket No. 41] in the Adversary Proceeding, which the Debtors moved to dismiss [Adv. Docket No. 54] (the "Counterclaims MTD") on July 31, 2020. A true and correct copy of the Counterclaims MTD is attached hereto as **Exhibit "G."** On July 27, 2020, SGM filed a notice of administrative claims [Docket No. 5197] (the "SGM Asserted Admin Claim") in these Cases. On July 30, 2020, SGM filed an objection to confirmation of the Plan [Docket No. 5288] (the "SGM Objection").

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3. *There Is No Dispute That This Court Has Jurisdiction to Determine the Plan Satisfies § 1129(a)(9) and (11), Despite Ongoing Litigation*

As a threshold matter, there is no dispute that the Bankruptcy Court has jurisdiction to determine that the Plan satisfies each of the § 1129 factors, including (a)(9) and (a)(11). *See In re Harbin*, 486 F.3d 510, 519 (9th Cir. 2007) ("Congress has explicitly given the bankruptcy court jurisdiction to consider questions concerning confirmation of a debtor's plan, and in doing so to estimate the various claims and interests against the debtor's estate.").

SGM's attempt to obfuscate settled jurisdictional principles must be rejected. The Plan Proponents agreed to include the jurisdictional language SGM requested in the Disclosure Statement, the Plan, and the Confirmation Order. As the old adage goes, no good deed goes unpunished, as SGM now cherry picks Section 10.5 to create a hypothetical jurisdictional issue not before this Court. SGM argues that the Plan's "proposed use of estimation by the Bankruptcy Court in Plan section 10.5(b) to limit the amount of SGM's Administrative Claim for any purpose, including to determine compliance with § 1129(a)(9) or (a)(11) or for final distribution, is improper, unlawful and would deprive SGM of the right to have its counterclaims fully and finally adjudicated by the District Court and paid in full." *See* SGM Objection, at 10. Section 10.5 is a general Plan provision, however, and there is no estimation motion before this Court.[11] SGM's attempt to boot strap its argument to § 1129 contradicts its own jurisdictional conclusions that the Bankruptcy Court must "consider the outcome of potential material claims that are the subject of

[11] As a technical point, SGM argues that Section 10.5(b) is "improper" because it "purports to limit the amount of any disputed Administrative Claim to the amount 'estimated by the Bankruptcy Court.'" SGM Objection, at 8. However, Section 10.5(b) does not apply to Administrative Claims. Section 10.5(b) of the Plan deals with "Estimation of Disputed Claims." The Plan does not define disputed Administrative Claims as "Disputed Claims." *Compare* Plan § 1.13 with § 1.58. "Disputed" describes Claims pursuant to their relationship with the Debtors' Schedules or proofs of claim. *See* Plan § 1.58. An "Administrative Claim," on the other hand, is not defined as "Claims" but rather as a "Request for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2) . . . ." *See* Plan §1.13. Objections to Administrative Claims are the subject of Plan § 15.3. Further, pursuant to court order [Docket No. 4997], the Debtors' deadline to file an estimation motion pursuant to Section 10.5(b) was July 23, 2020; the Debtors clearly did not request that type of estimation with respect to SGM.

pending litigation" as part of feasibility under § 1129(a)(11). *See* SGM Objection, at 7. SGM cannot escape this conclusion by attempting to incorrectly conflate a hypothetical estimation motion under § 502(c) with the requirement that the Bankruptcy Court consider SGM's counterclaim in determining feasibility under § 1129(a)(11). *Cf. Harbin*, 486 F.3d at 519 ("Because the bankruptcy court failed to consider the consequences of Sherman's potential success on appeal, it clearly erred in failing to discharge its obligations under section 1129(a)(11).").

Further, putting aside whether § 502(c) even applies to SGM's counterclaim, SGM's focus on the District Court's jurisdiction over the counterclaim is a red herring. No one disputes the District Court's jurisdiction to adjudicate the counterclaim and the Disclosure Statement and the Plan expressly provide the same as requested by SGM. That does not interfere with the Bankruptcy Court's jurisdiction to consider the counterclaim as part of its feasibility determination under § 1129(a)(11). *See Harbin*, 486 F.3d at 519 ("Congress has explicitly given the bankruptcy court jurisdiction to consider questions concerning confirmation of a debtor's plan, and in doing so to estimate the various claims and interests against the debtor's estate."). Indeed, bankruptcy courts are required to and routinely consider litigation claims where other courts have jurisdiction as part of their feasibility determination under § 1129(a)(11). *See, e.g., In re Tristar Fire Protection, Inc*., 466 B.R. 392 (Bankr. E.D. Mich. 2012) (bankruptcy court has authority to estimate administrative claims for the purpose of plan confirmation despite NLRB's exclusive jurisdiction to adjudicate whether such claims are allowed); *cf. Harbin*, 486 F.3d at 519 (finding bankruptcy court's determination that it was barred from considering claim under *Rooker-Feldman* doctrine to be clear error given its affirmative obligation to consider questions concerning confirmation); *In re RCS Capital Dev., LLC*, Transcript, at 105, Case No. 2:11-BK-28746-RJH (Bankr. D. Ariz. Nov. 13, 2012) (Docket No. 268, the "RCS Bankruptcy Transcript") (interpreting *Harbin* in this way). SGM concedes the point. SGM Objection, at 9 (string cite of cases supporting that court could estimate for confirmation purposes if not for liquidation and allowance). Any other conclusion would lead to the absurd and illogical result of depriving

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bankruptcy courts of their ability to evaluate feasibility when a disgruntled litigant desired to block confirmation.

4. *SGM Is Not an Allowed Administrative Claimholder and Cannot Overcome the Plan's Clear Satisfaction of § 1129(a)(9)*

Regarding § 1129(a)(9), SGM says it best: "A Chapter 11 Plan must provide for payment in full of *allowed* administrative claims, and the proponent has the burden to establish that there will be funds available to make such payments." SGM Objection, at 4-5 (emphasis added). The Debtors do not disagree that allowed administrative claims should be paid on the Effective Date. The Debtors do, however, dispute SGM's argument that the Plan fails to satisfy § 1129(a)(9) because it does not assure payment of a judgment that SGM may recover against the Debtors in the future. The Deposit assures payment in the unlikely event SGM ever prevails in its counterclaim against the Debtors. As importantly, SGM has not shown by the preponderance of the evidence that it holds any administrative claim, let alone an *allowed* one, nor attached any evidence of the same. "[F]or those creditors who object, it is up to that objecting party to 'produce evidence to establish the validity of the objection before the ultimate burden of proving that all the requirements of Section 1129(a) have been met is shifted to the plan proponent.'" *Art & Architecture Books of the 21st Century*, 2016 WL 1118743, *7 (quoting *In re Future Energy Corp*., 83 B.R. 470 (Bankr. S.D. Ohio 1988)). Here, SGM has not met its burden.

As set forth above, § 1129(a)(9) only requires that a plan provide for payment in full of administrative claims that *have been allowed*. Specifically, § 1129(a)(9) requires a plan to provide that "with respect to a claim of a kind specified in section 507(a)(2) . . . , on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the *allowed* amount of such claim." 11 U.S.C. § 1129(a)(9) (emphasis added). In turn, § 507(a)(2) describes "administrative expenses allowed under section 503(b) . . . ." 11 U.S.C. § 507(a)(2). Further in turn, § 503(b) provides that administrative expenses, "[a]fter notice and a hearing, . . . shall be allowed." 11 U.S.C. § 503(b).

Accordingly, even if SGM can assert a valid administrative expense pursuant to § 503(b), it is not "deemed allowed" similar to a § 502(a) claim, but rather must be affirmatively allowed by

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the Bankruptcy Court following notice and hearing. *See* 11 U.S.C. § 503(b). SGM holds no such claim for purposes of § 1129(a)(9). Not only does SGM's objection therefore not defeat confirmation of the Plan, the Debtors submit that SGM arguably lacks standing to object to confirmation on this particular point. *See In re Lisanti Foods, Inc.*, 329 B.R. 491, 502-03 (D.N.J. 2005) (affirming that bankruptcy court did not err in finding plan complied with § 1129(a)(9)(A) given that objecting creditor did not yet hold an "allowed" claim as defined by the plan and therefore did "not yet have any entitlement to payment of their administrative claims unless and until the Bankruptcy Court so orders").

SGM obfuscates the distinction between § 1129(a)(9) and (11) by arguing them in tandem. For example, SGM argues that, "[i]n determining compliance with section 1129(a)(9) and plan feasibility required by section 1129(a)(11), the bankruptcy court must consider the outcome of potential material claims that are the subject of pending litigation." SGM Objection, at 6. For this point, SGM cites *Harbin*, *Matter of Pizza of Hawaii, Inc.*, 761 F.2d 1374 (9th Cir. 1985), and *In re Dennis Ponte, Inc*., 61 B.R. 296 (B.A.P. 9th 1986). *Id.* However, these three decisions are limited to a plan's compliance with § 1129(a)(11), not § 1129(a)(9). The Debtors address feasibility under §1129(a)(11) separately below in section VIII.G.5.

As for *In re Mid Pac. Airlines, Inc.*, 110 B.R. 489 (Bankr. D. Haw. 1990), which SGM also relies on to support its § 1129(a)(9) argument, the cherry-picked quotation is not applicable to these circumstances. As quoted by SGM, *Mid Pac. Airlines* states: "Without a more accurate estimate of the administrative expenses under the Chapter 11 liquidation Plan as compared to that under Chapter 7 liquidation, the Court cannot determine that the Plan meets the requirement of Section 1129(a)(9)." SGM Objection, at 5 (quoting 110 B.R. at 492). First, the court's language indicates it was actually evaluating the best interest of creditors test (*i.e.*, not being able to compare administrative expenses in chapter 11 to chapter 7), not feasibility. Accordingly, and based on the rest of the decision, it is clear that the reference to subsection (a)(9) more than likely was a typographical error that should have referenced subsection (a)(7). Assuming arguendo it was not an error, the facts are also distinguishable. There the court lists several ways the debtor did not place the court in a position to understand the universe of potential claims. 110 B.R. at

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492. This is far from the case here, where the Plan and the Disclosure Statement provide a drastically clearer estimate of claims in support of feasibility.

5. *Due Consideration of SGM's Potential Litigation Claim Cannot Defeat the Plan's Feasibility under § 1129(a)(11)*

SGM similarly argues that the Plan fails to satisfy § 1129(a)(11) because it does not assure payment of the SGM Asserted Admin Claim. SGM Objection, at 4. To the contrary, the law in this Circuit provides this Court with the flexibility and discretion (as well as the jurisdiction) to *consider* the SGM Asserted Admin Claim and still find the Plan to be feasible under the circumstances.

Pursuant to § 1129(a)(11), the Bankruptcy Court must find that "confirmation of the [P]lan is not *likely* to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the [P]lan, unless such liquidation or reorganization is proposed in the [P]lan." 11 U.S.C. §1129(a)(11) (emphasis added). The key word in the Bankruptcy Code for satisfaction of this subsection is "likely," *i.e.*, that success of the Plan is *reasonably* assured—not guaranteed and not inevitable. *See Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1364 (9th Cir. 1986); *In re Brotby*, 303 B.R. 177, 191 (B.A.P. 9th Cir. 2003) ("The Code does not require the debtor to prove that success is inevitable . . . ."); *Art & Architecture*, 2016 WL 1118743, at *20 ("The feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed and the court is not required to determine that the future success of the Post–Confirmation Debtor is inevitable in order to find that the plan is feasible.") (citing *Johns-Manville Corp.*, 843 F.2d at 649; *In re North Valley Mall, LLC*, 432 B.R. 825, 838 (Bankr. C.D. Cal. 2010) ("The Code does not require debtor to prove that success is inevitable or assured, and a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility. . . . The Court finds that the plan more likely than not can be performed as promised and that it is therefore feasible and complies with § 1129(a)(11).") (internal citations omitted); *see also Mutual Life Ins. Co. of N.Y. v. Patrician St. Joseph Partners Ltd. P'ship (In re Patrician St. Joseph Partners Ltd. P'ship)*, 169 B.R. 669, 674 (D. Ariz. 1994) ("A plan meets this feasibility standard if the plan offers a reasonable prospect

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of success and is workable. . . . The prospect of financial uncertainty does not defeat plan confirmation on feasibility grounds since a guarantee of the future is not required. . . . The mere potential for failure of the plan is insufficient to disprove feasibility.") (*citing In re Drexel Burnham Lambert Group, Inc*., 138 B.R. 723, 762 (Bankr. S.D.N.Y. 1992)).

As recognized above, while the Debtors bear "the burden of proving that its plan is feasible under § 1129(a)(11)," SGM as the "objecting party 'bear[s] the burden of producing evidence to support their objection.'" *In re W.R. Grace & Co.*, 475 B.R. 34, 119 (D. Del. 2012) (quoting *In re Armstrong World Indus., Inc*., 348 B.R. 111, 122 (Bankr. D. Del. 2006)); *see also Art & Architecture*, 2016 WL 1118743, at *7. The Debtors have to make only "a relatively low threshold of proof," and have far exceeded this minimal threshold in the attached Chadwick Declaration. *See Brotby*, 303 B.R. at 191 ("[A] relatively low threshold of proof will satisfy § 1129(a)(11) . . . ."); *North Valley Mall*, 432 B.R. at 838 ("[A] relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility."); *In re Sagewood Manor Assoc. Ltd. P'ship*, 223 B.R. 756, 762-63 (Bankr. D. Nev. 1998); *cf. Seasons Partners, LLC*, 439 B.R. 505, 516 (Bankr. D. Ariz. 2010) ("conclud[ing] that the weight of the evidence, on all aspects of feasibility . . . was credible").

SGM falls woefully short of satisfying its burden of objection, particularly since the majority of its counterclaim comprises speculative, contingent attorney's fees not supported by any evidence. Just as the Plan cannot be a "visionary scheme" to be deemed feasible, the Debtors submit that so too must an objection to feasibility present more than an unreasonable vision that could render the Plan infeasible. *See Pizza of Hawaii*, 761 F.2d at 1382 (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] at 1129–34 (15th ed. 1984)); *see also Acequia, Inc*., 787 F.2d at 1365 (quoting *Pizza of Hawaii*). The SGM Objection imagines a parallel universe that is completely divorced from the reality of these Cases. The Debtors have no obligation to prove—and the Bankruptcy Court has no duty to find—that the Plan would be successful in that alternative universe.

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a. *Settled Case Law Establishes the Bankruptcy Court's Wide Discretion to Consider the Ongoing SGM Litigation Under the Rubric of Feasibility.*

Bankruptcy courts have "sound discretion in considering how [a debtor's ongoing civil] litigation may affect the feasibility of any specific plan." *Harbin*, 486 F.3d at 520. Indeed, there is no "bright-line" rule that requires a plan to provide a mechanism for addressing the claims of creditors who may subsequently recover large judgments against the debtor. *In re RCS Capital Dev., LLC*, BAP No. AZ-12-1626-JuTaAh, 2013 WL 3619172, *8 (B.A.P. 9th Cir. July 16, 2013) (Unpublished). SGM's tortured interpretation of the cases is incorrect. For the reasons discussed below, consideration of the counterclaims leads to the conclusion that the Plan is feasible and should be confirmed.

SGM suggests that, with respect to determining the Plan's feasibility pursuant to § 1129(a)(11), the Bankruptcy Court "must consider the outcome of potential material claims that are the subject of pending litigation." SGM Objection, at 6. For this proposition, SGM relies on *Harbin*, *Pizza of Hawaii*, and *Dennis Ponte*, as discussed *supra*. However, these cases—plus the more recent case *RCS Capital*—reveal that the Ninth Circuit has not dictated *how* a bankruptcy court should consider potentially material claims that are the subject of pending litigation, but *that* it must consider them, and that such consideration is subjection to the bankruptcy court's "sound discretion." *Harbin*, 486 F.3d at 520.

In *Pizza of Hawaii*, a creditor had filed a prepetition lawsuit against the debtor's principles, which resumed as a postpetition adversary proceeding. 40 B.R. 1014, 1015-16 (D. Haw. 1984), *aff'd*, 761 F.2d 1374, 1375 (9th Cir. 1985). Relevant to SGM's reliance on this case, *Pizza of Hawaii* involved a mostly *prepetition claim*, 40 B.R. at 1017, with only a "potential post-bankruptcy administrative claim," *Dennis Ponte*, 61 B.R. at 299. There, "the bankruptcy court confirmed the plan pursuant to § 1129(a) but it did not estimate the value of [creditor] Shakey's claim under § 502(c)." 40 B.R. at 17. The district court emphasized: "Importantly, § 502(c)'s 'language is mandatory, not permissive, and creates in the [bankruptcy] court an affirmative duty to estimate any unliquidated claim . . .' such as Shakey's." *Id*. (quoting *In re Nova Real Estate*

Inv. Trust, 23 Bankr. 62, 64 (Bankr. E.D. Va. 1982)). That court continued: "Without the benefit of an estimate of Shakey's claim, the bankruptcy court could not have adequately judged the plan's feasibility." *Id*. The court then remanded the case "to the bankruptcy court to estimate Shakey's claim . . . and to determine the plan's feasibility in light of the estimate." *Id*. The Ninth Circuit affirmed the district court's decision. 761 F.2d at 1382.

On its face, *Pizza of Hawaii* is inapposite because the "mandatory" language of § 502(c) does not apply to administrative expenses. On this point, one needs to look no further than the SGM Objection, which informs the Bankruptcy Court: (a) that "the Ninth Circuit has yet to decide . . . if estimation procedures under 11 U.S.C. §502(c) apply to administrative priority claims"; (b) that "Bankruptcy Code Section 502(c) does not by its own terms apply to post-petition claims"; and (c) "While its estimation procedures may be 'borrowed' to facilitate confirmation, it should not be used to counteract other provisions of the Bankruptcy Code . . . ." SGM Objection, at 8. More importantly, in *Pizza of Hawaii* the district court, affirmed by the Ninth Circuit, held that "[w]hatever value the bankruptcy court ultimately places on the claim is not, however, immediately relevant." 40 B.R. at 1017. Instead what matters is that the claim is "entered into the bankruptcy court's rubric under § 1129(a)(11)." *Id*.

The court's decision in *Dennis Ponte*, which came on the heels of *Pizza of Hawaii* is instructive. There, the record "shows disregard of the need to evaluate and at least estimate the counterclaim." 61 B.R. at 300. Here, to the contrary, the Debtors request and anticipate that the Bankruptcy Court will consider the SGM Asserted Admin Claim and, based on such consideration, determine the claim's insufficiency to render the Plan infeasible for the purposes of satisfying § 1129(a)(11). *See id*. ("[T]he bankruptcy court should have considered the potential claim for Brutoco during the confirmation process sufficiently for the purpose of evaluating its impact on feasibility.").

In *Harbin*, also involving a prepetition claim, the Ninth Circuit held that the bankruptcy court has wide discretion in evaluating how pending litigation may affect the feasibility of a pending plan:

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> [O]ur decision today *does not dictate the conclusion a bankruptcy court should reach* after conducting such an evaluation; rather, the bankruptcy court must exercise its *sound discretion* in considering how such litigation may affect the feasibility of any specific plan.

Id. at 519-20 (emphasis added). Thus, the Ninth Circuit remanded to the bankruptcy court, and noted that its holding did not preclude the bankruptcy court "from valuing [the] claim at zero"; rather, it assigns the bankruptcy court "the duty to exercise its own judgment in reaching such a conclusion." *Id*. at 520 n.7.

In *RCS Capital Development*, the Bankruptcy Appellate Panel for the Ninth Circuit confirmed that nowhere does *Harbin* set forth "a 'bright-line' rule that requires a plan to provide a mechanism for addressing the claims of creditors who may subsequently recover large judgments against the debtor." 2013 WL 3619172, at *8; *see also* RCS Bankruptcy Transcript, at 7 (interpreting *Harbin* to require the bankruptcy court—not the plan itself—to consider such claims). Unlike the other cases which found bankruptcy court error in determining plan feasibility without proper consideration of potential litigation claims, in *RCS* the bankruptcy court's feasibility determination was affirmed, having first "properly noted, 'what might happen on appeal is among the facts and circumstances the court needs to consider in determining feasibility' . . . then considered the effect of ABC's appeal on the feasibility of Debtors' plan by taking evidence on whether ABC would prevail in the appeal of the RCS MSJ order, but 'it heard no evidence to that effect.'" *Id.* at *8; *see also In re Pawlowski*, 428 B.R. 545, 552-53 (E.D.N.Y. 2009) (affirming bankruptcy court's confirmation of plan because, unlike in *Harbin*, it "was expressly predicated on the court's view that the Bernandez claim was not likely to be successful on appeal").

In considering the appeal, the bankruptcy court further stated that it must consider the likelihood of claimant's success on appeal, not "assume [claimant] will succeed on appeal." *Id*. at 80. The court heard and considered the evidence presented at the confirmation hearing "as well as what's gone on in this now relatively long case previously"—which the Debtors submit is also relevant to this Court's consideration. *Id*. at 102. But at bottom, "[t]he mere fact that you have an appeal pending certain under *Harbin* does not say well that means it's likely that any plan

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confirmed while an appeal is pending is going to be followed by a liquidation or further financial reorganization. So it's one factor among others that must be considered in determining whether it's more likely than not that this plan will need further liquidation or financial reorganization." *Id.* at 106; *see also Pawlowski*, 428 B.R. at 552-53 ("Indeed, nothing in Harbin suggests that ongoing litigation renders a plan inherently infeasible; it requires merely that the presiding court exercise discretion in evaluating feasibility in light of such claims."); *In re Ell 11, LLC*, Case No. 07-60089, 2008 WL 916695, *2 (Bankr. M.D. Ga. April 2, 2008) ("[T]he court [in *Harbin*] did not hold that any ongoing litigation defeats the feasibility of a plan; only that a court must exercise discretion in evaluating feasibility in light of such claims. . . . While the court [here] considered the presence of ongoing litigation, it is not bound to deem the plan infeasible merely because of the presence of ongoing litigation between a debtor and a claimant.").

Ultimately, the court concluded:

> [B]ased on all of the evidence I heard, it's clear to me that this plan is not likely to need any further liquidation or financial reorganization for two reasons.
>
> Number one, I don't think it's likely that ABC is going to prevail on the appeal. And I certainly heard no evidence to that effect,
>
> But secondly, even if it does prevail on the appeal, I don't have any evidence to say it's likely that if they come back here with their claim that it will not perhaps at that time be subject to setoff, perhaps with different exchange rates at a different time period, and that it's likely to wind up with a net claim that is so large that the Debtor will have to liquidate or engage in further financial reorganization.
>
> ***
>
> And I've weighed the facts and the evidence, and I frankly don't find any evidence suggesting that liquidation or financial reorganization is likely, and on the other hand the Debtor did present a good case that further liquidation or financial reorganization is not likely, and therefore the objection on (a)(11) is overruled, and I find and conclude the Debtor's evidence sustains its burden of proof as to the satisfaction of 1129(a)(11).

Id. at 107-08.

Accordingly, under §1129(a)(11) and Ninth Circuit precedent, the Bankruptcy Court must consider, exercising its wide discretion and among all the facts and circumstances of the Cases, and the evidence presented, whether the SGM Asserted Admin Claim would likely cause

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confirmation of the Plan to be followed by the liquidation, or the need for further financial reorganization," of the Debtors. As presented below, the Debtors submit the only answer is no.

b. *Consideration of the SGM Asserted Admin Claim Does Not Defeat Plan Feasibility under § 1129(a)(11).*

As discussed above, the Bankruptcy Court must consider SGM's litigation as part of its feasibility determination. Unlike all of the cases cited by SGM, however, here the Debtors commenced the lawsuit against SGM postpetition, asserting substantial claims for relief for contract and tort damages. The District Court recently confirmed that the Debtors' complaint states valid claims for relief. *See* Denial Order. SGM asserted counterclaims against the Debtors,[12] and asserted in the SGM Asserted Admin Claim entitlement to at least $45.2 million, comprising a return of the $30 million Deposit, plus at least $6 million in interest thereon, plus at least $9 million in attorneys' fees. *See* SGM Asserted Admin Claim.

In consideration of SGM's unsubstantiated counterclaims, the Bankruptcy Court may consider that the Debtors agreed to set aside the maximum amount of the $30 million Deposit, as a reserve, until the District Court enters a judgment. Consequently, despite SGM's allegations that the Debtors have failed to account for SGM's claims, the Debtors have set aside the entirety of the Deposit, as set forth in the Disclosure Statement to be included in the Plan.

The Bankruptcy Court may further consider that SGM filed no evidence in support of their entitlement to nor the amount of their counterclaims for interest and attorney's fees, neither with the SGM Asserted Admin Claim, the SGM Objection, nor the SGM Counterclaims. Accordingly, SGM has not even approached its burden.[13] *See In re Sunnyslope Housing Ltd. P'ship*, 859 F.3d

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[12] SGM alleges three bases for the SGM Asserted Admin Claim: (i) postpetition breach of contract; (ii) conversion; and (iii) attorney's fees. SGM Objection, at 5-6. As argued in greater detail in the attached Counterclaims MTD, the Debtors disagree that SGM has any valuable counterclaim which is the basis for the purported administrative claim.

[13] SGM is a frequent participant in bankruptcy cases involving hospitals and is, or at least should be, quite familiar with this process. *See, e.g., In re Victor Valley Community Hospital*, Case No. 6:10-39537 (Bankr. C.D. Cal. 2010) (SGM was the buyer of the hospital from chapter 11 estate); *In re Gardens Regional Hospital and Medical Center, Inc.*, Case No. 2:16-bk-ER (Bankr. C.D. *{footnote continued}*

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637, 647 (9th Cir. 2017) ("It was therefore well within the bankruptcy court's discretion to find that the plan of reorganization was feasible" based on the debtor's projections and that the objecting creditor "c[a]me in with no evidence of a lack of feasibility."); *W.R. Grace*, 475 B.R. at 119 ("In conclusion, the Court also notes that while AMH challenges the feasibility of the Joint Plan on numerous grounds before this Court, it failed to present any concrete evidence of its own on this point before the Bankruptcy Court."); *In re Finevest Foods, Inc*., 159 B.R. 972, 976 (Bankr. M.D. Fla. 1993) (claimant must prove entitlement to administrative priority "by a preponderance of the evidence"). Further, SGM advanced no argument as to why they are entitled to either amount. As set forth in the Counterclaim MTD, SGM simply is not entitled to interest and attorneys' fees, which are only afforded to SGM under the SGM APA if they are the prevailing party in the litigation. Accordingly, in attempting to distract the Bankruptcy Court with a jurisdictional issue, SGM has offered the Bankruptcy Court nothing to consider to find the Plan infeasible, "despite having ample opportunity to do so."[14] *See W.R. Grace*, 475 B.R. at 119.

The Bankruptcy Court may further consider that, should SGM have its counterclaims recognized by the District Court and obtain a resulting net claim against the Debtors, this Court would have jurisdiction over whether such claim is entitled to administrative priority. The Debtors seriously doubt that SGM will be able to demonstrate that it provided a benefit to the Debtors' estates, but that is a fight for another day. *See, e.g., In re Cook Inlet Energy LLC*, 583 B.R. 494 (B.A.P. 9th Cir. 2018); *In re Nichols*, BAP No. AZ-09-1325 PaDJu, 2010 WL 6259965, *4 (B.A.P. 9th Cir. 2010).

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Cal. 2017) (SGM was court approved buyer but refused to close because of conditions imposed by the California Attorney General.); *In re Promise Healthcare Group, LLC*, Case No. 18-12491 (Bankr. D. Del. 2018) (SGM buys Promise Hospital of Overland Park from chapter 11 case). Additionally, SGM affiliates, with the same leadership as SGM, have been debtors in bankruptcy themselves. *See, In re Chaudhuri Medical Corp., et al*., Case No. 6:00-bk-26995-WJ (Bankr. C.D. Cal. 2000) (SGM affiliate files chapter 11 case for largest for profit medical group in Southern California).

[14] The Debtors recall a similar tactic employed by SGM previously, when SGM spent more time instructing this Court why it could not determine issues under the APA rather than presenting evidence on those issues during its many opportunities.

Based the foregoing, even if the Bankruptcy Court valued SGM's litigation using the litigation risk analysis formula set forth in *In re Lahijani*, 325 B.R. 282, 289-90 (B.A.P. 9th Cir. 2005), the reserve of the Deposit is more than sufficient. SGM asserts a right to recover $46 million; the Debtors estimate SGM's likelihood of success on the merits is low, generously estimated for these purposes at 25%, so that the expected value in the future of SGM's litigation is .25 x $46,000,000 = $11,500,000. To reduce that amount to present value, the Bankruptcy Court should use the same factors as the Bankruptcy Appellate Panel in Lahijani: three years estimated to resolve the litigation with a discount rate of 10%, which results in a present value of SGM's counterclaims of $8,640,120. The Debtors are reserving $30 million, or approximately three and a half times the estimated value of SGM's counterclaims. Even if the Bankruptcy Court estimates SGM's likelihood of success on the litigation as "a coin toss" or 50%, the estimated value of SGM's counterclaims is only $17,280,240, or just over half of the amount reserved by the Debtors.[15] All that is required by the Ninth Circuit is that the Bankruptcy Court merely consider the claim in connection with feasibility.

Given the foregoing, the Deposit is more than an ample reserve, particularly since the Debtors are not required to even set forth a mechanism for addressing the claims of creditors who may subsequently recover large judgments against the Debtors. *See Harbin*, 486 F.3d at 519-20; *RCS Capital*, 2013 WL 3619172, *8.

[15] The Bankruptcy Court may also consider that it is not prohibited in the Ninth Circuit "from valuing [the] claim at zero" as long as it "exercise[s] its own judgment in reaching such a conclusion." *See Harbin,* 486 F.3d at 520 n.7 *Bittner v. Borne Chem. Co., Inc.,* 691 F.2d 134, 135 (3d Cir. 1982), which was cited to approvingly by the Ninth Circuit in *Pizza of Hawaii*, affirmed a bankruptcy court's zero valuation of a pending litigation claim in the context of feasibility. In *Bittner*, the creditors argued for a present value calculation of the probability that appellants will be successful in their state court action, similar to that adopted in *Lahijani*. Instead, they complained that the bankruptcy court "assessed the ultimate merits and, believing that [the creditors] could not establish their case by a preponderance of the evidence, valued the claims at zero." *Id*. The Third Circuit did not "find that such a valuation method is an abuse of discretion conferred by section 502(c)(1)." *Id*. In so holding, the Court stated that "[t]he validity of this estimation must be determined in light of the policy underlying reorganization proceedings." *Id*.

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6. *SGM Lacks Standing to Object to Plan Provisions Concerning Offset and Recoupment, Nor Are Such Provisions Impermissible*

SGM does not have standing to dispute the provisions of the Plan dealing with offset or recoupment rights under § 553(a). Although § 1128(b) states that a "party in interest" has standing to object to plan confirmation, § 1128 does not provide any guidance as to who or what constitutes a "party in interest." Section 1109(b), however, defines a party in interest to include the debtor, a trustee, a creditor, an equity security holder, a creditors' or equity security holders' committee, or an indenture trustee. A creditor is defined in § 101(10) as (a) an entity that has a prepetition claim, (b) an entity that has a claim against the estate under §§ 348(d) (claims arising in a converted case), 502(f) (claims arising in an involuntary case), 502(g) (claims arising from rejection of a contract), 502(h) (claims arising from recovery of property), or 502(i) (tax claims arising postpetition), or (c) an entity that has a community claim. SGM meets none of those standards, and is therefore not a creditor as that term is defined in the Bankruptcy Code. *But see In re Thorpe Insulation Co.,* 677 F.3d 869 (9th Cir. 2012) (§ 1109 list not exclusive). Even if the Bankruptcy Court considers SGM as a party in interest, that does not obviate the basic requirement of Article III standing that a party be "directly, adversely, and pecuniarily affect[ed]" by the action it challenges—*i.e.*, that a party sustain an injury-in-fact. *Thorpe Insulation*, 677 F.3d at 887. In *In re Northwood Props., LLC*, for example, the court rejected the appellees' argument that they were "grouped into an artificial convenience class . . . in order to orchestrate acceptance of the plan." *Bourne v. Northwood Props., LLC (In re Northwood Props., LLC)*, 509 F.3d 15, 25 (1st Cir. 2007). Here the Plan provisions related to offset and recoupment do not affect any rights of SGM, so it has no standing to object to those provisions.

SGM does not have a right of setoff preserved through § 553 for several reasons: (a) it has no rights of setoff under applicable non-bankruptcy law which would be preserved by § 553(a), and (b) it has no prepetition claims, and § 553(a) only preserves prepetition claims.

SGM has no right of setoff under California law. The Bankruptcy Code does not create a right of setoff; it merely preserves such rights that exist under applicable non-bankruptcy law. *Citizens Bank of Md. v. Strumpf,* 516 U.S. 16, 18 (1995); *In re Bennett Funding Grp., Inc.*, 146

F.3d 136, 138-39 (2d Cir. 1998) ("Section 553(a) . . . does not create a right of setoff, but rather preserves whatever right exists under applicable non-bankruptcy law."); *In re McLean Indus., Inc.*, 90 B.R. 614, 618 (Bankr. S.D.N.Y. 1988) ("Section 553 is, however, not an independent source of a right to setoff; rather, it recognizes and preserves, but does not define, the common law right of setoff under nonbankruptcy law. A creditor seeking to setoff . . . must establish a claim and a right to setoff by applying the law of the state where the operative facts occurred."). SGM's "right to payment" (to the extent it exists at all) is contingent upon it winning the pending litigation against the Debtors related to its failure to close its purchase of the Debtors' hospitals. However, *under California law, contingent claims are not subject to setoff*. *See In re WL Homes LLC*, 471 B.R. 349 (Bankr. D. Del. 2012) (relying on 16 Cal. Jur.3d., Counterclaim and Setoff, § 10 (2012) ("Ordinarily, when a liability is contingent, and not fixed, it is unavailable as a setoff without the consent of the plaintiff. . . . A claim urged as a setoff . . . must be mature at the time when the judgment debtor seeks the setoff. Thus, a judgment debtor's right to receive payments from a judgment creditor on a note that is not yet due at the time when the setoff is sought does not constitute a proper subject for equitable setoff.")); *see also Fed. Deposit Ins. Corp. v. Liberty Nat'l Bank & Trust Co*., 806 F.2d 961 (10th Cir. 1986) ("it appears to be the general rule that contingent claims are not a proper subject of setoff"). There is no dispute that SGM's "right to payment" is contingent upon it prevailing in its counterclaims in the pending adversary proceeding. To allow SGM to demand treatment of its contingent claim as subject to setoff would be to elevate it to status as a secured claim. *See* 11 U.S.C. § 506(a)(1) ("An allowed claim of a creditor . . . that is subject to setoff under section 553 . . . is a secured claim to the extent of . . . the amount subject to setoff . . . ."). This is clearly inappropriate when the claims it has asserted are vigorously contested in the pending adversary proceeding. *See In re Corporate Resource Servs., Inc*., 564 B.R. 196 (2017) ("Even when a lawsuit has been filed, claims that are not finally adjudicated are contingent.").

Even if SGM had a right of setoff, it would not be preserved by § 553(a). Section 553(a) expressly applies only to the offset of prepetition claims against prepetition debts. *See* 11 U.S.C. 553(a) (Section 553(a) "does not affect any right of a creditor to offset a mutual debt owing by

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such creditor to the debtor that arose before the commencement of the case . . . against a claim of such creditor against the debtor that arose before the commencement of the case"); *In re Myers,* 362 F.3d 667, 672-73 (10th Cir. 2004); *In re Delta Airlines,* 359 B.R. 462-66 (Bankr. S.D.N.Y. 2006). SGM's claims (if any) arise from the postpetition Asset Purchase Agreement with the Debtors, and therefore would be a postpetition right to payment.[16]

SGM argues that the Plan provisions addressing recoupment rights are impermissible; they are simply wrong. First, they can point to no provision of the Bankruptcy Code which prohibits plan provisions restricting rights of recoupment. Section 1129(a)(1) only requires that a plan not be inconsistent with provisions of the Bankruptcy Code. But recoupment rights are not mentioned in the Bankruptcy Code. *See, e.g., In re TLC Hospitals*, 224 F.3d 1008 (9th Cir. 2000) ("[R]ecoupment does not owe its legitimacy to anything in the Bankruptcy Code. As applied in bankruptcy, recoupment is an equitable doctrine . . . .").

SGM relies on cases holding that recoupment rights are not extinguished by a discharge in bankruptcy or a sale under § 363. But those cases are irrelevant here, where the Debtors are not receiving a discharge nor is this issue raised in the context of a sale under § 363. SGM argues that their defenses to payment being asserted in the Adversary Proceeding are improperly cut off in the Plan, because it transfers causes of action but bars rights of setoff or recoupment. But it ignores the actual language of the Plan, which raises those issues only with regard to a *Claim*. (Plan § 13.6). Thus, the provisions to which SGM objects do not apply to SGM, which is not a holder of a Claim, as that term is defined in the Plan to refer to prepetition claims only. Moreover, courts

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[16] SGM argues that courts have allowed the setoff of postpetition claims against postpetition debts. While this is true, SGM does not and cannot rely on the provisions of § 553(a) which, by its plain terms, only applies to prepetition obligations. *See, e.g., ASARCO, LLC v. Celanese Chemical Co*., 792 F.3d 1203, 1210 (9th Cir. 2015) ("A primary canon of statutory interpretation is that the plain language of a statute should be enforced according to its terms, in light of its context."); *see also Lamie v. United States Tr*., 540 U.S. 526, 542 (2004) ("It is beyond our province to rescue [the legislature] from its drafting errors, and to provide for what we might think . . . is the preferred result.") (quoting *United States v. Granderson*, 511 U.S. 39, 68 (1994) (Scalia, J., concurring)). And because they cannot rely on § 553(a)—or any other provision of the Bankruptcy Code—to establish a right to offset postpetition claims against postpetition debts, SGM cannot rely on § 1129(a)(1).

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have held that a confirmed plan that expressly prohibits creditors from exercising any right of setoff post-confirmation, to which the creditor does not object or appeal, binds the creditor through the *res judicata* effect of the debtor's confirmed plan. *In re Lykes Bros. S.S. Co.,* 217 B.R. 304, 311 (Bankr. M.D. Fla. 1997); *see also Heins v. Ruti-Sweetwater, Inc. (In re Ruti-Sweetwater, Inc.)*, 836 F.2d 1263, 1267-68 (10th Cir. 1988) (creditors who failed to timely object to plan could not challenge plan on appeal).

7. *The Plan Does Not Run Afoul of the Bankruptcy Code's Priority Scheme*

SGM's citation of *Cynzewski v. Jevic Holdings Corp.*, 137 S. Ct. 973 (2017), is misplaced. First, the Plan complies with the Bankruptcy Code given that it (a) proposes to pay administrative claims in full when allowed, as provided by the Bankruptcy Code, and (b) provides adequate funding to do so based on real world ranges for such administrative expense claims in the aggregate, as will be demonstrated at the confirmation hearing. Nothing in the Bankruptcy Code or in *Jevic* requires a chapter 11 plan to reserve for every dollar of asserted administrative expense claims (however baseless or overstated) to be feasible and this is not a structured dismissal of the chapter 11 cases.

Second, under the Bankruptcy Code, secured creditors come before administrative claimants. The Holders of the Secured 2005 Revenue Bond Claims are within their rights to require that the portion of their secured claim which they are voluntarily deferring be paid from the Liquidating Trust before any administrative claims which may be allowed in the future in the unlikely event that the administrative claims in the aggregate end up being materially more than the estimate presented as part of the evidentiary record at the confirmation hearing.

8. *The Plan's Treatment of Professional Claims Is Permissible*

SGM argues the Plan should not be confirmed because it does not allow for disgorgement of professional fees in the unlikely event SGM prevails in full on its counterclaims against the Debtors at the district court trial in late 2021 and the Plaintiffs lose on all of their claims against SGM. The cases SGM cites are in the distinctive context of a chapter 11 case that has been converted to chapter 7 and, with one exception, are from outside this district. *See In re Dick Cepek, Inc.*, 339 B.R. 730 (B.A.P. 9th Cir. 2006) (reversing and remanding bankruptcy court order

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requiring disgorgement of retainer in a chapter 7 case). However, other cases find in a chapter 11 context that § 726(b) is not applicable and/or that disgorgement is either not an authorized remedy at all or is in the bankruptcy court's discretion. *See, e.g., In re Home Life Serv. Corp.*, 533 B.R. 320 (Bankr. N.D. Cal. 2015); *In re Headlee Mgmt. Corp.*, 519 B.R. 452 (Bankr. S.D.N.Y. 2014); *In re Unitcast, Inc.,* 214 B.R. 992 (Bankr. N.D. Ohio 1997); *In re St. Josephs Cleaners, Inc.*, 346 B.R. 430 (Bankr. W.D. Mich. 2006). As discussed in the case of *In re Santa Fe Med. Group, LLC,* 558 B.R. 223 (Bankr. D.N.M. 2016), the better reasoned view is not to require disgorgement of professional fees for the following reasons: (i) § 726(b) does not provide for a disgorgement remedy; (ii) § 726(b) does not apply outside chapter 7; (iii) §§ 329 to 331 address allowance and payment of professional fees but not disgorgement; (iv) § 549(a)(2) protects payments authorized by the Bankruptcy Court; (v) it is unfair to target payments to professionals for disgorgement in an administrative insolvency scenario but not payment to vendors, service providers and other chapter 11 administrative claimants; and (vi) § 105(a) should not be used to imply remedies in other sections of the Bankruptcy Code which do not contain that remedy.

9. *The Releases, Exculpations, and Injunctions under the Plan Are Permissible*

a. *The Plan Does Not Discharge the SGM Counterclaims.*

SGM's sweeping objections to the releases, exculpations, and injunctions under the Plan are built on a fiction—that the Plan Proponents nefariously crafted the Plan to undermine SGM's counterclaims in the pending Adversary Proceeding. By way of example, SGM professes shock that it "was not consulted before the Plan was filed [and] was given no opportunity for input." *See* SGM Objection, at 25-26. But, as SGM admits, the Plan Proponents and SGM agreed to language to be included in the Disclosure Statement, Plan, and Confirmation Order before the Plan was filed that addressed the parties' respective rights to the Deposit. *See id.* at 4; *see also* Docket No. 5197, at 4. Moreover, the Plan does not specifically address the SGM counterclaim because it was not asserted by SGM until July 10, 2020—a week after the Bankruptcy Court approved the Disclosure Statement. *See* Docket No. 5197, Ex. 1.

To be clear, the Plan Proponents do not trade in the same sleight of hand favored by SGM and its affiliates—the releases, exculpations, and injunctions are not intended to interfere with the

pending SGM litigation or SGM's meritless counterclaims asserted against the Debtors. That litigation will proceed apace without interference from the confirmation process, and the Plan Proponents will make such clarification if requested by the Bankruptcy Court. Thus, consistent with § 1141(d)(3), and as observed by SGM, the confirmation of the Plan will not discharge the counterclaims asserted against the Debtors because "the plan provides for the liquidation of all or substantially all of the property of the estate." 11 U.S.C. § 1141(d)(3); *see also* SGM Objection, at 19 n.24 (citing Plan § 13.2). In light of the foregoing clarification, SGM's objection to the Debtors' releases, exculpations, and injunctions should be overruled as moot.[17]

b. *Section 524(e) Does Not Preclude the Nondebtor Releases, Exculpations, and Injunctions Set Forth in the Plan.*

SGM misreads the evolving precedent of the Ninth Circuit Court of Appeals concerning the scope and impact of § 524(e) on releases under a plan. SGM cites to language in *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), that, at first blush, suggests that § 524(e) prohibits nondebtor releases of any kind. However, the Ninth Circuit's recent decision in *Blixseth*, 961 F.3d 1074, clarifies that the plain language of § 524(e) must be more narrowly construed. This is a critical distinction ignored by SGM—the Plan's releases are appropriate because they do not contravene § 524(e), which only bars a debtor's discharge from affecting the co-liability of a nondebtor for the discharged debt.

Section 524(e) provides as follows:

> Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

The Ninth Circuit's early interpretation of § 524(e) recognized that, "[g]enerally, discharge of the principal debtor in bankruptcy will not discharge *the liabilities of codebtors or guarantors*." *Underhill v. Royal,*769 F.2d 1426, 1432 (9th Cir. 1985) (emphasis added). The Ninth Circuit and

[17] The Plan Proponents submit that this clarification moots SGM's additional objections to the nondebtor releases, exculpations, and injunctions. Although permissible, as discussed below, *{footnote continued}*

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the Bankruptcy Appellate Panel for the Ninth Circuit generally conformed to this interpretation—that § 524(e) precludes a debtor's discharge from affecting the liability of a codebtor or guarantor on "such debt." *See, e.g.*, *Am. Hardwoods, Inc. v. Deutsche Credit Corp. (In re Am. Hardwoods, Inc.)*, 885 F.2d 621, 625 (9th Cir. 1989) (affirming bankruptcy court finding that it lacked the power to permanently enjoin creditor from enforcing state court judgment against nondebtor guarantors); *Sun Valley Newspapers, Inc. v. Sun World Corp. (In re Sun Valley Newspapers, Inc.),* 171 B.R. 71, 77 (B.A.P. 9th Cir. 1994) (holding reorganization plans which proposed to release non-debtor guarantors violated § 524(e) and were therefore unconfirmable); *Seaport Automotive Warehouse, Inc. v. Rohnert Park Auto Parts, Inc. (In re Rohnert Park Auto Parts, Inc.),* 113 B.R. 610, 614-17 (B.A.P. 9th Cir. 1990) (finding that a reorganization plan provision which enjoined creditors from proceeding against co-debtors violated § 524(e)).

However, in *Lowenschuss*, the Ninth Circuit suggested that the limitations of § 524(e) might be broader. *See* 67 F.3d 1394. There, the Ninth Circuit considered a "Global Release Provision" in a plan, which "broadly released the debtor and connected persons or entities . . . from all claims" rather than co-liabilities or guarantees. *See id.* at 1401. The Ninth Circuit reviewed its prior decisions and concluded that "[t]his court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors." *Id.* (citing *Am. Hardwoods, Inc.*, 885 F.2d 621; *Underhill,*769 F.2d 1426). Although this broad statement may be appealing to SGM in isolation, the Ninth Circuit recently reevaluated the sweep of this apparent absolute prohibition against third party releases.

In *Blixseth*, the Ninth Circuit considered the propriety of an exculpation clause that purported to exculpate liability for nondebtor plan proponents. *See Blixseth*, 961 F.3d at 1082. The Ninth Circuit reviewed the plain language of § 524(e) and observed that "[b]y its terms, § 524(e) prevents a bankruptcy court from extinguishing claims of creditors against non-debtors *over the very debt discharged through the bankruptcy proceedings*." *Id.* (citing *In re PWS*

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SGM makes no allegation that its rights will be affected or impaired by the nondebtor releases given its sole basis for objecting is the preservation of its counterclaims against the Debtors.

Holding Corp., 228 F.3d 224, 245-46 (3d Cir. 2000)) (emphasis added). The Ninth Circuit reasoned

> [t]hat § 524(e) confines the debt that may be discharged to the "debt of the debtor"—and not the obligations of third parties for that debt—conforms to the basic fact that "a discharge in bankruptcy does not extinguish the debt itself but merely releases the debtor from personal liability . . . . The debt still exists, however, and can be collected from any other entity that may be liable."

Id. (quoting *Landsing Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund)*, 922 F.2d 592, 600 (10th Cir. 1990)). The Ninth Circuit further recounted its prior observation, in *Underhill*, of the legislative history that "[t]he emphasis on the liability of co-debtors and guarantors, but not creditors or other third parties, indicates the intended scope of Section 16 and, by extension, § 524(e)." *See id.* at 1083 (citing *Underhill v. Royal,*769 F.2d at 1432).

The Ninth Circuit reconciled the language in its prior holdings with the plain meaning of § 524(e) and concluded that

> the breadth of the coverage—the "Global Release" in *Lowenschuss*; the permanent injunction in *American Hardwoods*; and the "all claims" exculpation in *Underhill*—would have affected the ability of creditors to make claims against third parties, including guarantors and co-debtors, for the debtor's discharged debt.

Id. at 1084. SGM glosses over this critical distinction and never reconciles its repeated citation to cases rejecting the release of guarantors and co-liable parties (*see* SGM Objection, at 20-22) with the releases effectuated by the Plan. The Plan does not intend to release the narrow set of co-liabilities precluded by § 524(e) and Ninth Circuit authority as set forth below:

- Section 13.5(b) (Settlement Releases). As set forth in greater detail herein, the Plan Proponents have thoroughly demonstrated "why it is appropriate [and] necessary for creditors of the Debtors to release and discharge" the Settlement Released Parties. SGM Objection, at 23. Obtaining the Settlement Releases is a precondition of the Creditor Settlement Agreements, which effectuate resolutions of (i) some of the largest claims against the Debtors estates, (ii) significant and

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costly litigation between the Committee and the Prepetition Secured Creditors, and (iii) the 2005 Revenue Bonds Diminution Claim. In fact, it is uncontroverted that, without the Creditor Settlement Agreements, the Plan could not be confirmed as proposed. Thus, the benefit to creditors of the Debtors' Estates is evident—the Settlement Releases will maximize creditor recoveries in these Chapter 11 Cases by providing a pathway to confirm the now-overwhelmingly accepted Plan. SGM does not contend, and there is no evidence that, the Settlement Releases will effectuate a release of any guarantee or co-liability of the Settlement Released Parties on a debt otherwise treated under the Plan. Accordingly, the Settlement Releases are consistent with § 524(e).

- Section 13.6(a) (General Injunction). Without support, SGM claims that the General Injunction "is also impermissibly broad, not limited to actions or claims arising post-petition, and not entirely (or even primarily) related to formulation of the Plan." SGM Objection, at 23. However, as set forth above, courts in this District regularly approve similar injunctions in liquidating chapter 11 cases. *See, e.g.*, *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, No. 2:16-bk-17463-ER, Docket No. 1372 at 15 (Bankr. C.D. Cal. Sept. 18, 2018); *In re T Asset Acquisition Co., LLC*, No. 2:09-bk-31853-ER, Docket No. 741, at 4-5 (Bankr. C.D. Cal. June 6, 2011); *In re SCI Real Estate Invs., LLC*, Case No. 2:11-bk-15975-PC, Docket No. 186, at 18 (Bankr. C.D. Cal. June 15, 2012); *In re Danville Land Invs., LLC*, Case No. 2:11-bk-62685-DS, Docket No. 150, at 8 (Bankr. C.D. Cal. May 23, 2013). Further, SGM makes no claim that the General Injunction constitutes a release of co-liable nondebtor parties prohibited by § 524(e).
- Section 13.7 (Exculpation). The Exculpation provision fits squarely within the Ninth Circuit's analysis in *Blixseth*. In *Blixseth*, "[t]he Debtors, Blixseth, CrossHarbor, Credit Suisse—the Debtors' largest creditor—and a committee of unsecured creditors battled over the companies' assets." *See Blixseth*, 961 F.3d at 1078. The parties ultimately entered into a global settlement that formed the basis

for a joint plan that included exculpations for certain of the settling parties. *See id.* at 1078-79. The Ninth Circuit found the exculpation permissible because it was "narrow in both scope and time"—it was limited to postpetition liability related to the chapter 11 cases, did not affect obligations of nondebtors on debts discharged in the bankruptcy, and covered parties "closely involved" with drafting the Plan. *See id.* at 1081-82. Specifically, the court noted that Credit Suisse "had the ability to single-handedly disrupt the entire confirmation process, but had become a plan proponent through its direct participation in the negotiations that preceded the adoption of the Plan." *See id.* at 1082 (internal quotations and brackets omitted). The Ninth Circuit held that such an exculpation was not prohibited by § 524(e) for the reasons set forth above.

As with *Blixseth*, the PBGC and Prepetition Secured Creditors are holders of the largest unsecured and secured claims in the Debtors' cases, and litigation between the Debtors, the Prepetition Secured Creditors, and the Committee presented substantial and complex issues. Further, despite their ability to "disrupt" the confirmation process, the Settlement Released Parties all agreed to support the Plan. Indeed, the Prepetition Secured Creditors and Committee are co-proponents of the Plan as a direct result of the Plan Settlement. Given that the exculpation is similarly limited to postpetition liability related to the Chapter 11 Cases, the facts, here, fit squarely within the *Blixseth* paradigm. The notion that other Released Parties—the Estates, the Debtors, the Committee and its members, the Indenture Trustees, and their affiliates—were not closely involved in drafting the plan they jointly proposed is likewise baseless. *See In re PG & E Corp.*, – B.R. –, 2020 WL 3273475, at *11 (Bankr. N.D. Cal. June 17, 2020) (approving exculpation under *Blixseth* that "covers a lot of players, a number of documents and a number of events and activities" where "[t]hat reach is consistent with the complexities and difficulties of these cases").

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- Section 13.8 (No Recourse). Here, SGM obliquely admits the limitations of its overbroad citation to *Lowenschuss*. SGM claims that the No Recourse provision of the Plan oversteps § 542(e)'s "specific" prohibition against releases of nondebtor parties that are co-liable on debts of the Debtors. However, the No Recourse provision is not so broad. First, as noted above, SGM does not claim that the Settlement Released Parties—the PBGC, the Prepetition Secured Creditors, the Committee, and their affiliates—are co-liable on *any* debts of the Debtors. Second, as noted above, the No Recourse provision goes no farther than the already-extant *Barton* doctrine protections afforded to the Post-Effective Date Debtors, the Post-Effective Date Board of Trustees, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust. *See In re Crown Vantage, Inc*., 421 F.3d 963, 973 (9th Cir. 2005). Accordingly, the No Recourse provisions are permissible.

Under the facts of the Chapter 11 Cases, the releases, exculpations, and injunctions are necessary and appropriate to effectuate a value maximizing Plan—a challenging task after SGM refused to close the sales of four of the Debtors' hospitals and caused the Estates to incur nearly another year of operational losses. Given the state in which SGM's own malfeasance has left the Debtors' Estates, the releases, exculpations, and injunctions (and particularly the Settlement Releases) are critical to the Plan Proponents' confirmation strategy and necessary for Plan confirmation. Accordingly, they should be approved as consistent with § 524(e).

10. *Conclusion*

For the foregoing reasons, the SGM Objection should be overruled and the Plan should be confirmed.

G. The Toyon Objection Should Be Overruled Because the Plan Adequately Considers Toyon's Speculative and Disputed Claim

Toyon Associates, Inc. ("Toyon") filed *Toyon Associates, Inc.'s Limited Objection to Confirmation of Second Amended Joint Chapter 11 Plan of Liquidated (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket Nos. 5281] (the "Toyon Objection"). In the Toyon Objection, Toyon objects to confirmation of the Debtors' Plan because

it asserts that it has an administrative expense claim of over $12 million, for which the Debtors must reserve in full, in the event that its motion for payment of administrative expense is eventually granted in full. Toyon is simply wrong. Its alleged right to more than $12 million in contingency fees is purely speculative and, at best, contingent on future success in appeals which are subject to significant litigation risk and therefore inherently uncertain.

As set forth above, Toyon bears the burden of proof in asserting a right to payment for an administrative expense. *See supra*. Here, the asserted claim has not been allowed, as required under § 1129(a)(9). If the Bankruptcy Court considers any litigation with Toyon in connection with its feasibility determination under § 1129(a)(11), discussed *supra*, the Bankruptcy Court may consider the reserve in the amount of $250,000 sufficient to reserve for the unlikely chance that Toyon prevails.

The declaration in support of its objection to confirmation plainly reveals the inherent weakness in Toyon's assertions. First, the declaration expressly states that "Toyon is paid a contingency of 20% or 25% of the total recovery, or additional reimbursement received, *after the cash is received by [the Debtors]*." *Declaration of Thomas P. Knight in Support of Toyon Associates, Inc.'s Limited Objection To Confirmation of Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 5281-1] (the "Knight Declaration"), at ¶12, lines 17-19 (emphasis added). This is consistent with the Declaration filed by Toyon to support its retention as an ordinary course professional. *See Disclosure Declaration of Thomas P. Knight In Support of Retention of Toyon Associates, Inc. As An Ordinary Course Professional* [Docket No. 900], at ¶6., lines 4-7 ("For the Appeal Services described above, the Firm [Toyon] is paid a contingency of the total additional reimbursement paid to the hospital resulting from the successful pursuit of appeal issues. With respect to appeals, *no fees or expenses are paid to Toyon unless the appeal or reopening results in additional reimbursement to the hospital*.") (emphasis added).

Toyon provides no evidence, because there is none, that the Debtors ever were paid any recoveries from appeals brought by Toyon postpetition and failed to pay Toyon its contingency fees on those recoveries. To the contrary, Toyon's own description of the status of its appeals

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reveals that they are still in the process of being litigated and may never result in a recovery to the Debtors. For example, fully three-quarters of Toyon's demand, or approximately $8.9 million, relates to a single appeal: the Dual Eligible Part C Days Appeal. *See* Knight Decl., at ¶13.f., lines 4-17. As the Knight Declaration expressly states, that appeal was recently decided by the United States Supreme Court, but it does not ensure that the Debtors will be paid the asserted $39 million, or any funds at all. Instead, as the Knight Declaration makes clear, "[a]ll hospitals involved in this appeal, including the Debtors, *are legally due a recalculation and increase in reimbursement pending settlement negotiations and potential audits by CMS*." *Id.* at lines 10-12 (emphasis added). Toyon would only be entitled to its contingency fee if the Debtors were eventually paid some amount by CMS after a recalculation, which must result in an increase in reimbursement, further settlement negotiations with CMS and then potential audits by CMS. And, of course, it is impossible to know what Toyon's fee would be until the Debtors are paid.

Virtually every other appeal described in the Knight Declaration is similarly and clearly subject to dispute by CMS, contingent on future legal proceedings and unliquidated until those proceedings are resolved. *See, e.g.*, SSI Ratio/Remand Appeals, Knight Decl., at ¶13.b., lines 17-22 ("When the federal district court agreed with the position asserted by the Debtors and other providers, *all cases were remanded for recalculation of payment* pursuant to the new ratio. *The Debtors are now simply waiting to be paid the money* they are legally owed by Medicare which has not yet been paid. *Toyon is in the process of filing a complaint in federal court for the Debtors on this issue* on the basis that the government is not in compliance with the prior court order.") (emphasis added); SSI Accuracy Appeals, Knight Decl., at ¶13.c., lines 17-22 ("Toyon's efforts on these matters benefitted the Debtors . . . *by preserving rights to expected payment awards* for the Debtors[.]") (emphasis added); Outlier Appeals, Knight Decl., at ¶13.d., lines 17-19 ("Toyon's efforts on these matters benefitted the Debtors . . . *by preserving rights to expected payment awards for the Debtors*[.]") (emphasis added); Dual Eligible Part A Days Appeals, Knight Decl., at ¶13.g., lines 21-22 ("*These appeals are all currently at the PRRB* pending a request for expedited judicial review. . . . Toyon's success on these matters benefitted the Debtors … *by obtaining expected payment awards for the Debtors*[.]") (emphasis added). It is clear that Toyon

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has no basis for an administrative expense, and therefore its objection to confirmation of the Plan on the basis that its administrative expenses are not adequately provided for is without merit and should be denied.

Additionally, Toyon concedes that its right to an administrative expense requires that Toyon show that its efforts resulted in a benefit to the Debtors' estates. Unable to show that its appeals generated cash receipts for the Debtors, it seeks to support its demand by arguing that pursuing those appeals must have provided value to the Debtors because the Asset Purchase Agreements for the sale of the Debtors' hospitals (other than St. Vincent Medical Center) required the transfer of the Medicare Provider Agreements to the buyers, and the resulting stipulations between CMS and the Debtors over the transfers of the Medicare Provider Agreement required the Debtors to withdraw any pending appeals including those being pursued by Toyon. *See, e.g.*, Knight Decl., at ¶27, lines 15-17 ("The jointly administered bankruptcy estates of the Debtors are expected to obtain significant benefits by having the provider agreements assigned with respect to the St. Francis Sale and any dismissal of the St. Francis Withdrawn Appeals.").

However, this is simply inaccurate. First, all these appeals result from denials of claims or cost report adjustments by the Medicare program. The process for appealing these denials and adjustments is long, cumbersome and very often unsuccessful. Most appeals take more than five years, and less than half are successful. For these reasons, the Debtors, like most hospitals, write off amounts that might be recovered on these appeals and put no value on them during the appeal. *See* Chadwick Decl. at ¶ 34. Even buyers who purchase accounts receivables are most likely to attribute no value to amounts that might someday be recovered on a pending appeal. Thus, these appeals were not considered a valuable asset by the Debtors when negotiating the sales of their hospitals. Moreover, the most important and valuable aspect of the stipulations between the Debtors and CMS to the buyers was that the stipulation eliminated successor liability risks for the buyer. The stipulations make clear that any value of these pending appeals was speculative and unknown. For all these reasons, Toyon cannot show it provided a benefit to the postpetition Debtors by pursuing appeals which did not result in recoveries to the Debtors.

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IX.

RESERVATION OF RIGHTS

The Plan Proponents reserve the right to further amend the Plan and to submit additional documents, declarations, exhibits and other supporting documents and evidence in connection with confirmation of the Plan or any Amended Plan, or otherwise. While the objections to confirmation of the Plan are limited to those timely raised in the written Objections filed by the objection deadline, to the extent any additional or modified objections are raised in connection with the confirmation hearing, the Plan Proponents reserve the right to respond to the same and/or to argue they are untimely. Nothing contained herein shall constitute a limitation or waiver of rights with respect to any objection filed after the confirmation objection deadline pursuant to a stipulation extending such deadline.

X.

CONCLUSION

WHEREFORE, the Movants respectfully request that the Bankruptcy Court enter an order substantially in the form of the Confirmation Order, attached hereto as **Exhibit "A,"** (i) confirming the Plan, (ii) overruling the Objections, and (iii) granting such other and further relief as the Bankruptcy Court deems just and proper.

Dated: August 5, 2020

DENTONS US LLP

By: */s/ Tania M. Moyron*
Samuel R. Maizel
Tania M. Moyron
Nicholas A. Koffroth

Counsel to the *Debtors and Debtors In Possession*

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DECLARATION OF RICHARD G. ADCOCK

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

1. I am the Chief Executive Officer of Verity Health System of California, Inc. ("VHS"). I became the Debtors' Chief Executive Officer effective January 2018. Prior thereto, I served as VHS's Chief Operating Officer since August 2017.

2. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge, my review of relevant documents, information provided to me by employees of the Debtors or the Debtors' legal and financial advisors, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations and the healthcare industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. This Declaration is in support of the *Memorandum of Law in Support of Confirmation of Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and Prepetition Secured Creditors* (the "Memorandum")[18] and for all other purposes permitted by law.

A. The Plan Settlement

4. The draft Settlement Agreement among the Debtors and the co-proponents of the Plan (collectively, the "Parties"), provides for (i) the treatment of claims in Classes 2, 3, 4, 5, 6, and 8 as set forth in the Plan, (ii) the Parties' support of certain chapter 11 events, including confirmation of the Plan, and (iii) mutual waivers and release of other claims. The Settlement Agreement is subject to various conditions, including Bankruptcy Court approval of the Settlement Agreement, the Plan Effective Date having occurred on or before September 5, 2020, and neither the order approving the Settlement Agreement nor the Confirmation Order being subject to a stay as of the Plan Effective Date. A true and correct copy of the draft Settlement Agreement is attached to the Memorandum as **Exhibit "B."**

[18] All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Memorandum.

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5. The Debtors exercised their reasonable business judgment in entering into the Settlement Agreement. I further believe that the Settlement Agreement is fair and equitable and in the best interests of the estates. The Settlement Agreement (i) avoids both protracted and uncertain litigation between and among various Parties, (ii) agrees to certain modification of priority in order to ensure that all Allowed and allowable Administrative Claims will be paid, (iii) avoids further administrative burden to the estates through early resolution of any potential disputes between the Parties concerning their respective claims and rights associated with the chapter 11 cases as a whole, and the Committee's fees and certain pending adversary proceedings, and (iv) garners necessary support of confirmation of the Plan and exit from these cases.

6. Our professionals engaged in extensive, arms-length negotiations with the other Parties over the terms of the Settlement Agreement and, by extension, the Plan. Significantly, the Settlement Agreement avoids disputes and relieves the Debtors of any further administrative burden associated with resolving the Parties' claims and causes of action. In the absence of the Settlement Agreement, the Parties may be forced into expensive—and uncertain—litigation to resolve any dispute, not to mention uncertainty as to the future of the Plan. In that vein, the Settlement Agreement provides for the immediate realization of material benefits to the estates and all creditors in the form of the support of major stakeholders for the success of the Plan.

B. The Health Net Objection

7. Health Net of California, Inc. ("Health Net") has filed an objection to confirmation based on Prime's decision not to assume and assign SFMC's exiting May 2008 agreement with Health Net as part of the sale to Prime. According to Health Net, that decision will jeopardize Prime's compliance with one of the AG's conditions for the transfer, specifically the requirement to maintain the commercial Medi-Cal managed care plan offered by Health Net. My understanding, however, is that Prime is in advanced discussions with Health Net, and expects to consummate a new agreement, for the maintenance of such coverage. I have been intimately involved with the preparations for the closing of the SFMC sale and have been in near-daily communication with Prime over the myriad steps needed to close the sale and satisfy the AG's conditions. Based on my conversations with representatives of Prime, I believe that Prime stands

ready to enter into a new, standalone Medi-Cal commercial plan agreement with Health Net on reasonable and customary terms. To my knowledge, Prime intends to fully comply with the AG's condition to participate in the Medi-Cal program at SFMC by providing the managed Medi-Cal services offered by Health Net. Thus, I expect the Prime sale will close as scheduled and that the Plan will be timely consummated.

I declare under penalty of perjury and of the laws in the United States of America, the foregoing is true and correct.

Executed this 5th day of August, 2020, at Los Angeles, California.

/s/ Richard G. Adcock
RICHARD G. ADCOCK

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DECLARATION OF PETER C. CHADWICK

I, Peter C. Chadwick, declare, that if called as a witness, I would and could competently testify of my own personal knowledge, as follows:

1. I am a Managing Director of Berkeley Research Group, LLC ("**BRG**") and am currently acting as Chief Financial Officer ("**CFO**") to the Debtors in these chapter 11 cases. I am duly authorized to make this declaration (the "**Declaration**") on behalf of BRG and the Debtors.

2. I obtained a BA from Pennsylvania State University, and an MBA in Finance from Babson College, Olin School of Business. Before joining BRG, I was an Executive Director at Capstone Advisory Group, LLC. Prior to that, I was a Senior Managing Director at FTI Consulting. For more than twenty years, I have served as a chief restructuring officer, chief executive officer, chief operating officer, chief financial officer and as a financial advisor and trustee in complex restructuring matters. Among other things, I have significant experience in the healthcare sector and in effectuating sale transactions.

3. I have significant corporate operating experience, including improving underperforming businesses and advising debtors and creditors in complex financial matters. I have served as chief executive officer, chief operating officer, chief financial officer, and advisor to companies in a variety of industries. My healthcare experience includes acting as the advisor or an officer to healthcare providers, including leading hospital systems and long-term care providers through operational turnarounds and financial restructurings. As an officer or advisor, I prepared and implemented post-acquisition integration plans, viability plans, asset dissolution strategies, and liquidity enhancement plans. My experience spans the spectrum from the largest U.S. companies to middle market proprietary companies.

4. On November 7, 2018, the Court entered an order employing BRG [Docket No. 785] as the financial advisors to Verity Health System of California, Inc. and the above-referenced debtors and debtors in possession (collectively, the "**Debtors**"), in the above captioned chapter 11 cases (the "**Cases**"). In my role as financial advisor, I have diligently worked with the Debtors on every aspect of their Cases.

5. Pursuant to the Debtors' request and further Court orders, I agreed to serve in the role of Chief Financial Officer to the Debtors. Accordingly, I have been serving as Chief Financial Officer of VHS, effective as of October 1, 2019, and have been serving as the CFO of certain other Debtors since September 1, 2019. *See* Docket No. 3682.

6. As the financial advisor and CFO of the Debtors, I have become familiar with the operational and financial aspects of the Debtors' businesses and have participated in the sales process and the negotiations of the Plan and settlements reached in these Cases. I am generally familiar with the terms and provisions of the Plan. Unless otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, or my opinion based upon experience, knowledge, and information concerning the operations and financial condition of the Debtors, or upon information supplied to me by the Debtors' employees or other professionals and consultants. Together with the Debtors' legal advisors, I have reviewed the requirements for confirmation of the Plan pursuant to section 1129 of title 11 of the United States Code (the "**Bankruptcy Code**").

7. This Declaration is in support of the *Memorandum Of Law In Support Of Confirmation Of Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) Of The Debtors, The Committee, And Prepetition Secured Creditors* (the "**Brief**") in support of confirmation of the *Second Amended Joint Chapter 11 Plan (Dated July 2, 2020) of the Debtors, the Committee, and the Prepetition Secured Creditors* [Docket No. 4993] (the "**Plan**") and for all other purposes permitted by law. All capitalized terms not otherwise defined herein shall have the same meaning as in the Brief.

8. Based upon my personal involvement in the negotiation and development of the Plan and discussions with the Debtors' legal and other financial advisors, I believe that the Plan complies with the applicable provisions of the Bankruptcy Code; including requirements of feasibility and that the Plan was proposed in good faith; and that the Debtors, acting through their officers (including myself), directors, and professionals, have conducted themselves in good faith and at arm's-length in relation to the formulation and negotiation of, and voting on, the Plan.

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9. My conclusions in the paragraphs beloware based on my understanding of the Plan, the events that have occurred throughout the Debtors' Chapter 11 Cases, the financial condition of the Debtors, my discussions with legal and other financial advisors to the Debtors, and negotiations I have participated in with the various creditor constituencies .I believe that the Plan complies with the provisions of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended (the "**Bankruptcy Code**").

I.

THE PLAN

10. The Plan constitutes a Plan for all of the Debtors, and the classification and treatment of Claims and Interests in the Plan apply to all of the Debtors. The Plan provides for the deemed consolidation of the Debtors for voting and distribution purposes. The Plan is also the culmination of extensive, good-faith negotiations among the Debtors, the Creditors Committee and the Debtors' largest creditor constituencies, including the Prepetition Secured Creditors.

11. The Plan implements a comprehensive settlement and compromise between the holders of the Secured 2005 Revenue Bond Claims, the Debtors, the Creditors Committee, as well as the holders of Secured 2015 Revenue Notes Claims, Secured 2017 Revenue Claims, Secured MOB I Financing Claims and Secured MOB II Financing Claims,[19] which enables the Plan to become effective in these Chapter 11 Cases immediately after the sale of the Debtors' remaining Hospital assets and resolves the litigation pending against the Prepetition Secured Creditors in these proceedings (the "**Plan Settlement**"). In my judgment, approval of the Plan, which is only made possible by the Plan Settlement, is the lynchpin to maximizing the value of the Debtors' estates.

12. The Plan provides for cash payments to be made on or about the Effective Date of the Plan in full satisfaction of the accrued claims of the Prepetition Secured Creditors, other than

[19] The Secured 2005 Revenue Bond Claims, the Secured 2015 Revenue Notes Claims, Secured 2017 Revenue Claims, Secured MOB I Financing Claims and Secured MOB II Financing Claims are collectively referred to as the "**Prepetition Secured Creditors**")

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the Secured 2005 Revenue Bond Claims; in partial satisfaction of the Secured 2005 Revenue Bond Claims; in full payment of all Allowed Mechanics Lien Claims, excluding interest and fees; full payment of all Allowed Administrative Claims and, as Part of the Plan Settlement, the dismissal of certain litigation in which the Committee is the named plaintiff and the resolution of certain claims arising in connection with the Intercreditor Agreement[20], all as more fully described in the Plan and Disclosure Statement.

13. The Plan also provides for settlement with the Pension Benefit Guaranty Corporation ("**PBGC**") with respect to all of its claims against the Debtors arising under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and the PBGC has agreed to support the Plan (the "**PBGC Settlement**"). Under the terms of the PBGC Settlement, approved by the Bankruptcy Court on August 3, 2020 [Docket No. 5329], the PBGC will receive a single Allowed General Unsecured Claim in the amount of $450 million and a single Allowed Administrative Claim in the amount of $3 million, to be paid in the Effective Date.

14. The Debtors have resolved and/or agree with a significant number of the filed administrative claims, as reflected in **Exhibit "C,"** (the "**Section 15.3 Exhibit**") in the total amount of $27.556 million. *See* Exhibit "C," Section 15.3 Settled Claims Reserve, plus Non-Disputed Administrative Claims Reserve. For example: the Debtors reached a mediation settlement with the California Nurses Association before the Hon. David Coar, a retired Bankruptcy Judge from the Northern District of Illinois. The Debtors resolved issues relating to the WARN Act claims for nurses at SVMC and have agreed to provide a single allowed administrative claim for the benefit of the CNA represented nurses. Subject to a settlement motion under Federal Rule of Bankruptcy Procedure 9019, the CNA settlement also will resolve the proceedings before the National Labor Relations Board ("**NLRB**") and any other pending administrative actions. Further, Debtors have reached a settlements with Conifer Health Solutions,

[20] The "Intercreditor Agreement" refers to the Second Amended and Restated Intercreditor Agreement dated December 1, 2017 to which certain of the Debtors and certain Prepetition Secured Creditors are parties.

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LLC and Seoul Medical Group by which the Debtors have agreed to resolve these unliquidated Administrative Claim liabilities arising from the Debtors' postpetition operations in amounts to be paid on the Effective Date The aggregated resolutions for these settled Administrative Claims (a) - (b) is $5.3 million. The Debtors also have reached resolutions with a majority of its ordinary course trade creditors, whose claims will be allowed as filed and in the aggregate will be resolved through the payment prior to the Effective Date or depositing $3.7 million (the "Ordinary Course Trade Settlements") into the Administrative Claims Reserve as reflected in Exhibit C.

15. In the Section 15.3 Exhibit, there are three other union related Administrative Claims for which unliquidated amounts were asserted or for which the claims are either duplicative of Administrative Claims filed by other entities, relate to severance for employees to be hired or relate to settled PTO obligations of the Debtors to be funded by the buyers with respect to the Hospital Sales. The entities included in this group are International Federation of Professional and Technical Engineers, Local 20 ("Local 20"), Service Employees International Union, United Healthcare Workers-West ("SEIU"), and United Nurses Associations of California/Union of Health Care Professionals ("UNAC") (collectively the "**Unliquidated Union Claims**"). With respect to Local 20, the reserved amount is the post-petition accrued PTO expected to be assumed by AHMC in the sale of Seton. With respect to the SEIU, the reserved amount is: (i) the post-petition accrued PTO to be paid out upon the sale of St. Francis; (ii) post-petition accrued PTO to be assumed by AHMC upon the sale of Seton; (iii) PTO already paid in March 2019 to O'Connor and St. Louise employees in connection with the Santa Clara sale; (iv) an estimate of post-petition accrued severance to be paid out to the minority of members who are not hired by the buyers of St. Francis and Seton; (v) and the post-petition accrued portion of the members' full-time guarantee balances at St. Francis. With respect to UNAC, the Debtors have determined the reserve amount should be :(i) the post-petition accrued PTO expected to be paid out upon the sale of SFMC; and (ii) an estimate of post-petition accrued severance to be paid out to the minority of members who are not hired by the buyer of St. Francis. The Debtors dispute the Unliquidated Union Claims to the extent inconsistent with the reserves in the amount of $13.0 million, a subcategory of the Non-Disputed Administrative Claims Reserve. As discussed in

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detail below in ¶¶ 37-41, Non-Disputed Administrative Claims Reserve also includes amounts for Private Payor (defined below) Administrative Claims. As reflected in the Section 15.3 Exhibit, the total estimated reserves for Settled Administrative Claims and Non-Disputed Administrative Claims is $27.6 million.

16. The Plan also establishes a Liquidating Trust to collect and liquidate the Debtors' remaining assets and to make distributions to certain priority creditors and holders of beneficial interests granted to certain Allowed Claims that will remain outstanding after the initial payments made on the Effective Date. Such Holders of allowed unsecured claims will become holders of Second Priority Beneficial interests in the Liquidating Trust and will be entitled distributions from the Plan Fund after satisfaction of the First Priority Beneficial Interests distributed to the holders of the Allowed Secured 2005 Revenue Bonds Claims. The Liquidating Trust will be established immediately upon the Effective Date of the Plan, and will also hold and prosecute Causes of Action (including Avoidance Actions) and other Liquidating Trust Assets being contributed to the Liquidating Trust as described in the Disclosure Statement. The Trust will have an initial duration of five (5) years (subject to possible extension). In addition, the Liquidating Trust will hold on the Effective Date, all rights of the Debtors to contingent litigation claims existing as of the Effective Date, including certain claims that Debtors assert against Strategic Global Management ("**SGM**") in connection with the SGM Litigation.[21]

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II.

FEASIBILITY OF THE PLAN

17. As more fully described below, assets available for distribution under the Plan will reflect: (1) the result of the Debtors' operations and all pre-confirmation asset sales, including Saint Louise Regional Hospital, O'Connor Hospital, St. Vincent Medical Center and the physician

[21] The "**SGM Litigation**" refers to all matters related to the Complaint for Breach of Contract, Promissory Fraud and Tortious Breach of Contract (Breach of Implied Covenant of Good Faith and Fair Dealing) *Verity Healthcare System of California, Inc., et al., v. Strategic Global Management Inc.,* et al., Adversary Proceeding No. 2:20-ap-01001-ER pending in the United States District Court for the Central District of California (the "**District Court**").

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practices relating to Verity Medical Foundation; (2) proceeds of sales of the Debtors' two remaining hospitals, St. Francis Medical Center and Seton Medical Center and the related campuses on which medical office buildings are located (the "**Hospital Sales**"); (3) the post Effective Date collection of certain patient, third party payor and government account receivables and payment entitlements net of any adjustments to which the purchasers of the Hospital Sales may be entitled under the relevant APA;[22] and (4) certain litigation recoveries, including preferential transfer avoidance claims arising under Section 547 of the Bankruptcy Code and the SGM Litigation. The proceeds of the Hospital Sales are expected to be received both before and after the Effective Date. The Hospital Sales have resulted after rigorous marketing efforts and extensive negotiations with different parties. Such sales have successfully enabled the continuation of the Debtors' remaining Hospitals on a going-concern basis, the continued serving by such Hospitals of the communities in which the Hospitals are located, and the preservation of the jobs of substantially all of the employees of the Debtors, thereby maximizing the value of the Debtors' business platform.

18. As described below, based upon the Debtors' current projections, the establishment of appropriate reserves by the Debtors and the Liquidating Trust as required by the Plan, combined with continuing governance of the Debtors while fulfilling their obligations as Sale Leaseback Debtors (as defined in the Plan), I believe that the Debtors and the Liquidating Trust will have sufficient Cash to make timely all administrative and priority payments required to be made as of the Effective Date and as otherwise may be required pursuant to the terms of the Plan, and to otherwise implement the other provisions of the Plan, without the need for a further liquidation or reorganization of the Debtors other than as expressly proposed in Plan. I also believe that the Plan allows holders of Allowed Claims to realize the highest possible recovery under the

[22] The purchaser of SFMC is entitled to a credit against certain future Quality Assurance Payments as collections for any required EBITDA adjustment to the purchase price pursuant to §1.1(a)(i) of the St. Francis APA

circumstances. The key means to effectuation and implementation of the Plan are summarized below, and set forth in more detail in the Plan and the Liquidating Trust Agreement.

A. Results of The Debtors' Operations

19. On February 28, 2019, the Debtors sold two of their Hospitals, Saint Louise Regional Hospital and O'Connor Hospital to government of Santa Clara County (the "**SCC Sale**"). After payment of certain cure costs, closing costs and other items, and creating a post-closing claims reserve escrow, the net remaining proceeds were approximately $183.2 million. The Debtors utilized a portion of such funds to repay their DIP loans and for operating expenses. Pursuant to the terms of certain cash collateral orders and related budgets, the balance of the SCC Sales Proceeds was used to fund the Debtors' operations, excluding the $23.5 million of such proceeds held in escrow (the "**Post-Closing Escrow**") by First American Title Insurance Company, the escrow agent. The Post-Closing Escrow was established pursuant to the terms of the SCC APA, expired in February 2020. The amount of $23.5 million currently is available to the Debtors to be utilized in connection with its Plan.

B. Proceeds of Hospital Sales

20. On February 10, 2020, the Debtors filed a motion [Docket No. 4069] to approve, among other things, bidding procedures for the sale (the "**SFMC Sale**") of certain assets related to Saint Francis Medical Center ("**SFMC**").

21. On March 29, 2020, the Debtors filed a motion [Docket No. 4360] to approve, among other things, the private sale of certain assets related to SMC (the "**Seton Sale**") to AHMC Healthcare.

22. Provided that the closings of the SFMC Sale and the Seton Sale, which are conditions precedent to the Effective Date, occur on or before August 22, 2020, the Debtors expect that the results of operations, plus Hospital Sales proceeds result in immediately available funds of $445.5 million on the Effective Date of the Plan (the "**Effective Date Cash**"). However, if for any reason either or both of the Hospital Sales are delayed beyond August 22, 2020, the Debtors expect the Effective Date similarly may be delayed and Effective Date Cash reduced below $445.5 million.

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23. Also included in Effective Date Cash are funds derived from operations, i.e.,. received from the collection of accounts and government receivables less current expenses and reorganization costs. The Debtors reasonably project cash on hand from operations as of September 5, 2020 to be approximately $168 million.

24. The Debtors expect to pay all obligations that have been incurred in the ordinary course of its operations on or before the Effective Date as required by Section 1129(a)(9) of the Bankruptcy Code. To the extent payment of such ordinary course obligations is not yet due on the Effective Date, the Debtors will pay such sums from the Administrative Claims Reserve as and when due. The Debtors estimate of timely payment of ordinary course administration obligations is included in their estimates of funds available from operations. See Exhibits "Section 15.3 Exhibit" and "Section 7.9 Exhibit." The Debtors also have estimated that such accrued or yet to be accrued ordinary administrative obligations will total $36.9 million and have included that amount in the Administrative Claims Reserve. *See* Section 15.3 Exhibit.

C. Post Effective Date Collections

25. In addition, the Debtors currently estimate $180 million of value will be realized post Effective Date. The purchaser of Seton did not purchase accounts receivable and the purchaser of St. Francis provided for a post-closing reconciliation of accounts receivable. The Debtors expect approximately $17 million of Seton patient and third party private payor accounts receivable will be collected directly by the Liquidating Trust, and St. Francis patient and third party private payor accounts receivable will be similarly liquidated in the interest of minimizing any adjustment in connection with the post-closing reconciliation, with the assistance of the buyers pursuant to the terms of certain transition services agreements ("**TSA**"). The form of the TSAs for each Hospital Sale was approved by the Bankruptcy Court pursuant to the relevant Sale Orders. In addition, this Post Effective Date value is also expected to include $115 million of Quality Assurance Payments ("QAF") (Programs V and VI) and Disproportionate Share Hospital payments ("DSH") received post Effective Date from pre-closing patient care activities of OCH, SLRH and SFMC under certain system-level contracts that are incorporated in the California Quality Assurance Payment formula. The Debtors expect that The Quality Assurance Payments,

Programs V and VI, also will continue to be collected by the Debtors for the benefit of the Liquidating Trust through the end of 2021 at the earliest, in connection with the St. Francis asset purchase agreement between the Debtors and the St. Francis purchaser.

26. As more fully described in the Disclosure Statement, certain Debtors defined in the Plan as The Sale-Leaseback Debtors, SVMC, St. Vincent Dialysis, the SCC Debtors, and VHS (together, the "**Post-Effective Date Debtors**"), will continue to exist after the Effective Date of the Plan, with the Sale-Leaseback Debtors to hold certain requisite licenses pending transition to the asset purchasers. The Post Effective Debtors will also perform certain transition tasks under the Interim Agreements and engage in the transition tasks set forth in Section 5.8 of the Plan, until all Quality Assurance Payments are collected and the Interim Agreements are terminated. It is estimated that the Quality Assurance Payments collected and remitted to the Liquidating Trust will be approximately $109 million.

27. Under the terms of the Plan, the Debtors further will transfer to the Liquidating Trust proceeds from the disposition of Marillac, a wholly-owned subsidiary of VHS, which is a non-debtor that provides insurance coverage to the Debtors. Marillac was incorporated in the Cayman Islands on December 9, 2003, and holds a Class B(i) Insurer's License pursuant to the Cayman Islands Insurance Law, 2010. This class of licensure applies to insurers writing at least 95% of net premiums with their related business. It is estimated that the sale of Marillac as a going concern will result in a cash payment of $ 1 million. To the extent that certain insurance coverage for the Debtors must remain in place for the Post-Effective Date, there is a possibility that a $4 million GLPL tail premium may be avoided if assumed by the purchaser in the sale of Marillac, thereby reducing post Effective Date costs by approximately $4 million, which funds are otherwise in the Liquidating Trust Reserves.

28. As noted above, the Seton Sale does not include certain Patient Receivables, which will be collected by the Debtors and assigned to the Liquidating Trust. In addition, $4 million in funds held in escrow in connection with the AHMC transaction will revert to the Debtors in one year from the closing of the Seton Sale and in turn will assigned to the Liquidating Trust. The

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expected balance of post Effective Date Collections will be received from litigation recoveries described below.

29. Other miscellaneous assets will be collected by the Liquidating Trust that I have not quantified either because they do not arise from the Hospital Sales and/or are not material. However, the Debtors expect litigation recoveries to be material to the success of the Plan for all creditors, but not to achievement of the Effective Date or Effective Date Cash.

D. Litigation Recoveries

30. The Debtors have estimated post Effective Date litigation recoveries with respect to all causes of action will approximate $43.0 million over time. While the Debtors have not attempted to review all preference claims against all parties, the Debtors' estimate for preference recoveries is included within the $43.0 estimate in the amount of $12.5 million. That number is derived from the universe of 5,289 transferees that received transfers totaling $200.2 million in the 90 days prior to the Petition Date. The Debtors retained the specialist preference recovery firm ASK LLP ("**ASK**") to prepare a report on the range of possible recoveries (the "**Preference Report**"). The Preference Report identified two levels of targets and a range of recoveries before fees of $24.7 million to $ 31.4 million, which the Debtors have discounted down to an estimated net recovery of $12.5 million.

31. The Debtors in the exercise of their business judgment have not attributed any material value to the appeals pursued by Toyon Associates resulting from denials of claims by the Medicare program because the Medicare appeals program is long, cumbersome and unlikely to be successful. Medicare appeals have four levels of appeal before the Debtors can even seek relief in federal court. The average processing time for a Medicare appeal is approximately 1,473 days or more than 4 years. Many appeals take much more than five years, and less than half are successful. For these reasons, the Debtors, like most hospitals, write off amounts that might be recovered on these appeals and put no value on them during the appeal. Even buyers who purchase accounts receivables are most likely to attribute no value to amounts that might someday be recovered on a pending appeal. Thus, these appeals were not considered a valuable asset by the Debtors when negotiating the sales of their hospitals and this assessment is further supported by the fact that the

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express terms of the stipulations make clear that no value was attributed between the Debtors and CMS to the waiver of any pending appeals.

32. Also included in Post Effective Date litigation recoveries is the retention of a "Non-Refundable Deposit" transferred to the Debtors by SGM in connection with the $610.0 million transaction under the SGM APA, that SGM failed to close. The Debtors believe they have meritorious claims against SGM[23] that will result in the release of the Deposit from the VHS Non-Santa Clara Sales Proceeds Account[24] and the full recovery of the value of the Non-Refundable Deposit, including accrued interest in the estimated amount of $30.5 million. Despite the Debtors claims in the SGM Litigation for damages, including punitive damages, arising from breach of contract and promissory fraud, I have not included a projected affirmative recovery on its damages claim in my determination of recoveries supporting the feasibility of the Plan. The Debtors have also agreed to set aside the Deposit until entry of a judgment, as more precisely described in the Disclosure Statement. The Deposit has been added to the Administrative Claim Reserve being established pursuant to Section 15.3 of the Plan.

E. Plan Reserves

33. The Plan provides for certain reserves to be created on the Effective Date including : (i) the Liquidating Trust Reserves required by § 7.9 of the Plan (the "**Section 7.9 Reserves**"); (ii) and the Administrative Claim Reserve required by § 15.3 of the Plan (the "**Section 15.3 Reserves**").

a. Section 7.9 Reserves. As part of the Section 7.9 Reserves, the Liquidating Trustee will set aside Cash sufficient in the aggregate to fund a reserve on account of any Disputed Unclassified Claims and Disputed Class 1A Claims, i.e., priority non-tax claims. Once such

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[2323] On August 4, 2020, the District Court confirmed that the Debtors had pled viable claims against SGM and denied SGM's motion to dismiss the Debtors' First Amended Complaint. See Ex. x].

[24] The VHS Non-Santa Clara Sales Proceeds Account was established under the terms of the Final DIP Order and is not considered part of the Administrative Claims Reserve. Under the terms of *{footnote continued}*

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Disputed Unclassified Claims and Disputed Class 1A Claims, if any, are resolved and become Allowed, Cash in such reserves will be made available, on a quarterly basis, for distribution to the holders of such newly Allowed Claims in accordance with the Plan. If all Disputed Unclassified Claims and Disputed Class 1A Claims are either Allowed and satisfied or Disallowed, any remaining funds in such reserve, on a quarterly basis, will be used to first fund the Trust Administration Account (if necessary) and the remainder will be deposited into the Plan Fund. The Debtors estimate the Disputed Unclassified Claims Reserve may be approximately $6.9 million; however, the Debtors are still reconciling these claims and anticipate this amount will be less after allowing the majority of the § 503(b)(9) claims. In determining the sufficiency of the Liquidating Trust Reserve and for purposes of estimating the Disputed Unclassified Claims Reserve the Liquidating Trustee will take into account to avoid duplication the Debtors' Administrative Claims Reserve and the Professional Claims Reserve as determined by the Bankruptcy Court.

b. Section 15.3 Reserves. As more fully set forth in Section 15.3 of the Plan, on the Effective Date, the Debtors will establish the Administrative Clams Reserve. Upon satisfaction of all Allowed Administrative Claims and resolution of any disputed Administrative Claims for which amounts were included in the Administrative Claims Reserve, any funds remaining in the Administrative Claims Reserve will be deposited into the Plan Fund. In making determinations as to the Administrative Claims Reserve amounts, the Debtors have carefully reviewed the claims that may be asserted and the potential that they would in fact be likely to materialize or be allowed post Effective Date. Below in ¶¶ 33- 44 is a discussion of specific reserve issues considered by the Debtors and reflected in the presentation of the Debtors' business judgement in establishing and estimating the Section 15.3 Reserves.

34. The Debtors in the exercise of their sound business judgment concluded that Toyon's pursuit of appeals which did not result in recoveries to the Debtors did not provide a

{continued from previous page}
the Plan. The Deposit would be returned directly to SGM in the event of an unstayed adverse final judgment in the SGM Litigation.

benefit to the Debtors' estates, particularly since Toyon was retained on a purely contingency fee basis and that accordingly Toyon would not be entitled to distributions from the Administrative Claims Reserve, as more fully set forth in the Brief. However, out of an abundance of caution, the Debtors reserved $250,000.

35. Relying upon the *Final Order Granting Emergency Motion of Debtors for Entry of Order: (I) Authorizing the Debtors to A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing* [Docket No.612] (the "**Wage Order**"), the Debtors have quantified an appropriate resolution of issues with the Retirement Plan for Hospital Employees (the "**RPHE**"), pursuant to which an administrative claim liability to RPHE for annual contributions will be funded in the ordinary course prior to the Effective Date with respect to 2019 accrued contributions payable in 2020. The contribution will cover active employees whose benefits were not previously frozen and is included in the results of operation and the available Effective Date Cash. Accrued RPHE contributions for the 2020 plan year in the amount of $2.4 million are ordinarily not payable until 2021 and will be reserved as ordinary course contributions in the Liquidating Trust Reserve for Disputed Unclassified Claims to the extent that RPHE does not agree to a settlement prior to the Effective Date.

36. The Debtors have similarly considered the SGM asserted administrative claims. Given the disputes surrounding such claims, the potential for reduction by Debtors contract breach claims against SGM, in the Debtors judgment no additional amounts beyond the Non-Refundable Deposit need to be reserved on account of such claims in the Administrative Claims Reserve. In particular, I have concluded that there is a reasonable prospect that the mere withholding of the Non-Refundable Deposit can be considered as an economic over reserve using traditional risk discounting techniques that I have used in other situations involving the Debtors books and records. As indicated in the Confirmation Brief, the District Court has concluded the Debtors claims against SGM are not conclusively without merit. SGM's maximum administrative damage

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claims under its Notice of Administrative Claims is approximately $46 million[25]. As the CFO for the Debtors, I have calculated the expected and present value of such a claim and find the stipulated retention of the Non-Refundable Deposit as $30 million reserve to be in excess of the amount necessary to meet normal accounting reserves..

37. When setting reserves, as an MBA trained finance professional and the Debtors' CFO, I typically look at the range of outcomes, and the timing associated with such an outcome. I have concluded that an SGM assumed range of success from 25% in my view reasonable to 85% in my view unreasonably high, demonstrates that holding the Non-Refundable Deposit as a reserve for SGM's Disputed Administrative Claim is more than sufficient. First, using traditional discounting techniques a 25% likelihood of success on a $46 million claim is worth at best only $11.5 million. Second, the present value of that recovery is normally discounted by the number of years using an implied interest rate. Using the prejudgment interest rate under the California Constitution 10%, the present value of that $11.5 million recovered after 3 years is only $ 8.6 million, an amount that is clearly less the Non-Refundable Deposit. Indeed, even assuming SGM's probability of success at 85%, would still yield a required reserve of only $29.4 million, i.e. less than the Non-Refundable Deposit. Having considered the economic rationale for the Non-Refundable Deposit as a restricted component of the Administrative Claim Reserve, it is the Debtors business not to increase the size of the Administrative Claims Reserve beyond retention of the Non-refundable Deposit.

38. The Debtors have also reserved for eight (8) Administrative Claim creditors who are private payors that have asserted claims for postpetition overpayments to the Debtors (Aetna Life Insurance Company and its Affiliated Entities, Cigna Healthcare of California, Inc., Cigna Health and Life Insurance Company, and Life Insurance Company of North America, Health Net of California, Inc., Health Net, LLC., Health Plan of San Mateo, Humana Insurance Company and Humana Health Plan, Inc., SCAN Health Plan and UnitedHealthcare Insurance Company (the

[25] I understand SGM's Notice of Administrative Claim states its unliquidated damages are "at least $45 million".

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"**Private Payors**"). The Debtor hospitals are compensated under two general payment models for the provision of medical care: fee-for-service (FFS) and capitation. Under the FFS model, the hospitals were parties to various participation, service or other provider agreements under which the applicable Debtor provided covered medical services to members enrolled in the health care benefit plans offered or administered by the payor in exchange for reimbursement in the amounts and at the times set forth in such agreements. Under the FFS agreements, the health plan retained the risk for the cost of health care provided to its members and retrospectively reimbursed the hospital for the negotiated cost of services that may have been rendered by the hospital provider from time to time. Under the capitation agreements, by contrast, the hospital provider assumed the risk for the cost of health care (under a negotiated division of financial responsibility, or DOFR). In return, the plan prospectively paid the hospital a fixed, monthly "per member, per month" payment (PMPM). The PMPM is also commonly referred to as a capitation payment.

39. Under both types of agreements ((FFS) and capitation), the payor from time to time in the normal course of business would occasionally make an inadvertent overpayment (an "OP") to the hospital. Typically, this would occur because of, among other reasons, erroneous coding or Private Payors' processing of claims submitted by the provider for reimbursement under the FFS agreement. Similarly, under the capitation agreements, the number and type of members might vary month to month due to a member's decision to switch health plans or as a result of other enrollment changes. In either case, generally speaking, the hospital provider is obligated under the applicable agreement to repay to the payor an OP that the provider may have received. In addition, the payor also has the contractual right to recoup and/or offset OPs from the provider against reimbursement payments due to the provider.

40. During the Chapter 11 case, the Debtor has previously made decisions to reject, or assume and assign, various of its FFS agreements in connection with the sale of OCH and SLRH (in February 2019), the closure of SVMC (in January 2020), and the sales of SMC and SFMC (anticipated to close in August 2020). As part of that process, the Debtors have engaged with each of the counterparty payors to the FFS agreements to review, validate and fix the Debtors' OP liability on account of reimbursements made for claims based on pre-petition dates of service. In

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most cases, the Debtors have reached an agreement with each payor for the admitted amount of pre-petition OP claims (or, if not yet resolved, a minimum-maximum range for such OP claims). These amounts, having been liquidated by the Debtors, are factored into the Debtors' administrative reserve for potential OP liability.

41. All of the Administrative Claims of the Private Payors are listed on the Section 15.3 Exhibit under the Non-Disputed Administrative Claims Subtotal. The Debtors have determined to fund the Administrative Claims Reserve with the full amount of the asserted Administrative Claims of the Private Payors $2.2 million even though subsequently asserted overpayments may be less than such reserved amounts.

42. The Debtors have identified 6 Administrative Claim creditors that are "**Risk Pool Creditors**" (Applecare, Angeles IPA, HCLA MPM, OMNICARE, ALL CARE MPM, and Saint Vincent IPA) that operated at either SFMC or SVMC. Like many health care providers, the Debtors are reimbursed by health plans for hospital facility services under both fee-for-service (FFS) and capitation models. In the former case, the health plan retains the risk for the cost of health care provided to its members and retrospectively reimburses the hospital provider for the (negotiated) cost of services rendered to such patients from time to time. In the latter case, the hospital facility assumes the risk for the cost of health care (under a negotiated division of financial responsibility, or DOFR). The plan prospectively pays the hospital a fixed, monthly "per member, per month" payment (PMPM). In order to efficiently manage the care delivered to capitated plan members (and minimize the potential for incurring costs, both internal and external, i.e., to third-party, downstream providers, that exceed the PMPM revenue), the facility provider (i.e., the hospital, such as SFMC) typically agrees to a risk-sharing agreement with an independent physicians' association (IPA) that has assumed the corresponding professional risk for the same plan members.

43. Under these risk-sharing agreements, the IPA receives compensation for its efforts to optimize the nature and source of patient care needed by plan members. The amount of that compensation is determined by reference to a notional "risk pool" for each calendar "risk year." The payment (or refund) of compensation, in turn, depends on whether or not each annual risk

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pool shows a surplus or a deficit. If a surplus, the amount of the surplus is shared with each IPA according to a ratio set forth in the agreement (usually 50-50, with occasional variations by health plan). If a deficit (meaning the cost of care exceeded the capitation revenue paid to the hospital from the health plan), the IPA is obligated to repay its share of the deficit to the hospital.

44. The computation of a surplus or a deficit is, generally speaking, a function of credits and debits that are assigned to the risk pool. The former are comprised principally of the capitation payments made to the hospital from the applicable health plan(s) that are managed with the assistance of the IPA. The latter are comprised principally of the costs of medical care rendered by the hospital that are the financial responsibility of the hospital according to the health plan agreement(s), among other administrative costs. Those facility costs, in turn, are made up of internal draw rates for services performed at the hospital or payments owed by the hospital to downstream, out of network, providers that may have rendered services to patients. Under the risk-sharing agreements, the hospital and the IPA agree to jointly manage the care delivered to capitated plan members and thereby minimize the potential for incurring costs, both internal and external (i.e., to third-party, downstream providers), that exceed the capitation revenue. A third party medical service organization (or MSO), tracks these credits and debits and performs the annual risk pool settlement reconciliation.

45. The final computations generally trail the end of each risk year by 16-20 months. Consequently, neither the Debtors nor the IPAs can precisely quantify the potential surplus or deficit that might eventually manifest under the risks-pools that are tracked for each IPA. Thus, by necessity, the Debtors have made a careful assessment of their potential exposure under the risk-sharing agreements for purposes of funding the Administrative Claim Reserve.

46. The Debtors' assessment of the outstanding post-petition claims that might be due under the currently outstanding risk-sharing agreements was based on three categories of claims. First, the Debtors have engaged in detailed and productive negotiations with the IPAs regarding the open administrative expense due for the 2018 and 2019 risk pool years. In those cases where the parties have reached an agreement in principle on those amounts, they have been reserved in exactly the agreed amount. Second, for the current 2020 risk pool year, the Debtors have used the

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most current risk pool reports issued by the applicable MSO as of June 30, 2020, to estimate the surplus through that date and have further use those "snapshots" to extrapolate a potential additional risk pool surplus through the anticipated termination/rejection date of the agreements. Third, in those instances where the parties have not agreed on the appropriate methodology to compute the risk pool, or allocate other charges due to the IPAs between pre- and post-petition periods, the Debtors have made a conservative estimate using the IPA's asserted claim, adjusted for the risks of litigation. The Debtors have included $20.7 million to account for Risk Pool Creditors as part of the reserve for Administrative Claims Reserve for Ordinary Course Creditors. See Exhibit C.

47. Effective Date Professional Claim Reserves. As part of the Section 7.9 Reserves, the Liquidating Trustee will establish such Reserves for not yet fixed and Allowed Professional Claims as of the Effective Date. In so doing, the Liquidating Trust Reserves will include the Debtors Administrative Claims Reserve and the Professional Claims Reserve as part of its computations. The Debtors have estimated Professional Fee Claims using the same methodology used to forecast the DIP and Cash Collateral Budgets. Using that methodology, the Debtors have estimated that professional fees, including professional fees due as a result of adequate protection payments under the Final DIP Order, subject to payment at or prior to the Effective Date or the Professional Claims Reserve established by the Debtors under the Plan will be approximately $11.3 million including payments to Ordinary Course Professionals during that same period of less than $0.1 million and fees payable to the U.S. Trustee of $0.7 million, all of which are also included in the Administrative Claims Reserve to the extent not paid prior to the Effective Date. If all Professional Claims are Allowed and satisfied, any funds remaining in the Effective Date Professional Claim Reserve will be used to first fund the Trust Administration Account (if necessary) and the remainder will be deposited into the Plan Fund.

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48. Liquidating Trust Reserve: Under Section 7.9 of the Plan, the Liquidating Trust is required to establish a reserve for Disputed Unclassified Claims[26] and Disputed Class 1A Claims,[27] which the Debtors will not satisfy as of the Effective Date. In addition, the Liquidation Trust will establish reserves for operations of the Liquidating Trust that include payment of insurance premiums required by the Plan and the Trust Agreement, i.e., tail premiums, self-insured retention premiums and funding of Marillac for provision of professional and general liability insurance required by the Plan. The Debtors have estimated the reserve necessary to satisfy the Plan's Liquidating Trust Reserve Requirement to be $23.6 million including the Liquidating Trust Operating Reserves, plus the Disputed Administrative Claim Reserves that are included with the Section 15.3 Reserves discussed above. *See* Exhibit D.

49. Disputed Unsecured Claims Reserve. From the Plan Fund, the Liquidating Trustee will reserve for Disputed General Unsecured Claims until such Claims are reconciled and either Allowed or Disallowed. Amounts held in the Disputed Unsecured Claims Reserve will be transferred into the unreserved portion of the Plan Fund for distribution to Allowed General Unsecured Claims upon determination of the General Unsecured Claim's status as Allowed or Disallowed. The Debtors do not expect the Liquidating Trust to establish a Disputed Unsecured Claims reserve until such time as the Liquidating Trustee projects that holders of Second Priority Beneficial Interest under the Liquidating Trust can be expected to receive distributions from the Plan Fund.

F. Effective Date Payment to Secured 2005 Revenue Bonds Claims

50. Under 12.2(d) of the Plan, it is a condition to the Effective Date that the Debtors also be able to make the Initial Secured 2005 Revenue Bonds Claims Payment required by §4.5 of the Plan in the minimum amount of $96.2 million (the amount of $28.0 million is also being held by the 2005 Revenue Bonds Trustee). The Plan requires that such minimum amount available

[26] Disputed Unclassified Claims are Disputed Administrative, Administrative Claims, Professional Claims, Statutory Fees, and Priority Tax Claims.

[27] Disputed Class 1A Claims are Dispute Non-Tax Priority Claims.

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must be net of all amounts (i) necessary to satisfy all Unclassified Claims and Class 1A Claims that are Allowed on or prior to the Effective Date, (ii) necessary to satisfy all Allowed Claims payable on the Effective Date to Classes 2, 3, 5, 6 and 7, and (iii) reserved under the Liquidating Trust Agreement,

51. The Debtors expect Unclassified Claims that will be Allowed prior to the Effective Date to consist of ordinary course administrative claims, the disbursement for which is part of the results of operations and Administrative Claims that are the subject of Bankruptcy Court approved Settlements.

52. The Debtors have analyzed their ability to fulfill their obligations under the Plan and have taken into consideration their estimated costs of administration. After considering the Debtors' expected results from operations, including the expected payment of the Debtors KEIP/ KERP obligations at or prior to the Effective Date, the proceeds of Hospital Sales received on or before August 22, 2020, the agreed and expected payment of, and reserves for, Allowed Administrative Claims, Professional Claims, Disputed Unclassified Claims and Disputed Class 1A Claims, and the other required Liquidating Trust Reserves, I have concluded that the Debtors will sufficient cash on the Effective Date to be able to make the Initial Secured 2005 Revenue Bonds Claims Payment. As a result, I have also concluded the Debtors have proposed the Plan in good faith, and as shown in the Disclosure Statement, this Declaration, and the Brief, that the Plan is feasible and otherwise meets all requirements for confirmation. I believe the Debtors will have sufficient funds to administer and consummate the Plan; to winddown the Debtors' Estates, and to close the Chapter 11 Cases. I also believe that all Administrative Claims allowed as of the Effective Date can and will be paid in accordance with Section 1129(a)(9) of the Bankruptcy Code.

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I declare under penalty of perjury and of the laws in the United States of America, the foregoing is true and correct.

Executed this 5th day of August, 2020, at Los Angeles, California.

/s/ Peter C. Chadwick
PETER C. CHADWICK

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Exhibit A

Draft Confirmation Order

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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.	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. Judge Ernest M. Robles
☒ Affects All Debtors ☒ Affects Verity Health System of California, Inc. ☐ Affects O'Connor Hospital ☐ Affects Saint Louise Regional Hospital ☐ Affects St. Francis Medical Center ☐ Affects St. Vincent Medical Center ☒ Affects Seton Medical Center ☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital/ Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☒ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.	**ORDER CONFIRMING SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION (WITH TECHNICAL AMENDMENTS)** Hearing: Date: August 12, 2020 Time: 10:00 a.m. Location: Courtroom 1568 255 E. Temple St., Los Angeles, CA

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Verity Health System of California, Inc. ("**VHS**") and its affiliated Debtors in these Chapter 11 Cases (collectively, the "**Debtors**"),[1] in the above-referenced chapter 11 cases (the "**Chapter 11 Cases**") and the other plan proponents listed on the previous page (collectively, the "**Plan Proponents**") having proposed the Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors and the Committee [Docket No. 4993] (the "**Plan**," an amended and restated copy including certain Technical Plan Amendments (as hereinafter defined) of which is attached hereto as **Appendix 1**);[2] the Court having conducted a hearing to consider confirmation of the Plan ("**Confirmation**") on August 12, 2020, (the "**Confirmation Hearing**"); the Court having considered: (i) the (a) *Declaration of Travis Buckingham on Behalf of Kurtzman Carson Consultants LLC Regarding Voting and Tabulation of Ballots Accepting and Rejecting the Second Amended Joint Chapter 11 Plan of Liquidation* (the "**Voting Declaration**") [Docket No. ____], (b) *the Declaration of Peter Chadwick in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. ____] (the "**Chadwick Declaration**") and (c) *the Declaration of Rich Adcock in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. ____] (the "**Adcock Declaration**") each admitted into evidence at the Confirmation Hearing; (ii) the arguments of counsel presented at the Confirmation Hearing, and (iii) the *Memorandum of Law in Support of Confirmation of the Second Amended Joint Chapter 11 Plan of Liquidation* (the "**Confirmation Brief**") [Docket No. ____]; and the Court being familiar with the Bankruptcy Code; and the Court having taken judicial notice of the entire docket of the Debtors' Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, and all pleadings and other documents filed, all orders entered, and evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases; and the Court having found that due and proper notice has been given with respect to the

[1] In addition to VHS the Debtors are as follows: (i) O'Connor Hospital, (ii) St. Louise Regional Hospital, (iii) St. Francis Medical Center, (iv) St. Vincent Medical Center, (v) Seton Medical Center, (vi) O'Connor Hospital Foundation, (vii) Saint Louise Regional Hospital Foundation, (viii) St. Francis Medical Center of Lynwood Foundation, (ix) St. Vincent Foundation, (x) St. Vincent Dialysis Center, Inc., (xi) Seton Medical Center Foundation, (xii) Verity Business Services, (xiii) Verity Medical Foundation, (xiv) Verity Holdings, LLC, (xv) De Paul Ventures, LLC and (xvi) De Paul Ventures - San Jose Dialysis, LLC. There are certain affiliates of VHS who are not Debtors.

[2] All capitalized terms used but not defined herein have the meanings given to them in the Plan.

Confirmation Hearing and the deadlines and procedures for filing objections to the Plan; and the Court having heard the statements and arguments made by counsel in respect of Confirmation of the Plan, and all objections to Confirmation (including, without limitation, any of the settlements to be approved pursuant to the Plan) having been withdrawn, resolved as stated on the record or overruled; and the appearance of all interested parties having been duly noted in the record of the Confirmation Hearing; and upon the record of the Confirmation Hearing, and after due deliberation thereon, and sufficient cause appearing therefor;

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY FOUND AND CONCLUDED, that[3]:

JURISDICTION AND VENUE

A. The Court has jurisdiction over this matter and these Chapter 11 Cases pursuant to 28 U.S.C. § 1334.

B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), this Court has jurisdiction to enter a final order with respect thereto, and this Court's exercise of such jurisdiction is constitutional in all respects. The Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

C. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtors are proper Debtors under § 109 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* as amended (the "**Bankruptcy Code**"), and the Plan Proponents are proper proponents of the Plan under § 1121(a) of the Bankruptcy Code.

COMPLIANCE WITH BANKRUPTCY RULE 3016

E. The Plan is dated and identifies the entities submitting and filing it, thereby complying with Rule 3016(a) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). The filing of the Disclosure Statement complied with Bankruptcy Rule 3016(b).

[3] The findings of fact and conclusions of law set forth herein shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent any of the orders of this Bankruptcy Court constitute findings of fact or conclusions of law, they are adopted as such. To the extent any of the findings of fact or conclusions of law constitute an order of this Bankruptcy Court, they are adopted as such.

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PROPER NOTICE

F. As described below and as evidenced by the KCC Service Affidavit (defined below), due, adequate and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement, and the Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan and with respect to confirmation was given in compliance with applicable law, including, without limitation, the Bankruptcy Rules, and no other or further notice is or shall be required.

STANDARDS FOR CONFIRMATION UNDER § 1129 OF THE BANKRUPTCY CODE

G. The Plan Proponents have met their burden of proving the elements of §§ 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. Further, the Plan Proponents have proven the elements of §§ 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence. The evidentiary record of the Confirmation Hearing supports the findings of fact and conclusions of law set forth in the following paragraphs.

H. **§ 1129(a)(1).** The Plan complies with each applicable provision of the Bankruptcy Code. Pursuant to §§ 1122(a) and 1123(a)(1) of the Bankruptcy Code, § 3 of the Plan provides for the separate classification of Claims into thirteen Classes or Sub Classes, based on reasonable and appropriate differences in the legal nature or priority of such Claims (other than Administrative Expense Claims, US Trustee Fees, and Priority Tax Claims, which are addressed in § 2 of the Plan and which are not required to be designated as separate Classes pursuant to § 1123(a)(1) of the Bankruptcy Code). In particular, the Plan complies with the requirements of §§ 1122 and 1123 of the Bankruptcy Code as follows:

1. In accordance with § 1122(a) of the Bankruptcy Code, § 3 of the Plan classifies each Claim against the Debtors into a Class containing only substantially similar Claims and, without limiting the foregoing, taking into account the effects of the Intercompany Settlement;

2. In accordance with § 1123(a)(1) of the Bankruptcy Code, § 3 of the Plan properly classifies all Claims that require classification. With respect to Claims classified in Classes 8, 9 and 10, the Debtors have provided proof of a legitimate reason for the separate classification of such Claims,

and such classification is justified. Separate classification was not done for any improper purpose and does not unfairly discriminate between or among holders of Claims;

3. In accordance with § 1123(a)(2) of the Bankruptcy Code, § 3 of the Plan properly identifies and describes each Class of Claims that is not Impaired under the Plan;

4. In accordance with § 1123(a)(3) of the Bankruptcy Code, § 4 of the Plan properly identifies and describes the treatment of each Class of Claims that is Impaired under the Plan;

5. In accordance with § 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim within a particular Class unless the holder of such a Claim has agreed to less favorable treatment;

6. In accordance with § 1123(a)(5) of the Bankruptcy Code, the Plan, including the Plan Supplement, provides, in detail, adequate and proper means for its implementation;

7. In accordance with § 1123(a)(6) of the Bankruptcy Code, i.e., that, if a debtor is a corporation, its plan must prohibit the issuance of nonvoting equity securities, the Debtors, as not-for-profit entities, will not issue any stock or other securities under the Plan and therefore the Plan comports with § 1123(a)(6) of the Bankruptcy Code;

8. In accordance with § 1123(a)(7) of the Bankruptcy Code, the provisions of the Plan regarding the manner of selection of directors of Post-Effective Date Debtors are consistent with the interests of creditors and equity security holders (of which there are none) and with public policy;

9. In accordance with § 1123(b)(1) of the Bankruptcy Code, Sections 3 and 4 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims;

10. In accordance with § 1123(b)(2) of the Bankruptcy Code, § 11 of the Plan provides for the assumption, assumption and assignment or rejection of the executory contracts and unexpired leases of the Debtors that have not been previously assumed, assumed and assigned or rejected pursuant to § 365 of the Bankruptcy Code and orders of the Court;

11. In accordance with §§ 363 and 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan provides for the good faith compromise of all Claims and controversies relating to the contractual, legal, and subordination rights that a holder of any Claim may have with respect to any Allowed Claim or any distribution to be made on account of such an Allowed Claim. § 6 of the Plan further provides, in accordance with § 1123(b)(3) of the Bankruptcy Code, that the Liquidating Trust (with

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respect to the Liquidating Trust Assets) or the Post-Effective Date Debtors (with respect to the Operating Assets) will retain and may enforce any claims, demands, rights, defenses and Causes of Action that any Debtor or Post-Effective Date Debtor may hold against any entity, to the extent not expressly released under the Plan;

12. In accordance with § 1123(b)(5) of the Bankruptcy Code, § 3 of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in Classes 1 through 11;

13. In accordance with § 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code; and

14. In accordance with § 1123(d) of the Bankruptcy Code, Section 11 of the Plan provides for the satisfaction of cure amounts associated with each Executory Agreement to be assumed pursuant to the Plan in accordance with § 365(b)(1) of the Bankruptcy Code. All cure amounts will be determined in accordance with the underlying agreements and applicable law.

I. **§ 1129(a)(2).** The Plan Proponents have complied with all applicable provisions of the Bankruptcy Code as required by § 1129(a)(2) of the Bankruptcy Code, including §§ 1122, 1123, 1124, 1125, 1126, 1127 and 1128 of the Bankruptcy Code and Bankruptcy Rules 3017, 3018 and 3019, and all other applicable rules, laws and regulations with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, acceptances or rejections of the Plan were solicited in good faith and in compliance with the requirements of §§ 1125 and 1126 of the Bankruptcy Code as follows:

1. In compliance with the *Order Granting Joint Motion for an Order Approving (I) Proposed Disclosure Statement, (II) Solicitation and Voting Procedures, (III) Notice and Objection Procedures for Confirmation of Amended Joint Plan, (IV) Setting Administrative Claims Bar Date; and (V) Granting Related Relief* entered on July 2, 2020 [Docket No. 4997] (the "**Disclosure Statement Order**"), on July 8, 2020, the Debtors, through their claims and noticing agent, Kurtzman Carson Consultants LLC ("**KCC**"), caused copies of the following materials to be served on all holders of Claims in Classes that were entitled to vote to accept or reject the Plan (i.e., Claims in Classes 2 through 10); see Affidavit of Service of Solicitation Materials [Docket No. 5346], dated August 4, 2020 (the "**KCC Service Affidavit**"):

- a written notice (the "**Confirmation Hearing Notice**") of (a) the Court's approval of the Disclosure Statement, (b) the voting

deadline, (c) the date and time of the Confirmation Hearing, and (d) the Confirmation objection deadline;

- the Disclosure Statement (together with the exhibits thereto, including the Plan and the Disclosure Statement Order) in electronic format; and

- the appropriate form of Ballot with a postage prepaid return envelope.

2. In compliance with the Disclosure Statement Order, on July 8, 2020, the Debtors, through KCC, caused a copy of the notice of non-voting status to be served on all holders of Claims in the non-voting classes (i.e., Classes 1A, 1B and 11). See KCC Service Affidavit at ¶ 15).

3. In compliance with the Disclosure Statement Order, on July 8, 2020, the Debtors, through KCC, caused a copy of the Confirmation Hearing Notice to be served on all parties in the creditor database maintained by KCC not otherwise served pursuant to paragraphs 1 and 2 above, including, but not limited to, (a) all non-Debtor parties to Executory Agreements, and (b) all holders of Administrative Expense Claims and Priority Tax Claims. See KCC Service Affidavit at ¶ 14.

4. In compliance with the Disclosure Statement Order, on July 8, 2020, the Debtors, through KCC, caused copies of the Disclosure Statement (together with the exhibits thereto, including the Plan and the Disclosure Statement Order) and the Confirmation Hearing Notice, to be served on the parties who have requested notice of pleadings in this case. See KCC Service Affidavit at ¶¶ 16-17.

5. On the dates indicated below, the Debtors filed (and made available on their Debtors' restructuring website at www.kccllc.net/VerityHealth) the following Plan Supplement documents:

(a) the identity of the initial Liquidating Trustee, filed on August __ 2020 [Docket No. ____];

(b) the identity of the directors serving on the Post-Effective Date Board of Directors and other information specified in § 1129(a)(5) of the Bankruptcy Code, filed on August __, 2020 [Docket No. _____];

(c) the identity of the members of the Post-Effective Date Committee, filed on August __, 2020 [Docket No. ____];

(d) the form of Liquidating Trust Agreement, filed on August __, 2020 [Docket No. ____]; and

(e) the Plan Settlement, filed on August __, 2020 [Docket No. __].

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6. On August __, 2020, the Debtors filed (and made available on the Debtors' restructuring website at www.kccllc.net/VerityHealth), certain technical modifications to the Plan as reflected in the Third Amended and Restated Plan of Liquidation (the "**Technical Plan Modifications**")] [Docket No. __] and the Confirmation Brief [Docket No. ____].

7. The Confirmation Hearing Notice and Notice of the Technical Plan Modifications provided due and proper notice of the Confirmation Hearing and all relevant dates, deadlines, procedures and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the voting deadline, the objection deadline, the time, date and place of the Confirmation Hearing and the release provisions in the Plan.

8. All persons entitled to receive notice of the Disclosure Statement, the Plan, and the Confirmation Hearing have received proper, timely and adequate notice in accordance with the Disclosure Statement Order, applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, and have had an opportunity to appear and be heard with respect thereto.

9. The Debtors solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order. Accordingly, the Debtors are entitled to the protections afforded by § 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in § 13.7 of the Plan.

10. Claims in Classes 1A and 1B under the Plan are unimpaired, and such Classes are deemed to have accepted the Plan pursuant to § 1126(f) of the Bankruptcy Code.

11. The Plan was voted on by both of the Classes of Impaired Claims that were entitled to vote pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order (i.e., Classes 2 through 10)

12. KCC has made a final determination of the validity of, and tabulation with respect to, all acceptances and rejections of the Plan by holders of Claims entitled to vote on the Plan, including the amount and number of accepting and rejecting Claims in Classes 2 through 10 under the Plan. See Voting Declaration at ¶ __ and Exhibit A thereto.

13. Each of Classes 2, 3, 4, 5, 6, 7, 8, 9, and 10 have each accepted the Plan because holders of Claims in such Classes of at least two-thirds in amount and a majority in number of the Claims in such Classes actually voted to accept the Plan. See Voting Declaration, at ¶ __ and Exhibit A thereto.

J. **Section 1129(a)(3).** The Plan has been proposed in good faith and not by any means forbidden by law. The Chapter 11 Cases were filed in good faith and consistent with

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the purposes of the Bankruptcy Code, including, without limitation, to transfer certain of the Debtors' healthcare businesses as going concerns to third parties, to ensure continuity of care for their patients in a manner consistent with their charitable mission, and to ensure that the value of the Debtors' businesses were or are being maximized for the benefit of the creditors of the Debtors. The Plan was negotiated and proposed with the intention of accomplishing those goals, and for no ulterior purpose. The Plan fairly achieves a result consistent with the objectives and purposes of the Bankruptcy Code. In so finding, the Court has considered the totality of the circumstances in these Chapter 11 Cases. The Plan is the result of extensive good-faith, arms'-length negotiations by and among the Plan Proponents and certain of their principal constituencies, and their respective representatives, and reflects substantial input from the principal constituencies having an interest in the Chapter 11 Cases and, as evidenced by the overwhelming acceptance of the Plan, achieves the goal of a consensual chapter 11 plan pursuant to the requirements of the Bankruptcy Code. The Plan Proponents and each of their respective officers, directors, employees, advisors and professionals (i) acted in good faith in negotiating, formulating, and proposing, where applicable, the Plan and agreements, compromises, settlements, transactions, and transfers contemplated thereby, and (ii) will be acting in good faith in proceeding to (a) consummate the Plan and the agreements, compromises, settlements, transactions, transfers, and documentation contemplated by the Plan, including, but not limited to, the Plan Supplement documents, and (b) take any actions authorized and directed or contemplated by this Order. Thus, the Plan satisfies the requirements of § 1129(a)(3) of the Bankruptcy Code.

K. **§ 1129(a)(4).** The Plan provides that Professional Claims submitted by professionals for services incurred prior to the Effective Date will be entitled to payment only if they are approved by, or are subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying the requirements of § 1129(a)(4) of the Bankruptcy Code.

L. **§ 1129(a)(5).** The Debtors have disclosed in the Plan Supplement the identities of the Liquidating Trustee, the directors of the Post-Effective Date Board of Directors, and the Post-Effective Date Committee. The Post-Effective Date Board of Directors and the members of the Post-Effective Date Committee will not be compensated and the compensation of

the Liquidating Trustee will be consistent with the Liquidating Trust Agreement. The proposed Liquidating Trustee and directors for the Post-Effective Date Debtors, each as set forth in the Plan Supplement, are qualified to perform the services required of them under the Plan and their appointment to, or continuance in, such offices is consistent with the interests of holders of Claims and with public policy. The Debtors have therefore satisfied the requirements of § 1129(a)(5) of the Bankruptcy Code.

M. **§ 1129(a)(6).** The Plan does not provide for any changes in rates that require regulatory approval of any governmental agency and therefore, the requirements of § 1129(a)(6) are inapplicable to confirmation of the Plan.

N. **§ 1129(a)(7).** The liquidation analysis set forth in Exhibit A to the Disclosure Statement and other evidence proffered or adduced at or prior to the Confirmation Hearing, or in the Chadwick Declaration in connection with the Confirmation Hearing: (a) are reasonable, persuasive, accurate and credible, (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by any other evidence, and (d) establish that each holder of a Claim in an Impaired Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan, on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

O. **§ 1129(a)(8).** Classes 1A and 1B are not Impaired and are conclusively presumed to have accepted the Plan under § 1126(f) of the Bankruptcy Code. As set forth in the Voting Declaration, each of Classes 2 through 10 have each voted to accept the Plan. The Plan therefore satisfies § 1129(a)(8) of the Bankruptcy Code.

P. **§ 1129(a)(9).** The Plan provides treatment for Administrative Expense Claims, Priority Tax Claims and Priority Non-Tax Claims that is consistent with the requirements of § 1129(a)(9) of the Bankruptcy Code.

Q. **§ 1129(a)(10).** The Plan has been accepted by all classes of Impaired Claims that are entitled to vote on the Plan (i.e., Classes 2 through 10), determined without including any acceptance of the Plan by any "insider." See Voting Declaration, Exhibit A.

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R. **§ 1129(a)(11).** The Plan is feasible, within the meaning of § 1129(a)(11) of the Bankruptcy Code. The projections of the liquidity and financial information, including, without limitation, the projections of Post-Effective Date Debtors as of the Effective Date, are reasonable and made in good faith. The evidence provided in support of the Plan or adduced by the Debtors or other Plan Proponents at, or before the Confirmation Hearing or in the Chadwick Declaration and the Adcock Declaration: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; and (c) has not been controverted by any other admissible evidence. The Plan Proponents have demonstrated a reasonable assurance of the Plan's prospects for success.

S. **§ 1129(a)(12).** The Plan provides that fees payable pursuant to 28 U.S.C. § 1930 will be paid by the Debtors on or before the Effective Date. After the Effective Date, all fees payable pursuant to 28 U.S.C. § 1930 will be paid by the Liquidating Trust until the earlier of the conversion or dismissal of the applicable Chapter 11 Case under § 1112 of the Bankruptcy Code, or the closing of the applicable Chapter 11 Case pursuant to § 350(a) of the Bankruptcy Code.

T. **§ 1129(a)(13).** The Reorganized Debtors are not obligated to pay any retiree benefits pursuant to § 1114 of the Bankruptcy Code, and therefore, the requirements of § 1129(a)(13) are inapplicable to confirmation of the Plan.

U. **§§ 1129(a)(14) and (15).** The Debtors do not owe any domestic support obligations and are not individuals. Therefore, the requirements of §§ 1129(a)(14) and 1129(a)(15) are inapplicable to confirmation of the Plan.

V. **§ 1129(a)(16).** The Plan satisfies § 1129(a)(16) of the Bankruptcy Code and any applicable non-bankruptcy law that governs transfers of property under a plan to be made by a not-for-profit entity. § 1129(a)(16) of the Bankruptcy Code does not require the court to remand or refer any proceeding, issue, or controversy to any court other than the Bankruptcy Court or to require the approval of any court (including, without limitation, any California court under the Not For-Profit Laws) other than the Bankruptcy Court for any prior, current or future

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transfer of property. Therefore, because the Plan contains the Bankruptcy Court's approval of any prior, current or future property transfers, the Plan satisfies the requirements of § 1129(a)(16) of the Bankruptcy Code.

W. **§ 1129(b).** Because all Classes of Claims are either deemed to accept or voted to accept the Plan, § 1129(b) of the Bankruptcy Code is inapplicable.

X. **§ 1129(c).** The Plan (including previous versions thereof) is the only plan that has been filed in these Chapter 11 Cases that has been found to satisfy the requirements of subsections (a) of § 1129 of the Bankruptcy Code. Accordingly, confirmation of the Plan complies with the requirements of § 1129(c) of the Bankruptcy Code.

Y. **§ 1129(d).** No party in interest has requested that the Court deny Confirmation of the Plan on grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of § 5 of the Securities Act, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of § 1129(d) of the Bankruptcy Code.

Z. **§ 1129(e).** None of these Chapter 11 Cases is a small business case within the meaning of the Bankruptcy Code.

AA. Based upon the foregoing and all other pleadings and evidence proffered or adduced at or prior to the Confirmation Hearing, the Plan and the Plan Proponents satisfy the requirements for confirmation set forth in § 1129 of the Bankruptcy Code.

MODIFICATIONS TO THE PLAN

BB. The Technical Plan Modifications do not materially and adversely affect or change the treatment of any Claim against any Debtor. The Technical Plan Modifications do not require additional disclosure under § 1125 of the Bankruptcy Code or the re-solicitation of acceptances or rejections of the Plan under § 1126 of the Bankruptcy Code.

CC. The filing of the Plan and Technical Plan Modifications constitute due and sufficient notice thereof under the circumstances of the Chapter 11 Cases. Accordingly, the Plan is properly before the Court, and all votes cast with respect to the Plan prior to the Technical Plan Modifications shall be binding and shall apply with respect to the Plan.

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IMPLEMENTATION OF THE PLAN

DD. All documents and agreements necessary to implement the Plan, including, but not limited to, the Plan Supplement documents, are essential elements of the Plan and consummation of each agreement is in the best interests of the Debtors, the Estates and holders of Claims. The Debtors and where applicable, the other Plan Proponents, have exercised reasonable business judgment in determining to enter into the contemplated agreements, and the agreements have been negotiated in good faith, at arms'-length, are fair and reasonable, and shall, upon execution and upon the occurrence of the Effective Date, constitute legal, valid, binding, enforceable, and authorized obligations of the respective parties thereto and will be enforceable in accordance with their terms. Pursuant to § 1142(a) of the Bankruptcy Code, the Plan Supplement documents, and any other agreements necessary to implement the Plan will apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

CONDITIONS TO THE CONFIRMATION OF THE PLAN

EE. Each of the conditions precedent to entry of this Order has been satisfied in accordance with § 12.2 of the Plan or properly waived in accordance with § 12.3 of the Plan.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

FF. Pursuant to §§ 365 and 1123(b)(2) of the Bankruptcy Code, upon the occurrence of the Effective Date, Section 11 of the Plan provides for the assumption, assumption and assignment, or rejection of certain Executory Agreements. The Plan Proponents' determinations regarding the assumption, assumption and assignment, or rejection of Executory Agreements are based on and within the sound business judgment of the Plan Proponents, are necessary to the implementation of the Plan and are in the best interests of the Debtors, their Estates, holders of Claims and other parties in interest in the Chapter 11 Cases. The Debtors may elect to file a "Schedule of Assumed Contracts" as part of their the Plan Supplement (as it may be amended or supplemented) prior to the Effective Date and will provide notice to counterparties of the Debtors' determinations regarding the assumption, assumption and assignment, or rejection of Executory Agreements and any related Cure amounts. The Debtors are authorized to make

modifications to the Schedule of Assumed Contracts as provided for in the Plan, including after the Effective Date.

THE SETTLEMENTS UNDER THE PLAN

GG. The Plan settles numerous litigable issues in the Chapter 11 Cases pursuant to Bankruptcy Rule 9019 and §§ 363 and 1123 of the Bankruptcy Code. These settlements are in consideration for the distributions and other benefits provided under the Plan. Any other compromise and settlement provisions of the Plan and the Plan itself constitute a compromise of all Claims or Causes of Action relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or any distribution to be made on account of such an Allowed Claim.

HH. In consideration of the Creditor Settlement Agreements of numerous disputed Claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and § 1123 of the Bankruptcy Code and in consideration for the distributions, releases and other benefits provided under the Plan, the provisions of the Plan shall upon consummation constitute a good-faith compromise and settlement as reflected therein and in the Creditor Settlement Agreements arising from or related to a variety of asserted secured, administrative, priority, and general unsecured claims. The entry of this Order constitutes the Court's approval of each of the Creditor Settlement Agreements and all other compromises and settlements provided for in the Plan. The Court finds that such compromises and settlements are in the best interests of the Debtors, their estates, creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness and consistent with the Debtors' reasonable business judgment.

II. In reaching its decision on the substantive fairness of the Creditor Settlement Agreements and the Plan, the Court considered the following factors for each such settlement: (i) the balance between the litigation's probability of success and the settlement's future benefits; (ii) the likelihood of complex and protracted litigation and the risk and difficulty of collecting on the judgment; (iii) the proportion of creditors and parties in interest that support the settlement; (iv) the competency of counsel reviewing the settlement; (v) the nature and

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breadth of releases to be obtained by officers and directors; and (vi) the extent to which the settlement is the product of arm's length bargaining.

RELEASES, EXCULPATIONS AND INJUNCTIONS OF RELEASED PARTIES

JJ. Each non-Debtor Released Party that will benefit from the releases, exculpations and related injunctions set forth in the Plan (collectively, the "**Plan Releasees**") either shares an identity of interest with the Debtors, was instrumental to the successful prosecution of the Chapter 11 Cases, and/or provided a substantial contribution to the Debtors, which value provided a significant benefit to the Debtors' estates and general unsecured creditors, and which will allow for distributions that would not otherwise be available but for the contributions made by such non-Debtor parties. The releases in § 13.5 of the Plan are, individually and collectively, integral to, and necessary for the successful implementation of, the Plan and are supported by reasonable consideration.

WAIVER OF STAY

KK. Under the circumstances, it is appropriate that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a) be waived.

II. ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. **Confirmation of the Plan.** The Plan (including the Plan Supplement) and each of its provisions (whether or not specifically set forth and approved in this Order) is and are CONFIRMED in each and every respect, pursuant to § 1129 of the Bankruptcy Code, and the terms of the Plan and the Plan Supplement are incorporated by reference into, and are an integral part of, this order ("**Confirmation Order**"), provided, however, that if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. The Effective Date of the Plan shall occur on the date when the conditions set forth in § 12.2 of the Plan have been satisfied or, if applicable, have been waived in accordance with § 12.3 of the Plan. The failure to specifically include or to refer to any particular

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article, section or provision of the Plan, Plan Supplement or any related document in this Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Court that this Confirmation Order confirm the Plan and any related documents in their entirety.

2. **Notice**. Notice of the Confirmation Hearing complied with the terms of the Disclosure Statement Order, was appropriate and satisfactory based on the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of applicable law, including, without limitation, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. In addition, due, adequate and sufficient notice of any Schedule of Assumed Contracts was provided to all counterparties to Executory Agreements with the Debtors, in substantial compliance with the Disclosure Statement Order and Bankruptcy Rules 2002(b), 3017 and 3020(b), and no other or further notice is or shall be required (other than as expressly provided for in the Plan for any amendments to the Schedule of Assumed Contracts).

3. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the holders of Claims in connection with voting on the Plan pursuant to the Disclosure Statement Order: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding on the Debtors, Post-Effective Date Debtors, or Liquidating Trust except for voting purposes.

4. **Order Binding on All Parties.** Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and this Order shall be immediately binding upon, and inure to the benefit of: (a) the Debtors; (b) Post-Effective Date Debtors; (c) the Liquidating Trust; (d) any and all holders of Claims (irrespective of whether such Claims are impaired under the Plan or whether the holders of such

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Claims accepted, rejected or are deemed to have accepted or rejected the Plan); (e) any other person giving, acquiring or receiving property under the Plan; (f) any and all non-Debtor parties to Executory Agreements with any of the Debtors; and (g) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing. On the Effective Date, all settlements, compromises, releases, waivers, discharges, exculpations, and injunctions set forth in the Plan shall be effective and binding on all Persons.

5. **Other Essential Documents and Agreements.** The form of documents comprising the Plan Supplement, any other agreements, instruments, certificates or documents related thereto and the transactions contemplated by each of the foregoing are approved and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, shall be in full force and effect and valid, binding and enforceable in accordance with their terms without the need for any further notice to or action, order or approval of this Court, or other act or action under applicable law, regulation, order or rule. The Debtors, and after the Effective Date, Post-Effective Date Debtors and/or the Liquidating Trustee (as may be applicable), are authorized, without further approval of this Court or any other party, to execute and deliver all agreements, documents, instruments, securities and certificates relating to such agreements and perform their obligations thereunder, including, without limitation, payment of all fees due thereunder or in connection therewith.

6. **Unclassified Claims.** On and after the Effective Date, the treatment of the Unclassified Claims of the Debtors shall be effectuated pursuant to § 2 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **Administrative Claims Bar Date**. Pursuant to § 2.1 of the Plan, and except as otherwise provided in § 2 of the Plan, requests for payment of Administrative Expense Claims were required to be filed by July 30, 2020 (unless such date was extended by stipulation with a specific potential administrative creditor) (the "**Administrative Claims Bar Date**"). Holders of Administrative Expense Claims that were required to, but do not, file and serve a request for payment of such Administrative Expense Claims by the Administrative Claims

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Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Expense Claims against the Debtors or their property and such Administrative Expense Claims shall be deemed discharged as of the Effective Date. For the avoidance of doubt, Administrative Expense Claims that arise in the ordinary course of the Debtors' ongoing business are not subject to the Administrative Claims Bar Date and shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements governing, instruments evidencing or other documents relating to such transactions.

(b) **Professional Claims Incurred Prior to the Effective Date.** Pursuant to Section 2.2 of the Plan, all entities seeking an award by the Bankruptcy Court of a Professional Claim (other than the Ordinary Course Professionals) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is sixty (60) after the Effective Date, and shall receive, in full satisfaction of such Claim, Cash in an amount equal to 100% of such amounts as are allowed by the Bankruptcy Court promptly after the date an order relating to any such Professional Claim is entered or upon such other terms as may be mutually agreed-upon between the holder of such Professional Claim and the Liquidating Trustee and the Post-Effective Date Debtors. Objections to any final applications covering Professional Claims must be filed and served on the Post-Effective Date Debtors and the Liquidating Trustee and the requesting party no later than ninety (90) days after the Effective Date (unless otherwise agreed to by the requesting Professional). Ordinary Course Professionals must submit a final invoice for their services no later than thirty (30) days after the Effective Date and may continue to receive payment of compensation and reimbursement of expenses for services rendered to the Debtors without further Bankruptcy Court review or approval (except as provided for in the Ordinary Course Professionals Order). Notwithstanding anything to the contrary contained in the Plan, Ombudsmen and their respective professionals are authorized to apply for compensation after the deadline established herein if they are required to respond to any discovery or involuntarily become a party to litigation related to the Debtors; provided, however, that the Liquidating Trustee and the Post-Effective Date Debtors retain all rights to object to such applications on any applicable ground.

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(c) **Interim Fee Procedures.** Other than as set forth herein or in the Plan, the procedures set forth in the Order Authorizing Interim Fee Procedures (the "**Interim Compensation Order**") [Docket No. 661] shall remain in effect with respect to services rendered and expenses incurred through the Effective Date. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the Reorganized Debtors and the Liquidating Trustee (as applicable) are authorized to pay compensation for services rendered or reimbursement of expenses incurred on or after the Effective Date in the ordinary course of business and without the need for Bankruptcy Court approval or a holdback.

(d) **Statutory Fees.** Pursuant to § 2.3 of the Plan, notwithstanding anything to the contrary contained in the Plan, all fees required to be paid by 28 U.S.C. § 1930(a)(6) and any interest thereon ("**U.S. Trustee Fees**") shall be paid by the Liquidating Trustee in the ordinary course of business until the closing, dismissal or conversion of these Chapter 11 Cases to another chapter of the Bankruptcy Code. Any unpaid U.S. Trustee Fees that accrued before the Effective Date shall be paid no later than thirty (30) days after the Effective Date.

7. **Post-Effective Date Governance.** On and after the Effective Date, the post-Effective Date governance of the Debtors shall be effectuated pursuant to § 5 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **Continued Corporate Existence and Vesting of Assets.** Pursuant to § 5 of the Plan, and except as set forth in the Plan: (i) on the Effective Date, all of the Debtors (other than Reorganized Debtors) shall be deemed dissolved without the requirement of any further actions or approvals, and their interests and rights shall be vested for all purposes in the Post-Effective Date Debtors, and all of the interests in such Debtors shall be cancelled and terminated and (ii) on and after the Effective Date, Debtors shall continue in existence as the Post-Effective Date Debtors and, pursuant to the Plan, retain its Not-For-Profit Status, with all of the powers of such a legal entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) pursuant to the Plan

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and without necessity of any further approvals under any other applicable laws. On and after the Effective Date, Post-Effective Date Debtors shall continue in existence, subject only to those restrictions expressly imposed by the Plan or this Confirmation Order as well as the documents and instruments executed and delivered in connection with the Plan, including the documents, exhibits, instruments, and other materials comprising the Plan Supplement. Without limiting the foregoing, Post-Effective Date Debtors may pay the charges that it incurs from and after the Effective Date for Compensation Claims, disbursements, expenses or related support services without application to, or the approval of, the Court, in accordance with the Plan. On the Effective Date, all current directors of Debtors shall be deemed discharged of and from all further authority, duties, responsibilities and obligations related to, arising from and in connection with or related to their services as such through and including the Effective Date.

(b) **Dissolution of the Committee.** Pursuant to § 7.11 of the Plan, on the Effective Date, the Committee shall be dissolved (except with respect to any Professional compensation matters), and the members, employees, agents, advisors, affiliates, and representatives (including, without limitation, attorneys, financial advisors, or other professionals) of each thereof shall thereupon be released from and discharged of and from all further authority, duties, responsibilities, and obligations related thereto, arising from and in connection with or related to the Chapter 11 Cases; provided, however, that obligations arising under confidentiality agreements, joint interest agreements, and protective orders; if any, entered during the Chapter 11 Cases shall remain in full force and effect according to their terms.

(c) **Formation of the Post-Effective Date Committee.** Pursuant to § 7.11 of the Plan, on the Effective Date, the Post-Effective Date Committee shall be appointed. The members that shall serve on the Post-Effective Date Committee were selected by the Committee and have been disclosed in the Plan Supplement.

8. **Means for Implementation of the Plan.** On and after the Effective Date, the Plan's implementation shall be effectuated pursuant to § 7 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

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(a) **The Creditor Settlement Agreements.** Pursuant to § 7.1(a) of the Plan, Bankruptcy Rule 9019, and § 1123(b)(3) of the Bankruptcy Code, the entry of this Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of each of the Creditor Settlement Agreements and the finding that (i) entering into each of the Creditor Settlement Agreements is in the best interests of the Debtors, their Estates, and their Claim holders, (ii) each of the Creditor Settlement Agreements is fair, equitable and reasonable, and (iii) each of the Creditor Settlement Agreements meets all the standards set forth in Bankruptcy Rule 9019 and § 1123(b)(3) of the Bankruptcy Code. Notwithstanding anything to the contrary set forth in the Plan, all distributions contemplated by each Creditor Settlement Agreement shall be made only in accordance with the terms of the respective Creditor Settlement Agreement.

(b) **No Further Court Authorization.** Pursuant to § 7.5 of the Plan, and except as provided in the Plan or this Confirmation Order, on and after the Effective Date, the Post-Effective Date Debtors shall not be required to obtain any approvals from the Bankruptcy Court, any court or governmental body and/or provide any notices or seek approvals under the Not-For-Profit Laws to implement the terms of the Plan, including, without limitation, the subsequent Transfer of any Operating Assets retained by the Post-Effective Date Debtors.

(c) Except as set forth in the Plan, all actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of this Court, or further action by the respective trustees, directors, or members of the Post-Effective Date Debtors and the Liquidating Trust.

(d) To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the directors of any of the Debtors, Post-Effective Date Debtors, or the Liquidating Trust, this Confirmation Order shall, pursuant to § 1142 of the Bankruptcy Code, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors of the appropriate Debtor, the Post-Effective Date Debtors, or the Liquidating Trust, unless the Plan expressly provides that such party must provide such consent after the Effective Date.

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(e) Each federal, state, commonwealth, local, foreign or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Confirmation Order.

(f) All transactions effected by the Debtors during the pendency of the Chapter 11 Cases from the Petition Date through the Confirmation Date are approved and ratified.

(g) **Preservation of Insurance.** Nothing in the Plan shall diminish, impair, or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover Claims against any Debtor pursuant to § 7.14 of the Plan.

9. **Plan Distributions.** On and after the Effective Date, distributions on account of Allowed Claims and the resolution and treatment of Disputed Claims shall be effectuated pursuant to §§ 8 and 10 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered. The record date for making distributions under the Plan shall be the date of entry of this Confirmation Order.

10. **Procedures for Treating and Resolving Disputed Claims.** On and after the Effective Date, the procedures for the treatment and resolution of Disputed Claims shall be effectuated pursuant to § 10 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **Resolution of Disputed Claims.** The Liquidating Trustee shall have the right to file, settle, compromise, withdraw or litigate objections to certain Claims pursuant to the Disputed Claims resolution procedures outlined in § 10 of the Plan. The Liquidating Trustee may settle, compromise, or withdraw any objections or proceedings without Court approval or may seek Court approval without notice to any Person.

11. **Executory Contracts and Unexpired Leases.** On and after the Effective Date, the treatment of Executory Agreements shall be effectuated pursuant to § 11 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

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(a) **General Treatment.** Pursuant to § 11.1 of the Plan, on the Effective Date, all Executory Agreements to which any Debtor is a party shall be deemed rejected as of the Effective Date and will receive a Notice of Rejection of Executory Agreement, substantially in the form annexed hereto as **Appendix 2**, except for those Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to the Rejection Procedures), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 of the Bankruptcy Code on or before the Effective Date, or (c) are specifically designated as a contract or lease to be assumed on any Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed, provided, however, that the Debtors or Reorganized Debtors, as applicable, reserve the right, with the Consent of the Committee or Post-Effective Date Committee, as applicable, to amend the Plan Supplement at any time on or before thirty (30) days after the Effective Date to modify any Schedule of Assumed Contracts to include or delete any Executory Agreement. If the party to the Executory Agreement listed to be assumed in any Schedule of Assumed Contracts wishes to object to the proposed assumption (including with respect to the cure amounts), it shall do so within thirty (30) days from the service of the Schedule of Assumed Contracts.

(b) **Cure of Defaults.** Except to the extent that a different treatment has been agreed to by the non-Debtor party or parties to any Executory Agreement to be assumed pursuant to § 11.1 of the Plan, the Debtors will, pursuant to the provisions of §§ 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code and consistent with the requirements of § 365 of the Bankruptcy Code, within thirty (30) days after (a) the Effective Date or (b) the date of the filing of the Plan Supplement listing an Executory Agreement, file with the Bankruptcy Court and serve on counterparties to Executory Agreements to be assumed, a notice listing the cure amounts of all such Executory Agreements. The scheduled cure amount (if any) shall be binding absent any timely objection to such scheduled amount. If there are any timely objections to the cure amounts filed, the Bankruptcy Court shall hold a hearing. Notwithstanding the foregoing, at all times through the date that is fifteen (15) days after the Bankruptcy Court enters a Final Order resolving and fixing the amount of a disputed cure amount, the Debtors, the Liquidating Trustee or the

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Reorganized Debtors (as applicable) shall have the right to remove such Executory Agreement from the Schedule of Assumed Contracts and such Executory Agreement shall be deemed rejected.

(c) **Bar Date for Rejection Damages.** Pursuant to § 11.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court no later than thirty (30) days after the later of (a) the Effective Date or (b) the date of the Debtors' notice of determination to reject an Executory Agreement. Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

12. **Conditions Precedent to the Effective Date.** On and after the Effective Date, the conditions precedent to the Confirmation of the Plan, the conditions precedent to the Effective Date, and the waiver provisions therefor pursuant to § 12 of the Plan are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

13. **Effect of Confirmation.** On and after the Effective Date, the Plan shall be effectuated pursuant to § 13 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered.

(a) **Vesting of Assets.** Upon the Effective Date, pursuant to § 13.1 of the Plan and §§ 1141(b) and (c) of the Bankruptcy Code, (a) the Liquidating Trust Assets shall vest in the Liquidating Trust and (b) the Operating Assets shall vest in the Post-Effective Date Debtors, in each case free and clear of all Claims, liens, encumbrances, charges and other interests, subject to Debtors' obligations under the Plan.

(b) **General Settlement of Claims and Interests.** Pursuant to § 13.3 of the Plan, as one element of, and in consideration for, an overall negotiated settlement of numerous disputed Claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and § 1123 of the Bankruptcy Code and in consideration for the classification, distributions, Releases and other benefits provided under the Plan, the provisions of the Plan shall upon consummation constitute a good faith compromise and settlement of all Claims, and controversies

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resolved pursuant to the Plan. In accordance with the Plan, all distributions made pursuant to the Plan to holders of Allowed Claims in any Class are intended to be and shall be final.

(c) **Plan Discharges, Releases, Injunctions, and Exculpation.** The Plan discharge, release, and Injunction provisions set forth in §§ 13.4 through 13.7 of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party.

(d) **Releases.** The Plan release provision set forth in § 13.5 of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

(a) Releases Of Debtors. As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Debtors arising from or related to the Debtors' pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature except for as provided in the Plan or this Confirmation Order.

(b) Settlement Releases. Pursuant to § 1123(b)(3)(A) and the Plan Settlement, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, each Holder of any Claim shall be deemed to forever release, waive, and discharge all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Settlement Released Parties arising from or related to the Settlement Released Parties' pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature except for as provided in the Plan or this Confirmation Order.

(c) Limitation Of Claims Against the Liquidating Trust. As of the Effective Date, except as provided in the Plan or this Confirmation Order, all Persons shall be precluded from asserting against the Liquidating Trust any other or further Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, relating to the Debtors or any Interest in the Debtors based upon any acts, omissions or liabilities, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date.

(d) Debtors' Releases. Pursuant to § 1123(b), and except as otherwise specifically provided in the Plan, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious liquidation of the Debtors and the consummation of the transactions contemplated by the Plan, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtors and their Estates from any and all claims,

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obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen, or unforeseen, existing or herein after arising in law, equity, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or other Person, based on or relating to, or in any manner arising from, in whole or in part, the operation of the Debtors prior to or during the Chapter 11 Cases, the transactions or events giving rise to any Claim that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the restructuring of Claims before or during the Chapter 11 Cases, the marketing and the sale of Assets of the Debtors, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents, other than a Claim against a Released Party arising out of the gross negligence or willful misconduct of any such person or entity. Claims against any Released Party that are released pursuant to this Section 13.5(d) shall be deemed waived and relinquished by the Plan for purposes of Section 13.9 of the Plan.

(e) ***WAIVER OF LIMITATIONS ON RELEASES. THE LAWS OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542) PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS/HER DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS 13.5 (a)-(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS THEY MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT***

(f) **General Injunction.** The Plan Injunction provision set forth in § 13.6(a) of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party.

Except as otherwise expressly provided herein, all Persons that have held, currently hold or may hold a Claim against the Debtors are permanently enjoined on and after the Effective Date from taking any action in furtherance of such Claim or any other Cause of Action released and discharged under the Plan, including, without limitation, the following actions against any Released Party: (a) commencing, conducting or continuing in any manner, directly or indirectly, any action or other proceeding with respect to a Claim; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order with respect to a Claim; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind with respect to a Claim; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Post-Effective Date Debtors or the Liquidating Trust with respect to a Claim; or (e) commencing, conducting or continuing any proceeding that does not conform to or comply with or is contradictory to the

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provisions of the Plan; provided, however, that nothing in this injunction shall (i) limit the Holder of an Insured Claim from receiving the treatment set forth in Class 9; or (ii) preclude the Holders of Claims against the Debtors from enforcing any obligations of the Debtors, the Post-Effective Date Debtors, the Liquidating Trust, or the Liquidating Trustee under the Plan and the contracts, instruments, releases and other agreements delivered in connection herewith, including, without limitation, the Confirmation Order, or any other order of the Bankruptcy Court in the Chapter 11 Cases. By accepting a distribution made pursuant to the Plan, each Holder of an Allowed Claim shall be deemed to have specifically consented to the injunctions set forth in this Section.

(g) **Other Injunctions.** The Plan Injunction provision set forth in § 13.6(b) of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party.

The Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, the Post-Effective Date Board of Directors, or the Liquidating Trust and their respective members, directors, officers, agents, attorneys, advisors or employees shall not be liable for actions taken or omitted in its or their capacity as, or on behalf of, the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except those acts found by Final Order to arise out of its or their willful misconduct, gross negligence, fraud, and/or criminal conduct, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of the Post-Effective Date Board of Directors, the Post-Effective Date Debtors, the Liquidating Trustee, the Post-Effective Date Committee, or the Liquidating Trust (as applicable), except for any actions or inactions found by Final Order to involve willful misconduct, gross negligence, fraud, and/or criminal conduct. Any indemnification claim of the Post-Effective Date Debtors, the Post-Effective Date Board of Directors, the Liquidating Trustee, the Post-Effective Date Committee and the other parties entitled to indemnification under this subsection shall be satisfied from either (i) the Liquidating Trust Assets (with respect to all claims, other than those claims related to the Operating Assets), or (ii) the Operating Assets (with respect to all claims related to the Operating Assets). The parties subject to Section 13.6(b) of the Plan shall be entitled to rely, in good faith, on the advice of retained professionals, if any.

(h) **Exculpation.** The Plan Exculpation provision set forth in § 13.7 of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party.

To the maximum extent permitted by applicable law, each Released Party shall not have or incur any liability for any act or omission in connection with, related to, or arising

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out of the Chapter 11 Cases (including, without limitation, the filing of the Chapter 11 Cases), the marketing and the sale of Assets of the Debtors, the Plan and any related documents (including, without limitation, the negotiation and consummation of the Plan, the pursuit of the Effective Date, the administration of the Plan, or the property to be distributed under the Plan), or each Released Party's exercise or discharge of any powers and duties set forth in the Plan, except with respect to the actions found by Final Order to constitute willful misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each Released Party shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Without limitation of the foregoing, each such Released Party shall be released and exculpated from any and all Causes of Action that any Person is entitled to assert in its own right or on behalf of any other Person, based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence in any way relating to the subject matter of this Section.

14. **Preservation of Causes of Action.** Pursuant to § 13.9 of the Plan, nothing contained in the Plan shall be deemed a waiver or relinquishment of any claims or Causes of Action of the Debtors that are not specifically waived or relinquished by the Plan, which shall vest in the Liquidating Trust (with respect to the Liquidating Assets) or the Post-Effective Date Debtors (with respect to the Operating Assets), subject to any existing valid and perfected security interest or lien in such Causes of Action. Except as provided in § 7.1 of the Plan, nothing contained in this Plan shall be deemed a waiver or relinquishment of any claims or Causes of Action of the Debtors that are not settled with respect to Allowed Claims or specifically waived or relinquished by this Plan, which shall vest in the Liquidating Trust, subject to any existing valid and perfected security interest or lien in such Causes of Action. The Causes of Action preserved hereunder include, without limitation, claims, rights or other causes of action:

(i) against vendors, suppliers of goods or services (including attorneys, accountants, consultants or other professional service providers), utilities, contract counterparties, and other parties for, including but not limited to: (A) services rendered; (B) over- and under-payments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, setoff or recoupment; (C) failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors; (D) wrongful or improper termination, suspension of services or supply of goods, or failure to meet

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other contractual or regulatory obligations; (E) indemnification and/or warranty claims; or (F) turnover causes of action arising under §§ 542 or 543;

(ii) against landlords or lessors, including, without limitation, for erroneous charges, overpayments, returns of security deposits, indemnification, or for environmental claims;

(iii) arising against current or former tenants or lessees, including, without limitation, for non-payment of rent, damages, and holdover proceedings;

(iv) arising from damage to Debtors' property;

(v) relating to claims, rights, or other causes of action the Debtors may have to interplead third parties in actions commenced against any of the Debtors;

(vi) for collection of a debt owed to any of the Debtors;

(vii) against insurance carriers, reinsurance carriers, underwriters or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or other matters;

(viii) relating to pending litigation, including, without limitation, litigation related to the SGM Claims and any other claims or causes of action related thereto, and the suits, administrative proceedings, executions, garnishments, and attachments listed in Attachment 4a to each of the Debtors' Statements of Financial Affairs;

(ix) arising from claims against health plans;

(x) that constitute Avoidance Actions;

(xi) arising under or relating to any and/or all asset purchase agreements and related sale documents (including, without limitation, any leases) entered into during these Chapter 11 Cases, including, but not limited to, enforcement of such agreements by the Debtors' Estates and/or breaches of any and/or all such agreements by the applicable non-Debtor parties (including, without limitation, the purchasers of the Debtors' assets under such agreements and any and all principals and/or guarantors of the obligations under or relating to such agreements);

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(xii) all claims against Integrity Healthcare, LLC and BlueMountain Capital Management LLC; and

(xiii) relating to the Operating Assets.

15. On and after the Effective Date, in accordance with § 1123(b) and the terms of this Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall retain and have the exclusive right to prosecute, abandon, settle or release any or all Causes of Action without the need to obtain approval or further relief from the Bankruptcy Court. The Causes of Action preserved in the Plan include, without limitation, claims, rights or other causes of action:

The Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and the Post-Effective Date Debtors shall have, retain, reserve and be entitled to assert all such claims, rights of setoff and other legal or equitable defenses that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by the Plan may be asserted by the Liquidating Trustee and the Post-Effective Date Committee on their behalf after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

On and after the Effective Date, in accordance with § 1123(b) of the Bankruptcy Code and the terms of the Plan, the Liquidating Trustee, the Post-Effective Date Committee, the Responsible Officer and the Post-Effective Date Debtors shall retain and have the exclusive right to prosecute, abandon, settle or release any or all Causes of Action, as they deem appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court. The Post-Effective Date Committee shall analyze potential Causes of Action in consultation with the Liquidating Trustee, to determine whether the pursuit of these actions would be beneficial. The Liquidating Trustee shall also confer and cooperate with the Post-Effective Date Committee in the prosecution and defense of all Causes of Action to be brought under the Plan. The Responsible Officer shall analyze potential Causes of Action and will confer with the Liquidating Trustee to determine whether the pursuit of these actions should be beneficial.

16. **Specific Stipulations Regarding the Plan.**

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(a) SGM

The Plan Proponents acknowledge that SGM disputes the Debtors' claim to the Deposit, and SGM contends that the Deposit must be returned to SGM. The Debtors and the Plan Proponents dispute the contentions and claims of SGM to the Deposit, and contend that the Deposit is an asset of the Debtors' estates, free and clear of any rights or claims of SGM, and should be distributed in accordance with the Plan. As provided in the Plan, on the Effective Date, all rights of the Debtors against SGM, including, without limitation, all rights to recover the Deposit, are being transferred to the Liquidating Trust. The Liquidating Trust shall not distribute the Deposit to creditors in accordance with the Plan or take any other action which would reduce or dissipate the Deposit, unless permitted by a judgment or an order entered by the District Court having jurisdiction over the Adversary Proceeding, and such judgment or order has not been stayed. In the event an appeal is taken from any such judgment or order, the party taking the appeal shall have the right to seek a stay pursuant to the applicable Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure. Nothing contained in the Plan or the Disclosure Statement shall modify, alter or change the rights of the Debtors and the Liquidating Trust, on the one hand, and SGM, on the other hand, to any claim or rights to the Deposit. All such claims and rights are expressly reserved and preserved.

(b) Integrity

Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the transfer of any claim or Cause of Action to the Liquidating Trust shall not impair Integrity Healthcare, LLC's or its current and former affiliates' respective existing rights, defenses, claims, counterclaims, rights of setoff or recoupment applicable to, arising out of, or relating to, any such claim or Cause of Action transferred to the Liquidating Trust.

(c) Infor

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Prior to the Petition Date, Infor (US), Inc., previously doing business as Infinium Software, Inc. ("Infor"), entered into a number of agreements (the "Infor Agreements") with VHS, pursuant to which Infor granted to VHS certain non-exclusive, non-transferrable licenses to use copyrighted software and computer programs owned by Infor (collectively, the "Infor Software"). The Infor Agreements include, without limitation, the *Master Software License Agreement No. 2002-4384, Dated August 30, 2002 (Together With The Schedules Thereto, As Amended)* (the "MSLA"). Notwithstanding anything to the contrary contained in this Confirmation Order, the Plan, the Plan Supplement, or any other document related thereto, the Debtors' licenses to access and use the Infor Software shall remain in place until December 31, 2020, at which point the MSLA shall be terminated. The cost for this three-month extension for the access and use of the Infor Software by the Debtors for the sole and exclusive benefit of the Debtors and their estates is $24,000, which amount and applicable tax shall be paid by the Debtors to Infor pursuant to the terms of the applicable invoice. Absent timely payment of this amount by the Debtors, the MSLA shall terminate immediately and the Debtors shall comply with the termination obligations set forth in the following sentence. Unless extended by the mutual agreement of the Debtors and Infor, on or before December 31, 2020, the Debtors shall; (i) remove all copies of any on-premises Infor Software and any portions thereof from assets of the Debtors and cease accessing and using any hosted Infor Software; (ii) destroy all copies of the Infor Software contained in the Debtors' assets and related documentation and delete all access codes; and, (iii) certify to Infor in writing that the Debtors have complied with the foregoing subparagraphs (i) and (ii). Absent prior written consent, after December 31, 2020, the Infor Software shall not be transferred to or used in any way by or for the benefit of the Debtors, their estates, the Liquidating Trustee, the Liquidating Trust, or any of their respective employees, independent contractors, professionals, representatives, agents, successors, or assigns. The

release, injunction, exculpation, recourse, and other provisions of the Plan, the Confirmation Order, and any other Plan-related document shall not in any way impair, impact, or otherwise affect Infor's rights, claims, defenses, and remedies as to any Debtor or any other party whether arising under Infor's contracts with the Debtors or third parties and/or applicable non-bankruptcy law that may arise on or after July 30, 2020.

17. **Retention of Jurisdiction.** On and after the Effective Date, § 14 of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered. Unless otherwise provided in the Plan or in this Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases as is legally permissible, including jurisdiction over those matters and issues described in § 14.1 of the Plan.

18. **Miscellaneous Provisions.** On and after the Effective Date, the miscellaneous provisions of § 15 of the Plan, which are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered.

19. **Severability.** Pursuant to § 15.7 of the Plan, in the event that the Bankruptcy Court determines, prior to the Effective Date, that any provision of the Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the Consent of the Debtors and the Committee, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistently with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. This Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

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20. **Binding Effect of Prior Orders.** Pursuant to § 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date and subject to the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder and all motions or requests for relief by the Debtors pending before the Court as of the Effective Date shall be binding upon and shall inure to the benefit of the Debtors, Post-Effective Date Debtors, the Liquidating Trust, and their respective successors and assigns.

21. **Notice of Confirmation of the Plan.** Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c)(2), the Debtors or Post-Effective Date Debtors will serve a notice of the entry of this Order substantially in the form of **Appendix 2** attached hereto and incorporated herein by reference (the "**Confirmation Notice**"), to all parties in the creditor database maintained by KCC, no later than 5 Business Days after the Confirmation Date; provided, however, that the Debtors or the Post-Effective Date Debtors will serve the Confirmation Notice only on the record holders of Claims as of the Confirmation Date. The Debtors will publish the Confirmation Notice once in Los Angeles Times and San Francisco Chronicle as soon as reasonably practicable after the Confirmation Date, but no later than 5 Business Days after the Confirmation Date. As soon as practicable after the entry of this Order, the Debtors will make copies of this Order and the Confirmation Notice available on the Debtors' restructuring website at http://www.kccllc.net/VerityHealth. As soon as practicable after the occurrence of the Effective Date pursuant to the terms of the Plan, the Debtors will serve the notice of Effective Date, substantially in the form attached hereto as **Appendix 3** (the "**Notice of Effective Date**") on all parties served with the Confirmation Notice.

22. **Reserves.** The mechanisms to establish the reserves pursuant to §§ 7.6 and 15.3 of the Plan are hereby approved.

23. **Modification of the Plan.** Pursuant to § 15.5 of the Plan, the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of this Confirmation Order with the Consent of the Committee. After the entry of this Confirmation Order, the Debtors may with the Consent of the

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Committee, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with § 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan; provided, however, that no Bankruptcy Court authorization is required if the proposed amendment or modification to the Plan is not material and consented to by the Committee. A holder of an Allowed Claim that is deemed to have accepted this Plan shall be deemed to have accepted this Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder.

24. **Governing Law.** Pursuant to § 15.11 of the Plan, except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to the principles of conflict of laws thereof; provided however that the foregoing shall not be deemed to require compliance with Not For-Profit Laws with respect to any obligations, rights or entitlements under or in furtherance of the Plan.

25. **Notice.** Except as otherwise provided in the Plan and this Order, notice of as of the Effective Date, all subsequent pleadings in the Chapter 11 Cases shall be limited to counsel to the Debtors, counsel to the Post-Effective Date Committee, the U.S. Trustee and any party known to be directly affected by the relief sought.

26. **References to Plan.** Any document related to the Plan that refers to a chapter 11 plan of the Debtors other than the Plan confirmed by this Order shall be, and it hereby is, deemed to be modified such that the reference to a chapter 11 plan of the Debtors in such document shall mean the Plan confirmed by this Order, as appropriate.

27. **Reconciliation of Inconsistencies.** Without intending to modify any prior Order of this Court (or any agreement, instrument or document addressed by any prior Order), in the event of an inconsistency between the Plan, on the one hand, and any other agreement, instrument, or document intended to implement the provisions of the Plan, on the other, the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement,

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instrument, or document). In the event of any inconsistency between the Plan or any agreement, instrument, or document intended to implement the Plan, on the one hand, and this Order, on the other, the provisions of this Order shall govern.

28. **Automatic Stay.** Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to §§ 105 or 362 of the Bankruptcy Code or any order of this Court and extant on the date of entry of this Confirmation Order (excluding any injunctions or stays contained in the Plan or this Confirmation Order) shall remain in full force and effect until the Closing of the Chapter 11 Cases. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

29. **Order Effective Immediately**. Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, the stay provided for under Bankruptcy Rule 3020(e) shall be waived and this Order shall be effective and enforceable immediately upon entry. The Debtors are authorized to consummate the Plan and the transactions contemplated thereby immediately after entry of this Order and upon, or concurrently with, satisfaction of the conditions set forth in the Plan.

Dated: August __, 2020

THE HONORABLE ERNEST ROBLES
UNITED STATES BANKRUPTCY JUDGE

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Exhibit B

Draft Plan Settlement

SETTLEMENT AGREEMENT

On this ____ day of August, 2020 (the "Agreement Date"), and subject to approval by order of the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), Verity Health System of California, Inc. ("VHS") and all affiliates (collectively, the "Debtors," and each individually a "Debtor") in the Debtors' jointly administered chapter 11 bankruptcy cases (the "Chapter 11 Cases"), the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee"), UMB Bank, N.A. ("UMB Bank") as successor Master Trustee (solely in such capacity, the "Master Trustee") under the Master Indenture of Trust dated as of December 1, 2001 (as amended and supplemented, the "Master Indenture"), Wells Fargo Bank National Association ("Wells Fargo") as bond indenture trustee under the bond indentures relating to the 2005 Revenue Bonds (defined below), U.S. Bank National Association ("U.S. Bank") solely in its capacity as the note indenture trustee under each of the note indentures relating to the 2015 Revenue Notes (defined below) and the 2017 Revenue Notes (defined below), respectively (collectively, the "Working Capital Notes"), and Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together, the "MOB Lenders," and, together with UMB Bank, Wells Fargo, and U.S. Bank, the "Prepetition Secured Creditors") (the Debtors, the Committee, and the Prepetition Secured Creditors are referred to collectively herein as the "Parties" and each, individually, as a "Party"), and subject to the terms, conditions and approvals set forth herein, agree to the following (the "Agreement"):

RECITALS

A. **Petition Date.** On August 31, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code") with the Bankruptcy Court. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to §§ 1107 and 1108.[1]

B. **The Committee.** On September 17, 2018, the Office of the United States Trustee for the Central District of California (the "U.S. Trustee") appointed the Committee in these Chapter 11 Cases pursuant to § 1102 [Docket No. 197].[2]

C. **The Prepetition Secured Credit Facilities.** As of the Petition Date, the Debtors were indebted and liable to each of the Prepetition Secured Creditors as follows:

[1] All references to "§" herein are to sections of the Bankruptcy Code unless otherwise noted. All references to "Rules" are to the Federal Rules of Bankruptcy Procedure. All references to the "LBR" are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

[2] As appointed by the U.S. Trustee, the Committee comprises the following nine members: (i) Aetna Life Insurance Company; (ii) Allscripts Healthcare, LLC; (iii) California Nurses Association; (iv) Iris Lara; (v) Medline Industries, Inc.; (vi) PBGC; (vii) SEIU United Healthcare Workers West; (viii) Sodexo Operations, LLC; and (ix) St. Vincent IPA Medical Corporation.

(1) The Master Trustee with respect to the MTI Obligations (defined below) securing the repayment by the Obligated Group (defined below) of its loan obligations with respect to: (a) the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005, A, G, and H (the "2005 Revenue Bonds"); (b) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2015 A, B, C and D (the "2015 Revenue Notes"); and (c) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B (the "2017 Revenue Notes"). The joint and several obligations issued under the Master Indenture by VHS, O'Connor Hospital, Saint Louise Regional Hospital ("SLRH"), St. Francis Medical Center ("SFMC"), St. Vincent Medical Center, and Seton Medical Center (collectively, the "Obligated Group") in respect of the 2005 Revenue Bonds, 2015 Revenue Notes, and the 2017 Revenue Notes are collectively referred to as the "MTI Obligations."

(2) Wells Fargo as the bond indenture trustee under the bond indentures relating to the 2005 Revenue Bonds (the "2005 Revenue Bonds Trustee").

(3) U.S. Bank as the note indenture trustee and as the collateral agent under each of the note indentures relating to the 2015 Revenue Notes and the 2017 Revenue Notes, respectively (in such capacities the "2015 Notes Trustee" and the "2017 Notes Trustee").

(4) The MTI Obligations are jointly and severally secured by, *inter alia*, security interests granted to the Master Trustee in the prepetition accounts of, and mortgages on the principal real estate assets of, the members of the Obligated Group. The MTI Obligations are also the subject of an Amended and Restated Intercreditor Agreement dated December 1, 2017 (the "Intercreditor Agreement") pursuant to which the Master Trustee, the 2005 Revenue Bonds Trustee, the 2015 Notes Trustee, the 2017 Notes Trustee, and VHS agreed to the prior payment of the 2015 Revenue Notes and 2017 Revenue Notes under certain conditions and pursuant to grants of certain collateral liens and deeds of trust.

(5) The 2015 Notes Trustee and the 2017 Notes Trustee also have been granted prepetition first priority liens upon and security interests in the Obligated Group's accounts and by deeds of trust on the principal real estate assets and equipment of SLRH and SFMC. The 2017 Notes Trustee also has been granted a deed of trust, dated as of December 1, 2017, by Verity Holdings, LLC ("Holdings") in certain real property and equipment located in San Mateo, California to further secure the 2017 Revenue Notes.

(6) The MOB Lenders hold security interests in and liens upon certain real property owned by Holdings pursuant to deeds of trust on medical office buildings and related personal property assets, including accounts and rents, pursuant to security agreements entered into in connection therewith (the "MOB Financing"). The MTI Obligations, the Obligated Group's loan obligations with respect to the Working Capital Notes, and the MOB Financing are each referred to herein as a "Prepetition Secured Obligation;" the prepetition interests (including the liens and security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are each referred to herein as such Prepetition Secured Creditor's "Prepetition Lien."

(7) Certain of the collateral securing the MTI Obligations and the MOB Financing has been sold by the Debtors pursuant to orders approving such sales entered by the

Bankruptcy Court, with certain of the Sales Proceeds (as defined in the Final DIP Order)[3] either being held in the Escrow Deposit Accounts (as defined in the Final DIP Order) as required by the Final DIP Order or utilized pursuant to the Cash Collateral Stipulations (as defined below). As of the date of this Agreement, the Obligated Parties have closed sales of collateral pursuant to the SCC Sale Order[4] and the St. Vincent Sale Order.[5] The Obligated Parties have been authorized to sell, but have not yet consummated the sale of, assets constituting collateral securing the MTI Obligations pursuant to the St. Francis Sale Order[6] and the Seton Sale Order.[7]

D. **The DIP Financing.** On the Petition Date, the Debtors filed the *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* (the "DIP Financing Motion"). Pursuant to the DIP Financing Motion, the Debtors sought, among other things, entry of an order authorizing the Debtors to enter into a senior secured, superpriority debtor in possession financing facility (the "DIP Facility") with Ally Bank, a subsidiary of Ally Financial, Inc. under the Debtors In Possession Revolving Credit Agreement, dated as of September 7, 2018 (as amended, supplemented, or otherwise modified and in effect from time to time, and, together with all other agreements, documents, notes certificates, and instruments executed and/or delivered with, to or in favor of the DIP Lender, the "DIP

[3] The "Final DIP Order" refers to the *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief*, dated October 4, 2018 [Docket No. 409].

[4] The "SCC Sale Order" refers to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief*, dated December 27, 2018 [Docket No. 1153].

[5] The "St. Vincent Sale Order" refers to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to the Chan Soon-Shiong Family Foundation or Its Designee(s) Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and (C) Granting Related Relief*, dated April 10, 2020 [Docket No. 4530].

[6] The "St. Francis Sale Order" refers to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Prime Healthcare Services, Inc. Pursuant to the APA Attached Hereto Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and (C) Granting Related Relief*, dated April 9, 2020 [Docket No. 4511].

[7] The "Seton Sale Order" refers to that certain *Order Granting Debtors' Motion to Approve Terms and Conditions of A Private Sale of Certain of the Debtors' Assets Related to Seton Medical Center to AHMC Healthcare Inc.*, dated April 23, 2020 [Docket No. 4634].

Financing"). On October 4, 2018, the Court entered the Final DIP Order granting the DIP Financing Motion on a final basis.

E. **The Challenge Rights.** Paragraph 5(e) of the Final DIP Order granted the Committee standing and authority to challenge the validity, enforceability and amount of the Prepetition Secured Obligation and the Prepetition Liens (subject to the limitations set forth in the Final DIP Order, a "Challenge"). *See* Final DIP Order at ¶ 5(e). Paragraph 5(e) of the Final DIP Order further provided that Prepetition Collateral, VMF Collateral, or their proceeds could not be used to investigate or prosecute Challenge claims against the Prepetition Secured Creditors; provided, however, that the Committee was authorized to investigate the existence of such Challenge claims and have allowed fees paid from the Prepetition Collateral or VMF Collateral and the proceeds of the DIP Facility up to the amount of $250,000, as set forth more fully in the Final DIP Order (the "Investigation Budget") and the Debtors' reservations of rights [Docket Nos. 3896, 4287]. *See id.*

F. **The U.S. Bank Adversary Proceeding.** On June 13, 2019, the Committee filed a *Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 1] against U.S. Bank, as defendant, which initiated an adversary proceeding before the Bankruptcy Court captioned *Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. v. U.S. Bank National Association*, Adv. Case No. 2:19-ap-01165-ER (Bankr. C.D. Cal.) (the "U.S. Bank Adversary Proceeding"). On September 11, 2019, the Committee filed the *First Amended Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 30]. On September 30, 2019, U.S. Bank filed a motion [Adv. Docket No. 39] to dismiss the amended complaint. The motion to dismiss is fully briefed and the hearing thereon has been held in abeyance by order [Adv. Docket No. 53] of the Bankruptcy Court pending a request of any party to the U.S. Bank Adversary Proceeding or further order of the Bankruptcy Court.

G. **The UMB Bank Adversary Proceeding.** On June 13, 2019, the Committee filed a *Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 1] against UMB Bank, as defendant, which initiated an adversary proceeding before the Bankruptcy Court captioned *Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al. v. UMB Bank National Association*, Adv. Case No. 2:19-ap-01166-ER (Bankr. C.D. Cal.) (the "UMB Bank Adversary Proceeding" and, together with the U.S. Bank Adversary Proceeding, the "Adversary Proceedings"). On September 11, 2019, the Committee filed the *First Amended Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests* [Adv. Docket No. 28]. On September 30, 2019, UMB Bank filed a motion [Adv. Docket No. 37] to dismiss the amended complaint. The motion to dismiss is fully briefed and the hearing thereon has been held in abeyance by order [Adv. Docket No. 53] of the Bankruptcy Court pending a request of any party to the UMB Bank Adversary Proceeding or further order of the Bankruptcy Court.

H. **The MOB Lenders Challenge Deadline.** The Bankruptcy Court has approved stipulations [Docket Nos. 1045, 1047, 1248, 1249, 1309, 1310, 1389, 1390, 1626, 1627, 1944, 1945, 2363, 2364, 2484, 2485, 2548, 2549, 2582, 2583, 2610, 2611, 3014, 3015, 3209, 3210, 3543, 3544, 3770, 3771, 3904, 3905, 3966, 3967, 4110, 4111, 4288, 4289, 4589, 4590, 4739, 4740, 4903, 4904, 5126, 5127] (the "Challenge Stipulations") continuing the deadline for the

Committee to file a Challenge (the "Challenge Deadline") with respect to the MOB Lenders. The current deadline for the Committee to file such Challenge is August 31, 2020. *See* Docket Nos. 5136, 5138.

I. **The Cash Collateral Stipulations.** On August 28, 2019, the Debtors filed the *Debtors' Notice of Motion and Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash Collateral and (B) Granting Adequate Protection to Prepetition Secured Creditors* [Docket No. 2962] (as modified by Docket No. 2968, the "Cash Collateral Motion"). As set forth more fully in the Cash Collateral Motion, the Debtors sought, pursuant to the terms of a consensual proposed order (the "Cash Collateral Agreement"), authority to, among other things, (i) continue use of "Escrowed Cash Collateral" (as defined in the Cash Collateral Agreement), (ii) grant liens on postpetition accounts and inventory as adequate protection to the Prepetition Secured Creditors, and (iii) pay off the DIP Financing. On September 6, 2019, the Court entered the *Final Order (A) Authorizing Continued Use of Cash Collateral, (B) Granting Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Docket No. 3022] (the "Supplemental Cash Collateral Order") granting the Cash Collateral Motion and approving the Cash Collateral Agreement on the terms set forth in the Supplemental Cash Collateral Order. The Bankruptcy Court has approved [Docket Nos. 3883, 4028, 4187, 4670, 5151] (together with the Supplemental Cash Collateral Order, the "Cash Collateral Orders") stipulations [Docket Nos. 3872, 4019, 4184, 4669, 5150] to amend the Supplemental Cash Collateral Order to, among other things, extend the Debtors' consensual use of cash collateral, subject to the terms of the Cash Collateral Orders. The Debtors are currently authorized to use cash collateral through September 6, 2020, subject to the terms of the Cash Collateral Orders. *See* Docket No. 5151.

J. **The Plan.** On June 16, 2020, the Debtors, the Prepetition Secured Creditors, and the Committee filed the *Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 4879] and a related disclosure statement [Docket No. 4880]. On July 2, 2020, the Debtors, the Prepetition Secured Creditors, and the Committee filed the *Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket No. 4993] (as may be amended or modified, the "Plan")[8] and related disclosure statement [Docket No. 4994] (the "Disclosure Statement"). On July 2, 2020, the Bankruptcy Court entered an order [Docket No. 4997] that, among other things, approved the Disclosure Statement and set a hearing on confirmation of the Plan on August 12, 2020, at 10:00 a.m. (Pacific Time).

K. **The Plan Settlement.** This Agreement and the Plan set forth the final and complete terms of the Plan Settlement, the principle terms of which appear in the Plan and are described in the Disclosure Statement, whereby the Parties have agreed, among other things, to resolve all issues and disputes among the Parties, and to obtain the support of the Parties for the prompt, consensual confirmation of the Plan. *See* Plan § 7.1(a) and Disclosure Statement Article VII (B)(1).

[8] Unless otherwise defined herein, all capitalized terms in shall have the definitions set forth in the Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby stipulate and agree to become bound by the terms of this Agreement and the provisions set forth herein as follows:

1. **Recitals.** The Recitals as set forth above are true and correct and are incorporated herein by reference and made a part of this Agreement in all respects.

2. **Agreement to Support Plan.** The Parties agree to support the Plan, including the filing of pleadings in support of the Plan, if necessary, and entry of an order confirming the Plan, provided the Plan contains, and the Bankruptcy Court authorizes and approves, by entry of the Confirmation Order, the provisions described herein and the Plan providing (i) for distributions on account of, and the satisfaction of, the Secured 2017 Revenue Notes Claims, Secured 2015 Revenue Notes Claims, Secured 2005 Revenue Bond Claims, Secured MOB I Financing Claims, Secured MOB II Financing Claims, General Unsecured Claims, and Administrative Claims, each in the manner described herein and (ii) the Parties the benefits of the Plan releases, exculpation, and injunction provisions, each as set forth in the Plan. The Parties agree to provide the support of the Plan and Confirmation Order provided in this section, whether or not the Plan or Confirmation Order are modified after the date of this Agreement; provided that such modifications do not constitute material modifications to the Plan or this Agreement.

3. **Treatment of Secured 2017 Revenue Notes Claims.** Holders of Secured 2017 Revenue Notes Claims shall receive the treatment set forth in the Plan for holders of Class 2 Secured 2017 Revenue Notes Claims, including, but not limited to, the following:

a. *Treatment.* The Secured 2017 Revenue Notes Claims shall be paid in cash on the Effective Date by the Debtors to the 2017 Notes Trustee for distribution in accordance with the 2017 Revenue Notes Indentures in an amount equal to 100% of a single Allowed Claim in the aggregate amount of $42,000,000, plus (i) any accrued, but unpaid postpetition interest, if any, at the rate specified in the 2017 Revenue Note Indentures, excluding any interest at a default rate, any make whole premium, any applicable redemption or other premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2017 Notes Trustee and the Master Trustee pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date, less any amounts held by the 2017 Notes Trustee in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2017 Revenue Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2017 Notes Trustee in accordance with the 2017 Revenue Notes Indenture.

b. *Subordination.* Following receipt of the distribution provided in section 4.3(b) of the Plan and described in subsection (a) above, all rights held by the 2017 Revenue Bond Trustee and/or the Master Trustee under the Intercreditor Agreement shall be deemed satisfied, waived or released by the treatment provided in the Plan Settlement and the Plan.

4. **Treatment of Secured 2015 Revenue Notes Claims.** Holders of Secured 2015 Revenue Notes Claims shall receive the treatment set forth in the Plan for holders of Class 3 Secured 2015 Revenue Notes Claims, including, but not limited to, the following:

a. *Treatment.* The Secured 2015 Revenue Notes Claims shall be paid in cash on the Effective Date by the Debtors to the 2015 Notes Trustee for distribution in accordance with the 2015 Revenue Notes Indentures in an amount equal to 100% of a single Allowed Claim in the aggregate amount of $160,000,000, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2015 Revenue Note Indentures for each of 2015 Revenue Notes Series A, B, C and D, excluding any interest at a default rate, or any applicable redemption or other premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2015 Notes Trustee and the Master Trustee, pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date, less any amounts held by the 2015 Notes Trustee on account of the 2015 Revenue Notes in a (x) principal or revenue account, (y) debt service or redemption reserve, or (z) an escrow or expense reserve account. No beneficial Holder of any Secured 2015 Revenue Notes Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such holder by the 2015 Notes Trustee.

b. *Subordination.* All rights held by 2015 Revenue Bond Trustee and/or the Master Trustee under the Intercreditor Agreement shall be deemed satisfied, waived or released by the treatment provided in the Plan Settlement and the Plan.

5. **Treatment of Secured 2005 Revenue Bond Claims.** Holders of Secured 2005 Revenue Bond Claims shall receive the treatment set forth in the Plan for holders of Class 4 Secured 2005 Revenue Bond Claims, including, but not limited to, the following:

a. *Treatment.* The Secured 2005 Revenue Bond Claims shall be treated as a single Allowed Claim in the aggregate amount of $259,445,000 plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2005 Revenue Bond Indentures through and including the Effective Date, excluding any interest at the default rate or the Tax Rate (as defined in the Plan), or any applicable redemption or other premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2005 Revenue Bonds Trustee and the Master Trustee pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date. The Secured 2005 Revenue Bond Claims shall be paid and satisfied as follows: (i) an amount equal to the Initial Secured 2005 Revenue Bonds Claims Payment plus (a) accrued, but unpaid postpetition interest, if any, at the rate specified in the 2005 Revenue Bonds Indentures through and including the Effective Date, excluding any interest at the default rate or the Tax Rate, or any applicable redemption or other premium, and (b) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of the 2005 Revenue Bonds Trustee and the Master Trustee pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date, shall be paid in cash by the Debtors to the 2005 Revenue Bonds Trustee on the Effective Date. In addition, (x) any amounts held by the 2005 Revenue Bonds Trustee in a (1) principal or revenue account, (2) debt service or redemption reserve, or (3) an escrow or expense reserve account shall be applied against the Secured 2005 Revenue Bond Claim, and (y) the 2005 Revenue Bonds Trustee shall become the sole Trust Beneficiary and holder of all of the First Priority Trust Beneficial Interests in the amount of the 2005 Revenue Bonds Diminution Claim, including interest accruing after the Effective Date at the non-default rate

provided for in the 2005 Revenue Bonds Indentures. The foregoing payments and distributions shall be in full and final satisfaction of the Secured 2005 Revenue Bond Claims as a single Allowed Claim. Notwithstanding distribution of First Priority Trust Beneficial Interests on account of the 2005 Revenue Bonds Diminution Claim, the 2005 Revenue Bonds Trustee or the Master Trustee shall be entitled to retain and apply Adequate Protection Payments received during the course of these Cases on or on behalf of the 2005 Secured Revenue Bonds in the manner provided by the relevant indenture. No beneficial Holder of any Secured Series A, G and H Revenue Bonds Claims shall be entitled to receive any distribution pursuant to the Plan, except as may be remitted to such Holder by the 2005 Revenue Bonds Trustee.

b. *Subordination.* All rights held by 2005 Revenue Bonds Trustee and/or the Master Trustee under the Intercreditor Agreement shall be deemed satisfied, waived, or released by the treatment provided in the Plan Settlement and the Plan.

6. **Treatment of Secured MOB I Financing Claims.** Holders of Secured MOB I Financing Claims shall receive the treatment set forth in the Plan for holders of Class 5 Secured MOB I Financing Claims, including, but not limited to, the following:

a. *Treatment.* The Secured MOB I Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of $46,363,095.90, plus (i) accrued but unpaid postpetition interest, if any, at the rate specified in the MOB I Loan Agreement, excluding any interest at the default rate, or make whole premium, and (ii) any accrued, but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing LLC, pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date.

7. **Treatment of Secured MOB II Financing Claims.** Holders of Secured MOB II Financing Claims shall receive the treatment set forth in the Plan for holders of Class 6 Secured MOB II Financing Claims, including, but not limited to, the following:

a. *Treatment.* The Secured MOB II Financing Claims shall be paid in cash on the Effective Date by the Debtors in an amount equal to 100% of a single Allowed Claim in the aggregate amount of $20,061,919.48, plus (i) accrued, but unpaid postpetition interest, if any, at the rate specified in the MOB II Loan Agreements, excluding any interest at the default rate, or make whole premium, and (ii) any accrued but unpaid reasonable, necessary out-of-pocket fees and expenses of Verity MOB Financing II LLC, pursuant to the Final DIP Order and Cash Collateral Orders through and including the Effective Date.

8. **Treatment of Allowed General Unsecured Claims.** Holders of Allowed General Unsecured Claims shall receive the treatment set forth in the Plan for holders of Class 8 General Unsecured Claims, including, but not limited to, the following:

a. *Treatment.* As soon as practicable after the Effective Date or as soon thereafter as the claim shall have become an Allowed Claim, each holder of an Allowed General Unsecured Claim shall receive a Second Priority Trust Beneficial Interest and become a Trust Beneficiary in full and final satisfaction of its Allowed Class 8 Claim, except to the extent that

such Holder agrees (a) to a less favorable treatment of such Claim, or (b) such Claim has been paid before the Effective Date.

9. **Treatment of Administrative Claims.** The Parties agree that, if all conditions precedent set forth in the Plan to the occurrence of the Effective Date of the Plan are satisfied, on the Effective Date, the Debtors shall pay, or reserve for, all Allowed and allowable Administrative Claims not otherwise paid in the ordinary course of the Debtors' operations, as set forth more fully in the Plan, notwithstanding that, absent this Agreement and the Plan, such Administrative Claims would not otherwise be entitled to any payment absent the prior payment in full of the Secured 2005 Revenue Bond Claims.

10. **Dismissal of the Adversary Proceedings with Prejudice.** The Parties agree that, if all conditions precedent set forth in the Plan to the occurrence of the Effective Date of the Plan are satisfied, on the Effective Date, or as soon thereafter as is reasonably practicable, the Committee shall dismiss the Adversary Proceedings with prejudice and all further rights of the Committee with respect to the claims raised, or which could have been raised against the defendants in the Adversary Proceedings shall be waived, released, and terminated with prejudice pursuant to the mutual releases set forth more fully herein.

11. **Termination of the Challenge Stipulations.** Any outstanding continuance or extension of the Challenge Deadline with respect to the MOB Lenders or other agreement tolling the Committee's right to pursue claims against the MOB Lenders pursuant to the Final DIP Order and/or the Cash Collateral Orders shall be terminated and all further rights of the Committee with respect to such claims shall be waived, released, and terminated with prejudice pursuant to the mutual releases set forth more fully herein.

12. **Waiver of Investigation Budget Objections.** The Parties agree that, if all conditions precedent set forth in the Plan to the occurrence of the Effective Date of the Plan are satisfied, on the Effective Date, the Debtors and the Prepetition Secured Creditors shall waive any objection to the fees and expenses incurred by the Committee's advisors which exceed the limitations for investigating and prosecuting claims against the Prepetition Secured Creditors as set forth in the Final DIP Order, the Cash Collateral Orders, the related budgets, and as set forth more fully in the Debtors' reservations of rights [Docket Nos. 3896, 4287] and all further rights of the Debtors and the Prepetition Secured Creditors with respect to such objections shall be waived, released, and terminated with prejudice pursuant to the mutual releases set forth more fully herein. Notwithstanding the foregoing, nothing herein shall be deemed a waiver of the rights of any party to object to the reasonableness of fees and/or expenses of the Committee.

13. **Confirmation Order Findings.** The Confirmation Order shall include, without limitation, the following findings of fact and conclusions of law:

a. the Prepetition Secured Creditors were oversecured as of the Petition Date and are entitled to retain Adequate Protection Payments as allowed postpetition interest and fees under § 506(a);

b. the amount of the Prepetition Replacement Lien (as defined in the Final DIP Order and the Cash Collateral Orders) that may be asserted by the Master Trustee and the 2005 Revenue Bonds Trustee is equal to or greater than the 2005 Revenue Bonds Diminution Claim;

c. the Secured 2005 Revenue Bond Claims, including the 2005 Revenue Bonds Diminution Claim, constitute an Allowed Secured Claim for all purposes under the Plan and the Liquidating Trust Agreement, and on and after the Effective Date shall not be subject to any defense, reduction, setoff or counterclaim, including without limitation, pursuant to any claims under §§ 506(c) and 552(b);

d. the Master Trustee and the 2005 Revenue Bonds Trustee are authorized to enter into the Plan Settlement on behalf of the holders of the Secured 2005 Revenue Bond Claims and such Trustees have properly exercised their rights, powers and discretion pursuant to the 2005 Revenue Bonds Indenture and applicable law in entering into the Plan Settlement, which shall bind the Master Trustee, the 2005 Revenue Bonds Trustee, and all Holders of the Secured 2005 Revenue Bond Claims; and

e. the Prepetition Secured Creditors and the Committee are Released Parties under the Plan and are to be granted the benefit of the releases, injunctions, and exculpations set forth in the Plan pursuant to § 1123(b)(3)(A) and the Plan Settlement.

14. **9019 Order.** The Debtors shall seek an order of the Bankruptcy Court approving this Agreement pursuant to Rule 9019 in conjunction with confirmation of the Plan, which confirmation order shall provide, among other things, as follows:

a. **Settlement Release.** Except as otherwise expressly provided in the Plan or expressly agreed by the Parties in writing, upon the occurrence of the Effective Date, each Holder of a Claim against the Debtors shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Prepetition Secured Creditors or the Committee arising from or related to the pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature of the Prepetition Secured Creditors or the Committee, and their respective members, directors, officers, agents, attorneys, advisors or employees.

b. **Settlement Injunction.** Except as otherwise expressly provided in the Plan or expressly agreed by the Parties in writing, upon the occurrence of the Effective Date, each Holder of a Claim against the Debtors shall be permanently enjoined on and after the Effective Date from taking any action in furtherance of all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever, against the Prepetition Secured Creditors or the Committee arising from or related to the pre- and/or post-petition actions, omissions or liabilities, transaction, occurrence, or other activity of any nature of the Prepetition Secured Creditors or the Committee, and their respective members, directors, officers, agents, attorneys, advisors or employees.

15. **Mutual Releases.** Upon the occurrence of the Effective Date and the distributions required to be made on such date under the Plan, except as expressly provided in the Plan or otherwise agreed by the Parties in writing, the Parties shall, and hereby do, fully, finally,

unconditionally, irrevocably and completely release and forever discharge each other and each of their predecessors, successors (including, without limitation, any chapter 11 or chapter 7 trustee of the Debtors or their estates), assigns, affiliates, subsidiaries, parents, partners, constituents, officers, directors, employees, attorneys and agents (past, present or future) and each of their respective heirs, successors, and assigns, of and from any and all claims (including, but not limited to any claims made or which could have been made against the defendants in the Adversary Proceedings, any Challenge brought or which could have been brought, or any objection to the fees and expenses incurred by the Committee's advisors, as set forth more fully in Paragraphs 10 through 12 hereof), causes of action, litigation claims, avoidance actions (including those that may arise under Chapter 5 of the Bankruptcy Code) and any other debts, obligations, rights, suits, damages, actions, remedies, judgments and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, in law or at equity, whether for tort, contract or otherwise, based in whole or in part upon any act or omission, transaction, event or other occurrence or circumstance existing, whether arising from or in any way related to the Debtors, their assets or property, the Chapter 11 Cases, or any aspect thereof; provided, that nothing in this Agreement shall release any Party from its obligations under the Plan, the Liquidating Trust Agreement, or this Agreement. The releases set forth herein were bargained for separately and are entered into freely and voluntarily by the Parties.

16. **Section 1542.** Each Party acknowledges that it is familiar with Section 1542 of the California Civil Code, which states 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.

All rights under Section 1542 of the California Civil Code, or any analogous state or federal law, are hereby expressly WAIVED and RELINQUISHED by each Party. In connection with such waiver and relinquishment, each of the Parties hereby acknowledges and understands that it is executing and delivering this Agreement with full knowledge of any and all rights which such Party may have with respect to the claims resolved hereby.

17. **Conditions Precedent.** This Agreement shall be immediately effective upon its approval by the Bankruptcy Court, the occurrence of the Effective Date, and the distributions required to be paid on the Effective Date; provided that (a) the order approving this Agreement is not subject to a stay as of the Effective Date, (b) the Confirmation Order is not subject to a stay as of the Effective Date, and (c) the Effective Date occurs on or before September 5, 2020.

18. **Support of Agreement.** Approval of this Agreement will be sought by motion of the Debtors pursuant to Rule 9019 and affirmatively supported by the Prepetition Secured Creditors and the Committee.

19. Miscellaneous.

a. **One Writing/Integration.** This Agreement constitutes the full, complete, and entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes any and all prior oral and written understandings, agreements, and arrangements between them, whether oral or written, express or implied, including, but not limited to any prior settlement agreement(s). There are no other agreements, covenants, promises, or arrangements between or among the Parties other than those set forth herein. There is no other consideration for this Agreement other than the consideration set forth in this Agreement.

b. **Jurisdiction.** Any dispute concerning the terms and interpretation of this Agreement shall be resolved by the Bankruptcy Court.

c. **Reservation of Rights.** The Parties reserve all rights and defenses provided to them under the Bankruptcy Code except as otherwise stated herein.

d. **Amendment, Modification, Waiver.** This Agreement may be amended, altered, modified, or waived, in whole or in part, only in a writing executed by the Parties to this Agreement. This Agreement may not be orally amended, altered, modified, or waived, in whole or in part. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach of any other covenant, duty, agreement, or condition.

e. **Counterparts.** This Agreement may be executed in one or more original counterparts, all of which together shall constitute one and the same instrument.

f. **Interpretation.** In the event of any ambiguity or question of intent or interpretation of this Agreement, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

g. **No Third Party Beneficiaries.** Except as may be specifically set forth in this Agreement, nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party, nor give any third persons any right of subrogation or action against any Party.

h. **Authority.** By executing below, each Party represents that it has the requisite authority to enter into and implement all terms of this Agreement.

i. **Waiver of Jury Trial.** Each Party irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement, the terms hereof, or the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized representatives as of the Agreement Date set forth above.

DENTONS US LLP

By: _____

Samuel R. Maizel
Tania M. Moyron
Claude D. Montgomery
Nicholas A. Koffroth

Counsel to the *Debtors and Debtors In Possession*

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

By: _____

Paul J. Ricotta
Daniel S. Bleck

Counsel to *UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo Bank, National Association, as Indenture Trustee*

MCDERMOTT WILL & EMERY LLP.

By: _____

Nathan F. Coco
Megan M. Preusker

Counsel to *U.S. Bank National Association solely in its capacity, as the note indenture trustee and as the collateral agent under the note indenture relating to the 2015 Revenue Notes*

MASLON LLP.

By: _____

Clark T. Whitmore
Jason Reed

Counsel to *U.S. Bank National Association solely in its capacity, as the note indenture trustee and as the collateral agent under the note indenture relating to the 2017 Revenue Notes*

JONES DAY

By: _____

Bruce S. Bennett
Benjamin Rosenblum
Peter S. Saba

Counsel to *Verity MOB Financing, LLC* and *Verity MOB Financing II, LLC*

MILBANK LLP

By: _____

Gregory A. Bray
Mark Shinderman
James C. Behrens

Counsel to the *Official Committee of Unsecured Creditors*

Exhibit C

Section 15.3 Reserves

In re Verity Health System of CA, Inc., et. al.
Estate Administrative Claim Reserve Pursuant to §15.3 of the Second Amended Ch. 11 Joint Plan of Liquidation
Illustrative Calculation as of: August 6, 2020

$ in 000's

FN		Administrative Claim Amount Asserted	Amounts Reserved For Or Paid At PD*	Docket No.
	Filed Administrative Claims			
	Settled Administrative Claims			
1)	California Nurses Association	SETTLED	SETTLED	#3239
1)	National Labor Relations Board, Region 21	SETTLED	SETTLED	#5089
	Pension Benefit Guaranty Corporation	SETTLED	SETTLED	#3287
	Seoul Medical Group, Inc.	SETTLED	SETTLED	#3301, #5263, #5273
2)	Smith & Nephew, Inc.	SETTLED	SETTLED	#3259
3)	**Settled Claims Reserve**	**n/a**	**$ (5,250)**	
4)	**Ordinary Course Creditors (OCC)**			
	3M Corporation	$ (996)	$ (996)	#3199
	Alcon Vision, LLC	UNLIQUIDATED	$ (1)	#5237
	Bausch Health US, LLC	$ (3)	$ (3)	#5236
	Bayer HealthCare LLC	$ (17)	$ (17)	#3302
	Becton Dickinson and Company	$ (2)	$ (2)	#3321
	Bio-Medical Applications of California, Inc. and Spectra Laboratories	$ (26)	$ (26)	#5256
	California Physicians Service dba Blue Shield of California	$ (338)	$ (338)	#3242; #3243
	Emerald Textiles, LLC	$ (124)	$ (124)	#5235
	KForce, Inc.	$ (285)	$ (285)	#3304; #5243; #5244
	McKesson Technologies, Inc. n/k/a Change Healthcare Technologies,	$ (395)	$ (395)	#3244; #5211
5)	MedImpact Healthcare Systems, Inc.	$ (860)	$ (860)	#3147
	Messiahic Inc., a California Corporation d/b/a Payjunction	$ (25)	$ (25)	#3016
	Microsoft Corporation, a Washington Corporation, and its Subsidiary, Microsoft Licensing, GP	$ (1,855)	$ (1,855)	#3221; #5219
	Parallon Revenue Cycle Services, Inc. f/k/a The Outsource Group, Inc.	$ (24)	$ (24)	#3071; #5201
	Premier, Inc. for Itself and its Subsidiaries	UNLIQUIDATED	$ (200)	#3246; #5257
	RightSourcing, Inc.	$ (949)	$ (949)	#5251
	US Foods, Inc.	$ (42)	$ (52)	#3235
	Varian Medical Systems, Inc.	$ (2)	$ (2)	#3206
	Payor Claimants			
	Aetna Life Insurance Company and its Affiliated Entities	$ (163)	$ (163)	#3272; #5163
	Cigna Healthcare of California, Inc., Cigna Health and Life Insurance Company, and Life Insurance Company of North America	$ (899)	$ (899)	#3300; #5155
	Health Net of California, Inc.	$ (145)	$ (145)	Various
	Health Net, LLC	$ (264)	$ (264)	Various
	Health Plan of San Mateo	$ (500)	$ (500)	#5210
	Humana Insurance Company and Humana Health Plan, Inc	$ (299)	$ (299)	#5262
	SCAN Health Plan, a California Nonprofit Public Benefit Corporation	$ (19)	$ (19)	#3299; #5255
	UnitedHealthcare Insurance Company	$ (353)	$ (353)	#3216; #5223
	Union Claimants			
6)	International Federation of Professional and Technical Engineers, Local 20 on Behalf of Members	$ (122)	$ (149)	#3310
7)	Service Employees International Union, United Healthcare Workers-West	$ (18,097)	$ (8,218)	#3250; #3274
8)	United Nurses Associations of California/Union of Health Care Professionals	UNLIQUIDATED	$ (4,698)	#3298; #5253
	Other Claimants			
	Blue Shield of California Promise Health Plan f/k/a Care 1st Health Plan	$ (50)	$ (50)	Various
9)	California Department of Tax and Fee Administration	UNLIQUIDATED	$ (200)	#3219
	NantWorks, LLC	$ (164)	$ (164)	#5258
	SmithGroup, Inc.	$ (30)	$ (30)	#3234; #3241
10)	**Non-Disputed Administrative Claims Reserve**	**$ (27,049)**	**$ (22,306)**	
	Disputed Administrative Litigation Claimants			
	Alignment Health Plan	$ (121)	$ -	#5193
	Conifer Health Solutions, LLC	UNLIQUIDATED	$ (300)	#3309
	DaVita Inc.	$ (1,825)	$ (500)	#4671; #5227
	Golden Gate Perfusion Inc.	$ (728)	$ (364)	#5215
11)	GRM Information Management Services Inc.	UNLIQUIDATED	$ (2,000)	#5259
	QuadraMed Affinity Corporation and Picis Clinical Solutions Inc.	$ (2,412)	$ (412)	#5209
12)	Retirement Plan for Hospital Employees	$ (12,298)	$ (2,363)	#3296; #5252
13)	St. Vincent IPA Medical Corporation	$ (2,514)	$ (150)	#4701
14)	Strategic Global Management, Inc.	$ (45,200)	$ (30,000)	#5197
15)	Toyon Associates, Inc.	$ (12,015)	$ (250)	#3286; #5230; #5242
16)	**Disputed Administrative Claims Reserve**	**$ (77,114)**	**$ (36,339)**	
	Total Filed Administrative Claims	**$ (104,163)**	**$ (63,895)**	
17)	**Less: Total amount either already paid or anticipated to be paid prior to PD *(OCC, Union)***		**(20,070)**	
	Total Reserve for Filed Administrative Claims Upon PD *(Including SGM Deposit)*		**$ (43,825)**	

In re Verity Health System of CA, Inc., et. al.
Estate Administrative Claim Reserve Pursuant to §15.3 of the Second Amended Ch. 11 Joint Plan of Liquidation
Illustrative Calculation as of: August 6, 2020

$ in 000's

FN		Amounts Paid Or Reserved For At PD
	Administrative Expense Reserves for Ordinary Course Creditors, Excepted from Bar Date Requirement	
	Hospital expenses	
	Employee benefits - medical care claims	$ (5,779)
	Payroll Other / Registry	(900)
	Medical Fees	(1,250)
	Utilities	(184)
	Supplies	(1,713)
	Rental & Leases	(441)
	Purchased Services	(4,442)
	Capitation OON payments:	
18)	SFMC Applecare	(7,495)
	SFMC Angeles IPA	(1,421)
	SFMC HCLA MPM	(771)
	SFMC OMNICARE	(1,128)
	SFMC ALL CARE MPM	(71)
	SVMC SVIPA	(364)
	MSO management fees	(731)
	Capitation risk pool settlements:	
19)	SFMC Applecare	(7,000)
	SFMC Angeles IPA	(724)
	SFMC OMNICARE	(662)
	SVMC SVIPA	(150)
	Add back: filed claim paid above	150
	Payor overpayments *(Not including claims filed)*	(1,800)
	Total administrative expense reserve for Ordinary Course Creditors	**$ (36,875)**
	Reserve for Filed Administrative Claims Upon PD from previous page *(Including SGM Deposit)*	**$ (43,825)**
	Administrative Claims Reserve pursuant to § 15.3 *(Including SGM Deposit)*	**$ (80,700)**

In re Verity Health System of CA, Inc., et. al.
Estate Administrative Claim Reserve Pursuant to §15.3 of the Second Amended Ch. 11 Joint Plan of Liquidation
Illustrative Calculation as of: August 6, 2020

$ in 000's

FOOTNOTES

* The term "PD" stands for Plan Effective Date.

1) The CNA settlement, which will be the subject of a 9019 motion, resolves the NLRB proceeding and any other pending administrative actions brought on behalf of SVMC registered nurses and grants CNA a single, allowed administrative expense claim of $2 million.

2) Smith & Nephew filed an administrative claim that was contingent upon the claimant's retrieval of equipment from Hospitals that were sold. The Debtors' understanding is that this equipment has been retrieved.

3) Amounts related to claims that have been settled are presented in the aggregate.

4) Ordinary course creditors are excepted from the administrative claim bar date notice requirement. Those ordinary course creditors who filed notices of administrative claims are shown here in the interest of completeness, but the Debtors have either already paid their specific claims or plan to pay their claims in the ordinary course, either prior to or upon the Plan Effective Date (PD). The Debtors intend to pay the administrative expenses of all other ordinary course creditors out of the reserves detailed on Page 3 of this schedule.

5) MedImpact Healthcare Systems is an OCC that provides ongoing services to Debtors in relation to the pharmacy benefits plan the Debtors offer in conjunction with their employee ERISA plans. MedImpact is paid in the normal course and the reserve shown is intended to reflect the average outstanding payables balance. OCCs that are similar to MedImpact are reserved for within the 'Employee benefits - medical care claims' section of Page 2.

6) Local 20 asserted claims on behalf of members related to PTO, ESL and severance. Reflected above as the reserved amount is the post-petition accrued PTO expected to be assumed by AHMC in the sale of Seton. Based on Verity's records, L20 member post-petition accrued ESL balances are $0 and all employees are expected to be hired by AHMC, obviating the requirement to pay severance.

7) SEIU asserted claims on behalf of members at all Verity Hospitals related to PTO and grievances unsettled at the time of filing, in October 2019. Reflected above as the reserved amount is i) the post-petition accrued PTO to be paid out upon the sale of St. Francis; ii) post-petition accrued PTO to be assumed by AHMC upon the sale of Seton; iii) PTO already paid in March 2019 to O'Connor and St. Louise employees in connection with the Santa Clara sale; iv) an estimate of post-petition accrued severance to be paid out to the minority of members who are not hired by the buyers of St. Francis and Seton; v) and the post-petition accrued portion of the members' full-time guarantee balances at St. Francis.

8) UNAC asserted claims on behalf of members related to PTO, severance and grievances unsettled at the time of filing, in October 2019. Reflected above as the reserved amount is i) the post-petition accrued PTO expected to be paid out upon the sale of SFMC; and ii) an estimate of post-petition accrued severance to be paid out to the minority of members who are not hired by the buyer of St. Francis.

9) The California Department of Tax and Fee Administration filed an administrative claim for sales and use tax on each anticipated Hospital sale as of October 2019. The Debtors do not dispute that an amount is owed and have reserved a sufficient estimate, based on the amended taxes assessed on the Santa Clara sales

10) The differential between the 'Asserted' column and the 'Reserved' column of the administrative claims subtotaled within the 'Non-Disputed' category is attributable primarily to the SEIU claim described above. $17.953 million of the SEIU claim is comprised of a calculation of total post-petition accrued PTO at every Verity Hospital and does not account for employees' usage of post-petition accrued PTO, resulting in a significant difference between the filed claim and the current balances of post-petition accrued PTO.

11) Settlement negotiations ongoing with GRM. Reserved for settlement.

12) Reflects settlement offer made to RPHE.

13) SVIPA reserve for settlement.

14) SGM's deposit is held by the Debtors in an escrowed deposit account. The amount of the reserve is discussed in the Confirmation Brief and in Peter Chadwick's Declaration.

15) The reserve for Toyon is discussed in the Confirmation Brief and in Peter Chadwick's Declaration.

16) The differential between the 'Asserted' column and the 'Reserved' column of the administrative claims subtotaled within the 'Disputed' category is discussed in the Confirmation Brief and in Peter Chadwick's Declaration.

17) Section 15.3 of the Plan provides that the administrative claims reserve shall be established in order to satisfy all administrative claims that have not been allowed as of the Effective Date and all allowed claims that will be paid after the Effective Date. However, to be comprehensive, the Debtors have included certain filed claims that are either expected to be paid prior to PD or already have been paid. Since these will be paid, they will not need to be reserved for post plan effective date.. All 'Reserved' amounts under the Ordinary Course Creditor and Union descriptions fall under this category.

18) Included within this reserve for out of network payments to providers for care rendered to St. Francis capitated members is all current and future amounts owed to Long Beach Memorial. Long Beach Memorial filed a claim (#5254) related to these services and the Debtors plan to satisfy this claim in the ordinary course.

19) On August 5th (the filing date of this exhibit), Applecare filed an administrative claim (#5367), which the Debtors are in the process of reviewing.

Exhibit D

Section 7.9 Reserves

In re Verity Health System of CA, Inc., et. al.
Estate Liquidating Trust Reserve Pursuant to §7.9 of the Second Amended Ch. 11 Joint Plan of Liquidation
Illustrative Calculation as of: August 6, 2020

$ in 000's

	§7.9 Estimated Liquidating Trust Reserves		
	Professional Claim Reserves		
	General professional fees, including OCPs		(46)
	Restructuring fees:		
	For June and prior fees		(3,642)
	For July, August and interim fees		(6,976)
	UST		(679)
	Total restructuring & OCP professionals	**$**	**(11,343)**
	Liquidating Trust (LT) & Estate Wind-Down Costs		
	Insurance-related costs:		
	Tail premiums	$	(1,508)
	Wind-down premiums		-
	Marillac funding		(4,250)
1)	SIR		(3,000)
	Liquidating trust - Initial funding		(3,500)
	Total Liquidating Trust & estate wind-down costs	**$**	**(12,258)**
	Liquidating Trust Reserve pursuant to §7.9	**$**	**(23,601)**
	Administrative Claims Reserve pursuant to § 15.3 *(Including SGM Deposit)*	**$**	**(80,700)**
2)	**§15.3 Administrative Claims Reserve, plus §7.9 Liquidating Trust Reserve**	**$**	**(104,301)**

FOOTNOTES

1) Within the Self-Insured Retention (SIR) reserve for EPL and D&O claims is included the filed Cynthia Sorto claim (#5205).

2) This amount corresponds to the $72 million of administrative expenses reflected within the Best Interest Test included in the Plan Disclosure Statement, filed on June 16, 2020, but also includes the escrowed SGM deposit and excludes KEIP-KERP to be paid upon or prior to Plan Effective Date.

Exhibit E

Health Net Correspondence

A

Health Net of California, Inc.
101 North Brand Blvd., 15th Floor
Glendale, CA 91203
www.healthnet.com

November 27, 2019

St. Francis Medical Center
Eleanor Ramirez, RN, PHN, BSN, MS
Interim President & CEO
3630 E. Imperial Hwy.
Lynwood, CA 90262

RE: Provider Participation Agreement between St. Francis Medical Center ("St. Francis") and Health Net of California, Inc., ("Health Net") effective May 1, 2008 ("Agreement")

Dear Ms. Ramirez:

I am following up from a recent telephone discussion between Verity Health's Chapter 11 bankruptcy counsel (Henry Kavane) and Health Net's Executive Counsel (Shelley Hubner). On St. Francis Medical Center ("St. Francis")'s behalf, Mr. Kavane proposed that the parties (St. Francis and Health Net)mutually consent to termination of the above-referenced capitation contract with respect to Health Net members assigned to All Care Medical Group ("All Care"), based on the membership's lack of use of the Hospital's services. This letter confirms that Health Net does not desire to pursue any such termination. (In earlier, August 30, 2019 correspondence to Dr. Schweitzer, I clarified that the Agreement is not subject to partial termination.)

Addendum A.3 of the Agreement sets forth the terms of the Medi-Cal Benefit Program, including the definition of a Medi-Cal Primary Hospital and the Compensation Provisions. Section B stipulates St. Francis's obligations, including, specifically, Compensation to Other Providers of Hospital Capitated Services at subsection B.3. The Agreement's Fifth Amendment, effective June 1, 2013, adds All Care, among other participating provider groups, to the Agreement.

As described to Ms. Hubner, the basis for Mr. Kavane's termination proposal is that St. Francis is not providing care to the Health Net members assigned to All Care. However, as clarified above, non-usage of St. Francis does not relieve St. Francis from satisfying its broader obligation under the Agreement. Addendum A.3, Medi-Cal Benefit Program, Section B, Compensation Provisions, Subsection 3, Compensation to Other Providers of Hospital Capitated Services, is unequivocal that St. Francis remains liable for payment of hospital services rendered to the relevant membership, regardless of whether said services are rendered at St. Francis or at another hospital.

Mr. Kavane acknowledged St. Francis's receipt of Health Net's monthly capitation payments on behalf of All Care Medical Group membership. The rates for those services are provided in Addendum A.3.1.a,

Medical Capitation Compensation Schedule – Applicable ONLY to Members Assigned to All Care Medical Group.

In closing, Health Net does not share St. Francis' interest in terminating of the Agreement with respect to Health Net members assigned to All Care. Rather, it has every expectation that St. Francis will honor the Agreement's obligations, including but not limited to those set forth above.

Sincerely,

Valentina T. Shabanian
Regional Health Plan Officer
Health Net

cc:
John Hall, Provider Network Management, Vice President
Meece Ghoraishy, Regional Network Director
Henry Kavane, Esq.

Exhibit F

Denial Order

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC.	CV 20-613 DSF
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Plaintiffs, v. KALI P. CHAUDHURI, M.D., et al., Defendants.	Order DENYING Motion to Dismiss (Dkt. No. 39)

Defendants Strategic Global Management, Inc. (SGM), Kali P. Chaudhuri, and various Chaudhuri-related entities have moved to dismiss the first amended complaint (FAC). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for August 10, 2020 is removed from the Court's calendar.

The adversarial action is brought by various debtors related to Verity Health System of California, Inc. (Verity) over fallout from the failed attempt to sell several hospitals to SGM. Verity brings breach of contract and fraud claims against the Defendants.

Defendants argue that all of Plaintiffs' claims require that Plaintiffs had satisfied the conditions in the asset purchase agreement (APA), and that Plaintiffs failed to satisfy §§ 8.6 and 8.7 of the APA. The FAC

alleges that the conditions precedent were satisfied. FAC ¶ 121. "In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed." Fed. R. Civ. P. 9(c). Defendants nonetheless argue that the claims should be dismissed because judicially noticeable materials from the Bankruptcy Court proceedings conclusively demonstrate that Plaintiffs did not, in fact, satisfy all of the conditions precedent. Assuming that this avenue of attack on the FAC is available under Rule 9(c), the Court is not convinced that the record conclusively demonstrates that Plaintiffs failed to satisfy §§ 8.6 and 8.7 of the APA.

Nor does the litigation privilege provide a justification for dismissing Plaintiffs' promissory fraud claim. Defendants cite Silberg v. Anderson, 50 Cal. 3d 205 (1990), for the proposition that "To be protected, the communications just need to 'have some connection or logical relation to the action.'" Mem. at 18. But Silberg explicitly applies the "usual four-part test" for application of the litigation privilege. Id. at 219.

> The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.

Id. at 212, 219-20.

Plaintiffs alleged that Defendants represented that SGM would consummate the purchase of the relevant hospital properties according to the terms in the APA, but SGM/Defendants had no intention of ever doing so.[1] The only connection between the transaction at issue and

[1] Defendants' strange claim that Plaintiffs did not allege fraudulent intent is contradicted by the most cursory examination of the FAC. See FAC ¶¶ 60, 115, 124, 129. The allegations that Defendants supposedly believe contradict fraudulent intent do no such thing. The allegations are just explanations for why Defendants allegedly believed that they would never have to comply

any litigation is that the hospitals were being sold by a Chapter 11 debtor under the supervision of a bankruptcy court and that the transaction would have to be approved by the bankruptcy court. There was no litigation between the parties at the time of the representations and no prospect of litigation. Defendants' assertion of the litigation privilege here would be possible only under a rule that communications related to any transaction requiring judicial approval would be privileged from suit. Defendants provide no authority for this incredibly broad proposition, and the Court sees no reason to adopt it.

Defendants move to dismiss the tortious breach of contract claim and the tortious breach of the implied covenant of good faith and fair dealing claim because Defendants argue that those claims do not exist under California law. This is not the case. The California Supreme Court has explicitly acknowledged the existence of these torts even outside of the insurance context. See Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 990 (2004). The appellate cases relied on by Defendants precede Robinson Helicopter. Defendants' attempt to categorize Robinson Helicopter as involving the economic loss rule misses the point because the economic loss rule is about when tort remedies can be sought for breaches of contract expectations. "The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." Id. at 988.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: August 4, 2020

Dale S. Fischer
United States District Judge

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with the fraudulent promise that they were making. See FAC ¶¶ 59, 78, and Preliminary Statement.

Exhibit G

Counterclaims MTD

SAMUEL R. MAIZEL (Bar No. 189301)
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Counsel to Plaintiffs and Chapter 11 Debtors and Debtors In Possession

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION - LOS ANGELES

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

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT DIALYSIS CENTER, INC., a California nonprofit public benefit corporation, and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, SETON MEDICAL CENTER, a California nonprofit public benefit corporation, and VERITY HOLDINGS, LLC, a California limited liability company,

Plaintiffs,

v.

KALI P. CHAUDHURI, M.D., an individual, STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation, KPC HEALTHCARE HOLDINGS, INC. a California Corporation KPC HEALTH PLAN HOLDINGS, INC. a California Corporation, KPC HEALTHCARE, INC. a Nevada Corporation, KPC GLOBAL MANAGEMENT, LLC, a California Limited Liability Company, and DOES 1 through 500,

Defendants.

Case No. 2:20-cv-00613-DSF

Hon. Dale S. Fischer

PLAINTIFFS' MOTION TO DISMISS DEFENDANT STRATEGIC GLOBAL MANAGEMENT'S COUNTERCLAIMS, OR IN THE ALTERNATIVE, TO STRIKE PORTIONS OF DEFENDANT STRATEGIC GLOBAL MANAGEMENT'S COUNTERCLAIMS

Date: August 31, 2020
Time: 1:30 p.m.
Place: Courtroom 7D
350 West 1st Street
Los Angeles, CA 90012

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

NOTICE OF MOTION AND MOTION

TO DEFENDANTS AND THEIR COUNSEL AND TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that on August 31, 2020 at 1:30 p.m. or as soon thereafter as counsel may be heard in the United States District Court for the Central District of California, located at First Street Courthouse, 350 W. 1st Street, Courtroom 7D, Los Angeles, California, Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, Verity Holdings, LLC, and the above-captioned debtors will and hereby do move to dismiss (in whole or in part) each count of Defendant Strategic Global Management, Inc.'s Counterclaims (the "Counterclaim"), as well as its claim for punitive damages, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a cognizable claim for relief.

In addition, and in the alternative, Plaintiffs move pursuant to Rule 12(f) of the Federal Rules of Civil Procedure to strike the portions of SGM's Counterclaim that seeks refund of the Deposit, including: page 2, lns. 9-10, 23-26; page 3, lns. 1-2; page 11, lns. 2-9; page 12, lns. 1-3; page 21, lns. 6-8; page 22, lns. 6-7, 13-14; page 23, lns. 17-19, 23-24; and page 25, ln. 14. In addition, Plaintiffs move to strike SGM's punitive damages allegations associated with SGM's conversion claim for the same reasons the conversion claim fails, and because the punitive damages request is improperly pleaded as a matter of law.

This motion is based upon this Notice, the following Memorandum of Points and Authorities, the concurrently-filed Request for Judicial Notice, all pleadings, records and documents on file herein, and such additional evidence and argument as may be properly introduced in support of the motion.

This motion is made following the conference of counsel pursuant to L.R.7-3, which took place on July 23, 2020, with subsequent emails among counsel.

Respectfully submitted,

Dated: July 31, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
SONIA R. MARTIN
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

By */s/ Sonia Martin*
Sonia Martin

Attorneys for Verity Health Systems of California, Inc., *et al.*

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TABLE OF AUTHORITIES

Page(s)

Cases

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Statutes

Rules and Regulations

Other Authorities

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SAN FRANCISCO, CALIFORNIA 94105
(415) 267-4000

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises from an asset purchase agreement (the "APA") for the sale of four hospitals to Defendant Strategic Global Management, Inc. ("SGM") under the auspices of a Bankruptcy Court order. Ultimately, SGM did not close the sale, and Plaintiffs terminated the APA. The Counterclaim alleges the APA requires Plaintiffs to refund SGM's $30 million deposit (the "Deposit"), and asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, conversion and violation of the California Unfair Practices Act, §§ 17000 *et seq.* (the "UCL"). The theory fails as a matter of law.

First, all of SGM's claims must be dismissed because, pursuant to the express terms of Section 1.2 of the APA, the Deposit was "non-refundable." The APA provides that SGM is entitled to a refund of the Deposit under only four triggering circumstances, *none* of which SGM alleges. SGM fails to allege that any of those circumstances occurred, and it fails to allege any basis for recovering the Deposit under the APA or any legal theory.

Second, all of SGM's claims must be dismissed because Plaintiffs *are under court order* not to release the Deposit. Specifically, the Bankruptcy Court's May 2, 2019 order approving the SGM Sale ordered that sale proceeds shall not be used for any purpose "except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court." *See* Plaintiffs' RJN, Ex. B. Declining to violate a court order does not breach the APA or its implied covenant of good faith and fair dealing. Nor does it supply a basis for conversion and unfair competition claims.

Third, SGM's conversion and unfair competition claims fail on additional grounds. The conversion claim is based on Debtors' supposed breach of the APA. But the economic loss rule bars a claimant from premising a conversion claim on a

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SAN FRANCISCO, CALIFORNIA 94105
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breach of contract. As for the unfair competition claim, the Counterclaim fails to allege "unfair" conduct under the standards set forth in applicable authority.

Finally, SGM fails to allege any basis on which it could recover punitive damages against Plaintiffs: the Counterclaim does not come close to alleging the type of fraudulent, malicious or oppressive conduct required for this unique remedy. Debtors have retained the Deposit based on clear language in the APA and pursuant to a court order preventing Debtors from releasing the Deposit. This is light years away from the types of facts that allow a claimant to plausibly seek punitive damages.

For the reasons fully described below, Plaintiffs respectfully request that the Court dismiss Counterclaims I [First Cause of Action - Breach of Contract] ("**Count I**") and II [Second Cause of Action - Breach of The Implied Covenant of Good Faith and Fair Dealing] ("**Count II**"), to the extent they are premised on purported breach of the APA for failure to refund SGM's $30 million deposit, and strike any allegations seeking the refund of the Deposit. In addition, Plaintiffs respectfully request that the Court dismiss SGM's Counterclaims III [Third Cause of Action - Conversion] ("**Count III**") and IV [Fourth Cause of Action - Violation of Cal. Bus. & Prof. Code § 17200] (("**Count IV**") in their entirety, including SGM's prayer for punitive damages.

II. FACTUAL BACKGROUND

A. The Bankruptcy And The Hospital Sale

On August 31, 2018, Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center (together with St Francis and St. Vincent, the "Plaintiff Hospitals"), and Verity Holdings, LLC, and the above-captioned debtors (collectively, the "Debtors" or "Plaintiffs") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which are currently administered before the Bankruptcy Court. *See* SGM Counterclaims ("Counterclaim"), Docket No. 41,

at ¶ 16. The Debtors' bankruptcy cases are the second largest hospital bankruptcy in U.S. history.

In January 2019, SGM executed an agreement to buy the Hospitals and their assets in exchange for (among other things) a cash payment of $610 million. *See* Counterclaim, ¶ 2. On January 8, 2019, SGM executed the APA, which is attached as an exhibit to the Plaintiffs' First Amended Complaint ("FAC"). *See* FAC, Ex. A; Counterclaim, ¶¶ 2, 17.

B. The Deposit And The Limited Circumstances For Its Refund

Pursuant to APA Section 1.2, SGM wired the $30 million Deposit into VHS's bank account. *See* Counterclaim, ¶ 18. APA section 1.2 states:

> The Deposit shall be *non-refundable in all events*, except as provided in Section 6.1(b) or Section 6.2, or in the event [SGM] *has terminated this Agreement* pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case [Plaintiffs] shall immediately return the Deposit to [SGM] with all interest earned thereon.
>
> FAC, Ex. A (emphasis added).

Accordingly, the Deposit is non-refundable except as provided in four sections of the APA. Specifically, Section 6.1(b)(2) of the APA requires the refund of the Deposit in the event the Hospitals were sold to an "overbidder" other than SGM:

> [I]n the event that an overbidder (and not the Purchaser) is the successful bidder for the purchase of the Assets (the '**Alternate Transaction**') and the Alternative Transaction is approved by the Bankruptcy Court, (a) the Deposit, and any interest earned thereon, shall be returned to Purchaser immediately upon the entry of such sale order[.]
>
> FAC, Ex. A.

Section 6.2 requires refund of the Deposit in the event the Bankruptcy Court's "Sale Order" approving the APA was appealed and a stay was imposed:

> In the event a stay is issued by any appellate court, including the United States District Court, which prevents the sale from closing, as scheduled, Purchaser shall have the right to terminate this Agreement if such stay is not vacated on or before 45 days from the date of the stay is

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> issued, and Purchaser shall be entitled to the prompt return of the Deposit and any interest earned thereon.
>
> FAC, Ex. A.

Section 9.1 of the APA delineates the following grounds on which the APA could be terminated, permitting a refund of the Deposit:

> 9.1 Termination. This Agreement may be terminated at any time prior to Closing:
>
> (a) by the mutual written consent of the parties;
>
> (b) by Sellers if a material breach of this Agreement has been committed by Purchaser and such breach has not been (i) waived in writing by Sellers or (ii) cured by Purchaser to the reasonable satisfaction of Sellers within fifteen (15) business days after service by Sellers upon Purchaser of a written notice which describes the nature of such breach;
>
> (c) by Purchaser if, in its sole and absolute discretion, it is not satisfied with either (i) the results of its due diligence examination of the Hospitals, or (ii) the contents of any schedule or exhibit that was not completed and attached to this Agreement, but which has been provided to Purchaser after the Signing Date, and Purchaser has notified Seller of its election to terminate the Agreement under this Section 9.1(c) on or prior to January 8, 2019 […];
>
> (d) by Purchaser if a material breach of this Agreement has been committed by Sellers and such breach has not been (i) waived in writing by Purchaser or (ii) cured by Sellers to the reasonable satisfaction of Purchaser within fifteen (15) business days after service by Purchaser upon Sellers of a written notice which describes the nature of such breach;
>
> (e) by Purchaser if satisfaction of any of the conditions in ARTICLE 8 has not occurred by December 31, 2019 or becomes impossible […].
>
> (f) by Sellers if satisfaction of any of the conditions in ARTICLE 7 has not occurred by December 31, 2019 or becomes impossible […];
>
> (g) by either Purchaser or Sellers if the Bankruptcy Court enters an order dismissing the Bankruptcy Cases or fails to approve the Sales Procedures Motion by the date specified in Section 6.1(b);

> (h) by Sellers if, in connection with the Bankruptcy Cases, any Seller accepts an Alternate Transaction and pays the Break-Up Fee;
>
> (i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019; or
>
> (j) by Purchaser if a force majeure event […].
>
> FAC, Ex. A.

Finally, Section 9.2 of the APA states that the Deposit must be refunded if the APA is terminated for any of the above reasons other than the Purchaser's default under Section 9.1(b):

> 9.2 Termination Consequences. If this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, *if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon.* Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement.
>
> FAC, Ex. A (emphasis added).

C. The Bankruptcy Court Orders Effectuating The Sale And Preventing Release Of The Deposit

On January 17, 2019, the Debtors filed a motion to approve, among other things, the form APA and related "stalking horse" protections and bidding procedures for the sale of the Hospitals, which the Court approved. *See* Plaintiffs' Request for Judicial Notice In Support of Motion to Dismiss SGM's Counterclaims ("Plaintiffs' RJN"), Ex. A. On May 2, 2019, the Court entered an order approving the sale to

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SGM (the "Sale Order"). *See* Plaintiffs' RJN, Ex. B. SGM filed a brief in support of entry of the Sale Order. *See* Plaintiffs' RJN, Ex. M. ("SGM respectfully requests that the Court grant the Sale/Bid Procedures Motion as submitted by the Debtor.")

The Sale Order required that all sale proceeds (including the SGM deposit) be held in Escrow Deposit Accounts pursuant to the terms and restrictions set forth in the order authorizing postpetition financing, use of cash collateral, liens, adequate protection, and other relief (the "Final DIP Order"), which were expressly incorporated into the Sale Order. *See* Plaintiffs' RJN, Ex. C. Pursuant to the Final DIP Order, the subsequent cash collateral orders entered in the bankruptcy proceedings, and the Sale Order, the Debtors cannot use sale proceeds held in Escrow Deposit Accounts without the consent of the Prepetition Secured Creditors or an order of the Court. *See* Plaintiffs' RJN Exs. D-H.

Specifically, the Final DIP Order required the Debtors to place "all proceeds of any sale or other this position of the Debtors' property" in "Escrow Deposit Accounts" subject to deposit account control agreements. Plaintiffs' RJN, Ex. C. Paragraph 4 of the Final DIP Order restricts the Debtors' authority to use or transfer funds held in the Escrow Deposit Accounts:

> [T]he Debtors shall not be permitted to use Cash Collateral of any of the Prepetition Secured Creditors held in any Escrow Deposit Account for any purpose without first obtaining the consent of the applicable Prepetition Secured Creditor or obtaining an order of the Court pursuant to Section 363 of the Bankruptcy Code after notice and a hearing. *Id.*

In addition, the DIP Agent was granted a first priority lien on the Escrow Deposit Account and all Sale Proceeds:

> As provided by the Interim Order, this Final Order and the DIP Credit Agreement, the DIP Liens *shall attach as first priority liens and security interests*, pursuant to section 364(d) of the Bankruptcy Code and the DIP Financing Agreements, to all proceeds of any sale or other disposition of the Debtors' property, including, without limitation, the Healthcare Facilities (as defined in the DIP Credit Agreement) and any other DIP Collateral (as defined below) (the "***Sale Proceeds***"). The Sale Proceeds

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> shall be held in escrow in one or more deposit accounts subject to a deposit account control agreement in favor of the DIP Agent (the "***Escrow Deposit Account***"). Any funds held in the Escrow Deposit Account shall not be commingled with any other funds of the selling Debtor, the Sale Proceeds of any other Debtor or otherwise.
>
> Plaintiffs' RJN, Ex. C. (emphasis in italics added)

The terms of the Final DIP Order were expressly incorporated into the Sale Order, which likewise provides that Sale Proceeds shall not be used for any purpose "except as provided in this Order, the DIP Credit Agreements or the Final DIP Order *without further order of this Court*":

> 13. The terms and conditions of the Final DIP Order shall apply with respect to the Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:
>
> (a) the Debtors shall direct SGM, pursuant to the terms of the APA, to remit all Sale Proceeds to the separate accounts opened in the name of each Debtor for the Sale Proceeds (each such hereafter referred to as "Escrow Deposit Account");
>
> [. . .]
>
> (c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, *no funds held in any Escrow Deposit Account shall be* (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) *used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or the Final DIP Order without further order of this Court,* after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee; and
>
> (d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order [concerning payment of cure amounts for assigned

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> contracts], and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon[.]
>
> Sale Order, Plaintiffs' RJN, Ex. B at ¶ 13 (emphasis added).

After the bankruptcy court entered the Sale Order, the Debtors obtained authority for the consensual use of cash collateral pursuant to a Supplemental Cash Collateral Order and subsequent amendments to the Supplemental Cash Collateral Order. *See* Plaintiffs' RJN Exs. D-H. Each order explicitly incorporates the limitations of the Final DIP Order.

D. SGM Fails To Close And Never Terminates The APA

The background regarding Plaintiffs' efforts to close the Sale with SGM are detailed in the First Amended Complaint, and incorporated by reference. *See* 2:20-cv-00613-DSF, Docket No. 29. SGM did not close the sale on December 5, 2019 or at any time thereafter despite ample opportunity. *See* Counterclaim, ¶¶ 63-65. Instead, it sent the Debtors a letter on December 5, 2019, demanding the refund of its $30 million deposit. *See* Counterclaim, ¶ 79.

On December 6, 2019, the Debtors filed an emergency motion for issuance of an order to show cause why SGM failed to close the sale by December 5, 2019. *See* Plaintiffs' RJN, Ex. I. On December 9, 2019, the Bankruptcy Court denied the motion and ruled that "[a]ny efforts undertaken by the Debtors with respect to the alternative disposition of the Hospitals" would not violate the APA. Plaintiffs' RJN, Ex. J, at 2. The Bankruptcy Court recognized that:

> By failing to close, SGM risks the loss of its $30 million good-faith deposit as well as the possibility of damages for breach of contract in an amount of up to $60 million. [. . .] In the future, the Debtors will have an opportunity to litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain SGM's good-faith deposit.

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Plaintiffs' RJN, Ex. K at 2.

By letter dated December 10, 2019, Plaintiffs confirmed they remained prepared to close, stating "[t]he Debtors were prepared to close on December 5, and remain able and willing to do so today. SGM, however, has intentionally frustrated the Debtors' efforts, and has never proposed any alternative closing date[.]" FAC, ¶¶ 103-104, Answer to First Amended Complaint ("SGM Answer"), Docket No. 41, ¶¶ 103-104. On December 17, 2019, Debtors sent SGM a letter advising that the APA would terminate effective December 27, 2019. *See* Plaintiffs' RJN, Ex. L; Counterclaim, ¶ 66. SGM never terminated the APA—only Debtors did.

E. The Adversary Proceeding Against SGM and Its Alter Egos

Plaintiffs filed their original Complaint in this proceeding on January 3, 2020. On March 11, 2020, Plaintiffs filed the FAC. *See* Docket No. 29.

On July 10, 2020, SGM answered the FAC and filed its Counterclaim, asserting four counts. Count I and Count II allege Plaintiffs breached the APA and the implied covenant of good faith and fair dealing. Count III accuses Plaintiffs of conversion based their retention of the Deposit. Finally, Count IV alleges Plaintiffs violated the UCL based on the same alleged conduct. Each of SGM's claims is premised on the allegation that Plaintiffs are required under the APA to refund the Deposit. As explained below, that is incorrect.

III. LEGAL STANDARD

A motion to dismiss a counterclaim is subject to the same standard as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *E.g.*, *Eagle Eyes Traffic Indus. USA Holding v. AJP Distributors Inc.*, No. 218CV01583SJOAS, 2018 WL 4859260, at *2 (C.D. Cal. June 22, 2018) (citing *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Id.* (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)). "Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires 'a short

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and plain statement of the claim showing that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). Thus, the Court may not accept as true mere legal conclusions in the counterclaim, and the legal "framework" of the counterclaim "must be supported by factual allegations." *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

IV. ARGUMENT

A. SGM Cannot Recover The Deposit Because It Was Non-Refundable Under The Express Terms Of The APA

Each of SGM's claims fail, in whole or in part, because the express terms of the APA do not entitle SGM to recover the Deposit. *See Gosha v. Bank of New York Mellon Corp.*, 707 F. App'x 484 (9th Cir. 2017) (affirming dismissal of claims based on parties' written agreements, because "absent ambiguity, the court construes the words of a contract as a matter of law" (quotation omitted)).

1. The Deposit Is Non-Refundable Because None Of The Exceptions Under Section 1.2 Are Applicable.

SGM admits it paid the Deposit to VHS "[p]ursuant to APA Section 1.2." Counterclaim, ¶ 18. APA Section 1.2 states:

> The Deposit *shall be non-refundable in all events*, except as provided in Section 6.1(b) or Section 6.2, or in the event [SGM] *has terminated this Agreement* pursuant to Section 9.1 (other than Section 9.1(b)) or as set forth in Section 9.2, in which case [Plaintiffs] shall immediately return the Deposit to [SGM] with all interest earned thereon.
>
> FAC, Ex. A (emphasis added).

The Counterclaim, however, does not allege that any of the referenced four APA sections referenced in the APA (6.1(b), 6.2, 9.1, or 9.2) entitle SGM to a refund of the Deposit. Nor do these four APA sections entitle SGM to a refund of the Deposit as discussed in term.

First, APA Section 6.1(b) would have been triggered only in the event that an "Overbidder" successfully bid to purchase the Hospitals in an "Alternate

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Transaction." *See* FAC, Ex. A, § 6.1(b). There is no dispute this did not occur, as is clear from the First Amended Complaint and the Counterclaim.

Second, APA Section 6.2 is likewise inapplicable on its face, because there was no appellate court stay of the Sale Order preventing a closing and SGM did not terminate the APA. *See* FAC, Ex. A, § 6.2.

Third, APA Section 9.1 (other than Section 9.1(b)) would only require a refund of the Deposit in the event "[SGM] has terminated this Agreement." FAC, Ex. A, § 1.2. As the Counterclaim confirms, however, this did not occur. Despite its baseless allegations that Plaintiffs had breached the APA, SGM never purported to terminate the APA for any of the reasons unilaterally available to Purchaser as enumerated in Section 9.1, *e.g.* § 9.1(c) [due diligence dissatisfaction before January 8, 2019], §9.1(d) [Sellers' material covenant breach], § 9.1(e) [Article 8 conditions unsatisfied by December 31, 2019], 9.1(g) [dismissal of the chapter 11 cases], or §9.1(i) [failure to close without fault of Purchaser]. Instead, it simply refused to close the transaction and demanded the return of its Deposit in one letter, while seeking to keep Plaintiffs locked in the APA, incurring estimated daily losses of $450,000 and being prevented from selling the Hospitals to another buyer.

Fourth, APA Section 9.2 also does not entitle SGM to a refund of the Deposit. That section provides:

> 9.2 Termination Consequences. If this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1: (a) all further obligations of the parties under this Agreement shall terminate (other than Purchaser's right to receive the Break-Up Fee if applicable), provided that the provisions of ARTICLE 12, shall survive; and (b) each party shall pay only its own costs and expenses incurred by it in connection with this Agreement; provided, in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof. In addition, *if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 (other than Section 9.1(b)), Seller shall immediately return the Deposit to Purchaser with all interest earned thereon.* Each Party acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, that without

these agreements such Party would not have entered into this Agreement.

FAC, Ex. A (emphasis added).

Here, the APA was not terminated pursuant to Sections 6.1(b), 6.2 or 9.1. Rather, *Plaintiffs* terminated the APA, pursuant to Section 9.1(b). *See* FAC ¶¶ 88, 91, 93, 100, 107; SGM Answer ¶¶ 93, 107. Section 9.2 expressly provides that the Deposit will not be refunded in the event of a termination pursuant to Section 9.1(b). *See* FAC, Ex. A, APA, § 9.2 ("In addition, if this Agreement is terminated pursuant to Sections 6.1(b), 6.2 or 9.1 *(other than Section 9.1(b)),* Seller shall immediately return the Deposit to Purchaser with all interest earned thereon." (emphasis added)). Because none of the circumstances delineated in Section 1.2 occurred, the Deposit remains "*non-refundable*" according to the APA's express terms.

Consequently, SGM is not entitled to a refund of the Deposit.

2. Section 11.2 Does Not Entitle SGM To A Refund of the Deposit.

To avoid the express terms of Section 1.2, SGM stretches Section 11.2 of the APA to a breaking point. Contrary to SGM's assertions, APA Section 11.2 did not expand the limited set of circumstances in which the Deposit was refundable.

As its placement in the contract suggests, Section 11.2 merely outlines the remedies available in the event of a termination under Section 9.1(b) or (d). *See* FAC, Ex. A, § 9.2 ("in the case of any termination based on Sections 9.1(b) or (d) the consequences of such termination shall be determined in accordance with ARTICLE 11 hereof"). In contrast, Section 1.2 appears in the first section of the contract, sets forth the definition of "Deposit," and expressly states the Deposit is "non-refundable in all events," except for the four instances set forth in Sections 6.1(b), 6.2, 9.1 and 9.2. FAC, Ex. A; *see In re Keller's Estate,* 134 Cal. App. 2d 232, 236, 286 P.2d 889, 891 (1955) ("We are convinced that consideration should first be given to the order in which the provisions appear, for, unless some contrary design is apparent, what could be more logical in applying rules of interpretation than to say

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that each subsequent provision in a will must be considered in the light of that which has gone before.").

To supplement those four limited instances with a new section that was not referenced would eviscerate the "non-refundable in all events" language of Section 1.2. The "fundamental rule of contract interpretation" is that "a contract should be interpreted so as to give meaning to each of its provisions" without rendering any of them "meaningless." *Brinderson–Newberg Joint Venture v. Pac. Erectors, Inc.*, 971 F.2d 272, 278–79 (9th Cir.1992) (citing Restatement of Contracts (2d) § 203(a) cmt. b (1979)). SGM's proposed interpretation of Section 11.2 is also inconsistent with Section 9.1, which lists the specific circumstances entitling SGM to a refund in the event Plaintiffs did not fulfill their obligations under the APA.

For these reasons, SGM cannot recover the Deposit under the plain terms of the APA. Accordingly, the Court should dismiss each of Plaintiffs' Counts to the extent they are based on such a theory, or alternatively strike any allegations to this effect.

B. Plaintiffs Are Prohibited By Court Order From Releasing The Deposit.

In addition, each claim asserted by SGM fails because orders issued by the Bankruptcy Court preclude Plaintiffs from disbursing the Deposit. Specifically, as explained above, the Sale Order incorporates the provisions of the Final DIP Order, which requires that all sale proceeds, including deposits, be held in a segregated Escrow Deposit Account, and precludes the Debtors from disbursing those funds absent the consent of the Debtors' Prepetition Secured Creditors or an order of the Court. *See* Sale Order, Plaintiffs' RJN, Ex. B at ¶ 13; Final DIP Order, Plaintiffs' RJN, Ex. C at ¶ 4. The Counterclaim does not allege that such consent has been given or that such an order has been issued.

In the face of these arguments, SGM has incorrectly asserted that the Bankruptcy Court's orders are contrary to the express terms of the APA. However,

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the Sale Order provides that, "[u]nless otherwise provided in this Sale Order, to the extent any inconsistency exists between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order shall govern." Sale Order, Plaintiffs' RJN, Ex. B at ¶ 26. Accordingly, the more restrictive terms of the Sale Order limiting disbursements of sale proceeds govern over any contrary language in the APA.

Plaintiffs cannot be liable under any legal or equitable theory for refusing to engage in conduct that would violate a court order, particularly one that takes precedent over any inconsistent provisions contained in the APA. *See Singh v. Baidwan*, 651 F. App'x 616, 617-19 (9th Cir. 2016) ("the public importance of discouraging [illegal] transactions outweighs equitable considerations of possible injustice between the parties") (internal quotes omitted).

In short, Plaintiffs are obligated to hold the Deposit pursuant to the Bankruptcy Court's orders, and they have not breached the APA, converted funds or violated the UCL by acting in conformance with those orders designed to protect the interests of parties other than Plaintiffs. Accordingly, Counts III and IV, which are based entirely on Plaintiffs alleged failure to refund the Deposit, should be dismissed. Counts I and II should be dismissed to the extent they are premised on the same theory. In the alternative, the Court should strike all allegations that seek to impose liability for allegedly failing to remit the Deposit to SGM, as specified in the above Notice of Motion.

C. <u>The Conversion Claim Fails On Additional Grounds.</u>

In addition to the above, SGM has also failed to plead (and cannot plead) a cognizable claim for conversion. "The basic elements of conversion are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." *Cakebread v. Berkeley Millwork & Furniture*

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Co., No. 16-CV-00083-RS, 2017 WL 579913, at *8 (N.D. Cal. Feb. 13, 2017) (applying California law).

SGM alleges the it has a right to possess the Deposit under the APA. As explained above, however, the APA expressly rendered the Deposit "non-refundable in all events," with the exception of four specific events that did not occur here. In any event, a "mere contractual right of payment, without more, will not suffice" to support a right to possession for purposes of a conversion claim. *See Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221, 233 (2014); *accord Cakebread*, 2017 WL 579913, at *8; *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999); *Lever Your Bus., Inc. v. Sacred Hoops & Hardwood, Inc.*, No. 519CV1530CASKKX, 2019 WL 7050226, at *6 (C.D. Cal. Dec. 23, 2019).

For much the same reasoning, the economic loss rule bars SGM from premising a conversion claim on an alleged breach of contract. "Courts grant motions to dismiss based on the economic loss rule when no harm has been alleged other than a broken contractual promise." *Lever Your Bus.,* 2019 WL 7050226, at *7 (citing *Correia v. Johnson & Johnson Co.*, No. 2:18-CV-09918-PSG-AS, 2019 WL 2120967, at *5 (C.D. Cal. May 9, 2019) (finding a conversion claim "barred by California's economic loss rule"); *Zhejiang Crafab Elec. Co. v. Advantage Mfg., Inc.*, No. 8:17-CV-02268-JVS-JPR, 2018 WL 6177952, *5-6 (C.D. Cal. Apr. 23, 2018) (dismissing a conversion claim arising "from the same alleged conduct that [gave] rise to its cause of action for breach of contract"); *Pollock v. Vanguard Grp. Inc.*, No. 2:16-CV-06482-JLS-JCG, 2017 WL 4786007, at *4-5 (C.D. Cal. Aug. 21, 2017) (dismissing a conversion claim where "there [was] no evidence that [plaintiff] suffered any harm 'above and beyond a broken contractual promise'"); *Baggett v. Hewlett-Packard Co.*, 8:07-CV-00667-AG-RNB, 2009 WL 3178066, at *2–3 (C.D. Cal. Sep. 29, 2009) (dismissing a conversion claim "aris[ing] solely out of their contract"). Here, SGM's conversion claim is premised entirely on the allegation that it is owed $30 million under the APA, and that Plaintiffs broke their contractual

promise. Because SGM's alleged damages arise solely out of a contractual agreement, the economic loss rule applies. *See also Culp Constr. Co. v. Sposito*, No. SACV19727JVSADSX, 2019 WL 6357971, at *4 (C.D. Cal. July 31, 2019) (dismissing conversion claim as barred by economic loss rule).

In sum, SGM fails to allege a basis on which it had any right to ownership or possession over the Deposit. Nor could it, given that the APA rendered the Deposit non-refundable absent circumstances not alleged here, and court orders confirmed that the Deposit was properly in escrow accounts and cannot be disturbed absent subsequent court order. Accordingly, for these reasons SGM's Count III should be dismissed for failure to state a claim.

D. The UCL Claim Fails

SGM's Count IV, for restitution under the UCL, is defective for the same reasons discussed above.

The UCL defines unfair competition as "any unlawful, unfair or fraudulent business act or practice" and is "written in the disjunctive, establishing three varieties of unfair competition." *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1043–44 (9th Cir. 2010) (internal quotation omitted). Under the UCL, "an act is independently wrongful [only] if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." *Korea Supply Co. v. Lockheed Martin Corp.,* 29 Cal. 4th 1134, 1159 (2003). There are two lines of authority for determining what constitutes "unfair" conduct under Section 17200. "One line defines 'unfair' as prohibiting conduct that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers and requires the court to weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim […] The other line of cases holds that the public policy which is a predicate to a consumer unfair competition action under the 'unfair' prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions." *Bardin v. DaimlerChrysler Corp.*, 136 Cal. App.

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4th 1255, 1260-1261 (2006) (citations omitted). Finally, fraudulent conduct requires a showing that "the public would likely be deceived," including "pleading [. . .] facts showing the basis for that conclusion." *Id.* at 1275.

Here, the Counterclaim fails to allege such conduct. First, the transaction does not affect retail consumers or the public and is not alleged to be tethered to any "specific constitutional, statutory, or regulatory provisions." *Bardin*, 136 Cal. App. 4th at 1261. Second, as explained above, APA and court orders rendered the Deposit non-refundable absent circumstances that are not present here, and the Debtors are entitled to retain it. Such conduct is clearly not of an "unethical, oppressive, unscrupulous" nature. *Id.* at 1260. Accordingly, SGM cannot demonstrate a basis for restitution under the UCL, because it cannot establish that Plaintiffs are obligated to refund the Deposit. *See Korea Supply,* 29 Cal. 4th at 1148 (monetary recovery under the UCL is limited to restitution, which is the return of money to those persons from whom it was taken or who had an ownership interest in it). Finally, and in any event, an alleged breach of contract is insufficient to support a UCL claim. *See Melody Kizler v. Budget Fin. Co.*, No. CV 5:20-0296-DOC-KK, 2020 WL 4037175, at *3 (C.D. Cal. May 5, 2020) (dismissing UCL based on breach of contract claim); *Bank Leumi USA v. R&R Food Servs. LLC*, No. CV 17-7183-MWF (SSX), 2018 WL 6003580, at *9 (C.D. Cal. July 13, 2018) (accord); *Macedonia Distrib., Inc. v. S-L Distribution Co., LLC*, No. SACV171692JVSKESX, 2018 WL 6190592, at *9 (C.D. Cal. Aug. 7, 2018) (accord). Accordingly, Count IV should be dismissed for failure to state a claim.

E. SGM's Request for Punitive Damages Should Be Dismissed Or Stricken.

SGM bases its punitive damages claim on its conversion claim. Because that claim fails as a matter of law, so too does SGM's request for punitive damages.

In addition, the Counterclaim fails to allege that Plaintiffs engaged in fraudulent, malicious or oppressive conduct, as required for punitive damages

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liability. *See* Cal. Civ. Code § 3294(a)). "Malice is defined as 'conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.'" *California Spine and Neorosurgery Inst. v. Aetna Life Ins. Co.,* CV 18-6829-DMG, 2019 WL 960205 (C.D. Cal. Jan. 8, 2019) (quoting Cal. Civ. Code § 3294(c)(1)). "Oppression means 'despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.'" *Id.* (quoting Cal. Civ. Code § 3294(c)(2)). "And fraud is 'an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.'" *Id.* (quoting Cal. Civ. Code § 3294(c)(3)).

Here, SMG "makes no non-conclusory allegations regarding [Plaintiffs'] intention to cause injury, conduct carried out with a conscious disregard of [SGM's] rights, or imposition of cruel or unjust hardship on [SGM]." *California Spine & Neurosurgery Inst.*, at *2–3 (C.D. Cal. Jan. 8, 2019) (dismissing punitive damages claim where plaintiff merely alleged that defendant improperly underpaid plaintiff, as "those allegations do not rise to the level of the intentional, despicable, and deceitful conduct California law requires for punitive damages awards."); *see also Bouncing Angels, Inc. v. Burlington Ins. Co.*, No. EDCV170015JGBSPX, 2017 WL 1294004, at *4 (C.D. Cal. Mar. 20, 2017) ("Since the allegations on which Plaintiff relies to sustain its claim for punitive damages go no further than what is alleged in support of Plaintiff's breach of contract and breach of the covenant of good faith and fair dealing claims, the Court cannot infer that Burlington's conduct is of a 'different dimension' than that which would be enough to make out a case for bad faith."). Nor could SGM possibly allege such conduct, given that Plaintiffs were entitled to retain the Deposit according to the express terms of the APA and court orders. Accordingly, SGM's punitive damages claim should be dismissed or stricken.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion, and dismiss Counts III and IV with prejudice in their entirety, as well as Counts I and II with prejudice to the extent they assert breach premised on Plaintiffs' unwillingness to refund SGM's $30 million deposit.

Respectfully submitted,

Dated: July 31, 2020

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION - LOS ANGELES

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al*.	Case No. 2:20-cv-00613-DSF Hon. Dale S. Fischer
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT DIALYSIS CENTER, INC., a California nonprofit public benefit corporation, and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, SETON MEDICAL CENTER, a California nonprofit public benefit corporation, and VERITY HOLDINGS, LLC, a California limited liability company, Plaintiffs, v. KALI P. CHAUDHURI, M.D., an individual, STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation, KPC HEALTHCARE HOLDINGS, INC. a California Corporation KPC HEALTH PLAN HOLDINGS, INC. a California Corporation, KPC HEALTHCARE, INC. a Nevada Corporation, KPC GLOBAL MANAGEMENT, LLC, a California Limited Liability Company, and DOES 1 through 500, Defendants.	**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS DEFENDANT STRATEGIC GLOBAL MANAGEMENT'S COUNTERCLAIMS, OR IN THE ALTERNATIVE, TO STRIKE PORTIONS OF DEFENDANT STRATEGIC GLOBAL MANAGEMENT'S COUNTERCLAIMS** Date: August 31, 2020 Time: 1:30 p.m. Place: Courtroom 7D 350 West 1st Street Los Angeles, CA 90012

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The Court, having considered Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, Verity Holdings, LLC, and the above-captioned debtors ("Plaintiffs") Motion to Dismiss Defendant Strategic Global Management's Counterclaims pursuant to Fed. R. Civ. P. 12(b)(6) and to strike portions of Strategic Global Management's Counterclaims pursuant to Fed. R. Civ. P. 12(f) ("Motion"), and finding good cause therefore, **GRANTS** the Motion.

ANALYSIS

All of Strategic Global Management's ("SGM") claims are dismissed because, pursuant to the express terms of Section 1.2 of the asset purchase agreement (the "APA"), the Deposit was "non-refundable." The APA provides that SGM is entitled to a refund of the Deposit under only four triggering circumstances, none of which SGM alleges. SGM fails to allege that any of those circumstances occurred, and it fails to allege any basis for recovering the Deposit under the APA or any legal theory.

In addition, all of SGM's claims are dismissed because Plaintiffs are under court order not to release the Deposit. Specifically, the Bankruptcy Court's May 2, 2019 order approving the SGM Sale ordered that sale proceeds shall not be used for any purpose "except as provided in this Order, the [Debtor-in-Possession] Credit Agreements or the [October 4, 2018 Final Debtor-in-Possession Order, Bankruptcy Docket No. 409] without further order of this Court." Plaintiffs' Request for Judicial Notice, Ex. B.[1] Declining to violate a court order does not breach the APA or its implied covenant of good faith and fair dealing. Nor does it supply a basis for conversion and unfair competition claims.

Further, SGM's conversion and unfair competition claims fail on additional grounds. The conversion claim is based on Debtors' supposed breach of the APA.

[1] Plaintiffs' Request for Judicial Notice in support of its Motion is granted. Judicial notice of the matters requested is proper under Federal Rules of Evidence Rule 201.

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A conversion claim cannot be premised on a breach of contract. *See In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999) ("a mere contractual right of payment, without more, does not entitle the obligee to the immediate possession necessary to establish a cause of action for the tort of conversion."); *Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221, 233 (2014). As for the unfair competition claim, the Counterclaim fails to allege "unfair," "unlawful," or "fraudulent" conduct under the standards set forth in applicable authority. California Business and Professions Code § 17200; *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1043–44 (9th Cir. 2010).

Finally, SGM fails to allege any basis on which it could recover punitive damages against Plaintiffs : the Counterclaim does not come close to alleging the type of fraudulent, malicious or oppressive conduct required for this unique remedy. *See* Cal. Civ. Code § 3294. Debtors have retained the Deposit based on language of the APA and pursuant to court orders preventing Debtors from releasing the Deposit.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Plaintiffs' Motion is **GRANTED** and Defendant Strategic Global Management's Counterclaims are dismissed for failure to state a cognizable claim for relief;
2. Plaintiffs' Request for Judicial Notice filed in support of its Motion is **GRANTED**;
3. Additionally, and in the alternative, the Court strikes the following portions of Strategic Global Management's Counterclaims:
    a. Page 2, lns. 9-10, 23-26; page 3, lns. 1-2; page 11, lns. 2-9; page 12, lns. 1-3; page 21, lns. 6-8; page 22, lns. 6-7, 13-14; page 23, lns. 17-19, 23-24; and page 25, ln. 14;
    b. The punitive damages allegations associated with Strategic Global Management's conversion claim.

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Dated: August __, 2020

_____
Hon. Dale S. Fischer
UNITED STATES DISTRICT JUDGE

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