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Debtors In Possession

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

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

- 13 Affects All Debtors
- 14 Affects O'Connor Hospital
- 15 Affects Saint Louise Regional Hospital
- 16 Affects St. Francis Medical Center
- 17 Affects St. Vincent Medical Center
- 18 Affects Seton Medical Center
- 19 Affects O'Connor Hospital Foundation
- 20 Affects Saint Louise Regional Hospital
Foundation
- 21 Affects St. Francis Medical Center of
Lynwood Foundation
- 22 Affects St. Vincent Foundation
- 23 Affects St. Vincent Dialysis Center, Inc.
- 24 Affects Seton Medical Center Foundation
- 25 Affects Verity Business Services
- 26 Affects Verity Medical Foundation
- 27 Affects Verity Holdings, LLC
- 28 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

**OMNIBUS REPLY TO CERTAIN OBJECTIONS
TO 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, 5342,
5343, 5385]**

Hearing Date and Time:

Date: August 12, 2020

Time: 10:00 a.m.

Place: Courtroom 1568

255 E. Temple Street

Los



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1 Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors
2 and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor”
3 and, collectively, the “Debtors”), with the support of the Official Committee of Unsecured
4 Creditors (the “Committee”), UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo
5 Bank, National Association, as Indenture Trustee for the 2005 Bonds, U.S. Bank National
6 Association solely in its capacity, as the note indenture trustee and as the collateral agent under the
7 note indenture relating to the 2015 Working Capital Notes and the 2017 Working Capital Notes,
8 Verity MOB Financing, LLC and Verity MOB Financing II, LLC (collectively, the “Plan
9 Proponents”), hereby file this omnibus reply in support of the *Second Amended Joint Chapter 11*
10 *Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Creditors, and*
11 *the Committee* [Docket No. 4993], as may be amended and supplemented from time to time (the
12 “Plan”) and reply to the objections filed by various creditors [Docket Nos. 5342, 5343]
13 (collectively, the “Objections”)¹ to confirmation of the Plan, and, in support hereof refer, and
14 incorporate by this reference, the arguments and evidence set forth in the brief [Docket No. 5385]
15 (the “Confirmation Brief”)² filed in support of confirmation of the Plan, the *Declaration of*
16 *Richard G. Adcock* (the “Adcock Decl.”) and the *Declaration of Peter C. Chadwick* (the
17 “Chadwick Decl.”) filed in support of the Confirmation Brief, and respectfully state as follows:

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¹ The Plan Proponents have received additional objections [Docket Nos. 5326, 5337, 5339, 5341] 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.

² Unless otherwise provided herein, all capitalized terms have the definitions set forth in the Confirmation Brief.

I.

THE OBJECTIONS SHOULD BE OVERRULED

A. Response to the Premier Objection

Premier, Inc., directly and through its affiliates (“Premier”) is a party to seven prepetition master agreements with the Debtors³ (the “Premier Agreements”). Each of the Premier Agreements was assumed as part of a settlement agreement with the Debtors resolving certain financial and operating disputes between the parties [Docket 2352] (“Settlement Agreement”), approved by the express terms of a Bankruptcy Court *Order Granting Debtors’ Motion for Approval of Compromise with Premier Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019 and Bankruptcy Code § 365* entered on May 29, 2019 [Docket No. 2461] (the “Settlement Order”). Although nothing in the Plan purports to alter the terms of the either the Settlement Agreement or the Settlement Order, Premier filed its *Objection of Premier, Inc. to Second Amended Joint Chapter 11 Plan of Liquidation* [Docket No. 5343] (the “Premier Objection”). For the reasons set for below, the Premier Objection should be overruled in its entirety.

Premier has posed three limited objections to confirmation, two of which are unique and one of which is common to that posed by other objections to which the Debtors have already responded. Premier asserts: “First, the Plan is unclear about the source of payment of the Debtors’

³ The Agreements are: (i) the Amended and Restated Limited Partnership Agreement, effective as of October 1, 2013, as amended, by and among Premier LP, Premier GP and the limited partners of Premier LP party thereto (including VHS) (collectively, the “Limited Partners”) (the “LP Agreement”); (ii) the GPO Participation Agreement, effective as of October 1, 2013, by and between Premier LP and VHS (the “GPO Participation Agreement”); (iii) the Performance Suite Solutions Subscription Agreement, dated November 14, 2011, by and between PHSI and VHS (as amended, the “Subscription Agreement”); (iv) the Exchange Agreement, effective as of October 1, 2013, by and among Premier, Inc., Premier LP, and the Limited Partners (the “Exchange Agreement”); (v) the Tax Receivable Agreement, effective as of October 1, 2013, by and among Premier, Inc. and the Limited Partners (the “Tax Receivable Agreement”); (vi) the Registration Rights Agreement, effective as of October 1, 2013, by and among Premier, Inc. and the Limited Partners; and (vii) the Voting Trust Agreement, effective as of October 1, 2013, by and among Premier, Inc., Premier LP, the Limited Partners, and defined as Stockholders therein, and Wells Fargo Delaware Trust Company, N.A., as trustee (the “Voting Trust Agreement”). *See Declaration of Anita Chou* (the “Chou Decl.”), Exhibit C to Notice of Motion to Approve Compromise with Premier, Inc. [Docket 2283 at 35.]

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1 obligations under the Settlement Agreement.” Premier Obj. at 2. However, the Debtors have been
2 very clear that any pre-Effective Date obligations are being satisfied in the ordinary course of
3 operations with respect undisputed obligations of service providers such as Premier. In addition,
4 with respect to obligations of the Debtors under the Premier Agreements, which have already
5 accrued but are not yet payable, such as Effective Date Subscription fees or a tax adjustment
6 obligations arising under the GPO, the Debtors have included an additional \$200,000 in its
7 Administrative Claims Reserve for “Ordinary Course Creditors” on account of Premier. *See*
8 Confirmation Brief, Ex. C. There is no suggestion or evidence submitted by Premier to indicate
9 that a \$200,000 is not sufficient to pay “any and all unpaid invoiced amounts then due and owing
10 to Premier under the Premier Agreements,” as required by the Settlement Agreement following the
11 final closing of the Premier Exchange Stock. *See* §4(g), Settlement Agreement. [Docket 2352 at
12 p.9]. For the reasons set forth in IV.I. of the Confirmation Brief, this objection should be
13 overruled.

14 Premier’s second objection relates to the unknown duration of the Post Effective Date
15 Debtors. *See* Premier Obj. at 2. The Disclosure Statement states unequivocally that:

16 The Sale-Leaseback Debtors, SVMC, St. Vincent Dialysis, the SCC
17 Debtors, and VHS (together, the “Post-Effective Date Debtors”) shall continue to exist after the Effective Date of the Plan (i) with
18 the Sale-Leaseback Debtors existing until the expiration of the Interim Agreements so that they may engage in the transition tasks
19 set forth in Section 5.8 of the Plan, and (ii) with the SCC Debtors existing until all Quality Assurance Payments are collected. The
20 primary transaction task (i) for the Sale-Leaseback Debtors involves the Interim Agreements, and (ii) for the SCC Debtors involves
21 remitting Quality Assurance Payments received after the Effective
22 Date to the Liquidating Trust.

23 See Disclosure Statement at 80.

24 In connection with the Hospital Sales (as defined in Debtors Reply), the Debtors are
25 expected to enter into Interim Management Agreements and Transition Services Agreements by
26 which the Post Effective Date Debtors will give to, or receive support from, the Hospital Sales
27 purchasers pending the Sale Leaseback Period. Pursuant to the Subscription Agreement, Premier
28 provides VHS and its Hospitals with valuable access to nonexclusive license rights to certain of

1 Premier's proprietary intellectual property through Premier's technology programs and systems.
2 These systems include programs that help to manage patient healthcare information and important
3 medical records management for physicians. VHS, in turn, reimburses Premier a monthly fee
4 based upon the services and solutions provided. *See* Chou Decl. at 16. Pursuant to the terms of the
5 IMAs, the purchasers, pursuant to the Hospital Sales, are obligated to reimburse and indemnify the
6 Post Effective Date Debtors for cost incurred by the Post Effective Date Debtors in connection
7 with the Interim Management Agreements, including TSA that benefits Hospital operations. *See*
8 *e.g.*, §4.6, Interim Management Agreement Seton [Docket No. 4360 at 118].

9 However, the duration of the IMA is not truly relevant to Premier because there is a third
10 settlement payment due immediately after the Post Effective Date Debtors collect money on the
11 October 2020 Exchange Stock, pursuant to section 4(g) of the Premier Settlement Agreement.

12 Immediately following the sale of the October 2020 Exchange
13 Stock, but no later than three (3) business days following such sale
14 (the "Final Payment Date"), VHS shall pay Premier, in cash, any
15 and all unpaid invoiced amounts then due and owing to Premier
16 under the Premier Agreements, including, without limitation, any
17 Monthly Subscription Agreement Fees, and other amounts due to
18 PHSI under the Subscription Agreement and/or any Excess
19 Downward Adjustment then subject to payment to, or recovery by,
20 Premier pursuant to the express terms of Section 5 and Section 7.5
21 of the LP Agreement and Exhibit 5 of the LP Agreement (the "Final
22 Premier Payment"). The Final Premier Payment shall be made free
23 and clear of any liens, claims and encumbrances.

24 As a result, by the sometime in the first quarter of 2021, the use of Premier's services will have
25 ended either because the IMA will have terminated or the Premier Agreements will have
26 terminated. Premier's objection should be overruled because the Plan is feasible and can
27 reasonably be said to be able to achieve Debtors promises to creditors. *See* Confirmation Brief §
28 IV.K

Third, Premier challenges the granting of releases under the Plan. The Debtors have fully
addressed the question of releases in Section V.C. of the Confirmation Brief. However, the
Settlement Agreement is an assumed obligation of the Post Effective Date Debtors, and claims
arising post-Effective Date with respect to post Effective Date services are not subject to the

1 injunction or release. Otherwise, Premier is subject to the same injunction and releases as all other
2 creditors with respect to pre Effective Date services. *Id.*

3 **B. Response to the LBMCC Objection**

4 Long Beach Memorial Medical Center (“LBMCC”) raises three issues in its *Long Beach*
5 *Memorial Medical Center’s Limited Objection to Confirmation of Second Amended Joint Plan of*
6 *Liquidation and Reservation of Rights* [Docket No. 5342] (the “LBMCC Objection”). As to its
7 first issue, the Debtors confirm they will pay the post-petition ordinary course claims of LBMCC
8 in accordance with the Plan and will have sufficient funds to do so. As to its second issue, if the
9 buyer of SFMC wants transitional or post-closing services from LBMCC, then either the buyer
10 will need to contract directly with LBMCC for those services or if the Debtors so agree, the
11 Debtors will pay for such services as a pass through and be reimbursed for such services by the
12 buyer pursuant to the Transition Services Agreement.

13 As to its final issue, the injunctive provisions in the Plan are appropriate and should be
14 approved for the reasons set forth in Section V.C of the Confirmation Brief. The Debtors also
15 note that LBMCC does not provide any examples in its Limited Objection as to what kinds of real
16 world claims it would have against the Released Parties or what kinds of setoff or recoupment
17 claims it may assert given the nature of its claims would be contractual as a services provider.

18 **II.**

19 **RESERVATION OF RIGHTS**

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

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III.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter an order substantially in the form of the Confirmation Order, attached to the Confirmation Brief 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 7, 2020

DENTONS US LLP

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

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