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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.

☐ 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.

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

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

Chapter 11 Cases

Hon. Ernest M. Robles

Adv. Proc. No. 2:19-ap-01002-ER

PLAINTIFFS' AMENDED OPPOSITION TO MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING

Date: April 2, 2019
Time: 10:00 a.m.
Judge: Hon. Ernest M. Robles
Courtroom: 1568

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ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation,

Plaintiffs,

v.

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency,

Defendant.

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AMENDED[1] OPPOSITION TO MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING

Plaintiffs St. Vincent Medical Center and St. Francis Medical Center (collectively, the "Debtors" or "Plaintiffs") oppose the motion to dismiss or, in the alternative, to stay proceedings filed by defendant Local Initiative Health Authority for Los Angeles County dba L.A. Care Health Plan ("LA Care"), and request that the Court deny the motion in its entirety. The Complaint sets forth well-pleaded claims that should neither be dismissed nor diverted to arbitration.

I.

INTRODUCTION

The Debtors have sued LA Care for over $25 million based on systematic underpayments and non-payments under the parties' service agreements, coupled with improper setoffs in violation of the automatic stay, and the steadfast refusal to turnover undisputable, matured amounts owed to the Debtors' estates. LA Care's response that the matter should be privately arbitrated would have been appropriate pre-petition when the Debtors were seeking long outstanding amounts due for medical services. However, after the Debtors filed petitions for chapter 11 bankruptcy, LA Care not only ignored the written demands for payment, but actively engaged in improper setoffs of pre and post-petition alleged debts. The Debtors have sued for breach of contract, turnover, violations of the automatic stay, unjust enrichment, and injunctive relief. These claims are core matters because they involve critical issues under the Bankruptcy Code, including refusing to turnover amounts as to which there is no bona fide dispute and flouting the automatic stay.

The Debtors believe that LA Care's dismissal motion ("Motion") is a delay tactic consistent with its business practices to avoid liability for substantial debts, while continuing to engage in improper self-help or setoffs with respect to amounts owed going forward.

The claims can and should be determined by this Court. As medical providers in bankruptcy, the Debtors should not be expected to litigate turnover, willful violations of the automatic stay under

[1] Plaintiffs submit this Amended Opposition to redact certain information set forth in Exhibit B pursuant to the *Order Granting Plaintiffs' Motion for Protective Order Pursuant to 11 U.S.C. §107(c) and FRBP 9037 to Restrict Access to Filed Documents Containing Personal Identifiers* [Docket No. 31].

Bankruptcy Code section 362, or the propriety of setoffs and/or recoupments under Bankruptcy Code section 553, before a private arbitrator. A central tenet of bankruptcy is that core claims are administered in a single forum. Further, all collection efforts against the debtor must cease unless and until the defendant, after notice and a hearing, is granted relief from the automatic stay. LA Care seeks to avoid the Bankruptcy Court in the name of business-as-usual by insisting that the parties arbitrate while violating Plaintiffs' rights in bankruptcy.

The Court should deny the Motion on the grounds that (1) the adversary is a core matter that should be determined by this Court, (2) the Debtors made written demand on LA Care, presenting its claim more than three months in advance of commencing litigation, satisfying any potential claims requirements set forth under the Government Claims Act, and (3) each claim for relief set forth in the Complaint states a plausible and well-pleaded claim for relief.

II.

THE DEBTORS' ADVERSARY PROCEEDING IS PROPERLY BEFORE THIS COURT AND SHOULD NOT BE STAYED AND DIVERTED TO ARBITRATION

The true motive behind LA Care's Motion is not dismissal of defective claims – rather, LA Care seeks to divest this Court of jurisdiction in favor of private arbitration. That issue is thus addressed here first.

LA Care argues that the Complaint should be dismissed based on a contractual arbitration provision between the parties. Motion at pp. 12-13. There is no dispute that a "garden-variety" breach of contract dispute is a non-core proceeding,[2] but this is not such a dispute (*infra* at Section IV.C.). The adversary proceeding is properly before this Court because it involves core issues and because arbitration would conflict with essential bankruptcy policies governing the Debtors' estates concerning whether and how creditors can pursue collection, or stall recovery, after a petition is filed.

The controlling authority in the Ninth Circuit pertaining to enforcement of arbitration provisions in bankruptcy is *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation*

[2] *See* LA Care's *Memorandum of Points and Authorities Regarding Non-Core Designation* [Docket No. 19] at p. 1.

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Co.), 671 F. 3d 1011, 1021 (9th Cir. 2012),[3] which held that the core/non-core distinction is relevant but not singly dispositive. Instead, the bankruptcy court has discretion to decline to enforce an arbitration provision if arbitration would conflict with the underlying purposes of the Bankruptcy Code. *Id.* (citing *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987)). In *Thorpe*, the debtor/ asbestos distributor and one of its insurers entered a prepetition settlement agreement containing an arbitration clause. The debtor filed bankruptcy and sought to confirm a reorganization plan that included a channeling injunction under Bankruptcy Code section 524(g), all of which included negotiations with other insurers and potential asbestos claimants allegedly in violation of the parties' settlement agreement. *Id.* at 1015-16.

On appeal, the Ninth Circuit in *Thorpe* affirmed that resolution of the breach of contract claim was a core proceeding because the insurer had filed a proof of claim and the claim would affect assets in the 524(g) trust and "directly impacted the administration of the bankruptcy estate." *Id.* at 1021. The Ninth Circuit also agreed with the lower courts that arbitration would conflict with the underlying purposes of the Bankruptcy Code for several reasons. *Id.* at 1022-23. First, "as a matter of fundamental bankruptcy policy, only a Bankruptcy Court should decide whether the manner in which someone has administered a bankruptcy estate gives rise to a claim for damages." *Id.* at 1022 (quoting bankruptcy court; insurer's dispute was central to the management of the asbestos-related bankruptcy estate). Second, setting aside the issue of a 524(g) trust, one of the purposes of the Bankruptcy Code is to centralize disputes and protect creditors and debtors from piecemeal litigation. The Ninth Circuit hypothesized that multiple parties could seek to arbitrate prepetition claims and the bankruptcy court would have no control over the timing of the proceedings and decisions, and would ultimately lose control over the plan confirmation process. *Id.* at 1023.

[3] The U.S. Supreme Court recently issued a decision, *Henry Schein, Inc. v. Archer & White Sales Inc.*, 2019 U.S. LEXIS 566 (January 8, 2019), addressing enforcement of arbitration outside of the context of bankruptcy. The Court held that an arbitration agreement provision can specify that threshold issues of arbitrability be determined by an arbitrator instead of the Court, which is not subject to exception in instances where the asserted right to arbitration is alleged to be "wholly groundless." There is no such provision in the arbitration agreement before this Court.

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LA Care seeks to portray the Complaint as a run-of-the-mill breach of contract dispute, while simultaneously insisting that LA Care disputes all amounts sought to be turned over by the Debtors (Motion at p. 15), and asserting that LA Care initiated post-petition recoupments, not setoffs in violation of the stay, based on its alleged right to reduce future payments to the Debtors for overpayments (Motion at p. 17). Meanwhile, other than to request information already in its possession as a further delay tactic, LA Care never responded to Plaintiffs' Demand Letter, either to provide notice of a claim insufficiency or to specify what portion or why it disputes tens of millions of timely submitted claims. *Infra* at Section IV, A.3. The Complaint asserts core claims for turnover of estate property and willful violations of the automatic stay (Complaint – Second, Fourth, Sixth, and Eighth claims for relief) as a result of LA Care's systematic breaches of contract and failure to pay. The Debtors seek over $25 million of damages from LA Care based on the foregoing claims. Complaint (prayer for relief).

The Court should decline to enforce arbitration because, like *Thorpe,* the dispute involves issues inextricably intertwined with the bankruptcy. *Thorpe,* 671 F. 3d at 1022. Determination of what constitutes property of the estate subject to immediate turnover and what constitutes an improper setoff in violation of the automatic stay are critical bankruptcy issues that should be determined by this Court, consistent with underlying bankruptcy policy that favors efficient resolution of claims and conservation of bankruptcy assets. *Id.* at 1023 (citing *In re Nat'l Gypsum Co.,* 118 F. 3d 1056, 1069 n. 21 (5th Cir. 1997)). Delegation to an arbitrator of the issues of turnover, enforcement of the automatic stay, and the parties' rights of setoff and recoupment would seriously conflict with bankruptcy policy establishing the parameters of the Debtors' estates and their administration by this Court. *See Process Am., Inc. v. Cynergy Holdings, LLC (In re Process Am., Inc.),* 588 B.R. 82, 110 (Bankr. C.D. Cal. 2018) (recoupment and setoff claims subject to determination by bankruptcy court notwithstanding that disputed claim amounts were determined and liquidated by district court; motion to dismiss denied). Moreover, the Debtors strongly believe that arbitration would pose a threat of additional interminable delays, extraordinary costs, and derailment of prospects for a timely plan confirmation, contrary to fundamental bankruptcy policy.

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LA Care cites to *MCI Telecommunications Corp. v. Gurga (In re Gurga)*, 176 B.R. 196 (BAP 9th Cir. 1994) for the proposition that garden-variety breach of contract claims are subject to mandatory arbitration. Motion at pp. 12-13. The case is not analogous. First, the *Gurga* case did not involve post-petition setoffs in violation of the automatic stay, or recoupments as LA Care now alleges. The *Gurga* facts are limited and even the amount at issue was not specified. Second, the *Gurga* debtor initiated a prepetition arbitration for breach of contract and accounting that was stayed, which formed the basis for its adversary proceeding two years later, which was substantively no different and merely added a turnover claim. *Id.* at 199. Third, and most significantly, the *Gurga* case directed a contractual dispute to arbitration where there were no facts establishing a conflict with underlying bankruptcy policy. LA Care's effort to divert this case to arbitration should be denied because it will conflict with bankruptcy policy with respect to the determination and ultimate distribution of significant assets of the estate, and conflict with this Court's authority to determine core bankruptcy matters, including turnover of estate assets under Bankruptcy Code section 542 that the Debtors contend are not reasonably subject to any kind of bona fide dispute, stay violations under Bankruptcy Code section 362, and setoffs under Bankruptcy Code section 553.

The Court should not stay this action pending an arbitration as requested by LA Care. Motion at p. 19. For reasons discussed above, the Court should assert core, or at least related to, jurisdiction to determine the issues raised in the Complaint.

III.

RULE 12(b)(6) STANDARDS

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") and Federal Rule of Bankruptcy Procedure 7012, the Court must accept all of the factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Detailed factual allegations are not required. Rule 8(a)(2) governs the general rules of pleading and calls for "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* The Supreme Court has made clear that a complaint must allege sufficient facts that, accepted as true, state a claim for relief that is plausible on its face. *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 50 U.S. 544, 556 (2007)). A claim is plausible if there is "factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Id. See also Twombly,* 50 U.S. at 556 ("And, of course, a well-pleaded complaint may proceed even if its strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely."). Finally, longstanding precedent supports liberally granting leave to amend in the interests of justice. *Foman v. Davis,* 371 U.S. 178, 182 (1962) (rejecting approach that one misstep of pleading is decisive and directing that leave to amend be "freely given"); *Moss v. U.S. Secret Service,* 572 F. 3d 962, 972 (9th Cir. 2009) ("Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment;" quoting *Gompper v. VISX, Inc.*); *Stoyas v. Toshiba Corp.,* 896 F. 3d 933, 939 (9th Cir. 2018) (dismissal reversed to allow amendment).

In this case, LA Care has systematically failed and refused to pay amounts due to the Debtors and then, with full knowledge of the pending bankruptcy, LA Care has continuously violated the automatic stay by effectuating monthly, unauthorized setoffs against amounts owed to the Debtors. LA Care's technical argument that the Debtors have failed to comply with statutory requirements of a written claim filed against a public entity is a red herring that highlights the real problem: LA Care has ignored the Debtors' written demand made on September 26, 2018, as set forth in the Complaint. LA Care's arguments for dismissal of each cause of action are equally without merit. Notwithstanding that LA Care may dispute liability, the Debtors have plausibly and adequately stated claims for breach of contract, failure to turnover estate funds, violation of the automatic stay, and unjust enrichment. LA Care's argument that setoffs should be construed as recoupments in the absence of a court order is a critical question in bankruptcy that is based on disputed facts. The Debtors have set forth sufficient facts to demonstrate a willful violation of the automatic stay. Dismissal of the claims at this stage would be improper.

IV.

THE COMPLAINT AND EACH CLAIM FOR RELIEF SHOULD NOT BE DISMISSED

A. The Debtors Are in Compliance with the Government Claims Act So There Is No Basis for Dismissal of the Adversary Proceeding.

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LA Care seeks dismissal of the Complaint on the grounds that the Debtors have not presented a written claim in compliance with the Government Claims Act (formerly the California Tort Claims Act) at Government Code sections 810 *et seq.* Motion at pp. 8-11. Assuming that the written claim requirements even apply to the Debtors' claims, they were submitted in writing to LA Care on September 26, 2018 (the "Demand Letter") in compliance with the statute, as alleged in the Complaint. Complaint, ¶¶ 18, 24, 45, and 51. A copy of that Demand Letter is attached as Exhibit A,[4] not including the files encrypted for patient privacy, which provided detailed notice to LA Care as to each patient/member, including the date and type of service, service preauthorization, and amount claimed.

1. Pursuant to Government Code Section 905(e), Claims Relating to the Provision of Goods and Services for Recipients of Public Assistance Are Excepted From Written Claim Requirements.

The Government Code sets forth written claim requirements for certain claims made against local public entities. The Debtors acknowledge that LA Care is a local public entity as defined by the Government Code. Complaint, ¶7. As LA Care notes, the Government Code specifies the basic contents of a written claim made against a public entity. However, certain categories of claims are exempted. First, the claim presentation requirements apply only to claims for money or damages. *Minsky v. City of Lost Angeles*, 11 Cal. 3d 113, 117 (1974) ("The uniform claims presentation procedure of section 905- like most of the enactments which it replaced – applies only to claims for 'money or damages.' Even as to local public entities … the coverage of the new general claims statute is not universal;" citing Law Revision Commission Comments). Second, certain claims are excepted from the claim presentation requirements pursuant to Government Code section 905.

Government Code section 905(e) sets forth an exception for claims relating to the provision of any form of public assistance. Section 905(e) provides:

> There shall be presented in accordance with chapter 1 (commencing with Section 900 [definitions]) all claims for money or damages against local public entities **except any of the following**: . . .

[4] For purposes of a motion to dismiss, courts may consider documents attached to or referenced in the Complaint without converting the motion to summary judgment. *See generally* O'Connell & Stevenson, Rutter Group Prac. Guide: Federal Civ. Pro. Before Trial §9:212.1 (The Rutter Group 2018); *Davis v. HSBC Bank Nevada, NA,* 691 F. 3d 1152, 1159 (9th Cir. 2012).

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> (e) Applications or claims for any form of public assistance under Welfare and Institutions Code or other provisions of law relating to public assistance programs, **and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance**.

Govt. Code §905(e) (emphasis added). By LA Care's own description, it is a commission within the meaning of Welfare and Institutions Code §14087.96, established "to provide health coverage to low-income Los Angeles County residents." Motion at p. 5 fn. 1. The Debtors provide life-saving and necessary hospital and medical services to low-income patients who are members of LA Care's health plans. By its terms, section 905(e) excepts from the claim requirements any claims for goods and services rendered "for or on behalf of" any public assistance recipient. Indeed, the exception covers "any form of public assistance." Thus, claims for direct medical services provided to LA Care members (i.e., individuals receiving the "public assistance" of health care coverage through LA Care) may be submitted directly to litigation or other dispute resolution processes. *Compare Taylor v. County of San Bernardino,* 2011 U.S. Dist. LEXIS 113051 at *19-21 (C.D. Cal. April 2, 2011) (pro se litigant's tort claims for fraud and emotional distress in connection with public assistance benefits subject to government claim requirements; 502(e) exception not applicable).

While there is very little case law available to interpret the Government Code section 905(e), the plain terms of the statute exempt the Debtors' claims for the provision of direct medical services to LA Care health plan members from the procedural requirements set forth at Government Code section 900 *et seq.* Based on the nature of the Debtors' claims, they were not required to satisfy any statutory prerequisites and the absence of a statement in the Complaint to confirm compliance is not a basis for dismissal of the action.

2. The Debtors Have Substantially Complied with the Claim Requirements of Government Code Section 910 and LA Care's Failure to Respond Waived Any Defense as to the Claim Sufficiency.

Even if the Court concludes that the Debtors' claims are subject to the requirements of Government Code section 900 *et seq*., which is not clear, the Debtors did in fact comply with the statutory requirements by submitting its Demand Letter to LA Care for unpaid and underpaid services on September 26, 2018. Complaint, ¶¶ 18, 24, 45, and 51.

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LA Care describes the claim presentation rules at some length (Motion, pp. 8-10), but fails to mention that the controlling issues are: (1) whether the claim is in substantial compliance with Government Code sections 900 *et seq.*, and (2) if the claim is defective, whether the public entity gave written notice of the insufficiency of the claim within 20 days or waived its defense based on any alleged insufficiency pursuant to Government Code sections 910.8 and 911. *Phillips v. Desert Hospital District*, 49 Cal. 3d 699 (1989) (public entity must treat defective claim as notice, triggering obligation to respond regarding insufficiency or waive any defense based on insufficiency; dismissal order reversed); *Alliance Financial v. City and County of San Francisco*, 64 Cal. App. 4th 635 (1998) (cited by LA Care; attorney communications provided notice of actionable claim and public entity could not remain silent and then raise deficiencies; dismissal order reversed). The *Phillips* and *Alliance* cases are both instructive as to the overall government claim process, as well as the court's view that claims are reviewed for substantial compliance and a public entity cannot receive notice of a pending claim and later insist that the claimant did not fully comply with procedural requirements.

Government Code section 910 states that the required contents of a claim consist of (a) the name and address of the claimant; (b) the address to which notices should be sent; (c) the date, place and other circumstances of the claim; (d) a general description of the indebtedness so far as may be known at the time of presentation of the claim; (e) the name of any public employee(s) who caused damage; and (f) if the amount claimed is greater than $10,000, whether the claim would be a limited civil case. Govt. Code § 910(a)-(f). "When a public entity receives a document which contains the information required by section 910 and is signed by the claimant or her agent as required by section 910.2, the public entity has been presented with a 'claim' under the act, and must act within 45 days or the claim is deemed to have been denied." *Phillips*, 49 Cal. 3d at 707. The purpose of the claim requirements is to provide the public entity with sufficient information to enable it to investigate claims and, if appropriate, settle them without the expense of litigation. *Id.* at 705. *See also Alliance Financial*, 64 Cal. App. 4th at 647 ("The point of the requirements is not to establish a needless formality, but to permit the public entity to avoid litigation by enabling it to conduct an early investigation and consider the benefits of settling a claim.").

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The Debtors made written demands on LA Care on September 26, 2018 (Complaint, ¶¶ 18, 24, 45, 51) and again on November 2, 2018. LA Care does not dispute the existence of the September 26, 2018 Demand Letter (Exhibit A hereto) – and does not allege that LA Care responded – but rather insists that the Complaint allegations concerning the presentation of a claim are insufficient. Motion at p. 11.

In fact, the Debtors substantially complied with the Government Code requirements by providing more than sufficient information for LA Care to investigate and resolve the outstanding payments. Specifically, and as required by Government Code section 910, the Debtors identified the name and address of the claimant, the email addresses and names to whom notice should be sent, a description of the debt based on nonpayment and underpayment, and encrypted files containing detailed information regarding the date, place, amount, and circumstances of the medical care provided to each LA Care member in a form substantially the same as the unredacted versions of Exhibits B and D that are attached to the Complaint (which removed patient names and other identifiers). The Demand Letter clearly put LA Care on notice of a breach of contract claim and claim for turnover of estate funds under Bankruptcy Code section 542(b) sufficient for LA Care to investigate and respond to the claim. *See, e.g., Connelly v. County of Fresno,* 146 Cal. App. 4th 29, 42 (2006) (personal injury claim that identified unknown medical expenses and general lost income substantially complied with claim requirements, and was sufficient to enable investigation; summary judgment in favor of defendant reversed).

LA Care argues that the Complaint seeks "unexplained damages" beyond that which is sought for breach of contract, referring to the setoff amounts and violation of stay damages, ignoring the notice sent by Debtors' counsel on November 2, 2018 (the "Setoff/ Stay Violation Letter"), to which LA Care again did not respond. Motion at p. 11. A copy of that Setoff Letter is attached hereto as Exhibit B. A claim is not required to outline each and every theory of recovery. In *Stockett v. Assoc. of Cal. Water Agencies Joint Powers Ins. Authority,* 34 Cal. 4th 441 (2004), the California Supreme Court explained, "The claim, however, need not specify each particular act or omission later proven to have caused the injury. A complaint's fuller exposition of the factual basis beyond that given in the claim is not fatal, so long as the complaint is not based on an 'entirely

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different set of facts.'" *Id.* at 447 (citations omitted; judgment reversed in favor of plaintiff). In *Stockett,* the court determined that the plaintiff substantially complied with the claim procedures by notifying the public entity of his claim for wrongful termination and general injuries, consisting of loss of earnings and mental and physical pain and suffering, and by providing the necessary information to investigate the merits of his claim. *Id.* His additional theories of recovery for wrongful dismissal were "predicated on the same fundamental actions or failures by the defendants," and were not precluded by the claim procedures. *Id.*

In this case, the Debtors have alleged that LA Care systematically failed and refused to pay amounts owed, or underpaid amounts owed, to the Debtors. Complaint, ¶¶15, 43. The Debtors' Demand Letter and Setoff/Stay Violation Letter complied or substantially complied with the Government Claims Act by delineating over 2,700 fee-for-service claims, for which now over $25 million is owed, and identifying the dates and amounts of offending setoffs effected as of that time. Months later, after submitting such claims and waiting for a detailed response from LA Care, the Debtors are entitled to bring this action.

3. LA Care Waived Any Defense to Submission of the Claim.

Pursuant to Government Code section 910.8, if a claim that is presented fails to substantially comply with the elements and signature requirements, the public entity may give notice within twenty (20) days of the insufficiency and identify with particularity the defects or omissions. Government Code section 911 governs waiver based on a failure to respond or give notice of any asserted insufficiency under section 910.8:

> Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

Govt. Code §911. The California courts in *Phillips* and *Alliance Financial* explained the defense-waiver provisions of the Government Claims Act where a defective claim is submitted but nonetheless provides notice of a claim and an address for a response. In *Phillips,* the Supreme Court confirmed that a notice, which discloses the existence of a claim that will result in litigation, triggers

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the notice and defense-waiver provisions of 910.8 and 911. *Phillips,* 49 Cal. 3d at 709. By failing to notify the claimant of the alleged insufficiencies, the hospital in *Phillips* waived any defense based on those insufficiencies, including timeliness. *Id.* at 711 (dismissal reversed). Similarly, in *Alliance Financial,* the court held that a public entity that received notice of unpaid invoices and the claimant's intent to litigate received sufficient information to require a response or waiver of defenses. *Alliance Financial,* 64 Cal. App. 4th at 650-51 (burden of requiring public entity response is precisely the intended effect of the statutory notice and defense-waiver provisions; quoting *Phillips*).

In this case, LA Care wholly failed to respond to the Demand Letter or the Setoff/Stay Violation Letter (within 20 days or any amount of time). LA Care purportedly disputes the sufficiency of the Debtor's Demand, but has yet to state why with any particularity. Motion at p. 11. LA Care was provided the name and address of the Debtors' Chief Financial Officer, as well as the names and addresses of individuals to whom a response should be directed. LA Care failed to provide notice of any insufficiency (stating with particularity the defects or omissions therein as required by Government Code section 910.8), and, accordingly, waived what it now asserts are alleged defects. LA Care's request for dismissal should be denied because the Debtors complied with the Government Claims Act and claim procedures, and LA Care waived any alleged insufficiencies by failing to respond to the Debtors.

B. <u>The Debtors' Breach of Contract Claims Should Not Be Dismissed.</u>

The Debtors allege that LA Care has breached written agreements between the parties under which LA Care is obligated to pay the Debtors for medical care provided in good faith to members of LA Care with payment on a fee-for-service basis (the "<u>FFS Contracts</u>"), attached to the Complaints as Exhibits A and C. Complaint, ¶¶ 12-19, 39-46 (First and Fifth Claims for Relief).

LA Care argues that the Complaint fails to allege a breach or that the Debtors have fully performed under the relevant contracts. However, the Debtors in fact allege: "LA Care has systematically and materially breached" the FFS Contracts by failing and refusing to pay for services rendered and by paying less than what is owed under the FFS Contracts. Complaint, ¶¶ 16, 43. The

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Debtors further allege that they have "performed all terms and conditions required" of them to be performed under the FFS Contracts. Complaint, ¶¶ 18, 44.

Notwithstanding these allegations, LA Care argues that there are no allegations of the following, among others: a) that the services for which the Debtors seek reimbursement were "covered medical services," b) that the Debtors "sought prior authorizations for the services" such that "Clean Claims" were submitted, c) that claims "were transmitted in the manner specified in the agreements," d) that LA Care had primary responsibility, and e) that the Debtors submitted the claims within six months of the date that services were provided. Motion at p. 14. The terms of the FFS Contracts speak for themselves and, under Rule 8(a) of the Federal Rules of Civil Procedure, the Debtors are only required to state a short and plain statement of the claim. The Debtors have properly alleged a breach of the FFS Contracts by LA Care. Moreover, by alleging performance of all conditions of the FFS Contracts, the Debtors have alleged performance as to provisions identified by LA Care and others. Further, Exhibits B and D of the Complaint set forth the dates services were rendered and the dates claims relating to such services were submitted to LA Care, establishing their timeliness and propriety.

If LA Care has a bona fide defense that the Debtors did not perform, it can raise an affirmative defense and denial of the allegations. The determination of breach and performance are factual determinations with reference to the contract at issue, and cannot be determined on the pleadings alone.

C. <u>The Debtors' Turnover Claims Should Not Be Dismissed Because the Debtors Seek to Collect a Matured Debt as to which There Is No Bona Fide Dispute.</u>

The Debtors seek turnover of amounts owed by LA Care under the FFS Contracts, which constitute property of the estates. Complaint, ¶¶ 20-26, 47-53 (Second and Sixth Claims for Relief). Section 542(b) of the Bankruptcy Code provides:

> Except as provided in subsections (c) or (d) of this section, **an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt** to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim of the debtor.

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Bankr. Code §542(b) (emphasis added).[5] The Debtors have alleged that they made demand on LA Care for payment of a debt that is property of the estate and LA Care has continuously failed and refused to turnover amounts due and owing. Complaint, ¶¶ 23-25, 50-52.

LA Care argues that the turnover claims should be dismissed because, as discussed above, the amounts due are allegedly disputed and comprise a claim for damages based on breach of contract. Although a turnover proceeding requires the existence of a mature debt, there is no statutory requirement that the debt be undisputed. *See generally* 5 Collier on Bankruptcy ¶ 542.04. Moreover, denial or dispute of the mature debt does not take the action outside the scope of section 542(b). *Process Am., Inc. v. Cynergy Holdings, LLC (In re Process Am., Inc.)*, 588 B.R. 82, 101 n.61 (Bankr. C.D. Cal. 2018) ("The mere fact that the defendants deny these allegations of a matured debt does not take the trustee's action outside the scope of section 542(b);" quoting *In re Kenston Management Co.*, 137 B.R. 100, 107-08 (Bankr. E.D.N.Y. 1992)). *See also Sec. Investor Protection Corp. v. Rossi (In re Cambridge Capital, LLC)*, 331 B.R. 47, 57 (Bankr. E.D.N.Y. 2005) (same; motion for summary adjudication of turnover claim denied based on questions of fact); *In re Rawson*, 40 B.R. 167, 169-71 (Bankr. N.D. Ohio 1994) (citing other courts that have consistently found that allegations that a matured debt is property of the estate fall within section 542(b) notwithstanding denial of the allegations; motion to dismiss or alternatively for summary judgment denied).

LA Care's citation to *Gurga, supra*, and similar cases is unavailing. The *Gurga* case is focused on arbitration of a contractual dispute and makes no mention of a matured debt or property of the estate. *Gurga*, 176. B.R. at 199. Likewise, the case of *Victoria Alloys, Inc. v. Fortis Bank SA/NV (In re Victoria Alloys, Inc.)*, 261 B.R. 424 (Bankr. N.D. Ohio 2001) involved a dispute as to ownership of iron and the debtor lost at trial after failing to demonstrate title or ownership; the case

[5] As more fully set forth in *Plaintiffs' Response to Defendant's Memorandum of Points and Authorities Regarding Non-Core Designation* [Docket No. 22] at p. 3, l. 24 – p. 5, l. 15, the reimbursement claims that form the basis of the Complaint matured no later than thirty (30) working days after their initial submission to Defendant. Defendant's breaches of the subject Agreements were (and are) "systematic": that is, Defendant engaged in (and continues to engage in) business practices designed to hinder and delay payment of the matured claims for many months, if not years, beyond the thirty (30) working day limit, as reflected in Exhibits B and D to the Complaint.

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of *Marlow v. Oakland Gin Co. (In re Julien Co.)*, 128 B.R. 987 (Bankr. W.D. Tenn. 1991) involved a dispute as to ownership of certain cotton shipments and reclamation rights under bankruptcy. These cases do not involve a matured debt that is property of the estate, and do not support dismissal on the pleadings. *See also FLR Co. v. Brant Constr. Co. (In re FLR Co.)*, 58 B.R. 632 (Bankr. W.D. Pa. 1985) (cited by LA Care; dismissal granted after evidentiary hearing; court concluded that setoff amounts owed by debtor exceeded turnover claims and claims were not matured).

The Debtors have sufficiently alleged that LA Care owes a matured debt that is property of the estate. Complaint, ¶¶ 23, 50. The Debtors believe that there is no bona fide dispute as to liability, such that the claims are for collection and do not amount to a typical breach of contract. Moreover, to the extent that LA Care disputes the existence of a matured debt that is property of the estate, it is raising disputed questions of fact that are not properly the subject of a motion to dismiss. The turnover claims against LA Care are properly stated and should not be dismissed.

D. <u>The Debtors' Claims for Violations of the Automatic Stay Should Not Be Dismissed Because LA Care's Alleged Rights of Recoupment Are Disputed Questions of Fact.</u>

LA Care incredibly argues that the "Debtors do not allege that LA Care violated the automatic stay." Motion at p. 17. The Fourth and Eighth Claims for Relief are for damages arising from violations of the automatic stay based on LA Care's setoff of pre and post-petition debts under different contracts. The Complaint alleges:

> By effectuating the Setoffs, Defendants violated the automatic stay provisions in at least the following ways: (i) exercising control over property of St. Vincent's [St. Francis's] bankruptcy estate within the meaning of § 362(a)(3) of the Bankruptcy Code; (ii) collecting or recovering a claim against the debtor that arose before the Petition Date within the meaning of § 362(a)(6) of the Bankruptcy Code; and (iii) setting off debt owing to St. Vincent that arose before the Petition Date within the meaning of § 362(a)(7) of the Bankruptcy Code.

Complaint, ¶¶ 38, 64.

Again, LA Care may dispute that it violated the automatic stay, but LA Care's allegations of recoupment are in the nature of a defense and are not a basis for dismissal of the claims because the Debtors have properly stated a cause of action. LA Care effectively admits making deductions to amounts owed to the Debtors, but insists that "this is a textbook example" of recoupment and,

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therefore, not a setoff in violation of the automatic stay. Motion at p. 17. The Debtors disagree with LA Care's characterization of the facts and LA Care's conclusory statements that it has exercised a right of recoupment. First, the Debtors dispute that the setoffs arise out of the "same transaction or occurrence" as required under the doctrine of recoupment, discussed below. The Debtors specifically allege facts in the Complaint that LA Care deducted Capitation Fees against fees owed to the Debtors under the FFS Contracts, involving separate agreements and pools of patients. Complaint, ¶¶ 34, 61. Second, to the extent that LA Care asserts a right of recoupment, it asserts a conclusory allegation of law. The alleged remedy of recoupment is, at least, subject to disputed questions of fact that cannot be determined on a motion to dismiss.[6]

Setoff and recoupment are distinct equitable doctrines in bankruptcy. According to Collier, the primary distinction is that setoff involves separate, mutual obligations between the same parties that are independently enforceable, often arising from separate transactions or events, whereas recoupment is a right to reduce the amount of the debtor's claim based on a countervailing right arising out of the same transaction that gives rise to the debt sought to be reduced. 5 Collier on Bankruptcy ¶553.10. *See Newbery Corp. v. Fireman's Fund Ins. Co.*, 95 F. 3d 1392, 1399 (9th Cir. 1996) (discussing setoff and recoupment; recoupment following cross summary judgment motions affirmed). LA Care's conclusory statements that it has a right of recoupment cannot be determined on a motion to dismiss.

The doctrine of recoupment is narrowly construed. *Westinghouse Credit Corp. v. D'Urso*, 278 F. 3d 138, 147 (2d Cir. 2002) (recoupment is limited and should be narrowly construed). The cases that LA Care cites do not support dismissal under the facts of the Complaint, particularly at the pleading stage. For example, in *TLC Hospitals, Inc.*, the parties presented cross motions for summary judgment on the issue of setoff versus recoupment. A "fiscal intermediary" had already conducted an annual audit of Medicare overpayments and underpayments made by the government

[6] For example, in the St. Vincent FFS Contract, a provision to permit asserted FFS overpayments to be deducted against future capitation payments is stricken. (Complaint, Ex. A at §2.6). The St. Francis FFS Contract does not provide a right to deduct asserted Capitation overpayments against FFS payments: rather, any deductions are limited to "Hospital Services" rendered under the terms of the St. Francis FFS Agreement, which contains FFS reimbursement obligations, and not capitation payment provisions. (Complaint, Ex. C at §3.6).

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to the debtor, and the amounts at issue under the relevant contracts were undisputed. *Sims v. U.S. Dept. of Health & Human Servs. (In re TLC Hospitals, Inc.),* 224 F. 3d 1008, 1010 and 1012 (9th Cir. 2000). The dispute was whether the government could deduct the amount of overpayments from post-petition underpayments. *Id.* at 1010. In this case, the Debtors believe that LA Care has systematically underpaid amounts owed and dispute alleged overpayments by LA Care. *See also Ashland Petroleum Co. v. Appel (In re B&L Oil Co.),* 782 F. 2d 155, 159 (10th Cir. 1986) (cited by LA Care; creditor filed action for declaratory relief to permit recoupment based on mistaken prepetition overpayment); *Joseph v. Dillard's Inc. (In re ETM Entertainment Network, Inc.),* 2005 U.S. App. LEXIS 21542 *2-4 (9th Cir. Oct. 3, 2005) (summary judgment in favor of creditor on breach of contract and preference claims where debtor had already breached the contract).

In sum, the Debtors have sufficiently alleged setoffs made by LA Care in violation of the automatic stay. Complaint, ¶¶32-38, 59-65 and Exhibit E (summary of setoffs). Further, the Debtors allege that LA Care is unilaterally making setoffs of amounts due to them in the absence of a court order or adequate factual support for the alleged reductions. Complaint, ¶¶ 36, 63. LA Care's assertion that it is exercising valid recoupment rights conflicts with the allegations of the Complaint that LA Care is, in fact, making improper setoffs and the dispute cannot be determined from the face of the Complaint or LA Care's Motion. *Cf.* 5 Collier on Bankruptcy ¶553.10 ("[I]n practice, the difference between recoupment and setoff are often subtle and difficult to maintain.") and ¶553.10[1] ("Not surprisingly… courts do not always agree on what kinds of obligations qualify as arising out of the 'same transaction.'"). LA Care may dispute liability for the stay violations based on alleged recoupments, but that is for the Court to determine based on a complete factual record. The damage claims for violation of the stay should not be dismissed.

E. <u>The Debtors' Claims for Unjust Enrichment Are Alternative Claims and Should Not Be Dismissed.</u>

LA Care also seeks dismissal of the Debtors' claims for unjust enrichment. Complaint, ¶¶ 27-31, 54-58 (Third and Seventh Claims for Relief). LA Care's various arguments for dismissal of the unjust enrichment claims should each be rejected.

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As LA Care acknowledges, the elements of an unjust enrichment are (1) that the defendant received a benefit at the expense of the plaintiff, and (2) it would be unjust for the defendant to retain the benefit conferred. Motion at p. 16. The Debtors satisfy these elements by alleging that they provided life-saving and necessary medical services to members of LA Care's health plans on behalf of and for the benefit of LA Care; and LA Care has obtained a benefit from those services and has been unjustly enriched thereby in the absence of payment. Complaint, ¶¶ 28-30, 55-57.

LA Care argues that the unjust enrichment claims must be dismissed because the parties entered enforceable written contracts. Motion at p. 16. LA Care ignores the fact that plaintiffs are entitled to assert alternative theories of recovery in a complaint. Rule 8(d)(2) of the Federal Rules of Civil Procedure, made applicable in bankruptcy under Federal Rule of Bankruptcy Procedure 7008, provides: "A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient." Rule 8(e) further provides that pleadings must be construed to do justice. A plaintiff may plead a breach of contract and alternatively plead recovery for unjust enrichment, even though the plaintiff cannot recover under both theories. *See, e.g., In re Verisign, Inc., Derivative Litigation,* 531 F. Supp. 2d 1173, 1217 (N.D. Cal. 2007) (motion to dismiss unjust enrichment claim denied; plaintiffs entitled to assert inconsistent causes of action for pleading purposes).

Finally, LA Care argues that quasi-contractual claims against a government entity are barred. The cases cited by LA Care involved cities organized under charters and governed by specific statutes under Government Code section 34000 *et seq.* (Government of Cities), where the charters barred certain types of claims. *See, e.g., Katsura v. City of San Buenaventura,* 155 Cal. App. 4th 104, 108-10 (2007) (city charter barred oral contracts by city employees without requisite authority; judgment on common counts reversed). LA Care has not identified a comparable city charter or statute to preclude liability against a public agency on a cause of action for unjust enrichment. Accordingly, the Debtors' claims for unjust enrichment should stand as an alternative to the breach of contract claims.

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F. The Debtors Properly State a Claim for Injunctive Relief Under Bankruptcy Code Sections 105(a) and 362.

LA Care attacks the Debtors' final cause of action for injunctive relief on the grounds that injunctive relief is a remedy, not an independent claim. Motion at p. 18. *See* Complaint, ¶¶ 66-68 (Ninth Claim for Relief). Rule 8(e) of the Federal Rules of Civil Procedure requires that pleadings be construed "so as to do justice." The Debtors have properly stated a claim for an order enjoining LA Care from taking any further setoffs or exercising any alleged right of recoupment pursuant to sections 105(a) and 362 of the Bankruptcy Code. The claim is properly grounded in the Bankruptcy Code, and could alternatively be stated as a claim for declaratory relief in light of LA Care's allegations of recoupment.

Paragraph 67 of the Complaint alleges: "Plaintiffs are entitled to an order pursuant to Bankruptcy Code §§ 105(a) and 362 enjoining the Defendant from engaging in any further setoff of Capitation Fees owed to Plaintiffs against any claims held by Defendant." Section 105 of the Bankruptcy Code permits the Court to issue any order that is necessary or appropriate to carry out the provisions of title 11. Those provisions clearly include enforcement of the automatic stay under section 362. *See, e.g., In re Spier Aircraft Corp.*, 137 F. 2d 736, 738 (3d Cir. 1943), *cert. denied*, 321 U.S. 770 (bankruptcy court's authority to issue injunctions to maintain custody and administration of bankruptcy estate derive from former section 11 of title and court's inherent equitable powers; "Actions commenced after the initiation of bankruptcy proceedings seeking to reach property of the estate are enjoinable by the bankruptcy court.").

Again, LA Care may dispute that the Court should enter an injunction, but it is not entitled to dismissal of the claim. The Debtors have properly stated a claim for injunctive relief, which should not be dismissed.

V.

CONCLUSION

LA Care's Motion to dismiss this adversary proceeding on any and every grounds possible should be denied. The litigation should not be directed to private arbitration because the Complaint involves core bankruptcy matters, including turnover of estate assets, setoffs in violation of the

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automatic stay, and counterclaims of alleged recoupment. Relegating these bankruptcy issues to a private arbitrator would conflict with bankruptcy policy. The Government Claims Act does not govern the claims at issue and, if it does, the Debtors have substantially complied with the claims requirements and LA Care has waived arguments regarding purported insufficiencies. Lastly, the Debtors have sufficiently alleged facts supporting each of the individual claims for relief set forth in the Complaint, and if there is any doubt, the Debtors should be granted leave to amend the Complaint. For the foregoing reasons, the Debtors respectfully request that the Court deny the Motion in its entirety.

Dated: March 22, 2019

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Steven J. Kahn
Steven J. Kahn
Co-Counsel to Chapter 11 Debtors and
Debtors In Possession

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EXHIBIT A

Verity Health

2040 E Mariposa Avenue
El Segundo, CA 90245

September 26, 2018

Sent via email and US Mail

Dino Kasdagly, COO
LA Care Healthplan
1055 West 7th Street 10th Floor
Los Angeles, CA 90017

Re: Verity Health System Chapter 11 Bankruptcy

Dear Mr. Kasdagly,

As we communicated in our letter to you dated September 14, 2018, Verity Health Systems (Verity) filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Central District of California – Los Angeles Division on August 31, 2108. The filing included all of Verity holdings which includes the Verity Medical Foundation. I am writing to you as one of the health plans that Verity had a fee for service agreement that defined how health plan's would reimburse Verity for services provided to your members covered by the fee for service agreement.

As I have been advised by our bankruptcy counsel, one of the responsibilities of Verity as the debtor is to collect monies owed to the bankruptcy estate. The Bankruptcy Code requires parties that owes a debt to the estate pay those funds over to the debtor. 11 U.S.C. § 542(b).

We have identified a number of fee for service claims across Verity hospitals that our accounts receivable system shows a no payment or underpayment from your health plan. As part of the bankruptcy process, we are requesting you review these claims and provide Verity with a response for each claim that will be used in our preparation of a filing with the bankruptcy court regarding the specific claims and claims amounts owed to Verity by your health plan.

Verity Health

I have included with this email an encrypted file with a list of your health plans claims. We will send you a separate email with a passcode for your file. In addition a copy of this letter will be mailed to you without the attachments.

We would ask that you provide your response no later than November 30th, 2018. Should you have questions, contact the following individuals:

Dr. Mike Schweitzer, Verity email MichaelSchweitzer@verity.org Phone (424) 367-0738 .

Frank Stevens, BRG Fstevens@thinkbrg.com (714)-267-2860

We appreciate your assistance and cooperation with the review of these claims issues using a process that minimizes the expenses of both Verity as the debtor and your organization.

Anita Chou
Chief Financial Officer
Verity Health System

EXHIBIT B

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Shirley S. Cho
310.277.6910
scho@pszjlaw.com

November 2, 2018

Via E-Mail and U.S. Mail

Dino Kasdagly, COO
L.A. Care Health Plan
1055 West 7th Street, 10th Floor
Los Angeles, CA 90017

Re: ***In re Verity Health System of California, Inc., et al.,*** **Chapter 11 Case No. 2:18-bk-20151-ER**

Dear Mr. Kasdagly:

This law firm is co-counsel to Verity Health System of California, Inc. ("Verity"), and its affiliates (collectively, the "Debtors'). As you are aware due to previous correspondence sent to your attention from Verity, St. Francis Medical Center filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code") on August 31, 2018 (the "Petition Date"). The Debtors' bankruptcy cases are pending before the Honorable Ernest M. Robles, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Central District of California, Los Angeles Division (the "Bankruptcy Court").

Upon the Petition Date, an automatic stay arose in favor of St. Francis Medical Center by operation of federal law that prohibits, *inter alia*:

> "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;"
>
> "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;"
>
> "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title."

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11 U.S.C. §§ 362(a)(3); 362(a)(6); 362 (a)(7).

It has come to our attention that L.A. Care Health Plan ("L.A. Care") has made deductions against capitation payments due to St. Francis Medical Center for the months of August, September and October 2018 (the "Capitation Deductions") in the amounts set forth below based on the capitation summaries attached hereto as **Tab 1**:

Month	Total Capitation Payment Owed	Actual Amount Paid	Amount of "Claims Withold"
August 2018 (Medicare)	$1,306,046.92	$1,123,305.72	$117,414.07
August 2018- (Medi-Cal)	$73,736.58	$39,807.93	$33,928.65
September 2018 (Medicare)	$1,028,354.15	$974,947.71	$2,132.76
October 2018 (Medicare)	$992,050.69	$842,820.03	$99,629.01
October 2018 (Medi-Cal)	$72,237.34	$55,771.40	$16,465.94
Total:			**$269,570.43**

It further appears that L.A. Care may continue making deductions against future monthly capitation payments based on alleged overpayments arising before the Petition Date. This conclusion is based on recent "10-Day Cap Deduction Letters" sent to St. Francis Medical Center.[1] *See* **Tab 2**. Each of these proposed deductions raises the prospect of another deduction against post-petition amounts due to St. Francis Medical Center against pre-petition claims held by L.A. Care.

Please be advised that any setoff of a pre-petition claim against a post-petition obligation due to the Debtors is in violation of the automatic stay. Actions taken in violation of the automatic stay are void *ab initio*. *In re Nat'l Environmental Waste Corp.*, 129 F.3d 1052 (9th Cir.

[1] One of the proposed deductions is for a service date of January 2016, which claim was waived under the *Settlement and General Release* agreement between L.A. Care and St. Francis Medical Center.

PACHULSKI STANG ZIEHL & JONES

LAW OFFICES

1997). To the extent that such setoff involves a claim based on services provided prior to September 2016, the deduction is also a violation of the Settlement and General Release.

The Debtors hereby demand that L.A. Care cease and desist any and all further setoff attempts unless and until there is an agreement between us or until L.A. Care obtains an order from the Bankruptcy Court authorizing it to do so. Please send to us by **November 15, 2018** the following information:

1. The back-up detail supporting the Capitation Deductions, including the subscriber name, subscriber ID, DOB, service date, amount billed, L.A. Care Claim number, and amount of deduction.
2. An explanation of why any Capitation Deductions taken by L.A. Care Health Plan to date do not violate the automatic stay.

The information should be sent to my attention (scho@pszjlaw.com) with a copy to the Debtors, c/o Michael Schweitzer (MichaelSchweitzer@verity.org).

If we do not receive the information by the requested deadline, we will proceed with formal relief from the Bankruptcy Court. Willful violations of the automatic stay may result in liability for punitive damages, contempt of court, and civil penalties. *Johnston Environmental Corp. v. Knight (In re Goodman)*, 991 F.2d 613 99th Cir. 1993); *In Re Computer Communications, Inc.*, 824 F.2d 725, 731 (9th Cir. 1987). St. Francis Medical Center reserves all of its rights and remedies against L.A. Care. Please do not hesitate to contact me with any questions.

Very truly yours,

/s/Shirley S. Cho

Shirley S. Cho

Enclosures

TAB 1

L.A. Care HEALTH PLAN

Cal Medi-Connect (Medicare) Capitation Summary For Month: August-2018

Hospital: H0000198 St. Francis Medical Center

		Members	Amount
Current Month:		2621	$1,030,496.32
Retroactivity:		32	$275,550.60
Total Capitation:		**2653**	**$1,306,046.92**
Performance Incentives:			
Adjustments:	201808 MMP Q/H 3%		($39,161.87)
	201808 SEQ 2%		($26,165.26)
	CLAIMS WITHHOLD		($117,414.07)
GRAND TOTAL:		2653	$1,123,305.72

L.A. Care HEALTH PLAN

Cal Medi-Connect (Medi-Cal)
Capitation Summary
For Month: August-2018

Hospital: H0000198 St. Francis Medical Center

		Members	Amount
Current Month:		2696	$76,054.82
Retroactivity:		-37	($2,318.24)
Total Capitation:		**2659**	**$73,736.58**
Performance Incentives:			
Adjustments:	Claims Cap Withhold		($33,928.65)
GRAND TOTAL:		2659	$39,807.93

L.A. Care HEALTH PLAN

Cal Medi-Connect (Medicare) Capitation Summary For Month: September-2018

Hospital: H0000198 St. Francis Medical Center

		Members	Amount
Current Month:		2589	$1,007,769.75
Retroactivity:		44	$20,584.40
Total Capitation:		**2633**	**$1,028,354.15**
Performance Incentives:			
Adjustments:	201809 MMP Q/H 3%		($30,706.71)
	201809 SEQ 2%		($20,566.97)
	CLAIMS WITHHOLD - MOU		($2,132.76)
GRAND TOTAL:		2633	$974,947.71



Cal Medi-Connect (Medicare)
Capitation Summary
For Month: October-2018

Hospital: **H0000198** **St. Francis Medical Center**

		Members	Amount
Current Month:		2567	$995,425.04
Retroactivity:		14	($3,374.35)
Total Capitation:		**2581**	**$992,050.69**
Performance Incentives:			
Adjustments:	201810 MMP Q/H 3%		($29,760.64)
	201810 SEQ 2%		($19,841.01)
	CLAIMS WITHHOLD		($99,629.01)
GRAND TOTAL:		2581	$842,820.03



Cal Medi-Connect (Medi-Cal)
Capitation Summary
For Month: October-2018

Hospital: **H0000198** **St. Francis Medical Center**

		Members	Amount
Current Month:		2650	$74,822.70
Retroactivity:		-19	($2,585.36)
Total Capitation:		**2631**	**$72,237.34**
Performance Incentives:			
Adjustments:	Claims cap withhold		($16,465.94)
GRAND TOTAL:		2631	$55,771.40

TAB 2

10/26/2018

Re: 10-Day Cap Deduction Letter

ST FRANCIS MED CNTER

PO BOX 6014

ARTESIA, CA 90702-6014

Attn: Appeals & Claims Department.

Dear Claims Manager:

L.A. Care Health Plan Claims Department is in receipt of a payment dispute. The claim/bill is being forwarded to you for processing and adjudication.

Pursuant to L.A. Care Shared Risk Agreement, the services billed are your financial responsibility. Please examine the information submitted by the provider of service, POMONA VALLEY HOSP MEDICAL CNTR.

SUBSCRIBER NAME	SUBSCRIBER ID	DATE OF BIRTH	SERVICE DATE	AMOUNT BILLED	LA CARE CLM #
SEE ATTACHMENT	SEE ATTACHMENT	SEE ATTACHMENT	SEE ATTACHMENT	SEE ATTACHMENT	643180

The following steps must be implemented within ten (10) working days of this letter:

1. Process this claim for immediate payment.
2. Include interest and penalties from the date of receipt by your plan, if it applies.
3. Provide LA Care with the proof of payment or justification for non-payment.

Please complete the attached report no later than ten (10) working days from the receipt date of this letter. If no reply is received, LA Care will process this claim by deducting capitation due you. You may also fax your reply and a copy of this letter to <(213) 438-5087>. If you have any questions, please contact the Claims Department of L.A. Care Health Plan at <(866) 522-2736>.

Sincerely,

The Claims Department

L.A. Care Health Plan

Cc: Claims Department File

Re: NOTIFICATION OF CLAIMS RESOLUTION TO LA CARE HEALTH PLAN

Plan: L.A. Care Health Plan

Payer: ST FRANCIS CAP HOSP

Re: 10-Day Cap Deduction Letter

NAME	ID#	AMOUNT	PAID DATE	CHECK#	NEW CLM#	REASON
[redacted],	[redacted]	$750.00				
[redacted]	[redacted]	$8,221.99				

WE WILL NOT ACCEPT FUTURE PAYMENT DATES
NOR LATE RESPONSES

10/19/2018

Re: 10-Day Cap Deduction Letter

ST FRANCIS MED CNTER

PO BOX 6014

ARTESIA, CA 90702-6014

Attn: Appeals & Claims Department.

Dear Claims Manager:

L.A. Care Health Plan Claims Department is in receipt of a payment dispute. The claim/bill is being forwarded to you for processing and adjudication.

Pursuant to L.A. Care Shared Risk Agreement, the services billed are your financial responsibility. Please examine the information submitted by the provider of service, AMERICAN PROFESSIONAL AMBULANCE.

SUBSCRIBER NAME	SUBSCRIBER ID	DATE OF BIRTH	SERVICE DATE	AMOUNT BILLED	LA CARE CLM #	ACCOUNT NUMBER
[redacted]	[redacted]	[redacted]	01/28/2016	$843.67	693974	

The following steps must be implemented within ten (10) working days of this letter:

1. Process this claim for immediate payment.
2. Include interest and penalties from the date of receipt by your plan, if it applies.
3. Provide LA Care with the proof of payment or justification for non-payment.

Please complete the attached report no later than ten (10) working days from the receipt date of this letter. If no reply is received, LA Care will process this claim by deducting capitation due you. You may also fax your reply and a copy of this letter to <(213) 438-5087>. If you have any questions, please contact the Claims Department of L.A. Care Health Plan at <(866) 522-2736>.

Sincerely,

The Claims Department

L.A. Care Health Plan

Cc: Claims Department File

Re: NOTIFICATION OF CLAIMS RESOLUTION TO LA CARE HEALTH PLAN

L.A. Care HEALTH PLAN

Plan: L.A. Care Health Plan

Payer: ST FRANCIS CAP HOSP

Re: 10-Day Cap Deduction Letter

<Member ID>: 97346791D

<Date of Service>: 01/28/2016 CASE# 693974

<PAID>: $_____

<CHECK NUMBER>: _____

<CHECK DATE>: _____

<CLAIM NUMBER>: _____

<DENIAL DATE>: _____

<REASON FOR DENIAL>: _____

_____

_____

<COMPLETED BY>: _____ <DATE>: _____

<PHONE NO>: _____

WE WILL NOT ACCEPT FUTURE PAYMENT DATES
NOR LATE RESPONSES

09/18/2018

Re: 10-Day Cap Deduction Letter

ST FRANCIS MED CNTER

PO BOX 6014

ARTESIA, CA 90702-6014

Attn: Appeals & Claims Department.

Dear Claims Manager:

L.A. Care Health Plan Claims Department is in receipt of a payment dispute. The claim/bill is being forwarded to you for processing and adjudication.

Pursuant to L.A. Care Shared Risk Agreement, the services billed are your financial responsibility. Please examine the information submitted by the provider of service, COMPANION HOSPICE & PALLIATIVE CARE.

SUBSCRIBER NAME	SUBSCRIBER ID	DATE OF BIRTH	SERVICE DATE	AMOUNT BILLED	LA CARE CLM #	ACCOUNT NUMBER
[redacted]	[redacted]	[redacted]	SEE ATTCHMENT	SEE ATTCHMENT	986037	

The following steps must be implemented within ten (10) working days of this letter:

1. Process this claim for immediate payment.
2. Include interest and penalties from the date of receipt by your plan, if it applies.
3. Provide LA Care with the proof of payment or justification for non-payment.

Please complete the attached report no later than ten (10) working days from the receipt date of this letter. If no reply is received, LA Care will process this claim by deducting capitation due you.
You may also fax your reply and a copy of this letter to <(213) 438-5087>. If you have any questions, please contact the Claims Department of L.A. Care Health Plan at <(866) 522-2736>.

Sincerely,

The Claims Department

L.A. Care Health Plan

Cc: Claims Department File

Re: NOTIFICATION OF CLAIMS RESOLUTION TO LA CARE HEALTH PLAN

Plan: L.A. Care Health Plan

Payer: ST FRANCIS CAP HOSP

Re: 10-Day Cap Deduction Letter

DOS	BILLED AMOUNT	PAYMENT AMOUNT	CHECK NUMBER	CLAIM NUMBER
4/14/18-04/30/18	$ 2,741.25			
5/1/18-5/14/18	$ 2,257.50			
5/21/18-5/31/18	$ 1,773.75			
6/1/18-6/30/18	$ 3,547.50			
6/1/18-6/30/18	$ 1,290.00			

WE WILL NOT ACCEPT FUTURE PAYMENT DATES
NOR LATE RESPONSES

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
150 California Street, 15th Floor, San Francisco, CA 94111

A true and correct copy of the foregoing document entitled (*specify):* ***PLAINTIFFS' AMENDED OPPOSITION TO MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING*** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **March 22, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Anthony Dutra adutra@hansonbridgett.com
- Steven J Kahn skahn@pszjlaw.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Neal L Wolf nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com,lchappell@hansonbridgett.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **March 22, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA HAND DELIVERY
Honorable Ernest M. Robles
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1560 / Courtroom 1568
Los Angeles, CA 90012

☐ Service information continued on attached page

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

March 22, 2019	Matthew J. Renck	*/s/ Matthew J. Renck*
Date	*Printed Name*	*Signature*