Exhibit A
CHAPTER IV. - EMPLOYEE-MANAGEMENT RELATIONS

ARTICLE 1. - GENERALLY


It is the policy of the County to promote full communication between the County and its employees to protect the exercise by its employees of their full freedom of association, self-organization and designation of representatives of their own choosing, by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between the management of the County and employee organizations. It is also the purpose of this article to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of County employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the County. Nothing contained herein shall be deemed to supersede the provisions of existing state law or the provisions of the County Charter or this Code which establish and regulate a merit system or which provide for other methods of administering employer-employee relations. This chapter is intended instead, to strengthen the merit system and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between County employees and the management of the County. In order to fully and effectively implement the provisions of this chapter, management employees shall not be included in any representation unit.

(Code 1954, § 3.9.1-1; Ord. No. NS-300.90, § 1, 2-7-66; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.193, § 1, 9-3-74)

Sec. A25-340. - "Confidential employee" defined.

As used in this chapter, "confidential employee" means an employee who is privy to decisions of County management affecting employee relations, the total number of which shall not exceed three percent of the total number of budgeted County positions.

(Code 1954, § 3.9.2-5; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-341. - "Days" defined.

As used in this chapter, "days" means calendar days.
Sec. A25-342. - "Employee" defined.

As used in this chapter, "employee" means an employee whose salary is fixed by the Board of Supervisors in the salary ordinance of the County, other than a management employee.

Sec. A25-343. - "Employee organization" defined.

As used in this chapter, "employee organization" means any organization which includes employees and which has as one of its primary purposes representing such employees in their relations with the County and which has registered with the Director of Employee Services Agency as provided for in Article 2 of this chapter.

Sec. A25-344. - "Management" defined.

As used in this chapter, "management" or "management employee" means the County Executive and other representatives of management having the authority to act for the County on any matters relating to the implementation of the County's labor-management relations program and who are so designated by the Personnel Director with the approval of the County Executive in accordance with the procedures set forth in Section A25-369. The Personnel Director may not designate a position as management which is included in any recognized representation unit other than a supervisory administrative unit.

Sec. A25-345. - "Mediation" defined.

As used in this chapter, "mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of management and the recognized employee organizations through interpretation, suggestion and advice.
Sec. A25-346. - "Recognized employee organization" defined.

As used in this chapter, "recognized employee organization" means an employee organization that has been certified pursuant to Article 4.

Sec. A25-347. - "Supervisory employee" defined.

"Supervisory employee," as used in this chapter, means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sec. A25-348. - Manner of proof of employee approval.

(a) Proof of employee approval to a petition is demonstrated under this chapter, by any of the following:

(1) Signed and dated signatures on the petition.
(2) Signed and dated employee organization authorization cards.
(3) Documented evidence of current dues paying employee organization membership or payroll dues deductions using the payroll immediately prior to the date the petition is filed.

(b) For purposes of Paragraphs (a)(1) and (a)(2) above, only signatures of employees currently employed, which signatures have been executed within six months prior to the date the petition is filed, shall be accepted as proof of employee approval.

(c) The total number of employees in a proposed representation unit shall be determined by using the County salary ordinance, adjusted to reflect the positions occupied as of the date of the petition.

ARTICLE 2. - REGISTRATION OF ORGANIZATIONS

Sec. A25-353. - Application required; contents.

An organization that desires to be registered as an employee organization shall file with the Director of Employee Services Agency a statement, signed by its presiding officer, showing:

(a) Name and mailing address of the organization.
(b) Names and titles of officers.
(c) A copy of its constitution and/or bylaws which shall contain a statement that the organization has as one of its primary purposes representing employees in their employment relations.
(d) Verification of employee membership in the organization which may be shown by employee organization payroll dues deduction or by an official membership statement or authorization cards.
(e) An acknowledgment in writing, signed by a duly authorized officer of the organization, that the organization agrees to all of the provisions of this chapter.
(f) A statement that the organization has no restriction on membership based on race, color, creed, national origin or sex.
(g) A designation of those persons, not exceeding three in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the organization for any purpose.

(Code 1954, § 3.9.2-6; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.375, § 3, 2-21-84)

Editor's note—Section 1 of Ord. No. NS-300.375, adopted Feb. 21, 1984, repealed former § A25-347; § 2 added a new § A25-347; and § 3 added a new § A25-348. However, the text of the new § A25-348 is the same as that of the repealed A25-347; therefore the history note to that section has been retained.


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(d) Verification of employee membership in the organization which may be shown by employee organization payroll dues deduction or by an official membership statement or authorization cards.
(e) An acknowledgment in writing, signed by a duly authorized officer of the organization, that the organization agrees to all of the provisions of this chapter.
(f) A statement that the organization has no restriction on membership based on race, color, creed, national origin or sex.
(g) A designation of those persons, not exceeding three in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the organization for any purpose.

(Code 1954, § 3.9.3-1; Ord. No. NS-300.90, § 1, 2-7-66; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 37, 8-25-15.)

Upon receipt of all the information required by Section A25-353, the Director of Employee Services Agency shall, in writing, notify the organization that it has been registered as an employee organization. A copy of this notice shall be filed with the Board of Supervisors.

(Code 1954, § 3.9.3-2; Ord. No. NS-300.90, § 1, 2-7-66; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 38, 8-25-15)


A registered employee organization shall thereafter annually, between December 1 and December 31, file with the Director of Employee Services Agency a statement required by Section A25-353 and the Director of Employee Services Agency shall annually issue the notice of registration required by Section A25-354.

(Code 1954, § 3.9.3-3; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 39, 8-25-15)


ARTICLE 3. - REPRESENTATION UNITS

Sec. A25-363. - Petition for establishment.

A representation unit is established by petition of employees within the proposed unit. The petition must be accompanied by proof of employee approval equal to at least 30 percent of the employees within the proposed unit. The petition shall be filed with the Director of Employee Services Agency. The Director shall give notice of the filing to the Board of Supervisors together with his recommendation as to the appropriateness of the representation unit. He shall also give notice of the filing to the employees in the proposed unit and to any person or employee organization that has filed a written request for such notice. A petition for the establishment of a representation unit may be combined with a petition that seeks to certify an employee organization as a recognized employee organization.

(Code 1954, § 3.9.4-1; Ord. No. NS-300.90, § 1, 2-7-66; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 40, 8-25-15)

Sec. A25-364. - Challenge by employee organization.
If an employee organization desires to challenge the appropriateness of the proposed representation unit and seeks to establish a different unit, it shall file a petition with the Director of Employee Services Agency within 30 days of filing the original petition requesting a unit determination by the County Personnel Board. The petition must be accompanied by proof of employee approval equal to at least 30 percent of the employees in the unit requested by the challenging organization.

(Code 1954, § 3.9.4-2; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 41, 8-25-15)

Sec. A25-365. - Challenge by Board of Supervisors.

If the Board of Supervisors decides to challenge the appropriateness of the proposed representation unit, it shall within 30 days of filing the original petition direct the Director of Employee Services Agency to file a petition with the County Personnel Board requesting a determination.

(Code 1954, § 3.9.4-3; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 42, 8-25-15)

Sec. A25-366. - Certification of unit.

If there has been no petition filed challenging a petition to establish a representation unit within 30 days, the Director of Employee Services Agency shall certify to the Board of Supervisors and petitioner that the representation unit has been established.

(Code 1954, § 3.9.4-4; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 43, 8-25-15)

Sec. A25-367. - Amendment of petitions.

If a challenge is lodged, the Director of Employee Services Agency shall notify the original petitioner in writing. If an amended petition is not filed within seven days of such notice, the petition and challenge shall be transmitted to the County Personnel Board as provided below. Upon the filing of an amended petition, the original petition shall be deemed revoked and the amended petition shall be considered on its own merits as if originally filed.

(Code 1954, § 3.9.4-5; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 44, 8-25-15)

Sec. A25-368. - Determination of dispute.
(a) If a challenging petition has been duly filed, and the challenge has not been resolved by amendment or withdrawal, the dispute shall be resolved through arbitration by an arbitrator selected by the parties to the dispute. Within ten days of the filing of the challenge the parties will select an arbitrator to hear the dispute and schedule a date for the dispute to be heard. The dispute need not be heard within this ten-day period.

(b) In resolving representation unit disputes, the arbitrator shall in each case determine the broadest feasible unit based upon such factors as internal and occupational community of interest and history of representation. No County classification shall be included in more than one representation unit, except that management and confidential employees shall not be included in any unit which includes nonmanagement or nonconfidential employees.

(c) Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees. "Professional employees," for the purposes of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and various types of physical, chemical and biological scientists.

(d) The decision of the arbitrator shall be final and binding. The cost of the arbitrator and court reporter shall be paid by the County. Costs of representation shall be paid by the respective parties.

(Code 1954, § 3.9.4-6; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.494, § 1, 1-14-92)

Sec. A25-369. - Maintenance of representation units.

It shall be the duty of the Director of Employee Services Agency to maintain a record of the composition of each representation unit. The Director shall allocate each new County classification to an appropriate existing representation unit and shall allocate individual positions into or out of management or confidential status.

The Director shall notify all recognized employee organizations in writing of the intended allocation no later than 30 days after approval of the new classification by the Board of Supervisors. A recognized employee organization may challenge the appropriateness of the
intended allocation by filing a petition with the Director within 30 days of notice of the intended allocation requesting a determination of the allocation. The challenging organization shall also by certified mail notify and provide a copy of the challenge to the representative of the representation unit to which the class was allocated in the Director's allocation notice. The challenge must be filed within 30 days of the date of the notice of the Director. If no challenge is filed the allocation shall be final. Challenges shall be resolved pursuant to Section A25-368.

The allocation of new classifications created through the reclassification of positions where there is no change in the representation of the incumbents may not be challenged nor is the Director required to provide any notices pursuant to this provision.

(Code 1954, § 3.9.4-7; Ord. No. NS-300.145, 12-22-70; Ord. No. NS-300.163, § 1, 4-11-72; Ord. No. NS-300.193, § 4, 9-3-74; Ord. No. NS-300.494, § 1, 1-14-92; Ord. No. NS-304.134, § 45, 8-25-15)

Sec. A25-370. - Modification of units.

A petition may be filed pursuant to this chapter to modify an existing representation unit to include a County classification or classifications which are included in other existing representation unit or units. A modification petition may also include the establishment of a new representation unit.

All petitions pursuant to this section must be filed with the Director of Employee Services Agency between 150 and 120 days prior to the termination of an existing memorandum of agreement or understanding between the Board of Supervisors and the recognized employee organization which represents the unit containing the classes in the petition. Where the classes in the petition are included in more than one unit, the unit with the memorandum of agreement or understanding with the latest termination date will determine the submission period for the petition.

Challenges to the appropriateness of proposed unit modifications may be filed in accordance with the provisions of Article 3 of this chapter.

A petition which seeks to create a new unit may be combined with a petition which seeks to be certified as the recognized employee organization in accordance with Article 4 of this chapter. Petitions challenging petitions seeking certification as the recognized employee organization for such new unit may also be filed in accordance with Article 4.
All unit modification petitions filed pursuant to this section must be accompanied by proof of employee approval equal to greater than 50 percent of the employees covered by the petition. Where positions are proposed to be included in an existing representation unit, proof of employee approval of greater than 50 percent of that representation unit is also required. The proof of employee approval of the existing representation unit may be submitted by letter to the Director from the recognized employee organization for existing representation unit.

Notwithstanding the provisions of Sections A25-368 and A25-384, if the Director of Employee Services Agency or a recognized employee organization currently representing the positions in the petition so requests, the proposed unit modification(s) are subject to approval by the petitioning employees via a secret ballot election conducted by the California State Mediation and Conciliation Service. The ballot shall be restricted to a choice between the petitioning and the challenging organizations and neither the County, the employee organization representing the positions in the petition nor the petitioners may object to the election.

(Code 1954, § 3.9.4-8; Ord. No. NS-300.149, § 1, 3-9-71; Ord. No. NS-300.494, § 1, 1-14-92; Ord. No. NS-304.134, § 46, 8-25-15)


The County and recognized employee organization(s) may, upon mutual agreement, modify existing representation units represented by such recognized employee organization(s) through merging of unit(s), creation of new unit(s), moving of classification(s) from one unit to another, etc. Certification of recognition may be part of such agreement(s). The Personnel Board and all recognized employee organizations shall be notified by the Director of any such agreement, and such agreement(s) shall thereupon be binding and effective according to the terms of such agreement(s).

(Ord. No. NS-300.304, § 1, 9-11-79)


ARTICLE 4. - RECOGNIZED EMPLOYEE ORGANIZATIONS

An employee organization that seeks certification as a recognized employee organization shall file a petition with the Director of Employee Services Agency. The petition shall identify the representation unit requested or established pursuant to Article 3 of this chapter for which petitioner seeks recognition. The petition shall be accompanied by proof of employee approval of employees within the representation unit.

(Code 1954, § 3.9.5-2; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 47, 8-25-15)


The Director of Employee Services Agency shall determine the percent of proof of employee approval. A petition accompanied by proof of employee approval greater than 50 percent of the employees within the representation unit shall be certified as a majority petition. A petition accompanied by proof of employee approval of between 30 percent and 50 percent of the employees within the representation unit shall be certified as a minority petition.

(Code 1954, 3.9.5-2; Ord. No. 300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 48, 8-25-15)


The Director of Employee Services Agency shall give written notice of his certification of a majority or minority petition to the petitioner, to the employees involved, and to any employee organization that has filed a written request for the receipt of such a notice with him. Within 30 days of the date of such notice, another employee organization may file a challenging petition seeking to become the recognized employee organization within the representation unit.

(Code 1954, § 3.9.5-3; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 49, 8-25-15)

Sec. A25-381. - Certification without election.

(a) If no challenging petition is filed against a majority petition which demonstrates proof of employee approval by means of Paragraph (a)(3) of Section A25-347, the Director of Employee Services Agency shall certify the petitioner as the recognized employee organization of the representation unit.

(b) If no challenging petition is filed against a majority petition which demonstrates proof of employee approval by means other than Paragraph (a)(3) of Section A25-347, the Director of Employee Services Agency may certify the petitioner or request
the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and pursuant to Section A25-384.

(Code 1954, § 3.9.5-5; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 50, 8-25-15)

Sec. A25-382. - Election on challenged majority petition.

If a challenging petition is filed against a majority petition and is accompanied by proof of employee approval equal to at least 30 percent of the employees within the representation unit, the Director of Employee Services Agency shall request the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and pursuant to Section A25-384.

(Code 1954, § 3.9.5-5; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 51, 8-25-15)

Sec. A25-383. - Election on minority petition.

If a minority petition is filed, the Personnel Director shall, whether or not a challenging petition is filed, request the State Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations and pursuant to Section A25-384. If a challenging petition is filed against a minority petition and is accompanied by proof of employee approval equal to at least ten percent of the employees within the representation unit, the State Conciliation Service shall include the challenging employee organization on the ballot.

(Code 1954, § 3.9.5-6; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)


Whenever the State Conciliation Service calls an election pursuant to this article, it shall include the choice of no organization on the ballot. Employees entitled to vote in a representation election shall be those employees within the representation unit whose names appeared on the payroll immediately prior to the date of election. An employee organization shall be certified by the Director of Employee Services Agency as the recognized employee organization within the representation unit if the majority of those casting valid ballots at the election choose said organization. In an election where none of the choices receives a majority of the valid ballots cast,
a run-off election shall be conducted between the two choices receiving the largest number of
ballots cast. There shall be no more than one representation election in a 12-month period within
the same representation unit.

(Code 1954, § 3.9.5-7; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.134, § 52, 8-25-15.)

Sec. A25-385. - Decertification procedure.

(a) A decertification petition may be filed with the Director of Employee Services
Agency by employees of a registered employee organization to determine whether
or not a recognized employee organization continues to represent a majority of
the employees in the representation unit. The petition must be accompanied by
proof of employee approval equal to at least 30 percent of the employees within
the representation unit. All petitions pursuant to this section must be filed with the
Director of Employee Services Agency between 150 and 120 days prior to the
termination of an existing memorandum of agreement or understanding between
the recognized employee organization for the unit and the Board of Supervisors. In
the event no memorandum or agreement exists between the recognized employee
organization and the Board of Supervisors, petitions shall be filed between 150
and 120 days prior to the end of the fiscal year of the County. During the term of
the memorandum of understanding or agreement between a recognized
employee organization and the Board of Supervisors covering a representation
unit, no decertification petition for such unit shall be accepted by the Director of
Employee Services Agency unless it is timely filed during the last annual term
thereof, or the third annual term thereof, whichever first occurs. Notwithstanding
the foregoing provisions, no decertification petition for the same unit shall be
accepted by the Director of Employee Services Agency more frequently than every
two years.

(b) When a valid petition has been filed by employees, the State Conciliation Service
shall be requested to conduct an election within 30 days to determine whether or
not the incumbent recognized employee organization shall be decertified. The
incumbent recognized organization shall be decertified if a majority of those
casting valid ballots vote for decertification. When a valid petition has been filed by
a registered employee organization the State Conciliation Service shall be
requested to conduct an election within 30 days to determine whether such
organization shall be recognized. The incumbent recognized employee
organization shall be decertified if a majority of those casting valid ballots vote for
the petitioning organization.

If the State Conciliation Service refuses to conduct the election, the election shall be
conducted by the Registrar of Voters.

(Code 1954, § 3.9.5-8; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.149, § 2, 3-9-71; Ord.
No. NS-300.178, § 1, 7-31-73; Ord. No. NS-300.180, § 1, 10-30-73; Ord. No. NS-304.134, § 53, 8-25-
15.)

Editor's note—Sec. A25-385, as amended by Ord. No. NS-300.180, § 1, shall become effective on
July 1, 1974.


ARTICLE 5. - RIGHTS AND OBLIGATIONS

Sec. A25-393. - Duty to meet and confer in good faith.

(a) Upon request, a recognized employee organization shall have the right to meet
and confer in good faith to negotiate wages, hours and other terms and conditions
of employment with the appropriate level of management. Representatives of
recognized employee organizations may participate in such meetings without loss
of compensation or other benefits.

(b) "Meet and confer in good faith" means the mutual obligation personally to meet
and confer in order to exchange freely information, opinions and proposals and to
endeavor to reach agreement on matters within the scope of representation. If
agreement is reached by management and a recognized employee organization, or
recognized employee organizations, on matters subject to approval by the Board
of Supervisors, they shall jointly prepare a written memorandum of such
understanding, and present it to the Board of Supervisors for determination. If
agreement is reached on matters not subject to approval by the Board of
Supervisors, the appropriate level of management and recognized employee
organizations shall jointly prepare a written memorandum of such agreement.

(Code 1954, § 3.9.6-1; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-394. - Dues deductions.

Only a recognized employee organization may have the regular dues of its members within a representation unit deducted from employees' paychecks under procedures prescribed normally by the Director of Finance for such deductions. Dues deductions shall be upon the written authorization of the member. An authorization for dues deduction shall be subject to revocation pursuant to the provisions of a memorandum of agreement between the County and a recognized employee organization and the terms and conditions of such memorandum shall prevail over procedures prescribed by the Director of Finance. Other payroll deductions or dues deductions for employees not within recognized representation units may be allowed in accordance with such procedures as may be established.

(Code 1954, § 3.9.6-3; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.190, § 1, 5-31-74)

Sec. A25-395. - Communication with employees.

A recognized employee organization which represents employees of a County department shall be allowed by that department use of space on available bulletin boards for communications, provided that it does not interfere with the needs of the department. A recognized employee organization may distribute material to employees in the representation unit through normal channels. A recognized employee organization may distribute material to all employees through normal department channels when approved by the appointing authority. A recognized employee organization may distribute material to all employees through County-wide facilities of communication when approved by the County Executive. Any representative of an employee organization shall give notice to the department head or his designated representatives when contacting departmental employees on County facilities during the duty period of the employees, provided that solicitation for membership or other internal employee organization business shall be conducted during the nonduty hours of all employees concerned. Prearrangement for routine contact may be made on an annual basis.

(Code 1954, § 3.9.6-4; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-396. - Use of County buildings.
County buildings and other facilities may be made available for use by County employees or an employee organization or their representatives in accordance with administrative procedures governing such use.

(Code 1954, § 3.9.6-4; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-397. - Organizations to be given advance notice of proposals, actions.

(a) Each recognized employee organization affected shall be given reasonable advance written notice of any ordinance, rule or regulation, or proposal directly relating to matters within the scope of representation proposed to be adopted by the County and shall be given the opportunity to meet with the appropriate level of management prior to adoption.

(b) Whenever management communicates in writing to employees a management decision or proposal which might affect the working conditions, personnel, management practices or other employee-management relationship, it shall concurrently send such notice to the appropriate recognized employee organizations.

(Code 1954, § 3.9.6-5; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-398. - Grievances.

Grievances involving wages, hours and other conditions of employment which affect members of the representation unit may be processed by the recognized employee organization on its own behalf directly with the appropriate level of management. Individual and group grievances shall be processed in accordance with the provisions of the grievance procedure as provided in Chapter V of Division A25. Grievances with respect to any agreement negotiated in accordance with this chapter shall be processed in accordance with procedures set out in such agreement or directly with the County Executive if no agreement on a grievance procedure is reached. Grievances involving the interpretation and application of this chapter may be appealed to the County Executive. This section shall not apply to a representation unit when the recognized employee organization of that unit has signed a written memorandum of understanding with County management which provides for a grievance procedure and such memorandum has been approved by the Board of Supervisors and is in effect.

(Code 1954, § 3.9.6-6; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-304.74, § 3, 9-5-72)
Sec. A25-399. - Attendance at meetings.

(a) In accordance with general policy guidelines negotiated with the County Executive, a reasonable number of employees may be designated from time to time as official representatives by recognized employee organizations. Upon reasonable advance notice, such representatives may attend meetings and otherwise represent employees on matters within the scope of representation on County line within the County.

(b) Upon prior agreement with the appropriate level of management, a reasonable number of employees may be designated as unit representatives. Such unit representatives may attend meetings, conduct investigations and otherwise represent employees on County time within their units.

(c) Attendance at meetings by employee representatives outside the County may be authorized but at no expense to the County.

(Code 1954, § 3.9.6-7; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-400. - Representing individual employees.

Employee organizations may represent their individual employee members in individual employment relations, including grievances, to the extent required by the Government Code.

(Code 1954, § 3.9.6-8; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-401. - Individuals representing themselves.

Nothing in this chapter shall be construed to restrict or in any way modify the right of an individual employee to present matters involving his employment relationship to the appropriate level of management, provided that any action taken is not inconsistent with the terms of an agreement then in effect, and that before any action is taken which could affect the terms and conditions of employment of other employees in the representation unit, such proposed action is communicated to the recognized employee organization for its opinion on the merits and the effect of the proposed action.

(Code 1954, § 3.9.6-9; Ord. No. NS-300.130, § 1, 2, 1-13-69)

Sec. A25-402. - Discrimination, coercion by management.
No appointing authority or his representative shall discriminate for or against any employee organization, or in any way coerce or influence any employee in his free choice to join or refrain from joining any employee organization.

(Code 1954, § 3.9.6-10; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-403. - Prompt attention by management to requests.

Representatives of the appropriate level of management shall acknowledge in writing, within five working days, any written request for consideration of a matter by a recognized employee organization, and shall attempt a resolution of any problem within the scope of representation within a reasonable period of time.

(Code 1954, § 3.9.6-11; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-404. - Restrictions on confidential employees.

Confidential employees who are members of an employee organization that includes as members employees who are not confidential employees shall not:

(a) Serve as officers of such employee organization, or
(b) Serve on committees which deal with areas within the scope of representation, or
(c) Serve as a representative of such employee organization before County management.

(Code 1954, § 3.9.6-12; Ord. No. NS-300.130, §§ 1, 2, 1-13-69; Ord. No. NS-300.193, § 5, 9-3-74)

Sec. A25-405. - Labor Code § 923 not applicable.

The enactment of this chapter shall not be construed as making the provisions of Labor Code § 923 applicable to employees.

(Code 1954, § 3.9.6-13; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)


ARTICLE 6. - IMPASSE PROCEDURES
Sec. A25-414. - Impasse on matters subject to approval by Board of Supervisors.

(a) If the appropriate level of management and the recognized employee organization fail to reach agreement prior to June 1 of a fiscal year on a matter within the scope of representation affecting the budget and subject to approval by the Board of Supervisors and the parties together are unable to agree on a method of resolving the dispute, the dispute shall be submitted to mediation.

(b) If the parties are unable to agree on the mediator, either party may request the service of the State Conciliation Service to provide a mediator. Costs of mediation shall be divided one-half to the County and one-half to the recognized employee organization or recognized employee organizations.

(Code 1954, § 3.9.7-1; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Sec. A25-415. - Impasse on matters not subject to approval by Board of Supervisors.

(a) If after a reasonable period of time, the appropriate level of management and recognized employee organization fail to reach agreement on a matter not subject to approval by the Board of Supervisors and within the scope of representation, the parties together may mutually agree upon a method of resolving the dispute including, but not limited to, mediation. If mutual agreement on a method for resolving the dispute is not achieved within a reasonable period of time, the dispute shall be submitted to mediation.

(b) If the parties are unable to agree on the mediator, either party may request the services of the State Conciliation Service to provide a mediator. Costs of mediation shall be divided one-half to the County and one-half to the recognized employee organization or recognized employee organizations.

(Code 1954, § 3.9.7-2; Ord. No. NS-300.130, §§ 1, 2, 1-13-69)

Exhibit B
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

Hon. Judge Ernest M. Robles

ORDER GRANTING DEBTORS’ MOTION UNDER § 1113 OF THE BANKRUPTCY CODE TO (A) REJECT AND TERMINATE THE TERMS OF CALIFORNIA NURSES ASSOCIATION’S COLLECTIVE BARGAINING AGREEMENTS WITH SAINT LOUISE REGIONAL HOSPITAL AND O’CONNOR HOSPITAL AND (B) TO MODIFY RELATED PROVISIONS IN A CERTAIN MASTER AGREEMENT UPON THE CLOSING OF THE SALE OF HOSPITALS TO SANTA CLARA COUNTY

[Relates to Docket No. 1182]

Hearing:
Date: February 13, 2019
Time: 10:00 am
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

FEB 19 2019
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK
This matter came before the Court on the Debtors’ Motion under § 1113 of the Bankruptcy Code to (A) Reject and Terminate the Terms of California Nurses Association’s Collective Bargaining Agreements with Saint Louise Regional Hospital and O’Connor Hospital and (B) to Modify Related Provisions in a Certain Master Agreement upon the Closing of the Sale of Hospitals to Santa Clara County [Docket No. 1182] the (“Motion”), filed by Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the “Debtors”), seeking the entry of an order, pursuant to § 1113 of title 11 of the United States Code (the “Bankruptcy Code”).¹ (A) rejecting and terminating all terms of (1) the Collective Bargaining Agreement between California Nurses Association (“CNA”) and Debtor Saint Louise Regional Hospital (“SLRH”) (the “CNA SLRH CBA”) (which is filed as Docket No. 1202-2 as redacted for confidentiality purposes) and (2) the Collective Bargaining Agreement between Debtor O’Connor Hospital and CNA (the “CNA OCH CBA”) (which is filed as Docket No. 1202-3 as redacted for confidentiality purposes); and (B) modifying related terms contained in the Master Agreement between certain hospitals within VHS and CNA, effective December 22, 2016 - December 21, 2020 (the “CNA Master CBA”) (filed as a redline with such proposed modifications as Docket No. 1202-4 as redacted for confidentiality purposes) (together, the CNA OCH CBA, the SLRH CBA and the CNA Master CBA are the “CBAs”) to effectuate rejection and termination of the SLRH CBA and OCH CBA and all obligations of the Debtors to CNA relating to OCH and SLRH; (B) with all such relief to be effective and conditioned upon the “Closing” (as that term is defined in the Asset Purchase Agreement dated October 1, 2018 (the “APA”) [Docket No. 365-1] between VHS, Verity Holdings, LLC, a California limited liability company, and Santa Clara County (“SCC”)).

At the previous hearing on the Motion on February 13, 2019 (the “Hearing”), the Court considered the Motion, the Declaration of Richard G. Adcock in Support of Debtors’ § 1113 Motions [Docket No. 1193], the Declaration of James Moloney in Support of Debtors § 1113

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “LBR” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.
Motions [Docket No. 1194], the Corrected Declaration of Sam J. Alberts in Support of Motions to Reject or Modify Collective Bargaining Agreements [Docket No. 1202], the California Nurses Association Objection to Debtors’ Motion under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Hospital [Docket No. 1269], the Declaration of Andrew Prediletto in Support of Objection to § 1113 Motion Filed by Debtor Verity Health System of California, Inc. [Docket No. 1270], Official Committee of Unsecured Creditors’ Response to Debtors’ Motions to Reject or Modify Collective Bargaining Agreements [Docket No. 1276], the Debtors’ Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1332], the Sur-Reply to Debtors’ Reply to California Nurses Association’s Objection to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreements [Doc. No. 1385], the Declaration of Kyrsten Skogstad in Support of [Sur-Reply] [Doc. No. 1386], the Debtors’ Request to Strike Or, in the Alternative, Overrule California Nurses’ Association Unauthorized "Sur-Reply" to Debtors’ Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1396], the Order: (1) Requiring Further Briefing on Debtors’ Motions to Reject Collective Bargaining Agreements and (2) Continuing Hearing on Motions from January 30, 2019 to February 8, 2019 at 10:00 a.m. [Doc. No. 1411], The County of Santa Clara’s Briefing Re Debtors’ Motions to Reject Collective Bargaining Agreements [Doc. No. 1502], the Official Committee of Unsecured Creditors’ Supplemental Response to Debtors’ Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1503], the Debtors’ Response to Court Order for Additional Briefing Regarding Selected Issues Concerning Debtors’ Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1507] and the related Notice of Errata [Doc. No. 1511], the California Nurses Association’s Response to the Hon. Ernest Robles’ Order Requesting Further Briefing Regarding Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of CNA’s Collective Bargaining Agreements [Doc. No. 1508]; and having reviewed the foregoing, including all
exhibits and declarations submitted therewith, as well as the statements, arguments and representations of the parties made at the Hearing; and the entire record of these cases;

HEREBY FINDS AND CONCLUDES THAT:

A. The relief sought in the Motion is in the best interests of the Debtors and their estates, and the legal and factual bases set forth in the Motion and presented at the Hearing establish just cause for the relief granted herein and for the reasons set forth in the Court’s tentative ruling [Docket No. 1542] which is incorporated by reference herein.

B. Proper notice of the Motion has been provided;

C. The Debtors have met the requirements of § 1113 for the relief they seek in the Motions, including satisfying the nine-part test articulated in In re Karykeion, Inc., 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010).

D. The CBAs are among the “applicable CBAs” referenced in paragraph 18 of the 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 [Docket No. 1153] (the “Sale Order”).

E. This Order constitutes the “resolution of the collective bargaining agreements” “that cover employees at Saint Louise Regional Hospital and O’Connor Hospital prior to SCC closing on the proposed Sale pursuant to the APA” referenced in paragraph 33 of the Sale Order as relates to the CBAs and to CNA.

F. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). This Order shall be effective and enforceable immediately, and time is of the essence in approving the relief granted herein.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motions is GRANTED and APPROVED.

2 The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.
2. All objections with regard to the relief sought in the Motions that have not been withdrawn, waived, settled, or provided for herein, including any reservation of rights included in such objections, are overruled on the merits, with prejudice.

3. Effective and conditioned upon the Closing, (i) the CNA SLRH CBA and CNA OCH CBA are rejected, and (ii) all terms contained therein are terminated.

4. Effective and conditioned upon the Closing, the CNA Master CBA is modified as set forth in the redlined document filed as Docket No. 1202-4, and all terms contained therein that relate to SLRH and OCH are terminated.

5. The Debtors are authorized to take all steps necessary to carry out this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order or the CBAs.

IT IS SO ORDERED.

###

Date: February 19, 2019

[Signature]

Ernest M. Robles
United States Bankruptcy Judge
United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, February 13, 2019

Hearing Room 1568

10:00 AM
2:18-20151 Verity Health System of California, Inc. Chapter 11

#7.20 Hearing
RE: [1192] Motion Debtor’s Motion Under 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union-United Healthcare Workers-West’s Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara (Moyron, Tania)

fr. 1-30-19

Docket 1192

Matter Notes:
2/13/2019

The tentative ruling will be the order.
Party to lodge order: Movant

Tentative Ruling:
2/12/2019

See Cal. No. 7.1, above, incorporated in full by reference.

Party Information

Debtor(s):
Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar

Wednesday, February 13, 2019 
Hearing Room 1568

10:00 AM 
2:18-20151 Verity Health System of California, Inc. 
Chapter 11

#7.10 Hearing
RE: [1182] Motion Debtors' Motion Under 1113 of the Bankruptcy Code to 
Modify, Reject and Terminate Certain Terms of California Nurses Association's 
Collective Bargaining Agreement with O'Connor Hospital and Saint Louise 
Regional Hospital Upon Closing of the Sale of Hospitals to the County of Santa 
Clara (Moyron, Tania)

fr. 1-30-19

Docket 1182

Matter Notes:
2/13/2019

The amended tentative ruling will be the order. 
Party to lodge order: Movant

POST PDF OF Amended TENTATIVE RULING TO CIAO

Tentative Ruling:
2/13/2019

(Amended after hearing in RED.) For the reasons set forth below, the Debtors’ 
motions to reject collective bargaining agreements with the California Nurses 
Association and the Service Employee International Union—United Healthcare 
Workers West are GRANTED. The Court approves the settlements reached between 
the Debtors and the Engineers and Scientists of California, IFPTE Local 20 and the 
California Licensed Vocational Nurses Association.

Pleadings Filed and Reviewed:
1) Debtors’ Motions to Modify, Reject, and/or Terminate Various Collective
Verity Health System of California, Inc.

Chapter 11

Bargaining Agreements:

a) Debtors’ Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of Engineers and Scientists of California, IFPTE Local 20’s Collective Bargaining Agreements with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of the Hospitals to the County of Santa Clara [Doc. No. 1181]
   i) Supplement to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of Engineers and Scientists of California, IFPTE Local 20’s Collective Bargaining Agreements with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of the Hospitals to the County of Santa Clara [Doc. No. 1373]

b) Debtors’ Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of California Licensed Vocational Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital Upon the Closing of the Sale of These Hospitals to the County of Santa Clara [Doc. No. 1191]
   i) Supplement to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Reject and Terminate the Terms of California Licensed Vocational Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital Upon the Closing of the Sale of These Hospitals to the County of Santa Clara [Doc. No. 1372]

c) Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of Hospitals to the County of Santa Clara [Doc. No. 1182]

d) Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of Service Employee International Union—United Healthcare Workers West’s Collective Bargaining Agreement with Certain Debtors Upon the Closing of the Sale of Hospitals to the County of Santa Clara [Doc. No. 1192]

e) Corrected Declaration of Sam J. Alberts in Support of Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1202]

f) Declaration of Richard G. Adcock in Support of Debtors’ § 1113 Motions [Doc. No. 1193]

g) Declarations of James M. Moloney in Support of Debtors § 1113 Motions [Doc. No. 1194]
Verity Health System of California, Inc. Chapter 11

2) Opposition Papers:
   a) California Nurses Association Objection to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Hospital [Doc. No. 1269]
      i) Declaration of Andrew Prediletto in Support of California Nurses Association’s Objection to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of the California Nurses Association’s Collective Bargaining Agreement [Doc. No. 1270]
   b) SEIU-UHW’s Opposition to Debtors’ Motion Under § 1113 to Modify, Reject and Terminate SEIU-UHW’s CBA with Certain Debtors [Doc. No. 1271]
      i) Declaration of Greg Pullman in Opposition to Debtors’ Motion Under § 1113 to Modify, Reject and Terminate SEIU-UHW’s CBA with Certain Debtors [Doc. No. 1272]
      ii) Declaration of Emily P. Rich in Opposition to Debtors’ Motion Under § 1113 to Modify, Reject and Terminate SEIU-UHW’s CBA with Certain Debtors [Doc. No. 1273]

3) Official Committee of Unsecured Creditors’ Response to Debtors’ Motions to Reject or Modify Collective Bargaining Agreements [Doc. No. 1276]

4) Debtors’ Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1332]

5) Sur-Reply to Debtors’ Reply to California Nurses Association’s Objection to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreements [Doc. No. 1385]
   a) Declaration of Kyrsten Skogstad in Support of [Sur-Reply] [Doc. No. 1386]

6) Debtors’ Request to Strike Or, in the Alternative, Overrule California Nurses’ Association Unauthorized “Sur-Reply” to Debtors’ Omnibus Reply in Support of Motions Under § 1113 of the Bankruptcy Code [Doc. No. 1396]

7) Order: (1) Requiring Further Briefing on Debtors’ Motions to Reject Collective Bargaining Agreements and (2) Continuing Hearing on Motions from January 30, 2019 to February 8, 2019 at 10:00 a.m. [Doc. No. 1411]
   a) Order Approving Stipulation Continuing Hearing Regarding Debtors’ Motions Under Section 1113 of the Bankruptcy Code [Doc. No. 1446]

8) Additional Briefing Submitted in Response to the Court’s Order:
I. Facts and Summary of Pleadings

On August 31, 2018 (the “Petition Date”), Verity Health Systems of California (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

A. The Bidding Procedures Order and Sale Order

On October 31, 2018, the Court entered an Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to Be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 724] (the “Bidding Procedures Order,” and the motion for entry of the Bidding Procedures Order, the “Bidding Procedures Motion”).

The Bidding Procedures Order established procedures governing the auction of
Verity Health System of California, Inc. versus Chapter 11
St. Louise Regional Hospital ("St. Louise"), O’Connor Hospital ("O’Connor"), and related assets (collectively, the “Hospitals”). Pursuant to an Asset Purchase Agreement [Doc. No. 365, Ex. A] (the “APA”) dated October 1, 2018, the County of Santa Clara ("Santa Clara") was designated as the stalking horse bidder.

The APA provides that certain liabilities are excluded from the sale, including “Labor Obligations,” defined as all “collective bargaining agreements … that are in place with any labor unions …." APA at ¶8.13. Santa Clara is not obligated to close the sale unless it is "satisfied, in its reasonable discretion, by the terms of the Sale Order or otherwise," that the Hospitals "are being sold and transferred to [Santa Clara] free and clear of any and all Labor Obligations to the maximum extent permitted by law." Id.

Under the APA, Santa Clara has agreed to offer provisional employment to substantially all non-management employees of the Hospitals who are actively employed and in good standing. APA at ¶5.3. Employees who accept provisional employment will be provided the opportunity to apply for permanent-track positions with Santa Clara. Id.

Certain of the Debtors are parties to collective bargaining agreements (the "CBAs") with the California Nurses Association (the "CNA"), the Service Employee International Union—United Healthcare Workers West (the "SEIU-UHW"), the Engineers and Scientists of California, IFPTE Local 20 ("Local 20"), and the California Licensed Vocational Nurses Association (the "CLVNA") (collectively, the "Unions").

The Hospitals were vigorously marketed by the Debtors’ investment banker, Cain Brothers, a division of KeyBank Capital Markets, Inc. (“Cain”). Twenty-five parties executed non-disclosure agreements and were granted access to a data room containing information about the Hospitals. Decl. of James M. Moloney [Doc. No. 1041] (the "Moloney Decl.") at ¶6. Cain sent a direct e-mail communication to over 170 interested potential purchasers containing key information about the Hospitals. Id. at ¶7. Cain actively followed up with two serious potential purchasers, assisting those parties with due diligence and making itself available to answer questions. Id. at ¶¶7–8. During the marketing process, the Debtors expressed their preference that potential purchasers assume the CBAs. Decl. of Richard G. Adcock in Support of Debtors’ § 1113 Motions [Doc. No. 1193] (the "Adcock Decl.") at ¶7. Notwithstanding these thorough marketing efforts, no party other than Santa Clara placed a bid for the Hospitals. Moloney Decl. at ¶9.

On December 27, 2018, the Court entered an Order (A) Authorizing the Sale of
**United States Bankruptcy Court**  
**Central District of California**  
**Los Angeles**  
**Judge Ernest Robles, Presiding**  
**Courtroom 1568 Calendar**

**Wednesday, February 13, 2019**  
**Hearing Room**  
**1568**

**10:00 AM**  
**CONT... Verity Health System of California, Inc.**  
**Chapter 11**

*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* [Doc. No. 1153] (the "Sale Order"). The sale is projected to close on March 4, 2019. Closing of the sale "is conditioned upon the rejection, termination and/or modification of all applicable CBAs related to [O'Connor] and [Saint Louise], pursuant to § 1113 or as otherwise agreed to between the Debtors, the respective unions, and as approved by the Court." Sale Order at ¶18. The Sale Order further provides that the "Debtors must have resolution of the collective bargaining agreements … that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to [Santa Clara] closing on the proposed Sale pursuant to the APA." *Id.* at ¶33.

**B. The Settlements with Local 20 and CLVNA**

On January 2, 2019, the Debtors filed motions seeking authorization to reject, modify, and or terminate the CBAs with the Unions (collectively, the "Rejection Motions"). The Debtors have reached settlements resolving the Rejection Motions with Local 20 and CLVNA. CNA and SEIU-UHW (the "Objecting Unions") continue to oppose the Rejection Motions.

The material terms of the settlement with CLVNA are as follows:

1) Rejection and termination of the CLVNA CBA shall be effective upon the closing of the sale.

2) All paid time off ("PTO") obligations that have accrued and remain unused or unpaid that arose after the Petition Date are granted allowed administrative expense status under § 503. PTO obligations that accrued between March 4, 2018 and the Petition Date are granted allowed priority status under § 507(a)(4), up to the statutory cap of $12,850, with any remaining balance to be treated as a general unsecured claim. PTO obligations that accrued prior to March 4, 2018, are granted allowed general unsecured claim status.

3) Notwithstanding the rejection and termination of the CLVNA CBA, allowed severance benefits are granted for any employee covered under the CLVNA CBA who is not provisionally hired by Santa Clara.

The material terms of the settlement with Local 20 are substantially similar to the terms of the CLVNA settlement.
C. Discussions Between the Debtors and CNA

The Debtors entered into three prepetition CBAs with CNA regarding the Hospitals which are still effective:

1) SLRH CNA Local Contract 2016–2020 [Doc. No. 1182, Ex. 1] (the "CNA Saint Louise CBA"), between Saint Louise and the CNA;
2) OCH CNA Local Contract 2016–2020 [Doc. No. 1182, Ex. 2] (the "CNA O’Connor CBA"), between O’Connor and CNA;
3) CNA/VHS Contract 12/22/16–12/21/20 [Doc. No. 1182, Ex. 3] (the "CNA Master CBA"), between VHS and CNA.

CNA represents approximately 544 registered nurses at O’Connor and approximately 204 registered nurses at St. Louise.

Shortly after the Petition Date, Andrew Prediletto, the Assistant Director of Collective Bargaining for the CNA, contacted Steven Sharrer, VHS’ Chief Human Resources Officer, and requested a meeting regarding the CBAs affecting CNA. Decl. of Andrew Prediletto [Doc. No. 1270] (the "Prediletto Decl.") at ¶¶2–4. Mr. Sharrer responded that a meeting would be premature because the Debtors were not yet seeking to sell the Hospitals. Id.

Under the Bidding Procedures Order, December 5, 2018, was the deadline for parties to submit bids for the Hospitals. As noted, Santa Clara was the only party that submitted a bid.

On December 6, 2018, the Debtors met with CNA and orally presented the Debtors’ proposal to (a) reject and terminate the CNA Saint Louise CBA and CNA O’Connor CBA and (b) to modify the CNA Master CBA to remove, reject, and terminate all references to Saint Louise and O’Connor contained therein, for the purpose of effectuating rejection of the CNA Saint Louise CBA and CNA O’Connor CBA. Adcock Decl. at ¶13. The Debtors explained that they were seeking authorization to reject the CBAs because the Debtors would no longer be operating the Hospitals after the sale closed. Id. at ¶12.

On December 7, 2018, the Debtors provided CNA a letter memorializing the proposal made at the December 6 meeting (the "CNA Letter"). The CNA Letter provides in relevant part:

The [Bidding Procedures Order] established a deadline of December 5,
CONT...

Verity Health System of California, Inc.

Chapter 11

2018 ... whereby interested parties who met certain criteria ... could submit bids to purchase the assets and liabilities of [the Hospitals]. After the Debtors undertook a thorough marketing process to sell in whole or in part the Hospitals, no Alternative Qualified Bidder (or any other bidder) has presented an Alternative Qualified Bid (or any other bid) by the Bid Deadline, nor has any part requested additional time within which to submit such a bid. So, at this time, besides the County [of Santa Clara], no party has expressed material interest in acquiring and operating the Hospitals....

Because the APA is for the sale of all operations of [the Hospitals], after the Sale closes (which we expect to occur in late February or March 2019), the Debtors will no longer operate those Hospitals and, therefore, will have no further need for the [CNA Saint Louise CBA] and [CNA O’Connor CBA], and, as the County will only acquire the Hospitals free from the CBAs, aver that rejection of them is necessary to permit reorganization of the Debtors because the only bidder in a thorough marketing and auction process will not assume the CBAs.

Corrected Decl. of Sam J. Alberts [Doc. No. 1202] (the "Alberts Decl.") at Ex. 1.

On December 13, 2018, the Debtors sent a redline copy of the CNA Master CBA showing all proposed changes to that document. The changes eliminated references to Saint Louise and O’Connor but did not alter any provisions related to the Debtors’ other hospitals that are not part of the sale.

On December 13, 2018, CNA sent a letter seeking clarification about the Debtors’ proposal regarding the CBAs [Doc. No. 1332, Ex. 6] (the "CNA Initial Letter"). The CNA Initial Letter asserted that the Debtors’ proposed rejection of the CNA Saint Louise CBA and CNA O’Connor CBA in their entirety "is an overbroad and unnecessary step." Doc. No. 1332 at Ex. 6. Debtors responded in writing on December 18, 2018:

As previously stated, because Santa Clara County ... will not (and by operation of law cannot) assume CBAs and the Debtors will have no operations at [Saint Louise] and [O’Connor] upon closing of the sale to [Santa Clara County], no terms of the [CNA O’Connor CBA] and [CNA Saint Louise CBA] warrant survival. To the contrary, survival of any terms would unduly burden the Debtors’ estates and their ability to reorganize. Due to these facts, the Debtors’ proposal is the rejection and termination, in toto, of the [CNA...
The CNA Initial Letter also sought "information from Verity regarding Verity’s and/or Cain Brothers’ interactions with other entities who were interested in purchasing [Saint Louise] or [O’Connor], specifically those who advanced far enough in the process to execute nondisclosure agreements." Doc. No. 1332, Ex. 6. In response, the Debtors agreed to provide information about the bidding process, subject to confidentiality restrictions. The Debtors further agreed to arrange a meeting with either Cain Brothers or the Debtors regarding the bidding process.

CNA did not respond to the Debtors’ offers for a meeting with Cain or for other sale information until January 16, 2019. On that date, CNA sent the Debtors an e-mail providing in relevant part:

The Union would like to discuss with Verity an agreement that would modify the successor clause to ensure that it is not in conflict with the APA in exchange for severance pay to nurses to mitigate any financial losses incurred by such a modification.

Doc. No. 1332, Ex. 8.

On January 19, 2019, the Debtors replied as follows:

Verity has already stated, repeatedly, that it is willing to provide severance for people who are not rehired. As such, I am not sure what, if anything actually remains in dispute. That said, if there is something else at issue, please advise. Always happy to talk by phone.

Doc. No. 1332, Ex. 8.

On January 22, 2019, the Debtors provided CNA with redacted Indications of Interest (the "IOIs") submitted by potential bidders prior to the Petition Date. The delay in the production of the IOIs resulted from the inability of the Debtors and CNA to agree upon the form of a confidentiality agreement.

D. Discussions Between the Debtors and SEIU-UHW

The Debtors are parties to a prepetition CBA with SEIU-UHW (the "SEIU-UHW CBA") that remains in effect. SEIU-UHW represents approximately 190 employees
who work at Saint Louise and 512 employees who work at O’Connor. The employees work in a variety of positions, including environmental and food services, clerical support, medical records, and various technician positions (including radiology technicians, pharmacy technicians, and respiratory care practitioners).

On December 11, 2018, the Debtors met with SEIU-UHW, and orally presented the Debtors’ proposal to modify the SEIU-UHW CBA to provide for the termination of the agreement’s provisions with respect to Saint Louise and O’Connor. (The Debtors had sought to conduct the meeting immediately after the December 5, 2018 bid deadline, but SEIU-UHW was not available to meet until December 11.) On December 13, 2018, the Debtors provided SEIU-UHW a letter memorializing the proposal made at the December 11 meeting (the "SEIU-UHW Letter").

On December 14, 2018, SEIU-UHW’s counsel sent 30 discrete information requests to the Debtors. Among other things, SEIU-UHW asked for information regarding the effective date of the proposed modification; the efforts that were made to find a bidder who would assume the SEIU-UHW CBA; and the information provided by the Debtors to potential bidders regarding the costs of operating under the SEIU-UHW CBA. On January 3, 2019, the Debtors provided written responses to SEIU-UHW’s requests for information.

On January 9, 2019, SEIU-UHW sent an additional 23 requests for information. On January 12, 2019, the Debtors provided written responses. On Friday, January 11, 2019, SEIU-UHW requested a meeting with the Cain, the Debtor’s financial advisors, the following Monday afternoon. The Debtors arranged for the meeting and SEIU-UHW met with Cain on Monday, January 14, 2019.

On January 14, 2019, SEIU-UHW served the Debtors with six additional information and document requests. The Debtors took the position that certain of the information requested by SEIU-UHW could be produced only if subject to a confidentiality agreement. After attempts to negotiate a confidentiality agreement proved unsuccessful, the Debtors and SEIU-UHW reached an agreement under which certain information that the Debtors contended was confidential—the Indications of Interest of nonbidders—would be produced to SEIU-UHW, with the names and identity information redacted. On January 21, 2019, the Debtors provided SEIU-UHW with redacted versions of the Indications of Interest.

On January 24, 2019, SEIU-UHW asked the Debtors if they would "consider paying severance to all employees in exchange for [SEIU-UHW’s] withdrawal of its opposition." E-mail from Caitlin E. Gray to the Debtors, dated January 24, 2019, at 6:09 p.m. [Doc. No. 1501-2 at 18]. On January 28, 2019, the Debtors advised SEIU-UHW...
E. Summary of Papers Filed in Connection with the Rejection Motions

The Debtors’ primary arguments in support of the Rejection Motions may be summarized as follows:

1) Rejection of the CBAs is necessary, equitable, and sought in good faith because, absent such relief, the Debtors would be unable to sell the Hospitals to Santa Clara, who was the only bidder for the Hospitals after a thorough marketing process. Pursuant to Cal. Gov’t Code § 3500, known as the Meyers-Milias-Brown Act, Santa Clara cannot assume the CBAs, because Santa Clara’s existing employees are already represented by a union. The Meyers-Milias-Brown Act requires Santa Clara to negotiate all collective bargaining issues with this pre-existing union.

2) Throughout the sale process, the Debtors’ stated preference has been for buyers to accept assignment of the CBAs. Notwithstanding this preference, Santa Clara would not, and could not, take assignment of the CBAs.

3) Once the sale to Santa Clara closes, the Debtors will have no operational activities at the Hospitals, and accordingly will no longer have any need or use for the employees working at those facilities or the CBAs at issue.

SEIU-UHW’s primary arguments in opposition to the Rejection Motion may be summarized as follows:

1) To reject the SEIU-UHW CBA, Debtors must "propose modifications to the existing labor contract without which the debtor cannot obtain confirmation." In re Pierce Terminal Warehouse, Inc., 133 B.R. 639, 646–47 (Bankr. N.D. Iowa 1991). "The Court must also consider whether the employer, although needing some modifications to successfully reorganize, has sought changes to the contract which materially exceed such needs. The result of such overreaching is that rejection will be prohibited." Id. Although Santa Clara
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will not assume the SEIU-UHW CBA, the CBA could continue between SEIU-UHW and the Debtors, with claims for breach of contract allowed. This would allow union members to make claims for severance payments under the agreement and claims for ongoing minimum pension funding contributions required under the CBA.

2) The Debtors have stated that rejection of the SEIU-UHW CBA is necessary to "avoid administrative expenses which can dilute creditors’ recoveries and even make confirmation of a plan impossible." See Debtors’ Responses to Information Request No. 5 [Doc. No. 1273, Ex. B] at ¶5. The Debtors’ desire to minimize administrative claims does not establish that rejection is necessary for plan confirmation.

3) Even if the Debtors could establish that rejection is necessary and that all affected parties are treated fairly and equitably, the Rejection Motion must still be denied because the Debtors failed to meet with SEIU-UHW at reasonable times to confer in good faith as required by § 1113. The Debtors entered into the APA with Santa Clara before commencing negotiations with SEIU-UHW. The Debtors should have engaged with SEIU-UHW before the APA was finalized, and should have provided SEIU-UHW a meaningful opportunity to engage with Santa Clara regarding the terms of the APA. Once the Debtors signed the APA, their bargaining leverage with Santa Clara was markedly diminished. In In re Lady H Coal Co., Inc., 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996), the court rejected the Debtor’s attempt to reject a CBA where, as here, the Debtors did not seek rejection of the CBA until after they had entered into a sale agreement with a party not willing to assume the CBA. The Lady H court explained "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise," and held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." Lady H, 193 B.R. at 242. Similarly, in In re Karykeion, Inc., 435 B.R. 663, 682 (Bankr. C.D. Cal. 2010), the court stated that the "[u]nions are correct that beginning negotiations when one party is already locked into a position does not constitute good faith."

CNA’s primary arguments in opposition to the Rejection Motion (to the extent they differ from the arguments presented by SEIU-UHW) may be summarized as follows:
CONT...

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1) The Debtors have no external incentive to bargain in good faith because they are liquidating their assets. See, e.g., In Re United States Truck Co. Holdings, 2000 Bankr. Lexis 1376, *89 (Bankr. E.D. Mich. Sept. 29, 2000) ("Where a debtor is liquidating under Chapter 11 and is no longer operating a business, there is inherently a lack of an important incentive to bargain in good faith. . . Debtor no longer needs its employees to keep its business operating and consequently does not have to bargain to avert the threat of a work stoppage or a strike.") Under these circumstances, the Court must carefully scrutinize the Debtors’ compliance with the requirements of § 1113. Consequently, the Debtors’ refusal to meet with CNA prior to execution of the APA with Santa Clara should not be easily excused due to the pressures and constraints inherent in any bankruptcy sale.

2) Debtors have already violated the successor clause of the CBAs by (1) signing the APA with Santa Clara and (2) moving to sell the Hospitals prior to moving to reject the contracts under § 1113. In order to avoid an administrative claim against the estate for breach of contract, Debtors would be required to reject the CBAs retroactively. However, the Ninth Circuit Bankruptcy Appellate Panel has stated that "[b]ecause a CBA may not be rejected retroactively, unilateral breaches prior to rejection cannot be related to unsecured status." In re World Sales, 183 B.R. 872 (BAP 9th Cir. 1995).

The Debtors’ primary arguments in Reply to the Oppositions of the Objecting Unions may be summarized as follows:

1) The Objecting Unions are seeking to block rejection of the CBAs in order to increase the estate’s administrative liabilities. This is not a legitimate basis to oppose § 1113 relief and cuts directly against the "fair and equitable" perspective from which such relief must be granted. Faced with similar facts, the court in In re Chicago Const. Specialties, Inc., 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) concluded that "the only purpose of leaving the CBA in place would be to afford the Respondents the opportunity for an augmented administrative claim rather than a general unsecured claim. Naturally, a creditor would prefer to maximize its distribution from the bankruptcy estate. Nonetheless, section 1113 may not be used to elevate a union’s position at the cost of any distribution to any other creditor. Such would be contrary to the purpose of section 1113 and the Bankruptcy Code as a whole."

2) The Objecting Unions speculate that had they been permitted to actively
participate in the sale process, they may have achieved an enhanced outcome for their members. This argument fails, because the only party that bid for the assets was Santa Clara, and it is indisputable that Santa Clara cannot assume the CBAs under California law. Further, § 1113 "does not impose any obligation on the Debtors to ensure that the [union] can negotiate the best possible deal with the new owner of the Debtors’ operations." In re Walter Energy, Inc., 542 B.R. 859, 890 (Bankr. N.D. Ala. 2015), aff’d sub nom. United Mine Workers of Am. Combined Benefit Fund v. Walter Energy, Inc., 551 B.R. 631 (N.D. Ala. 2016), and aff’d sub nom. United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc., 579 B.R. 603 (N.D. Ala. 2016), aff’d sub nom. In re Walter Energy, Inc., 911 F.3d 1121 (11th Cir. 2018). "The section 1113 inquiry focuses solely on the proposal made by the Debtors, not the other parties, and the UMWA is not entitled to a veto power over a going concern sale when the undisputed evidence establishes that it is the best way to maximize value for all creditors and provide the best chance for future employment for the Debtors’ employees, including, but not limited to, UMWA-represented employees." Id.

3) The Objecting Unions cannot speculate on potential transactions as an alternative without presenting a proposed specific transaction to the Court—which the Unions did not do here.

4) The Debtors have provided up-to-date, relevant information to the Objecting Unions. The burden has now shifted to the Unions to show that the information provided is not sufficient. See In re Karykeion, Inc., 435 B.R. 663, 680 (Bankr. C.D. Cal. 2010) ("The debtor bears the initial burden of producing evidence of the information that it has provided to the union. The burden then shifts to the union to rebut the debtor’s explicit or implicit assertion that such evidence is sufficient to enable an evaluation of the proposal.").

On January 28, 2019, CNA filed a Sur-Reply, which may be summarized as follows:

1) Prior to the Petition Date, potential bidders submitted Indications of Interest (IOIs) in the Debtors’ assets. One of these parties—Entity A—offered to assume the outstanding pension obligations in its asset purchase. In response to discovery requests filed in connection with the Motions to Reject, the Debtors have stated that Entity A’s "proposal did not provide sufficient value to the secured creditors." Doc. No. 1273-3 at 6. The Debtors further stated that they "advised this party to improve its financial offer in order to be considered
2) The Debtors’ treatment of the IOI submitted by Entity A further illustrates why CNA should have been involved in the process of selecting the stalking horse bidder. The Debtors made the decision, without CNA’s involvement, that Entity A’s bid was inadequate because it did not provide sufficient value to secured creditors. The purpose of § 1113 “is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree.” In re Century Brass Prods. Inc., 795 F.2d 265, 273 (2d Cir. 1986). By instructing Entity A to submit a bid providing additional value to secured creditors, the Debtors made the determination that the burden of restructuring should fall upon the nurses, rather than the secured creditors.

On January 28, 2019, the Debtors filed a request to strike CNA’s Sur-Reply, on the ground that it was not authorized. In the alternative, the Debtors assert that the Court should overrule the arguments contained in the Sur-Reply. Debtors assert that the prepetition IOIs are not relevant given that none of the IOIs resulted in a formal bid.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Rejection Motions. [Note 1] The Committee believes that it is in the best interest of its overall constituency to close the sale to Santa Clara and to mitigate to the maximum extent possible the exposure of the Debtors’ estates to postpetition claims arising under the CBAs with respect to the facilities being sold.

On January 29, 2019, the Court ordered the parties to submit further briefing addressing the following issues:

1) In the context of this case, should the Court interpret "necessary to permit reorganization of the debtor" to mean "necessary to permit the § 363 sale of the Hospitals" or "necessary to enable the Debtors to obtain confirmation of a plan of liquidation"?
2) Is it possible for the Debtors to close the sale if, as contemplated by the Unions, the Court denies the Rejection Motions, allows the CBAs to remain in effect between the Debtors and the Unions, and allows the Unions an administrative claim for breach of the CBAs?
3) What impact would allowance of an administrative claim by the Unions have upon the Debtors’ ability to confirm a plan of liquidation?
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See Order: (1) Requiring Further Briefing on Debtors’ Motions to Reject Collective Bargaining Agreements and (2) Continuing Hearing on Motions from January 30, 2019 to February 8, 2019 at 10:00 a.m. [Doc. No. 1411] (the "Briefing Order").

In response to the Briefing Order, Santa Clara stated that it was willing to close the sale, absent rejection of the CBAs, only if the Objecting Unions executed stipulations fully and irrevocably waiving any enforcement of the CBAs against Santa Clara. The Objecting Unions assert that they could be provided administrative claims for breach of the CBAs without impairing the Debtors’ ability to confirm a liquidating plan. SEIU-UHW estimates that it would assert an administrative claim, attributable to employee severance benefits, of approximately $3 million. CNA estimates that it would assert an administrative claim of approximately $8.56 million, attributable to the lower wages its members will be receiving under their new employment contracts with Santa Clara.

The Debtors assert that providing the Objecting Unions the administrative claims they seek would render the estates administratively insolvent, making it difficult for the Debtors to confirm a liquidating plan. According to the Debtors’ best estimates, approximately $25 to $75 million will be available to satisfy administrative claims. The Debtors’ calculations assume that all unions who are parties to CBAs with the Debtors would receive similar administrative claims treatment. The Debtors assert that providing the severance benefits requested by SEIU-UHW to all union-represented employees would cost $51 $71 million. Administrative treatment for other union benefits, including unused paid time off, sick leave, and holiday pay (collectively, "PTO") would cost an additional $27 $35 million, according to the Debtors.

The Debtors, the Committee, and SEIU-UHW argue that the phrase "necessary to permit reorganization of the debtor" should be interpreted as "necessary to effectuate the Debtors’ going-concern liquidation efforts." The Debtors assert that such an interpretation is appropriate given that in the Debtors’ view, the most beneficial reorganization strategy requires two or more major sales of assets, instead of a single sale of substantially all the Debtors’ assets. CNA maintains that the phrase should be interpreted as "necessary to permit the § 363 sale of the Hospitals."

II. Findings and Conclusions
A. The Court Will Consider CNA’s Sur-Reply

The Local Bankruptcy Rules do not authorize the filing of a Sur-Reply. However, § 1113 contemplates bargaining between the Debtors and the unions that takes place
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up until the date that the motion regarding the CBAs is heard. See § 1113(b)
(requiring the Debtors to meet with the unions’ authorized representative "at
reasonable times" during "the period beginning on the date of the making of a
proposal … and ending on the date of the hearing …."
). A motion to modify or
terminate a CBA is unlike most motions heard by the Court, in that the statutory
predicate for the motion explicitly contemplates that the positions of the parties may
change as a result of negotiation up until the hearing date. Therefore, the Court will
consider CNA’s Sur-Reply as well as the rebuttal arguments made by the Debtors in
their request to strike the Sur-Reply.

B. The Rejection Motions Are Granted

Section 1113 provides:

(a) The debtor in possession, or the trustee if one has been appointed under the
provisions of this chapter, … may assume or reject a collective bargaining
agreement only in accordance with the provisions of this section.

(b)

(1) Subsequent to filing a petition and prior to filing an application seeking
rejection of a collective bargaining agreement, the debtor in possession or
trustee (hereinafter in this section "trustee" shall include a debtor in
possession), shall—

(A) make a proposal to the authorized representative of the employees
covered by such agreement, based on the most complete and reliable
information available at the time of such proposal, which provides for
those necessary modifications in the employee benefits and protections
that are necessary to permit the reorganization of the debtor and assures
that all creditors, the debtor and all of the affected parties are treated
fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the
employees with such relevant information as is necessary to evaluate
the proposal.

(2) During the period beginning on the date of the making of a proposal
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provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

2) the authorized representative of the employees has refused to accept such proposal without good cause; and

3) the balance of the equities clearly favors rejection of such agreement.

"Bankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test" first set forth in In re Am. Provision Co., 44 B.R. 907, 909 (Bankr. D. Minn. 1984). See In re Karykeion, Inc., 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010); see also In re Family Snacks, Inc., 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001) ("Virtually every court that is faced with the issue of whether a Chapter 11 debtor may reject its collective bargaining agreement utilizes a nine-part test that was first set down by the bankruptcy court in In re American Provision Co."). The American Provision factors are as follows:

1) The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.

2) The proposal must be based on the most complete and reliable information available at the time of the proposal.

3) The proposed modifications must be necessary to permit the reorganization of the debtor.

4) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.

5) The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.

6) Between the time of the making of the proposal and the time of the hearing on
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Chapter 11 approval of the rejection of the existing collective bargaining agreement, the debtor must meet at reasonable times with the Union.

7) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.

8) The Union must have refused to accept the proposal without good cause.

9) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

American Provision, 44 B.R. at 909.

Courts apply the American Provision factors even where a debtor is liquidating its assets and does not intend to continue in business after emerging from bankruptcy. Courts reason that "reorganization," as used in § 1113(b)(1)(A), is "generally understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code’s priority scheme." Family Snacks, 257 B.R. at 895. Some courts have held that where, as here, the Debtors are liquidating their assets, the phrase "necessary to permit the reorganization of the debtor" means “necessary to achieve a sale under § 363 of the Bankruptcy Code." Alpha Nat. Res., Inc., 552 B.R. 314, 333 (Bankr. E.D. Va. 2016); see also Walter Energy, 542 B.R. at 890 (requiring that the debtor’s proposal “be necessary to permit … those modifications necessary to consummate a going-concern sale”); In re Karykeion, Inc., 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) (finding that the debtor had proven that rejection was necessary when the closing of a § 363 sale was contingent on rejection of a collective bargaining agreement). Others courts have concluded that in a liquidating case, the phrase "necessary to permit reorganization of the debtor" means "necessary to accommodate confirmation of a Chapter 11 plan." Family Snacks, 257 B.R. at 895.

In the context of this case, the term "necessary to permit the reorganization of the debtor” is best interpreted to mean “necessary to permit the Debtors to confirm a liquidating plan.” This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case. From the outset, the Debtors have stated their intent to sell the six hospitals that they operate as going concerns, and use the proceeds from the sales to fund a plan of liquidation. This process is well underway. The Court has already approved the sale of two of the Debtors’ hospitals to Santa Clara, and recently approved bidding procedures pertaining to the auction of the remaining four hospitals.
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i. Debtors Have Not Unilaterally Breached the CBAs

Before addressing the American Provision factors, the Court finds it important to emphasize that there is no merit to CNA’s contention that the Debtors have unilaterally breached the CBA’s successorship provisions by executing the APA with Santa Clara. The APA was a necessary inducement for Santa Clara to serve as the stalking horse bidder. Santa Clara’s role as the stalking horse bidder was the optimal means of marketing the Hospitals. Such marketing was intended to induce the participation of other bidders who may have been willing to assume the CBAs. Unfortunately no such bidders emerged. That does not diminish the reality that the APA was the best means of securing bids favorable to the Objecting Unions.

The CBA’s successorship provisions bar the sale of the Hospitals to any entity that does not assume the agreements. By moving to reject the CBAs prior to closing on the sale contemplated by the APA, the Debtors have fulfilled their legal obligations. Nothing within § 1113 requires the Debtors to obtain rejection of the CBAs prior to execution of an APA. Indeed, such a result would be counter-productive to the interests of the Objecting Unions, as the APA provided the best hope that an entity willing to assume the CBAs might emerge.

Adopting CNA’s position would severely circumscribe the Debtors’ ability to execute APAs beneficial to the marketing of their assets. Such a result would be contrary to § 1113, which expressly contemplates that it is possible for Debtors to reject a CBA in connection with an asset sale.

ii. Factors 1, 2, 6, and 7

Within the context of this case, factors 1, 2, 6, and 7 are related. Under these factors, the Debtor must make a proposal to the unions (factor one) based upon the most complete and reliable information available at the time of the proposal (factor two). Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing CBA, the debtor must meet at reasonable times with the unions (factor six). At the meetings, the debtor must confer in good faith in attempting to reach mutually satisfactory modifications to the collective bargaining agreement (factor seven).

According to the Objecting Unions, the Debtors cannot establish that they met and conferred in good faith regarding modification of the CBAs. The Objecting Unions’ position is that the Debtors should have initiated negotiations before the APA with Santa Clara had been executed. Had negotiations commenced at this time, the Objecting Unions assert, the Debtors would have had greater leverage over Santa
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Clara, and it might have been possible for the Debtors to obtain additional concessions favorable to the unions. The Objecting Unions rely upon In re Lady H Coal Co., Inc., 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996) for the proposition "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise." The Lady H court held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." Id.

The Objecting Unions’ reliance upon Lady H is misplaced. In Lady H, the debtor’s CEO unilaterally obtained a broker to market the assets at issue, in violation of § 327. As a result of this violation, the unions received no notice of the marketing of the assets. Lady H, 193 B.R. at 242. The lack of notice deprived the unions of the "opportunity to participate in whatever process a debtor engages in to find a suitable buyer." Id. Here, by contrast, the Debtors have stated their intent to sell the Hospitals from the inception of the case. The Debtors fully complied with the requirements of § 327 when retaining Cain to market the Hospitals. As of October 1, 2018, the unions were aware of the APA and Santa Clara’s decision to serve as the stalking horse bidder.

In addition, the debtor in Lady H did not pursue a possible sale to another buyer who was willing to assume the union’s CBA. Id. Instead, the debtor obligated itself to a buyer that wanted to reject the CBA, primarily because that buyer had agreed to employ the debtor’s officers at inflated salaries. Id. In contrast to the facts of Lady H, the record shows that the Debtors executed the APA with Santa Clara to maximize the proceeds available to the estate, not to enrich insiders, and that the Debtors aggressively marketed the Hospitals, expressing a preference for bids that would assume the CBAs. The entire purpose of the APA with Santa Clara was to produce additional favorable bids, some of which might include assumption of the CBAs. The Debtors were not "locked in" under the APA; the APA was merely the first step in a thorough marketing process. The fact that no other bidders emerged does not indicate that there were problems with the APA; it instead demonstrates that the Hospitals face such serious operational challenges that no buyers aside from Santa Clara were interested in purchasing them.

The only temporal requirement imposed by the statute regarding the Debtors’ bargaining obligations is that the bargaining commence prior to the filing of a motion seeking relief under § 1113. § 1113(b)(1)(A). Here, the Debtors fulfilled this requirement. The Debtors met with CNA on December 6, 2018 and met with SEIU-
The decision in *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors’ Comm. (In re Family Snacks, Inc.),* 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001) shows that the Debtors are not obligated to commence bargaining at the inception of the case. Similar to this case, in *Family Snacks* the debtor commenced negotiations only after it had sold its assets. The *Family Snacks* court held that the debtor’s decision to not commence negotiations until after the asset sale did not automatically bar the debtor from obtaining relief under § 1113. *Family Snacks,* 257 B.R. at 895–96.

CNA contends that the manner in which the Debtors treated certain non-binding Indications of Interest (the "IOIs") submitted prior to the Petition Date by various potential bidders establishes that the Debtors have not negotiated in good faith. CNA points out that the IOI submitted by Entity A provided for the assumption of the Debtors’ unfunded pension liabilities. According to CNA, to meet the requirements of § 1113, the Debtors were required to inform CNA of these IOIs at the time they were received. The implication of CNA’s argument is that had the Debtors done so, it might have been possible to structure a sale in which the purchaser assumed the CBAs.

CNA’s argument suffers from several flaws. First, CNA places far more weight upon the Indications of Interest than they can reasonably bear. An Indication of Interest is just that—a statement that a party is considering bidding for assets. For whatever reason, after conducting its due diligence, Entity A concluded that it would not further pursue its Indication of Interest.

CNA implies that had only the Debtors put CNA into contact with Entity A at the time the IOI was submitted, the result might have been different. Given the financial burdens imposed upon employees represented by CNA in connection with this bankruptcy, CNA’s optimism is understandable. However, in the Court’s view, the suggestion that the Debtors could have structured a more favorable transaction with Entity A falls into the category of "hopeful wishes, mere possibilities and speculation." *Karykeion, Inc.,* 435 B.R. at 678. Had Entity A been serious about purchasing the Hospitals, it would have at the very least submitted a formal bid.

Finally, CNA’s argument incorrectly assumes that § 1113 requires the Debtors to facilitate communication between unions and third-party potential asset purchasers. Section 1113 contains no such requirement.

### iii. Factor 3
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Factor 3 requires that the proposed modifications must be necessary to permit the reorganization of the debtor. As discussed above, within the context of this case, the term “necessary to permit the reorganization of the debtor” is best interpreted to mean “necessary to permit the Debtors to confirm a liquidating plan.”

Two lines of authority exist as to the meaning of the word “necessary.” In Wheeling–Pittsburgh Steel Corp. v. United Steelworkers of America, 791 F.2d 1074 (3d Cir.1986), the Third Circuit defined “necessary” as synonymous with “essential.” The Second Circuit has defined “necessary” more broadly. In Truck Drivers Local 807 v. Carey Transportation, Inc., 816 F.2d 82 (2d Cir.1987), the court held that “the necessity requirement places on the debtor the burden of proving that its proposal is made in good faith, and that it contains necessary, but not absolutely minimal, changes that will enable the debtor to complete the reorganization process successfully.” The parties have not cited, and the Court has been unable to locate, any binding Ninth Circuit authority as to the scope of the word “necessary.”

The Court finds the Second Circuit’s approach to be better reasoned. As explained in Carey Transportation, the Third Circuit’s strict definition conflicts with other provisions of the statute:

Because the statute requires the debtor to negotiate in good faith over the proposed modifications, an employer who initially proposed truly minimal changes would have no room for good faith negotiating, while one who agreed to any substantive changes would be unable to prove that its initial proposals were minimal. Thus, requiring the debtor to propose bare-minimum modifications at the outset would make it virtually impossible for the debtor to meet its other statutory obligations.

Carey Transportation, 816 F.2d at 89.

Further, the “legislative history strongly suggests that ‘necessary’ should not be equated with ‘essential’ or bare minimum.” Id. A prior version of § 1113 would have permitted rejection only if the debtor’s proposal contained “such ‘minimal modifications in the contract that would permit the reorganization, taking into account the best estimate of the sacrifices expected to be made by all classes of creditors and other affected parties.’” Wheeling-Pittsburgh Steel Corp., 791 F.2d at 1083 (quoting 130 Cong. Rec. S6181-82 (daily ed. May 22, 1984)). Congress rejected this language in favor of broader language permitting rejection if “necessary to permit the reorganization of the debtor ….”
Applying the Second Circuit’s “necessary” standard to the instant case, the Court notes that to confirm the liquidating plan which they envision, the Debtors are first required to sell the six hospitals as going concerns. Selling the hospitals on a going-concern basis is necessary to maximize proceeds to the estate. The Debtors’ operational difficulties and mounting losses require that the hospitals be sold quickly. In a declaration filed in support of the Debtors’ First Day Motions, the Debtors’ CEO Richard Adcock testified that the hospital system was losing $175 million annually on a cash flow basis, or approximately $480,000 per day. First Day Decl. of Richard G. Adcock [Doc. No. 8] at ¶ 95.

The sale to Santa Clara is a key component of the Debtors’ overall plan of liquidation, and the CBAs must be rejected in order for the sale to close. Under Cal. Gov’t Code § 3500, Santa Clara cannot assume the CBAs, because Santa Clara’s existing employees are already represented by a union. Santa Clara is statutorily required to conduct all collective bargaining negotiations with this existing union. Santa Clara is the only party who submitted a formal bid for the Hospitals, which were thoroughly marketed by Cain (see Section I.A., above, for a discussion of Cain’s marketing efforts).

The Sale Order provides that closing of the sale "is conditioned upon the rejection, termination and/or modification of all applicable CBAs related to [O’Connor] and [Saint Louise], pursuant to § 1113 or as otherwise agreed to between the Debtors, the respective unions, and as approved by the Court." Sale Order at ¶18. The Sale Order further provides that the "Debtors must have resolution of the collective bargaining agreements … that cover employees at Saint Louise Regional Hospital and O’Connor Hospital prior to [Santa Clara] closing on the proposed Sale pursuant to the APA." Id. at ¶33.

Notwithstanding its rights under the Sale Order and APA, Santa Clara has stated that if CNA and SEIU-UHW stipulate to irrevocably waive any claims under the CBAs against Santa Clara, it is willing to close the sale absent rejection of the CBAs. No such stipulation is presently before the Court. However, even if the Objecting Unions so stipulated, the Court finds that rejection of the CBAs would still be necessary to enable the Debtors to confirm a liquidating plan.

The most likely result of the Debtors’ failure to obtain rejection of the CBAs would be the accrual of substantial administrative claims in favor of the Objecting Unions. In assessing the effect of such administrative claims upon the Debtors’ ability to confirm a liquidating plan, the Court does not confine its analysis to the potential claims of SEIU-UHW and CNA. The Debtors are parties to CBAs with many
different unions. While not identical, the terms of these CBAs are broadly similar. Granting an administrative claim to SEIU-UHW and CNA would most likely require the Court to grant administrative claims to the other unions.

The uncontroverted testimony of David E. Galfus establishes that the granting of administrative claims to all the unions would most likely render the estate administratively insolvent. Mr. Galfus is the Managing Director of Berkeley Research Group’s Restructuring and Transaction Advisory. Galfus Decl. [Doc. No. 1507] at ¶ 1. He estimates that after sale of the Debtors’ assets and payment of claims secured by those assets, between $25 and $75 million will be available to pay administrative claims. Id. at ¶¶ 6–7. Mr. Galfus projects that providing the unions administrative claims would impose liabilities against the estate of approximately $71 million on account of severance, and approximately $35 million on account of paid time off, holiday pay, and extended sick leave. Id. at ¶¶ 12–13. Mr. Galfus projects that providing all union employees administrative claims would impose liabilities against the estate totaling approximately $78 million, consisting of approximately $51 million on account of severance, and approximately $27 million on account of paid time off, holiday pay, and extended sick leave. Id. at ¶¶ 12-13 and Ex. B.

The administrative claims of the unions alone would total approximately $106 million, far in excess of the $25 to $75 million that will be available to pay all administrative claimants. The administrative claims of the unions alone would total approximately $78 million, in excess of the $25 million to $75 million that will be available to pay all administrative claimants. Allowing the CBAs to remain in place would almost certainly render the estate administratively insolvent, which in turn would make it exceptionally difficult for the Debtors to confirm a plan of liquidation. For this reason, the Court finds that rejection of the CBAs is necessary to enable the Debtors to confirm a liquidating plan.

Others courts have looked with disfavor upon unions who seek to maintain CBAs for the sole purpose of augmenting an administrative claim. The facts of In re Chicago Const. Specialties, Inc., 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) are similar to this case. In Chicago Const., the debtor moved to reject a CBA because it was no longer operating. Overruling the unions’ objections to rejection, the court held:

As noted above, the only purpose of leaving the CBA in place would be to afford the [unions] the opportunity for an augmented administrative claim rather than a general unsecured claim. Naturally, a creditor would prefer to maximize its distribution from the bankruptcy estate. Nonetheless, section
iv. Factor 4

Factor 4 requires that the proposed modifications to the CBAs treat all creditors, the Debtors, and all affected parties fairly and equitably. As explained by the court in *Walter Energy*:

This requirement "spread[s] the burden of saving the company to every constituency while ensuring that all sacrifice to a similar degree." "Courts take a flexible approach in considering what constitutes fair and equitable treatment due to the difficulty in comparing the differing sacrifices of the parties in interest." A debtor can meet the requirement "by showing that its proposal treats the union fairly when compared with the burden imposed on other parties by the debtor's additional cost-cutting measures and the Chapter 11 process generally."


In applying this factor, it is important to emphasize how the Debtors arrived at this point. In early 2014, facing serious operating losses, the Debtors began evaluating strategic alternatives. First Day Decl. of Richard G. Adcock [Doc. No. 8] at ¶ 87. To continue operations until a contemplated sale or recapitalization could close, the Debtors borrowed $125 million in 2014. *Id.* In 2015, the Debtors entered into a recapitalization transaction with BlueMountain Capital Management LLC ("BlueMountain"). BlueMountain injected $100 million of capital and arranged for an additional $160 million of loans. *Id.* at ¶¶ 88–89. Despite BlueMountain’s infusion of cash, the health system did not prosper. *Id.* at ¶ 93.

In July 2017, NantWorks, LLC loaned another $148 million to the Debtors. *Id.* at ¶ 94. Notwithstanding these additional capital infusions and the retention of various
United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar

Wednesday, February 13, 2019  
Verity Health System of California, Inc.

Chapter 11 consultants and experts to improve operations, losses of approximately $175 million annually continued to mount. *Id.* at ¶ 95.

In sum, prior to seeking bankruptcy relief, the Debtors diligently attempted to put their operations on a sound financial footing. The unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs is simply too great to permit the Hospitals to continue to sustainably operate. This reality was confirmed by the recent sales process, in which Santa Clara was the only buyer who expressed interest in purchasing the Hospitals—but only on condition that the sale be free and clear of the CBAs.

Many parties have been required to make sacrifices to permit continued operations of the Hospitals. Under these circumstances, the proposed rejection and/or modification of the CBAs is fair and equitable.

**v. Factor 5**  
Factor 5 requires the Debtors to provide the unions such relevant information as is necessary to evaluate the proposal. The Debtors have satisfied this factor. Before making the proposal, the Debtors provided the Objecting Unions a declaration detailing the Debtors’ finances, assets, and liabilities; bankruptcy schedules showing the Debtors’ financial status; testimony from the Debtors’ investment banker; and the APA with Santa Clara. As described in Sections I.C and I.D, above, the Debtors have provided the Unions with substantial additional information subsequent to making the proposal. The Debtors have promptly responded to the Unions’ requests for information.

**vi. Factors 8 and 9**  
Under Factor 8, the unions must have refused to accept the proposal without good cause. Under Factor 9, the balance of the equities must clearly favor rejection of the collective bargaining agreement. Both factors are satisfied.

As discussed, the Objecting Unions’ goal in opposing the Rejection Motions is to obtain an administrative claim for breach of the CBAs. The Objecting Unions acknowledge that Santa Clara cannot assume the CBAs and have no desire to prevent the sale from closing. While the Objecting Unions’ desire to elevate the status of their claims against the estate is certainly understandable, it does not constitute good cause to refuse the Debtors’ proposal. *See Chicago Const. Specialties, Inc.*, 510 B.R. 205, 221 (Bankr. N.D. Ill. 2014) (holding that “section 1113 may not be used to elevate a union’s position ….”).
Verity Health System of California, Inc.  Chapter 11

It would not be fair and equitable to deny rejection of the CBAs or to provide the Objecting Unions with administrative claims. Such a course of action would likely render the estate administratively insolvent, making it very difficult, if not impossible, for the Debtors to confirm a liquidating plan. This result would inure to the detriment of all other stakeholders in these cases.

For the same reasons, the balance of the equities clearly favors rejection of the CBAs. In this respect, the Court further notes that Santa Clara has agreed to make offers of provisional employment to substantially all employees. Individuals hired by Santa Clara will have the opportunity to join the union for Santa Clara employees. The Objecting Unions naturally would prefer to continue to be represented by their own collective bargaining organization; however, this result is precluded by California law.

The bottom line is that the sale negotiated by the Debtors will preserve the jobs of most workers at the Hospitals. Hospital employees will be permitted to join the union representing Santa Clara employees. It is unclear from the record whether the terms of employment offered by Santa Clara are less generous than the terms under the CBAs. [Note 2] Even if Santa Clara’s employment package is less favorable than the CBA’s provisions—a finding the Court does not make—the balance of the equities would still favor rejection. As stated above, absent rejection, the sale to Santa Clara cannot close and the Debtors cannot propose and confirm a liquidating plan. It is regrettable that the terms of employment with Santa Clara will be less generous than those afforded by the CBAs. Unfortunately, this result is required to permit the continued operation of the Hospitals and to enable the Debtors to propose and confirm a liquidating plan.

III. Conclusion

For the reasons set forth above, the Rejection Motions are GRANTED. The settlements between the Debtors and the Engineers and Scientists of California, IFPTE Local 20 and the California Licensed Vocational Nurses Association are APPROVED. The Debtors shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

Note 1
CNA and SEIU-UHW are members of the Committee. CNA and SEIU-UHW recused themselves from the Committee’s response to the Rejection Motions.

Note 2
United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar

Wednesday, February 13, 2019       Hearing Room  1568

10:00 AM
CONT... Verity Health System of California, Inc. Chapter 11

SEIU-UHW contends that union-represented employees will be paid less by Santa Clara. SEIU-UHW submits a declaration from Jacqueline V. McElroy, Organizing Representative for Verity Hospital System. Ms. McElroy testifies that she has reviewed the terms of employment offered by Santa Clara to 300 union members. According to Ms. McElroy, most employees will earn between $3 to $10 less per hour. McElroy Decl. [Doc. No. 1501] at ¶ 4. However, Ms. McElroy offers no testimony regarding other aspects of the compensation package, such as retirement benefits. Santa Clara asserts—although it offers no evidence—that notwithstanding the wage cuts, the overall compensation package being offered to union-represented employees is as generous, if not more generous, than the provisions of the CBAs.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Party Information**

**Debtor(s):**

Verity Health System of California, Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho
Exhibit C
O'Connor Hospital
2105 Forest Ave, San Jose, CA 95128

Continue to Forest Ave

1. Head southwest
   2 min (495 ft)
   102 ft

2. Turn left toward Forest Ave
   210 ft

3. Turn right toward Forest Ave
   184 ft

Take N Bascom Ave to Renova Dr in Fruitdale

4. Turn left onto Forest Ave
   5 min (1.2 mi)
   0.2 mi

5. Continue onto Naglee Ave
   0.1 mi

6. Turn right onto N Bascom Ave
   0.9 mi
Drive to your destination

7. Turn right onto Renova Dr
   180 ft

8. Turn left
   184 ft

9. Turn right
   276 ft

10. Turn left
    236 ft

Santa Clara Valley Medical Center
751 S Rascom Ave, San Jose, CA 95128

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.
St. Louise Regional Hospital
9400 No Name Uno, Gilroy, CA 95020

Take No Name Uno and San Ysidro Ave to Leavesley Rd

1. Head southwest toward Las Animas Ave
   135 ft
2. Turn right
   0.1 mi
3. Sharp left onto No Name Uno
   0.3 mi
4. No Name Uno turns slightly left and becomes Las Animas Ave
   325 ft
5. Turn right onto San Ysidro Ave
   0.7 mi
6. Turn left onto Leavesley Rd
   43 s (0.1 mi)
Follow Arroyo Cir to your destination

7. Use the right 2 lanes to turn right onto Arroyo Cir
   1.0 mi

8. Turn right
   338 ft

9. Turn left
   Destination will be on the left
   102 ft

Valley Health Center Gilroy
7475 Camino Arroyo, Gilroy, CA 95020

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.
Exhibit D
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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 ASC, LLC

Debtors and Debtors in Possession.

The Honorable Ernest M. Robles

CALIFORNIA NURSES ASSOCIATION
OBJECTION TO DEBTORS’ MOTION UNDER
§ 1113 OF THE BANKRUPTCY CODE TO
MODIFY, REJECT AND TERMINATE CERTAIN
TERMS OF CALIFORNIA NURSES
ASSOCIATION’S COLLECTIVE BARGAINING
AGREEMENT WITH O’CONNOR HOSPITAL
AND SAINT LOUISE HOSPITAL

Hearing:
Date: January 30, 2019
Time: 10:00 AM
Place: Courtroom 1568
255 East Temple Street
Los Angeles, CA 90012
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CNA OBJECTION TO DEBTORS' MOTION TO REJECT COLLECTIVE BARGAINING AGREEMENTS

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

I. INTRODUCTION

The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors” or “Verity”), submits this objection (the “Objection”) to Debtors’ Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of Hospitals to the County of Santa Clara (the “1113 Motion”) [Doc. 1182]. Any replies to this Objection are due on January 23, 2019.

II. BACKGROUND

CNA Registered Nurse Representation

1. CNA represents approximately 544 registered nurses at O’Connor Hospital (“OCH”) and approximately 204 registered nurses at Saint Louise Regional Hospital (“SLRH”). The CNA nurses have been conscientiously working and maintaining the key operation of the Debtors during these uncertain times in a difficult bankruptcy.

2. CNA represented nurses at OCH and SLRH are covered by a Master Collective Bargaining Agreement (“Master Agreement”) between CNA and OCH, SLRH, St. Vincent Medical Center (“SVMC”) and Seton Medical Center (“SMC”). A true and correct copy of the Master Agreement is attached hereto as Exhibit 1. Additionally, nurses at OCH and SLRH are covered by supplemental local agreements specific to each facility. A true and correct copy of the OCH and SLRH local Collective Bargaining Agreements are attached hereto as Exhibits 2 and 3, respectively.1 Collectively, Exhibits 1, 2 and 3 are referred to as the “CNA CBAs”.

3. The Master Agreement contains a “successor clause” which requires any purchaser of the hospitals to adopt the CBAs [Exhibit 1, Article 3, p.3].

4. The registered nurses employed by Santa Clara County are primarily represented by the Registered Nurse Professional Association (“RNPA”). A true and correct copy of the

---

1The Master Agreement and local Collective Bargaining Agreements were ratified in December of 2016 and are in effect from December 22, 2016 to December 21, 2020.
current RNPA contract is attached as Exhibit 4. RNPA only represents nurses employed by Santa Clara County.

Verity’s Petition for Bankruptcy

5. In early August 2018 and prior to filing their voluntary petition for bankruptcy, Debtors received eleven indications of interest ("IOI") for some or all of Verity’s assets. Four of the IOIs were “full system offers” and two were offers for all of Debtor’s assets located in Santa Clara County. Declaration of James M. Moloney in Support of Debtors’ § 1113 Motions (Moloney Decl.), ¶ 5 [Doc. 1194].

6. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code.

7. Shortly after Debtors filed for Bankruptcy, Andrew Prediletto, CNA Assistant Director of Collective Bargaining, contacted Steven Sharrer, Chief Human Resources Officer of Verity Health Systems, Inc. ("Verity") to request bargaining with Verity over the sale of any Verity hospitals at which CNA represents registered nurses. See Declaration of Andrew Prediletto (the “Prediletto Declaration”), concurrently filed with this Objection, ¶ 3.

8. On September 18, 2018, Mr. Sharrer responded in an email that Verity would not meet to bargain with CNA at that time and that Mr. Prediletto’s request was “premature.” A copy of this email is attached to the Prediletto Declaration as Exhibit 1.

9. On October 1, 2018, Debtors filed a Stalking Horse Bidder Motion in which Debtors sought to establish the County of Santa Clara (the “County”) as the Stalking Horse Bidder for the sale of SLRH, OCH, and related assets (the “Assets”) at a price of $235 million (the “Asset Sale”) [Docket No. 365, p. 1]. The Debtors also filed an Asset Purchase Agreement (the “APA”) with the Stalking Horse Bidder Motion [Docket No. 365-1] for court approval.

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2 This document was downloaded from the County of Santa Clara’s website, available at: https://www.sccgov.org/sites/esa/labor/Documents/mou-moa/registered-nurses-professional-association-RNPA-2014-through-2019.pdf.

3 CNA is prepared to offer the live testimony of Andrew Prediletto regarding the substance of his Declaration. However, CNA does not believe his testimony is necessary unless this Court finds there are disputed facts whose resolution would benefit from live testimony.
The APA was dated October 1, 2018, and between Debtors Verity Health System of California, Inc. (“Verity”), Verity Holdings, LLC, OCH and SLRH, on the one hand, and the County, on the other hand, to be used by County as the stalking horse purchaser of the assets.

10. Under APA § 5.3.1, the Purchaser agrees to hire substantially all of Debtor’s employees on a “provisional basis” and any employees who are permanently hired will receive “benefits and terms and conditions of employment generally consistent with those offered to other Purchaser employees in the same or substantially similar Purchaser classifications” [Id. at 47-48].

11. Under APA § 8.13, the Purchaser will buy the assets free and clear of any labor obligations including the terms of existing collective bargaining agreements (“CBAs”) and retirement, pension, or welfare-benefits obligations [Id. at 58].

12. On October 31, 2018, the Court entered an Order approving the Stalking Horse Bidder Motion and the APA (the “Bidding Procedures Order”) and, inter alia, setting deadlines to bid on the Assets either in part or in full [Docket No.724].

13. Prior to the deadlines to submit bids for the Assets, Debtors continued to market them to potential bidders with the intent of inducing them to submit bids [Doc. 1194, Maloney Decl. ¶ 8]. In particular, Debtors communicated heavily with two entities identified as Proposal Party A and Proposal Party B up until the auction deadlines [Doc. 1194, Maloney Decl. ¶ 10-11].

14. On December 6, 2018, Mr. Prediletto met with Verity representatives Mr. Sharrer; Mr. Richard Adcock, Verity CEO; and Mr. Sam Alberts, counsel to Verity, to bargain over the modification of the OCH and SLRH collective bargaining agreements for the first time [Prediletto Decl., ¶ 7].

15. At this meeting, the Verity representatives’ proposal to CNA was to reject the entirety of the OCH and SLRH CBAs [Prediletto Decl., ¶ 9]. Mr. Alberts sent Mr. Prediletto a letter memorializing this meeting on December 7, 2018 [Prediletto Decl., Ex. 2].

16. On December 13, 2018, Mr. Prediletto responded that CNA would meet with Verity to bargain over the modification of the terms of the CBAs which were necessary in order...
to sell the hospitals as going concerns. Additionally, CNA asked for information regarding Debtors’ interactions with parties who were interested in purchasing the Assets and signed an NDA [Prediletto Decl. Ex. 3].

17. On December 18, 2018, Mr. Alberts responded that survival of any terms of the CBAs would “unduly burden the Debtors’ estates and their ability to reorganize.” At this juncture, he also offered for the first time to facilitate any discussions between Santa Clara County and CNA. Moreover, he stated that the CBAs were “unnecessary” after the sale closing since the CNA members would no longer be their employees. In response to CNA’s request for information about potential buyers, he responded that CNA would have to execute a confidentiality agreement [Prediletto Decl., Ex. 4].

18. On December 27, 2018, this Court approved the sale of Assets to Santa Clara County free and clear of liens, claims, encumbrances, and other interests.

19. On January 16, 2019, Mr. Prediletto offered to negotiate with Debtors regarding modification of the successor clause in exchange for all nurses receiving a severance payment. The intent of the proposal was to offer nurses compensation given that they will likely work under less desirable terms and conditions at the County than they would under an employer who adopted the successor clause [Prediletto Decl., ¶ 11, Ex. 5].

20. On January 16, 2019, Mr. Albert responded that Verity would be amendable to only offering such payments to nurses who were not “fortunate enough to be hired by the County” [Prediletto Decl., Ex. 6].

III. PRELIMINARY STATEMENT

Debtors’ Motion fails to show compliance with the requirements of 11 U.S.C. section 1113 and accordingly should be denied. Debtors treated the requirements of section 1113 as a pro forma checklist. Debtors never meaningfully engaged with CNA to find compromises, offered a proposal which included necessary modifications to the CBAs, or provided relevant information to understand their proposal. Moreover, given the unfair burdens that the CNA nurses will suffer as a result of this bankruptcy sale in terms of decreased future earning potential and benefit accrual, the equities militate against rejection of the CBAs. Specifically,
Debtors have not negotiated in good faith with the CNA as evidenced by their failure to commence negotiations until after the deal was done. This meant that CNA had no real power to bargain for a better outcome and Debtors had no power to influence potential buyers. That CNA could have influenced the sale and the resulting positions of the nurses is not merely an academic exercise, but an actual opportunity Verity denied to CNA in bad faith. Additionally, Verity fails to demonstrate that the entirety of the CBAs must be rejected, as opposed to only the successor clause, in order for the Asset Sale to move forward. Furthermore, Verity has failed to provide the Union with information requested regarding why the entire CBA must be rejected, as well as information regarding the identity of potential buyers and their proposals.

IV. ARGUMENT

A. Section 1113 Creates an Elevated Standard Through Which Collective Bargaining Agreements May Be Rejected and Must Be Strictly Construed.

Courts in this district have observed that “the rejection of a CBA is a rejection of one of the most binding contracts in our legal system and not a matter to be treated lightly.” In re Karykeion, 435 B.R. 663, 666 (Bankr. C.D. Cal 2010), citing In Re Century Brass Products, 795 F.2d 265, 271 (2d Cir. 1986) (CBA is accorded higher status than a normal contract).

Indeed, Congress elevated CBAs above other types of contracts by mandating additional substantive and procedural requirements to which debtors must strictly adhere before a CBA may be rejected in bankruptcy. See 11 U.S.C. § 1113; In re Certified Air Techs, Inc., 300 B.R. 355, 361 (Bankr. C.D. Cal 2003). Section 1113(a) specifically provides that a debtor may reject a collective bargaining agreement “only in accordance with the provisions of this section,” and section 1113(f) provides that “[n]o provision of this title shall be constructed to permit a trustee to unilaterally terminate or alter any provision of a collective bargaining agreement prior to compliance with the provisions of this section.” 11 U.S.C. § 1113(f).

In order to determine if a debtor has met the requirements of section 1113, courts generally follow the nine-part test developed in In re American Provisions Co., 44 Bankr. 907 (Bankr. Minn. 1984). See, e.g., Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of
America, 791 F.2d 1074, 1080 (3d Cir. 1986); In re Karykeion, 435 BR at 677. The nine requirements are:

1. The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.

2. The proposal must be based on the most complete and reliable information available at the time of the proposal.

3. The proposed modifications must be necessary to permit the reorganization of the debtor.

4. The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.

5. The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.

6. Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the debtor must meet and confer at reasonable times with the Union.

7. At meetings, the debtor must confer in good faith in attempt to reach mutually satisfactory modifications of the collective bargaining agreement.

8. The Union must have refused to accept the proposal without good cause.

9. The balance of equities must clearly favor rejection of the collective bargaining agreement.

The sheer number of requirements show that contract rejection under section 1113 is not a simple matter and requires substantial effort on the part of the debtors before courts may grant such relief. Debtors cannot merely go through the motions and expect to be granted judicial relief, but, rather, must engage with unions in an interactive process. E.g., *In re K & B Mounting, Inc.*, 50 B.R. 460, 465 (N.D. Ind. 1985) (“It must be kept in mind that one of the main purposes of the new Code section to encourage solution of the employer’s labor problems through collective bargaining rather than by means of the debtor’s unilateral action and recourse to the bankruptcy court”).

Finally, it is well-settled that the requirements of section 1113 apply equally to all forms of bankruptcy under Chapter 11, including liquidation. *In re Chicago Construction Specialties*, 510 B.R. 205, 215 (Bankr. N.D. Ill. 2014) (“It is tempting, therefore, to find that section 1113 is simply inapplicable to liquidating chapter 11 cases…But those courts that have short cut the process of applying section 1113 have paid the price on appeal”), citing *In re Family Snacks*, 257 B.R. 884, 894 (B.A.P. 8th Cir. 2001).

B. Debtors Failed to Meet their Burden to Confer with CNA in “Good Faith to Reach Mutually Satisfying Modifications.”


Debtor’s contention that it has complied with the requirement to confer in good faith because it met with CNA after no competing bidders came forward and offered it a non-negotiable proposal to terminate the CBAs reduces this critical directive of section 1113 to a mere triviality. Instead, good faith bargaining requires “an honest purpose to arrive at an agreement as a result of the bargaining process.” *Walway*, 69 B.R. at 973; *In re Walter Energy, Inc.*, 542 B.R. 859, 894 (N.D. Ala. 2015) (“[t]he good faith requirement of section 1113 has been interpreted to mean that the debtor must make a serious effort to negotiate”). Good-faith bargaining requires flexibility and a party that is already committed itself may only make a non-negotiable offer. *In re Delta Airlines*, 342 B.R. 685, 697 (Bankr. S.D.N.Y. 2006) (finding that “a debtor cannot be said to comply with its obligation [to bargain in good faith].. . when it steadfastly maintains that its initial proposal under subsection (b)(1)(A) is non-negotiable” in
response to an airlines making concessions from pilots and mechanic contingent on receiving similar agreements from flight attendants); In re Lady H, 193 B.R. 233, 241 (Bankr. S.D.W.V. 1996); In re Karykeion, 435 B.R. at 683 (“[t]he unions are correct that beginning negotiations when one party is already locked into a position does not constitute good faith”).

In other words, good faith bargaining means more than giving a union a “Hobson’s choice between two evils,” i.e., save the members jobs without any benefits they had under the prior collective bargaining agreement or “don’t save the jobs at all.” American Flint Glass Workers v. Anchor Resolution, 197 F.3d 76, 82 (3d Cir. 1999). Finally, good faith negotiations must be driven by a desire to reach a compromise with the union and not other concerns related to the bankruptcy estate. See, In Re United States Truck Co. Holdings, 2000 Bankr. Lexis 1376, *69 (Bankr. E.D. Mich. Sept. 29, 2000) (finding that employer had not negotiated in good faith in part because its bargaining was driven by its concern for “avoiding withdrawal liability, eliminating the priority that would be afforded to the Union’s claim if the CBA were not rejected, and maximizing the equity left in the corporation after liquidating”).

2. Debtors Could Have Avoided This Hobson’s Choice Scenario If They Engaged With CNA During a Period When Both Parties Had Leverage over Potential Buyers.

Debtors’ argument that its non-negotiable proposal to reject the CBAs is excusable because the County emerged as the only viable bidder and refused to assume them is a post hoc justification for not conferring in good faith. In the instant case, especially because of the presence of other entities who expressed interest in the Assets, one cannot know what compromises may have been possible had the union been involved at critical junctures in the sale process. It may not have even been necessary for Debtors to file this motion if they had bargained with CNA at important milestones. K&B Mounting, Inc., 50 B.R. at 465 (finding that one of the main purposes of section 1113 is to encourage bargaining rather than resorting to the court’s power to reject contracts). Just because a debtor is in a non-negotiable position with a union at the end of the sale process, does not mean that was the only result possible at the outset.
However, even assuming that in hindsight it can be shown that bargaining with CNA would not have changed the ultimate outcome, the obligation to bargain in good faith is not rendered moot. Indeed, Debtors’ reliance on *Walter Energy* for the proposition that they cannot be faulted for offering non-negotiable offers when no other viable alternatives exist, must be squared with the fact that the debtor and union in *Walter Energy* negotiated multiple times before the debtor signed the APA and sought to “plow some middle ground” before determining that they were left with no other option than rejection of successorship clause to save the business. 542 B.R. at 895 (“In *Lady H Coal*, the court found good faith lacking where the debtors had already obligated themselves prior to initiating modification negotiations. Here, however, the Debtors were not locked in at the time negotiations commenced”). Thus, far from supporting Debtors, the *Walter Energy* decision demonstrates that the good faith bargaining process of section 1113 must be respected even if it is later shown that circumstances prevent compromise.

Furthermore, Debtors’ heavy reliance on *In re Alpha Natural Resources, Inc.*, 542 B.R. 314 (E.D. Va. 2016) for support that it conferred in good faith is likewise unavailing [Doc. 1182, p. 20]. Comparing the engagement between the *Alpha Natural Resources* debtors with the instant situation is like comparing the pyramids of Egypt to the Luxor Hotel, one evidences genuine effort and the other is an unconvincing imitation. True, in both this matter and *Alpha Natural Resources* the debtors met with the unions and “facilitated” discussions with a sole bidder, but in *Alpha Natural Resources*, the debtors began negotiating with the union prior to executing an APA with the stalking horse and facilitated meetings directly between the stalking horse and union directly which proved fruitful. *Alpha Natural Resources*, 552 B.R. at 336. In the instant situation, Debtors only made a proposal to CNA and started discussion after no other parties had bid and only then did Debtors half-heartedly offer to facilitate meetings with the County [Prediletto Declaration, Exs. C&D]. The comparison is even more misplaced given that Mr. Prediletto requested bargaining with Debtors prior to the execution of the APA and was rebuffed [Prediletto Decl., Ex. A].
Thus, in order for the requirement to confer in good faith to have real meaning, Debtors should have met with CNA to discuss what nurses wanted in return for waiver of the successorship clause before they had signed the APA with the County. E.g., *In re Bruno Supermarkets*, 2009 Bankr. Lexis at *57 (“section 1113’s purpose is to require the parties to negotiate”). Debtors’ argument that in effect they bargained in place of the Union because they were able to obtain job retention for a “substantial” number of the nurses falls flat. CNA is the nurses’ representative, Debtors are not. The point of section 1113 is to force the employer to bargain with the union, not to bargain on its behalf. *Id.*

While it is possible that CNA would have placed job retention as the highest priority, given the difficulties of staffing OCH and SLRH which collectively require approximately 750 nurses and the high demand for nursing professionals, it is also quite plausible the County was not making a material concession by agreeing to offer substantially all of the nurses employment. (One could argue that the County benefits just as much as the nurses from this provision in the APA.) Thus, if Debtors had involved CNA early on in the sale process CNA may have chosen to strongly push for the County agree to match the nurses’ hourly wage rates or it may have wanted to ensure that the County carried over the accrued vacation and other paid-time nurses had earned while working for Verity. Furthermore, Debtors have submitted no evidence to suggest that it offered the County any of these alternatives. On the contrary, it appears Debtors were content once they received the County’s promise of job retention.

Moreover, case law illustrates that negotiations prior to any firm commitments of the parties are necessary to allow movement in parties’ positions. *Bruno Supermarkets*, 2009 Bankr. Lexis 1366, *18-*21. The facts of *In re Bruno Supermarkets* are illustrative of how parties’ positions may shift in practice if the union is engaged in the sale process while the debtor still has leverage over potential bidders. In that case, one of the potential bidders submitted a letter of interest initially stating that its offer was contingent on the court rejecting the CBAs. *Id.* However, a week later this same entity stated that it would be willing to consider purchasing the supermarket with a renegotiated union contract if such a promise would make their offer appear more attractive since there was another potential buyer.
expressing interest. *Id.* During this same period, the union, during section 1113 negotiations with the employer, expressed a willingness to renegotiate its contract with a successful purchaser, as opposed to making the employer assume the current contract. *Id.* Hence, a compromise was reached.

Thus, during the early stages of the sale process, positions which initially seem intractable may change under pressure to make a competitive offer. Similar to the facts in *Bruno Supermarkets*, it is conceivable that if prior to the execution of the APA, Debtor consulted CNA, the parties could have agreed to amend the successor clause so that the purchaser would only be bound to negotiate a new contract with CNA or make alternative compromises to some of the CBAs’ terms. It is also conceivable that some of the potential buyers would have agreed to such an offer in an effort to make their proposal more competitive, which would have placed pressure on the County to make further concessions. While Debtors have stated that the County is legally precluded from bargaining with CNA, a position with which CNA disagrees, in lieu of agreeing to renegotiate a contract with CNA, it could have made its offer more attractive by agreeing to assume the nurses’ paid time off liabilities, matching their current wage rate or some other benefit.

In short, Verity and CNA had the most leverage to force the bidders to compete prior to the execution of the APA before Verity revealed that it would accept an APA that did not assume the CBAs. Arguably, Verity and CNA also had some leverage with the County prior to the auction. However, after the auction when the County was revealed to be the sole bidder, all meaningful power to negotiate with the County disappeared. Because Verity excluded the Union from negotiations until a period when it was powerless, the Union was precluded from exploring any real compromises.

Additionally, once the APA was executed, CNA lost much of its bargaining power to negotiate for some form of compensation from Verity for violation of the successor clause.

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4 CNA also asserts that Verity engaged in bad-faith bargaining by not even asking for CNA’s legal position on whether the County could recognize CNA as the exclusive representative of registered nurses at OCH and SLRH.
American Flint Glass Workers, 197 F.3d at 82 ("[i]n effect, the Agreement’s condition precedent [that purchaser not be bound by any retroactive wage increases due to under the CBA] stripped GMU of whatever bargaining power it might otherwise have had"). Given that the current OCH and SLRH nurses who choose to work for the County will face a decline in the terms and conditions of employment (see Section E below), CNA should have been given the opportunity to meet with Verity to negotiate a severance package for all nurses regardless of whether they accept County employment. Instead, CNA was forced to make its offer after all leverage was removed, and, unsurprising, Verity has responded that it will only offer severance to those nurses who are not hired by the County [Prediletto Decl., ¶¶ 11 & 12, Exs. 5 & 6]. Accordingly, Verity denied CNA its right as the employee representative to offer counterproposals at a time when discussion would have been fruitful.

To be clear, CNA is not asking the Court to make a bright line rule that good faith bargaining can never occur when the Debtor seeks to engage with the union after the parties have executed an APA. Instead, given the unique facts and circumstances of the case at bar, in order to negotiate in good faith, Verity should have engaged with CNA prior to committing itself to the APA with the County. Congress has not created any exception to the obligation to bargain in good faith under section 1113, and thus Verity should not be able to shortcut these requirements merely because the ultimate outcome was that the only bidder on the Assets staked out the position that it would not agree to adopt the CBAs.

3. Good Faith Negotiations With Unions Prior to the Debtors Obligating Themselves to Purchasers Are the Norm and Would Not Unreasonably Burden Debtors or Impede the Sale.

Debtors’ engagement with unions in the early stages of the sale process is so commonplace that even the fact patterns of the cases Verity cites in support of the 1113 Motion demonstrate it. In re Walter Energy, Inc., 542 B.R. 859, 872 (N.D. Ala. 2015) ("[a]s the Stalking Horse APA was crystallizing the Debtors engaged again with UMWA to discuss the UMWA CBA"); In re Nat’l Forge Co., 289 B.R. 808, 812 (W.D. Pa. 2003) (court noting that union had “ample opportunity” to contact all parties who expressed any interest in purchasing
debtor’s assets because debtor had provided the identity of these entities to union prior to the sale auction); In re Alpha Natural Res., Inc., 552 B.R. 314 (E.D. Va. 2016) (distinguishing the holding of Lady H from the case at bar because “debtors did not sign the APA until well after negotiations had begun with the union” and noting that debtors facilitated conversations between the Stalking Horse and union) (citing Walter Energy, 542 B.R. at 894-95); In re Karykeion, 435 B.R. at 682 (“This situation differs from Lady H Coal both because the debtor passed the unions offers along to Avanti, tried to negotiate further with Avanti on behalf of the unions, and the debtor only signed a MOU with Avanti before negotiating under 1113”).

Furthermore, Debtors did not move for an expedited emergency sale hearing because the business was failing and needed to be sold rapidly or to perform any other act that suggested bargaining with the CNA prior to the sale would be infeasible. Thus, in this instance requiring Verity to engage with CNA prior to committing itself would not place unreasonable burdens on the sale process and is expected as part of good-faith negotiations.

4. **Given A Liquidating Debtor’s Lack of Incentive to Deal with Unions In Good Faith, Debtors’ Actions Should Be Carefully Scrutinized.**

Furthermore, because Verity no longer has an external incentive to bargain in good faith it is all the more important that this Court require it to fulfill its obligations. E.g., In Re United States Truck Co. Holdings, 2000 Bankr. Lexis 1376, *89 (Bankr. E.D. Mich. Sept. 29, 2000)(“Where a debtor is liquidating under Chapter 11 and is no longer operating a business, there is inherently a lack of an important incentive to bargain in good faith. . . Debtor no longer needs its employees to keep its business operating and consequently does not have to bargain to avert the threat of a work stoppage or a strike.”) Accordingly, Verity’s actions such as refusing to meet with Mr. Prediletto prior to signing the Asset Purchase Agreement, not consulting CNA regarding the nurses’ opinions at critical junctures, disingenuously offering to meet with CNA after no real opportunity to bargain existed should not be easily excused due to the pressures and constraints inherent in any bankruptcy sale.

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As an example, in Family Snacks, the court granted the debtors’ motion for an expedited hearing due to its bleak financial condition. 257 B.R. at 887.
5. *Family Snacks* Offers No Guidance or Support for Debtors’ § 1113 Motion

*In re Family Snacks* concerned whether a debtor could still meet section 1113’s requirement that rejection of the CBA “is necessary to permit reorganization” when the asset sale had already occurred and the employer has closed its business. 257 B.R. 884, 890 (B.A.P. 8th Cir. 2001) (reversing the lower court’s ruling that “[b]ecause Debtor had already sold its assets, it also could not establish that rejection was necessary to facilitate the sale of the business on a going concern basis”). *Family Snacks* did not concern a successor clause. In that case, the reason the union opposed the CBA’s rejection was so that it could have unpaid prepetition medical expenses paid as an administrative expense as opposed to fourth priority expenses under section 507(a)(4). *Id.* at 888. Furthermore, *Family Snacks* offered no direction on the interpretation of good faith bargaining since this element of the *American Provision* requirements was not before it. *Id.* at 898. Instead, it remanded the case to the lower court to determine if the debtor had indeed satisfied good faith requirements. *Id.* at 898. In any event, because in *Family Snacks* the Debtor moved for and was granted an expedited sale hearing based on its dire financial position, it does not provide an appropriate factual comparison to the case at bar for compliance with section 1113. *Id.* at 887.

C. Debtors Failed To Show That Rejection of the CBAs is Necessary for the Asset Sale to Close or Otherwise Necessary for the Survival of the Debtors’ Estate.

The only justification that Debtors provided to CNA for rejecting the entirety of the collective bargaining agreements as opposed to just terminating the successor clause is that the Debtors will have no need upon closing for them and their continuation is harmful to the estate [Prediletto Decl., Ex. 4]. It is undisputed that the Asset Sale to Santa Clara County is not contingent on termination of contracts since no such condition is present in the APA. While different courts have reached varying conclusions about what is deemed necessary, Debtors’ justification falls short under any established standards. *Truck Drivers Local 807 v. Carey Transp., Inc.*, 816 F.2d 82, 89 (2d Cir. 1987) (finding that “necessary” is determined by whether the proposed modifications
would increase the likelihood of a successful reorganization). *Contra Wheeling-Pittsburg Steel Corp. v. United Steelworkers of Am.*, 791 F.3d 1074 (3d Cir. 1986) (strictly construing necessary to mean essential). Debtors have simply not demonstrated what burden, if any, maintaining the CBAs will impose after closure.

Additionally, since the CNA CBAs provides for retiree health benefits [*see Ex. 2 (Article 29, Section 1.46) & Ex. 3 (Article 11, Section C)*], these provisions may not be modified absent a motion under 11 U.S.C. section 1114. Therefore, it is not even permissible for the contracts to be rejected at this time.

**D. The Debtors Have Not Met Their Burden to Prove that Their Proposal Was Based on “The Most Reliable Information Available” and, Likewise, Failed To Prove That They Provided the Unions With Relevant Information Necessary To Evaluate the Proposal.**

CNA’s information requests have either been rebuffed or discounted. As stated above, in response to CNA’s request for information regarding what provisions of the CBA the Debtor believes are necessary to reject, Debtors told CNA that the CBAs are not needed after the closing of the sale. This response provides no information upon which CNA can evaluate Debtors’ proposal. In any event, CNA should not have to ask for this information, but Debtor should have provided it with the proposal.

In response to CNA’s requests for information regarding the potential buyers and the proposals they submitted to Verity, Debtor informed Mr. Prediletto that it would only “provide information about the bidding process, subject to any confidentiality restriction” [*Prediletto Decl., Ex. 4*]. As justification for its reluctance to provide CNA with information, Verity states that none of the proposed buyers had agreed to assume the CBAs [*Id.*]. However, this fact is meaningless, since as stated above with respect to good faith bargaining, Debtor should have presented CNA with the opportunity to explore compromises with potential buyers. During negotiations, parties often move from seemingly intractable positions. *National Forge*, 289 B.R. at 810 (determining that the debtor provided the union with “complete and reliable information” in part because the
“union was provided with information on all entities that had expressed interest in acquisition of the Debtor’s assets”).

E. Debtors’ Proposal to CNA Fails to “Assure All Affected Parties Are Treated Fairly and Equitably.”

As a result of the sale, the OCH and SLRH nurses will suffer on several levels. They will lose participation in their pension plan, lose accrued paid-time off, likely have diminished hourly wage rates, and lose representation by their elected union, CNA. However, according to Debtors, the nurses are treated fairly in this process because they will be represented by the RNPA, or as Debtors refer to it, the “Santa Clara Approved Union,” should they be offered employment [Doc. 1182, p. 21]. First, it goes without saying that the prospect of joining the union approved by one’s future employer is tantamount to joining the “company union” and extremely unappealing. Obviously, nurses would rather be represented by the “nurse approved union” which in this case is CNA, a national leader, rather than RNPA, the employer approved union which only represents nurses employed by the County. Additionally, because the OCH and SLRH nurses have not yet received offer letters, it is unclear what wage rate the County intends to offer them; however, if the wage rates negotiated by the “Santa Clara Approved Union” are any indication, the OCH and SLRH are likely to face a significant pay cut. In order to at least approach fairness, Debtors should offer nurses a reasonable severance to compensate them for this change in position.

The burden borne by the nurses is unlike that of the secured creditors or unsecured trade creditors. These commercial creditors receive their income from several different sources and may not even be substantially affected if their claims are not paid in

6 See, e.g., RNPA’s highest biweekly rate (based on 80 hours of work) effective October 22, 2018 for a Clinical Nurse II is $5,813.52 [Exhibit 5, Appx. A, p.105, Clinical Nurse II Step C, Step 5] compared with the highest biweekly rate of an OCH Staff Nurse II is $6,629.20 (80 hours multiplied by $82.865 per hour) [Exhibit 2, Appx. A, p. 46, Staff Nurse II, Step 8]. Over a year or 26-biweekly-payperiods the difference between the two salaries is approximately $21,207.68.
full or at all. However, for the nurses, this change in position affects their sole source of income and unlike sophisticated commercial creditors they never assumed the risk that their hospitals would become bankrupt. See Donald R. Korokin, Employee Interests in Bankruptcy, 4 AM Bankr. Inst. L. Rev. 5, 6 (Spring 1996). Accordingly, the burden placed on these nurses is unfair compared to the burden placed on commercial creditors and Verity executives who are receiving additional compensation through the Key Employee Retention Plan and Key Employee Incentive Plan [Doc. 876]. See In re Century Brass Prods. Inc, 795 F.2d 265, 273 (2d Cir. 1986) (“[t]he purpose is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree).

F. CNA Has Rejected Debtors’ Proposal for Good Cause and Despite the fact that Debtors Have Provided It With Nothing to Bargain Over, CNA Made Counter Proposals in Good Faith.

CNA has good cause to not agree to reject the CBAs: Debtors have not shown that their rejection is necessary, not bargained in good faith, not provided information necessary to evaluate its proposal, and the proposal unfairly burdens the nurses. However, despite these untenable positions taken by Debtors, CNA has not stonewalled or refused to consider alternative solutions. Indeed it has offered exploring the possibility of waiving the successor clause in the CBAs in exchange for severance payments to the nurses [See Prediletto Decl., Ex. 5].

G. The Balance of the Equities Does Not “Clearly Favor” the CBAs’ Rejection.

In light of the facts that Debtors did not bargain in good faith with CNA, proposed an unnecessary termination of the CBAs, did not provide CNA with the information necessary to evaluate its proposal, the proposal treats the nurses unfairly, and CNA has rejected the proposal for good cause, under no scenario can the equities clearly favor rejection. Delta Air Lines, 342 B.R. at 702 (“Given my findings in point B (concerning the requirement to ‘confer in good faith’), point C (concerning the ‘fairly and equitably
requirement’) and point D (concerning the requirement of ‘good cause’ for refusal to accept), above, I cannot find that the balance of equities clearly favors rejection”.

H. **Even If Debtors Were Successful In Their § 1113 Motion Under Ninth Circuit Bankruptcy Appellate Panel Case Law, Collective Bargaining Agreements May Not be Rejected *Nunc Pro Tunc* So The Court’s Relief Would Be Meaningless.**

Debtors have already violated the successor clause of the CBAs by (1) signing the APA with the County and (2) moving for a motion for approval of the Asset Sale and receiving such relief prior to moving to reject the contracts under section 1113. Thus, in order to avoid an administrative claim against the estate for breach of contract, Debtors would need to be able to reject the CBAs retroactively. However, the Ninth Circuit Bankruptcy Appellate Panel has explicitly ruled that collective bargaining agreements may not be rejected nunc pro tunc. *In re World Sales*, 183 B.R. 872 (B.A.P. 9th Cir. 1995) (“[b]ecause a CBA may not be rejected retroactively, unilateral breaches prior to rejection cannot be relegated to unsecured status”); *In re Hoffman Bros. Packing Co.*, 173 B.R. 177, 185 (B.A.P. 9th Cir. 1994)(“[t]hus the retroactive aspect of the interim order must be reversed so that the unions may be permitted to file administrative claims for their members’ post petition unpaid benefits accruing prior to entry of the court-ordered modification”).

Had Debtors wished to avoid this claim they should have filed their motions to reject the CBA prior to the sale hearing. *In re Nat’l Forge Co.*, 289 B.R. at 808 (“[b]ecause of the successor language, Debtor and its advisors were compelled to seek rejection of the CBA prior to confirmation of the sale to eliminate a potential claim by the Union under the successor clause. . .[f]ollowing rejection of the CBA, the sale hearing took place”).
I. The Denial of Debtors' Section 1113 Motion Need Not Impede the Asset Sale to Santa Clara County.

As stated in its prior filings, CNA recognizes that the County is the only entity currently willing to buy the Assets. Accordingly, CNA does not wish to block the Asset Sale. However, merely because a court denies a section 1113 motion with a successor clause at issue does not require a purchaser to assume the CBAs. Rather, a court may allow the sale to go forward, but since section 1113 relief has been denied, order relief in the form of post-petition administrative claims for breach of contract. In re Lady H, 193 B.R. at 243 (finding that Lady H Coal Company violated the successor clause in the CBA and ordering that “the UMWA employees or any other party with the right to assert claims will be given twenty (20) days from the date of the sale to file a damage claim for breach of the NBCWA [the CBA covering the UMWA employees] and such claim shall be a post-petition administrative claim”). This is the relief that CNA seeks.

V. CONCLUSION

For the foregoing reasons, CNA requests that the Court deny Debtors’ section 1113 motion and grant CNA and the CNA-represented nurses a post-petition administrative claim for breach of contract. In addition, CNA requests that the Court grant such other and further relief as the Court may deem necessary and proper.

Dated: January 16, 2019

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By

Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION
Exhibit E
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 Verity Business Services
□ Affects Verity Medical Foundation
□ Affects Verity Holdings, LLC
□ Affects De Paul Ventures, LLC
□ Affects De Paul Ventures – San Jose ASC, LLC

Debtors and Debtors in Possession.

The Honorable Ernest M. Robles

SUR-REPLY TO DEBTORS’ REPLY TO CALIFORNIA NURSES ASSOCIATION’S OBJECTION TO DEBTORS’ MOTION UNDER § 1113 OF THE BANKRUPTCY CODE TO MODIFY, REJECT AND TERMINATE CERTAIN TERMS OF CALIFORNIA NURSES ASSOCIATION’S COLLECTIVE BARGAINING AGREEMENTS[Docket Nos. 1182, 1269, 1270, 1332]

Hearing:
Date: January 30, 2019
Time: 10:00 AM
Place: Courtroom 1568
255 East Temple Street
Los Angeles, CA 90012
I. INTRODUCTION

The California Nurses Association (“CNA”), a creditor and party in interest in the Chapter 11 bankruptcy cases of the above-captioned debtors and debtors-in-possession (the “Debtors” or “Verity”), submits this Sur-Reply to Debtors’ Reply [Docket No. 1332] to CNA’s Objection [Docket No. 1269] to Debtor’s Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association’s Collective Bargaining Agreement with O’Connor Hospital and Saint Louise Regional Hospital Upon the Closing of the Sale of Hospitals to the County of Santa Clara (the “1113 Motion”) [Docket No. 1182]. CNA has acquired additional information from Debtors since filing its Objection and believes this information undermines several of the positions in Debtors’ Reply Brief, such that it is relevant to the Court’s analysis.

II. BACKGROUND

CNA’s Interactions with Debtors after CNA Filed its Objection Brief

1. CNA incorporates the Background Information in its Objection Brief [Docket Nos. 1269, 1270] and exhibits submitted therewith into its Sur-Reply.

2. On January 16, 2019, Mr. Prediletto offered to negotiate with Debtors regarding modification of the successor clause in exchange for all nurses receiving a severance payment. The intent of the proposal was to offer nurses compensation given that they will likely work under less desirable terms and conditions at the County than they would under an employer who adopted the successor clause. [Declaration of Andrew Prediletto “Prediletto Decl.” in Support of CNA Objection to Debtors section 1113 Motion, Docket. No. 1270-5, ¶ 11].

3. On January 16, Mr. Sam Alberts, Debtors’ Counsel, responded that Verity would be amendable to offering such payments only to nurses who were not “fortunate enough to be hired by the County.” [ Prediletto, Decl. Docket. No. 1270-6].

1 All referenced dates occurred in 2019 unless otherwise noted.
4. On January 16, CNA filed its Objection Brief, summarizing the facts contained in paragraphs 2 and 3 immediately above, as evidence of the fact that no real opportunity for making meaningful counterproposals exists since all critical decisions have already been made. [Docket No. 1269, p. 17].

5. On January 17, Mr. Alberts sent an email to Mr. Prediletto stating that based on CNA’s pleadings filed on the day prior, he understood that CNA would not be submitting a counterproposal. [Skogstad Declaration in Support of CNA Sur-Reply “Skogstad Decl.” Exhibit “Ex.” 1].

6. On January 19, Mr. Prediletto sent Mr. Alberts an email stating he was happy to discuss any proposed modifications to the collective bargaining agreements (“CBAs”) with him. Mr. Alberts responded that Verity “is willing to provide severance for people who are not rehired” and was “not sure, what if anything actually remains in dispute.” [Skogstad Decl., Ex. 2].

7. On January 22, Mr. Alberts provided Mr. Prediletto with redacted Letters of Intent (the “LOIs”) submitted by potential bidders interested in purchasing either the entire Verity Hospital System, or only Saint Louise Regional Hospital (“SLRH”), O’Connor Regional Hospital (“OCH”) and Morgan Hill property (the “Purchased Assets”). [Skogstad Decl., Ex. 3].

8. Based on a review of these LOIs, CNA learned that in addition to the County of Santa Clara’s proposal for the Purchased Assets, five other entities expressed interest in them. [Id.]. Significantly, all five entities proposed to either honor or modify the existing collective bargaining agreements and one entity stated it would also be willing to assume all pension liabilities. Specifically, the five other proposals were: (1) “Entity A” proposed to buy the entire Verity Hospital system and assume all pension liabilities and honor all collective bargaining agreements; (2) “Entity B” stated it would pay $265 million for the Purchased Assets, honor the existing CBAs with modifications regarding the pension plans, and would grant the former Verity employees it hired vesting credit in its pension plan based on their credited service in Verity’s plans; and (3) “Entities C-E” also proposed to buy the entire system and would have
honored the collective bargaining agreements with modifications regarding the pension plans. [Id.].

**Recent Developments with Other Unions Representing Verity Employees**

9. On January 16, Service Employees International Union, United Healthcare Workers West ("SEIU"), filed with this Court several responses it received to information requests directed to Debtors. [Emily Rich Declaration in Opposition to Debtors section 1113 Motion, Docket No. 1273]. In one of these responses, Debtors stated that Entity A, the proposal party who would have assumed the pension obligations, did not provide a proposal which would have satisfied the secured creditors. [Docket No. 1273-3, p. 6]. The same response also states that Verity did not give a financial value to proposal parties who agreed to assume the CBAs, but considered it as a factor in the “qualitative considerations” of each proposal. [Id.].

10. On January 24, counsel for SEIU, emailed Mr. Alberts to counteroffer that all SEIU-UHW members receive severance due to the diminished terms and conditions of employment they would work under at the County. Mr. Alberts responded that no other unions’ members who were hired by the County would receive severance payments and so her counterproposal was “unfair.” [Supplemental Declaration of Counsel in Opposition to Debtors’ Motion Under Section 1113, Docket No. 1362, ¶5].

11. On January 25, Debtors filed with the Court the settlement agreements it reached with the California Licensed Vocational Nurses Association ("CLVNA") and the Engineers and Scientists of California, IFPTE Local 20 ("Local 20") to resolve Debtors Section 1113 Motions to reject their respective contracts. [Docket Nos. 1372, 1373]. Under these settlement agreements in exchange for not objecting to the motion to reject their CBAs, CLVNA and Local 20, essentially receive severance for those employees who are not hired by the County and assurance that the employees’ paid-time off claims will not be contested and paid in accordance with applicable bankruptcy law. [Id.]. The Local 20 settlement agreement is effective January 22 and the CLVNA agreement is effective January 24. [Id.]
2014 Efforts to Sell the Daughters of Charity Healthcare System

12. In 2014, Daughters of Charity Healthcare System ("DCHS") explored options to sell their hospital system. In the final bidding stage of the competitive process, six different entities made offers for the entire DCHS system and all would have assumed the CBAs and all or most of the pension obligations.\(^2\) [Skogstad Decl., Ex. 4, pp. 12-13].

III. PRELIMINARY STATEMENT

CNA submits this Sur-Reply to inform the Court of the new information and developments that have occurred which undermine Debtors’ claims that they have met the requirements of section 1113. First, five other entities submitted proposals that would have assumed some version of the current CBAs and one would also have assumed the pension plans. This fact makes Verity’s refusal to engage with CNA sooner all the more troubling and in bad faith. Second, Debtors maintained their position with CNA and all other unions that they would only provide severance for those not hired by the County. This fact shows that there were no meaningful counterproposals CNA could have made because the time to negotiate in good faith had passed. Third, the fact that Verity determined that Entity A did not provide enough value to the secured creditors even though it agreed to assume all pension obligations and collective bargaining agreements demonstrates that the nurses have not been treated fairly and equitably in this process. Finally, CNA wishes to make clear that case law in this district does not support Debtors’ contention in its Reply that a different standard applies to liquidation cases under section 1113.

\(^2\) Two of the entities later withdrew their final bids. \([Id. at p. 2].\)
IV. ARGUMENT

A. Because All Proposal Parties Except Santa Clara County Would have Assumed Some or All of the Provisions in CNA CBAs, Debtors Had a Good Faith Obligation to Engage with CNA At Least Prior to the Bid Deadline.

The rationale CNA stated in its Objection for why the good faith prong of Section 1113 required Debtors to bargain with it prior to becoming “locked-in” to a position are all the more amplified given that Entities A-E submitted serious proposals which would place CNA nurses at OCH and SLRH in a superior position than they currently face with County employment. [Docket No. 1269, pp. 12-19]. The fact that Verity rebuffed Mr. Prediletto’s request to bargain in September of 2018 is all the more difficult to justify given that contemporaneously Debtors were negotiating the APA with the County which would violate the CNA CBAs and other proposal parties were willing to assume most of their provisions. [Docket. No. 1270-1].

Even more troubling is that Entity B would have paid more money for the Purchased Assets ($265 million compared to the County’s bid of $235 million) and given Verity employees vesting credit in its pension plan based on their prior credited service as Verity employees. When a potential buyer makes a proposal which stands to benefit the nurses so substantially, their union should at least be apprised of its existence. Furthermore, because the 2014 sale process resulted in six final system-wide bidders who were all willing to assume most or all of the pensions and CBAs, it is quite likely that the current proposal parties (assuming any continuity in identity between the 2014 and 2019 proposal parties) would have been in a position to accept these obligations if pressured.

In short, Verity should have consulted CNA under section 1113’s requirements of good faith at critical junctures in the decision-making process (e.g., the decision to sell the hospitals piecemeal as opposed to system-wide, the selection of the County as the stalking horse, etc.). While Debtors were not obligated to change their position based on discussions with CNA, given that they initially had several options regarding the sale
process, they at least had to engage with CNA’s representatives before making these
important decisions. See American Flint Glass Workers v. Anchor Resolution, 197 F.3d
76, 82 (3d Cir. 1999).

B. Debtors’ Contention that CNA and SEIU Have Not Made Counterproposals
in Good Faith Falls Flat Given that Debtors’ Own Behavior Has Shown it
Will Not Accept Meaningful Counteroffers.

Both CNA and SEIU separately tried to negotiate a settlement to Debtors’ 1113
Motion and have been offered no meaningful relief in return. See, e.g., [Docket No.
1362, ¶5, Skogstad Decl. Ex. 2]. In response to both unions’ counteroffers for severance
payments for all of its nurses, Debtor repeatedly maintained that it will only provide
severance to those not hired by the County. [Id.]. As demonstration of their
entrenchment, Debtors told SEIU that any other severance offer would be “unfair” to the
other unions (with whom Debtors have already executed settlement agreements).
[Docket No. 1362, ¶5]. Indeed, CLVNA and Local 20 were unable to negotiate any
greater severance benefits with the Verity in their respective settlement. [Docket No.
1372, 1373]. Consequently, CNA determined it was futile to make further requests.

Moreover, Debtors’ offer to pay severance to those not provisionally hired by the
County is hollow given that quite possibly all CNA nurses at OCH and SLRH will
receive offers of employment. [Santa Clara County APA Section 5.3.1, Docket No. 365-
1]. Verity is therefore offering the sleeves off its vest when it proposes to only give a
benefit to this subgroup of potentially nonexistent employees.

Accordingly, contrary to Debtor’s contention, CNA has not behaved “languidly”
[Docket 1332, p. 25]. Rather, the fact that Debtors engaged with CNA only after Debtors
were committed to a position with the County rendered the process of offering
counterproposals meaningless. Therefore, CNA has shown good cause for rejecting
Verity’s contract rejection proposal.
C. The Fact that “Entity A” Would have Assumed All of the Pensions Liabilities and CBAs, but Verity Determined it Did not Provide Enough Cash to Satisfy the Secured Creditors Demonstrates that Contract Rejection Is Not Fair and Equitable to the Employees.

As stated in CNA’s objection, the nurses and other Verity employees will bear a substantial burden in this bankruptcy, because unlike secured creditors, their employment is their sole source of income and they have not assumed the risk that their employer would go bankrupt. See Donald R. Korokin, Employee Interests in Bankruptcy, 4 AM Bankr. Inst. L. Rev. 5, 6 (Spring 1996). Thus, the fact that Verity instructed Entity A to submit a proposal with more value for the secured creditors after it agreed to assume major employee liabilities shows that it made a determination that the nurses should bear the greater burden in this bankruptcy through loss of their pension plans, collective bargaining agreements and elected union representative than the secured creditors. [Docket 1273-3, p.6]. Accordingly, this contract rejection places too much of the weight on the employees’ shoulders and fails under the equity requirements of section 1113. See In re Century Brass Prods. Inc, 795 F.2d 265, 273 (2d Cir. 1986) (“The purpose is to spread the burdens of saving the company to every constituency while ensuring that all sacrifice to a similar degree.”). Additionally, the fact that Debtors did not engage CNA when Entity A did not follow-up with a second proposal is further evidence of bad faith.

D. Bankruptcy Courts in this District Require Strict Compliance with Section 1113 in All Chapter 11 Scenarios Including Liquidation.

Debtors’ argument that CNA and SEIU-UHW have applied the wrong standard in interpreting section 1113 is weakly supported and ill-considered. Courts in this district do not apply section 1113 in a relaxed fashion when the debtor is liquidating. E.g., In re Karykeion, Inc. 435 B.R. 663, 667 (Bankr. C.D. Cal. 2010)(requiring a liquidating debtor to “strictly” comply with section 1113’s requirements) (citing In re Certified Air Techs, 300 B.R. 355, 361 (Bankr. C.D. Cal. 2003)). Courts in other districts have also required liquidating debtors to strictly comply with section 1113. See, e.g., In re Bruno
Supermarkets, 2009 Bankr. Lexis 1366, fn. 33 (Bankr. N.D. Ala. April 27, 2009) ("Right or wrong section 1113 is weighted in favor of maintaining collective bargaining agreements. Its standards are strict."). Indeed, other courts have scrutinized liquidating debtors more closely under section 1113 given that they no longer have an incentive to retain their employees or prevent them from striking. See In Re United States Truck Co. Holdings, 2000 Bankr. Lexis 1376, *89 (Bankr. E.D. Mich. Sept. 29, 2000) ("Where a debtor is liquidating under Chapter 11 and is no longer operating a business, there is inherently a lack of an important incentive to bargain in good faith."). Accordingly, liquidating debtors should not be held to a more relaxed standard than those undergoing reorganization.

V. CONCLUSION

For the foregoing reasons, CNA requests that the Court deny Debtors’ section 1113 motion and grant CNA and the CNA-represented nurses a post-petition administrative claim for breach of contract. In addition, CNA requests that the Court grant such other and further relief as the Court may deem necessary and proper.

Dated: January 28, 2019

CALIFORNIA NURSES ASSOCIATION
LEGAL DEPARTMENT

By
Kyrsten B. Skogstad
Attorneys for Creditor
CALIFORNIA NURSES ASSOCIATION
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:

California Nurses Association, 155 Grand Avenue, Oakland CA 94612

A true and correct copy of the foregoing document entitled (specify): Sur-Reply to Debtors' Reply to California Nurses Association's Objection To Debtors' Motion Under § 1113 of the Bankruptcy Code to Modify, Reject and Terminate Certain Terms of California Nurses Association's Collective Bargaining Agreements [Relates to Docket Nos. 1182, 1269, 1270, 1332] 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) 01/28/2019, 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:

Please see Attachment.

☐ 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) 01/28/2019, 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.

Hon. Ernest M. Robles, U.S. Bankruptcy Court, Roybal Federal Building
255 E. Temple Street, Suite 1560/Courtroom 1568, Los Angeles CA 90012 (via Overnight Mail)

☐ 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.

01/28/2019
Date

Rob Craven
Printed Name

/s/ Rob Craven
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

June 2012

F 9013-3.1.PROOF.SERVICE
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• Rose Zimmerman rzimmerman@dalycity.org
Exhibit F
IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re Verity Health System of California, Inc.
Debtors

XAVIER BECERRA, California Attorney General,
Appellant,
v.
County of Santa Clara,
Appellee.

DISTRICT COURT CASE NUMBER:
2:19-cv-133-DMG

BANKRUPTCY COURT CASE NUMBER:
2:18-bk-20151-ER

CALIFORNIA ATTORNEY GENERAL'S NOTICE OF EMERGENCY MOTION AND EMERGENCY MOTION TO STAY PENDING APPEAL OF THE BANKRUPTCY COURT'S ORDER AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS TO SANTA CLARA COUNTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND MEMORANDUM OF DECISION OVERRULING OBJECTIONS OF THE CALIFORNIA ATTORNEY GENERAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF ALICIA BERRY, WENDI HORWITZ AND PHIL DALTON IN SUPPORT THEREOF;

[Appendix filed concurrently]

Date: [TBD]
Time: [TBD]
Courtroom: 8C
Judge: Dolly M. Gee

Case No. 2:19-cv-00133-DMG
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<td>Federal Rules of Bankruptcy Procedure, Rule 8007(b)</td>
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Xavier Becerra, Attorney General of California (Attorney General) moves the Court for an order to stay the Bankruptcy’s Court’s “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” entered on December 27, 2018 (Sale Order) pending the Attorney General’s appeal to this Court filed on January 7, 2019. This motion is being made on an emergency basis because the Bankruptcy Court waived the automatic 14-day stay of the Sale Order allowed under Bankruptcy Rule 6004(h) and denied the Attorney General’s request for a stay.

Thus, the Sale Order became immediately effective and allows the parties to close the transaction before this Court can rule on the instant motion for a stay pending appeal. Without a stay, the Attorney General’s appeal regarding an important state law issue affecting public health, safety, and welfare will likely be rendered moot by operation of 11 U.S.C. § 363(m).

PLEASE TAKE NOTICE that the Attorney General brings this motion under Federal Rules of Bankruptcy Procedure Rule 8007(b) and Local Rule 7-19, seeking a stay pending appeal on an emergency basis. Granting this motion on an emergency basis will assure that the Attorney General’s right to appeal is preserved. The Attorney General’s interest in preserving his right to appeal is particularly significant here, where important issues of state law regarding health, safety, and

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welfare are at issue, and are most likely to arise again in bankruptcy sales where appellate rights are frequently mooted by operation of section 363(m).

**PLEASE TAKE FURTHER NOTICE** that this Motion is based on this Notice and Motion, the attached Memorandum of Points and Authorities, the Declarations of Alicia Berry, Wendi Horwitz and Phil Dalton, Appendix, the arguments of counsel, and other admissible evidence brought before the Court at or before the hearing on this Motion.

**PLEASE TAKE FURTHER NOTICE** that the Attorney General is serving this Notice and Motion, the Memorandum of Points and Authorities, the Declarations of Alicia Berry, Wendi Horwitz and Phil Dalton, and Appendix on Debtor, the County of Santa Clara, the Official Creditors Committee, the Office of the United States Trustee, and the United States Attorney as set forth in the attached proof of service. To the extent necessary, the Attorney General requests that this Court waive compliance with Local Rule 7-19 and approve service, in addition to the means of service set forth in such rule, by regular mail. In the event that the Court sets a hearing on the Motion, the Attorney General shall provide notice of the entry of the order setting the hearing on each of the foregoing parties and such other parties as the Court directs, including by telephonic notice.

**WHEREFORE**, for the foregoing reasons, and as may further be set forth at or before the hearing on this Motion, the Attorney General respectfully requests that this Court enter an order staying the Sale Order until the conclusion of an appeal therefrom.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On December 3, 2015, after careful deliberation, public meetings, and consultation with a healthcare expert pursuant to state law (Cal. Corp. Code, § 5914, et seq.), the California Attorney General issued a decision to consent with conditions to the change in governance and control of Daughters of Charity Health System (now known as Verity Health Systems of California, Inc.). The decision contained five sets of required health and safety protections ("AG Conditions"), one for each of the hospitals. (Appendix, Docs. 1 [AG Conditions] and 5 [health care impact reports].)

Following Verity’s acceptance of the AG Conditions, the transaction closed on December 14, 2015. The health and safety protections within the AG Conditions specifically contemplated a future sale of the hospitals, and required that O’Connor Hospital and Saint Louise Regional Hospital retain specific healthcare services for at least ten years from the closing date of the transaction, including: 24-hour emergency medical service; intensive care services; coronary care services; obstetric services; sub-acute care services; women’s health services; reproductive health services; and stroke services and designation as a primary stroke center; as well as additional services including cancer and cardiac services, for a period of five years. (Appendix, Doc. 1 [AG Conditions] at 178-179, 263-264.)

These hospitals provide essential services to the uninsured, under-served populations, and the elderly. (Appendix, Doc 5 [health care impact reports] at p. 715 and 811.) Now, Verity proposes to sell O’Connor and Saint Louise hospitals to Santa Clara County without the AG Conditions required by state law. Without these health and safety protections, the County will not be required to continue to operate O’Connor or Saint Louise as general acute care hospitals, or provide the healthcare services required by the AG Conditions.
The County’s Asset Purchase Agreement does not set forth the specific clinical services that will be provided. Nowhere has the County committed in any legally enforceable document to provide these essential healthcare services. The Asset Purchase Agreement only states that it will provide services “consistent with the objectives of the current conditions of approval from the California Attorney General.” (Appendix, Doc. 2 [Stalking Horse Motion], p. 557.) Of course, this statement of intent does not bind the County to actually provide the clinical services required by the AG Conditions.

The County has never stated which, if any, of the healthcare services the AG Conditions require are a problem for it to maintain. Without these vital health and safety protections, the County will not be required to maintain the properties as acute care hospitals providing important healthcare services, and can later use the properties for any other purpose. The County’s refusal to commit to these essential healthcare services compels the California Attorney General to seek a stay of the Sale Order.

PROCEDURAL BACKGROUND

1. In July 2015, Daughters of Charity Health System and Daughters of Charity Ministry Services Corporation (collectively, “Daughters”) entered into the System Restructuring and Support Agreement with BlueMountain Capital Management, LLC (“BlueMountain”), pertaining to the change in governance and control of Daughters, its affiliated entities, five acute care hospitals and skilled nursing facility; those facilities include but are not limited to: St. Vincent Medical Center in Los Angeles, St. Francis Medical Center in Lynwood, O’Connor Hospital in San Jose, Saint Louise Regional Hospital in Gilroy, Seton Medical Center in Daly City, and Seton Coastside in Moss Beach.

2. On July 31, 2015, Daughters submitted written notice of the transaction to the CALIFORNIA ATTORNEY GENERAL for review and approval pursuant to California Corporations Code sections 5914 and 5920. During the review of the
transaction, a healthcare expert was retained to evaluate the potential impact of the
transaction on the availability and accessibility of healthcare services to each of the
communities served by the hospitals involved, as required by the California Code
of Regulations, Title 11, section 999.5, subd. (e)(5) and (e)(6). The regulations
require the health care expert to assess the effect of the agreement on emergency
services, reproductive health services, and any other health care services that the
hospital is providing, the provision of services to Medi-Cal patients and county
indigent patients, staffing and the availability of care, the likely retention of
employees as it may affect continuity of care, and any mitigation measures
proposed by the hospital to reduce any potential adverse effect on health care
services. Cal. Code Regs. Tit. 11, § 999.5, subd. (e)(6) (2018). The regulations
require that the Attorney General evaluate the effect of the transaction on the
public, including the availability and accessibility of health care services to the
affected community. Cal. Code Regs. Tit. 11, § 999.5, subd. (f). The expert
prepared five health care impact statements. These healthcare impact statements
included interviews with medical staff, management, and employees, board
members, and community representatives. These health care impact statements
contained the expert’s analysis of financial, utilization, and health care services,
demographic characteristics, payer mix, hospital utilization records and trends,
health status indicators, and hospital market share information in formulating an
opinion regarding the potential impact of the transaction on the community.
(Declaration of Phil Dalton, ¶ 2.)

3. On December 3, 2015, the California Attorney General issued a decision
to consent with conditions, to the change in governance and control of Daughters of
Charity Health System (now known as Verity Health Systems of California, Inc.).
The decision contained five sets of conditions ("AG Conditions"), one for each of
the hospitals, as well as a copy of the healthcare impact reports for each of the
hospitals. (Appendix, Doc. 1 [AG Conditions].)
4. The December 3, 2015 decision incorporated the recommendations of the healthcare expert. Several conditions were already contained within the System Restructuring and Support Agreement, but were further formalized in the California Attorney General’s decision (i.e., the hospital would continue to operate as general acute care hospitals with emergency services, continuation of participation in the Medi-Cal and Medicare programs, continuation of staff privileges.) Moreover, the vast majority of the AG Conditions relate to the health, safety, and welfare of the People of the State of California: continued operation as licensed general acute care hospitals, continued provision of 24-hour emergency and trauma medical services, continued provision of certain essential health care services including reproductive health services, continued participation in the Medi-Cal and Medicare programs for low income, disabled and elderly patients, and the continuation of governmental contracts that provide access to care for indigent patients.

5. The transaction between Daughters and BlueMountain specifically contemplated a future sale of the hospitals through the Purchase Option Agreements listed in Condition II. (Appendix, Doc. 1.) Condition I of the AG Conditions provides that the conditions shall be legally binding on the parties to the transaction, including the hospital facilities, and any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity, and any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all of substantially all of the real property or operating assets of the hospitals, or the real property on which the hospital is located, any and all current and future owners, lessees, licensees, or operators of the hospital, and any and all current and future lessees and owners of the real property on which the hospital is located. (Appendix, Doc. 1.)

6. The conditions imposed by the California Attorney General’s decision for each of the five hospitals and one skilled nursing facility remain in effect for
fifteen years from the closing date of the transaction. The conditions also make
clear that they apply to all future owners, managers, lessees, licensees, or operators
of the hospitals and skilled nursing facility. (Appendix, Doc. 1 [AG Conditions].)

7. As part of the transaction, Daughters was renamed Verity Health System
of California, Inc. ("Verity"). Verity has since complied with the AG Conditions
and has not sought the California Attorney General's approval to modify any
conditions.

8. On August 31, 2018, Verity and its nonprofit subsidiaries (collectively,
the "Debtors") each filed a voluntary petition for relief under chapter 11 of the
Bankruptcy Code.

9. On October 1, 2018, Verity filed Debtors' Notice Of Motion And Motion
For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement
For Stalking Horse Bidder And For Prospective Overbidders To Use, (2)
Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid
Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties,
(4) Scheduling A Court Hearing To Consider Approval Of The Sale To The
Highest Bidder And (5) Approving Procedures Related To The Assumption Of
Certain Executory Contracts And Unexpired Leases; And (II) An Order (A)
Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And
Encumbrances; Memorandum Of Points And Authorities In Support Thereof (Bid
Procedures Motion) (Appendix, Doc. 2.) related to two of the hospitals in Santa
Clara County: O'Connor Hospital in San Jose, and Saint Louise Regional Hospital
in Gilroy. Section 5.6 of the Asset Purchase Agreement indicates that "Purchaser
agrees that promptly after the Signing Date, and in any event prior to the date of the
Auction, it will use its commercially reasonable efforts to negotiate any issues with
the California Attorney General over approval of the transactions contemplated by
this Agreement. Sellers agree to cooperate in good faith as permitted under the
Bankruptcy Code to assist in this endeavor.” (Appendix, Doc. 2 [Stalking Horse Motion] p. 536.)

10. On October 10, 2018 the California Attorney General filed his Response to Debtors’ Motion for Entry of (I) an Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder, and (II) an Order (A) Authorizing the Sale of Property Free and Clear of all Claims, Liens and Encumbrances; Memorandum of Points and Authorities in Support Thereof (AG Bid Procedure Response) wherein the California Attorney General objected to a sale free and clear of the AG Conditions. (Appendix, Doc. 3.)

11. On October 17, 2018 Verity filed its Debtors’ Reply to Response of California Attorney General to Debtors’ Bid Procedures Motion. (Appendix, Doc. 4.)

12. On October 22, 2018, the California Attorney General filed his Sur-Reply to Debtors’ Reply to the Response by the California Attorney General to Debtors’ Bid Procedures Motion; Declaration of Alicia Berry (AG Bid Procedure Sur-Reply wherein the California Attorney General objected to a sale free and clear of the AG Conditions. (Appendix, Doc. 5.)

13. In the Court’s Order dated October 30, 2018, the court did not rule on the objections asserted by the California Attorney General, finding such objections premature. However, the objections were preserved for the Sale Hearing. (Appendix, Doc. 6.)

14. Beginning in late October 2018, staff from the California Attorney General’s Office began discussions with counsel for the County of Santa Clara (“County”) regarding the applicability of the AG Conditions.

15. On November 2, 2018, the County submitted a request for clarification of certain of the AG Conditions for O’Connor Hospital and Saint Louise Regional Hospital. (Appendix, Doc. 8 [County Request for Clarification], p. 858-901.)
16. On November 9, 2018, the California Attorney General issued a response clarifying that the AG Conditions identified in the November 2 letter would not be enforced against the County. (Appendix, Doc. 8 [AG Letter of Clarification], p. 903-905.)

17. On December 12, 2018, Debtors’ filed their Debtors’ Notice of Motion and Motion for the Entry Of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances; Memorandum of Points and Authorities In Support (“Motion for Sale”). (Appendix, Doc. 7.)

18. On December 14, 2018, the California Attorney General filed its Response to the Motion for Sale. (Appendix, Doc. 8.)

19. On December 21, 2018, the Court issued its Preliminary Findings and Conclusions, and requested the Debtors, the California Attorney General, the Official Committee of Unsecured Creditors, and the County of Santa Clara submit further briefing by December 24, 2018. (Appendix, Doc. 9.)

20. The California Attorney General submitted his Response on December 24, 2018, and his errata dated December 26, 2018. (Appendix, Docs. 11 and 13.)

21. Debtor submitted a Response on December 24, 2018, and on that date also submitted the Declaration of Douglas Press. (Appendix, Docs. 10 and 12.)

22. On December 26, 2018, the bankruptcy court issued its Memorandum of Decision Overruling the Objections of the California Attorney General to the Debtors’ Sale Motion, and its Sale Order on December 27, 2018. (Appendix, Docs. 14 and 15.)
23. The Attorney General filed a notice of appeal. (Appendix, Doc. 16), and moved for a stay of the bankruptcy court’s sale order pending appeal. (Appendix, Doc. 17.) Debtors opposed the motion for stay, as did the Official Committee of Unsecured Creditors and the County of Santa Clara. (Appendix, Docs. 19-21.)

24. The Attorney General filed a Reply to the oppositions to the motion for stay. (Appendix, Doc. 22.) However, the bankruptcy court denied the motion for stay. (Appendix, Doc. 23.)

25. The transaction is scheduled to closed by February 28, 2019.

ARGUMENT

Federal Rules of Bankruptcy Procedure, rule 8007(b) allows a bankruptcy court to suspend an order pending appeal.

The standard for determining whether to grant a stay pending appeal is similar to the standard for issuing a preliminary injunction. Hilton v. Braunskill (Braunskill), 481 U.S. 770, 776 (1987); Tribal Vill. of Akutan v. Hodel, 859 F.2d 662, 663 (9th Cir. 1988); see also Winter v. Natural Res. Def. Council, 555 U.S. 7, 20, (2008) (laying out four-pronged test for preliminary injunctive relief). For both the appellate court and the district court, “the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits on the appeal; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure the other parties in the proceeding; and (4) where the public interest lies.” Braunskill, 481 U.S. at 776; see also Humane Soc’y of U.S. v. Gutierrez, 558 F.3d 896, 896 (9th Cir. 2009).

Courts need not give equal weight to each of the four factors. Standard Havens Prods v. Gencor Indus. (Standard Havens), 897 F.2d 511, 512 (Fed. Cir. 1990); see also Providence Journal Co. v. Federal Bureau of Investigation, 595 F.2d 889, 890 (1st Cir. 1979). Courts have used the sliding scale approach to decide motions for stay. Leiva-Perez v. Holder, 640 F.3d 962, 965 (9th Cir. 2011);
Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011). Likelihood of success in the appeal is not a rigid concept. Standard Havens, 897 F.2d at 512; see also Washington Metro Area Transit Comm'n v. Holiday Tours, 559 F.2d 841, 844 (D.C. Cir. 1977) (A court may grant a stay when “[t]here is substantial equity, and a need for judicial protection, whether or not movant has shown a mathematic probability of success.”).

I. THE CALIFORNIA ATTORNEY GENERAL IS LIKELY TO SUCCEED ON THE MERITS OF THE APPEAL

The Bankruptcy Court held 1.) that the sale of a nonprofit healthcare facility to a public entity is not subject to California Attorney General review under Corporations Code sections 5914 and 5920, 2.) that the California Attorney General had waived his right to object to the sale of the hospitals free and clear of the AG Conditions, and 3.) that the California Attorney General is equitably estopped from contesting the Debtors’ ability to sell the hospitals free and clear of the health and safety protections within the AG Conditions. The three grounds for the Court’s ruling are discussed separately below:

A. The California Attorney General Exercised His Police and Regulatory Powers by Imposing Conditions on the 2015 Transaction

Xavier Becerra is the elected Attorney General of the State of California and is the chief law officer of the State, as was Attorney General Kamala Harris before him. Cal. Const., art. V, § 13. The California Attorney General has broad constitutional, common law and statutory powers under the state constitution to protect the public. Cal. Const., art. V, §13; D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 14-15. The California Attorney General is charged with the supervision and regulation of nonprofit corporations and other charitable trusts in this state. Cal. Govt. Code, § 12598.

California Attorney General Harris exercised her police and regulatory powers pursuant to California state law in December 2015 when she issued a
decision to consent with conditions to the change in governance and control of
Daughters, its affiliated entities, five acute care hospitals and skilled nursing
facility; including St. Vincent Medical Center in Los Angeles, St. Francis Medical
Center in Lynwood, O’Connor Hospital in San Jose, Saint Louise Regional
Hospital in Gilroy, Seton Medical Center in Daly City, and Seton Coastside in
Moss Beach. The terms of the AG Conditions were to remain in place for 15 years,
181 and 266.) As such, the continued operation of the AG Conditions is a
continuation of the California Attorney General’s police and regulatory powers
under Corporations Code section 5914 et seq. The Bankruptcy Court was required
to apply non-bankruptcy law under Bankruptcy Code sections 959(b) and the
amendments to the Bankruptcy Code in the Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005 of sections 363(d)(1), 541(f), 1129(a)(16), and
1221(d) that specifically provide that applicable non-bankruptcy law applies to
sales of assets by a nonprofit debtor.

The Supreme Court held in *Midlantic National Bank v. New Jersey*
*Department of Environmental Protection*, 474 U.S. 494, 507 (1986), in a Chapter
11 case that converted to a liquidation proceeding in a Chapter 7, that the
Bankruptcy Code does not preempt “a state statute or regulation that is reasonably
designed to protect the public health or safety....” The Court noted Congress'
intentions that the trustee's efforts “to marshal and distribute the assets of the
estate” give way to the governmental interest in public health and safety. *Id.* at 502.
In addition, other courts have applied section 959(b) where the state was exercising
its inherent regulatory and police powers in a Chapter 7 or other liquidation
situation. *H.L.S. Energy Co., Inc.* 151 F.3d 434 (5th Cir. 1998) and *In re Stevens*, 68
B.R. 774 (D. Me. 1987).

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The legislative history regarding sections 363(d)(1)\(^2\), 1129(a)(16)\(^3\), and 1221(d)\(^4\) clearly shows Congress’s intent to give greater influence to state regulators and attorneys general, and limit the ability of trustees or debtors-in-possession to use, sell or lease property of a nonprofit corporation in derogation of laws regarding important state interests. This is especially true when government entities are enforcing their police and regulatory powers, such as Corporations Code section 5914 and 5920 \textit{et seq.}

Here, the California Attorney General protected the health, safety, and welfare of the communities served by the six health facilities owned and controlled by the Debtors by issuing conditions requiring essential health care services to be provided by the facilities including emergency services, minimum levels of charity care (free or discounted care), participation in the Medi-Cal and Medicare programs, and seismic safety. (Appendix, Doc. 1 [AG Conditions]; Cal. Const., art. V, § 13.)

Under both California law and the express terms of the conditions, the County as the purchaser takes the assets subject to the conditions. The California Attorney General’s decision is binding on any successor, successor in interest, assignee or other transferee of the healthcare facilities.

Condition I of the decision related to O’Connor Hospital states:

These Conditions shall be legally binding on [the parties], any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, assignee, or person or entity serving in a similar capacity of any of the above-listed entities [omitted]..., any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of O’Connor Hospital, or the real property on which O’Connor Hospital is located, any and all current and future owners.

\(^2\) Section 363(d)(1) provides that the trustee may use, sell, or lease property of the estate only in accordance with non-bankruptcy law applicable to the transfer of the debtor’s property.

\(^3\) Section 1129(a)(16) provides that all transfers of property of the plan shall be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a nonprofit corporation.

\(^4\) The Attorney General is a party in interest to these Chapter 11 proceedings pursuant to Section 1221(d) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 as “the attorney general of the State in which the debtor is incorporated, was formed or does business.”
lessees, licensees, or operators of O'Conner Hospital, and any and all current and future lessees and owners of the real property on which O'Conner Hospital is located.

These Conditions shall be legally binding on the following entities, as defined in Operating Asset Purchase Option Agreement, Operating Asset Purchase Agreement, Real Estate Purchase Option Agreement, and the Real Estate Purchase Agreement, when the closing occurs on the Operating Asset Purchase Agreement and the Real Estate Purchase Agreement: the Option Holders, Purchaser and its Affiliates, "OpCo" a Delaware limited liability company, owned directly or indirectly by funds managed by BlueMountain Capital Management LLC, and "PropCo" a Delaware limited liability company that will elect to be treated for tax purposes as a real estate investment trust, owned directly or indirectly by funds managed by BlueMountain Capital Management LLC, Integrity Healthcare, LLC, a Delaware limited liability company, Integrity Healthcare Blocker, LLC, a Delaware limited liability company, any other subsidiary, parent, general partner, limited partner, member, affiliate, successor, successor in interest, managing member, assignee, or person or entity serving in a similar capacity of any of the above-listed entities, any entity succeeding thereto as a result of consolidation, affiliation, merger, or acquisition of all or substantially all of the real property or operating assets of O'Connor Hospital, or the real property on which O'Connor Hospital is located, any and all current and future owners, lessees, licensees, or operators of O'Connor Hospital, and any and all current and future lessees and owners of the real property on which O'Connor Hospital is located. (Appendix, Doc. 1 [AG Conditions], p. 179-180 and 264-265, emphasis added.)

Also, construction of a statute by officials charged with its administration, including their interpretation of authority vested in them to implement and carry out its provisions, is entitled to great weight and courts should defer to the agency. 


**B. There Was No Waiver of the California Attorney General's Conditions**

Under California law, waiver is a question of fact. Waiver is an affirmative defense, for which the party asserting it bears the burden of proof. *Intel Corp. v. Hartford Acc. & Indem. Co.* 952 F.2d 1551, 1559 (9th Cir. 1991). Here, neither
Debtor nor the County has met the burden of proof.

Shortly before the California Attorney General filed his Response on December 14, the County was advised that the California Attorney General did not object to the sale as long as the conditions as currently or subsequently clarified remained in place. (Appendix, Doc. 11 [AG Response to Court’s Preliminary Findings], p. 967.) The County provided no evidence that the California Attorney General intended to, or had, withdrawn his previous objections. In fact, the County further corroborates the arguments and declarations submitted by the California Attorney General. (Appendix, Doc. 12 [Declaration of Douglas Press].) The County acknowledges that “we also agreed to discuss, post-sale, how to address the other conditions under a variety of approaches” and that “ongoing discussions with the County about the other conditions were contemplated outside the Court process.” (Id. at 946.) As such, it is clear that the County understood that the health and safety provisions within the AG Conditions would survive the sale order, or there would have been no need to continue discussing the AG Conditions post-sale. Thus, as evidenced by Press’ declaration, the County did not have a reasonable belief that the California Attorney General had intentionally relinquished his police and regulatory rights.

C. The Doctrine of Equitable Estoppel Does Not Apply

The doctrine of equitable estoppel requires: 1.) the party to be estopped must know the facts, 2.) he must intend that his conduct shall be acted on, 3.) the party asserting the right to estoppel must be ignorant of the true facts, and 4.) the party asserting estoppel must act in reliance and to his injury. Gabriel v. Alaska Elec. Pension Fund 773 F.3d 945, 955 (9th Cir. 2014).

Here, the County has failed to prove three factors of the four-prong test in Gabriel. First, there has been no showing that the California Attorney General intended the December 14, 2018 filing to be treated as a waiver. In fact, moments before the filing took place, the Chief Assistant Attorney General explained to the
Assistant County Counsel that the language meant that the California Attorney General did not object to the sale as long as the conditions, as clarified, remained in place. (Appendix, Doc 11 [Declaration of Angela Sierra] p. 939.) Thus, the California Attorney General did not intend the filing to waive all objections to the sale of the hospital, and no evidence has been introduced that negates this fact. Rather, the County was apprised of the California Attorney General’s position moments before the December 14, 2018 filing. (Ibid.)

Second, the County “agreed to discuss, post-sale, how to address the other conditions under a variety of approaches” and that “ongoing discussions with the County about the other conditions were contemplated outside the Court process.” (Appendix, Doc. 12 [Declaration of Assistant County Counsel Douglas Press], p. 946.) As such, not only was the County apprised of the California Attorney General’s position, the County agreed that the parties would continue discussions about the AG Conditions post-sale – which requires that the AG Conditions survive the sale order.

Lastly, there is no evidence that the County or Debtors were injured as required by the fourth prong. The County and Debtors argued that they would have argued more strenuously, but this is not a cognizable injury. Moreover, because the County was aware that the California Attorney General did not intend to waive his AG Conditions, there was no reliance and no injury to support the application of the equitable estoppel doctrine.

II. THE FAMILIES AND PATIENTS SERVED BY O’CONNOR HOSPITAL AND SAINT LOUISE REGIONAL WILL SUFFER IRREPARABLE INJURY ABSENT A STAY

The California Attorney General represents the People of the State of California and has broad constitutional, common law and statutory powers to protect the public. California Constitution, art. V, § 13; D’Amico v. Board of Medical Examiners, 11 Cal.3d 1, 14-15 (1974). The California Attorney General is statutorily obligated to conduct an assessment of the effect of the agreement on
emergency services, reproductive health services, and any other health care services
that the hospital is providing when reviewing hospital transactions. (Cal. Code
Regs. tit 11, § 999.5, subd. (e)(6) (2018). Moreover, “[i]t is the policy of the
Attorney General in consenting to an agreement of transaction involving a general
acute care hospital, to require for a period of at least five years the continuation at
the hospital of existing levels of essential healthcare services.” Id. at subd.
(f)(8)(C).

Absent a stay, the proposed sale transaction will close prior to a ruling on the
California Attorney General’s appeal. If that should occur, the appeal may well be
mooted because any reversal or modification of the Sale Order on appeal will not
affect the validity of a sale under 11 U.S.C. section 363(m). Paragraph E of the
Sale Order seeks to give the parties protection under section 363(m). Section
363(m) effectively moots any challenge to a section 363 sale that affects the
validity of the sale so long as the purchaser acted in good faith and the appellant
failed to obtain a stay of the sale. Thus, without the stay, any reversal or
modification of the Sale Order on appeal will not affect the validity of a sale, and
the essential healthcare services and protections in the AG Conditions will be lost
even if the bankruptcy court’s ruling is incorrect. The essential services that may
be lost include emergency services, obstetric and neonatal intensive care services,
pediatric services, cardiac services, sub-acute care services, diagnostic imaging
services, stroke and surgical services, women’s and breast care services, and
orthopedic services. (Declaration of Phil Dalton, ¶ 4.)

The Legislature entrusted the California Attorney General with the specific
responsibility to protect the public interest in reviewing the transfer of hospitals
through the statutory scheme laid out in California Corporations Code section 5914,
et seq. The families and patients who depend on the essential healthcare services
guaranteed by the AG Conditions will suffer irreparable injury if the Attorney
General is denied his power to protect the public health, safety, and welfare.
III. THERE WILL BE LESS HARM TO OTHER INTERESTED PARTIES IF A STAY IS GRANTED

The third factor is whether there will be any harm to other interested parties if a stay is granted. The Debtors have not demonstrated any harm to the parties if the County were required to provide these healthcare services. The County has never stated that any specific AG Condition at issue in this appeal would prevent the sale from closing.\(^5\) The County has never stated that it would not or could not provide any of the healthcare services at O’Connor and St. Louise. Were that situation ever to arise, state law already provides a mechanism to modify the AG Conditions and release the County from any particular obligations. Cal. Code Regs. tit. 11, § 999.5, subd. (h). Rather, the California Attorney General’s healthcare impact reports demonstrate that harm will occur if this transfer of assets is allowed without the continued application of the health and safety protections of the AG Conditions. (Declaration of Phil Dalton, ¶ 4; Appendix, Doc 5 [health care impact reports] p. 715 and 820.)

IV. A STAY WOULD PROMOTE THE PUBLIC INTEREST

As stated above, a stay will promote the public’s interest in allowing the District Court to determine on appeal whether the important health, safety, and welfare protections in the AG Conditions are preserved to protect the patients and families served by O’Connor Hospital and Saint Louise Regional Hospital. The AG Conditions address the continued operation as licensed general acute care hospitals; provision of 24-hour emergency and trauma medical services; reproductive health services; participation in the Medi-Cal and Medicare programs for low income, disabled and elderly patients; and the continuation of governmental contracts that provide access to care for indigent patients. The continued application of these important health and safety protections is in the public interest.

\(^5\) The five conditions referenced in the November 9 letter, which the Attorney General previously addressed with the County, are not at issue in the present appeal. (Appendix, Doc. 8 [AG letter of clarification] p. 903-905.)
Without them, the County is free to close the hospitals or eliminate vital healthcare services in those communities.

CONCLUSION

For the reasons stated above, the California Attorney General respectfully requests that this Court enter an order staying the Sale Order until the conclusion of an appeal therefrom.

Dated: February 1, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
TANIA M. IBANEZ
Senior Assistant Attorney General

/s/ ALICIA BERRY

ALICIA BERRY
Deputy Attorney General
Attorneys for Xavier Becerra, Attorney General of California
DECLARATION OF ALICIA BERRY

I, Alicia Berry, hereby declare:

1. I am a Deputy Attorney General at the California Attorney General's office. I make this declaration of my own personal knowledge and belief, and, if called as a witness, I could competently testify to the matters set forth herein.

2. The Appendix contains true and correct copies of the documents attached therein.

3. Based upon a concern that the Bankruptcy Court's waiver of Bankruptcy Rule 6004(h) in the filed and entered Sale Order and the fact that the transaction is scheduled to close at the end of February, the sale transaction could close before the Attorney General's request for a stay pending appeal is ruled on by this Court.

   I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

   Executed on February 1, 2019 at Los Angeles, California.

   /s/ Alicia Berry
   Alicia Berry, Deputy Attorney General
   For Xavier Becerra, California Attorney General
DECLARATION OF WENDI HORWITZ

I, WENDI HORWITZ, hereby declare:

1. I am a Deputy Attorney General at the Office of the California Attorney General. For the last 15 years, I have reviewed written notices submitted by nonprofit corporations seeking the California Attorney General’s written consent under Corporations Code sections 5914 et seq. I make this declaration of my own personal knowledge and belief, and, if called as a witness, I could competently testify to the matters set forth herein.

2. On or around July 31, 2015, Daughters of Charity Health System submitted a written notice seeking the California Attorney General’s written consent pursuant to California Corporations Code sections 5914 et seq. During the Attorney General’s review of the transaction, the Attorney General’s Office retained a healthcare expert, Phil Dalton, Senior Vice President of VHA-UHC Alliance NewCo, Inc., to prepare health care impact statements that evaluate the effects of the transaction on the availability and accessibility of health care services to each of the communities served by the hospitals, as required by the California Code of Regulations, Title 11, section 999.5, subdivisions (e)(5) and (e)(6).

3. A true and correct copy of the expert’s health care impact statements for O’Connor Hospital and Saint Louise Regional Hospital were filed with the bankruptcy court on October 22, 2018. (Appendix, Doc. 5.)

4. On or about December 3, 2015, the California Attorney General issued a decision conditionally consenting to the change in governance and control of Daughters of Charity Health System (now known as Verity Health Systems of California, Inc.). The Attorney General’s decision contained five sets of conditions, one for O’Connor Hospital, Saint Louise Regional Hospital, St. Vincent Medical Center, St. Francis Medical Center, and Seton Medical Center and Seton Coastside combined. (Appendix, Doc 1.) Many of the Attorney General’s conditions were recommended by the healthcare expert in the “Conclusions”
section of each health care impact statement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2019 at Los Angeles, California.

/s/ Wendi Horwitz
Wendi Horwitz, Deputy Attorney General
For Xavier Becerra, California Attorney General
DECLARATION OF PHIL DALTON

I, PHIL DALTON, hereby declare:

1. I am a Professor of Practice of Health Management and Policy at the University of Southern California Sol Price School of Public Policy where I teach courses in the Master of Health Administration program. I hold a Master of Public Health from the University of Minnesota and a Master of Science in Health Policy and Management from Harvard University. In my career, I have worked for hospitals and health systems for over 12 years with responsibilities that included planning new services and evaluating community needs. I have also provided strategic and business advisory services as a healthcare consultant for over 20 years (including for my own firm, MDS Consulting that later became a VHA business), and recently as an employee of the consulting division of Vizient Inc. (formerly VHA-UHC Alliance NewCo, Inc.). In my consulting work, I have advised hospitals and health systems regarding market assessments, community needs, and healthcare services. I also have over 15 years of experience assisting in the review of hospital transactions for the California Attorney General that included preparation of health care impact statements, and I have reviewed over 20 transactions involving more than 50 hospitals.

2. VHA-UHC Alliance NewCo, Inc. was retained by the California Attorney General in or around July 2015 to prepare health care impact statements that evaluate the effects of the Daughters of Charity Health System, Inc.’s transaction on the availability and accessibility of health care services to each of the communities served by their hospitals. As an employee and Senior Vice President of VHA-UHC Alliance NewCo, Inc., I helped prepare the five health care impact statements.

3. These five health care impact statements contained analyses of health care services, demographic characteristics, payer mix, hospital utilization trends, and hospital market share that were used in formulating an opinion regarding the
effect of the transaction on the communities served and proposed conditions to minimize any potential negative healthcare impact that might result from the transaction if the Attorney General approves the transaction. As set forth in the health care impact statement for O'Connor Hospital, we proposed conditions requiring the maintenance of several healthcare services: emergency medical services, obstetric and neonatal intensive care services, pediatric services, critical care services, stroke and cardiac services, sub-acute care services, and orthopedic services. (Appendix, Doc. 5.) As set forth in the health care impact statement for Saint Louise Regional Hospital, we proposed conditions requiring the maintenance of several healthcare services: concluded that emergency medical services, obstetric services, cancer services, critical care services, stroke services, and women’s services. (Appendix, Doc. 5.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2019 at Rancho Palos Verdes, California.

/s/ Phil Dalton
Phil Dalton
JAMES R. WILLIAMS, County Counsel (S.B. #271253)
ROBERT M. COELHO, Assistant County Counsel (S.B. #160583)
RICHARD M. SHIOHIRA, Deputy County Counsel (S.B. #240188)
OFFICE OF THE COUNTY COUNSEL
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Attorneys for Respondent
COUNTY OF SANTA CLARA

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF CALIFORNIA

CALIFORNIA NURSES ASSOCIATION,
Charging Party,
v.
COUNTY OF SANTA CLARA,
Respondent.

No. SF-CE-1648-M

DECLARATION OF JOHN P. MILLS IN SUPPORT OF RESPONDENT COUNTY OF SANTA CLARA'S OPPOSITION TO CHARGING PARTY'S REQUEST FOR INJUNCTIVE RELIEF AND RESPONSE TO CNA'S PERB CHARGE

I, John P. Mills, hereby declare as follows:

1. I am the Director of the Employee Services Agency ("ESA") for the County of Santa Clara ("SCC"), and my responsibilities include overseeing SCC’s human resources, labor relations, employee benefits, and executive recruitment functions. My office is located at 70 West Hedding Street, San José, California, 95110. SCC is a political subdivision of the State of California.

2. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon. Except as otherwise stated, all facts contained within this declaration are based upon my personal knowledge, from information gathered from other SCC employees, and/or my review of relevant documents.

3. The County has lawfully adopted Ordinance Code provisions ("Local Rules") governing "Employee-Management Relations," including verification of employee organizations, recognition of employee organizations, and exclusive recognition of employee organizations.
4. The County is in the process of conditionally offering provisional County employment in existing County Merit System classifications to many current employees of the Verity Hospitals. Those County job offers are contingent upon, among other things, the County acquiring the Verity Hospitals with no ongoing labor obligations to CNA and to Verity’s other unions, and County employment for these persons would not commence until after the sale closes, if at all.

5. The County would staff the Verity Hospitals by filling additional positions that it has created in the County’s existing Merit System classifications that currently perform work in the County Health and Hospital System. These classifications are already allocated to existing bargaining units within the County that have existing exclusive representatives—including CEMA, RNPA, and other exclusive representatives—and the additional positions in these classifications would be incorporated into the existing County Health and Hospital System budget unit pursuant to the County Budget Act. (Gov. Code § 29000, et seq.) Potential future County employees hired into the County’s existing Merit System classifications would be performing similar health care services to and using skills interchangeable with those of current County employees in those existing Merit System classifications, which are currently in bargaining units that have existing exclusive representatives.

6. The County Employees Management Association (CEMA) is the “recognized employee organization” (i.e., the exclusive representative) under the County’s Local Rules for employees in various County Classifications.

7. The County and CEMA are parties to a Memorandum of Agreement that expires on June 23, 2019.

8. The County has offered certain Verity Hospital employees provisional County employment in CEMA-represented County classifications, including the following: 1. S18 Patient Services Case Coordinators; and 2. EC7 Patient Services Case Coordinator—EH.

9. The Registered Nurses Professional Association (RNPA) is the “recognized employee organization” under the County’s Local Rules for the following 15 County classifications:

   i. Assistant Nurse Manager
ii. Certified Registered Nurse Anesthetist

iii. Clinical Nurse I

iv. Clinical Nurse II

v. Clinical Nurse III

vi. Clinical Nurse Specialist

vii. Infection Control Nurse

viii. Nurse Coordinator

ix. Nurse Practitioner

x. Psychiatric Nurse I

xi. Psychiatric Nurse II

xii. Staff Developer

xiii. Per Diem Clinical Nurse

xiv. Per Diem Psychiatric Nurse

xv. Per Diem Nurse Practitioner

10. The County and RNPA are parties to a Memorandum of Agreement that expires on October 20, 2019.

11. The County has offered certain Verity Hospital employees provisional County employment in the following RNPA-represented County classifications: 1. S75 Clinical Nurse III; 2. S76 Clinical Nurse II; 3. S89 Clinical Nurse I; and 4. S99 Per Diem Clinical Nurse.

12. CNA is neither a registered employee organization nor a recognized employee organization in the County under the County’s Local Rules.

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

Executed this 22nd day of February, 2019 in San José, California.

JOHN P. MILLS
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF CALIFORNIA

CALIFORNIA NURSES ASSOCIATION,
Charging Party,
v.
COUNTY OF SANTA CLARA,
Respondent.

I, Paul E. Lorenz, hereby declare as follows:

1. I am the Chief Executive Officer of Santa Clara Valley Medical Center ("SCVMC"), which is owned and operated by the County of Santa Clara ("the County"). I have held this position since November 2012. Prior to my current role at SCVMC, I served as the Chief Deputy Director of the Ventura County Health Care Agency for the County of Ventura. I have served in public health care for over 27 years.

2. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon. Except as otherwise stated, all facts contained within this declaration are based upon my personal knowledge, from information gathered from other SCC employees, and/or my review of relevant documents.

3. The County currently operates the County of Santa Clara Health System, which is the local healthcare safety net and provider of comprehensive care, service and programs to residents...
of Santa Clara County. The County Health System includes the Santa Clara Valley Medical Center (SCVMC), a tertiary general acute care hospital with a large network of primary, urgent, and specialty care clinics, the Behavioral Health Services Department, Public Health Department, Emergency Medical Services Agency, Custody Health Services Department, and Valley Health Plan.

4. The County Health System currently employs approximately 9,000 employees (approximately 7,800 in regular status and approximately 1,200 in extra help positions).

5. Verity Health System of California, Inc. owns O’Connor Hospital and Saint Louise Regional Hospital (collectively, the “Verity Hospitals”) in Santa Clara County, among other hospitals that Verity owns throughout California.

6. Verity is currently in Chapter 11 bankruptcy, and through the bankruptcy process, the County has successfully bid to acquire the Verity Hospitals and their related assets (e.g., facilities and equipment), but not its labor obligations or any of its other liabilities.

7. Currently, the sale of the Verity Hospitals has not closed (as the closing date is anticipated to be February 28, 2019), and the County does not presently own the Verity Hospitals.

8. If the County acquires the assets of the Verity Hospitals through the bankruptcy process, the County intends to integrate the Verity Hospitals into the County’s existing Health System. This integration would include operating SCVMC and the Verity Hospitals on one consolidated County hospital license with a single consolidated medical staff. (A true and correct copy of the Resolution of the Board of Supervisors of the County of Santa Clara Establishing a Single Medical Staff, Bylaws, Rules and Committee Structure for Consolidated Hospital License is attached hereto as Exhibit 1.) Oversight of administration and personnel matters for the Verity Hospitals would be centralized under the purview of the County Executive, who oversees the Health System and County Employee Services Agency (“ESA”).

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

Executed this 22nd day of February, 2019 in San Jose, California.

[Signature]

PAUL E. LORENZ

Declaration of Paul E. Lorenz ISO County’s Opposition to Request for Injunctive Relief and Response to PERB Charge
Exhibit 1
RESOLUTION NO. 88-2017-18

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ESTABLISHING A SINGLE MEDICAL STAFF, BYLAWS, RULES AND COMMITTEE STRUCTURE FOR CONSOLIDATED HOSPITAL LICENSE

WHEREAS, the County intends to purchase from Verity Health Systems of California, Inc. (“Verity”): (1) substantially all assets of O’Connor Hospital, including the limited partnership interest in the joint venture that owns real property located on the campus (“OCH”); (2) Saint Louise Regional Hospital (“SLRH”); (3) the DePaul Health Center (“DePaul,”); and (4) any other real estate assets located in Santa Clara County owned by OCH, SLRH, Verity, or Verity Holdings, LLC (collectively, the “Assets”);

WHEREAS, the Assets are being offered for sale through bankruptcy proceedings filed by OCH, SLRH, and Verity;

WHEREAS, on October 1, 2018 Verity filed with the Bankruptcy Court an Asset Purchase Agreement (APA) regarding the County’s proposed purchase of the Assets subject to certain Bankruptcy Court and County approvals, and other terms and conditions;

WHEREAS, on November 6, 2018, the Board of Supervisors adopted a Resolution approving the County’s purchase of the Assets and ratifying and approving the APA subject to certain terms and conditions;

WHEREAS, on December 27, 2018, the Bankruptcy Court issued an order authorizing the sale of the Assets to the County in accordance with the APA free and clear of liens, claims, encumbrances and other interests;

WHEREAS, under the terms of the APA, the County will take ownership of the Assets upon Closing of the Transaction as defined in the APA (the “Closing Date”);

WHEREAS, the County filed an application with the California Department of Public Health (CDPH) to operate Santa Clara Valley Medical Center (SCVMC), OCH, and SLRH on a consolidated hospital license effective on the Closing Date;

WHEREAS, California Health and Safety Code section 1250.8(b) states that the issuance of a single consolidated license requires, among other things, a “single medical staff for all the facilities maintained and operated by the licensee, with a single set of bylaws, rules, and regulations, which prescribe a single committee structure”;

WHEREAS, it is anticipated that SCVMC, OCH and SLRH will be considered one hospital by the Centers for Medicare and Medicaid Services by virtue of enrollment status after the Closing Date;

WHEREAS, the Medical Staff of SCVMC, acting through its Medical Executive Committee, has reviewed this Resolution and, after discussions with the OCH and SLRH medical staffs, 

Resolution Establishing Single Medical Staff Page 1 of 3
staffs regarding the action items contained herein, recommends that the Board of Supervisors adopt this Resolution to comply with Section 1250.8(b) and other state and federal requirements;

**NOW, THEREFORE, BE IT RESOLVED** that the organized Medical Staffs of SCVMC, OCH, and SLRH are hereby consolidated under the organized Medical Staff of SCVMC, which shall be the single organized Medical Staff for the three hospital facilities; and

**BE IT FURTHER RESOLVED** that appropriate actions shall be taken by the SCVMC Medical Staff to conduct an abbreviated (short form) medical staff application review process for OCH and SLRH providers in good standing who meet criteria to receive privileges and membership on the SCVMC Medical Staff for the duration of their current appointments in the same or equivalent status, with recommendations for privileges and membership for these providers to be presented to the Board of Supervisors Health and Hospital Committee promptly for approval per the existing process for SCVMC Medical Staff appointments; and

**BE IT FURTHER RESOLVED** that the Bylaws and Rules of the Medical Staff of SCVMC that are currently in effect as of the Closing Date shall be the Bylaws and Rules of the single consolidated Medical Staff, and such Bylaws and Rules shall remain in effect until such time as they are revised and approved by the Board of Supervisors; and

**BE IT FURTHER RESOLVED** that in order to ensure stability of clinic operations and continuity of patient care, the policies, procedures, and practices at each hospital location (SCVMC, OCH, and SLRH) that are currently in effect as of the Closing Date shall remain in effect until such time as the policies, procedures, and practices are standardized and consolidated as appropriate to reflect the existence of the single Medical Staff; and

**BE IT FURTHER RESOLVED** that there will be a single Medical Executive Committee that will be known as the Enterprise Medical Executive Committee, for which the membership shall be as set forth in the Medical Staff Organization and Committee Structure Chart attached and incorporated herein as Attachment A, and which shall remain in effect until such time as the Medical Staff Bylaws and Rules are revised as appropriate; and

**BE IT FURTHER RESOLVED** that the committee and organizational structure of the single organized Medical Staff shall be as set forth on the Medical Staff Organization and Committee Structure Chart attached and incorporated herein as Attachment A, and which shall remain in effect until such time as the Medical Staff Bylaws and Rules are revised as appropriate; and

**BE IT FURTHER RESOLVED** that this Resolution shall not take effect until the Closing Date; and
BE IT FURTHER RESOLVED that this Resolution shall have no force and effect if: (a) the Transaction does not close; or (b) CDPH does not approve the County’s application to operate SCVMC, OCH, and SLRH on a consolidated hospital license.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on February 12, 2019 by the following vote:

AYES: CHAVEZ, CORTESE, ELLENBERG SIMITIAN, WASSERMAN
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

S. JOSEPH SIMITIAN, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

TIFFANY LENNEAR
Assistant Clerk of the Board of Supervisors

Approved as to form and legality:

THERESA A. FUENTES
Lead Deputy County Counsel