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7 Debtors and Debtors In Possession

8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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

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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

**SUPPLEMENT TO EMERGENCY MOTION OF  
DEBTORS FOR AUTHORITY TO: (1) CONTINUE  
USING EXISTING CASH MANAGEMENT  
SYSTEM, BANK ACCOUNTS AND BUSINESS  
FORMS; (2) IMPLEMENT CHANGES TO THE  
CASH MANAGEMENT SYSTEM IN THE  
ORDINARY COURSE OF BUSINESS; (3)  
CONTINUE INTERCOMPANY TRANSACTIONS;  
(4) PROVIDE ADMINISTRATIVE EXPENSE  
PRIORITY FOR POSTPETITION  
INTERCOMPANY CLAIMS; AND (5) OBTAIN  
RELATED RELIEF [Docket No. 23]**

EMERGENCY HEARING:

Date: September 5, 2018

Time: 10:00 a.m.

Place: Courtroom 1568

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**SUPPLEMENT TO EMERGENCY MOTION**

1  
2 Verity Health System of California, Inc. (“VHS”) and the above-referenced affiliated  
3 debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned  
4 chapter 11 bankruptcy cases (collectively, the “Cases”), hereby supplement their motion, filed  
5 August 31, 2018 [Docket No. 23] (the “Motion”),<sup>1</sup> for the entry of an order, pursuant to §§ 105,  
6 363, 364, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”),<sup>2</sup> authorizing  
7 the Debtors, subject to the terms of any debtor in possession financing and/or cash collateral  
8 agreement or order, to, among other things, continue to use their cash management system,  
9 including the continued maintenance of their existing bank accounts (three of which include  
10 passive investing) and business forms (the “Cash Management System”).

11 As set forth in the Motion, the Debtors request authority to continue utilizing their Cash  
12 Management System, subject to the terms of the debtor in possession financing and cash  
13 collateral orders and agreements (collectively, the “DIP Documents”), to avoid any disruption to  
14 the Debtors’ cash flow – and, ultimately, impact patient care – because (i) the depositors (some of  
15 which are governmental agencies) will not respond quickly to the change and will likely continue  
16 to send deposits to the original deposit account, and (ii) the Debtors have certain obligations  
17 (including for debt, pension and defined contribution) that they pay exclusively by electronic  
18 funds transfer and changes to the payment accounts have the potential of slowing down these  
19 crucial payments.

20 The Debtors have received informal comments from the Office of the United States  
21 Trustee regarding a possible objection to the Motion. In the Motion, the Debtors demonstrated  
22 “cause” to continue operating their Cash Management System as it existed prepetition, subject to  
23 the DIP Documents, including (a) explicitly, to waive certain requirements regarding bank  
24 accounts set forth in the U.S. Trustee’s Operating Guidelines and Reporting Requirements for  
25 Debtors in Possession and Trustees (the “UST Guidelines”); and (b) by implication, to waive the  
26  
27

28 <sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

<sup>2</sup> All references to “§” or “sections” herein are to sections of the Bankruptcy Code.

1 formal requirements of § 345(b). However, in an abundance of caution, the Debtors, by this  
2 Supplement, wish to address the issue more explicitly.

3 **ARGUMENT**

4 Section 345 governs a debtor's deposits during its bankruptcy case and authorizes deposits  
5 of money of an estate in such manner as "will yield the maximum reasonable net return on such  
6 money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a).  
7 However, for deposits or investments that are not "insured or guaranteed by the United States or  
8 by a department, agency, or instrumentality of the United States or backed by the full faith and  
9 credit of the United States," § 345(b) requires that the estate obtain from the entity with which  
10 such money is deposited or invested, a bond in favor of the United States secured by the  
11 undertaking of a corporate surety. 11 U.S.C. § 345(b)(1)(A)-(B). In the alternative, the estate  
12 may require that the entity deposit government securities in accordance with 31 U.S.C. § 9303.  
13 11 U.S.C. § 345(b)(2).

14 Maintaining deposits in strict compliance with the requirements of § 345(b) would, in  
15 some cases, be inconsistent with the requirement of § 345(a) that deposits be maintained in a  
16 manner that "will yield the maximum reasonable net return on such money, taking into account  
17 the safety of such deposit or investment." It is for this reason that in 1994, Congress amended §  
18 345 to allow the requirements of subsection (b) to be waived or modified if a court so orders "for  
19 cause." 11 U.S.C. § 345(b). As the legislative history indicates, Congress believed that strict  
20 application of § 345(b) could "needlessly handcuff larger, more sophisticated debtors." 140  
21 Cong. Rec. H 10,767 (Oct. 4, 1994).

22 All except two of the Debtors' Accounts are ordinary depository accounts maintained for  
23 operational and not investment purposes. At times, the individual balance in the Accounts may  
24 exceed the current limits of governmental insurance. Therefore, these accounts may be subject to  
25 § 345(b)'s bonding or collateralization requirements unless they are waived.

26 In determining whether "cause" exists for a waiver, the Court should consider the "totality  
27 of circumstances," including the following factors:  
28

- (a) The sophistication of the debtor's business;
- (b) The size of the debtor's business operations;
- (c) The amount of the investments involved;
- (d) The bank ratings (Moody's and Standard and Poor) of the financial institutions where debtor-in-possession funds are held;
- (e) The complexity of the case;
- (f) The safeguards in place within the debtor's own business of insuring the safety of the funds;
- (g) The debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) The benefit to the debtor;
- (i) The harm, if any, to the estate; and
- (j) The reasonableness of the debtor's request for relief from § 345(b) requirements in light of the overall circumstances of the case.

*In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

The Debtors request that the Court waive the requirements of § 345(b) and permit the Debtors to maintain their deposits in the Accounts in accordance with existing deposit practices. The Debtors' existing deposit practices are significantly less burdensome and more appropriately tailored to their business needs than the practices otherwise required under both the Bankruptcy Code and by the UST Guidelines. The Debtors submit that strict compliance with § 345(b) would be overly burdensome and restrict the Debtors' banking options to the detriment of their Estates and creditors.

Moreover, the totality of circumstances in these Cases support cause for a waiver. The Debtors comprise a vast system of hospitals, medical clinics, medical foundation, philanthropic foundations, and systems. They operate using 63 different accounts, which include, on the one hand, operationally, multiple Accounts Payable and Payroll Accounts, and on the other hand, very specifically purposed accounts, some of which are held in trust or otherwise restricted as to their use. Subjecting each of these Accounts to the collateralization or bonding requirements of § 345 would be more than disruptive; it would be untenable and harmful to the estates, the Patients and all parties in interest such requirements are designed to protect.

Furthermore, the Debtors' operational accounts sit in Banks that have been approved by the Office of the United States Trustee as reliable depositories that are parties to agreements that provide additional protection § 345 is designed to give. The operational account at Tri Counties

1 Bank is fully insured by the FDIC up to an amount ten times its current balance. The investment  
2 account at Morgan Stanley is not used operationally, but rather has received donations that now  
3 are invested passively without Debtor action.

4 Accordingly, the Debtors respectfully submit it would be in the best interests of their  
5 estates to continue following the existing deposit practices, notwithstanding the requirements of §  
6 345(b). Courts in this district have granted such relief from the strict enforcement of § 345(b),  
7 both on a final basis,<sup>3</sup> and on an extended interim basis.<sup>4</sup> The Debtors respectfully submit that  
8 such a waiver should be granted in these Cases as well.

9 WHEREFORE, for the foregoing reasons, and those set forth in the Motion, the Debtors  
10 respectfully reiterate their requests for relief as stated in the Motion, including a waiver of the  
11 requirements of § 345(b).

12 Dated: September 4, 2018

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13 By           /s/Tania M. Moyron            
14 Tania M. Moyron

15 Proposed Attorneys for the Chapter 11 Debtors  
16 and Debtors In Possession

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22 <sup>3</sup> See, e.g., *In re Ocean Park Hotels-Toy, LLC*, Case No. 10-15358-GM, Docket No. 24 (Bankr. C.D. Cal. May 11,  
23 2010) (“The Debtors [sic] request for waiver of section 345 of the Bankruptcy Code with respect to the Accounts is  
24 approved to the extent funds on deposit exceed the FDIC insurance limit (currently \$250,000), provided the account  
25 is a debtor in possession account.”).

26 <sup>4</sup> See, e.g., *In re Heavenly Couture, Inc.*, Case No. 18-11756-TA, Docket No. 24 (Bankr. C.D. Cal. May 25, 2018)  
27 (granting motion, which requested waiver of § 345(b) requirements on an interim basis); *Meridian Sports Clubs Cal.*,  
28 LLC, Case No. 12-19163-AA, Docket No. 33 (Bankr. C.D. Cal. Oct. 19, 2012) (granting motion, Docket No. 7,  
requesting “an interim waiver of the requirements of section 345 . . . subject to final approval by this Court”); *In re*  
*Cal. Coastal Communities, Inc.*, Case No. 09-21712-TA, Docket Nos. 18 and 85 (Bankr. C.D. Cal. Oct. 29, 2009;  
Dec. 9, 2009) (first and second interim orders ordering that “[t]he application of the deposit and investment  
guidelines set forth in section 345(b) . . . are hereby waived.”); *In re Empire Land, LLC*, Case No. 08-14592-MJ,  
Docket No. 86 (Bankr. C.D. Cal. May 21, 2008) (granting a brief extension to come into compliance with the  
requirements of § 345); *In re People’s Choice Home Loan Inc.*, Case No. 07-10765-RK, Docket No. 34 (Bankr. C.D.  
Cal. Mar. 22, 2007) (granting the debtors “an additional sixty (60) days from the Petition Date to come into  
compliance with section 345,” and if the debtors would be unable to comply, directing them to “file a motion seeking  
authority to either deviate from such requirements or further extend the period in which to come into compliance”).