

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

**Wednesday, September 5, 2018**

**Hearing Room 1568**

10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#26.00** HearingRE: [31] Emergency motion Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108; Memorandum Of Points And Authorities In Support Thereof; Declaration Of Anita Chou In Support Thereof (Maizel, Samuel)

Docket 31

**Matter Notes:**

9/6/2018

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

**POST PDF OF TENTATIVE RULING TO CIAO**

**Tentative Ruling:**

9/6/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to authorize the Debtors to borrow \$30 million on an interim basis. A Final Hearing shall be held on **October 3, 2018, at 10:00 a.m. (Amended after hearing in RED to set forth additional agreed-upon provisions placed on the record at the hearing regarding amendments to the DIP Financing Agreements.)**

**Pleadings Filed and Reviewed:**

- 1) Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 31] (the "Financing Motion" or "Motion")
  - a) Declaration of Richard G. Adcock in Support of Emergency First-Day



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- Motions [Doc. No. 8]
- b) Declaration of Anita Chou, Chief Financial Officer, in Support of Motion for Interim Order Authorizing (A) Use of Cash Collateral; (B) Debtor in Possession Credit Agreement; (C) Grant of Superpriority Priming Liens to DIP Lender; and (D) Grant of Junior Liens on Post-Petition Accounts and Inventory as Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), and 364(C) and (D)
  - c) Order Setting Hearing on First Day Motions [Doc. No. 18]
  - d) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
- 2) Attorney General's Initial Limited Objection to Debtor's Emergency First Day Motions [Doc. No. 60]
- 3) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and as Series 2017 Note Trustee, to Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 67]

**I. Facts and Summary of Pleadings**

A. Background

On August 31, 2018, 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.

Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor nonprofit public benefit corporations that operate acute care hospitals: O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastsides (collectively, the "Hospitals"). Adcock Decl. [Doc. No. 8] at ¶11. VHS, the Hospitals, and their affiliated entities (collectively, the "Verity Health System") operate a nonprofit health care system in the State of California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and various medical specialties. *Id.* at ¶12. In 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000

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outpatients. *Id.*

Debtor Verity Medical Foundation (“VMF”), incorporated in 2011, is a medical foundation that contracts with physicians and other healthcare professionals to provide patient care throughout California. *Id.* at ¶14. VMF offers medical, surgical, and related healthcare services at community-based, multi-specialty clinics located in areas served by the Debtor Hospitals. *Id.*

Verity Holdings LLC (“Holdings”), a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance Verity’s interests in six medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the Hospitals. *Id.* at ¶15. Holdings’ real estate portfolio includes over 30 properties. *Id.*

Debtors Saint Louise Regional Hospital Foundation, St. Francis Medical Center Foundation, St. Vincent Medical Center Foundation, Seton Medical Center Foundation, and O’Connor Medical Center Foundation handle fundraising and grant-making programs for each of their respective Debtor Hospitals. *Id.* at ¶16.

As of August 30, 2018, the Debtors’ facilities had approximately 850 patients, and are currently at approximately 50% occupancy. *Id.* at ¶17. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. *Id.* at ¶18. Approximately 74% of these employees are represented by collective bargaining units. *Id.*

VHS operates Debtor Verity Business Services (“VBS”), a nonprofit public benefit corporation. *Id.* at ¶30. VBS provides support services to the Verity Health System, including accounting, finance, patient financial services, supply chain management, and purchasing services. *Id.*

O’Connor Hospital operates a 358 bed, general acute care hospital that serves residents from the greater San Jose area, and contains an emergency department with 23 emergency treatment stations. *Id.* at ¶32. St. Vincent Medical Center operates a 366 bed, regional acute care facility located in Los Angeles, CA. *Id.* at ¶34. St. Vincent Medical Center is the sole corporate member of the St. Vincent Dialysis Center, located on the Hospital’s campus. *Id.* at ¶36. St. Vincent Dialysis Center provides dialysis services for kidney disease patients. *Id.*

St. Francis Medical Center operates a 384 bed, general acute care hospital located in Lynwood, California. *Id.* at ¶37. Seton Medical Center operates a 357 bed hospital located in Daly City, California. *Id.* at ¶39. Seton Coastside is located in the City of Half Moon Bay, California, and contains 116 skilled nursing beds and five general, acute-care beds. *Id.* at ¶40. Saint Louise Hospital is located in Gilroy, California and

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operates a 93 bed, general acute care hospital. *Id.* at ¶42.

DePaul Ventures, LLC is a wholly-owned and operated holding company of the Debtors that was formed in August 2010 for the purpose of investing in a freestanding surgery center and other healthcare entities. *Id.* at ¶45. In April 2013, DePaul Ventures, LLC formed DePaul Ventures—San Jose Dialysis, LLC ("Dialysis"), a general and limited partner of Priday Dialysis, LLC ("Priday"). Priday—which is not a Debtor—is a healthcare center specializing in end-stage renal disease treatment. *Id.* at ¶46.

Non-Debtor Marillac Insurance Company, Ltd. ("Marillac") is a wholly-owned subsidiary of VHS, and was incorporated in the Cayman Islands on December 9, 2003. *Id.* at ¶49. Significant insurance is issued to the Debtors by its captive insurer Marillac. *Id.* at ¶68. Policies issued by Marillac cover professional and general liability.

**B. The Financing Motion**

The Debtors make the following arguments and representations in support of the Financing Motion:

Debtors seek authorization to enter into a senior secured, superpriority debtor in possession financing facility with Ally Bank, a subsidiary of Ally Financial, Inc. (the "DIP Lender"), in (a) an interim amount not to exceed \$30 million, and (b) after a final hearing, in an amount up to total lending of not more than \$185 million (such financing, the "DIP Facility").

VHS, VBS, and VHS' five acute care hospital subsidiaries (O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastsides) are jointly obligated parties on approximately \$461.4 million in outstanding secured debt consisting of (a) \$259.4 million in outstanding principal amount of tax exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities Development Authority (the "2005 Bonds") and (b) \$202 million in outstanding principal amount of tax exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California Public Financing Authority (the "Working Capital Notes").

For the 2005 Bonds, Wells Fargo Bank, N.A. ("Wells Fargo") is the Bond Trustee and UMB Bank, N.A. ("UMB") is the successor Master Trustee. The 2005 Bonds were issued to provide funds for capital improvements and to refinancing certain tax exempt bonds that had been issued in 2001. For the Working Capital Notes, U.S.

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Bank, N.A. ("U.S. Bank") is the Note Trustee and Collateral Agent. (The Working Capital Notes, together with the 2005 Bonds, are collectively referred to as the "MTI Obligations" ("MTI" is an abbreviation for "Master Trustee Indenture").)

Holdings, a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance VHS' interests in six medical office buildings whose tenants are primarily physicians and medical groups affiliated with certain of the Hospitals operated by the Debtors. Holdings' real estate portfolio consists of over 30 properties, including, but not limited to, apartment buildings, parking lots, and condominiums. Holdings is the borrower on approximately \$66 million on two series of non-recourse financing secured by separate deeds of trust and revenue and accounts pledges, including lease rents on medical buildings (the "MOB Financing"). The secured lenders for the MOB Financing are affiliates of NantWorks, LLC, which is an affiliate of the Debtors' prepetition manager, Integrity Healthcare, LLC ("Integrity") (Integrity has not sought bankruptcy protection).

Debtor Seton Medical Center is liable for repayment of \$20 million of limited obligation tax exempt bonds issued in September 2017 by the California Statewide Communities Development Authority (the "Clean Fund Bonds"). The Clean Fund Bonds were issued to assist with clean energy-related capital improvements to Seton Medical Center. No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National Association ("WTNA") is the Trustee holding the construction funds raised in connection with the Clean Fund Bonds.

Debtor Seton Medical Center is also liable for repayment of \$20 million in California 30-year tax exempt bonds, issued in September 2017 for the purpose of seismic improvements at Seton Medical Center (the "NR2 Petros Bonds"). No other Debtor is liable for repayment of the NR2 Petros Bonds. WTNA is the Trustee holding the construction funds raised in connection with the NR2 Petros Bonds.

NantCapital, LLC has provided \$40 million in unsecured debt financing for VHS, as reflected in two \$20 million unsecured notes dated March 7, 2018 and March 29, 2018 (the "Unsecured Notes").

All of the Debtors' income is subject to prepetition perfected pledges. The gross revenue of the Hospitals is pledged in favor of the 2005 Bonds. The prepetition accounts receivable and government receivables of the Hospitals are pledged in favor of the Working Capital Notes. As of August 31, 2018 (the "Petition Date"), the Debtors had less than \$40 million of cash on hand that is not subject to control accounts in favor of either the 2005 Bonds, the Working Capital Notes, or the MOB Financing (excluding cash held by WTNA on account of the Clean Fund Bonds and/or

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the NR2 Petros Bonds). The Debtors expect to spend approximately \$113 million during the first four weeks of the case; operating cash losses for this period are expected to exceed \$11 million. These figures do not include critical vendor payments, adequate protection payments, pension contributions, or capital expenditures.

As of the Petition Date, the Debtors anticipate having in excess of \$219 million in net accounts receivable, and expect to generate approximately \$80 million in new post-petition receivables during the first four weeks of the case. U.S. Bank, as Note Trustee for the Working Capital Notes, asserts that all postpetition receipts are proceeds of prepetition accounts receivable and prepetition government receivables and as such constitute priority collateral for the Working Capital Notes.

The terms of the DIP Facility are the result of a wide-ranging market exploration by the Debtors and their professionals. Beginning the week of July 23, 2018, Cain Brothers, a division of KeyBanc Capital Markets (“Cain”), acting as investment advisers to the Debtors, began searching for DIP financing. Cain consulted with 16 potential DIP Lenders. Cain’s efforts yielded four offers for debtor-in-possession financing. The Debtors believe the financing offered by Ally Bank (the “DIP Lender”) to be the most favorable.

To secure the DIP Facility, the Debtors propose to grant the DIP Lender first priority priming liens on, and security interests in, substantially all of the Debtors’ assets, subject to a Carve-Out not to exceed (a) \$2 million for fees accrued by professionals retained by the Debtors and (b) \$75,000 for fees accrued by professionals retained by the Official Committee of Unsecured Creditors (the “Committee”).

Secured Creditors will receive the following adequate protection:

- 1) Secured Creditors in connection with the 2005 Bonds, Working Capital Notes, and MOB Financing shall receive post-petition, non-default interest. WTNA, which holds the cash raised in connection with the Clean Fund Bonds and NR2 Petros Bonds, will not receive interest payments.
- 2) To the extent of any diminution in value of their interests, Secured Creditors shall receive replacement liens.
- 3) To preserve the prepetition value of the Debtors’ real property and improvements, the Debtors will use the DIP Facility Proceeds and cash collateral to continue to maintain such property in good repair.
- 4) To the extent of any diminution in the value of their interests, Secured Creditors shall have an allowed superpriority administrative expense



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*B. The Attorney General's Limited Objection*

The California Attorney General (the "Attorney General") filed a Limited Objection to the Financing Motion. The Attorney General makes the following arguments and representations in support of the Limited Objection:

The Debtors are nonprofit public benefit corporations that hold charitable gifts and assets that are restricted for a specific purpose. Those restricted gifts and assets are not to be used for any other purposes than the restricted purpose and should not be available to creditors unless authorized in the restriction.

Restricted donations to nonprofit corporations have been held not to be property of the bankruptcy estate and therefore not available for distribution to general creditors. *See In re Save Our Springs (S.O.S.) All., Inc.*, 388 B.R. 202, 249 (Bankr. W.D. Tex. 2008), *aff'd sub nom. In re Save Our Springs All., Inc., No. A-08-CA-727 LY*, 2009 WL 8637183 (W.D. Tex. Sept. 29, 2009), *aff'd sub nom. In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168 (5th Cir. 2011); *Hunter v. St. Vincent Medical Center (In re Parkview Hosp.)*, 211 B.R. 619, 621 (Bankr. N.D. Ohio 1997).

Restricted charitable funds held by the Debtors are held in a charitable trust, must be used for the restricted purposes, are not subject to liens or other encumbrances, are not available to cover operating expenses or other activities of the nonprofit corporation, and are not available either for distribution to the general creditors or to be used as cash collateral.

Debtors' Financing Motion seeks entry of interim and final orders which include provisions that inappropriately provide for liens on the charitable trust assets that may not be subject to such liens or other encumbrances.

Any order authorizing the use of cash collateral or approving debtor-in-possession financing should contain the following language:

Nothing in this order shall create or validate liens on or allow the use of any assets that are not assets of, or subject to being encumbered by, the debtors under applicable law. These assets may include, but are not limited to, restricted charitable funds.

Nothing in this order shall in any way diminish the obligation of any entity, including the debtors, to comply with applicable state law and conditions including, but not limited to, charitable trust laws and the conditions set forth

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in the California Attorney General's Decision dated December 3, 2015.  
Further, nothing in this order or the budget shall prevent the debtor from  
complying with any such obligations or conditions.

*C. U.S. Bank's Combined Reservation of Rights*

U.S. Bank responds to the Financing Motion as follows:

Subject to acceptable adequate protection, U.S. Bank, in its capacity as the 2015 Note Trustee and the 2017 Note Trustee, supports an order approving the DIP Facility and the Debtors' use of cash collateral. The Notes Trustee acknowledges that the Debtors face a serious liquidity crisis and urgently require some level of debtor-in-possession financing and use of cash collateral on an interim basis.

The Notes Trustee wants to make sure that the amount of money borrowed by the Debtors on an interim basis is truly necessary. For example, the proposed authorization for \$20 million to pay Critical Vendors seems extraordinary, and the Debtors have not yet demonstrated that such a large allocation is truly critical or appropriate.

In addition, given that the Debtors' facilities are being marketed for sale, the Debtors should be required to demonstrate why allocation of approximately \$8.3 million toward capital expenditures in the first 13-week period of the case (including allocation of \$5.72 million in the first 30 days) is necessary. Such expenditures would benefit the eventual purchasers of the facilities but would not benefit the Debtors' estates or their senior secured creditors.

The interim and final orders on the Financing Motion need to include protections that respect the separateness of each bankruptcy estate, including separate budgets for borrowings and repayments of the DIP Facility. Certain of the Hospitals, such as the St. Francis Medical Center on which the Notes Trustee has priority liens, are cash flow positive. The Debtors should be required to account for and report on their use of the DIP Facility on an entity-by-entity basis.

The Notes Trustee has discussed its position on other issues with the Debtors, and believes that the Debtors are amenable to including language in the Financing Order resolving the concerns of the Notes Trustee. Specifically, the following issues have been addressed:

- 1) In the Financing Motion, the Debtors propose to limit the adequate protection payment of the Notes Trustee's fees and expenses to out-of-pocket expenses incurred with respect to *one* law firm and *one* financial advisor. Because the



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2015 Notes and 2017 Notes were issued under separate indentures and have separate collateral rights, they have separate trustees. The Notes Trustee has discussed with the Debtors its position that there is no justification for limiting U.S. Bank to one counsel with respect to both trusteeships. The Notes Trustees believe that the Debtors are amenable to including language in the order resolving this issue.

- 2) The 2017 Note Trustee holds the only lien in the Moss Property under the Moss Deed of Trust. The proposed interim order on the Motion does preserve the relative priority of the Notes Trustee and the Master Trustee as provided in the Intercreditor Agreement, but does not preserve the relative prepetition priority of the 2017 Note Trustee in the Moss Property. The Notes Trustee has suggested language for the interim order on the Motion to clarify that the prepetition priority status of the Moss Deed of Trust will not be primed by Replacement Liens. Based on its discussions with the Debtors, the Notes Trustee believes that the Debtors are amenable to including this language in a revised form of interim order to be filed with the Court.

## **II. Findings and Conclusions**

### **A. The Attorney General's Limited Objection is Overruled Only for Purposes of this Hearing**

The Attorney General asserts that certain of the Debtors' assets are may not be distributed to creditors and are unavailable for general operating expenses because those assets are restricted charitable funds held in charitable trust. In support of this contention, the Attorney General points to various requirements imposed by the Attorney General upon the Debtors' operations in connection with a *System Restructuring and Supporting Agreement* dated December 3, 2015 (the "Agreement").

In the Agreement, the Attorney General consents to a change of control in the operation of the Debtors, provided the Debtors comply with various conditions, which include, among others, the following:

- 1) A fifteen-year prohibition on selling, transferring, or otherwise alienating the Hospitals operated by the Debtors.
- 2) A ten-year requirement that emergency departments at various Debtor Hospitals be operated in accordance with minimum requirements.
- 3) Requirements pertaining to the type of health care that the Debtor Hospitals must provide.
- 4) Requirements that the Debtor Hospitals furnish specified amounts of

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Notably, there is nothing in the Agreement that references or discusses any funds held by the Debtors that are the subject of a charitable trust.

In his Limited Objection, the Attorney General cites various decisions which held that funds that are part of an irrevocable, restricted charitable trust are not property of the bankruptcy estate. *See, e.g., In re Parkview Hosp.*, 211 B.R. 619, 634 (Bankr. N.D. Ohio 1997), *In re Roman Catholic Archbishop of Portland in Oregon*, 345 B.R. 686, 704 (Bankr. D. Or. 2006), and *In re Bishop Coll.*, 151 B.R. 394, 398 (Bankr. N.D. Tex. 1993). *Parkview Hospital*, *Roman Catholic Archbishop of Portland*, and *Bishop Coll.* stand for the unremarkable proposition that funds that are the property of an irrevocable charitable trust are not property of the bankruptcy estate.

In contrast to *Parkview Hospital*, *Roman Catholic Archbishop of Portland*, or *Bishop Coll.*, the Attorney General has not introduced specific evidence indicating that the Debtors hold custody over assets that are subject to an irrevocable charitable trust, such that those assets would not be property of the estate. On the record before it, the Court cannot conclusively rule out that the Debtors might have custody over assets that are part of an irrevocable charitable trust of the type at issue in *Parkview* and related cases, such that those assets would not constitute estate property. But the Attorney General has proffered no evidence that any of the Debtors' assets are the subject of such a trust.

Though it is not entirely clear, the Attorney General's argument appears to be that because the Debtors are public benefit corporations, *all* or almost all of the Debtors' assets are impressed with a charitable trust as a matter of law, and that accordingly such assets are either not property of the estate or may not be used by the Debtors in the postpetition operation of their estates. For purposes of this hearing only, the Court declines to adopt the Attorney General's position. It may be that the Debtors have custody over assets that are the subject of an irrevocable charitable trust and that are not property of the estate. However, there is currently no evidence before the Court establishing the presence of such assets. Therefore, at this juncture, the Court will not require that the interim order issued in connection with the Financing Motion contain the language suggested by the Attorney General. The Court's findings on the charitable trust issue are for purposes of this hearing only, and the Attorney General may raise such arguments in connection with future hearings.

**B. DIP Financing**

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Section 364 provides in relevant part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Having reviewed the declaration submitted by Anita Chou, the Chief Financial Officer of VHS (the “Chou Decl.”), the Court finds that the Debtors were unable to obtain financing on more favorable terms than those proposed by the DIP Lender. The Court further finds that the Debtors require the use of \$30 million, on an interim basis, in order to avoid irreparable harm to the continued operation of the Hospitals.

The Court finds that the Secured Creditors whose liens are primed by the DIP Facility are adequately protected. The book value of the Debtors’ collateral is approximately \$840 million, which provides more than a 20% equity cushion for Secured Creditors. *See In re James River Associates*, 148 B.R. 790, 796 (E.D. Va. 1992) (“The amount of equity cushion sufficient to adequately protect the creditor is determined on a case-by-case basis. *Kost*, 102 B.R. at 831. However, the reported cases do provide some guidance: Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection.... Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection.... Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection....”).

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In addition to adequate protection through the equity cushion, the replacement liens and superpriority claim provide the secured creditors additional adequate protection. The financing provided by the DIP Lender will enable the Debtors to continue to operate and generate additional receivables. Those receivables will be subject to the replacement liens. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]"). There is no evidence before the Court that the Debtors' assets are declining in value. However, the abrupt cessation of operations would almost certainly result in a decline in value.

The Court agrees with U.S. Bank, in its capacity as Trustee for the 2015 Notes and the 2017 Notes, that the Debtors' financial reporting should be broken down on an entity-by-entity basis. Although these cases are being jointly administered, the estates have not been substantively consolidated, and each Debtor has its own assets and liabilities independent of the other Debtors.

**The Court approves the following agreed-upon provisions, set forth on the record at the hearing, regarding amendments to the DIP Financing Agreements:**

**The Debtors shall give each Pre-Petition Secured Creditor notice concurrent with giving such notice or request to the DIP Agent for any amendment or waiver of the DIP Financing Agreements and, without prejudice to the effectiveness of any such amendment or waiver, each Pre-Petition Secured Creditor shall have the right to file a motion objecting to such amendment. Nothing in this DIP Order shall authorize the DIP Agent or DIP Lenders to increase the commitments in excess of the commitments set forth in this Interim Order, increase the contract interest rate, defined in the DIP Credit Agreement as the Applicable LIBOR Margin, or Default Rate or extend the maturity date, defined in the DIP Credit Agreement as the "Scheduled Termination Date".**

**C. Cash Collateral**

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that

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is, that the secured creditor's interest in the cash collateral is adequately protected.  
Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

For the reasons set forth above, the Court finds that the Secured Creditors are adequately protected.

**D. Final Hearing**

A Final Hearing on the Financing Motion shall take place on **October 3, 2018, at 10:00 a.m.** Opposition to final approval of the DIP Facility is due by no later than **September 19, 2018**. The Debtors' Reply in support of the Financing Motion is due by **September 26, 2018**.

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe

Tania M Moyron