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9 Wells Fargo Bank, National Association, as indenture trustee

10 **UNITED STATES BANKRUPTCY COURT**

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

12 In re
13 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
14 Debtor and Debtor In Possession.

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

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

Jointly Administered With:

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

Chapter 11 Cases

Hon. Ernest M. Robles

LIMITED OBJECTION TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS

HEARING:

Date: October 3, 2018

Time: 10:00 a.m.

Ctrm: 1568



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713 F.2d 534 (9th Cir. 1983)2

In re CoServ, L.L.C.
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In re Just for Feet, Inc.
242 B.R. 821 (D. Del. 1999)2

In re Kmart Corp.
359 F.3d 866 (7th Cir. 2004).2

1 Secured creditors UMB Bank, N.A., as successor master indenture trustee for the master
2 indenture obligations described more fully below (the “Master Trustee”), and Wells Fargo
3 Bank, National Association, as indenture trustee for the series 2005 revenue bonds also
4 described more fully below (the “Series 2005 Trustee”, and, collectively with the Master
5 Trustee, the “Secured Parties”) hereby make the following limited objection to the Debtors’
6 request for a final order (a “Final Order”) granting their “*Debtors’ Emergency Motion for Entry*
7 *of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors*”
8 [Docket No. 29] (the “Critical Vendor Motion”). In support of this limited objection, the
9 Secured Parties state as follows:

10 **BACKGROUND**

11 1. The Debtors seek authority through the Critical Vendor Motion to, among other
12 things, pay and/or honor certain prepetition claims held by providers that the Debtors determine
13 are “Critical Vendors”¹ of goods and services the Debtors use to maintain patient care and the
14 Debtors’ businesses.

15 2. The Secured Parties are the largest lender-side creditors in these cases. UMB
16 Bank, N.A. serves as master trustee for obligations issued by Verity Health Systems of
17 California, Inc. and its predecessor organizations (“VHS”) in an aggregate outstanding amount
18 exceeding \$461 million. Those obligations secure nine series of securities that include revenue
19 bonds, working capital bonds, and working capital notes issued for the benefit of Debtors VHS,
20 O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent
21 Medical Center and Seton Medical Center. Wells Fargo Bank, National Association serves as
22 indenture trustee for three of those series of debt instruments in an aggregate outstanding
23 amount exceeding \$259 million (the “Series 2005 Bonds”).²

24 3. The Debtors commenced these cases on August 31, 2018. The Debtors continue

25 ¹ Capitalized terms not defined in this objection have the meanings specified in the
26 Critical Vendor Motion.

27 ² U.S. Bank, National Association serves as indenture trustee for the remaining six of
28 those series of debt instruments in an aggregate outstanding amount exceeding \$202 million.

1 to manage their affairs as debtors in possession. The Court has appointed an official committee
2 of unsecured creditors in these cases [Docket No. 197] (the "Committee").

3 4. By order dated September 7, 2018, the Court approved the Critical Vendor
4 Motion on an interim basis, and scheduled a further hearing on the Critical Vendor Motion for
5 October 3, 2018 [Docket No. 134].

6 **LIMITED OBJECTION**

7 5. The Secured Parties are willing to consent to a Final Order approving the Critical
8 Vendor Motion, but only on terms that allow the Secured Parties and certain other major case
9 stakeholders to review, in advance, any payments the Debtors intend to make to Critical
10 Vendors.

11 6. The payment of prepetition vendor claims at the start of chapter 11 proceedings is
12 extraordinary relief. *In re B&W Enters., Inc.*, 713 F.2d 534, 537 (9th Cir. 1983); *In re Kmart*
13 *Corp.*, 359 F.3d 866, 871 (7th Cir. 2004). If permitted at all, this relief is only appropriate
14 under specific, narrow circumstances. *Id.*

15 7. Courts that do allow payments on prepetition claims like those described in the
16 Critical Vendor Motion consistently demand stringent proof supporting that relief, typically a
17 showing that the payments are necessary to prevent significant harm to a debtor's estate, or that
18 there is no practical alternative by which the debtor can deal with the claimants at issue other
19 than by payment of the claims. *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999);
20 *Kmart*, 359 F.3d at 874; *In re CoServ, L.L.C.*, 273 B.R. 487, 498 (Bankr. N.D. Tex. 2002).

21 8. To safeguard the interests of the Secured Parties and other major case
22 stakeholders, and to provide assurance that payments made as described in the Critical Vendor
23 Motion are consistent with the narrow circumstances where courts have recognized payments of
24 this type, any Final Order or other order granting relief on the Critical Vendor Motion should
25 include the following language:
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27
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1 The Debtors shall provide not less than two Business Days' prior
2 written notice to UMB Bank, N.A., as trustee, Wells Fargo Bank,
3 National Association, as trustee, U.S. Bank, National Association,
4 as trustee, and the Committee (each a "Notice Party") of each
5 prepetition claim the Debtors plan to pay and/or honor based on the
6 relief set forth in this Order. Such notice shall identify the proposed
7 amount, recipient, and payment date of each payment and
8 information reasonably sufficient to establish that the payment is
9 consistent with the relief provided by this Order. If any Notice Party
10 notifies the Debtors on or before the proposed payment date that it
11 objects to all or a portion of a proposed payment, the challenged
12 payment (or portion, as applicable) shall be paid solely upon
13 resolution of the objection or further order from this Court. Notice
14 to a party pursuant to this section may be given by email or overnight
15 mail to its counsel of record in these cases.

16 9. The Secured Parties submit that the foregoing is necessary and otherwise
17 appropriate under the circumstances of these cases given the foregoing principles.

18 **RESERVATION OF RIGHTS**

19 10. The Secured Parties reserve all rights to file further objections to the Critical
20 Vendor Motion, make related arguments, and introduce testimony and other evidence at any
21 hearing in connection with the Critical Vendor Motion on any matters that may be relevant to
22 the requested relief, whether or not those issues are described herein.

23 **WHEREFORE**, the Secured Parties respectfully request that the Court: (i) condition
24 further relief on the Critical Vendor Motion on terms consistent with the foregoing terms; and
25 (ii) grant such further relief as the Court deems appropriate.

26 Dated: September 25, 2018

27 **MINTZ LEVIN COHN FERRIS GLOVSKY AND
28 POPEO, P.C.**

29 /s/ Abigail V. O'Brient
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36 UMB Bank, N.A. as master indenture trustee and
37 Wells Fargo Bank, National Association, as
38 indenture trustee

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:
2029 Century Park East, Suite 3100, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **LIMITED OBJECTION TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS** 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*) September 25, 2018, 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:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) September 25, 2018, 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*) September 25, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL SERVICE: Honorable Ernest Robles U.S. Bankruptcy Court Roybal Federal Building 255 E. Temple Street, Suite 1560 Los Angeles, CA 90012	
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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.

9/25/18	Diane Hashimoto	/s/ Diane Hashimoto
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

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