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Unsecured Creditors of Verity Health System of
California, Inc., et al.*

**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
☐ Verity Health System of California, Inc.
☐ Saint Louise Regional Hospital
☐ St. Francis Medical Center
☐ St. Vincent Medical Center
☐ Seton Medical Center
☐ O'Connor Hospital Foundation
☐ Saint Louise Regional Hospital
Foundation
☐ St. Francis Medical Center of
Lynwood Foundation
☐ St. Vincent Foundation
☐ St. Vincent Dialysis Center, Inc.
☐ Seton Medical Center Foundation
☐ Verity Business Services
☐ Verity Medical Foundation
☐ Verity Holdings, LLC
☐ De Paul Ventures, LLC
☐ De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151

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

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' LIMITED
OBJECTION TO DEBTOR'S MOTION
FOR AUTHORITY TO OBTAIN
POSTPETITION FINANCING
AND RELATED RELIEF [DKT. 31]**



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The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al.* (the “Committee”) appointed in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors and debtors-in-possession (the “Debtors”), hereby file this limited objection (the “Objection”) to the *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* [Docket No. 31] (the “DIP Motion”), and in support thereof represents as follows:

I. PRELIMINARY STATEMENT

1. While the Committee supports, subject to the proposed changes and clarifications set forth below, the DIP Facility and entry of the Final DIP Order, the Committee objects to the scope of the protections afforded to the Prepetition Secured Creditors (which includes certain insiders of the Debtors¹) as adequate protection in connection therewith.

2. The terms of the adequate protection set the stage for the Chapter 11 Cases to be run for the benefit of the Prepetition Secured Creditors. The Debtors’ estates’ many other creditors—current employees (*e.g.*, nurses, lab technicians, and janitors), pension plans, doctors, former employees (potentially entitled to severance), trade creditors, and tort claimants—are effectively being asked to fund operations going forward even though the sale process and protections required by the Prepetition Secured Creditors as adequate protection may likely leave the unsecured creditors with little to no recovery.

¹ Included among the Prepetition Secured Parties are affiliates of Integrity Healthcare LLC (“Integrity”) and NantWorks, LLC (“NantWorks,” and together with Integrity, the “Insiders”), former management of the Debtors. We understand that the Debtors are in negotiations with other creditors asserting the right to adequate protection. The Committee expressly reserves all rights as to the propriety of any such additional grants of adequate protection, including its right to supplement this Objection to address such matters prior to the October 3, 2018 hearing.

1 3. This is especially troubling because, as of the Petition Date, there appear to
2 have been substantial unencumbered assets and value in the Debtors' estates that would otherwise be
3 available to pay the holders of unsecured claims. For example, the Debtors assert that there is no
4 single secured creditor with liens on all of the Debtors' assets. (DIP ¶ 26.) Nor, according to the
5 Debtors, does any secured creditor have perfected liens on the cash in the Debtors' operating
6 account. (*Id.* ¶ 72.) Nonetheless, as part of the adequate protection package, all such unencumbered
7 assets and value are being pledged to the Prepetition Secured Creditors, who otherwise did not have
8 a claim on such assets, for the diminution in the value of their claims purportedly caused by the very
9 ongoing operations that the Prepetition Secured Creditors need in order to realize value from their
10 collateral.
11

12 4. That is, the Prepetition Secured Creditors need the Debtors to continue to
13 operate while pursuing a sale of their collateral in order to realize value from that collateral. Yet, the
14 Prepetition Secured Creditors would impose the costs of such operations—and the administration of
15 these cases—on the unsecured creditors.
16

17 5. Combined with the proposed waiver of the Court's ability to later order the
18 marshaling of assets to ensure a fair distribution and the protections afforded to the estates under
19 sections 506(c) and 552(b), the expedited sale process mandated by the Final DIP Order that only
20 requires that sale proceeds clear minimal price hurdles (to pay the secured creditors only), and other
21 provisions of the proposed DIP Facility granting the Prepetition Secured Creditors an unwarranted
22 degree of control over these cases (such as requiring that a motion seeking approval of a sale of
23 substantially all of the Debtors' assets be filed a mere 60 days after the Petition Date for a price that
24 could be as low as \$700 million and requiring that the Court approve the motion within 30 days of
25 the filing), together with the artificially low investigation budget and carve-out afforded to the
26 Committee, the adequate protection package as proposed improperly serves to advance the interests
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28

1 of the Prepetition Secured Creditors while imposing all of the risks and costs of proceeding on the
2 estates' unsecured creditors.

3 6. As set forth more fully below, the Committee specifically objects to the
4 provisions of the Final DIP Order and DIP Credit Agreement relating to the following issues:
5

- 6 • Adequate Protection Liens and Claims
(Final DIP Order ¶¶ 5(a), 5(b), and 5(c).)
- 7 • Waiver of Section 506(c)
8 (Final DIP Order ¶ 5(e).)
- 9 • Waiver of Section 552(b)
10 (Final DIP Order ¶ 5(e).)
- 11 • Waiver of Marshaling Principles
12 (Final DIP Order ¶ 28(e).)
- 13 • Asset Sale Process Milestones, Covenants, and Events of Default
(DIP Credit Agreement ¶ 9.1(q)(x).)
- 14 • Secured Creditor Fees and Expenses
15 (Final DIP Order ¶ 5(b).)
- 16 • Committee Fees and Expenses
(Final DIP Order ¶, Ex. 2 (Budget).)
- 17 • Investigation Period
18 (Final DIP Order ¶ 5(d).)
- 19 • Investigation Budget
20 (Final DIP Order ¶ 5(d).)
- 21 • Carve-Out Amount
(Final DIP Order ¶ 16.)
- 22 • Exercise of Remedies
23 (Final DIP Order ¶ 24.)
- 24 • Reports and Budgets
(Final DIP Order ¶ 7.)
- 25 • Credit Bidding
26 (Final DIP Order ¶ 15.)
- 27 • Asset Sale Proceeds Allocation
28 (Final DIP Order ¶ M.)

II. OBJECTION

7. Upon any request for debtor-in-possession financing, the debtor has the burden of proving that (i) it is unable to obtain financing on better terms; (ii) the proposed credit transaction is “necessary to preserve the assets of the estate;” and (iii) the proposed terms “are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.” *In re Crouse Grp.*, 71 B.R. 544, 549 (Bankr. E.D. Pa.), *aff’d*, 75 B.R. 553 (E.D. Pa. 1987); *see also In re Barbara K. Enters., Inc., No. 08-11474 (MG)*, 2008 WL 2439649, at *10 (Bankr. S.D.N.Y. June 16, 2011); *In re Strug-Division LLC*, 380 B.R. 505, 514-15 (Bankr. N.D. Ill. 2008) (debtors have burden of proof under § 364); *In re Hubbard Power & Light*, 202 B.R. 680, 684-85 (Bankr. E.D.N.Y. 1996) (debtor has burden of proving that requirements of § 364 have been met). The Debtors’ burden is heavy—“the granting of [section 364 protections] should carry at least the same if not a heavier burden of proof than that a petitioner asking for a temporary restraining order must bear.” *In re Adamson Co.*, 29 B.R. 937, 940 (Bankr. E.D. Va. 1983); *see generally* 11 U.S.C. §§ 364(c) and 364(d).

8. Where obtaining post-petition financing requires the furnishing of adequate protection to prepetition lenders under sections 361, 363, and 364 of the Bankruptcy Code, such relief must be narrowly tailored. The purpose of providing adequate protection to prepetition parties is to preserve the *status quo*, not to better those parties’ positions. *See, e.g., In re 354 E. 66th St. Realty Corp.*, 177 B.R. 776, 782 (Bankr. E.D.N.Y. 1995); *In re Roe Excavating, Inc.*, 52 B.R. 439, 440 (Bankr. S.D. Ohio 1984). More specifically, its objective is to ensure that prepetition lenders receive the security they bargained for prior to the petition date. *See In re Sonora Desert Dairy*, 2015 WL 65301, at *11 (9th Cir BAP Jan. 15, 2015) (“In other words, adequate protection is provided to ensure that the prepetition creditor receives the value for which the creditor bargained

1 prebankruptcy”). “Neither the legislative history nor the [Bankruptcy] Code indicate that Congress
2 intended the concept of adequate protection to go beyond the scope of protecting the secured claim
3 holder from a diminution in the value of the collateral securing the debt.” *In re Pine Lake Vill.*
4 *Apartment Co.*, 19 B.R. 819, 824 (Bankr. S.D.N.Y. 1982); *In re Orlando Trout Creek Ranch*, 80
5 B.R. 190, 191-92 (Bankr. N.D. Cal. 1987) (secured claim may be deemed to be adequately protected
6 where its security is not depreciating).

8 9. Thus, a lender’s entitlement to adequate protection arises only when there is
9 evidence establishing likely loss to its collateral position. *See, e.g., RTC v. Swedeland Dev. Grp. (In*
10 *re Swedeland Dev. Grp.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Stoney Creek Techs., LLC*, 364 B.R.
11 882, 890 (Bankr. E.D. Pa. 2007); *accord In re Saypol*, 31 B.R. 796, 800 (Bankr. S.D.N.Y. 1983) (“In
12 the context of the automatic stay, Congress believed the existence *vel non* of such a decline [in the
13 value of the secured creditor’s interest] to be almost decisive in determining the need for adequate
14 protection.”)

16 10. Due to a debtors’ diminished capacity to negotiate financing on favorable
17 terms, DIP facility lenders “often extract favorable terms that harm the estate and creditors”
18 especially “when the lender has a prepetition lien on cash collateral.” *Resolution Tr. Co. v. Official*
19 *Unsecured Creditors Comm. (In re Defender Drug Stores Inc.)*, 145 B.R. 312, 317 (B.A.P. 9th Cir.
20 1992) (citing *In re Ames Dep’t. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990)); *In re Tenney*
21 *Vill. Co.*, 104 B.R. 562, 567-70 (Bankr. D.N.H. 1989).

23 11. Thus, for example, courts counsel against affording secured lenders unilateral
24 control over the course of chapter 11 cases because to do so would improperly usurp the mandated
25 roles of the Court, the debtors, and any committee in the chapter 11 process. *See, e.g., In re Tenney*
26 *Vill. Co., Inc.*, 104 B.R. at 568 (debtor-in-possession financing terms must not “pervert the
27 reorganizational process from one designed to accommodate all classes of creditors and equity
28

1 interests to one specially crafted for the benefit” of the secured creditor; to do so would permit
2 secured creditors to “run roughshod over numerous sections of the Bankruptcy Code”); *Gen. Elec.*
3 *Capital Corp. v. Hoerner (In re Grand Valley Sport & Marine, Inc.)*, 143 B.R. 840, 852 (Bankr.
4 W.D. Mich. 1992) (“[T]his court will not authorize post-petition financing pursuant to § 364 where a
5 creditor leverages a debtor in possession into making a concession unauthorized by, or in conflict
6 with, the Bankruptcy Code as a condition for the requested credit”); *In re Berry Good, LLC*, 400
7 B.R. 741, 747 (Bankr. D. Az. 2008) (“[B]ankruptcy courts do not allow terms in financing
8 arrangements which convert the bankruptcy process from one designed to benefit all creditors to one
9 designed for the unwarranted benefit of the post-petition lender”).
10

11 12. Prior to approving the terms of a DIP financing and any related adequate
12 protection, a bankruptcy court must ensure that the proposed financing will not “skew the carefully
13 designed balance of debtor and creditor protections that Congress drew in crafting Chapter 11” by
14 approving postpetition financing on terms that “prejudice, at an early stage, the powers and rights
15 that the Bankruptcy Code confers for the benefit of all creditors.” *Ames*, 115 B.R. at 37; *see also*
16 *Tenney Vill.*, 104 B.R. at 568 (stating that postpetition financing should not be approved where effect
17 is to “disarm the [d]ebtor of all weapons usable against it for the bankruptcy estate’s benefit, place
18 the [d]ebtor in bondage working for the Bank, seize control of the reins of reorganization, and steal a
19 march on other creditors in numerous ways”).
20
21

22 13. It is critical for the Court to ensure that the terms of the Debtors’ postpetition
23 financing do not impair the ability of either the Debtors or the Committee to discharge their duties
24 fully. There are two fiduciaries in these Chapter 11 Cases, the Debtors and the Committee, each
25 with very different mandates. The Debtors, as the chapter 11 management of a California not-for-
26 profit enterprise, have duties that run in favor of the Debtors’ ongoing “mission.” *See In re United*
27 *Healthcare Sys., Inc.*, 1997 WL 176574, at *5 (D. N.J. Mar. 26, 1997) (“The officers and directors of
28

1 a nonprofit organization are charged with the fiduciary obligation to act in furtherance of the
2 organization's charitable mission."); *Summers v. Cherokee Children & Family Servs.*, 112 S.W.3d
3 486, 504 (Tenn. Ct. App. 2002) ("[N]onprofit directors must be 'principally concerned about the
4 effective performance of the nonprofit's mission'"). Conversely, the Committee, as the statutorily
5 appointed representative of the Debtors' unsecured creditors, has duties run in favor of such
6 creditors. *In re Caldor, Inc. NY*, 193 B.R. 165, 169 (Bankr. S.D.N.Y. 1996) ("A creditors committee
7 stands as a fiduciary to the class of creditors it represents") (citing cases).

9 14. Importantly, the board of a not-for-profit debtor does not have the same duties
10 with respect to, or focus on, stakeholder value as do the boards of for-profit debtors. *See* John Tyler,
11 *Negating the Legal Problem of Having "Two Masters": A Framework for L3C Fiduciary Duties &*
12 *Accountability*, 35 Vt. L. Rev. 117, 140 (2010) ("The clarity and certainty of purpose for exempt
13 organizations focuses not on shareholder value but on faithfulness to the charitable exempt purposes
14 as defined by law and declared by the organization, which helps distinguish these entities from for-
15 profit operations.").

17 15. Thus, if the recoveries of unsecured creditors are to be maximized by a going
18 concern sale of the Debtors' assets, it is imperative that the DIP Facility not impair or impede the
19 exercise of duties by the Committee as the Debtors have an entirely different mandate.

21 16. However, as set forth in more detail below, many provisions in the proposed
22 DIP Facility and Final DIP Order do just that and would, in fact, "disarm the Debtor of all weapons
23 usable by it for the bankruptcy estate's benefit" and, thus, should not be approved because to do so
24 would not be in the best interests of the Debtors or their estates.

25 **A. Adequate Protection Liens and Claims**

27 17. The Final DIP Order, if granted, would provide the DIP Lender with
28 superpriority liens and claims against all of the Debtors' assets, both encumbered and unencumbered

1 (the “DIP Collateral”). More problematically, by way of adequate protection, the Final DIP Order
2 grants the Prepetition Secured Creditors replacement liens as to the full DIP Collateral, as well,
3 thereby elevating their position and enabling them to claim as their own the unencumbered assets
4 that were not otherwise available to them prior to the Petition Date because no creditor had a lien on
5 all of such assets. (Final DIP Order ¶¶ 5(a), 5(b), and 5(c).)

6
7 18. It would be unduly punitive to the Debtors’ unsecured creditors for the Court
8 to expand in this way the Prepetition Secured Parties’ prepetition collateral package by granting the
9 Prepetition Secured Creditors liens on previously unencumbered assets. *See, e.g., In re Four*
10 *Seasons Marine & Cycle, Inc.*, 263 B.R. 764, 771 (Bankr. E.D. Tex. 2001) (describing fundamental
11 unfairness imposed on unsecured creditors by granting of replacement lien on unencumbered assets
12 of estate); *In re Integrated Testing Prods. Corp.*, 69 B.R. 901, 905 (D.N.J. 1987) (holding that
13 prepetition secured creditor was not entitled to proceeds of sale of collateral recovered as preference
14 because to allow the secured creditor to “claim these preferences would frustrate the policy of equal
15 treatment of creditors under the Code”).

16
17 19. Depending on the outcome of the contemplated sales of the Debtors’ assets,
18 the proceeds of the Debtors’ prepetition unencumbered assets would likely be one of the main
19 sources of recovery for unsecured creditors. The Prepetition Secured Creditors should not be able to
20 dissipate these critical assets under any circumstance, and certainly not without first seeking to
21 recover from their own collateral packages. *See Meyer v. United States*, 375 U.S. 233, 237 (1963)
22 (marshaling doctrine requires secured creditor to first seek recovery from assets against which other
23 creditors do not have a claim and thereby “prevent[s] the arbitrary action of a senior lienor from
24 destroying the rights of a junior lienor or a creditor having less security.”).

25
26 20. To do so would be to take adequate protection too far. The adequate
27 protection granted to the Prepetition Secured Creditors would, in contravention of fundamental
28

adequate protection principles, plainly better their position. *See In re Pine Lake Vill. Apartment Co.*, 19 B.R. at 824 (“Neither the legislative history nor the [Bankruptcy] Code indicate that Congress intended the concept of adequate protection to go beyond the scope of protecting the secured claim holder from a diminution in the value of the collateral securing the debt.”) As a result, the proposed package of lender concessions granted to the Prepetition Secured Creditors as “adequate protection” would greatly exceed the risk to their collateral position and, consequently, be unbalanced and improper.

21. To remedy this impropriety, greater protections should be made available to the unsecured creditors, including by:

- Limiting the scope of the Prepetition Secured Creditor replacement liens and superpriority claims to the Debtors’ already encumbered assets or, if extended to unencumbered assets, only in an amount that is capped at the amount of DIP Facility proceeds actually used by each Debtor for its own benefit;
- Mandating, through the invocation of marshaling principles (as set forth *infra* ¶ D), that such adequate protection claims should only be payable out of unencumbered property after the secured lenders exhaust recoveries from their own collateral;
- Ensuring that surcharge under section 506(c) and section 552(b) relief remain available (as set forth *infra* ¶¶ B, C), to the Debtors to permit their estates to recover for the benefit of unsecured creditors some or all of the funds that will be expended under the DIP Facility to support the Debtors’ ongoing operations;
- To address any mismatch between collateral value and DIP Facility liability, providing that any Debtor that pays off the DIP Facility claims against another Debtor should be subrogated to the DIP Facility’s superpriority claims and liens for the benefit of unsecured creditors ahead of any claim for diminution in value by the Prepetition Secured Creditors;² and

² Upon becoming subrogated to the rights of a third-party creditor, a guarantor is entitled to enforce such creditor’s claim, including all attendant rights and priorities, as if the third-party itself were asserting the claims. “[T]he secondary obligor, through subrogation, succeeds not only to the claim of the obligee against the principal obligor, but also to the priority status of that claim.” RESTATEMENT (THIRD) OF SURETYSHIP & GUARANTY § 28 cmt; *see In re Chateaugay Corp.*, 89 F.3d 942, 947 (2d Cir. 1996) (“Subrogation is one of the oldest of equitable doctrines. Under its rule, one ‘compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other.’”) (quoting *Am.*

- Mandating that to the extent any of the Prepetition Secured Creditors assert a section 507(b) claim for failure of adequate protection, that the value of the claim be measured by the value such creditors would have received if the Debtors had simply handed them the keys to the company as of the Petition Date, not based on going concern value, because going concern value is not available to such creditors today.³

22. Clarifying and limiting the scope of the adequate protection claim to be granted to the Prepetition Secured Creditors is critical to protect unsecured creditors who are otherwise being asked to bear the risks of proceeding. By way of further elaboration, any section 507(b) claim granted should be limited as follows to avoid a windfall to the Prepetition Secured Creditors:

- ***Diminution Should Be Measured Off of the Value of the Asset the Secured Creditor Could Realize Today, Not the Going Concern Value It Could Realize after the Expenditure of Estate Funds in the Future:*** Given the operating losses of the enterprise, a secured creditor exercising remedies as to its collateral today would not likely recognize the going concern value of that collateral unless it spent significant dollars to keep the property operating pending a sale. Looked at differently, there is a cost to preserving/unlocking the going concern value for most of the Debtors' assets. The estates and their unsecured creditors should not bear the cost of preserving the going concern value, especially to the extent they do not share in that going concern value. At the very least, this means that the Debtors and the Committee must not waive the ability to seek marshaling of the assets or the protections afforded by section 552(b) and section 506(c) surcharge at this time.⁴

Sur. Co. v. Bethlehem Nat'l Bank, 314 U.S. 314, 317); *In re Wingspread Corp.*, 116 B.R. 915, 931 (Bankr. S.D.N.Y. 1990) *aff'd*, 145 B.R. 784 (S.D.N.Y. 1992), *aff'd without opinion*, 992 F.2d 319 (2d Cir. 1993) ("But the doctrine of subrogation, if applicable, is not restricted to the claim itself; one who is entitled to invoke the doctrine of subrogation is entitled to the benefit of the rights that flow with the claim."); *In re Miller (Miller v. Concord-Liberty Sav. & Loan Ass'n)*, 72 B.R. 352, 353 (Bankr. W.D. Pa. 1987) ("[O]nce the right to subrogation is established, the subrogee becomes subrogated to all rights of the creditor against the principal debtor, including the security given to secure the debt").

³ See *Official Comm. of Unsecured Creditors ex rel. the Estates of the Debtors v. UMB Bank, N.A. (In re Residential Capital, LLC)*, 501 B.R. 549, 567 (Bankr. S.D.N.Y. 2013) (holding that petition date value for purposes of section 507(b) claims must be calculated with view to obstacles to realization on petition date and depressed value of similar assets in hands of similarly distressed parties).

⁴ *Id.* at 569.

- 1 • ***The Adequate Protection Claim Should Be Limited by Debtor***
2 ***Entity***: The Debtors' estates are being jointly administered but
3 have not been substantively consolidated. Consequently, to the
4 extent a secured creditor can assert an adequate protection claim
5 for diminution, it must be asserted solely against the secured
6 creditor's counterparty, not against all of the Debtors.⁵
- 7 • ***The Adequate Protection Claim Remains Subordinate To Post-***
8 ***Petition Borrowings***: Some of the Debtors are supported by
9 funding by other Debtors. To the extent a borrowing Debtor
10 obtains proceeds directly from the DIP Facility and/or a lending
11 Debtor provides post-petition funds to a borrowing Debtor, the
12 claim arising from the post-petition lending must be senior in right
13 to the adequate protection claim. In short, whomever provides
14 post-petition financing (or satisfies that financing) is entitled to a
15 senior claim ahead of the adequate protection claim. That is the
16 import of the Prepetition Secured Creditors' consent to being
17 primed.

18 23. The foregoing changes to the terms of the DIP Facility and Final DIP Order
19 would reasonably ensure that there will be value remaining in the Debtors' estates after satisfaction
20 of the DIP Facility for the benefit of unsecured creditors.

21 **B. Section 506(c) Waiver**

22 24. The Final DIP Order contains a waiver, applicable to both the DIP Lender
23 and the Prepetition Secured Lenders, of the Debtors' rights under section 506(c) of the Bankruptcy
24 Code to surcharge the collateral to satisfy the costs of preserving the collateral. (Final DIP Order ¶
25 5(e).) The Committee does not object to this waiver insofar as it applies to the DIP Lender. The
26 Prepetition Secured Creditors, however, are a different story because the practical effect of a section
27 506(c) waiver as to them, as set forth above, is to eliminate a further avenue of recovery for the
28 Debtors' estates and to materially increase the prospect that the costs of the Debtors' chapter 11
 process would be borne by the unsecured creditors alone.

⁵ *Id.*

1 25. A section 506(c) surcharge may be particularly necessary if the Debtors’
2 ambitious plan to sell off their assets in side-by-side or serial sales fail. Yet, the very parties seeking
3 to extract this waiver are the parties who have pressured the Debtors to rush headlong into these
4 sales or face material loss of value. This approach may turn out to be wrong. If it does, any such
5 waiver would contravene the intent behind Congress’s inclusion of section 506(c) in the Bankruptcy
6 Code. *See, e.g., In re Codesco, Inc.*, 18 B.R. 225, 230 (Bankr. S.D.N.Y. 1982) (“The underlying
7 rationale for charging a lienholder with the costs and expenses of preserving or disposing of the
8 secured collateral is that the general estate and unsecured creditors should not be required to bear the
9 cost of protecting what is not theirs.”). Under such circumstances, this Court should reject the
10 proposed section 506(c) waiver, insofar as it applies to the Prepetition Secured Creditors.

11
12 26. Courts often reject attempted waivers of surcharge rights under section 506(c).
13 *See, e.g., Hartford Fire Ins. Co. v. Norwest Bank Minn., N.A. (In re Lockwood Corp.)*, 223 B.R. 170,
14 176 (B.A.P. 8th Cir. 1998) (holding that provision in DIP financing order purporting to immunize
15 lender from Bankruptcy Code section 506(c) surcharges was unenforceable and would create an
16 improper windfall); *In re Colad Grp.*, 324 B.R. 208, 224 (W.D.N.Y. 2005) (refusing to approve DIP
17 financing with a section 506(c) waiver intact); *In re Brown Bros.*, 136 B.R. 470, 474 (W.D. Mich.
18 1991) (concluding that a Bankruptcy Code section 506(c) waiver “is not enforceable in light of the
19 congressional mandate that a trustee have the authority to use a portion of secured collateral for its
20 preservation or proper disposal”). This Court should do the same here.

21
22
23 **C. Section 552(b) Waiver**

24 27. The Final DIP Order also contains a blanket waiver of the estates’ rights under
25 section 552(b) of the Bankruptcy Code. (Final DIP Order ¶ 5(e).) Under the current facts, as set
26 forth above, there is no reason that the Prepetition Secured Parties should benefit from the Debtors’
27 gratuitous waiver of this important right, particularly at unsecured creditors’ expense.
28

1 28. The equities of the case exception contained in section 552(b) of the
2 Bankruptcy Code allows the Debtors, the Committee, and other parties in interest to argue that
3 equitable considerations justify the exclusion of postpetition proceeds from a secured creditor's
4 collateral package.

5 29. Waiving the equities of the case exception at this time is inappropriate. The
6 Court cannot possibly determine the "equities of the case" only weeks after the Petition Date, or
7 order the elimination today of a remedy that could be based on the "equities of the case" tomorrow.
8 Thus, any finding of fact that prospectively waives the "equities of the case" exception set forth in
9 section 552(b) is premature. *See, e.g., Sprint Nextel Corp. v. U.S. Bank Nat'l Ass'n (In re TerreStar*
10 *Networks, Inc.)*, 457 B.R. 254, 272-73 (Bankr. S.D.N.Y. 2011) (denying request for 552(b) waiver as
11 premature because factual record was not fully developed); *In re Metaldyne Corp.*, 2009 WL
12 2883045, at *6 (Bankr. S.D.N.Y. June 23, 2009) (declining to waive equities of the case exception in
13 connection with approval of debtor's use of cash collateral).

14 30. Instead, the Committee believes that the rights of all parties to argue that the
15 equities of the case exception applies should be preserved and that the proposed waiver should
16 simply be deleted from the Final DIP Order.⁶

17
18
19 **D. Waiver of Marshaling Principles**

20 31. The Final DIP Order also contains a waiver, *applicable solely to the DIP*
21 *Lender*, of the estates' rights under the marshaling doctrine. (Final DIP Order ¶ 28(e).) The
22 equitable doctrine of marshaling requires a secured creditor first to seek recovery from assets against
23 which other creditors do not have a claim before looking to common assets. Marshaling "prevent[s]
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27 ⁶ At a minimum, the order should be without prejudice to any party's rights to seek relief under section 552(b)
28 based on any facts that arise after the date of the Final Order. *See, e.g., In re Excel Maritime Carriers, Ltd.*,
Case No. 13-23060-RDD, ECF No. 133 at p. 13 (Bankr. S.D.N.Y. Aug. 6, 2013) (containing such a
reservation).

1 the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having
2 less security.” *Meyer v. United States*, 375 U.S. at 237.

3 32. In the context of a chapter 11 case, the representative of a bankruptcy estate
4 can assert equitable marshaling rights against secured creditors by virtue of the powers granted to the
5 trustee by section 544(a) of the Bankruptcy Code.⁷ In fact, the case law is clear that an official
6 committee can stand in the shoes of the debtor in possession to pursue marshaling rights on behalf of
7 the bankruptcy estate and all general unsecured creditors.⁸ Thus, the Debtors’ proposed categorical
8 waiver of marshaling rights would adversely affect both its own and the Committee’s rights in the
9 Chapter 11 Cases.
10

11 33. The Committee submits that, as set forth above, any marshaling waiver as to
12 the DIP Lender should be limited to its logical function in the context of the Final DIP Order—*i.e.*,
13 the waiver should apply only in a scenario in which there is an Event of Default under the DIP
14 Documents and the DIP Lender actually proceed to exercise remedies against the Debtors. Absent
15 that scenario, there should not be a generalized waiver of marshaling rights, even as to the DIP
16 Lender, because such a waiver could lead to a situation in which the DIP Lender is repaid with
17 otherwise unencumbered assets—despite the absence of any default—leaving only encumbered
18 assets in the Debtors’ estates. Instead, the DIP Lender should be required to seek to recover (i) first,
19 from the assets of Debtors that are DIP Facility obligors and actual recipients of DIP Facility
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22
23

24 ⁷ See, e.g., *Owens-Corning Fiberglas Corp. v. Ctr. Wholesale, Inc. (In re Ctr. Wholesale, Inc.)*, 759 F.2d 1440,
25 1446 (9th Cir. 1985); *United States v. Houghton (In re Szwyd)*, 408 B.R. 547, 550 (D. Mass. 2009); *Kittay v.*
26 *Atl. Bank (In re Global Serv. Grp. LLC)*, 316 B.R. 451, 463 (Bankr. S.D.N.Y. 2004); *Official Comm. of*
27 *Unsecured Creditors v. Lozinski (In re High Strength Steel, Inc.)*, 269 B.R. 560, 573-74 (Bankr. D. Del. 2001);
28 *Official Comm. of Unsecured Creditors v. Hudson United Bank (In re America’s Hobby Ctr., Inc.)*, 223 B.R.
275, 287 (Bankr. S.D.N.Y. 1998); *Fundex Capital Corp. v. Balaber-Strauss (In re Tampa Chain Co. Inc.)*, 53
B.R. 772, 777-78 (Bankr. S.D.N.Y. 1985)

⁸ See *In re America’s Hobby Ctr.*, 223 B.R. at 287; accord *In re High Strength Steel*, 269 B.R. at 573 (allowing trustee to continue to pursue marshaling claim originally contained in complaint filed by the official committee of unsecured creditors).

proceeds; (ii) then, from the assets of Debtors that are DIP Facility obligors but that received no DIP Facility proceeds; and (iii) finally, from all other sources of recovery.

34. In any event—and simply to reiterate the absence of any request for waiver beyond the DIP Lender—there is no justification whatsoever for the inclusion of the Prepetition Secured Parties or the Prepetition Collateral within the scope of the marshaling waiver. To the extent that a representative of the Debtors’ estates could assert marshaling rights under section 544(a) of the Bankruptcy Code against the Prepetition Secured Parties on the Petition Date, nothing in the Final DIP Order should eliminate or otherwise affect those estate rights to the detriment of unsecured creditors.

E. Secured Creditor Fees and Expenses

35. The Final DIP Order also provides the Prepetition Secured Creditors with an unqualified right to have all of their professional fees paid from the Debtors’ estates, with little clarity as to the likely amount of such fees expected to be incurred or to what review (if any) such fees will be subject. Thus, the line item currently in the Budget projects \$100,000 per month in Prepetition Secured Creditor fees and expenses.⁹ Given that there are five separate creditor groups and counsel involved, however, this number may be quite insufficient. In addition, by all appearances, the Prepetition Secured Creditors believe themselves entitled to both post-Petition Date fees, to which they are entitled as adequate protection, and pre-Petition Date DIP Facility-related fees and expenses, to which they (unlike the DIP Lender) are not entitled. (Budget at 1; Final DIP Order ¶ 13.) In addition, the review process (by the Debtors, the Committee, and the U.S. Trustee) applicable to the DIP Lender fees and expenses (Final DIP Order ¶ 13) is not unambiguously

⁹ The Prepetition Secured Creditors believe they are entitled to both pre-and post-petition fees and costs. This is an issue that has not yet been resolved and will necessarily be part of the Committee’s investigation of liens and claims.

1 applicable to the fees and expense of the Prepetition Secured Creditors.¹⁰ Finally, while the Final
2 DIP Order does provide for the recharacterization as principal of interest payments to which it is
3 determined the Prepetition Secured Creditor are not entitled under section 506(b), there is, as there
4 should be, no parallel provision for the disgorgement of fees and expenses paid to the Prepetition
5 Secured Creditors under such circumstances. (DIP Order ¶ 5(c).) All of these unresolved issues
6 must be addressed if the Final DIP Order is to be approved.
7

8 **F. Asset Sale Process Milestones, Covenants, and Events of Default**

9 36. The DIP Credit Agreement improperly dictates the parameters of the Debtors'
10 asset sale process. For example, the DIP Credit Agreement includes a requirement that a motion
11 seeking approval of a sale of substantially all of the Debtors' assets must be presented for Court
12 approval *a mere 60 days after the Petition Date for a price that could be as low as \$700 million*,¹¹ a
13 sum that likely would leave little to no recovery for unsecured creditors. (DIP Credit Agreement
14 ¶ 9.1(q)(x).) Further, if the Court fails to grant the motion within 30 days of filing, an event of
15 default occurs under the DIP Credit Agreement allowing the DIP Lender to exercise full remedies
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20 ¹⁰ The Committee reserves all of its rights and remedies as to the receipt of *any* special benefits, including by way
21 of adequate protection or otherwise, by the Insiders under the Final DIP Order. The Insiders' involvement in
22 the affairs of the Debtors and related non-debtors is suspect, and the Committee fully intends to investigate the
23 conduct, liens and claims of the Insiders and their affiliates, subsidiaries, agents, officers, directors, employees,
24 attorneys, and advisors with respect to the Debtors. To extent that their secured claims are ever determined to
25 be subject to recharacterization or subordination, the Committee will seek invalidation and/or disgorgement of
26 any adequate protection afforded to them.

27 ¹¹ The DIP Credit Agreement provides the Debtor with the option of filing, within "60 days following the Petition
28 Date," *either* (i) "a motion for approval of bid procedures for an identified stalking horse bidder in an amount of
at least \$235,000,000 of cash consideration in connection with the sale of the St. Louise and O'Connor
Hospitals and related assets pursuant to section 363(b) and (f) of the Bankruptcy Code (the 'Bid Procedures
Motion') on terms and conditions acceptable to the DIP Agent;" *or* (ii) "a motion for approval of a negotiated
asset purchase agreement executed by a third party for the entire hospital system with expected consideration in
the form of cash or assumption of prepetition secured debt in an amount not less than \$700,000,000 and the
simultaneous payment in full of the obligations owed, and termination of all commitments of the DIP Agent and
DIP Lenders, under the DIP Credit Facility (the 'Sale Motion')." (DIP Credit Agreement § 7.2.) Failure by the
Debtors to file the requisite motion would have a material adverse impact (for a 30-day period) on availability
under the DIP Facility's Borrowing Base. (*Id.*)

1 against the Debtor and the collateral granted thereunder.¹² The chapter 11 process would, in other
2 words, be concluded even before it had ever commenced.

3 37. In addition, while the Committee has no objection to a requirement that the
4 sale proceeds be sufficient to satisfy the DIP Facility debt, there is no basis for mandating that these
5 proceeds also be sufficient (and no more than sufficient) to satisfy the Prepetition Secured Creditor
6 debt. Further, there is no articulated need for the Court's rush to approve these critical sales. These
7 requirements, and all similar provisions, should be excised from the DIP Credit Agreement and the
8 Final DIP Order.
9

10 **G. Committee Fees and Expenses**

11 38. The Prepetition Secured Creditors seek to minimize the role of the Committee,
12 as the primary watchdog of the Debtors' estates in these Chapter 11 Cases, by refusing to furnish
13 adequate resources in the Budget to fund its activities. The need for active involvement by the
14 Committee in not-for-profit cases is underscored by the Debtors' fiduciary duty to their "mission,"
15 rather than to the stakeholders in these cases. (*See supra*, ¶ 13.) The Budget currently allocates
16 \$100,000 per month to Milbank and \$50,000 per month to FTI, whereas the Debtors' professionals
17 are allotted a monthly budget in excess of \$1 million. Given the critical role the Committee is
18 anticipated to play in these cases, the professional fee amounts budgeted for the Committee will
19 most likely prove inadequate, and they will have to be increased to address the Committee's actual
20 and necessary funding needs. The Committee frankly questions the need for any budget as to the
21 Committee's fees. Such costs will be dictated by the events in the Chapter 11 Cases and the
22 advisors' fees and expenses are subject to court approval regardless.
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26
27 ¹² The DIP Credit Agreement provides that the Court has 30 Days to Approve Asset Sale Bid Procedures. The
28 Events of Default set forth in the Credit Agreement indicate a default will occur the following occurs: "(xvi) the failure of the Bankruptcy Court to approve any Asset Sale Bid Procedure Order or the Consolidated Sale Motion within thirty (30) days of the filing of the applicable Asset Sale Bid Procedure Order or Consolidated Sale Motion, respectively" (DIP Credit Agreement § 9.1(q)(xvi).)

H. Investigation Period

39. The proposed Final DIP Order also imposes extensive restrictions on the Committee's ability to investigate the Debtors' numerous prepetition transactions, including the validity of the various Prepetition Facilities. The proposed Final DIP Order only allots the Committee ninety (90) days from its appointment (the "Investigation Period") to investigate and challenge the liens and claims of the Prepetition Secured Creditors. (Final DIP Order ¶ 5(d).) While it is far from clear that this short time period will be sufficient, the Committee is prepared to accept it on the understanding that it can be extended by Stipulation among the Debtors, the Committee, and the Prepetition Secured Creditors, or, of course, the Court upon motion by the Committee.

40. By way of preview of the potential need for more time, this is not the typical case where the Committee is seeking to review the liens and claims of one or two prepetition lender groups. The Debtors have a diverse and complex capital structure with five (5) somewhat unusual secured facilities as to which there is more than \$560 million in claims outstanding, secured by several separate collateral pools, all extant in a highly regulated environment with many governmental and non-governmental actors on the scene. The Committee intends to engage in a thorough investigation of the Prepetition Secured Creditors' liens and claims, and that exercise will need to be done as quickly and efficiently as possible, but it is impossible to determine exactly how long that will take at this time.

I. Investigation Budget

41. Likewise, the proposed Final DIP Order seeks to limit the Committee to a budget of \$100,000 (the "Investigation Budget") to investigate liens and claims of Prepetition Secured Creditors holding claims exceeding \$560 million. (Final DIP Order ¶ 5(d).) The review of the Prepetition Facilities and perfection of liens thereon is a fact-intensive analysis that will require the review of extensive documents and filings. While the Committee acknowledges (as the Debtors

1 have conceded) that there are unencumbered assets that could be used to fund an investigation, as
2 noted above, these unencumbered assets are now subject to, among other obligations, the adequate
3 protection liens and claims granted to the Prepetition Secured Creditors. (Id. ¶ 4.(a).) The
4 Committee's professionals should not be compelled to bear the risk that there will be inadequate or
5 no unencumbered assets at the end of the Chapter 11 Cases to satisfy their fees. In order to avoid
6 this outcome, the Investigation Budget should be increased to \$250,000,¹³ subject to this amount
7 being increased by the Court for cause. In addition, any limitation on use of Investigation Budget
8 proceeds to investigate or sue should be limited to the prepetition liens and claims of the Prepetition
9 Secured Creditors.
10

11 **J. Carve-Out**

12 42. In the same vein, the Prepetition Secured Creditors seek to keep the
13 Committee on a short leash by allocating to it a share of the Carve-Out that is far too low
14 (\$150,000). (Final DIP Order ¶ 16.) If the default required to trigger access to the Carve-Out were
15 to occur, the Committee would need to be fully armed to preserve what could be saved for the
16 benefit of unsecured creditors. The proposed \$150,000 amount would not come close to satisfying
17 the Committee's likely funding needs, so this amount should be adjusted upward to a point where
18 (whatever the aggregate amount of Carve-Out) the ratio as between the Debtors and the Committee
19 is two to one (*e.g.*, at \$2,000,000, the Debtors' share would be \$1,333,333 and the Committee's
20 share would be \$666,667).
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25 ¹³ This amount is in accordance with other large postpetition financing approved in other districts. *See; In re Great*
26 *Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011) [Docket No. 479] (approving, upon
27 committee's objection, increase in cap on committee's investigation budget from \$100,000 to \$250,000); *In re*
28 *TerreStar Networks, Inc.*, No. 10-15446 (SHL) (Bankr. S.D.N.Y. Nov. 18, 2010) [Docket No. 181] (approving,
upon committee's objection, increase in cap on committee's investigation budget from \$200,000 to \$250,000);
In re Saint Vincents Catholic Med. Ctr. of New York, No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 17, 2010)
[Docket No. 285] (approving, upon committee's objection, increase in cap on committee's investigation budget
from \$20,000 to \$250,000)

43. In addition, the Carve-Out must only apply to fees and expenses accrued and to be paid after the Carve-Out Trigger Date. The Final DIP Order does not clearly so provide in its current form, and it must be amended to fully preserve the bargain between the Debtors, the Committee and the secured creditors reflected in the Carve-Out. To be clear, accrued fees and costs not paid before the Carve-Out Trigger Date must be paid in addition to the Carve-Out.

K. Exercise of Remedies

44. The Final DIP Order provides that, upon an event of default under the DIP Facility, the automatic stay is immediately modified to permit the DIP Lender to exercise its remedies under the DIP Credit Agreement, including the foreclosure upon, and the sale of, the DIP Collateral. (Final DIP Order ¶ 24.) This provision is unfair to the Debtors' estates and not consistent with the rights generally granted with respect to the exercise of remedies in a DIP order context. In keeping with such precedent, the Final DIP Order should provide for a five- (5) business day notice period and the opportunity for any party in interest to be heard before foreclosure or sale of the DIP Collateral or the exercise of any other DIP Facility remedies that could be undertaken by the DIP Lender.

L. Reports and Budget

45. The Debtors are required to provide various financial reports to the DIP Lender and the Prepetition Secured Creditors, as well as a budget as revised on a periodic basis. (Final DIP Order ¶ 7.) The Debtors should be required to provide the Committee with such reports and updated budgets at the same time they are provided to the DIP Lender and the Prepetition Secured Creditors, with the Committee also having consultation rights as to the budgets.

M. Credit Bidding

46. The Final DIP Order grants to both the DIP Lender and the Prepetition Secured Creditors the right to credit bid at any sale of the Debtors assets pursuant to section 363 of the Bankruptcy Code. (Final DIP Order ¶ 15.) However, the right thus granted is too broad and

1 unqualified. Any credit bidding undertaken by either the DIP Lender or the Prepetition Secured
2 Creditors must fully comply with all of the requirements of section 363(k).

3 **N. Asset Sale Proceeds**

4 47. The Final DIP Order does not clearly specify the conditions under which the
5 “Sale Proceeds” of DIP Collateral may be applied to existing pre- or post-Petition Date debt. (Final
6 DIP Order ¶ M.) The Final DIP Order does require that “any Sale Proceeds and deposits provided
7 in connection with any asset sale” be disbursed to the Prepetition Secured Creditors only “upon
8 further order of this Court.” (*Id.*) It does not similarly require a “further Order of this Court” to
9 permit the application of Sale Proceeds to satisfy (in full or part) the DIP Facility. It must be
10 amended to so provide.
11

12 **III. RESERVATION OF RIGHTS**

13 48. The Committee expressly reserves all rights, claims, defenses, and remedies,
14 including, without limitation, to supplement and amend this Objection, to raise further and other
15 objections to the DIP Motion and the form of Final DIP Order, and to introduce evidence prior to or
16 at any hearing regarding the DIP Motion in the event that the Committee’s objections are not
17 resolved prior to such hearing. Discussions between the Debtors and the Committee’s professionals
18 are ongoing and, as such, additional items of concern may come to light.
19

20 **IV. CONCLUSION**

21 49. The Court should reject “proposed terms that would tilt the conduct of the
22 bankruptcy case; prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers
23 for the benefit of all creditors; or leverage the Chapter 11 process by preventing motions by parties-
24 in-interest from being decided on their merits.” *In Re Ames Dept. Stores, Inc.*, 115 B.R. at 38. The
25 Court should require that the foregoing changes be made and any other problematic provisions in the
26
27
28

1 Final DIP Order and DIP Credit Agreement be excised and/or amended as a condition to granting the
2 relief requested in DIP Motion on a final basis.¹⁴

3 WHEREFORE, the Committee respectfully requests that the Court modify the
4 proposed Final DIP Order and the DIP Credit Agreement as set forth herein and grant such other and
5 further relief as may be just and proper.
6

7
8 DATED: September 27, 2018

MILBANK, TWEED, HADLEY & M^cCLOY

9 /s/ Gregory A. Bray
10 GREGORY A. BRAY
11 MARK SHINDERMAN
12 JAMES C. BEHRENS

13 Proposed Counsel for the Official Committee of
14 Unsecured Creditors of Verity Health System of
15 California, Inc., et al.
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27
28 ¹⁴ To be clear, only a few of the Committee's concerns and issues apply to the proposed DIP Lender and
protections offered that lender. Almost all relate to the proposed adequate protection for the Prepetition
Secured Creditors.

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 E, 33rd Floor, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): **OFFICIAL COMMITTEE OF UNSECURED CREDITORS' LIMITED OBJECTION TO DEBTOR'S MOTION FOR AUTHORITY TO OBTAIN POSTPETITION FINANCING AND RELATED RELIEF [DKT. 31]**

_____ 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 27, 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 27, 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 27, 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.

☒ 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.

September 27, 2018 Ricky Windom
Date Printed Name

/s/ Ricky Windom
Signature

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State of California Employment Development Department
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