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but as Series 2015 Note Trustee and Series 2017 Note Trustee, respectively*

12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
LOS ANGELES DIVISION

14 In re:
15 VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
16 Debtors.

Case 2:18-bk-20151-ER
Jointly Administered
Chapter 11 Cases

**RESPONSE OF U.S. BANK NATIONAL
ASSOCIATION, AS SERIES 2015 NOTE
TRUSTEE AND SERIES 2017 NOTE
TRUSTEE, TO OBJECTION TO
DEBTORS' PROPOSED FORM OF
ORDER ON MOTION OF DEBTORS FOR
FINAL ORDER (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**

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1 U.S. Bank National Association, not individually but in its respective capacities as Series
2 2015 Note Trustee and as Series 2017 Note Trustee (collectively, the “**Notes Trustee**”), submits this
3 response to the *Objection to Debtors’ Proposed Form of Order on Motion of Debtors for Final*
4 *Orders (A) Authorizing the Debtors to Obtain Post Petition Financing, (B) Authorizing the Debtors*
5 *to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors*
6 *Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Docket No. 398] (the “**Objection**”) filed by
7 UMB Bank, N.A., as successor master indenture trustee (the “**Master Trustee**”), and Wells Fargo
8 Bank, National Association, as indenture trustee for the Series 2005 Bonds (the “**Series 2005**
9 **Trustee**”).

10 1. On October 3, 2018, the Court held a final hearing on the *Emergency Motion of*
11 *Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing, (B)*
12 *Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to*
13 *Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Docket No.
14 31] (the “**Financing Motion**”).¹ Following the hearing, the Debtors lodged a proposed form of final
15 order on the Financing Motion (the “**Proposed Final Order**”).

16 2. The Debtors included additional language in Section 5(a) of the Proposed Final Order,
17 as indicated on the record in open court, to address the court’s ruling in response to the objection of
18 the Master Trustee and the Series 2005 Trustee to the Financing Motion. In particular, the Debtors
19 revised Section 5(a) of the Proposed Final Order to provide, “[u]nless otherwise ordered by the
20 Court, the Intercreditor Agreement shall not be deemed to be amended, altered or modified by the
21 terms of this Final Order or the DIP Financing Agreements.” The Notes Trustee submits that this
22 language accurately reflects the Court’s limited ruling, and is consistent with the language that
23 Debtors’ counsel, Claude D. Montgomery, read into the record at the hearing.² The Notes Trustee
24 relied upon and agreed to this language as having resolved the objection to the Financing Motion.

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26 ¹ Capitalized terms used but not defined herein shall have the meanings given to them in the Financing Motion.

27 ² While the Notes Trustee does not have access to the hearing transcript, should the transcript be available to the Court,
28 the Notes Trustee believes that the transcript is entirely consistent with the language the Debtors incorporated into the Proposed Final Order.

1 3. In the Objection, the Master Trustee and Series 2005 Trustee now seek the addition of
2 language beyond the scope of the Court’s limited ruling that, absent an order of the Court, the
3 Intercreditor Agreement would not be deemed altered. In particular, the Master Trustee and the
4 Series 2005 Trustee propose that an additional proviso be inserted into Section 5(a), mid-sentence
5 and mid-paragraph, stating as follows: “further provided that notwithstanding the foregoing, the
6 Intercreditor Agreement shall continue to govern the relative priorities, rights and remedies of the
7 Prepetition Secured Creditors unless otherwise ordered by the Court,” In the Notes Trustee’s
8 view, this proviso does not accurately reflect the statements of the Court or Debtors’ counsel about
9 the Court’s intended modification of the order on the Financing Motion.

10 4. The alternative language suggested in the Objection subtly goes beyond preserving the
11 rights of the parties under the Intercreditor Agreement and would introduce errors. First, it
12 erroneously supposes that all of the Prepetition Secured Creditors are parties to the Intercreditor
13 Agreement, which they are not. Second, it erroneously implies that the scope of the Intercreditor
14 Agreement, which is a bilateral subordination arrangement between the Master Trustee and the
15 Notes Trustee, somehow governs broad categories of priorities, rights and remedies to which it may
16 not apply. Moreover, the preemptory clause “notwithstanding the foregoing” converts the agreed-
17 upon savings clause to an affirmative and improper alteration of the adequate protection rights
18 granted in the prior clauses of Section 5(a) to both parties and non-parties to the Intercreditor
19 Agreement. The Notes Trustee has not consented to, and does not consent to, its inclusion.

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1 WHEREFORE, for the foregoing reasons, the Notes Trustee respectfully requests that the
2 Court enter the Proposed Final Order in the form submitted by the Debtors.

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4 Dated: October 4, 2018

MCDERMOTT WILL & EMERY LLP

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By: /s/ Jason D. Strabo
Jason D. Strabo

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MASLON LLP

8

By: /s/ Clark T. Whitmore
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*Attorneys for U.S. Bank National Association, not
individually but as Series 2015 Note Trustee and Series
2017 Note Trustee, respectively*

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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: McDermott Will & Emery LLP, 2049 Century Park East, 38th Floor, Los Angeles, CA 90067-3218.

A true and correct copy of the foregoing document entitled RESPONSE OF U.S. BANK NATIONAL ASSOCIATION, AS SERIES 2015 NOTE TRUSTEE AND SERIES 2017 NOTE TRUSTEE, TO OBJECTION TO DEBTORS' PROPOSED FORM OF ORDER ON MOTION OF DEBTORS FOR FINAL ORDER (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 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 October 4, 2018, I checked the CM/ECF docket for this bankruptcy case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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

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Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On October 4, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case 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.

Claude D. Montgomery, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020-1000

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

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David W. Lively, Matthew P. James, Monique D. Jewett-Brewster, Hopkins & Carley, 70 S First Street, San Jose, CA 95113

Marilyn Klinger, Ryan B. Luther, SMTO Law, LLP, 355 S. Grand Avenue, Suite 2450, Los Angeles, CA 90071

John Ryan Yant, Carlton Fields Jordan Burt, P.A. 4221 W. Boy Scout Blvd., Suite 1000 Tampa, FL 33607-5780

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 _____, 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 Delivery:
Honorable Ernest Robles
United States Bankruptcy Court for the Central District of California
Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

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.

October 4, 2018

Jason D. Strabo

/s/ Jason D. Strabo

Date

Printed Name

Signature