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Attorneys for Swinerton Builders

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOST ANGELES DIVISION

In re:

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al*,

Debtors and Debtors In Possession.

☒ Affects All Debtors

☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital
Foundation
☐ Affects St. Francis Medical Center of
Lynnwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul 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. Judge Ernest Robles

**MOTION PURSUANT TO
BANKRUPTCY RULE 7052(B) FOR
AMENDMENT OF FINDINGS IN FINAL
ORDER (I) AUTHORIZING
POSTPETITION FINANCING,
(II) AUTHORIZING USE OF CASH
COLLATERAL, (III) GRANTING LIENS
AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS,
(IV) GRANTING ADEQUATE
PROTECTION, (V) MODIFYING
AUTOMATIC STAY, AND (VI)
GRANTING RELATED RELIEF (DOC.**

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1 Swinerton Builders (“Swinerton”), a creditor secured by a mechanic’s lien on the Seton
2 Medical Center real property, moves for an additional finding and a corresponding amendment of
3 the judgment in the Court’s Final Order (I) Authorizing Postpetition Financing, (II) Authorizing
4 Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense
5 Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting
6 Related Relief (“Final Order”) (Doc. No. 409). Swinerton’s motion is made pursuant to Federal
7 Rule of Bankruptcy Procedure 7052(b), which allows a court to amend its findings or make
8 additional findings and to amend the judgment accordingly.

9 The Court overruled Swinerton’s objection to the DIP priming lien on the ground that:
10 “There is no reason why Swinerton’s lien should not be primed in the same manner as the liens of
11 the other secured creditors.” Tentative Ruling at 12 (Doc. No. 392), incorporated into the Final
12 Order (Doc. No. 409) at 6. However, in exchange for the priming of the other secured creditors’
13 liens the Final Order provides the other secured creditors with adequate protection. The Final
14 Order contains no provision of adequate protection for Swinerton. Swinerton requests that the
15 Court remedy this omission by amending the Final Order to provide Swinerton with adequate
16 protection similar to the adequate protection provided to the other secured creditors.

17 In Section N of the Final Order, the Court expressly finds:

18 In exchange for the priming of the Prepetition Liens and the VMF
19 Liens set forth below, the Prepetition Secured Creditors and
20 McKesson shall be entitled to receive adequate protection, as set
21 forth in this Final Order, pursuant to sections 361, 363 364 of the
22 Bankruptcy Code, for any diminution in the value of their
23 respective interests in the Prepetition Collateral or VMF Collateral
24 resulting from, among other things, the subordination to the Carve
Out (as defined herein) and to the DIP Liens (as defined herein), the
Debtors’ use, sale or lease of such Prepetition Collateral or VMF
Collateral, including Cash Collateral, and the imposition of the
automatic stay from and after the Petition Date (collectively, and
solely to the extent of such diminution in value, the “***Diminution in
Value***”).

25 Swinerton requests that the Court amend the Final Order by adding a Finding, comparable
26 to Section N, addressing adequate protection for Swinerton’s lien on the Seton Medical Center
27 property. Swinerton requests that the Final Order be amended to include the following text as an
28 additional Finding.

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1 Swinerton's lien on the Seton Medical Center property should be
2 primed in a manner substantially similar to the priming of the liens
3 of the Prepetition Secured Creditors. Specifically, in exchange for
4 the priming of Swinerton's lien, Swinerton shall be entitled to
5 receive adequate protection, pursuant to Bankruptcy Code sections
6 361, 363 and 364, for any diminution in the value of its interest in
7 the Seton Medical Center property resulting from, among other
8 things, the subordination to the Carve Out (as defined herein) and to
9 the DIP Liens (as defined herein), the Debtors' use, sale or lease of
10 the Seton Medical Center property, and the imposition of the
11 automatic stay from and after the Petition Date (collectively, and
12 solely to the extent of such diminution in value, the "***Diminution in***
13 ***Value***).

14 Swinerton requests that the Final Order be amended accordingly to provide Swinerton
15 with a superpriority claim, as set forth in Bankruptcy Code section 507(b), substantially similar to
16 the superpriority claim provided to the Prepetition Secured Creditors in section 5(d) of the Final
17 Order. Doc. No. 409 at 23-24. Swinerton requests the following text be added to the Final Order.

18 To the extent of the Diminution in Value of Swinerton's interest in
19 the Seton Medical Center property, Swinerton shall be granted and
20 allowed a superpriority administrative expense claim (the
21 "Swinerton Superpriority Claim"), which shall have priority (except
22 with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim,
23 (iii) the Carve Out, and (iv) any claims granted by Holdings
24 pursuant to those certain deeds of trust issued in connection with
25 the MOB Financing and the Moss Deed of Trust) in the Chapter 11
26 Cases under section 363(c)(1), 503(b) and 507(b) of the Bankruptcy
27 Code and otherwise over all administrative expense claims and
28 unsecured claims against the Debtors and their estates, now existing
or hereafter arising of any kind or nature whatsoever, including,
without limitation, administrative expenses of the kind specified or
ordered pursuant to sections 105, 326, 328, 330, 331, 503(a),
503(b), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113, and 1114 of
the Bankruptcy Code, and upon entry of this Final Order, section
506(c) of the Bankruptcy Code, whether or not such expenses or
claims may become secured by a judgment Lien, or other
nonconsensual Lien, levy or attachment.

Amending the Final Order to add the two requested provisions would effectuate the
Tentative Ruling by priming Swinerton's lien "in the same manner as the liens of the other
secured creditors."

Dated: October 17, 2018

Respectfully submitted,

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By: /s/ Nathan A. Schultz
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