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Debtors In Possession

**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
- ☐ 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 Lynwood 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 M. Robles

NOTICE OF HEARING (WITH COURT-APPROVED DATES) AND MOTION OF THE DEBTORS FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF DEBTORS' PLAN; AND (IV) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date and Time:

Date: October 2, 2019
Time: 10:00 a.m. (Pacific Time)
Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012



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1 **PLEASE TAKE NOTICE** that, at the above referenced date, time and location, the Court
2 shall hold a hearing before the Honorable Ernest M. Robles, United States Bankruptcy Judge, on
3 the *Motion of the Debtors for an Order Approving: (I) Proposed Disclosure Statement;*
4 *(II) Solicitation And Voting Procedures; (III) Notice And Objection Procedures for Confirmation*
5 *Of Debtors' Plan; And (IV) Granting Related Relief* (the "Motion") filed by Verity Health System
6 of California, Inc. ("VHS") and the affiliated debtors, the debtors and debtors in possession in the
7 above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), as set forth in the
8 Court's *Order Setting Hearing on Motion for Approval of Disclosure Statement for October 2,*
9 *2019, at 10:00 a.m.* [Docket No. 2998] (the "Order").¹ On September 3, 2019, the Debtors filed
10 the *Debtors Chapter 11 Plan of Liquidation (Dated September 3, 2019)* [Docket No. 2993] (the
11 "Plan") and related disclosure statement [Docket No. 2994] (the "Disclosure Statement").

12 **PLEASE TAKE FURTHER NOTICE** that the Motion is based upon this Notice, the
13 accompanying Memorandum of Points and Authorities, the *Declaration of Richard G. Adcock In*
14 *Support of Emergency First-Day Motions* [Docket No. 8], the record in these cases and all other
15 matters of which this Court may take judicial notice pursuant to Rule 201 of the Federal Rules of
16 Evidence, the arguments of counsel to be made at the hearing, and all other admissible evidence
17 properly brought before the Court at or before the hearing on this Motion, if any.

18 **PLEASE TAKE FURTHER NOTICE** that any party may review and obtain a copy of
19 the Motion, Plan, and Disclosure Statement, by visiting the following website
20 <https://www.kccllc.net/verityhealth>. Parties may also contact and request a copy from: Kurtzman
21 Carson Consultants LLC ("KCC"), the Debtors' Solicitation Agent, by sending a written request
22 via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222 N.

23 _____
24 ¹ This *Notice of Hearing (With Court-Approved Dates) Motion of the Debtors for an Order*
25 *Approving: (I) Proposed Disclosure Statement; (II) Solicitation and Voting Procedures;*
26 *(III) Notice and Objection Procedures for Confirmation of Debtors' Plan; and (IV) Granting*
27 *Related Relief* is filed solely to update the notice attached to the Motion with the hearing and
28 briefing dates set forth in the Order. The Debtors have filed and served a notice [Docket No.
3003] with respect to the hearing date and deadlines, pursuant to the Order and in accordance with
Rule 2002(b) of the Federal Rules of Bankruptcy Procedure. No changes have been made to the
Motion filed at Docket No. 2295.

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1 Pacific Coast Highway, Suite 300, El Segundo, CA 90245. Additionally, copies of the Motion,
2 Disclosure Statement, and Plan are on file with the Office of the Clerk of the Bankruptcy Court for
3 review during normal business hours and are also available on the KCC website at
4 <https://www.kccille.net/verityhealth>. A copy may also be obtained by e-mail request to:
5 Verityinfo@kccllc.com.

6 **PLEASE TAKE FURTHER NOTICE** that any party opposing or responding to the
7 Motion must file and serve the response (“Response”), pursuant to the Order and Local
8 Bankruptcy Rule 9013-1(f), on or prior to **September 18, 2019**, on the moving party and the
9 Office of the United States Trustee. A Response must be a complete written statement of all
10 reasons in opposition thereto or in support, declarations and copies of all evidence on which the
11 responding party intends to rely, and any responding memorandum of points and authorities.

12 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, any replies to any
13 Response must be filed and served on or prior to **September 25, 2019**.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
15 1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to
16 be consent to the relief requested therein.

17 Dated: September 4, 2019

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SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

20 By /s/ Tania M. Moyron
21 Tania M. Moyron

22 Attorneys for Verity Health Systems
23 of California, Inc., *et al.*

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor” and, collectively, the “Debtors”), request (the “Motion”) approval of (i) the *Disclosure Statement Describing Debtors’ Chapter 11 Plan Of Liquidation (Dated September 3, 2019)* (the “Disclosure Statement”)¹ filed concurrently herewith, (ii) the solicitation and voting procedures proposed herein, (iii) the proposed notice and objection procedures for confirmation of the *Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)* (the “Plan”) filed concurrently herewith, and (iv) granting related relief as set forth more fully herein. In support of the Motion, the Debtors refer to the *Declaration of Richard G. Adcock In Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”). Concurrently herewith, the Debtors have filed an application for an order setting the hearing on this Motion on shortened notice. The Debtors respectfully submit that Disclosure Statement contains “adequate information,” as that phrase is defined in § 1125(a)(1)², and, thus, request the Court grant the Motion.

II.

JURISDICTION, VENUE, AND REQUESTED RELIEF

The Bankruptcy Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

1. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Capitalized terms not otherwise defined herein have the same definitions set forth in the Disclosure Statement.

² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. All “Local Bankruptcy Rule” references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

2. The statutory predicates for the relief sought herein are §§ 105, 327, 328, 1125, and 1126; Bankruptcy Rules 2002, 2014, 3016, 3017, 3018, and 3020; and Local Bankruptcy Rules 2002-1 and 3018-1.

III.

BACKGROUND

A. General Background.

3. On August 31, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code (the “Cases”). The Cases are jointly administered before the Bankruptcy Court. *See* Docket No. 17. Since the Petition Date, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

4. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that, on the Petition Date, operated six acute care hospitals: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), Seton Medical Center (“SMC”), and Seton Medical Center Coastsides (“Seton Coastsides” and, together with OCH, SLRH, SFMC, and SVMC, the “Hospitals”). SMC and Seton Coastsides (collectively, “Seton”) operated under one consolidated acute care hospital license.

5. VHS, the Hospitals, and their affiliated entities (collectively, “Verity Health System”) have operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. *See* First-Day Decl., at 4, ¶ 12. The scope of the services provided by the Verity Health System are exemplified by the fact that in 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*, at 4, ¶ 12.

6. Additional background facts on the Debtors, including an overview of the Debtors’ business, historical operations, capital structure, employment plans, prior restructuring efforts and liquidity issues that led to these chapter 11 Cases are contained in the First-Day Declaration. Below is an abbreviated description of major historical events that preceded the chapter 11 filing.

B. Events Leadings to the Bankruptcy Cases.

7. Between 1995 and 2015, the Hospitals incurred substantial operating losses. During that time period, Daughters of Charity of St. Vincent de Paul, Province of the West (the “Daughters of Charity”) and the Daughters of Charity Health System (“DCHS”) attempted to find a solution which would resolve the operating losses, either through a sale of some or all of the hospitals or a merger with a more financially sound partner. These efforts were not successful, and the health system’s losses continued to mount.

8. In 2015, DCHS marketed the health system for sale and focused on offers that maintained the system as a whole, including the assumption of all existing obligations. In July 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC (“BlueMountain”), a private investment firm, to recapitalize its operations and transition leadership of the health system to the new Verity Health System (the “BlueMountain Transaction”). In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of \$100 million, arrange loans for another \$160 million to the system, and manage operations, with an option to buy the health system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”). DCHS’ name was changed to VHS, and Integrity Healthcare, LLC (“Integrity”) was formed to carry out the management services under a new management agreement.

9. On December 3, 2015, the California Attorney General (the “Attorney General”) approved the BlueMountain Transaction, subject to certain conditions. The Attorney General conditions were imposed for periods ranging from 5 to 15 years, and included, *inter alia*, limits on transfers of control; maintenance of specific health services and specific bed counts; required participation in Medicare and Medi-Cal programs; and required levels of charity care.

10. Under the Restructuring Agreement, VHS, OCH, SLRH, SFMC, SVMC, and Seton, were converted from religious corporations to public benefit corporations.

11. Despite BlueMountain’s infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system continued to incur losses.

1 12. In July 2017, NantWorks, LLC acquired a controlling stake in Integrity, and
2 brought in a new CEO, CFO, and COO. NantWorks also loaned another \$148 million to the
3 Debtors.

4 13. Despite the infusion of capital and new management, losses continued to mount to
5 approximately \$175 million annually on a cash flow basis. It soon became apparent that the
6 problems facing the Verity Health System were too large to solve without a formal, court-
7 supervised restructuring,

8 14. Accordingly, the Debtors commenced these Cases with the objective of protecting
9 the original legacy of the Daughters of Charity to the maximum extent possible. The Debtors
10 pursued a strategy to retire debt incurred over the past 18 years so the Hospital facilities and work
11 force can continue their critical operations under new ownership and leadership without the
12 accumulated crisis of the past.

13 **C. Appointment of Committee.**

14 15. On September 17, 2018, the Office of the United States Trustee appointed an
15 Official Committee of Unsecured Creditors in the Debtors' Cases. [Docket No. 197].

16 **IV.**

17 **DISCLOSURE STATEMENT AND PLAN**

18 Concurrently herewith, the Debtors filed the proposed Plan and related Disclosure
19 Statement. The Debtors worked diligently with their advisors to prepare the Plan, which
20 maximizes value for the estates for the benefit of creditors. The Debtors concluded, after a careful
21 analysis of the Debtors' complex corporate and financial structure, that a single plan of liquidation
22 contemplating the "deemed" substantive consolidation of all Debtors—rather than seventeen
23 separate plans—will maximize value and avoid unnecessary costs and potential litigation. Thus,
24 as more fully described in the Disclosure Statement, the Plan provides for the "deemed"
25 substantive consolidation of the Debtors solely for purposes of implementation of the Plan and
26 distributions to creditors otherwise in accordance with the Bankruptcy Code's distribution and
27 classification provisions. The Disclosure Statement describes further facts and legal bases that
28 support substantive consolidation.

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As set forth in the Disclosure Statement, the net proceeds of the SCC Sale and the SGM Sale will be the primary source of funding for distributions under the Plan. The Debtors also anticipate other sources of recovery, including, but not limited to, recovery of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action, including Avoidance Actions, to be pursued by the Liquidating Trust.

The Debtors propose the following key dates in connection with the approval of the Disclosure Statement and confirmation of the Plan:³

| Event Date/Deadline | Event Date/Deadline |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Disclosure Statement Objection Deadline | September 18, 2019 |
| Deadline to File Reply to Disclosure Statement Objections | September 25, 2019 |
| Disclosure Statement Hearing | October 2, 2019 at 10:00 a.m. (Pacific Time) |
| Solicitation Commencement Deadline | Five (5) business days after entry of order approving the Disclosure Statement |
| Voting Record Date | October 2, 2019 |
| Deadline to Object or to File a Motion to Estimate Claims for Voting Purposes | October 31, 2019 |
| Voting Objection Deadline | October 31, 2019 |
| Voting Deadline | November 7, 2019 at 4:00 p.m. (Pacific Time) |
| Confirmation Objection Deadline | November 7, 2019 |
| Deadline to File Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order and Response to Objections to the Confirmation | November 14, 2019 |
| Confirmation Hearing | November 21, 2019 at 10:00 a.m. (Pacific Time) |

The Debtors respectfully request entry of an order: (i) approving the Disclosure Statement as containing “adequate information,” as that term is defined in § 1125(a)(1); (ii) establishing procedures for solicitation and tabulation of votes to accept or reject the Plan, including (a) approving the form and manner of the solicitation packages, (b) approving the form and manner of notice of the hearing to confirm the Plan, (c) establishing a voting record date and approving

³ The Debtors filed an application for an order setting the hearing on this Motion on shortened notice contemporaneously herewith. The dates set forth herein are subject to the Court’s ruling on the Debtors’ application and the Court’s availability with respect to the proposed confirmation schedule.

1 procedures for distributing the solicitation packages, (d) approving the forms of ballots, (e)
2 establishing the deadline for the receipt of ballots, and (f) approving procedures for tabulating
3 acceptances and rejections of the Plan; (iii) establishing procedures with respect to, and the
4 deadline for filing objections to, the confirmation of the Plan; and (iv) granting related relief.

5 **V.**

6 **ARGUMENT**

7 **A. The Disclosure Requirements of the Bankruptcy Code**

8 Pursuant to § 1125, a plan proponent must provide holders of impaired claims with
9 “adequate information” regarding a proposed chapter 11 plan. In that regard, § 1125(a)(1)
10 provides in pertinent part that:

11 “adequate information” means information of a kind, and in sufficient detail, as far
12 as is reasonably practicable in light of the nature and history of the debtor and the
13 condition of the debtor’s books and records, including a discussion of the potential
14 material Federal tax consequences of the plan to the debtor, any successor to the
15 debtor, and a hypothetical investor typical of the holders of claims or interests in the
16 case, that would enable such a hypothetical investor of the relevant class to make an
17 informed judgment about the plan

18 11 U.S.C. § 1125(a)(1). Thus, a disclosure statement must as a whole, provide information that is
19 reasonably designed to permit an informed judgment by impaired creditors or equity or other
20 interest holders entitled to vote on a plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P.
21 9th Cir. 1996) (“At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate
22 information about the plan before the creditor is asked for a vote.”); *In re Art & Architecture*
23 *Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal.
24 Mar. 18, 2016) (“The primary purpose of a disclosure statement is to give creditors and interest
25 holders the information they need to decide whether to accept the plan.”) (citing *Captain Blythers,*
Inc. v. Thompson (In re Captain Blythers, Inc.), 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re*
Arnold, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

26 In examining the adequacy of the information contained in a disclosure statement, the
27 Bankruptcy Court has broad discretion. *See Art & Architecture Books of the 21st Century*, 2016
28 WL 1118743, at *14 (“Bankruptcy judges have broad discretion in reviewing disclosure

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1 statements and what constitutes adequate information and any particular instance will develop on a
2 case-by-case basis.”); *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (same); *Kirk v.*
3 *Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more
4 clear in granting broad discretion to bankruptcy judges under § 1125(a)”; *Menard-Sanford v.*
5 *Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *Tex. Extrusion Corp. v.*
6 *Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988); *see also In re*
7 *Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress intentionally drew vague
8 contours of what constitutes adequate information so that bankruptcy courts may exercise
9 discretion to tailor them to each case’s particular circumstances); *In re Dakota Rail Inc.*, 104 B.R.
10 138, 143 (Bankr. D. Minn. 1989) (a bankruptcy court has “wide discretion to determine . . .
11 whether a disclosure statement contains adequate information, without burdensome, unnecessary,
12 and cumbersome detail”).

13 Accordingly, the determination of whether a disclosure statement contains adequate
14 information is to be made on a case-by-case basis, focusing on the unique facts and circumstances
15 of each case. *See In re Diversified Inv’rs Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988)
16 (“According to the legislative history, the parameters of what constitutes adequate information are
17 intended to be flexible.”); *see also In re PC Liquidation Corp.*, 383 B.R. 856 at 866 (E.D.N.Y.
18 2008); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination is
19 largely within the discretion of the bankruptcy court.”); *In re Egan*, 33 B.R. 672, 674-75 (Bankr.
20 N.D. Ill. 1983). This discretion provides flexibility and facilitates the effective reorganization of
21 the different types of chapter 11 debtors by accommodating the varying circumstances
22 accompanying chapter 11 cases. *See H.R. REP. NO. 595*, at 408-09, 95th Cong. (1st Sess. 1977).

23 The determination of whether adequate information has been provided should take account
24 of expertise and resources, including outside advisors and relevant information already possessed
25 or publicly available, of the hypothetical investor of each class of claims or interests from which
26 classes the acceptance or rejection of the Plan is solicited after the commencement of the cases.
27 *See In re Zenith Elec. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

B. The Proposed Disclosure Statement Meets the Applicable Standards.

The Disclosure Statement provides “adequate information” to allow holders of Claims in the Voting Classes (as defined below) to make an informed decision about whether to vote to accept or reject the Plan. Specifically, the Disclosure Statement contains a number of categories of information that courts consider “adequate information,” including:

- (i) An overview of the Plan (*see* Disclosure Statement, Section V);
- (ii) The corporate structure and indebtedness of the Debtors (*see id.*, Sections II.C., III);
- (iii) The operation of the Debtors’ business (*see id.*, Sections II, III);
- (iv) Key events leading to the commencement of the Chapter 11 Cases (*see id.*, Section III);
- (v) Significant events that occurred during the Chapter 11 Cases (*see id.*, Section IV);
- (vi) Information regarding Litigation (*see* Section IV);
- (vii) Financial information that would be relevant to determinations of whether to accept or reject the Plan (*see id.*, Section V);
- (viii) Tax consequences of the Plan (*see id.*, Sections IX, X);
- (ix) Risk factors affecting the Plan and the Debtors (*see id.*, Section XIII);
- (x) Requirements for confirmation of the Plan (*see id.*, Section XII);
- (xi) A liquidation analysis under chapter 7 of the Bankruptcy Code (*see id.*, Section XII at K); and
- (xii) Description of Plan Releases (*see id.*, Section VIII).

The Disclosure Statement also provides adequate notice of the release, exculpation, and injunction provisions in the Plan. Pursuant to Bankruptcy Rule 3016(c), “[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement [must] describe in specific and conspicuous language all acts to be enjoined and identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c). The Disclosure Statement provides a detailed description of releases and exculpations to be provided under the Plan. *See* Disclosure Statement, § VIII.B., C., D.

1 Furthermore, the Disclosure Statement provides an analysis of the alternatives to
2 confirmation and consummation of the Plan. *See id.*, § X.II.K. (setting forth the Debtors’
3 liquidation analysis). Accordingly, the Debtors recommend that holders of claims eligible to vote
4 on the Plan vote to accept the Plan because it is the most efficient and effective means to provide
5 remaining recoveries to holders of claims against the Debtors’ estates.

6 The Disclosure Statement also contains a detailed description of means of implementation,
7 which includes the “deemed” substantive consolidation of the Debtors and the applicable factors
8 and legal basis. The Disclosure Statements sets forth adequate information concerning (i) the
9 legal requirements to establish deemed substantive consolidation, and (ii) the factual bases
10 supporting the Debtors’ request for deemed substantive consolidation. It also provides notice that
11 the Disclosure Statement and Plan shall be deemed a motion requesting that the Bankruptcy Court
12 approve the deemed substantive consolidation contemplated by the Plan at the Confirmation
13 Hearing, unless otherwise separately scheduled. *See* Disclosure Statement, Section XIV.

14 Specifically, the Disclosure Statement sets forth the effect of deemed substantive
15 consolidation and the facts of the cases that satisfy the standard for deemed substantive
16 consolidation in the Ninth Circuit. The facts relevant to the Ninth Circuit analysis and identified
17 in the Disclosure Statement include: (i) the impact of the conditions imposed by the Attorney
18 General and the extent to which the conditions required that the Debtors act as a single economic
19 unit; (ii) the manner in which the Debtors booked significant transfers on their general account
20 ledgers between entities and the effect the claims will have on recoveries among the unsecured
21 creditors of each Debtor; (iii) the issues raised by reconciliation of claims and the allocation of
22 liabilities among the Debtors; (iv) the Debtors’ lending and business relationships with the
23 creditors and the extent to which the Debtors dealt with creditors as a single enterprise; and
24 (v) facts reflecting the extent to which the proposed deemed substantive consolidation is
25 administratively convenient and benefits creditors. Accordingly, the Disclosure Statement
26 contains the pertinent information necessary for holders of impaired claims to make an informed
27 decision about whether to vote to accept or reject the Plan, including, among other things,

1 information regarding the effect and basis for the Debtors' request for deemed substantive
2 consolidation.

3 The Debtors respectfully submit that the Disclosure Statement complies with all aspects of
4 § 1125. The Debtors will demonstrate at the hearing to approve the Disclosure Statement that the
5 Disclosure Statement addresses the information set forth above in a manner that provides holders
6 of impaired unsecured claims that are entitled to vote to accept or reject the Plan with adequate
7 information within the meaning of § 1125 and should therefore be approved.

8 **VI.**

9 **ESTABLISHING PROCEDURES FOR SOLICITATION OF THE PLAN**

10 **A. Approval of Form and Manner of Solicitation Package.**

11 Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of
12 claims for the purpose of soliciting their votes and providing adequate notice of the hearing on
13 confirmation of a plan of reorganization:

14 Upon approval of a disclosure statement,—except to the extent that the court orders
15 otherwise with respect to one or more unimpaired classes of creditors or equity
16 security holders—the debtor in possession, trustee, proponent of the plan, or clerk
as the court orders shall mail to all creditors and equity security holders, and in a
chapter 11 reorganization case shall transmit to the United States trustee:

- 17 (1) the plan or a court-approved summary of the plan;
18 (2) the disclosure statement approved by the court;
19 (3) notice of the time within which acceptances and rejections of the
20 plan may be filed; and
21 (4) any other information as the court may direct, including any court
22 opinion approving the disclosure statement or a court-approved
23 summary of the opinion.

24 In addition, notice of the time fixed for filing objections and the hearing on
25 confirmation shall be mailed to all creditors and equity security holders in
26 accordance with Rule 2002(b), and a form of ballot conforming to the appropriate
Official Form shall be mailed to creditors and equity security holders entitled to
vote on the plan

27 Fed. R. Bankr. P. 3017(d).
28

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As further discussed below, if the Bankruptcy Court approves the Disclosure Statement as containing adequate information pursuant to § 1125, the Debtors propose to distribute by First Class Mail to holders of claims in the classes entitled to vote on the Plan (the “Voting Classes”)⁴ the Confirmation Hearing Notice (as defined below), as well as a package containing solicitation materials (the “Solicitation Package”) including:

- a) the Bankruptcy Court’s Order approving the Disclosure Statement (the “Disclosure Statement Order”), excluding the exhibits attached thereto;
- b) the applicable ballot (a “Ballot”), the proposed forms of which will be filed with the Court as a supplement to this Motion, together with a pre-paid, pre-addressed return envelope and, either paper copies of or electronic copies in “pdf” format on a CD-ROM or USB flash drive containing the Disclosure Statement (with the Plan and other exhibits attached thereto); and
- c) any supplemental documents filed with the Bankruptcy Court and such other materials as the Bankruptcy Court may direct, including any letters in support of the Plan.

The Debtors submit that such materials and manner of service satisfy the requirements of Bankruptcy Rule 3017(d).

Kurtzman Carson Consultants LLC (“KCC”) will serve as the Debtors’ Solicitation Agent (the “Solicitation Agent”) and provide access to Solicitation Packages, among other things. Solicitation Packages (except for Ballots) will be available (i) for download at <https://www.kccllc.net/verityhealth>, (ii) by email request to verityinfo@kccllc.com, (iii) by written request via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222

⁴ The Voting Classes consist of Class 2 (Secured 2005 Revenue Bond Claims), Class 3 (Secured 2015 Notes Claims), Class 4 (Secured Series 2017 Revenue Note Claims), Class 5 (Secured MOB I Financing Claims), Class 6 (Secured MOB II Financing Claims), Class 7 (Secured Mechanics Lien Claims), Class 8 (PBGC Claims), Class 9 (RPHE Claims), Class 10 (General Unsecured Claims), Class 11 (Convenience Claims), Class 12 (Insured Claims), and Class 13 (2016 Data Breach Claims). Class 14 (Subordinated General Unsecured Claims) and Class 15 (Interests) are deemed to reject the Plan, and, therefore, not entitled to vote. Similarly, Class 1A (Other Priority Claims) and Class 1B (Secured PACE Tax Financing Claims) are deemed not impaired, and, therefore, deemed to accept the Plan and not entitled to vote.

1 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245, and (iv) on the Bankruptcy Court's
2 website.⁵

3 **B. Approval of Form and Manner of Confirmation Hearing Notice**

4 Upon approval of the Disclosure Statement pursuant Disclosure Statement Order, the
5 Debtors will serve or cause to be served the following documents on the following parties, as
6 applicable: (i) a written notice to the Voting Classes (the "Confirmation Hearing Notice") of
7 (a) the Bankruptcy Court's approval of the Disclosure Statement, (b) the deadline for voting on the
8 Plan, (c) the time, date, and place for the hearing to consider confirmation of the Plan, and (d) the
9 deadline and procedures for filing objections to the confirmation of the Plan, together with the
10 Solicitation Package; (ii) a written notice to the non-voting accepting classes (the "Notice of Non-
11 Voting Accepting Status and Confirmation Hearing") that sets forth such parties' Plan treatment, a
12 summary of the Plan's release, injunction, and exculpation provisions, and certain information
13 regarding the hearing to consider confirmation of the Plan and related deadlines; and (iii) a written
14 notice to the non-voting rejecting classes (the "Notice of Non-Voting Rejecting Status and
15 Confirmation Hearing") that sets forth such parties' Plan treatment, a summary of the Plan's
16 release, injunction, and exculpation provisions, and certain information regarding the hearing to
17 consider confirmation of the Plan and related deadlines. The relevant notices will be served on the
18 appropriate parties by First Class Mail. The Debtors will file the proposed form of notices prior to
19 the hearing on this Motion.

20 Consistent with § 1126(f) and Bankruptcy Rule 3017(d), the Debtors propose to send the
21 Notice of Non-Voting Accepting Status and Confirmation Hearing to holders of Administrative
22 Claims, Professional Claims, Statutory Fees, Priority Tax Claims, Administrative DIP Lender
23 Claims, Other Priority Claims, and Secured PACE Tax Financing Claims (the
24 "Unclassified/Unimpaired Claimholders"), which classes are unclassified or deemed to accept the
25 Plan,.

26 _____
27 ⁵ <http://www.cacb.uscourts.gov/> (a PACER login and password are required to access documents
28 on the Bankruptcy Court's website).

1 Consistent with § 1126(g) and Bankruptcy Rule 3017(d), the Debtors proposed to send the
2 Notice of Non-Voting Rejecting Status and Confirmation Hearing to holders of Subordinated
3 General Unsecured Claims and Interests, which classes are deemed to reject the Plan.

4 The Debtors submit that such notices satisfy the requirements of the Bankruptcy Code and
5 Bankruptcy Rule 3017(d). Accordingly, the Debtors request that the Bankruptcy Court determine
6 that the Debtors are not required to distribute copies of the Plan, Disclosure Statement, or
7 Disclosure Statement Order to any of the Unclassified/Unimpaired Claimholders, holders of
8 Subordinated General Unsecured Claims, or Interest holders, unless otherwise requested in writing
9 or by the terms of the Disclosure Statement Order.

10 **C. Establishment of Voting Record Date and Approving of Procedures for Distribution**
11 **of Solicitation Packages.**

12 Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection
13 with the confirmation of a bankruptcy plan, “creditors and equity security holders shall include
14 holders of stock, bonds, debentures, notes and other securities of record on the date the order
15 approving the disclosure statement is entered or another date fixed by the court, for cause, after
16 notice and a hearing.” Fed R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar
17 provision regarding determination of the record date for voting purposes.

18 The Debtors request that the Bankruptcy Court establish October 2, 2019, as the record
19 date (the “Voting Record Date”), for purposes of determining the claimholders that are entitled to
20 vote (subject to the voting procedures set forth below) on the Plan or, in the case of non-voting
21 classes, for purposes of determining the claimholders to receive certain Plan-related materials.
22 The Debtors expect that they will be able to commence distribution of (i) the Confirmation
23 Hearing Notice and Solicitation Package to the Voting Classes and (ii) the Notice of Non-Voting
24 Accepting Status and Confirmation Hearing and/or Notice of Non-Voting Rejecting Status and
25 Confirmation Hearing to parties-in-interest outside of the Voting Classes, as applicable, as set
26 forth herein, within five (5) business days after the date of entry of the Disclosure Statement
27 Order, or as soon as reasonably practicable thereafter (the “Solicitation Commencement Date”).
28

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1 In the case of Class 2 (Secured 2005 Revenue Bond Claims), certain brokerage firms and
2 banks or their agents (collectively, the “Nominees”) hold Class 2 claims rather than the individual
3 holders themselves (collectively, the “Beneficial Holders”). To ensure proper tabulation of votes
4 for all Secured 2005 Revenue Bond Claims, the Debtors will deliver Solicitation Packages to
5 holders of record as of the Voting Record Date, including Nominees, as reflected on security
6 position reports provided by The Depository Trust Company (“DTC”). Additionally, the Debtors
7 will distribute “Master Ballots” and “Beneficial Holder Ballots” to Nominees under separate cover
8 from the Solicitation Packages delivered to all other holders of record. The Beneficial Holder
9 Ballots will instruct each Beneficial Holder voting on the Plan through a Nominee to return the
10 Beneficial Holder Ballot to the appropriate Nominee in sufficient time for such Nominee to timely
11 cast votes to accept or reject the Plan on behalf of the Beneficial Holders, or otherwise follow the
12 directions of the Nominee. The Nominee will complete and return a Master Ballot, which the
13 Debtors will tabulate for purposes of determining votes for Class 2.

14 The Debtors shall cause to be distributed electronically the Disclosure Statement Order
15 (excluding exhibits thereto), the Confirmation Hearing Notice, the Disclosure Statement (together
16 with the Plan and other exhibits attached thereto), and such other materials as the Bankruptcy
17 Court may direct (excluding a Ballot) to, among other parties (to the extent such parties did not
18 otherwise receive the Solicitation Package):

- 19 a) the U.S. Trustee;
- 20 b) the Internal Revenue Service;
- 21 c) the California Attorney General; and
- 22 d) all persons and entities that have filed a request for service of filings in the
- 23 Debtors’ Cases pursuant to Bankruptcy Rule 2002.

24 The Debtors anticipate that some of the notices served in the Debtors’ Cases, including
25 notices of the hearing to approve the Disclosure Statement and notices of the commencement of
26 the Debtors’ Cases, have been or may be returned, including because certain notice parties have
27 foreign addresses. The Debtors believe that it would be costly and inefficient to distribute the
28 Solicitation Package to the same addresses to which undeliverable notices were previously

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1 distributed. Therefore, the Debtors seek the Bankruptcy Court's approval for a departure from the
2 strict notice rule, excusing the Debtors from distributing Solicitation Packages to those entities
3 listed at such addresses if the Debtors are not provided with updated addresses for such entities
4 before the Solicitation Commencement Date. Further, if the Debtors send Solicitation Packages
5 that are deemed undeliverable and are not provided with a forwarding or more updated address,
6 the Debtors seek that the Debtors be excused from attempting to re-deliver Solicitation Packages
7 to such entities. The Debtors submit that good cause exists for implementing the aforementioned
8 notice and service procedures.

9 **D. Approval of Forms of Ballot**

10 Bankruptcy Rule 3017(d) requires that the Debtors mail a form of Ballot to "creditors and
11 equity security holders entitled to vote on the plan." The Debtors propose to distribute to each
12 holder of a claim in each Voting Class a Ballot, including the Master Ballots and/or Beneficial
13 Holder Ballots, as applicable, the form of which will be filed by the Debtors as a supplement prior
14 to the hearing on this Motion. The form of Ballot is based upon Official Form No. B314, but has
15 been modified to address the particular aspects of the Debtors Cases and to include certain
16 additional information that the Debtors believe to be relevant and appropriate for the applicable
17 classes of claims that are entitled to vote to accept or reject the Plan, including information
18 regarding the releases, injunctions, and exculpations contained in the Plan.

19 **E. Establishment of Deadline for Receipt of Ballots**

20 Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement,
21 the court shall fix a time within which the holders of claims or equity security interests may accept
22 or reject a plan. The Debtors have developed the proposed schedule to allow for a solicitation
23 period in the Debtors' Cases of at least 28 days, which the Debtors believe is appropriate in light
24 of the circumstances of the case and consistent with the requirements set forth in Bankruptcy Rule
25 2002(b). Accordingly, the Debtors propose that in order to be counted as a vote to accept or reject
26 the Plan, each Ballot must be properly executed, completed, and delivered to the Debtors so as to
27 be received by the Debtors no later than **4:00 p.m. (Pacific Time) on November 7, 2019** or as
28 otherwise ordered by the Bankruptcy Court (the "Voting Deadline") as set forth below. The

Debtors submit that such solicitation period is a sufficient period within which creditors can make an informed decision to accept or reject the Plan in light of the circumstances of the case.

All Ballots must be delivered via First Class Mail, overnight courier, or hand delivery so as to be actually received by the Debtors' solicitation agent no later than the Voting Deadline. Except as provided below, Ballots must be submitted to the Solicitation Agent at the following address in accordance with the voting procedures set forth below:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245
(888) 249-2741(domestic)
(310) 751-2635 (international)

Master Ballots submitted by Nominees holding Class 2 (Secured 2005 Revenue Bond Claims), must be delivered to the Solicitation Agent at:

Verity Ballot Processing Center
c/o Kurtzman Carson Consultants LLC
1290 Avenue of the Americas, 9th Floor
New York, NY 10104
(877) 833-4150 (domestic)
(917) 281-4800 (international)

BALLOTS TRANSMITTED TO THE DEBTORS BY FACSIMILE, ELECTRONIC MAIL, OR OTHER MEANS NOT SPECIFICALLY APPROVED BY THE BANKRUPTCY COURT MAY BE ACCEPTED BY THE DEBTORS ON A CASE-BY-CASE BASIS.

F. Approval of Procedures for Vote Tabulation

16. Section 1126(c) provides as follows:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

For purposes of voting on the Plan, with respect to all creditors of the Debtors, the Debtors propose that the amount of a claim used to tabulate acceptance or rejection of the Plan should be, as applicable:

- a) The amount of the claim listed in the Debtors' schedules of assets and liabilities (the "Schedules"); provided that (i) such claim is not scheduled as any of contingent, unliquidated, undetermined, disputed, or in a zero dollar amount, and (ii) no proof of claim has been timely filed (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) with respect to such claim.
- b) The noncontingent and liquidated amount specified in a proof of claim timely filed with the Bankruptcy Court (or otherwise deemed timely filed by the Bankruptcy Court under applicable law) to the extent the proof of claim is not the subject of an objection filed by **October 31, 2019** (the "Voting Objection Deadline") (or, if such claim has been resolved for allowance and/or voting purposes pursuant to a stipulation or order entered by the Bankruptcy Court, or otherwise resolved by the Bankruptcy Court, the amount set forth in such stipulation or order).
- c) If a proof of claim has been timely filed prior to the applicable bar date and such claim is asserted in the amount of \$0.00, such claim shall not be entitled to vote.
- d) Notwithstanding anything to the contrary in these tabulation rules, the holder of any claim that has been indefeasibly paid, in full or in part, shall only be permitted to vote the unpaid amount of such claim, if any, to accept or reject the Plan.
- e) The amount temporarily allowed or estimated by the Bankruptcy Court for voting purposes, pursuant to Bankruptcy Rule 3018(a), subject to notice consistent with the procedures set forth herein, the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall be the amount of the claim for voting purposes.
- f) If a claim for which a proof of claim has been timely filed for unknown or undetermined amounts (as determined on the face of the claim or after a reasonable review of the supporting documentation by the Debtors) and such claim has not been allowed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00.
- g) If a claim is listed on a timely filed proof of claim as either wholly or partially contingent or unliquidated, such claim is temporarily allowed in the amount that is the greater of (i) the liquidated and non-contingent amount and (ii) \$1.00, for voting purposes only, and not for purposes of allowance or distribution.

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- h) If a claim is deemed allowed under the Plan, such claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan.
- i) If a claim is not listed in the Schedules or is listed in the Schedules as contingent, unliquidated, or disputed (or in a zero amount) and a proof of claim was not (i) filed by the applicable bar date for the filing of proofs of claim established by the Bankruptcy Court or (ii) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, such claim shall be disallowed for voting purposes.
- j) If a proof of claim has been amended by a later proof of claim that is filed on or prior to the Voting Record Date, the later filed amending claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim. Except as otherwise ordered by the Bankruptcy Court, any amendments to proofs of claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.

The temporary allowance of claims for voting purposes does not constitute an allowance of claims for purposes of distribution under the Plan and is without prejudice to the rights of the Debtors or any other party-in-interest in any other context, including the right of the Debtors or any other party-in-interest to contest the amount or validity of any claim for purposes of allowance under the Plan.

Additionally, the Debtors seek authorization from the Bankruptcy Court for the Debtors to object to any claim (as defined in § 101(5)) solely for Plan voting purposes by filing a determination motion (the “Determination Motion”), no later than the Voting Objection Deadline. If an objection to a claim (made by way of a Determination Motion or otherwise) filed on or before the Voting Objection Deadline requests that such claim be reduced or reclassified, such claimant’s Ballot shall be counted in such reduced amount or as falling into the reclassified category. Further, if a creditor casts a Ballot and has timely filed a proof of claim (or has otherwise had a proof of claim deemed timely filed by the Bankruptcy Court under applicable law), but the creditor’s claim is the subject of an objection (made by way of a Determination Motion or otherwise) filed no later than the Voting Objection Deadline, the Debtors request, in accordance with Bankruptcy Rule 3018, that the creditor’s Ballot not be counted to the extent it is challenged by the objection, unless such claim is temporarily allowed by the Bankruptcy Court for

1 voting purposes pursuant to Bankruptcy Rule 3018(a) after the creditor files a motion for such
2 temporary allowance (the “Claims Estimation Motion”).⁶

3 If a creditor seeks to have its claim temporarily allowed for purposes of voting to accept or
4 reject the Plan pursuant to Bankruptcy Rule 3018(a), the Debtors request that such creditor be
5 required to file a Claims Estimation Motion for such temporary allowance by the later of (i) the
6 Voting Objection Deadline or (ii) if such claim is the subject of an objection or a Determination
7 Motion, seven (7) days after the filing of the applicable objection or Determination Motion.

8 In the event that a Determination Motion or Claims Estimation Motion is filed, the Debtors
9 request that the Bankruptcy Court allow the non-moving party to file a reply to such motion by the
10 later of (i) the Voting Objection Deadline, or (ii) seven (7) days after the filing of the applicable
11 motion (the “Voting Objection Reply Deadline”). A hearing will be scheduled (subject to the
12 Bankruptcy Court’s availability) on such motion within seven (7) days of the Voting Objection
13 Reply Deadline but in no event later than the Confirmation Hearing (as defined below). The
14 Debtors further request that the ruling by the Bankruptcy Court on any Determination Motion or
15 Claims Estimation Motion be considered a ruling with respect to the allowance of the claim(s)
16 under Bankruptcy Rule 3018 and such claim(s) be counted, for voting purposes only, in the
17 amount determined by the Bankruptcy Court.

18 The Debtors propose that, in the event a claimant reaches an agreement with the Debtors,
19 as to the treatment of its claim for voting purposes, the claim may be treated in such manner.

20 The Debtors further request that the following voting procedures and standard assumptions
21 be used in tabulating the Ballots:

- 22 a) For purposes of the numerosity requirement of § 1126(c) and based on the
23 reasonable efforts of the Debtors, separate claims held by a single creditor
24 in a particular class will be aggregated as if such creditor held one claim
25 against the Debtors in such class, and the votes related to such claims will
be treated as a single vote to accept or reject the Plan.

26 ⁶ This proposed procedure is consistent with § 1126, which provides that a plan may be accepted
27 or rejected by the holder of a claim allowed under § 502. In turn, § 502(a) provides that a filed
28 proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502(a).

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- b) Any creditor who holds duplicate claims within the same class (against one Debtor or across multiple Debtors) shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such class, regardless of whether the Debtors have objected to such duplicate claims.
- c) Creditors must vote all of their claims within a particular class either to accept or reject the Plan and may not split their vote. Accordingly, a Ballot (or multiple Ballots with respect to multiple claims within a single class) that partially rejects and partially accepts the Plan will not be counted.
- d) Ballots that fail to indicate an acceptance or rejection of the Plan or that indicate both acceptance and rejection of the Plan, but which are otherwise properly executed and received prior to the Voting Deadline, will not be counted.
- e) Only Ballots that are timely received with signatures will be counted. Unsigned Ballots will not be counted.
- f) Ballots sent by mail or overnight delivery that are postmarked prior to the Voting Deadline, but received after the Voting Deadline, will not be counted.
- g) Ballots that are illegible, or contain insufficient information to permit the identification of the creditor, will not be counted.
- h) Ballots transmitted to the Debtors by facsimile, electronic mail, or other means not specifically approved by the Bankruptcy Court may be accepted by the Debtors on a case-by-case basis.
- i) Whenever a creditor casts more than one Ballot voting the same claim prior to the Voting Deadline, the last valid Ballot received prior to the Voting Deadline shall be deemed to reflect the voter's intent and supersede any prior received Ballots.
- j) If a creditor simultaneously casts inconsistent duplicate Ballots with respect to the same claim, such Ballots shall not be counted.
- k) Each creditor shall be deemed to have voted the full amount of its claim in a class. Unless otherwise ordered by the Bankruptcy Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots shall be determined by the Debtors, which determination shall be final and binding.
- l) Any Ballot containing a vote that the Bankruptcy Court determines, after notice and a hearing, was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code shall not be counted.

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- m) Any Ballot cast by a person or entity that does not hold a Claim in a class that is entitled to vote to accept or reject the Plan shall not be counted.
- n) Notwithstanding anything contained herein to the contrary, the Debtors may contact parties that submitted Ballots to cure any defects in the Ballots.
- o) Any class that does not contain any claim eligible to vote to accept or reject the Plan (by reason of temporary allowance by the Bankruptcy Court or otherwise) as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such class pursuant to § 1129(a)(8).
- p) If a class contains claims eligible to vote and no holders of claims eligible to vote in such class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such claims in such class.
- q) Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors or the Bankruptcy Court determines. Neither the Debtors nor any other person or entity shall be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor shall any incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots shall not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) shall not be counted.
- r) The Debtors, and subject to contrary order of the Bankruptcy Court, may waive any defect in any Ballot at any time, either before or after the Voting Deadline and without notice, and any such waivers shall be documented in the voting results filed with the Bankruptcy Court.
- s) Except as provided below, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors may reject such Ballot as invalid, and therefore, decline to utilize it in connection with confirmation of the Plan by the Bankruptcy Court; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.
- t) Subject to contrary order of the Bankruptcy Court, the Debtors reserves the absolute right to reject any and all Ballots not proper in form, the acceptance of which would, in the opinion of the Debtors, not be in accordance with the provisions of the Bankruptcy Code; provided, however, that such invalid Ballots shall be documented in the voting results filed with the Bankruptcy Court.

In addition to the foregoing, as applicable, the Debtors request that the following voting procedures and standard assumptions be used in tabulating Master Ballots:

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- 1 u) In the case of Class 2 (Secured 2005 Revenue Bond Claims), votes cast by
- 2 beneficial owners holding through Nominees will be applied to the
- 3 applicable positions held by such Nominees as of the Voting Record Date.
- 4 v) If conflicting votes or “over-votes” are submitted by or on behalf of a
- 5 Nominee, the Solicitation Agent shall use reasonable efforts to reconcile
- 6 discrepancies with such Nominee. The submission of a Master Ballot
- 7 reflecting an aggregate amount of Class 2 (Secured 2005 Revenue Bond
- 8 Claims) that exceeds the Voting Record Date position is referred to herein
- 9 as an “overvote”.
- 10 w) If overvotes are submitted by a Nominee which are not reconciled prior to
- 11 the preparation of the certification of vote results, the votes to accept and to
- 12 reject the Plan shall be counted in the same proportion as the votes to accept
- 13 and to reject the Plan submitted by the Nominee, but only to the extent of
- 14 the Nominee’s Voting Record Date position.

15 The Debtors submit that such procedures provide for a fair and equitable voting process.

16 **G. Establishment of Deadline and Procedures for Filing Objections to the Confirmation**

17 **of the Plan.**

18 **a. Scheduling the Confirmation Hearing**

19 17. Bankruptcy Rule 3017(c) provides:

20 On or before approval of the disclosure statement, the court shall fix a time within

21 which the holders of claims and interests may accept or reject the plan and may fix

22 a date for the hearing on confirmation.

23 Fed. R. Bankr. P. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Debtors request that

24 a hearing on confirmation of the Plan (the “Confirmation Hearing”) be scheduled for **November**

25 **21, 2019 at 10:00 a.m. (Pacific Time).**

26 The Debtors propose that, no later than **November 14, 2019**, the Debtors will file with the

27 Bankruptcy Court a tabulation report for Plan voting, a proposed form of confirmation order, a

28 memorandum in support of confirmation addressing the requirements of § 1129(a) and any

declarations or other evidence in support thereof, and replies to any objections received by the

Confirmation Objection Deadline. In light of these deadlines, the Debtors respectfully request that

the Court shorten the ballot tabulation deadline set forth in Local Bankruptcy Rule 3018-1(b) from

fourteen days to seven days.

1 The Debtors request that the Confirmation Hearing may be continued from time to time by
2 the Bankruptcy Court or the Debtors without further notice other than by notices of continuance
3 filed on the docket of the Debtors' Cases. The proposed timing for the Confirmation Hearing is in
4 compliance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules,
5 and will enable the Debtors to pursue confirmation of the Plan in a timely fashion.

6 **H. Establishing Procedures for the Confirmation Hearing**

7 Bankruptcy Rules 2002(b) and 3017(d) require not less than twenty-eight (28) days' notice
8 to all creditors and equity security holders of the time fixed for filing objections and the hearing to
9 consider confirmation of a chapter 11 plan. In accordance with Bankruptcy Rules 2002 and
10 3017(d), the Debtors propose to provide to all creditors and interest holders a copy of either the
11 Confirmation Hearing Notice, the Notice of Non-Voting Accepting Status and Confirmation
12 Hearing, or the Notice of Non-Voting Rejecting Status and Confirmation Hearing as proposed
13 herein, setting forth, among other things, (a) the date of approval of the Disclosure Statement, (b)
14 the Voting Record Date, (c) the Voting Deadline, (d) the time fixed for filing objections to
15 confirmation of the Plan, and (e) the time, date, and place for the Confirmation Hearing. Such
16 notice will be sent at least twenty-eight (28) days before the deadline to object to confirmation of
17 the Plan.

18 Bankruptcy Rule 2002(1) permits the Bankruptcy Court to "order notice by publication if it
19 finds that notice by mail is impracticable or that it is desirable to supplement the notice." Fed. R.
20 Bankr. P. 2002(1). In addition to mailing the Confirmation Hearing Notice, the Debtors propose to
21 publish the Confirmation Hearing Notice once, as soon as reasonably practical after the entry of
22 the Disclosure Statement Order, in the following newspapers: *Los Angeles Times*, *San Francisco*
23 *Chronicle*, *San Jose Mercury News* and *USA Today*. The Debtors believe that publication of the
24 Confirmation Hearing Notice will provide sufficient notice of the approval of the Disclosure
25 Statement; the Voting Record Date; the Voting Deadline; the time fixed for filing objections to
26 confirmation of the Plan; and the time, date, and place of the Confirmation Hearing to persons
27 who do not otherwise receive actual written notice by mail as provided for in the Disclosure
28 Statement Order.

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1 The Debtors submit that the foregoing procedures will provide adequate notice of the
2 Confirmation Hearing and, accordingly, requests that the Bankruptcy Court approve such notice as
3 adequate.

4 **I. Establishing Procedures for the Filing of Objections to the Confirmation of the Plan.**

5 Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed
6 and served “within a time fixed by the court.” The Confirmation Hearing Notice provides, and the
7 Debtors request the Bankruptcy Court to direct, that objections to the confirmation of the Plan or
8 proposed modifications to the Plan, if any, must:

- 9 a) be in writing;
- 10 b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules;
- 11 c) set forth the name of the objector and the nature and amount of any Claim
- 12 asserted by the objector against or in the Debtors;
- 13 d) state with particularity the legal and factual bases for the objection and, if
- 14 practicable, a proposed modification to the Plan that would resolve such
- 15 objection; and
- 16 e) be filed with the Bankruptcy Court, together with proof of service, and
- 17 served so that they are actually received by the Notice Parties (as defined
- below) no later than **November 7, 2019** which deadline may be extended by
- the Debtors (the “Confirmation Objection Deadline”).

18 The Debtors request that Court require any confirmation objection to be served on the
19 following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors, Dentons US LLP,
20 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017, Attn: Tania M. Moyron, email:
21 tania.moyron@dentons.com; (ii) counsel to the Committee, Milbank LLP, 2029 Century Park
22 East, 33rd Floor, Los Angeles, CA 90067, Attn: Mark Shinderman, mshinderman@milbank.com;
23 (iii) counsel to the 2005 Revenue Bonds Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,
24 P.C., One Financial Center, Boston, Massachusetts 02111, Attn: Daniel S. Bleck and Paul Ricotta,
25 dsblek@mintz.com, pricotta@mintz.com; (iv) counsel to the 2015 Notes Trustee, McDermott Will
26 & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, Illinois 60606, Attn: Nathan F. Coco,
27 ncoco@mwe.com; (v) counsel to the 2017 Notes Trustee, Maslon, LLP, 3300 Wells Fargo Center,
28 90 South Seventh Street, Minneapolis, Minnesota 55402, Attn: Clark Whitmore,

1 clark.whitmore@maslon.com; and (vi) counsel to the U.S. Trustee, Office of the United States
2 Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017, Attn: Hatty K. Yip,
3 hatty.yip@usdoj.gov.

4 The proposed timing for filing and service of objections and proposed modifications, if
5 any, will afford the Bankruptcy Court, the Debtors, the Committee, and other parties in interest
6 sufficient time to consider the objections and proposed modifications prior to the Confirmation
7 Hearing.

8 **VII.**

9 **CONCLUSION**

10 WHEREFORE, the Debtors request that the Bankruptcy Court enter an order:
11 (i) approving the Disclosure Statement; (ii) approving the solicitation and voting procedures;
12 (iii) approving the proposed notice and objection procedures for confirmation of the Plan; and
13 (iv) granting such other and further relief as the Bankruptcy Court deems just and proper.

14 Dated: September 4, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

17 By /s/ Tania M. Moyron
18 Tania M. Moyron

19 Attorneys for Verity Health Systems of
20 California, Inc., *et al.*

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