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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors.	Lead Case No. 2:18-bk-20151-ER Chapter 11 Adv. Proc. No. 2:19-ap-01165-ER
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Plaintiff, v. U.S. BANK NATIONAL ASSOCIATION, as Trustee, Defendant.	**MOTION OF U.S. BANK NATIONAL ASSOCIATION, AS NOTES TRUSTEE TO DISMISS AMENDED COMPLAINT; MEMORANDUM IN SUPPORT THEREOF** Date: November 21, 2019 Time: 10:00 am Judge: Hon. Ernest M. Robles Place: U.S. Bankruptcy Court Courtroom 1568 Edward R. Roybal Federal Building 255 East Temple Street Los Angeles, CA 90012

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on November 21, 2019, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Judge Ernest M. Robles of the United States Bankruptcy Court for the Central District of California, located in Courtroom 1568, of the above-entitled Court, located at 255 East Temple Street, Los Angeles, CA 90012 Defendant U.S. Bank National Association in its respective capacities as Series 2015 Note Trustee and as Series 2017 Note Trustee (together, the "**Notes Trustee**"), will and hereby does move (this "**Motion**") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, which is applicable to this Adversary Proceeding under Rule 7012 of the Federal Rules of Bankruptcy Procedure, for entry of an order dismissing the First Amended Complaint for Determination of Validity, Priority, and Extent of Lien and Security Interests [Dkt. No. 30] (the "**Amended Complaint**") filed by Plaintiff Official Committee of Unsecured Creditors (the "**Committee**") for the reasons stated herein.

Under LBR 9013-1(f) any written response is to be filed and served at least fourteen days before the hearing, but per the stipulation among the parties, Plaintiff's response is to be filed and served by October 17, 2019 and Defendants' reply is to be filed and served by October 24, 2019.

This Motion is supported by the Memorandum of Points and Authorities in Support included herein, and the filed pleadings, documents or facts in the Debtors' chapter 11 bankruptcy cases for which Court may take judicial notice, applicable legal authority, and the arguments of counsel in support of this Motion.

Dated: September 30, 2019

MCDERMOTT WILL & EMERY LLP

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

MASLON LLP

By: /s/ *Clark T. Whitmore*
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Attorneys for U.S. Bank National Association, not individually but as Notes Trustee

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MEMORANDUM OF POINTS AND AUTHORITIES

The Committee's Amended Complaint,[1] brought in reliance upon the Challenge rights set forth the Final DIP Order (defined below), seeks a patchwork of judicial declarations against the Notes Trustee (as defined below) having no clear relevancy to the treatment of the Notes Trustee in the Debtors' proposed Plan of Liquidation. On the other hand, all of the issues raised in the Amended Complaint would be rendered moot by the confirmation of the Debtors' Plan.[2] The Debtors (whose proposed Plan treats the Notes Trustee as fully secured) have requested that this Court schedule a hearing on confirmation of the Plan on November 21, 2019, and it is supported by all of the Prepetition Secured Creditors, including the Notes Trustee. By the time of the confirmation hearing, the currently pending sale of the Debtors' remaining Hospitals to Strategic Global Management, Inc. ("**SGM**") is expected to have closed, providing a key source of funding for the Plan. At the hearing on confirmation, the Notes Trustee (alongside the Debtors and other Prepetition Secured Creditors) will present evidence that the prepetition and postpetition replacement liens of the Notes Trustee (whose liens are first in priority) and superpriority administrative expense claims support payment of the Notes as provided by the Plan.

The proposed Plan is the culmination of more than a year's worth of work by the Debtors, supported by the Prepetition Secured Creditors, including the Notes Trustee, which has centered on maintaining the Debtors as a going concern to maximize value for the Debtors' estates. Maintaining operations and selling the Debtors' assets as a going concern (even as significant ongoing financial losses have continued to mount), rather than shutting the facilities down, has benefitted the Debtors' general unsecured creditors who should receive a substantial distribution under the Plan, assuming that administrative expenses, such as litigation costs, can be appropriately limited.

Keeping the Hospitals operational during these cases was possible in part because the Debtors' Prepetition Secured Creditors, including the Notes Trustee, (a) permitted their perfected prepetition liens to be primed by a $185 million DIP facility, and (b) consented to the use of

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[1] The First Amended Complaint for Determination of Validity, Priority, and Extent of Lien and Security Interests [Dkt. No. 30] (19-ap-1165) filed September 11, 2019 shall be referred to as the "**Amended Complaint**".

[2] The Debtors' Chapter 11 Plan of Liquidation (Dated September 3, 2019), [Dkt. No. 2993] shall be referred to as the "**Plan**".

hundreds of millions of dollars of their cash collateral throughout the course of the bankruptcy cases to fund operating losses and pay administrative expenses. As part of this undertaking, the Debtors proposed a number of protections and stipulations, as well as adequate protection for Prepetition Secured Creditors that were included after an interim and final hearing in the Court's *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 (the "**Final DIP Order**")* [Dkt. No. 409].[3] In the Final DIP Order the Court found that the Prepetition Creditors were oversecured and together held liens upon substantially all of the assets of the Debtors as of the Petition Date.

The Final DIP Order granted the Committee limited standing within a designated Challenge Period without further leave of Court to challenge the Prepetition Liens (as defined in the Final DIP Order) of the Notes Trustee in the property of the Debtors as of the Petition Date. The Committee has never disputed the amount of the Notes Trustee's claim and, in December 2018, pursuant to a stipulation entered into between the Notes Trustee and the Committee, the Committee affirmatively waived its right to challenge the validity and enforceability of the Notes Trustee's prepetition liens on all of the present and after acquired collateral of the Notes Trustee described in its expansive loan documents, including substantially all rights to payment, except for certain bank accounts which allegedly lacked deposit control agreements in favor of the Notes Trustee. The Amended Complaint seeks a declaration that any funds in these accounts as of the Petition Date were not subject to the Notes Trustee's liens due to the alleged lack of deposit control agreements even though the funds in question were almost certainly the identifiable cash proceeds of other Notes Trustee liens and the money no longer exists.

The other claims in the Amended Complaint extend beyond the Committee's standing as provided in the Final DIP Order to seek judicial declarations that do not pertain to the Prepetition Liens as of the Petition Date, fail to present a present case or controversy, ignore the overriding rights granted by this Court to the Notes Trustee in the Final DIP Order and by the Committee's own

[3] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Final DIP Order and the Supplemental Cash Collateral Order (defined herein).

stipulated waivers, or are simply contrary to applicable law. Accordingly, each of the claims set forth in the Amended Complaint should be dismissed at this time.

The Amended Complaint is, at its core, a disguised partial objection to the Notes Trustee's treatment under the proposed Plan, and the substance of all such objections can and should be addressed at the confirmation hearing when the Court will have a complete record, including an understanding of the Prepetition Secured Creditors' postpetition replacement liens and superpriority administrative expense claims that are not addressed in the Amended Complaint.

FACTUAL BACKGROUND

1. Defendant U.S. Bank National Association serves as indenture trustee and collateral agent (in such capacities, the "**Notes Trustee**) for the holders of $202,000,000 in outstanding principal amount of Notes issued in 2015 and 2017 (collectively, the "**Notes**") by the California Public Finance Authority as a public finance conduit for Verity Health System of California, Inc. ("**VHS**") and its Obligated Members consisting of the St. Francis Medical Center, St. Vincent Medical Center, O'Connor Hospital, Saint Louise Regional Hospital, and Seton Medical Center, including Seton Medical Center Coastside (each, a "**Hospital Debtor**" and collectively, the "**Hospital Debtors**"). Of the $202,000,000 in principal amount of Notes, $160,000,000 was issued in four series pursuant to individual Indentures each dated as of December 1, 2015. The remaining $42,000,000 of Notes were issued in two series pursuant to two Indentures dated as of September 1, 2017 and December 1, 2017, respectively.

2. The proceeds of each series of Notes were loaned to VHS and the Hospital Debtors pursuant to corresponding Loan Agreements dated as of December 1, 2015, with respect to the 2015 Notes, and Loan Agreements dated as of September 1, 2017 and December 1, 2017, with respect to the 2017 Notes, each between the Authority and VHS, for itself and the Hospital Debtors.

3. The Loan Agreement for each series of Notes is accompanied by six substantially identical Security Agreements (as amended, the "**Security Agreements**") executed by VHS and each Hospital Debtor, respectively, in favor of the Notes Trustee on the same date as the corresponding Loan Agreement to which it relates.[4] Each of the Security Agreements was amended and restated

[4] Copies of the Security Agreements were filed in the Debtors' bankruptcy cases at Dkt. No. 367-1.

most recently on December 1, 2017, pursuant to which VHS and each Hospital Debtor granted the Notes Trustee a:

> continuing, first priority security interest in, all of Hospital Debtor's right, title, and interest in and to the following property of such Hospital Debtor, in each case whether now or hereafter existing or in which Hospital Debtor now has or hereafter acquires an interest and wherever the same may be located:
>
> (a) All Accounts;
>
> (b) Certain bank accounts (the "**Bank Accounts**") and all amounts deposited therein that are subject to Deposit Account Control Agreements, including, without limitation, those Bank Accounts listed on Schedule II annexed hereto[5]; and
>
> (c) All products, Proceeds and replacements thereof.

Security Agreement, § 2 (collectively, the "**Security Agreement Collateral**").

4. Each underlying Security Agreement defines "Accounts" broadly to capture all forms of revenue and rights of payment:

> "Accounts" means collectively, (a) any right to payment of a monetary obligation whether or not earned by performance, that relates to or arises out of any services provided or goods rendered by an Obligated Group Member (including, without limitation, payments made by or through a governmental authority to an individual patient assigned to such Member), (b) without duplication, any 'account' (as defined in the UCC), any accounts receivable, whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any Health-Care-Insurance Receivables (as defined in the UCC) and any Payment Intangibles (as defined in the UCC), (c) all General Intangibles (as defined in the UCC), Intellectual Property (as defined in the UCC), rights, remedies, guarantees, supporting obligations and letter of credit rights relating to or arising out of the foregoing assets described in clauses (a) and (b), (d) all information and data compiled or derived by any Member or to which any Member is entitled in respect of or related to the foregoing assets described in clauses (a) and (b) and (e) and all proceeds of any of the foregoing.

Security Agreement, Schedule V.

5. To perfect its security interest in the Security Agreement Collateral, the Notes Trustee filed Uniform Commercial Code ("**UCC**") Financing Statements, and appropriate amendments with the California Secretary of State. The UCC Financing Statements each perfected the Security Agreement Collateral against VHS and each of the relevant Hospital Debtors in all "Accounts" and "[a]ll products, Proceeds and replacements thereof." *Id.*

[5] These bank accounts include the 34 accounts of the Hospital Debtors referenced in Count II of the Amended Complaint.

6. The Notes are further secured by (a) that certain Deed of Trust with Fixture Filing and Security Agreement and Assignment of Leases and Rents by Saint Louise Regional Hospital dated December 14, 2015 (as amended and restated September 1, 2017, and further amended and restated December 1, 2017); (b) those certain Deeds of Trust with Fixture Filing and Security Agreement and Assignment of Leases and Rents by St. Francis Medical Center dated December 14, 2015 (as each was amended and restated September 1, 2017, and further amended and restated December 1, 2017).[6]

7. The indebtedness evidenced by the 2017 Notes is additionally secured by a Deed of Trust with Fixture Filing and Security Agreement and Assignment of Rents and Leases, dated September 15, 2017, as amended (the "**Moss Deed of Trust**"), granted by Verity Holdings LLC on certain real estate and related property located in San Mateo County, California (the "**Moss Property**").

8. The Notes are also entitled to share on a *pro rata* basis with the other Obligations under the Master Indenture, including the Series 2005 Bonds,[7] the benefits of the collateral pledged under the Master Indenture. Those Obligations are secured by, *inter alia*, (i) Deeds of Trust on each of the Hospital Debtors, and (ii) the "Gross Revenues" of VHS and the Hospital Debtors, which is broadly defined to include "all revenues, income, receipts and money received by or on behalf of the Members from all sources".

9. Pursuant to that certain Intercreditor Agreement dated as of December 1, 2015, as amended by the Amended and Restated Intercreditor Agreement dated as of September 1, 2017, as further amended by the Second Amended and Restated Intercreditor Agreement dated as of December 1, 2017 (as amended, the "**Intercreditor Agreement**"), the Master Trustee subordinated its liens and security interests, including the Gross Revenue pledge, to the Notes Trustee with respect to the Senior Note Collateral as described therein.[8] As a result, the Notes Trustee held, among other

[6] Copies of the Deeds of Trust were filed in the Debtors' bankruptcy cases at Dkt. No. 367-1.

[7] In addition to the Notes, the Obligations under the Master Indenture also include the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005A, F, G and H (the "**Series 2005 Bonds**").

[8] A copy of the Intercreditor Agreement was filed in the Debtors' bankruptcy cases at Dkt. No. 367-1.

things, first priority, perfected liens in all of the working capital assets of VHS and each of the Hospital Debtors and first priority deeds of trust covering the two most valuable Hospitals, St. Francis and Saint Louise.

10. On August 31, 2018 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases.

11. On the Petition Date, the Debtors also filed 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* [Dkt. No. 31] (the "**DIP Motion**"). The DIP Motion sought approval of postpetition financing in an amount up to $185 million, secured by a lien on substantially all the Debtors' present and future assets.

12. In connection with the DIP Motion, the Notes Trustee negotiated to provide its consent to being primed by the DIP Loans and to the use of the cash collateral of the Hospital Debtors to fund continuing operations during a consensual process to sell the hospital assets of the Debtors as going concerns. The DIP Lender refused to provide the DIP Loan without the consent of the Prepetition Secured Creditors, including the Notes Trustee. The Debtors agreed that the Notes Trustee (along with the other Prepetition Secured Creditors) was oversecured and asked the Court to provide the Notes Trustee with various forms of adequate protection, including Prepetition Replacement Liens, to protect it from the diminution in the value of its interests in prepetition collateral as of the Petition Date.

13. On October 3, 2018, this Court issued its tentative rulings regarding the DIP Motion [Dkt. No. 392] (the "**Tentative Ruling**"), which were expressly incorporated in and made a part of the Final DIP Order. The Court found that the Prepetition Secured Creditors held liens upon and security interests in substantially all the Debtors' assets, and that the secured creditors were oversecured with an equity cushion of between $150 and $200 million. Tentative Ruling p. 8. Specifically, the Court found that the Prepetition Secured Creditors, including the Notes Trustee, held

aggregate claims against the Debtors of approximately $565 million, and that the Debtors' assets with proper marketing would be worth between $725 and $800 million. *Id.*

14. The Court found in the Final DIP Order that the Prepetition Secured Creditors were adequately protected and held that ". . . the equity cushion, the replacement liens and Superpriority claims provide the secured creditors additional adequate protection. The financing by the DIP Lender will enable the Debtors to continue to operate and generate additional receivables. Those receivables will be subject to the replacement liens." [Tentative Ruling pgs. 10-11].

15. On October 4, 2018, this Court entered the Final DIP Order, pursuant to which the Debtors acknowledged, and the Court found, that the Notes Trustee's lien in the Prepetition Secured Collateral is valid, binding, enforceable, non-avoidable, and properly perfected. The Final DIP Order also expressly incorporated each of the findings in the Tentative Rulings.

16. Specifically, Section 5(a) of the Final DIP Order states that, "[a]s adequate for the interests of the Prepetition Secured Creditors in the Prepetition Collateral … on account of the granting of the DIP Liens, subordination to the Carve Out …, any Diminution in Value arising out of the Debtors' use, sale, or disposition or other depreciation of the Prepetition Collateral, including Cash Collateral …, resulting from the automatic stay, the Prepetition Secured Creditors … shall receive adequate protection" in the form of "additional valid, perfected and enforceable replacement security interests and Liens in the DIP Collateral … ." Final DIP Order, ¶ 5(a). The Final DIP Order also granted the Notes Trustee and other Prepetition Secured Creditors a Prepetition Superpriority Claim to the extent of any diminution in the value of its interest in Prepetition Collateral. Final DIP Order, ¶ 5(d).

17. Additionally, because the Notes Trustee consented to having its Prepetition Liens primed by the DIP Lender, the Final DIP Order further waived the "equities of the case" exception under section 552(b) and trustee surcharge rights under section 506(c) of the Bankruptcy Code. "In light of the Prepetition Secured Creditors' . . . agreements that their Prepetition Liens . . . shall be subject to the Carve Out and subordinate to the DIP Liens, the Prepetition Secured Creditors . . . are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the

Bankruptcy Code, and a waiver of the provisions of section 506(c) of the Bankruptcy Code. Final DIP Order, ¶ 5(f).

18. Section 5(e) of the Final DIP Order established a deadline for the Committee to challenge the Note Trustee's Prepetition Liens. It states that:

> The findings and stipulations set forth in this Final Order with respect to the validity, enforceability and amount of the Prepetition Secured Obligation and the Prepetition Liens shall be binding on any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including the Committee, unless, and solely to the extent that, a party in interest with requisite standing and authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4(d)) challenging the Prepetition Liens (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "**Challenge**") within ninety (90) days from the formation of the Committee (the "**Challenge Deadline**"); provided that for purposes of filing a Challenge, the Committee shall be deemed to have standing to file the requisite pleading without further order of the Court; and *provided further*, that the "Challenge Deadline" for matters solely relating to the value of the Prepetition Collateral may be further extended to such time as may be agreed by stipulation among the Debtors, the Committee and the Prepetition Secured Creditors or as further ordered by the Court.

Final DIP Order, ¶ 5(e)

19. On December 13, 2018, the Committee and the Notes Trustee entered into a *Stipulation between U.S. Bank National Association and the Official Committee of Unsecured Creditors Extending Challenge Deadline* (the "**Challenge Stipulation**") [Dkt. No. 1048]. Pursuant to the Challenge Stipulation, the Committee agreed that "[i]n consideration of the extension of the Challenge Deadline for certain assets of the Debtors as provided herein below, the Committee acknowledges that *the Challenge Deadline shall not be extended for the Acknowledged Collateral*." Challenge Stipulation, p. 2 (emphasis added).

20. The definition of Acknowledged Collateral in the Challenge Stipulation includes:

> (1) perfected deed of trust liens and security interest in the real property (including Facilities and Appurtenances, Leases, Rents and Equipment to the extent they constitute real property) set forth on Exhibit A hereto (the deeds of trust to which such security interest relate being referred to herein as "**Mortgages**");
>
> (2) to the extent not covered by subparagraph (1) above, perfected deed of trust liens and security interests in the Facilities, Appurtenances, Equipment, Leases, Rents, Proceeds and Inventory of St. Francis Medical Center, Saint Louise Regional Hospital and Verity Holdings LLC, in each case to the extent such property is (i) described in the corresponding financing

> statements filed with the California Secretary of State and (ii) can be perfected by the filing of a financing statement with the California Secretary of State. Any capitalized terms used in this paragraph which are not otherwise defined herein shall have the meaning assigned to such terms in the applicable Mortgages;
>
> (3) a perfected security interest in the following personal property of Seton Medical Center, Seton Coastside, Saint Louise Regional Hospital, St. Francis Medical Center, O'Connor Hospital and St. Vincent Medical Center:
>
> (a) Accounts (as defined in the Security Agreements referred to in the Loan Agreements); and
>
> (b) All products, replacements and Proceeds (as defined in the California Uniform Commercial Code) of the property described in the preceding clause (a).

Id. at 3.

21. The Challenge Stipulation incorporated by reference the definition of "Accounts" set forth in the Security Agreements described in paragraph 4 above, which includes, *inter alia*, (i) any "right to payment of a monetary obligation whether or not earned by performance, that relates to or arises out of any services provided or goods rendered by an Obligated Group Member (including, without limitation, payments made by or through a governmental authority to an individual patient assigned to such Member)," (ii) any "account" as defined in the UCC, (iii) any "accounts receivable, whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise, Health-Care-Insurance Receivables (as defined in the UCC)," and (iv) any "Payment Intangibles" and "General Intangibles" (each as defined in the UCC).

22. The fact that the Committee waived its challenge rights with respect to "Accounts" (*i.e*., "Acknowledged Collateral") under the Challenge Stipulation is significant because the Notes Trustee would not have otherwise agreed to extend the investigation period for the Committee under the Final DIP Order. Through the definition of "Acknowledged Collateral" set forth in the Challenge Stipulation, which expressly includes the term "Accounts" as defined under the Security Agreements, the Committee forever and irrevocably waived its right to later challenge the validity and perfection of the Notes Trustee's security interest in said "Accounts":

> The Committee has delivered correspondence to the Trustee *acknowledging the Trustee's valid and perfected security interest in some but not all of the assets of the Debtors as set forth in paragraph A below (the "Acknowledged Collateral")*. The Trustee and the Committee are discussing the extent and priority of liens with respect to that portion of the Debtors' assets not included within the Acknowledged Collateral.

Challenge Stipulation, ¶ 5 (emphasis added).

23. The rights of the Hospital Debtors to receive payments for care and services provided to patients of the Hospital Debtors of any type, including delayed QAF distributions from the California Department of Health Services, are "Accounts" of the Hospital Debtors and/or "proceeds" of Accounts within the definition of Acknowledged Collateral as set forth in the Security Agreements and the Challenge Stipulation.

24. The Challenge Deadline was extended five additional times by the Notes Trustee and the Committee with respect to challenges and liens *other than Acknowledged Collateral* on January 14, 2019 [Dkt. No. 1251], February 15, 2019 [Dkt. No. 1560], March 15, 2019 [Dkt. No. 1824], May 13, 2019 [Dkt. No. 2366], and May 31, 2019 [Dkt. No. 2480]. None of the additional extensions modified the rights of either the Notes Trustee or the Committee beyond extending the challenge period for the collateral rights not previously conceded by the Committee.

25. In June of 2019, before the final Challenge Deadline on June 13, 2019, the Committee filed its original adversary Complaint for Determination of Validity, Priority, and Extent of Liens and Security Interests (Docket No. 1, the "**Original Complaint**"). The initial Complaint sought: (a) to modify language in the Final DIP Order; (b) declarations that the Notes Trustee did not have a perfected security interest in an unspecified amount of cash held by the Debtors as of the Petition Date in certain bank accounts; and (c) declarations that Future QAF Disbursements not yet paid to the Hospital Debtors relating to post petition services and "commercial tort claims" would not be subject to the perfected security interests of the Notes Trustee.

26. On December 27, 2018, the Committee appealed from the Final DIP Order, solely with respect to the waivers of the "equities of the case" exception to Section 552(b) and the trustee surcharge rights under Section 506(c) of the Bankruptcy Code. That appeal was dismissed by the district court as moot on August 2, 2019, and the Committee has further appealed that dismissal to the Ninth Circuit Court of Appeals, where it remains pending at this time.

27. The Committee's appeals of the Final DIP Order have not included any appeal of the Court's ruling regarding the oversecured status of the Prepetition Secured Creditors or the Court's grant of adequate protection including Prepetition Replacement Liens and related superpriority claims

to the extent of any "diminution in value" of the interests of the Notes Trustee in the property of VHS and the Hospital Debtors. Nor did the Committee's appeal of the Final DIP Order include any appeal of the scope or effect of the lien challenge provision thereof.

28. In its brief to the District Court on appeal, the Committee, in fact, affirmatively relied upon this Court's determination in the Final DIP Order of a substantial equity cushion in favor of the Prepetition Secured Creditors as of the Petition Date to argue for the elimination of provisions in the Final DIP Order for a waiver of the "equities of the case" exception to Section 552(b) and the Trustee's right of surcharge in Section 506(c) of the Bankruptcy Code. *See* Case No. 2:18-cv-10675(RGK), Docket No. 22, pp. 19, 27 & 32 (noting that "the Bankruptcy Court had found [the Prepetition Secured Creditors] were already fully protected by an equity cushion in excess of 25%," and that "the claims of the Prepetition Secured Creditors were significantly oversecured").

29. On September 11, 2019, the Committee filed its Amended Complaint. The Amended Complaint adds allegations that the Notes Trustee does not have a security interest in certain "MOB Assets" and the so-called "going concern premium" obtained for any collateral sold, or to be sold, during the bankruptcy cases. The Amended Complaint alleges conditionally—for the first time—that if Future QAF Disbursements are determined to be proceeds of the Security Agreement Collateral as a result of modifications to a loan agreement, such modifications should be avoided under the California Fraudulent Transfers Act. Finally, the Amended Complaint includes a new count seeking a declaration that the Notes Trustee would be undersecured if the Court were to grant the other declarations being sought.

LEGAL STANDARD

"[A] motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) asserts that the complaint fails to state a claim upon which relief may be granted. Dismissal may be based on either 'the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.'" *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). For purposes of evaluating a motion to dismiss, a court "must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party." *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). A complaint must plead "enough facts to state a claim to relief

that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). "A claim is plausible 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Landmark Am. Ins. Co. v. Navigators Ins. Co.*, 354 F. Supp. 3d 1078, 1081–82 (N.D. Cal. 2018) (*quoting Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009)). It is axiomatic that a claim cannot be plausible when it has no legal basis. Therefore, a dismissal under Federal Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *See Johnson v. Riverside Healthcare Sys, LP*, 534 F.3d 1116, 1121 (9th Cir. 2008).

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a cognizable claim. *Iqbal*, 556 U.S. at 678. And "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Id*. Accordingly, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief." *Id*. at 679 (internal quotation marks omitted); *see Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004). And "'a plaintiff may plead [him]self out of court'" if he "plead[s] facts which establish that he cannot prevail on his . . . claim." *Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n.1 (9th Cir. 1997) (quoting *Warzon v. Drew*, 60 F.3d 1234, 1239 (7th Cir. 1995)).

ARGUMENT

I. THE COMMITTEE LACKS STANDING TO BRING CHALLENGES BEYOND THE SCOPE OF THE ENUMERATED CHALLENGES IDENTIFIED IN SECTION 5(E) OF THE FINAL DIP ORDER.

The Amended Complaint purports to be based entirely upon the Challenge standing conferred by the Court in Section 5(e) of the Final DIP Order, but the Committee's claims go far beyond it. Counts I, III and IV of the Amended Complaint should be dismissed because they are beyond the scope of the enumerated challenges identified in section 5(e) of the Final DIP Order. Section 5(e) does not contemplate claims or causes of action related to postpetition matters, such as the rights of parties with respect to postpetition Future QAF Payments or the proper method for the

Court to use in determining the value of the Notes Trustee's rights in existing and future postpetition Hospital sales proceeds characterized by the Committee as a "going concern premium."[9]

The Committee's claims and challenges (which now include a newly-added fraudulent transfer claim) go beyond the scope of the limited standing conferred under section 5(e) of the Final DIP Order. The Debtors are the representatives of the bankruptcy estates, and the Committee's powers and standing in these bankruptcy cases are limited by Section 1103 of the Bankruptcy Code, which does not authorize lawsuits against creditors on behalf of the bankruptcy estate without leave of court. Before exceeding the Court's sanctioned standing under the Final DIP Order ,the Committee was required to bring a motion for leave and demonstrate, *inter alia*, that (1) the claims it seeks to bring are colorable, and (2) the Debtors have unjustifiably refused to pursue such claims. *See In re Yes! Entertainment Corp*., 316 B.R. 141, 145 (D. Del. 2004). *See also Official Comm. Of Unsecured Creditors of Sunbeam Corp. v. Morgan Stanley & Co*. (In re Sunbeam Corp.), 284 B.R. 355, 375 (Bankr. S.D.N.Y. 2002) (denying standing to committee where failed to demonstrate that prosecution of the actions would be "necessary and beneficial" to the resolution of the bankruptcy proceedings).

Pursuant to Section 5(e) of the Final DIP Order, the findings and stipulations set forth in the Final DIP Order with respect to the Prepetition Secured Obligations and the Prepetition Liens are binding on the bankruptcy estates and its creditors unless and solely to the extent that a party in interest has filed a timely Challenge by appropriate proceedings within the designated 90-day period, with an initial deadline of December 13, 2018. The Committee was thus granted standing to file an appropriate Challenge, but subject to the limitations set forth in Section 5(e) and the purposes for which standing was granted in the Final DIP Order.

However, Counts I, III and IV of the Amended Complaint go well beyond the Court-sanctioned Challenge of pre-petition liens and security interests; they seek relief with respect to property acquired by the Debtors' estates long after the Petition Date. The Debtors did not make any

[9] The Committee's novel request in Count I for a declaration that a "going concern premium" be deducted from the Notes Trustee's Prepetition Liens and collateral sale proceeds is manifestly contrary to both the Final DIP Order and binding precedent in the Ninth Circuit on the proper valuation of collateral sold as part of a going concern. *See*, *e.g.*, *In re Sunnyslope Housing L.P.*, 859 F.3d 637 (9th Cir. 2017).

stipulations in the Final DIP Order about the collateral value of postpetition assets or the outer limits of Section 552(b) of the Bankruptcy Code as applied to future assets and events. Yet, the Committee improperly seeks to expand its Challenge right to include relief regarding the attachment of Prepetition Liens to Future QAF Disbursements and a newly-imagined asset class referred to as the "going concern premium" of the Notes Trustee collateral sold with its consent. Count III also tacks onto its claim to Future QAF Disbursements an improper new contingent fraudulent conveyance claim regarding future assets with respect to unspecified loan agreement amendments. Amended Complaint, ¶ 36. None of these claims fall within the Court's narrowly-tailored grant of derivative standing under section 5(e) of the Final DIP Order. The Challenges permitted by the Final DIP Order were naturally intended only to enable a review of the status of the Notes Trustee's lien rights as of the Petition Date, not to cover whatever issues the Committee might conjure up on the eve of confirmation to block confirmation of the Debtors' proposed Plan. Any improper effort to obtain negotiating leverage by threatening to delay confirmation of a time-sensitive Plan should not be tolerated.

The Committee's new Count IV—seeking a conditional determination that the Notes Trustee is rendered undersecured— is a striking example of the kind of claim that cannot properly be brought pursuant to Section 5(e) of the Final DIP Order. Not only is it an improper collateral attack on the Court's prior finding that the Prepetition Secured Creditors are over-secured, but in order to adjudicate Count IV, the parties would be required to litigate – and the Court would be required to evaluate – the Notes Trustee's Prepetition Replacement Liens on postpetition assets, to the extent not otherwise subject to its Prepetition Liens.

Count III, dealing with Future QAF Disbursements, and Count IV both turn on the extent to which value accumulating to the Debtors' bankruptcy estates post-petition count as part of the Notes Trustee's secured claim for Plan treatment purposes.[10] These are not Challenges within the meaning of the Final DIP Order and should be dismissed.

[10] In 2017 Bankruptcy Rule 7001 (2) was clarified to provide that a proceeding to determine the secured amount of a creditors' claim should proceed by motion under Rule 3012 and not be adversary proceeding. To the extent that Count IV may be construed as a claim to determine the amount of the secured claim of the Notes Trustee for confirmation purposes, it should be brought under Rule 3012 by the appropriate party. The Amended Complaint is equivocal about whether Replacement Liens granted to the Notes Trustee are covered by Count IV.

II. THE COMMITTEE'S LIEN CHALLENGE WITH RESPECT TO THE HOSPITAL DEBTORS' DEPOSIT ACCOUNTS WAS WAIVED AND IRRELEVANT, IN ANY EVENT.

A. The Committee Has Waived the Right to Challenge Whether Proceeds Held in the Hospital Debtors' Deposit Accounts are the Proceeds of the Collateral of the Notes Trustee.

Count II of the Amended Complaint should be dismissed because the Committee waived its right to challenge the validity and perfection of the Notes Trustee's liens and security interests with respect to the proceeds of "Accounts" (as broadly defined) held in the Hospital Debtors' deposit accounts as of the Petition Date. As noted above, the initial Challenge deadline was December 13, 2018. That Challenge deadline was extended by the Notes Trustee in a Challenge Stipulation, but only with respect to assets not constituting Acknowledged Collateral. Under the Challenge Stipulation, any claim that could have been asserted against the Notes Trustee with respect to "Acknowledged Collateral," including "Accounts" as defined in the Security Agreements, is now time-barred under the deadlines established in the Final DIP Order.

Settlements and compromises are favored in bankruptcy as they minimize costly litigation and further parties' interests in expediting the administration of the bankruptcy estate. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *In re Kerner*, 599 B.R. 751, 754 (Bankr. S.D.N.Y. 2019). The Ninth Circuit has stated that "stipulations serve both judicial economy and the convenience of the parties, courts will enforce them absent indications of involuntary or uninformed consent." *CDN Inc. v. Kapes*, 197 F.3d 1256, 1258 (9th Cir. 1999) (*citing United States v. McGregor*, 529 F.2d 928, 931 (9th Cir. 1976)). In fact, "[a] litigant can no more repudiate a compromise agreement than he could disown any other binding contractual relationship . . . . Moreover, it is equally well settled in the usual litigation context that courts have inherent power summarily to enforce a settlement agreement with respect to an action pending before it; the actual merits of the controversy become inconsequential . . . . The authority of a trial court to enter a judgment enforcing a settlement agreement has as its foundation the policy favoring the amicable adjustment of disputes and the concomitant avoidance of costly and time-consuming litigation." *Matter of Springpark Assocs.*, 623 F.2d 1377, 1380 (9th Cir. 1980) (superseded on other grounds by statute) (*quoting Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978)). The Ninth Circuit has

also found that "A bankruptcy court, as a court of equity, likewise possesses the power to summarily enforce settlements." *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 958 (9th Cir. 1994).

Count II identifies thirty-four (34) depository accounts held by the Hospital Debtors (together, the "**Deposit Accounts**"[11]) and seeks a declaration that (1) the Notes Trustee has no perfected liens in the Deposit Accounts because the Notes Trustee does not have possession or control of the Deposit Accounts,[12] and (2) none of the "funds in the Deposit Accounts constitute the identifiable cash proceeds of an otherwise perfected, unavoidable lien in other collateral of the Defendant."

While perfection in a deposit account itself generally requires control under UCC 9-314, the requirements for perfecting in identifiable cash proceeds only require the filing of a financing statement perfecting in the original collateral. See Cal. Com. Code § 9310(a). The Committee itself has acknowledged this. [Dkt. No. 3000; ¶ 2]. Except as otherwise provided in UCC sections 9310(b) and 9312(b), a financing statement must be filed to perfect all security interests and agricultural liens. Cal. Com. Code § 9310. Further, under California law, a secured creditor's lien attaches to the proceeds of its collateral notwithstanding a subsequent "sale, lease, license, exchange, or other disposition thereof … ." Cal. Com. Code § 9315.

There is no dispute that the Notes Trustee filed the requisite financing statements with the California Secretary of State covering the definition of Accounts and clearly identifying proceeds of such Accounts in the definition of its Prepetition Collateral. [See Exhibit B]. These financing statements cover all forms of payment to the Debtor Hospitals. The Amended Complaint does not and cannot allege to the contrary. Accordingly, Count II should be dismissed.

[11] The Amended Complaint includes fifteen other bank accounts within the definition of Deposit Accounts that are not with Debtors who are obligated to the Trustee. As discussed below, the Notes Trustee has not asserted a lien in deposit accounts not held by the Debtors obligated to it. There is no dispute as to these accounts and no reason to waste judicial resources seeking determinations with respect to such deposit accounts.

[12] Agreements governing and controlling several of these accounts among the Notes Trustee, Bank of America and the Debtors did exist. The Notes Trustee reserves all rights to assert that it did have control of these accounts by reason of these agreements, but the issue has little, if any, practical relevance because the funds therein would have been the identifiable proceeds of the liens of the Notes Trustee and, in any event, the funds have been spent by the Debtors and are not available.

In the Challenge Stipulation, the Committee irrevocably waived its right to make a Challenge of the security interests of the Notes Trustee in all of the Hospital Debtors' "Accounts," including

> (a) any right to payment of a monetary obligation whether or not earned by performance, that relates to or arises out of any services provided or goods rendered by an Obligated Group Member (including, without limitation, payments made by or through a governmental authority to an individual patient assigned to such Member), (b) without duplication, any 'account' (as defined in the UCC), any accounts receivable, whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any Health-Care-Insurance Receivables (as defined in the UCC) and any Payment Intangibles (as defined in the UCC), (c) all General Intangibles (as defined in the UCC), Intellectual Property (as defined in the UCC), rights, remedies, guarantees, supporting obligations and letter of credit rights relating to or arising out of the foregoing assets described in clauses (a) and (b), (d) all information and data compiled or derived by any Member or to which any Member is entitled in respect of or related to the foregoing assets described in clauses (a) and (b) and (e) and all proceeds of any of the foregoing.

Security Agreement, Schedule V. As noted above, the definition of "Accounts" was broad and captured all forms of revenues and payments made to or collected by the Obligated Members. Accordingly, the Committee's waiver extends to all funds in the Deposit Accounts.

B. <u>In Any Event, Count II Seeks Only an Irrelevant Judicial Declaration.</u>

Count II fails to present a real case or controversy because the Committee fails to allege that any real money is at stake. The Court found in the Final DIP Order that the Prepetition Secured Creditors (which included the Notes Trustee) were oversecured as of the Petition Date and, therefore, are entitled to a Prepetition Replacement Lien in all DIP Collateral to the extent of any diminution. Moreover, the funds in the subject Deposit Accounts have been spent by the Debtors along with hundreds of millions of dollars of the Notes Trustee's other cash collateral. This fact begs the question—what difference would a judicial declaration about the status of liens in spent money as of the Petition Date make? If the money is gone, it cannot be divided or shared. For all the foregoing reasons, Count II should be dismissed.

C. Count II Fails to Meet the Minimum Pleading Requirements for a Lien Challenge.

Count II of the Amended Complaint should be dismissed because it fails to meet minimum pleading requirements. Count II hinges upon a blanket allegation that there are no "identifiable cash proceeds" in the Hospital Debtors' deposit accounts. Amended Complaint, ¶ 33. The allegation is

completely unquantified and unsubstantiated, and is in the nature of conclusory legal assertion. Given that the Notes Trustee has a perfected security interest in all forms of revenue and rights of payment, the allegation that none of the cash held by the Hospital Debtors as of the Petition Date constitutes the identifiable proceeds of the Notes Trustee's Prepetition Liens is incredulous.

"Pleadings must be something more than an ingenious academic exercise in the conceivable." *Jackson v. BellSouth Communications*, 372 F.3d 1250, 1271 (11th Cir. 2004). While it is perhaps conceivable that some of the funds in these Deposit Accounts are not subject to the liens of the Notes Trustee, the Committee must do more than it has done in the Complaint to support a claim. Complaints brought under the Bankruptcy Code are subject to the same pleading requirements as other complaints in federal court. *In re Tracht Gut, LLC*, 836 F.3d 1146 (9th Cir. 2016) (affirming dismissal of fraudulent transfer complaint for failure to state a claim when complaint merely repeated statutory elements and did not contain any factual allegations regarding why specific transfers might be fraudulent). A generalized claim for declaratory relief that does not contain a cognizable legal theory or factual basis supporting such theory is properly dismissed. *Id*. at 51.

The challenge right in the Final DIP Order was established to require the Committee to investigate claims and to assert challenges that it could support with enough specificity to meet the pleading requirements imposed upon plaintiffs generally. Because of the numerous extensions granted to it, the Committee had many months to determine what specific liens, if any, it would challenge. It also had ample time to develop factual predicates to plead enough facts to put the Notes Trustee on notice as to which funds, in which Deposit Accounts, the Committee believed were not subject to a security interest. The Committee's blunderbuss listing of dozens of potentially closed or empty Deposit Accounts and its demand for a declaration that none of these accounts contain funds that represent any identifiable cash proceeds of the Notes Trustee's collateral fails to meet the standards contemplated by the Final DIP Order, the Federal Rules of Civil Procedure and binding case precedent.

III. THE NEW LIEN CHALLENGES ASSERTED BY THE COMMITTEE IN COUNTS I AND III OF ITS AMENDED COMPLAINT HAVE BEEN WAIVED.

The new lien challenges raised by the Committee for the first time in its Amended Complaint – *i.e.*, (i) the "going concern premium" challenge in Count I and (ii) the fraudulent conveyance challenge in Count III – were waived by the Committee and should be dismissed. As noted above, pursuant to stipulations entered into between the parties, the deadline for bringing lien Challenges under 5(e) of the Final DIP Order (even for collateral other than Acknowledged Collateral) expired on June 13, 2019. The Original Complaint did not include new claims asserted for the first time in the Amended Complaint. These include: (1) the new request in Count I for a declaration that the Court should not allow the Note Trustee to have Prepetition Liens upon "going concern premium" sales proceeds; (2) the new fraudulent conveyance allegation in Count III conditionally seeking to avoid any loan agreement amendments that may have captured a valid lien on Future QAF Disbursements and; (3) a new Count IV seeking a declaration that the Notes Trustee would be undersecured if the Court were to agree with the Committee's positions. As indicated above, these are not proper Challenges for which the Committee has standing, they have not been properly pled and have procedural defects. But, even if they were not otherwise subject to dismissal, and they are, these new claims have been raised too late, after the Challenge Deadline, and have therefore been waived.

Rule 15, is made applicable to this proceeding by Bankruptcy Rule 7015, does not save these new claims from being time barred. To relate back, that rule requires that "the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading…" *See* Fed. R. Civ. P. 15(c)(2). "[A]n amendment can only relate back if the new claim relies on the same facts and does not seek to insert new facts." *Id*. at 41. (reversing bankruptcy court's order granting leave to amend because untimely amended complaint pleaded new theory as well as new facts). The Ninth Circuit, in *Echlin v. PeaceHealth* held that:

> [C]laims must share a common core of operative facts such that the plaintiff will rely on the same evidence to prove each claim. Thus, an amendment will not

> relate back when the amended complaint had to include additional facts to support the new claim.

887 F.3d 967, 978 (9th Cir. 2018) (internal citations omitted).

Here, the facts alleged in the Original Complaint do not support the new claims asserted for the first time after the Challenge Deadline. *See* Amended Complaint, ¶¶ 22-24. Accordingly, these new claims, in addition to their other defects, have been waived as untimely.

IV. THE COMMITTEE'S REQUESTS IN COUNT I TO RESTATE THE SCOPE OF THE PREPETITION LIENS OF THE NOTES TRUSTEE AND TO MODIFY THE FINAL DIP ORDER ARE IMPROPER.

In Count I of the Amended Complaint, the Committee seeks a declaration that, notwithstanding anything to the contrary in Section 5(e) of the Final DIP Order, the collateral of the Notes Trustee is limited as of the Petition Date to what the Committee describes as its collateral on Exhibit A to the Amended Complaint. This claim is an improper attempt to reformulate the waiver as to Acknowledged Collateral in the Challenge Stipulation. The Committee's Exhibit A does not fully describe the Acknowledged Collateral in the Challenge Stipulation in important respects. For example, it omits deposit accounts subject to deposit control agreements in favor of the Notes Trustee that are listed in the Acknowledged Collateral. Moreover, Exhibit A describes the collateral of the Notes Trustee in a truncated and abbreviated way that is more limited than the description of Acknowledged Collateral in the Challenge Stipulation or in the relevant underlying documentation. The substance of Count I is already covered by the Challenge Stipulation and cannot be varied and reformulated now.

To the extent that Count I is intended to clarify or modify Paragraph 5(e) of the Final DIP Order, it is procedurally improper. The Final DIP Order is final and can only be modified through a timely appeal or a motion to reconsider. The Committee in fact did appeal the Final DIP Order. *See* Notice of Appeal and Statement of Election, *In re Verity Health System of California, Inc., et al.*; 2:18-cv-10675-RGK [Dkt No. 1]. In its Notice of Appeal, the Committee sought to overturn Paragraphs 2(d), 2(h), 5(d), 5(f), 19 and 28(e) of the Final DIP Order. The Committee chose not to appeal Paragraph 5(e). If the language "mistakenly suggested that Defendant has a perfected security interest in all of the assets of all of the Debtors," the Committee could have raised this when it filed

its initial Notice of Appeal. As described in paragraph 28 hereof, the Committee's appeal has now been decided by the District Court, and the Committee has further appealed the District Court's decision to the Ninth Circuit Court of Appeals. The Committee cannot now seek to challenge or modify the provisions of the Final DIP Order through its Complaint.

Finally, to the extent that the Committee believed that there was an error in the Court's Final DIP Order, it was required to timely seek relief under Federal Rule of Civil Procedure 60(b)(1), incorporated under Federal Rule of Bankruptcy Procedure 9024, but the Committee did not do so.

CONCLUSION

For the foregoing reasons, the Notes Trustee respectfully requests that the Court grant its Motion to dismiss the Amended Complaint.

Dated: September 30, 2019

MCDERMOTT WILL & EMERY LLP

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

MASLON LLP

By: /s/ *Clark T. Whitmore*
Clark T. Whitmore

Attorneys for U.S. Bank National Association, not individually but as Notes Trustee

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this adversary proceeding. My business address is: McDermott Will & Emery LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067-3206.

A true and correct copy of the foregoing document, entitled NOTES TRUSTEE'S MOTION TO DISMISS AMENDED COMPLAINT, MEMORANDUM IN SUPPORT THEREOF, 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 September 30, 2019, 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:

Mark Shinderman, Robert J. Liubicic, Alexandra Achamallah, James Cornell Behrens, Thomas E. Jeffry Jr., and Robert M. Hirsh on behalf of the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.
mshinderman@milbank.com, rliubicics@milbank.com, aachamallah@milbank.com, jbehrens@milbank.com, thomas.jeffry@arentfox.com, robert.hirsch@arentfox.com

Samuel R. Maizel, Tania M. Moyron and Nicholas A. Koffroth on behalf of Debtors Verity Health System of California, Inc., et al.
samuel.maizel@dentons.com, tania.moyron@dentons.com, nick.koffroth@dentons.com

United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On _____, 2019, 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.

☐ 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 September 30, 2019, 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.

September 30, 2019	Jason D. Strabo	*/s/ Jason D. Strabo*
Date	*Printed Name*	*Signature*