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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,[1] Debtors and Debtors In Possession.	District Court Case No.: 2:18-cv-10675-RGK Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER **APPENDIX IN SUPPORT OF BRIEF OF APPELLEES VERITY HEALTH SYSTEM OF CALIFORNIA, INC. *ET AL.***

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[1] The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

Verity Health System of California, Inc., and the above-referenced affiliated debtors, and debtors in possession in the above-captioned chapter 11 cases, and the Appellee with respect to this appeal hereby files this Appendix in support of its Appellee's Brief, which is being filed concurrently herewith.

Date Filed:	**Tab and Bankruptcy Court ECF No.**	**Document Name**
02/04/2019	1 [ECF No. 1457]	Order Approving Stipulation Between Debtors And Swinerton Builders, Resolving Rule 7052 Motion For Amendment Of Findings In Final Order (I) Authorizing Postpetition Financing [...].
01/14/2019	2 [ECF No. 1244]	Stipulation Between Ally Bank and Official Committee of Unsecured Creditors Regarding DIP Order Appeal
09/17/2018	3 [ECF No. 197]	Notice of Appointment of Creditors' Committee Filed by United States Trustee
08/31/2018	4 [ECF No. 22]	Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors Relating To The Foregoing
08/31/2018	5 [ECF No. 29]	Debtors Emergency Motion For Entry Of An Order Authorizing Debtors To Honor Prepetition Obligations To Critical Vendors
09/19/2018	6 [ECF No. 291]	Renewed Reservation of Rights Filed by Creditor U.S. Bank National Association, not individually, but as Indenture Trustee
10/17/2018	7 [ECF No. 559]	Motion to Reconsider Under Rule 9023/FRCP 59(e) Filed by Creditor Retirement Plan for Hospital Employees
10/17/2018	8 [ECF No. 564]	Motion to Amend Order on Motion to Use Cash Collateral Pursuant to Rule 7052(b) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]

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10/31/2018	9 [ECF No. 732]	Objection To Swinerton Builders Motion Pursuant To Bankruptcy Rule 7052(B) For Amendment Of Findings In Final DIP Order Filed by Debtor Verity Health System of California, Inc.
11/13/2018	10 [ECF No. 812]	Notice of Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]
11/13/2018	11 [ECF No. 813]	The Hearing date is set for 12/4/2018 at 10:00 AM
12/03/2018	12 [ECF No. 968]	Stipulation By Swinerton Builders and Debtors to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]
01/17/2019	13 [ECF No. 1280]	Stipulation By Swinerton Builders and Debtors (Second) to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...] Filed by Creditor Swinerton Builders.
11/29/2018	14 [ECF No. 932]	Notice of Appeal and Statement of Election to Bankruptcy Appellate Panel
01/20/2019	15 [ECF No. 1306]	Objection to Stipulation By Swinerton Builders and Debtors (Second) to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...] filed by Creditor Swinerton Builders) Filed by Creditor Committee Official Committee of Unsecured Creditors of Verity Health System of California, Inc.
02/01/2019	16 [ECF No. 1437]	Stipulation By Verity Health System of California, Inc. and Swinerton Builders, Resolving Rule 7052 Motion For Amendment of Findings In Final Order (I) Authorizing Postpetition Financing […]

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Dated: April 15, 2019

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FILED & ENTERED

FEB 04 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

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 Verity Health System of California, Inc.
☐ 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 ASC, 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

Hon. Judge Ernest M. Robles

ORDER APPROVING STIPULATION BETWEEN DEBTORS AND SWINERTON BUILDERS, RESOLVING RULE 7052 MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED DOCKET NOS. 1315, 1306, 1280, 974, 968, 732, 564, 409, 392, 355, 309 AND 269]

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The Court, having reviewed the *Stipulation Between Debtors and Swinerton Builders, Resolving Rule 7052 Motion For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]*(the "Stipulation"), filed as Docket No. 1437, entered between the above-captioned debtors and debtors in possession (the "Debtors"), Swinerton Builders and the Official Committee of Unsecured Creditors (the "Committee") and good cause appearing therefore,

HEREBY ORDERS AS FOLLOWS:

1. The Stipulation is approved.

2. The Court's Tentative Ruling [Docket No. 392] incorporated into the Final DIP Order [Docket 409] at p. 6, is hereby amended to add the following sentence at p. 12: "Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion in that property."

3. This Order resolves the Swinerton Motion made under Bankruptcy Rule 7052(b) and closes the record with respect to Docket No. 409.

4. The Debtors have waived any objection to the validity, perfection or amount of Swinerton's lien as a prepetition lien junior to the liens of the Prepetiton Secured Creditors.

5. The Committee shall have up to ninety (90) days from entry of this order to challenge the validity, perfection or amount of, or to otherwise challenge Swinerton's lien.

IT IS SO ORDERED.

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###

Date: February 4, 2019

Ernest M. Robles
United States Bankruptcy Judge

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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 and Debtors In Possession.

Affects:

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

Debtors and Debtors In Possession.

Lead Case No. 18-20151
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

STIPULATION BETWEEN ALLY BANK AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING DIP ORDER APPEAL

This stipulation is entered between Ally Bank ("Ally" or the "DIP Lender"), on the one hand, and the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in connection with the chapter 11 cases of the above-captioned debtors and debtors-in-possession (the "Debtors"), on the other, with respect to the following:

1. On August 31, 2018 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. On the Petition Date, the Debtors filed their 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 110 [Docket No. 31] (the "DIP Motion").

3. On September 6, 2018, the Court granted the DIP Motion on an interim basis [Docket No. 86] (the "Interim DIP Order").)

4. On September 14, 2018, the U.S. Trustee appointed Committee pursuant to section 1102(a) of the Bankruptcy Code [Docket No. 197].

5. On September 27, 2018, the Committee filed its Limited Objection to Debtor's Motion for Authority to Obtain Postpetition Financing and Related Relief [Docket No. 316] (the "Committee Objection").

6. On October 4, 2018, after overruling, among others, the Committee Objection, the Court granted the DIP Motion on a final basis, by entering the 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 [Docket No. 409] (the "Final DIP Order").

7. On November 29, 2018, the Committee filed its Notice of Appeal and Statement of Election [Docket No. 932] (the "Committee Appeal").

8. The issues that will be raised in the Committee Appeal involve Paragraphs 2(d), 2(h), 5(d), 5(f), 19, and 28(e) of the Final DIP Order, only insofar as such issues relate to the Prepetition Secured Creditors (as defined in the Final DIP Order) and not with respect to the DIP Lender and DIP Agent (as defined in the Final DIP Order) or any of the rights or protections granted to the DIP Lender and DIP Agent under the Final DIP Order and DIP Financing Agreements, including, without limitation, the DIP Protections, the waiver of the surcharge powers under section 506(c) of the Bankruptcy Code with respect to the DIP Collateral, and the waiver of any marshalling or similar doctrine with respect to the DIP Agent, DIP Lender and DIP Collateral.

9. The references in the Committee Appeal to certain Paragraphs of the Final DIP Order that relate to relief granted to the DIP Agent and DIP Lender are solely for the sake of being thorough with respect to the provisions of the Final DIP Order that involve the issues that are the subject of the Committee Appeal.

NOW, THEREFORE, all of the parties to this stipulation hereby stipulate:

A. The issues raised and relief sought by the Committee Appeal, as set forth in Paragraph 8 above, will not seek to overturn the terms of such provisions insofar as they granted specific relief to the DIP Agent and DIP Lender. In other words, even if the Committee is successful in its appeal, the Final DIP Order and DIP Financing Agreements shall remain in full force and effect as to the DIP Agent, DIP Lender, DIP Protections, and all of the other rights and protections granted to the DIP Lender and DIP Agent under the Final DIP Order and the DIP Financing Agreements.

B. Ally need not take any action with the respect to the Committee Appeal before the Bankruptcy Court, the Bankruptcy Appellate Panel for the Ninth Circuit, the United States District Court for the Central District of California, or any other appellate court, in order to preserve

all of its rights and remedies, whether granted under the Final DIP Order, the DIP Financing Agreements, or otherwise.

[Signature page follows]

Ally Bank Financial, Inc.

By: _____
David E. Lemke
Waller Lansden Dortch & Davis, LLP
Counsel to Ally Bank.

Official Committee of Unsecured Creditors

By: _____
Gregory A. Bray
Mark Shinderman
James C. Behrens
Milbank, Tweed, Hadley & McCloy LLP
Counsel to the Official Committee of Unsecured Creditors

PROOF OF SERVICE

I am employed in the County of Davidson, Tennessee. I am over the age of 18 and not a party to the within action. My business address is 511 Union Street, Suite 2700, Nashville, Tennessee 37219.

A true and correct copy of the foregoing document described as:

STIPULATION BETWEEN ALLY BANK AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING DIP ORDER APPEAL

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 ELECTRONIS 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 January 14, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

X Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:
On January 14, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

X Service information continued on attached page

3. **SERVED BY OVERNIGHT MAIL, FACSIMILE OR EMAIL:**
Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on January 14, 2019, I served the following persons and/or entities by 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.

X 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. Executed on January 14, 2019, at Nashville, Tennessee.

Christine T. Cronk

CHRISTINE T. CRONK

4817-0424-5122.4

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TAB 3

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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.***, Debtor(s). _X_ Affects All Debtors ___ Affects Verity Health System of California, Inc. ___ 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 **NOTICE OF APPOINTMENT AND APPOINTMENT OF COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS**

Pursuant to 11 U.S.C. Section 1102(a), the undersigned hereby appoints the following nine (9) Creditors to serve on the Committee of Creditors holding unsecured claims:

SEE ATTACHED EXHIBIT A

DATED: September 17, 2018

Respectfully submitted,
PETER C. ANDERSON
UNITED STATES TRUSTEE

By: Peter C. Anderson
United States Trustee

EXHIBIT A

EXHIBIT A

EXHIBIT "A"

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF APPOINTMENT AND APPOINTMENT OF COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS**
will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **9/17/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED LIST

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) **9/17/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED LIST

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **9/17/18**, 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.
JUDGE'S COPY: [Pursuant to the UST's agreement with the U.S. Bankruptcy Court, Judge's Courtesy Copy was mailed via Federal Express overnight mail to the following address] U.S. Bankruptcy Court, 255 E. Temple St., Room 940, Los Angeles, CA 90012, Attn: Mail Room Clerk—Judges Copies

☐ 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.

9/17/18	Helen Cruz	
Date	*Printed Name*	*Signature*

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- RightSourcing Inc., RightSourcing Headquarters, 9 Executive Circle, Ste. 290, Irvine, CA 92614, Attn: Christie Hayes - On Site Program Manager
- EOS Healthcare, 700 Longwater Dr., Norwell, MA 02061, Attn: Tod Dillon
- Smith Nephew Inc., P.O. Box 933782, Atlanta, GA 31193-3782, Attn: Keith Salaya
- American Red Cross, P.O. Box 73563, Chicago, IL 60673-7563, Attn: Michael Gregory
- Compspec, 425 E. Colorado St., #410, Glendale, CA 91205, Attn: Shellie Murph-Miller
- Sports, Orthopedic & Rehabilitation Associates, 500 Arguello St., Ste. 100, Redwood City, CA 94068, Attn: Customer Support
- FTG Builders Inc., 2975 Scott Blvd., Ste. 100, Santa Clara, CA 95054, Attn: Rodney Terra, Jr.
- Johnson & Johnson Health Care Systems, Inc., 425 Hoes Ln., Piscataway, NJ 08854, Attn: Vickey Corbett
- Cochlear Americas, c/o Cochlear Corp., 400 Inverness Dr. South, Ste. 400, Englewood, CO 80112, Attn: Brooke Phillips
- Mike Fayfel, 1180 S. Beverly Dr., Ste. 610, Los Angeles, CA 90035, Attn: Craig Ackerman, Tilajef Ackerman
- Touchpoint Support Services, 400 N. Ridge Rd., Sandy Springs, GA 30350, Attn: Todd Head
- Abbott Laboratories (formerly St. Jude), 3200 Lakeside Dr., Santa Clara, CA 95054, Attn: Karen Davidson
- Baxter Healthcare, 1 Baxter Pkwy., Deerfield, Il 60015, Attn: Paige Stuebe
- UHS Universal Hospital Services Inc., 6625 W. 78th St., Ste. 300, Minneapolis, MN 55439
- Pension Benefit Guaranty Corp., Office of the General Counsel, 1200 K St., NW, Washington, DC 20005, Attn: Judith Starr

TAB 4

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Proposed Attorneys for the Chapter 11 Debtors and 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.	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-20171-ER Chapter 11 Cases Hon. Judge Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ 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	**EMERGENCY MOTION OF DEBTORS FOR ENTRY OF ORDER: (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES AND SALARIES, AND (B) PAY AND HONOR EMPLOYEE BENEFITS AND OTHER WORKFORCE OBLIGATIONS; AND (II) AUTHORIZING AND DIRECTING THE APPLICABLE BANK TO PAY ALL CHECKS AND ELECTRONIC PAYMENT REQUESTS MADE BY THE DEBTORS RELATING TO THE FOREGOING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Filed Pursuant to LBR 2081-1(a)(6) and 9075-1(a)] [Declaration of Richard G. Adcock in Support of

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☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC Debtors and Debtors In Possession.	Debtors' First Day Motions filed concurrently herewith] EMERGENCY HEARING: Date: September 5, 2018 Time: 10:00 a.m. Place: Courtroom 1568 U.S. Bankruptcy Court 255 East Temple Street Los Angeles, CA 90012

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EMERGENCY MOTION

Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors (collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned Chapter 11 bankruptcy cases (collectively, the "Cases"), hereby move, on an emergency basis (the "Motion"), pursuant to §§ 105(a), 363(b), 507(a), 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code"),[1] for the entry of an order: (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages and salaries, and (b) pay and honor employee benefits and other workforce obligations (including remitting withholding obligations, maintaining workers' compensation and benefits programs, paying related administration obligations, making contributions to retirement plans, and paying reimbursable employee expenses); and (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing (collectively, the "Employee Obligations"). In support of the Motion, the Debtors have separately filed the Declaration of Richard G. Adcock in Support of Debtors' First Day Motions (the "Adcock Declaration").

SUMMARY OF REQUESTED RELIEF

The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer irreparable harm without the relief requested in this Motion. The Debtors' employees are vital to the operation of the Debtors' hospitals and its medical clinics, and to the health, welfare, safety and security of the patients who seek medical care therein. Payment of, and otherwise honoring, the Employee Obligations are necessary to prevent employees from terminating their employment with the Debtors and to maintain the employees' morale pending resolution of these Cases. Specifically, in satisfaction of Rule 2081-1(a)(6) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the "LBR"):

(A) the employees regarding whom relief is requested are still employed by the Debtors;

[1] All references to "§" or "sections" herein are to sections of the Bankruptcy Code.

(B) the proposed payments to employees are absolutely necessary;

(C) these proposed payment procedures are beneficial to the Debtors' estates;

(D) with the requested first-day relief, the Debtors' prospect of reorganization is heightened;

(E) the Debtors do not seek to pay any prepetition claims of any insiders at this time;

(F) the employees' claims are within the limits established by § 507; and

(G) the proposed payments will not render the Debtors' estates administratively insolvent.

Therefore, pursuant to LBR 2081-1(a)(6), the Debtors request that this Motion be heard on an emergency basis.[2]

ADDITIONAL INFORMATION

The Motion is based on the Notice of Emergency Motions that will be filed and served after a hearing date for the Debtors' "First Day Motions" has been obtained, the attached Memorandum of Points and Authorities, the Adcock Declaration, and the arguments of counsel and other admissible evidence properly brought before the Court at or before the hearing regarding the Motion. In addition, the Debtors request that the Court take judicial notice of all documents filed with the Court in this case.

Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and Authorities, the Adcock Declaration and the Notice of First Day Motions on: (i) the Office of the United States Trustee; (ii) any alleged secured creditors; (iii) the fifty largest general unsecured creditors appearing on the list filed in accordance with Rule 1007(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); (iv) the United States of America, and the State of California; and (v) parties that file with the Court and serve upon the Debtors requests for notice of all matters in accordance with Bankruptcy Rule 2002(i). To the extent necessary, the Debtors request that the Court waive compliance with LBR 9075-1(a)(6) and approve service (in addition to the means of services set forth in such LBR) by overnight delivery. Among other

[2] Pursuant to LBR 9075-1(a)(4), no separate motion for an expedited hearing is required.

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things, the Notice of Emergency Motions will provide that any opposition or objection to the Motion may be presented at any time before or at the hearing regarding the Motion, but that failure to timely object may be deemed by the Court to constitute consent to the relief requested herein.

In the event that the Court grants the relief requested by the Motion, the Debtors shall provide notice of the entry of the order granting such relief upon each of the foregoing parties and any other parties in interest as the Court directs. The Debtors submit that such notice is sufficient and that no other or further notice be given.

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the Court enter an order providing for the following relief: (i) authorizing the Debtors, in their discretion, to (a) pay prepetition employee wages and salaries, and (b) pay and honor employee benefits and other workforce obligations (including remitting withholding obligations, maintaining workers' compensation and benefits programs, paying related administration obligations, and paying reimbursable employee expenses); (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing; and (iii) granting such other and further relief as is just and proper under the circumstances.

Dated: August 31, 2018

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By /s/Tania M. Moyron
Tania M. Moyron

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Debtors request, pursuant to LBR 2081-1(a)(6) and 9075-1(a) and §§[3] 105(a), 363(b), 507(a), 1107(a) and 1108 of the Bankruptcy Code, entry of an order on an emergency basis in these cases: (i) authorizing, but not directing, the Debtors, in their discretion, to (a) pay or honor prepetition wages, salaries, employee benefits, and other compensation, (b) remit withholding obligations, (c) maintain workers' compensation and benefits programs, (d) pay related administration obligations, and (e) pay reimbursable employee expenses (collectively, the "Employee Obligations"); and (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing.

The Debtors' goals in these Cases are to facilitate an orderly administration of their Cases and to maintain efficient and seamless operations for the benefit of the patients (the "Patients") who seek medical care in the Hospitals (defined below) and medical clinics operated by the Debtors in order to maximize the value of their assets for the benefit of all stakeholders. Accordingly, it is imperative to the accomplishment of the Debtors' goals in these Cases that the Debtors minimize any adverse impact of the chapter 11 filing on the Debtors' workforce, on the Patients, on the operations of the Hospitals and medical clinics, and on the orderly administration of these Cases. Any disruption to payment of the payroll in the ordinary course, or to the continued implementation of employee programs in the Debtors' discretion, would adversely affect the Debtors' goals in this case because such events could cause some employees to terminate their employment with the Debtors, could cause employees to be distracted from their duties to care for the Patients and the operations of the Hospitals and medical clinics, and could hurt employee morale at a particularly sensitive time for all employees. Failure to honor payroll and employee benefits obligations could have severe repercussions on the Debtors' ability to

[3] All references to "§" or "section" herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended

preserve their assets and administer their estates, to the detriment of all constituencies. Accordingly, the Debtors respectfully request that the Court grant the Motion.

II.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

III.

STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 ("Petition Date"), Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[4] Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that operate six acute care hospitals: O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside (collectively, the "Hospitals") and other facilities in the state of California. Seton Medical Center and Seton Medical Center Coastside operate under one consolidated acute care license.

3. VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health System") operate as a nonprofit health care system, with approximately 1,680 inpatient beds, six

[4] All references to "§" or "section" herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended.

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active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care.

4. The VHS affiliated entities, including the Debtors and non-debtor entities, are as follows:

- O'Connor Hospital ("OCH")
- Saint Louise Regional Hospital ("SLRH")
- St. Francis Medical Center ("SFMC")
- St. Vincent Medical Center ("SVMC")
- Seton Medical Center ("SMC"), including Seton Medical Center Coastside campus ("SMCC")
- Verity Business Services ("VBS")
- Marillac Insurance Company, Ltd.
- O'Connor Hospital Foundation ("OCH-F")
- Saint Louise Regional Hospital Foundation ("SLRH-F")
- St. Francis Medical Center of Lynwood Foundation ("SFMC-F")
- St. Vincent Medical Center Foundation ("SVMC-F")
- Seton Medical Center Foundation ("SMC-F")
- St. Vincent de Paul Ethics Corporation
- St. Vincent Dialysis Center
- De Paul Ventures, LLC
- De Paul Ventures - San Jose Dialysis, LLC
- De Paul Ventures - San Jose ASC, LLC
- Verity Medical Foundation ("VMF")
- Verity Holdings, LLC ("Holdings")

5. VMF, incorporated in 2011, is a medical foundation, exempt from licensure under California Health & Safety Code § 1206(l). VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. With more than 100 primary care and specialty physicians, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Debtor Hospitals. VMF holds long-term professional services agreements with the following medical groups: (a) Verity Medical Group; (b) All Care Medical Group, Inc.; (c) CFL Children's Medical Associates, Inc.; (d) Hunt Spine Institute, Inc.; (e) San Jose Medical Clinic, Inc., D/B/A San Jose Medical Group; and (f) Sports, Orthopedic and Rehabilitation Associates.

6. Holdings is a direct subsidiary of its sole member VHS and was created in 2016 to hold and finance VHS' interests in four medical office buildings whose tenants are primarily

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physicians, medical groups, healthcare providers, and certain of the VHS Hospitals. Holdings' real estate portfolio includes more than 15 properties. Holdings is the borrower on approximately $66 million of non-recourse financing secured by separate deeds of trust and revenue and accounts pledges, including the rents on each medical office building.

7. OCH-F, SLRH-F, SFMC-F, SVMC-F, and SMC-F handle fundraising and grant-making programs for each of their respective Debtor Hospitals.

8. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. Approximately 74% of these employees are represented by collective bargaining units. A majority of the employees are represented by either the Service Employees International Union (approximately 39% of employees) or California Nurses Associations (approximately 22% of employees).

9. Each of the Debtors is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, except for Verity Holdings, LLC, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC.

10. To date, no official committee or examiner has been appointed by the Office of the United States Trustee in these chapter 11 Cases.

B. Historical Challenges.

11. The Hospitals and VMF were originally owned and operated by the Daughters of Charity of St. Vincent de Paul, Province of the West (the "Daughters of Charity"), to support the mission of the Catholic Church through a commitment to the sick and poor. The Daughters of Charity began their healthcare mission in California in 1858 and they ministered to ill, poverty-stricken individuals for more than 150 years. In March 1995, the Daughters of Charity merged with Catholic Healthcare West ("CHW"). In June 2001, Daughters of Charity Health System ("DCHS") was formed, and in October 2001, the Daughters of Charity withdrew from CHW. In 2002, DCHS commenced operations and was the sole corporate member of the Hospitals, which at that time were California nonprofit religious corporations.

12. Between 1995 and 2015, the Daughters of Charity and DCHS struggled to find a solution to continuing operating losses, either through a sale of some or all of the hospitals or a

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merger with a more financially sound partner. All these efforts failed. During these efforts, however, the health system's losses continued to mount, and the system borrowed more than $500 million – including through a 2008 bond issuance (the "2008 Bonds") – to fund operations, acquire assets, fund needed capital improvements and/or refinance existing debt.

13. Despite continuous efforts to improve operations, operating losses continued to plague the health system due to, among other things, mounting labor costs, low reimbursement rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for OCH, SLRH, SMC and SMCC. In 2013, to avoid failing debt covenants, the Daughters of Charity Foundation, an organization separate and distinct from DCHS, donated $130 million to DCHS to allow it to retire the 2008 Bonds in the total amount of $143.7 million.

14. In early 2014, DCHS announced that they were beginning a process to evaluate strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their health system and, in October of 2014, they entered into an agreement with Prime Healthcare Services and Prime Healthcare Foundation (collectively, "Prime") to sell the health system. However, to keep the hospitals open, DCHS needed to borrow another $125 million to mitigate immediate cash needs during the sales process; in other words, to allow DCHS to continue to operate until the sale could be consummated. In early 2015, the California Attorney General consented to the sale to Prime, subject to conditions on that sale that were so onerous that Prime terminated the transaction.

15. In 2015, DCHS again marketed their health system for sale, and, again, focused on offers that maintained the health system as a whole, and assumed all the 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").

16. In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of $100 million to the hospital system, arrange loans for another $160 million to the health system, and manage operations of the health system, with an option to buy the health

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system at a future time. In addition, the parties entered into a System Restructuring and Support Agreement (the "Restructuring Agreement"), DCHS's name was changed to Verity Health System, and Integrity Healthcare, LLC ("Integrity") was formed to carry out the management services under a new management agreement.

17. On December 3, 2015, the California Attorney General approved the BlueMountain Transaction, subject to conditions. Despite BlueMountain's infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system did not prosper.

18. In July 2017, NantWorks, LLC ("NantWorks") acquired a controlling stake in Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another $148 million to the Debtors.

19. Despite the infusion of capital and new management, it became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring. Thus, despite VHS' great efforts to revitalize its Hospitals and improvements in performance and cash flow, the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining agreements or payor contracts, the continuing need for significant capital expenditures for seismic obligations and aging infrastructure, and the general headwinds facing the hospital industry, make success impossible. Losses continue to amount to approximately $175 million annually on a cash flow basis.

20. Additional background facts on the Debtors, including an overview of the Debtors' business, information on the Debtors' capital structure and additional events leading up to these chapter 11 cases, are contained in the Adcock Declaration.

C. Relevant Background to Motion

1. The Debtors' Employees

21. As set forth in the concurrently filed Adcock Declaration, altogether, the Debtors employ approximately 7,385 employees – 6,907 excluding VMF and 478 under VMF. For W-2 tax and payroll purposes, the Debtors are divided into eight employers:

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(a) VHS, which covers the Systems Office and the Philanthropic Foundations, and as of the Petition Date employed approximately 294 employees (the "VHS Employees"), of which 289 are full-time, 3 are part-time and 2 are employed on a "*per diem*" basis;

(b) VBS, which as of the Petition Date employed approximately 307 employees (the "VBS Employees"), of which 285 are full-time, 11 are part-time and 11 are *per diem*;

(c) OCH, which as of the Petition Date employed approximately 1,370 employees (the "OCH Employees"), of which 586 are full-time, 441 are part-time and 343 are *per diem*;

(d) SLRH, which as of the Petition Date employed approximately 480 employees (the "SLRH Employees"), of which 153 are full-time, 159 are part-time and 168 are *per diem*;

(e) SFMC, which as of the Petition Date employed approximately 2,017 employees (the "SFMC Employees"), of which 1,583 are full-time, 136 are part-time and 298 are *per diem*;

(f) SVMC, which as of the Petition Date employed approximately 1,099 employees (the "SVMC Employees"), of which 897 are full-time, 42 are part-time and 160 are *per diem*;

(g) SMC, which includes SMCC, and as of the Petition Date employed approximately 1,340 employees (the "Seton Employees," and together with the VHS Employees, VBS Employees, OCH Employees, SLRH Employees, SFMC Employees and SVMC Employees, the "Verity Employees"), of which 516 are full-time, 551 are part-time and 273 are *per diem*; and

(h) VMF, which as of the Petition Date employed approximately 478 employees (the "VMF Employees," and together with the Verity Employees, the "Employees"), of which 424 are full-time, 15 are part-time and 39 are *per diem*.

22. Both full-time and part-time ("core") employees are regularly scheduled to work every pay period whereas per diem employees are used on an as-needed basis. Per diem employees are called in whenever Hospitals would not otherwise meet their core staffing requirements – for example, when core employees are sick or on vacation, or there is a spike in patient census. Although not limited to nursing employees, notably California requires the Hospitals to maintain specific nurse-to-patient ratios,[5] so the Debtors use *per diem* employees to ensure the Hospitals are in compliance with those requirements.

[5] *See* Cal. Health & Safety Code § 1276.4; Cal. Code Regs. tit. 22, § 70217.

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2. Employee Unions

23. Almost three-quarters of the Debtors' Employees – approximately 5,488 Employees in total – are represented by unions (the "Represented Employees"). These Represented Employees are represented by the California Nurses Association ("CNA"); Engineers and Scientists of California IFPTE Local 20, SEIU-UHW United Healthcare Workers-West; California Licensed Vocational Nurses' Association; CLVNA United Nurses Associations of California, UNAC, National Union of Healthcare Workers, NUHW; and The International Union of Operating Engineers, Stationary Local No. 39, AFL-CIO ("Local 39 Stationary Engineers," and collectively, the "Unions"). The Debtors' contractual arrangements with the Unions regarding the employment of the Represented Employees are reflected in multiple collective bargaining agreements (the "CBAs").

D. Prepetition Wages, Payroll and Associated Benefits

24. The Employees are paid their wages and salaries (the "Wages") bi-weekly, in arrears, either five or six days after the end of every 14-day pay period, through direct deposit or by check. The Debtors' average bi-weekly gross payroll is approximately $25,394,994, which includes approximately $463,907 for executive payroll, $3,726,816 for withholding obligations (relating to various taxes, claims and other obligations) and $208,476 for retirement plan contribution matching.

25. Pursuant to LBR 2014-1(a), the Debtors intend to serve Notices of Setting/Increasing Insider Compensation with respect to any of its executives who qualify as "insiders" (as defined in § 101(31)). As part of this Motion, the Debtors seek authority to pay these insider Employees the unpaid wage or salary obligations that have accrued on their behalf prior to the Petition Date, provided that no objections to the Notices are received within the 15-day time period provided by LBR 2014-1(a).

1. The Verity Debtors' Direct, Bifurcated, Payroll System

26. The Debtors are organized into eight employers. In addition, for payroll and cash management purposes, the Debtors are separated into VMF and the rest of the Debtors (the latter, the "Verity Debtors"). The Verity Debtors' payroll is further bifurcated, creating a constant pay

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cycle, with VBS, SFMC and Seton (collectively, "Verity Debtor Group A") paying their Employees on the odd weeks (e.g., 1, 3, . . . 49, 51), and VHS, OCH, SLRH and SVMC (collectively, "Verity Debtor Group B") paying their Employees on the even weeks (e.g., 2, 4, . . . 50, 52), in each case on a Friday – with the exception of SFMC whose payroll is processed on Thursday – for the preceding 14-day pay period running from Sunday to Saturday. The Verity Debtors process payroll directly, using a payroll platform licensed by Infinium. The Verity Debtors normally transfer funds from their respective accounts payable bank accounts to their respective payroll accounts two days prior to the pay date (i.e., Tuesdays for SFMC and Wednesdays for the other Verity Debtors).[6]

27. The date on which the Employees of Debtor Group A and certain Employees of Debtor Group B were last paid was August 30, 2018 for the two-week period ending August 25, 2018. The Employees of Debtor Group A represented by SEIU are entitled to identify and resolve any errors in payroll within 24 hours (the "SEIU Lookback"). The Debtor Group A Employees' next routine payroll is scheduled for September 13 (for SFMC) and September 14, 2018 (the "September 13/14th Payroll"), and expected to include approximately $24,287,614, which covers Debtor Group A Wages earned from August 26, 2018 through September 8, 2018 – approximately $2,727,235 of which amount is attributable to prepetition Wages (the "Group A Prepetition-Accrued Payroll").

28. The date on which the remaining Employees of Debtor Group B were last paid was August 24, 2018 for the two-week period ending August 18, 2018. These Employees' next routine payroll is scheduled for September 7, 2018 (the "September 7th Payroll"), and expected to be approximately $23,140,020, which covers Debtor Group B Wages earned from August 19, 2018 through September 1, 2018 – approximately $11,560,517 of which amount is attributable to prepetition payroll (together with the Group A Prepetition-Accrued Payroll, the "Verity Debtors Prepetition-Accrued Payroll").

[6] By separate and contemporaneous motion, the Debtors are requesting authority to continue operating their cash management system in the ordinary course of business, which, among other things, would permit them to continue transferring funds between bank accounts to fund payroll.

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29. Accordingly, the Debtors seek authority to pay the Verity Debtors Prepetition-Accrued Payroll in the amount of $14,287,752 on account of prepetition Wages, which they confirm does not exceed $12,850 per Employee. The Debtors further seek to pay any additional amounts identified as of the Petition Date through the SEIU Lookback. The Debtors further seek to continue to pay Wages to the Employees of the Verity Debtors incurred postpetition in the ordinary course of the Debtors' business.

2. VMF's Third-Party-Processed Payroll System

30. VMF pays the VMF Employees on the even weeks, on Fridays for the preceding 14-day pay period running from Monday to Sunday. VMF's payroll is disbursed by ADP, a supplier of human resources and document services that provides VMF with payroll management and administration services. VMF normally funds its payroll to ADP on Tuesday prior to the pay date.

31. The date on which the VMF Employees were last paid was August 24, 2018 for the two-week period ending August 19, 2018. These Employees' next routine payroll is also scheduled for September 7, 2018 (the "September 7th ADP Payroll"), and expected to be approximately $1,147,594, which covers VMF Wages earned from August 20 through September 2, 2018 – approximately $1,065,623 of which amount is attributable to prepetition Wages (the "VMF Prepetition-Accrued Payroll," and together with the Verity Debtors Prepetition-Accrued Payroll, the "Prepetition-Accrued Payroll"), which they confirm does not exceed $12,850 per Employee. VMF would need to fund the VMF Prepetition-Accrued Payroll to ADP by September 4, 2018.

32. As of the Petition Date, VMF will owe ADP approximately $4,500 with respect to its processing of the VMF payroll and related payroll administration matters (the "Administration Fees"). The Debtors request authority to continue to pay ADP the prepetition amount of $4,500 and to pay the postpetition ADP Administration Fees in the ordinary course of VMF's business.

33. Accordingly, the Debtors seek authority to pay the VMF Prepetition-Accrued Payroll in the amount of $1,065,623 on account of prepetition Wages. The Debtors further seek

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to continue to pay Wages to the VMF Employees incurred postpetition in the ordinary course of the Debtors' business.

3. The Debtors' Withholding Obligations

34. In the ordinary course of their business, the Debtors routinely withhold from the Wages certain amounts that the Debtors are required to transmit to the government and certain third parties for purposes such as Social Security and Medicare withholdings, federal and state or local income taxes, contributions to the Debtors' benefit plans, savings and retirement plan contributions, union claims, garnishment, child support or other similar obligations pursuant to court order or law (collectively, the "Withholding Obligations"). The Debtors owe approximately $3,726,816 for Withholding Obligations – including payments for tax obligations (the "Employer Tax Obligations") such as FICA and Social Security – in connection with the Requested Prepetition Payroll. Accordingly, the Debtors seek authority to pay the prepetition Withholding Obligations in the amount of $3,726,816 on account of prepetition Wages; and to continue to pay Withholding Obligations incurred postpetition in the ordinary course of the Debtors' business.

4. The Debtors' Union Obligations

35. In addition to various benefits incorporated above, the Debtors are required to make certain Union-specific contributions (the "Union Obligations"). Specifically, the Debtors are required to contribute 0.022% of the wages of the Represented Employees with SEIU-UHW to the SEIU Training and Upgrade Fund; this payment is made annually in February, and is not currently owing. The Debtors are also required to make a monthly contribution of approximately $165,800 (on average, in Calendar Year 2018) to the Local 39 Pension Trust Fund on behalf of Represented Employees with Local 39 Stationary Engineers. Accordingly, the Debtors seek authority to pay the prepetition Union Obligations in the amount of $176,524 on account of prepetition Wages; and to continue to pay Union Obligations incurred postpetition in the ordinary course of the Debtors' business.

E. Business Expense Reimbursements

36. The Debtors customarily reimburse Employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtors. Such expenses typically

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include, but are not limited to, business-related travel expenses (including mileage), business meals, relocation allowances, tuition reimbursement, and other items specified in the CBAs (the "Reimbursement Obligations"). Expense reports detailing the Reimbursement Obligations are submitted for reimbursement by the Employees and generally must be supported by copies of receipts.

37. It is difficult for the Debtors to determine the exact amount of Reimbursement Obligations that is due and owing for any particular time period since the expenses incurred by Employees on behalf of the Debtors throughout the year vary on a monthly basis and because there may be some delay between when an Employee incurs an expense and submits the corresponding expense report for processing. Based on historical experience, the Debtors anticipate that, as of the Petition Date, the Debtors owe an estimated $30,200 in Reimbursement Obligations. Accordingly, the Debtors seek authority to pay $30,200 in Reimbursement Obligations to their Employees. The Debtors further seek to continue to pay Reimbursement Obligations incurred postpetition in the ordinary course of the Debtors' business.

F. Bonuses

38. Certain Employees are eligible to receive sign-on and retention bonuses (the "Bonuses"). Sign-on bonuses are provided to candidates for employment in hard-to-fill or critical vacancies, such as ICU or Surgery Registered Nurses. Sign-on and retention bonuses are provided for management candidates as a recruiting incentive and to guarantee high-quality management candidates remain with the organization for a specified period of time.

39. The Debtors are not, by this Motion, seeking permission to pay any Bonuses to continuing Employees but do seek the authority, in the Debtors' discretion, to pay the Employees for contractually agreed bonuses that accrued within the 180 days prior to the Petition Date when their services with the Debtors are terminated so long as the total of the payments already then made for prepetition Employee Obligations and the Bonuses does not exceed the statutory limit for priority claims of $12,850.

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G. Paid Time Off and Extended Sick Leave

40. Full-time and part-time Employees become eligible to receive employment benefits beginning the first of the month following 30 days of employment (when they become "Eligible Employees"). *Per diem* Employees are not Eligible Employees.

41. The Debtors provide Eligible Employees with Paid Time Off ("PTO") and Extended Sick Leave ("ESL"). PTO is time off due to vacation, holiday, personal or incidental sick time. ESL kicks in (a) immediately where the Eligible Employee is admitted for surgery, (b) after a 3-day waiting period for a workers' compensation injury, and (c) after a 7-day waiting period if workers' compensation is not implicated.

42. Eligible Employees accrue PTO and ESL annually, and the number of hours they can accrue increases in successive years.[7] When these various caps are reached, no further PTO or ESL, respectively, will accrue until the Employee uses some of the accrued Paid PTO or some of the accrued time is cashed out by the Employee (per the terms of the relevant CBA or Hospital or Systems Office policy). As of the Petition Date, the Debtors are carrying approximately $36.6 million on their books for 789,942 hours of accrued and unused PTO. Eligible Employees are permitted to cash out their unused PTO on one or two occasions during the year depending on the relevant Hospital or CBA. As of the Petition Date, the Debtors are carrying approximately $17.5 million on their books for 372,000 hours of accrued and unused ESL. Some CBAs permit Eligible Employees to cash out a portion of their unused ESL at retirement.

43. The Debtors seek authority to honor their existing PTO and ESL policies to the extent it would permit continuing Employees to use their prepetition accrued leave in the ordinary course of business, and going forward. The Debtors are not, by this Motion, seeking permission to cash out any accrued and unused PTO or ESL of continuing Employees but do seek the authority, in the Debtors' discretion, to pay the Employees for unused PTO and/or ESL, as permitted per Hospital policy and relevant CBA terms, that accrued within the 180 days prior to

[7] The specific hours vary depending on the relevant CBA governing the Represented Employee's employment.

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the Petition Date so long as the total of the payments already then made for prepetition Employee Obligations and the PTO/ESL does not exceed the statutory limit for priority claims of $12,850.

H. Employee Benefits

44. The Debtors offer Eligible Employees the opportunity to participate in a number of insurance and benefit programs, including, among other things, medical, dental and vision plans, life insurance, short-term and long-term disability insurance, workers' compensation, retirement plans and other insurance plans and benefits as described below (collectively, the "Employee Benefits").

1. Medical, Vision and Dental Insurance

45. The Debtors offer all Eligible Employees and their eligible dependents (collectively, the "Dependents") medical, dental and vision insurance, which are primarily self-insured by the Debtors with the exceptions set forth below.

46. For medical, the Debtors offer (a) a self-insured Exclusive Provider Organization ("EPO") plan; (b) a self-insured preferred provider organization ("PPO") plan (together with (a), the "Self-Insured Medical Plans"); (c) one PPO plan fully-insured by Blue Shield of California ("BlueShield") for the enrolled Represented Employees of SMC with CNA and their Dependents (together with the Self-Insured Medical Plans, the "Medical Plans"). Healthnow is the third-party administrator for all medical and prescription drug claims against the Self-Insured Medical Plans.

47. The Debtors bear between approximately 51% and 100% of the costs of the Medical Plans. Depending on (a) which Debtor Employer, (b) whether the Eligible Employee is a Represented Employee – and, if so, under which CBA, and (c) whether and how many Dependents are covered, the Debtors' and Employees' respective monthly costs for the Medical Plans fall within the following ranges:

Plan	Monthly Employer Cost	Monthly Employee Cost
EPO	$539.19 - $2,959.45	$0 - $214.65
PPO	$403.32 - $2,994.42	$49.21 - $1,136.83
BlueShield PPO	$705.63 - $2,187.46	$326.56 - $1,012.35

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48. The Self-Insured Medical Plans are on a self-bill model, whereby the Debtors pay (a) to Healthnow: (i) monthly administration fees (including pass-through stop-loss insurance fees to Voya) based on the number of insured Employees in the prior month and (ii) actual medical claims; and (b) to BlueShield: accrued and unpaid prepetition premiums on account of the BlueShield Plan. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to Healthnow, or prepetition premiums to BlueShield. As of the Petition Date, the Debtors owed approximately $3,162,816 to Healthnow on account of accrued and unpaid prepetition claims against the Self-Insured Medical Plans.

49. For dental, the Debtors offer three self-insured Delta Dental plans and one Cigna plan (together, the "Dental Plans"). The Debtors bear between approximately 45% and 100% of the costs of the Dental Plans. Depending on the Employees' Hospital and Union affiliation and Dependent status, the Debtors' and Employees' respective monthly costs for the Dental Plans fall within the following ranges:

Plan	**Monthly Employer Cost**	**Monthly Employee Cost**
Cigna DHMO	$25.28 - $69.90	$0
DD 800	$21.81 - $95.52	$0 - 47.67
DD 1200 with Ortho	$43.64 - $170.87	$0 - $93.99
DD 1500	$30.41 - $95.52	$0 - $101.68

50. As of the Petition Date, the Debtors owed approximately $48,060 to Cigna and Delta Dental on account of accrued and unpaid prepetition claims against the Dental Plans. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to Cigna or Delta Dental.

51. For vision, the Debtors offer two self-insured VSP plans (the "Vision Plans," and together with the Medical Plans and the Dental Plans, the "Health Plans"). The Debtors bear up to 100% of the costs of the Vision Plans. Depending on the Employees' Hospital and Union affiliation and Dependent status, the Debtors' and Employees' respective monthly costs for the Vision Plans fall within the following ranges:

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Plan	Monthly Employer Cost	Monthly Employee Cost
VSP Basic	$4.27 - $20.88	$0 - $10.44
VSP Buy-Up	$0 - $20.87	$6.41 - $36.53

52. As of the Petition Date, the Debtors owed approximately $60,150 to VSP on account of accrued and unpaid prepetition claims against the Vision Plans. As of the Petition Date, the Debtors believe they do not owe any prepetition administration fees to VSP.

53. The Debtors believe that they are current on the administration fees and premiums related to the Health Plans. To the extent they are not, however, the Debtors seek authority to pay their portion of any premiums or administration fees for the Health Plans that accrued and remain unpaid as of the Petition Date, and to turn over to BlueShield any amounts sufficient to satisfy the portion of the accrued and unpaid prepetition premiums to be paid by the Employees in connection with the payment of the Wages and Withholding Obligations. The Debtors also seek authority to continue to pay, in their discretion and in the ordinary course of their business, the administration fees, premiums for and claims under the Health Plans incurred postpetition.

54. Furthermore, and for similar reasons, the Debtors seek to continue to perform any obligations under § 4980B of the Internal Revenue Code to administer Continuation Health Coverage ("COBRA") (*see* 26 U.S.C. § 4980B) in respect to former employees. The Debtors believe that any prepetition costs related to COBRA coverage benefits are *de minimis*, but nonetheless, to maintain Employee morale and ensure the orderly administration of the Estates, the Debtors request authority to pay in their discretion any such prepetition costs.

2. Employee Life, Disability and Workers' Compensation

55. The Debtors offer Eligible Employees premium-based group life insurance ("Life Insurance") and accidental death and dismemberment insurance ("AD&D") through UNUM. The premiums and other related charges for life insurance are paid 100% by the Debtors up to 1x salary[8] and total approximately $193,647 monthly on account of approximately 5,900 Employees. The premiums and other related charges for AD&D coverage are paid 100% by the Debtors up to

[8] Employees may elect to upgrade coverage to 5x annual salary and pay the additional amount themselves.

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$10,000 [9] and total approximately $16,191 monthly on account of approximately 5,800 Employees.

56. The Debtors also offer Eligible Employees premium-based short term ("STD") and long term disability coverage ("LTD") through Cigna. Depending on CBA, the Debtor employer pays 40-50% of premiums and other related charges for LTD,[10] and total approximately $108,035 and $110,643 monthly, respectively, on account of 5,800 Employees. STD premiums are 100% employee-funded.

57. The Debtors also provide workers' compensation insurance through Old Republic Insurance (the "Workers' Compensation Insurance"). Their broker of record is Lockton. The amount of the annual premium is approximately 2,044,515 which is paid quarterly in the amount of approximately $511,128. The Debtors use Sedgwick as their third-party administrator, whom the Debtors pay an estimated annual fee of $702,000, which the Debtors pay in quarterly installments, in advance of each quarter, of approximately $175,000.

58. In addition, as of the Petition Date, the Debtors owe approximately $10,293 to Cigna on account of claims under the Federal Medical Leave Act (FMLA) and California Family Rights Act (CFRA); and $13,507 to Optum under an employee assistance program.

59. The Debtors believe that they are current on all the above-mentioned insurance policies and claims obligations. To the extent they are not, however, the Debtors seek authority, in their discretion, to pay any accrued and unpaid prepetition premiums and related charges and to continue the above benefits postpetition and to deliver the Employees' portion of any accrued and unpaid prepetition premiums to the corresponding administrators in connection with the payment of the Wages and Withholding Obligations.[11]

[9] Employees may elect to upgrade coverage to 1x-4x annual salary and pay the additional amount themselves.

[10] Depending on CBA, some Employees may elect to upgrade coverage to 60%.

[11] By separate and contemporaneous motion, the Debtors are requesting authority to maintain their insurance program (including workers' compensation policies) and pay insurance premiums, deductibles and administration fees in the ordinary course of business (including any amounts accrued and unpaid as of the Petition Date). For the avoidance of doubt, to the extent these two Motions overlap, the Debtors seek authority to pay any obligation only once.

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3. Retirement Plans

60. The Verity Debtors also offer eligible Employees the opportunity to participate in various retirement plans, including three defined benefit plans (Verity Health System Retirement Plan A, Verity Health System Retirement Plan B, and the Retirement Plan for Hospital Employees), each funded according to IRS rules and actuarial determinations, two employer-funded defined contribution plans (Verity Health System Retirement Plan Account and Verity Health System Supplemental Retirement Match Plan 401(a)[12]), and two defined contribution plans funded by voluntary employee pre-tax payroll deferrals (Verity Health System Supplemental Retirement Plan TSA/403(b)[13] and Verity 457(b) Plan[14] ("457(b) Plan")).

61. VMF offers its Represented Employees and non-represented Employees the opportunity to participate in two defined contribution plans (Verity Medical Foundation 401(k) Plan and Verity Medical Foundation Management Bargaining Unit Employees 401(k) Plan) which allow for voluntary employee pre-tax deferrals, matching contributions and employer provided contributions (together with the defined benefit plans, defined contribution plans, and 457(b) Plan, the "Retirement Plans").

62. Employees participating in these programs may contribute up to the federal statutory cap per year. The Debtors deduct the employee pre-tax deferrals from Employee paychecks. The Debtors provide a match benefit for certain Employees of 50% up to 6% of annual salary or 35% up to 5% of annual salary (under the Verity Health System plans) or 75% up to 4% of the annual salary for Employees (under the VMF plans), provide formula-based nondiscretionary defined contribution allocations, and contribute actuarially determined required cash contributions to the defined benefit plans; the Debtors do not contribute to any other Retirement Plans. Employee contributions are remitted immediately following each pay date.

[12] The name of these plans comes from § 401(a) of the Internal Revenue Code ("IRC"), which provides for money purchase type retirement plans for employees.

[13] The name of these plans comes from § 403(b) of the IRC, which provides for tax-sheltered retirement plans for employees of certain 501(c)(3) tax-exempt organizations.

[14] The name of these plans comes from IRC § 457(b), which provides for non-qualified, tax-advantaged deferred compensation retirement plans for employees of certain employers.

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Failure to timely forward the Employees' Retirement Plan deductions may be a violation of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), resulting in potential personal liability for the Debtors' officers for such deducted amounts. The Debtors believe that maintaining the Retirement Plans is critical to maintaining Employee morale. Furthermore, certain of these retirement benefits are required by CBAs.

63. The Debtors seek authority to pay their matching contributions that accrued and remain unpaid as of the Petition Date for the Retirement Plans and to deliver the Employee contributions in connection with the payment of Wages and Withholding Obligations described above. Administration fees for the defined contribution plans are paid by the Employee participants while administration for the defined benefit plans are paid by the Debtors. The Debtors also seek authority to continue to pay, in their discretion and in the ordinary course of their business, matching contributions for the Retirement Plans incurred postpetition. The Debtors do not believe these additional payments will increase the total of the payments already then made for prepetition Employee Obligations to exceed the statutory limit for priority claims of $12,850; however, if that is not the case, the Debtors believe that any prepetition costs related to these retirement benefits are *de minimis*, and the Debtors request authority to pay in their discretion any such prepetition costs to maintain Employee morale and ensure the orderly administration of the Estates.

4. Miscellaneous Employee Benefit Plans

64. The Debtors also offer their eligible Employees the opportunity to participate in an IRS Section 125[15] Cafeteria Plan through Alliant Choice Plus, which includes voluntary critical care insurance, pet insurance, auto and home insurance. The healthcare reimbursement account and dependent care reimbursement account are administered through Healthnow, and long-term care is administered through UNUM. All of these programs are 100% funded by the Employees and are paid for through payroll deductions. The Debtors request authority to continue to honor these programs, in their discretion, and to continue distributing to third-parties the payments for

[15] The name of these plans comes from IRC § 125, which provides for participating employees to choose among two or more qualified benefits (as defined in the IRC) that are excluded from income.

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these programs in connection with the payment of Wages and Withholding Obligations as described above, including the distributions of payments that are for prepetition amounts due.

IV.

DISCUSSION

Sections 105(a) and 363(b)(1) and (c)(1) and the "necessity of payment" doctrine provide statutory support for the requested relief. Specifically, § 363(b)(1) of the Bankruptcy Code authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing; and § 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to enter into transactions in the ordinary course of business without notice and a hearing. LBR 2081-1(a)(6) also expressly permits a debtor to seek to pay prepetition employee obligations.

Moreover, the Employee Obligations that the Debtors request authority to pay and/or honor are entitled to priority in payment under §§ 507(a)(4), (5) and (8)(D). If the aggregate prepetition Wages, Employee Benefits and PTO that accrued within the 180 days prior to the Petition Date exceed the sum of $12,850 allowable as a priority claim under §§ 507(a)(4) and (5) for any individual Employee, the Debtors are not requesting, by this Motion, authority to pay any such excess amounts. Thus, the Debtors request authority to pay or honor all Wages, Employee Benefits and PTO in the ordinary course of business but only up to the $12,850 priority cap for each Employee.

A. This Court Has Authority Pursuant to §§ 105(a) and 363(b)(1) and (c)(1) to Grant the Relief Requested

Pursuant to § 105(a), "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Essentially, § 105(a) provides a statutory counterpart to the bankruptcy court's otherwise inherent and discretionary equitable powers. *See In re Sasson*, 424 F.3d 864, 874 (9th Cir. 2005); *In re Halvorson*, 581 B.R. 610, 636 n.91 (Bankr. C.D. Cal. 2018).

Utilizing § 105(a), bankruptcy judges in this district have recognized the existence of:

> some case law and some authority in the court's rules in Rule 2081-1(a)(6), which allows immediate payment of claims, often on first day

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> motions, based on the recognition of the critical need to pay prepetition wage and commission claims to employees and specified independent contractors so that they continue to work for the debtor and render services to the debtor to help it continue operations as a going concern and to reorganize in a Chapter 11 bankruptcy case.

In re EcoSmart, Inc., Case No. 15-27139 (RK), 2015 WL 9274245, at *4 (Bankr. C.D. Cal. Dec. 18, 2015) (citing LBR 2081-1(a)(6) and 2 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 11:386, at 11–45 (2014) ("Most courts allow payment of prepetition employee wages up to the priority amount under the '*necessity of payment' doctrine*, which permits immediate payment of creditors who will not supply services or material essential to the conduct of the business until their prereorganization claims are paid.") (emphasis in original)).

Bankruptcy judges in this district routinely grant motions to pay prepetition wages that are entitled to priority. *See, e.g., In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 16-17463-ER, Docket No. 68 (Bankr. C.D. Cal. June 10, 2016); *In re Gordian Med., Inc.*, Case No. 12-12399-MW, Docket No. 57 (Bankr. C.D. Cal. March 5, 2012); *In re Victor Valley Cmty. Hosp.*, Case No. 10-39537-CB, Docket No. 30 (Bankr. C.D. Cal. Sep. 17, 2010); *In re Downey Reg'l Med. Ctr.-Hosp., Inc.*, Case No. 09-34714-BB, Docket No. 37 (Bankr. C.D. Cal. Sep. 17, 2009); *In re Pleasant Care Corp.*, Case No. 07-12312-EC, Docket No. 47 (Bankr. C.D. Cal. Mar. 27, 2007). Courts either rely on the doctrine of necessity or a combination of § 507(a)(4) and LBR 2081-1(a)(6) to allow for the payment of prepetition employee wage claims up to the priority cap set forth in § 507(a)(4). *EcoSmart*, 2015 WL 9274245, at *9. Thus, as long as the Debtors "demonstrate . . . the priority status of wage, salary and commission claims of its employees and independent contractors under 11 U.S.C. § 507(a)(4)(A) and (B)," such demonstration will "warrant immediate payment in advance of general distribution on prepetition claims." *Id.* That is the extent of the relief the Debtors are requesting in this Motion.

The Debtors are mindful that in *In re B&W Enters.*, 713 F.2d 534 (9th Cir. 1983), the Ninth Circuit refused to extend the "necessity of payment" doctrine beyond the railroad reorganization case where the debtor made unauthorized postpetition payments to trade suppliers on prepetition debts. In *B&W*, after conversion to chapter 7, the trustee sought to recover the payments under § 549. That case is factually distinguishable from the instant one in that *B&W* (a)

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involved ordinary trade suppliers for which the claims were not entitled to priority, (b) did not seek prior court approval for the payments, and (c) was liquidating, thereby rendering the "necessity" of such payments moot. Moreover, the U.S. Supreme Court, in *Czyzewski v. Jevic Holding Corp.*, has recognized that courts "approve[] interim distributions that violate ordinary priority rules," generally when there are "significant Code-related objectives that the priority-violating distributions serve," including "payment of employees' prepetition wages." 137 S.Ct. 973, 985 (2017).

For a number of reasons, the Bankruptcy Code affords special treatment to certain prepetition claims of employees. Compared to a typical claim in bankruptcy, wages represent a large part of an employee's wealth. In addition, unlike an ordinary trade creditor, the typical employee does not have other sources of income and thus cannot diversify the risk of the employer's default.

Due to the timing of the commencement of these Cases, the Employees are owed accrued prepetition Wages for which payment is due on September 7, 13 and 14, 2018. These Wages cannot be paid without the approval of this Court. The failure of the Debtors to pay the Wages timely in the ordinary course of their business would result in a blow to Employee morale that in all likelihood would lead to employee turnover and other serious and irreparable disruptions of the Debtors' operations as well as possible harm to the Patients. Any significant number of Employee departures or deterioration in morale, especially at this sensitive time, will substantially and adversely impact the Debtors' ability to operate the Hospitals and medical clinics and result in immediate and irreparable harm to the Debtors' estates.

The Debtors submit that the amounts to be paid pursuant to this Motion are comparatively small in light of the importance and necessity of preserving the Employees' services and morale and the difficulties and losses the Debtors will suffer if Employee morale is low or if they leave in significant numbers. The Debtors further submit that there is ample justification for their belief that even the slightest delay in providing this relief to their Employees will hamper operations and damage the Debtors' estates. As a consequence, the Debtors are anxious to reassure their Employees.

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Many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation or reimbursement of their expenses in order to continue to pay their daily living expenses. These Employees may be exposed to significant financial and healthcare related problems if the Debtors is not permitted to pay and/or honor the Wages, PTO policy and Employee Benefits, and the expenses associated therewith in the ordinary course of the Debtors' business. It is critical, therefore, that the Debtors be permitted to pay outstanding, non-discretionary prepetition Wages that would otherwise constitute priority claims against the Debtors' estates, to honor their prepetition PTO policy regarding the use of accrued PTO and the payment for it upon termination, and to continue to fund their Employee Benefits. To fail to do so would be devastating to the Employees' morale and could lead to the loss of key Employees at this critical time, which could impact Patient care.

Additionally, the Withholding Obligations do not constitute property of the Debtors' Estates. They principally represent Employee earnings that governments (in the case of taxes), Employees (in the case of voluntary Withholding Obligations) and judicial authorities (in the case of involuntary Withholding Obligations), have designated for deduction from Employee paychecks. The failure to transfer these withheld funds could result in hardship to certain Employees and liability for the Debtors. The Debtors expects that if these Withholding Obligations are not paid, the Debtors will receive inquiries from garnishors regarding the Debtors' failure to submit, among other things, child support and alimony payments, which are not the Debtors' property but, rather, have been withheld from Employee paychecks. Moreover, if the Debtors cannot remit these amounts, the Debtors and their Employees may face legal action due to the Debtors' failure to remit these payments.

B. <u>This Court Has Authority Pursuant to LBR 2081-1(a)(6) to Grant the Relief Requested</u>

As discussed above, the LBR provide a roadmap toward the "immediate payment of claims, often on first day motions, based on the recognition of the critical need to pay prepetition wage and commission claims to employees . . . so that they continue to work for the debtor and render services to the debtor to help it continue operations as a going concern and to reorganize in

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a Chapter 11 bankruptcy case." *EcoSmart*, 2015 WL 9274245, at *4; LBR 2081-1(a)(6). The Debtors satisfy all the listed elements in these Cases:

The Employees are still employed by the Debtors. In satisfaction of LBR 2081-1(a)(6)(A), the Wages the Debtors propose to pay are for Employees who are still employed by the Debtors.

The proposed payments to Employees are absolutely necessary. In satisfaction of LBR 2081-1(a)(6)(B), albeit otherwise needless to say, it is essential for the Debtors to retain the Employees to operate the Debtors' business, particularly during this crucial beginning phase of the Debtors' Cases, where additional administration and other obligations are imposed upon the Debtors. The Debtors are concerned that a failure to honor their payroll obligations will result in Employees leaving their jobs, refusing to provide services to the Debtors – including essential medical services to their Patients – and interfering with the administration of these Cases. As opposed to the Debtors' focusing their efforts on case administration, the Debtors would instead by preoccupied with addressing dissatisfied Employee complaints. Without the Employees' support, the Debtors' business will be severely impaired, if not irreparably harmed.

These proposed payment procedures are beneficial to the Estates. The Debtors seek only to honor the Employee Obligations which would constitute priority claims pursuant to § 507. Such claims would otherwise be required to be paid prior to general unsecured claims in any subsequent distribution of assets. However, if the Debtors do not honor such Employee Obligations now, the Debtors run a serious risk of losing Employees, and the loss of Employees would be severely detrimental to the Debtors' business, which translates to a risk to the well-being of the Patients, to any prospect of reorganization and to the Debtors' goal of maximizing a recovery for unsecured creditors. Accordingly, LBR 2081-1(a)(6)(C) is satisfied.

With the requested first-day relief, the Debtors' prospect of reorganization is heightened. With regard to LBR 2081-1(a)(6)(D), the Debtors' prospect of reorganization is certainly higher with the relief requested herein than without it.

The Debtors do not seek to pay any prepetition claims of any insiders at this time. In satisfaction of LBR 2081-1(a)(6)(E), the Employees referenced herein are not insiders of the

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Debtors. The Debtors are not requesting to pay anyone classified as an insider pursuant to this Motion.

The Employees' claims are within the limits established by § 507 of the Bankruptcy Code. In satisfaction of LBR 2081-1(a)(6)(F), the Debtors only seek authority to: (i) pay and/or honor all prepetition Wages of the Employees; and (ii) honor accrued PTO and other Employee Benefits in the ordinary course of business, provided that no Employee shall receive more than $12,850 in value on account of prepetition claims for Employee Obligations.

The proposed payments will not render the Estates administratively insolvent. Finally, in satisfaction of LBR 2081-1(a)(6)(G), the source of the funds to be used to pay and/or honor the prepetition Employee Obligations will be the Debtors' cash. The Debtors believe that their cash is sufficient to pay the Wages without rendering their Estates administratively insolvent.

C. The Prepetition Wages and Prepetition Employee Benefits Are Priority Claims Under Bankruptcy Code §§ 507(a)(4) and (5)

Pursuant to § 507(a)(4)(A), claims of Employees of the Debtors for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of $12,850 per Employee. Similarly, § 507(a)(5) provides that Employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of $12,850 per Employee covered by such plan, less any amount paid pursuant to § 507(a)(4). The Debtors believes that the Wages, PTO policy and Employee Benefits relating to the 180-day period prior to the Petition Date constitute priority claims under §§ 507(a)(4) and (5). As priority claims, they must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations and will not prejudice the rights of general unsecured creditors or other parties in interest.

With respect to prepetition Wages, PTO policy and Employee Benefits, no Employees will be paid on account of claims above the $12,850 amount stated in §§ 507(a)(4) and (5) of the Bankruptcy Code.

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D. Maintaining the Employee Benefits Is Within the Debtors' Business Judgment

The Debtors' relationships with the Employees, including the terms and conditions of their employment, are matters subject to the Debtors' business judgment and may be managed by the Debtors in the "ordinary course of business." *See In re All Seasons Indus.*, 121 B.R. 822, 825-26 (Bankr. N.D. Ind. 1990); *In re Pac. Forest Indus., Inc.*, 95 B.R. 740, 743 (Bank. C.D. Cal. 1989) ("Employees do not need court permissions to be paid and are usually paid as a part of the ongoing operation of the business."). This doctrine also applies to accrued employee benefits such as paid time off and leave policies. *See In re Canton Castings, Inc.*, 103 B.R. 874, 876 (Bankr. N.D. Ohio 1989). The maintenance of the Debtors' benefit programs is an important part of the Debtors' relationships with their employees that is within the Debtors' business judgment.

Finally, the Withholding Obligations represent funds that the Debtors are not entitled to hold for any protracted period, since the Debtors effectively holds these amounts in trust and the Employees themselves hold a direct claim against such funds.

E. Honoring of Checks and Transfers Related to Employee Obligations and Maintenance of Payroll Accounts

The Debtors further request that their bank be authorized and directed to receive, process, honor and pay all checks presented for payment and to honor all transfer requests made by the Debtors related to Employee Obligations, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date (including checks that have been presented and dishonored), to the extent that the relevant accounts contain sufficient funds. The Debtors will identify to the banks the checks that are to be honored pursuant to an order approving this Motion. Accordingly, checks other than those for Employee Obligations should not be honored inadvertently. Moreover, the Debtors expect to have sufficient funds to pay all Employee Obligations, to the extent described herein, on an ongoing basis and in the ordinary course of business.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, the Debtors respectfully requests that this

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Court enter an order: (i) authorizing the Debtors, in their discretion, to (a) pay or honor prepetition wages, salaries, employee benefits, and other compensation, (b) remit withholding obligations, (c) maintain workers' compensation and benefits programs, (d) pay related administration obligations, and (e) pay reimbursable employee expenses; (ii) authorizing and directing the applicable bank to pay all checks and electronic payment requests made by the Debtors relating to the foregoing; and (iii) granting such other and further relief as is just and proper under the circumstances.

Dated: August 31, 2018

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TAB 5

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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 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-20171-ER Chapter 11 Cases Hon. Judge Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ 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 ASC, LLC Debtors and Debtors In Possession.	**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CRITICAL VENDORS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Filed Pursuant to LBR 2081-1(a)(_) and 9075-1(a)] [Declaration of Richard Adcock in Support of Debtors' First-Day Motions filed concurrently herewith] EMERGENCY HEARING: Date: September 5, 2018 Time: 10:00 a.m. Place: Courtroom 1568

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EMERGENCY MOTION

Pursuant to Rules 2081-1(a)(7) and 9075-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the "LBR"), Rules 6003(b), 6004(a) and (h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and sections 105, 363(b), 503(b)(9), and/or 549(a)(2)(B) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"),[1] Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy case (collectively, the "Debtors"), hereby move, on an emergency basis (the "Motion"), for the entry of an interim order authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after an interim hearing, in an interim amount of up to $5 Million and only as needed to avoid immediate and irreparable harm), and for the entry of a final order within thirty (30) days after filing the above-captioned chapter 11 bankruptcy case (the "Final Order", together with the Interim Order, the "Critical Vendors Order") authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after a final hearing, in an amount up to an additional $15 Million, for a total of up to $20 Million and only as needed to avoid immediate and irreparable harm), of their most critical vendors in the Debtors' discretion and in the ordinary course of the Debtors' business, pursuant to a carefully-designed Protocol (defined below) overseen by a core, centralized team consisting of senior members of Debtors' management and professional advisors, and subject to certain Terms and Conditions (defined below). In support of the Motion, the Debtors have separately filed the Declaration of Richard Adcock in Support of Debtors' First-Day Motions (the "Adcock Declaration"). The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer immediate and irreparable harm without the relief requested in this Motion.

The Debtors operate a nonprofit safety-net health care system that provides medical care for over 300,000 patients per year. The Debtor operates six general acute care hospitals and

[1] All references to "§" and "section" herein are to sections of the Bankruptcy Code.

numerous outpatient medical clinics, including St. Francis Medical Center in Lynwood (a Level II Trauma Center), St. Vincent Medical Center in Los Angeles, O'Connor Hospital in San Jose, St. Louise Regional Hospital in Gilroy, Seton Medical Center in Daly City, and Seton Coastside in Moss Beach. Collectively, the hospitals have 1,680 inpatient beds, six active emergency rooms, dialysis services, imaging services, labor and delivery services and neonatal services, among others. The Debtors employ more than 6,000 healthcare providers and administrative staff statewide and contract with hundreds of physicians and medical groups to ensure critical medical services are available to communities served by the hospitals.

The Debtors and the communities their hospitals serve are in a vulnerable position. The availability of life-saving care and treatment could immediately stop if the Debtors are unable to ensure the continual flow of the supplies and services that make their medical care possible, including medical supplies, blood supplies, medical equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and information technology support. Debtors and their inpatients and outpatients ("Patients") face irreparable harm without the granting of this Motion.

Additionally, local, state, and federal law requires Debtors ensure contracts with and services from various healthcare providers, as well as adequate drugs, supplies and medical equipment. For example, because the Debtors' hospitals are licensed by the California Department of Public Health and certified to participate in the Medicare and Medicaid programs, the Debtors must comply with all hospital licensing and certification requirements, including those found in the Health and Safety Code and in Title 22 of the California Code of Regulations, as well as the applicable Medicare conditions of participation and corresponding Medicaid (i.e., Medi-Cal) requirements. *See, e.g.*, Cal. Health & Safety Code §§ 1250 *et seq.*; 22 Cal. Code Regs §§ 70001, *et seq.*; 22 Cal. Code Regs. § 51207; 42 C.F.R. §§ 482 *et. seq.* In addition to complying with these overarching requirements, the Debtors must monitor and comply with all of the other licensing and operational requirements that apply to the different service lines and programs offered by the hospitals, including, for example, those applicable to the hospital pharmacies and

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laboratories. *See, e.g.*, Cal. Bus. & Prof. Code §§ 1200 *et. seq.*, Cal. Bus. & Prof. Code §§ 4000 *et. seq.*, Cal. Health & Safety Code §§ 11000 *et. seq.*, 16 Cal. Code Regs. §§ 1700 *et. seq.* These extensive, comprehensive regulations and requirements can only be fulfilled through uninterrupted access to essential goods and services. Thus, in order to ensure essential medical care and treatment is available to the vulnerable communities served by the Debtors' hospitals – such as Debtor's Level II Trauma Center that serves the inner city of Los Angeles – it is imperative the Debtors are able to rely on a consistent, quality supply of essential services and goods, including medical supplies, blood supplies, medical equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and information technology support and other medical suppliers and service providers that are "critical" to Patient care and the Debtors' businesses (the "Critical Vendors").

The Debtors' Critical Vendors include the following categories of providers: (i) uncompensated care contract physicians and on-call coverage physicians (collectively, the "Uncompensated Care and On-Call Coverage Physicians"); (ii) medical directors (the "Medical Directors"); (iii) medical staff officers and leadership positions ("Medical Leadership"); (iv) physicians providing teaching services ("Physician Educators"); (v) medical services providers (the "Medical Services Providers"); (vi) medical supplies and medical equipment providers (collectively, the "Medical Supplies and Equipment Providers"); (vii) medical staffing agencies and hospital-based services providers (collectively, the "Clinical Staffing"); (viii) non-medical services providers (the "Non-Medical Services Providers"); (ix) information technology services providers (the "IT Services Providers"); and (x) various employee benefits providers (the "Benefits Providers").

The Debtors are mindful of their fiduciary obligations to seek to preserve and maximize the value of their Estates. To that end, the Debtors and their advisors have engaged in an extensive process of reviewing and analyzing the Debtors' books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business

relationships—which, if lost, could materially harm the Debtors' Patients, the Debtors' businesses, reduce their enterprise value, and/or impair their restructuring process—all in an effort to identify only those most critical vendors using their business judgment (the "Protocol"). Such Protocol is on-going.

During the Protocol process, the Debtors have deemed certain vendors as critical because each of these Critical Vendors meets the following criteria: (a) the vendor is essential to Patient care, supports maintaining the Debtors' business in full compliance with all of the numerous legal requirements for operating general acute care hospitals in the state of California, including California's Title 22, and allows the Debtors to continue to provide essential and life-saving patient care and services while maintaining their business postpetition until the reorganization and/or sale of the Debtors' assets for the benefit of creditors; (b) the vendor is indispensable for providing vital goods or services (such as blood products or surgical implants), replacing said vendor would be prohibitively expensive, or said vendor is otherwise critical to prevent the diversion of management and key personnel (who would be nearly impossible to replace during the extensive transitional period);[2] (c) the vendor holds an unpaid prepetition claim for the provision of vital goods or services; (d) the Debtors believe the vendor will refuse to deliver vital goods or services without payment of the prepetition claim and the automatic stay imposed by § 362(a) will be inadequate to address the issue; (e) cash on delivery is unlikely to provide the requisite incentive for the vendor to continue providing goods or services; (f) the Debtors lack a long-term contractual relationship with the vendor that would oblige the vendor to continue the prepetition relationship, and the Debtors are otherwise without adequate leverage to compel performance on commercially reasonable terms; and (g) the Debtors will suffer immediate and irreparable harm if the vendor is not specially incentivized to continue providing essential goods or services. The Debtors' will use commercially reasonable efforts to require the vendor to sign a postpetition agreement with normalized terms and conditions that contractually bind the vendor to

[2] Additionally, the Debtors acknowledge that while some of these Critical Vendors are not the only vendors in the area that provide these vital goods or services, switching to other providers at this critical juncture will incur substantial time, energy, and unnecessary distraction during the extensive transitional period.

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continue providing essential goods and services postpetition (the "Critical Vendor Agreement"). A brief description of each category of Critical Vendors follows.

i. Uncompensated Care and On-Call Coverage Physicians

The Debtors require the service of various physicians who provide care to patients who lack the ability to compensate the Debtors for their medical treatment ("Uncompensated Care Contract Physicians") and the physicians who provide on-call services to cover the Debtors' six active emergency departments, one of which is an essential Level II Trauma Center ("On-Call Coverage Physicians"). The Uncompensated Care Contract Physicians provide life-saving medical care and treatment for Patients who would not otherwise be able to afford physician services, including trauma patients needing emergency surgeries, infants in Debtor's neonatal intensive care unit and cardiac patients needing immediate STEMI services for serious myocardial infarctions. Through the On-Call Coverage Physicians, Debtors ensure that specialty physician services are available at all times for all Patients (regardless of ability to pay) for emergency situations, such as trauma, cardiac arrest and labor and delivery. The On-Call Coverage Physicians include a broad range of specialties, such as (i) urology; (ii) general surgery; (iii) orthopedics; (iv) cardiology; (v) neurosurgery; (vi) thoracic surgery; (vii) cardiac surgery; (viii) radiation oncology; (ix) neurology, (x) psychiatry; (xi) nephrology; (xii) gastroenterology; (xiii) pediatric surgery; and (xiv) obstetrics. Due to the strong economy and the tight labor market for professionals with expertise, Uncompensated Care and On-Call Coverage Physicians have a vast array of working opportunities available to them, and to the extent the Debtors are unable to ensure payment for prepetition claims, these Uncompensated Care and On-Call Coverage Physicians will work at other hospitals, resulting in a devastating impact on the communities served by the Debtors' hospitals and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

ii. Medical Directors

The Debtors require the services of various physicians who serve as Medical Directors. As Medical Directors, it is their responsibility to ensure the hospital provides quality Patient care efficiently and in compliance with state and federal laws, rules and regulations. These Medical

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Directors supervise and coordinate the On-Call Coverage Physicians and provide vital operating and administrative services, such as supervision of medical departments and programs, including (i) the Long Term & Sub-Acute Unit; (ii) Advanced Wound Care; (iii) the Comprehensive Spine Care Program; (iv) the Stroke Program; (v) Cardiac & Pulmonary Rehabilitation; (vi) Oncology; (vii) Non-Invasive Cardiology; (viii) Radiation Therapy; (ix) the Intensive Care Unit and Neonatal Intensive Care Unit; (x) the Antimicrobial Stewardship Program; (xi) Interventional Neurology; (xii) the Bioethics Program; (xiii) the Catherization Laboratory; (xiv) the Skilled Nursing Facility; (xv) the Stroke Program; (xvi) Thoracic Surgery; (xvii) the Dialysis Center; and (xviii) Nuclear Medicine and Vascular Laboratory. The Medical Directors also are vital for program quality, oversight, and risk management. There are approximately 60 physicians serving as Medical Directors. Similar to the Uncompensated Care and On-Call Coverage Physicians, and due to the strong economy and the tight labor market for professionals with expertise, Medical Directors are in demand and have a vast array of working opportunities available to them. To the extent the Debtors are unable to ensure payment for prepetition claims to Medical Directors, these Medical Directors will work at other hospitals, resulting in a devastating impact on the communities served by the Debtors' hospitals and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

iii. Medical Leadership

The Debtors require the services of various physicians who serve as medical staff officers and in other leadership positions, as required by each Hospital's accreditation with The Joint Commission (the "TJC"). Accreditation by the TJC is essential for each Hospital's certification under the Medicare and Medi-Cal programs. Each Hospital's Medical Leadership includes a Chief and Vice Chief of Staff and Department Chairs as required by Medical Staff Bylaws, by TJC and by Title 22.

These medical staff leaders are essential to ensure quality medical services and risk management. Without these physicians, who can easily find competitive opportunities elsewhere, the quality of medical services may decline, and cause irreparable harm to the Debtors' chapter 11 Case.

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iv. Physician Educators

The Debtors require the services of various physicians who provide teaching services in the Debtors' graduate medical education (the "GME") program. The GME program trains physicians – so-called, interns, residents, and fellows – and such physicians provide needed staffing for Debtors' hospitals. Physician Educators are in high demand because they are so highly skilled – these physicians must not only be experts in their fields but must also meet the stringent qualifications under the government's GME requirements. Without the Physician Educators, Debtor would lose its GME program. The GME Program is a required program for the Level II Trauma Center that provides trauma services to the inner city of Los Angeles. To the extent the Debtors are unable to ensure payment for prepetition claims to Physician Educators, these in-demand Physician Educators will work at other hospitals, resulting in a devastating impact on the Debtors' patients, and the community served by the Debtor's hospital and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

v. Medical Services Providers

The Debtors require the services of various Medical Services Providers, including providers of surgical anesthesia coverage, organ harvesting and organ matching services, medical equipment sanitization, diagnostic interventional cardiology services, interventional neuroradiology, imaging services, advanced wound care, pathology and laboratory services, dialysis services, lithotripsy services, sterile compounding services, rehabilitation staffing and management services, subacute management services, psychiatric management services, hospitalist services, intensivist program services, medical screening services, and medical instrument repair services. These services are vital to the Debtors' ability to continue offering life-saving care and treatment at their hospitals. The Debtor and the communities served by the Debtors' hospitals will suffer immediate irreparable harm should the Court deny the Debtors' request to include the Medical Services Providers as Critical Vendors subject to payment on prepetition claims.

vi. Medical Supplies and Equipment Providers

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The Debtors require the use of various medical supplies and medical equipment, including, blood and plasma, heart valves, coronary intervention products, defibrillators, laparoscopic and minimally invasive surgical supplies, neurosurgical supplies and neurology devices, other surgical medical products, bone substitute biologics, regenerative vascular grafts, vaccinations and other pharmaceuticals, nuclear medicines, medical gases, anesthesia medical equipment, laboratory medical supplies, radiation equipment, gastrointestinal supplies, cochlear implants, orthopedic implants, spinal implants, intraocular lenses and ophthalmology supplies, sterilization equipment and products, and fetal monitoring systems. Equipment includes biomedical repair tools and equipment, patient beds and stretchers, vital sign monitoring, infusion pumps, medication supply stations, gastro-intestinal lab equipment, cardiac catherization lab equipment, operating room equipment, imaging equipment, laboratory equipment, pharmacy dispensing equipment, and transplant program equipment. The medical supplies and medical equipment the Debtors receive from the Medical Supplies and Equipment Providers are vital to the Debtors' ability to continue offering life-saving care and treatment at their hospitals. The patients and the communities served by the Debtors' hospitals will suffer immediate irreparable harm should the Court deny the Debtors' request to include the Medical Supplies and Equipment Providers as Critical Vendors.

vii. Clinical Staffing

The Debtors require various medical staffing agencies to provide numerous personnel essential to operating hospitals, including nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff. The ability to access staffing agencies is particularly important for nursing services because Debtors must comply with the California mandatory nurse-to-patient ratios; in other words, Debtors are required to increase nurse staffing depending upon daily patient census. This is not always possible to do solely through nurse-employees. Nurse staffing agencies are also important because it is difficult to recruit experienced staff for short-term assignments (e.g., single day) or during busier times (e.g., flu season).

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Moreover, many of the Clinical Staffing who provide physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff to the Debtors will not staff the Debtors' hospitals if there is any interruption or delay in the payment of the amounts due to them. Given the Debtors' reliance on the medical services provided by the Clinical Staffing to provide Patient care and otherwise fulfill the Debtors' daily medical services needs, and the fact that the Clinical Staffing can simply shift their services to another employer, it is crucial that the Debtors be authorized to pay any prepetition amounts due to the Clinical Staffing as Critical Vendors in the ordinary course of business.

viii. Non-Medical Services Providers

The Debtors require services of various non-medical service providers, including, but not limited to, those who provide services such as payroll tax services, financial audit services, billing services, cost reporting services, revenue cycle management services, consulting and education services for various required national, state, and local accreditations and mandates, environmental services, record retention services, building maintenance services, medical equipment maintenance services, management services, and other similar services, as well as to seismic contractors. Seismic contractors are designers, engineers, suppliers and constructors who are engaged in the statutory work of retrofitting hospital structures to meet the SB1953 and subsequent amendments that are required to be completed by December 31, 2019. Delay of the projects will cause the Debtors to miss the regulated deadlines risking California Department of Public Health license and suspension of such. These non-medical services are vital to the Debtors' day-to-day operations — including patient care — and the Debtors' ability to comply with regulatory requirements set by the State of California legislature, and the Debtors will suffer immediate irreparable harm should the Court not grant the Debtors' request to include the Non-Medical Services Providers as Critical Vendors.

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ix. IT Services Providers

The Debtors require use of various information technology services, including, but not limited to, those who provide services such as diagnostic technology, interoperability between devices, risk management and software services, revenue cycle management billing software and services, teleradiology services, customer relationship management, networking solutions services, multi-function copiers, voice over internet protocol system services, hosting services for applications, and point of care data management system services. Critical patient care systems such as electronic health record systems and enterprise resource planning systems must be maintained to ensure continuity of patient care. These information technology services are vital to the quality of patient care and the Debtors' day-to-day operations, and the Debtor will suffer immediate irreparable harm should the Court not grant the Debtors' request to include the IT Services Providers as Critical Vendors subject to payment on prepetition claims.

x. Benefits Providers

The Debtors have incentivized their employees to continue working through the continuation of company-subsidized benefits, such as workers compensation, medical, dental, vision, short term and long term care, leave of absence, and life insurance. If the Debtors are not permitted to pay any prepetition premium amounts due to these Benefits Providers, the employees' insurance coverage will be jeopardized and the employees will likely seek employment elsewhere. Specifically, any disruption to payment of the employee benefits in the ordinary course (and in the Debtors' discretion), would adversely affect the Debtors' goals in this Case because such events are likely to cause some employees to terminate their employment with the Debtors, will cause all employees to be distracted from their duties to care for the Patients and the operations of the Hospitals, and will inevitably hurt employee morale at a particularly sensitive time for all employees, resulting in severe repercussions on the Debtors' ability to provide Patient care, and to preserve their assets and administer the Estates, to the detriment of all constituencies. Since the Debtors do not have the ability to quickly or cost-effectively replace their employees who provide vital medical and non-medical services on a daily basis, it is critical that the Debtors be allowed to continue these benefits in order to retain their employees and

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maintain their business operations to preserve the full value of their assets for the benefit of their creditors. Therefore, the Court should include Benefits Providers as Critical Vendors.

SUMMARY OF REQUESTED RELIEF

By this Motion, the Debtors seek authority to continue to pay and/or honor the prepetition claims of the Uncompensated Care and On-Call Coverage Physicians, the Medical Directors, the Medical Leadership, Physician Educators, the Medical Services Providers, the Medical Supplies and Equipment Providers, the Clinical Staffing, the Non-Medical Services Providers, the IT Services Providers, and the Benefits Providers as Critical Vendors, up to $20 Million (the "Critical Vendor Cap"), with (i) an interim amount of up to $5 Million and only as needed to avoid immediate and irreparable harm; and (ii) an additional amount of up to $15 Million and only as needed to avoid immediate and irreparable harm, as set forth in the Declaration of Richard Adcock in Support of the Emergency Motions filed concurrently herewith (the "Adcock Declaration"), and in the Debtors' discretion and in the ordinary course of the Debtors' business, and pursuant to the Protocol. The amounts proposed to be paid to the Critical Vendors are already provided for in the Debtors' operating budget (the "Budget") submitted in connection with the Debtors' motion for authority to use cash collateral and to obtain debtors in possession financing from the Debtors' senior secured lender (the "Cash Collateral Motion") which is supported by the Declaration of Anita M. Chou (the "Chou Declaration") filed concurrently herewith.

As a safeguard to the Debtors' Patients, other creditors, and the Estates, the Debtors propose certain terms and conditions (the "Terms and Conditions") of the payment to the Critical Vendors if a Critical Vendor, after signing the Critical Vendor Agreement, thereafter refuses to supply the critical goods or services to the Debtor throughout the course of the bankruptcy proceeding, as provided under the Critical Vendor Agreement (the "Defaulting Vendor"). These Terms and Conditions allow the Debtors: (i) to deem such payment to the Defaulting Vendor as a voidable postpetition transfer pursuant to § 549(a); and (ii) to demand the immediate return of any and all payments made to the Defaulting Vendor pursuant to this Motion, to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or setoffs of any type

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whatsoever, and the Defaulting Vendor's prepetition claim shall be reinstated in such an amount as to restore the Debtors and the Defaulting Vendor to their original positions, as if the Critical Vendor Agreement had never been entered into and the payment of the Defaulting Vendor's prepetition claim had not been made. In short, the Debtors will return the parties to their positions immediately prior to the entry of the order approving the relief sought herein.

The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, provided, however, that: (i) funds are available in the Debtors' accounts to cover the checks and fund transfers; and (ii) all of the banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check as approved by the attached proposed order.

The Debtors respectfully submit that the relief requested herein is necessary and appropriate to ensure a smooth transition into chapter 11, to normalize and maintain existing relationships with the Debtors' Critical Vendors during the turbulent early stages of this bankruptcy case, and to preserve and maximize value for the benefit of the Debtors' creditors. One of the keys to the Debtors' successful reorganization will be maintaining harmonious relationships with their employees, medical services providers, most critical vendors, and customers, and preserving the going-concern value of the Debtors' business. As set forth in the attached Memorandum of Points and Authorities, the relief requested in this Motion is essential to those objectives.

ADDITIONAL INFORMATION

This Motion is based upon LBR 2081-1(a)(7) and 9075-1, Bankruptcy Rules 6003(b), 6004(a) and (h), and §§ 105, 363(b), 503(b)(9), and 549(a)(2)(B), the attached Memorandum of Points and Authorities, and Adcock Declaration filed concurrently herewith, the arguments and statements of counsel to be made at the hearing on the Motion, and other admissible evidence properly brought before the Court.

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Counsel to the Debtors will serve this Motion, the attached Memorandum of Points and Authorities, the Adcock Declaration and the Notice of First-Day Motions on: (i) the Office of the United States Trustee; (ii) the Secured Creditors and DIP Lenders; (iii) the 50 largest general unsecured creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d); (iv) the United States of America, and the State of California; and (v) parties that file with the Court and serve upon the Debtors requests for notice of all matters in accordance with Bankruptcy Rule 2002(i). To the extent necessary, the Debtors request that the Court waive compliance with LBR 9075-1(a)(6) and approve service (in addition to the means of services set forth in such LBR) by overnight delivery. Among other things, the Notice of Emergency Motions will provide that any opposition or objection to the Motion may be presented at any time before or at the hearing regarding the Motion, but that failure to timely object may be deemed by the Court to constitute consent to the relief requested herein.

In the event that the Court grants the relief requested by the Motion, the Debtors shall provide notice of the entry of the order granting such relief upon each of the foregoing parties and any other parties in interest as the Court directs. The Debtors submit that such notice is sufficient and that no other or further notice be given.

RESERVATION OF RIGHTS

Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under § 365. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

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PRAYER

WHEREFORE, the Debtors respectfully request that this Court hold an emergency hearing on the Motion and issue an Interim Order:

(1) affirming the adequacy of the notice given;

(2) granting the Motion in the interim;

(3) authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (up to $5 Million) of the Critical Vendors, in the ordinary course of the Debtors' business, in the Debtors' discretion, and in accordance with the Protocol and the Budget; and

(4) granting such other and further relief as the Court deems just and proper under the circumstances.

WHEREFORE, the Debtors also respectfully request that this Court hold a final hearing on the Motion and issue a Final Order:

(1) affirming the adequacy of the notice given;

(2) granting the Motion in its entirety;

(3) authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (up to a total of $20 Million) of the Critical Vendors, in the ordinary course of the Debtors' business, in the Debtors' discretion, and in accordance with the Protocol and the Budget; and

(4) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 31, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

By /s/ Tania M. Moyron
Tania M. Moyron

Proposed Attorneys for the Chapter 11 Debtors and Debtors In Possession

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rules 2081-1(a)(7) and 9075-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California (the "LBR"), Rules 6003(b), 6004(a) and (h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and sections 105, 363(b), 503(b)(9), and/or 549(a)(2)(B) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"),[3] Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy case (collectively, the "Debtors"), hereby move, on an emergency basis (the "Motion"), for the entry of an interim order (substantially in the form attached hereto as **Exhibit "A"**, the "Interim Order") authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after an interim hearing, in an interim amount of up to $5 Million and only as needed to avoid immediate and irreparable harm), and for the entry of a final order within 30 days after filing the above-captioned chapter 11 bankruptcy case (the "Final Order", together with the Interim Order, the "Critical Vendors Order") authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after a final hearing, in an amount up to an additional $15 Million, for a total of up to $20 Million and only as needed to avoid immediate and irreparable harm), of their most critical vendors in the Debtors' discretion and in the ordinary course of the Debtors' business, pursuant to a carefully-designed Protocol (defined below) overseen by a core, centralized team consisting of senior members of Debtors' management and professional advisors, and subject to certain Terms and Conditions (defined below). In support of the Motion, the Debtors have separately filed the Declaration of Richard Adcock in Support of Debtors' First-Day Motions (the "Adcock Declaration"). The Debtors request that the relief sought herein be granted on an emergency basis because they will suffer immediate and irreparable harm without the relief requested in this Motion.

[3] All references to "§" and "section" herein are to sections of the Bankruptcy Code.

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II. JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

2. Venue of the Debtors' chapter 11 cases is proper pursuant to 28 U.S.C. § 1408(1) and (2).

III. STATEMENT OF FACTS

A. General Background

1. On August 31, 2018 ("Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the commencement of their cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor California nonprofit public benefit corporations that operate six acute care hospitals, O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside (collectively, the "Hospitals") and other facilities in the state of California. Seton Medical Center and Seton Medical Center Coastside operate under one consolidated acute care license.

3. VHS, the Hospitals, and their affiliated entities (collectively, "Verity Health System") operate 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.

4. The VHS affiliated entities, including the Debtors and non-debtor entities, are as follows:

- O'Connor Hospital
- Saint Louise Regional Hospital
- St. Francis Medical Center
- St. Vincent Medical Center
- Seton Medical Center, including

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- Seton Medical Center Coastside campus
- Verity Business Services
- Marillac Insurance Company, Ltd.
- O'Connor Hospital Foundation
- Saint Louise Regional Hospital Foundation
- St. Francis of Lynwood Medical Center Foundation
- St. Vincent Medical Center Foundation
- Seton Medical Center Foundation
- St. Vincent de Paul Ethics Corporation
- St. Vincent Dialysis Center
- De Paul Ventures, LLC
- De Paul Ventures - San Jose Dialysis, LLC
- De Paul Ventures - San Jose ASC, LLC
- Verity Medical Foundation
- Verity Holdings, LLC

5. Verity Medical Foundation ("VMF"), incorporated in 2011, is a medical foundation, exempt from licensure under California Health & Safety Code § 1206(l). VMF contracts with physicians and other healthcare professionals to provide high quality, compassionate, patient-centered care to individuals and families throughout California. With more than 100 primary care and specialty physicians, VMF offers medical, surgical and related healthcare services for people of all ages at community-based, multi-specialty clinics conveniently located in areas served by the Debtor Hospitals. VMF holds long-term professional services agreements with the following medical groups: (a) Verity Medical Group; (b) All Care Medical Group, Inc.; (c) CFL Children's Medical Associates, Inc.; (d) Hunt Spine Institute, Inc.; (e) San Jose Medical Clinic, Inc., D/B/A San Jose Medical Group; and (f) Sports, Orthopedic and Rehabilitation Associates.

6. Verity Holdings, LLC ("Holdings") is a direct subsidiary of its sole member VHS and was created in 2016 to hold and finance VHS' interests in four medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the VHS Hospitals. Holdings' real estate portfolio includes more than 15 properties. Holdings is the borrower on approximately $66.2 Million of non-recourse financing secured by separate

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deeds of trust and revenue and accounts pledges, including the rents on each medical office building.

7. O'Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis of Lynwood Medical Center Foundation, St. Vincent Medical Center Foundation, and Seton Medical Center Foundation handle fundraising and grant-making programs for each of their respective Debtor Hospitals.

8. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. Approximately 74% of these employees are represented by collective bargaining units. A majority of the employees are represented by either the Service Employees International Union (approximately 39% of employees) or California Nurses Associations (approximately 22% of employees).

9. Each of the Debtors is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, except for Verity Holdings, LLC, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC.

10. To date, no official committee or examiner has been appointed by the Office of the United States Trustee in these chapter 11 Cases.

B. Historical Challenges

1. The Hospitals and VMF were originally owned and operated by the Daughters of Charity of St. Vincent de Paul, Province of the West (the "Daughters of Charity"), to support the mission of the Catholic Church through a commitment to the sick and poor. The Daughters of Charity began their healthcare mission in California in 1858 and they ministered to ill, poverty-stricken individuals for more than 150 years. In March 1995, the Daughters of Charity merged with Catholic Healthcare West ("CHW"). In June 2001, Daughters of Charity Health System ("DCHS") was formed, and in October 2001, the Daughters of Charity withdrew from CHW. In 2002, DCHS commenced operations and was the sole corporate member of the Hospitals, which at that time were California nonprofit religious corporations.

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2. Between 1995 and 2015, the Daughters of Charity and DCHS struggled to find a solution to continuing operating losses, either through a sale of some or all of the hospitals or a merger with a more financially sound partner. All these efforts failed. During these efforts, however, the health system's losses continued to mount, and the health system borrowed more than $500 Million—including through a 2008 bond issuance (the "2008 Bonds")—to fund operations, acquire assets, fund needed capital improvements and/or refinance existing debt.

3. Despite continuous efforts to improve operations, operating losses continued to plague the health system due to, among other things, mounting labor costs, low reimbursement rates and the ever-changing healthcare landscape. In 2013, DCHS actively solicited offers for O'Connor Hospital, St. Louise Regional Hospital, Seton Medical Center and Seton Medical Center Coastside. In 2013, to avoid failing debt covenants, the Daughters of Charity Foundation, an organization separate and distinct from DCHS, donated $130 Million to DCHS to allow it to retire the 2008 Bonds in the total amount of $143.7 Million.

4. In early 2014, DCHS announced that they were beginning a process to evaluate strategic alternatives for the health system. Throughout 2014, DCHS explored offers to sell their hospital system and, in October of 2014, they entered into an agreement with Prime Healthcare Services and Prime Healthcare Foundation (collectively, "Prime") to sell the health system. However, to keep the hospitals open, DCHS needed to borrow another $125 Million to mitigate immediate cash needs during the sales process; in other words, to allow DCHS to continue to operate until the sale could be consummated. In early 2015, the California Attorney General consented to the sale to Prime, subject to conditions on that sale that were so onerous that Prime terminated the transaction.

5. In 2015, DCHS again marketed their health system for sale, and, again, focused on offers that maintained the health system as a whole, and assumed all the 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").

6. In connection with the BlueMountain Transaction, BlueMountain agreed to make a capital infusion of $100 Million to the health system, arrange loans for another $160 Million to the health system, and manage operations of the health system, 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's name was changed to Verity Health System, and Integrity Healthcare, LLC ("Integrity") was formed to carry out the management services under a new management agreement.

7. On December 3, 2015, the California Attorney General approved the BlueMountain Transaction, subject to conditions. Despite BlueMountain's infusion of cash and retention of various consultants and experts to assist in improving cash flow and operations, the health system did not prosper.

8. In July 2017, NantWorks, LLC ("NantWorks") acquired a controlling stake in Integrity. NantWorks brought in a new CEO, CFO, and COO. NantWorks loaned another $148 Million to the Debtors.

9. Despite the infusion of capital and new management, it became apparent that the problems facing the Verity Health System were too large to solve without a formal court supervised restructuring. Thus, despite VHS' great efforts to revitalize its Hospitals and improvements in performance and cash flow, the legacy burden of more than a billion dollars of bond debt and unfunded pension liabilities, an inability to renegotiate collective bargaining agreements or payor contracts, the continuing need for significant capital expenditures for seismic obligations and aging infrastructure, and the general headwinds facing the hospital industry, make success impossible. Losses continue to amount to approximately $175 Million annually on a cash flow basis.

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10. Additional background facts on the Debtors, including an overview of the Debtors' business, information on the Debtors' capital structure and additional events leading up to these chapter 11 cases, are contained in the Declaration of Richard G. Adcock.

C. Critical Vendor Obligations

As life-saving medical service providers, the Debtors are situated in a vulnerable position. Their entire mission could immediately unravel, irreparably harming the Debtors and their patients (the "Patients") absent the continual flow of vital medical services, medical supplies, medical equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, admission department staff, as well as non-medical services and information technology support.

Additionally, local, state, and federal law places certain compliance requirements on the Debtors. For example, as the operator of hospitals licensed under California state law and certified to participate in the Medicare and Medicaid programs, the Debtors must comply with all hospital licensing and certification requirements, including those found in the Health and Safety Code and in Title 22 of the California Code of Regulations, as well as the applicable Medicare conditions of participation and corresponding Medicaid requirements. *See, e.g.*, Cal. Health & Safety Code §§ 1250 *et seq.*; 22 Cal. Code Regs §§ 70001, *et seq.*; 22 Cal. Code Regs. § 51207; 42 C.F.R. §§ 482 *et. seq.* In addition to complying with these overarching requirements, the Debtors must monitor and comply with all of the other licensing and operational requirements that apply to the different service lines and programs offered by the hospitals, including, for example, those applicable to the hospital pharmacies and laboratories. *See, e.g.*, Cal. Bus. & Prof. Code §§ 1200 *et. seq.*, Cal. Bus. & Prof. Code §§ 4000 *et. seq.*, Cal. Health & Safety Code §§ 11000 *et. seq.*, 16 Cal. Code Regs. §§ 1700 *et. seq.* These extensive, comprehensive regulations and requirements can only be fulfilled through continued, uninterrupted access to essential goods and services. Thus, in order to ensure the timely and proper care of the Patients and maintain ongoing business operations, it is imperative the Debtors are able to rely on a

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consistent, quality supply of various physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, admission department staff, as well as certain medical supplies, medical equipment, and services provided by vendors, suppliers and/or service-providers that are "critical" to Patient care and the Debtors' businesses (the "Critical Vendors").

The Debtors' Critical Vendors include the following categories of providers: (i) uncompensated care contract physicians and on-call coverage physicians (collectively, the "Uncompensated Care and On-Call Coverage Physicians"); (ii) medical directors (the "Medical Directors"); (iii) medical staff officers and leadership positions ("Medical Leadership"); (iv) physicians providing teaching services ("Physician Educators"); (v) medical services providers (the "Medical Services Providers"); (vi) medical supplies and medical equipment providers (collectively, the "Medical Supplies and Equipment Providers"); (vii) medical staffing agencies and hospital-based services providers (collectively, the "Clinical Staffing"); (viii) non-medical services providers (the "Non-Medical Services Providers"); (ix) information technology services providers (the "IT Services Providers"); and (x) various employee benefits providers (the "Benefits Providers").

The Debtors are mindful of their fiduciary obligations to seek to preserve and maximize the value of their Estates. To that end, the Debtors and their advisors have engaged in an extensive process of reviewing and analyzing the Debtors' books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business relationships—which, if lost, could materially harm the Debtors' Patients, the Debtors' businesses, reduce their enterprise value, and/or impair their restructuring process—all in an effort to identify only those most critical vendors using their business judgment (the "Protocol"). Such Protocol is on-going.

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During the Protocol process, the Debtors have deemed certain vendors as critical because each of these Critical Vendors meets the following criteria: (a) the vendor is essential to Patient care, supports maintaining the Debtors' business in full compliance with California's Title XII requirements for operating general acute care hospitals in the state of California, and allows the Debtors to continue to provide needed patient care and services and maintain their business postpetition until reorganization and/or sale of the Debtors' assets for the benefit of creditors; (b) the vendor is indispensable for providing vital goods or services (such as blood products or surgical implants), replacing said vendor would be prohibitively expensive, or said vendor is otherwise critical to prevent the diversion of management and key personnel to solicit other vendors to provide comparable goods or services and to prevent other unnecessary distraction during the extensive transitional period;[4] (c) the vendor holds an unpaid prepetition claim for the provision of goods or services; (d) the Debtors believe the vendor will refuse to deliver goods or provide services without payment of the prepetition claim and the automatic stay imposed by § 362(a) will be inadequate to address the issue; (e) cash on delivery is unlikely to provide the requisite incentive for the vendor to continue providing goods or services; (f) the Debtors lack a long-term contractual relationship with the vendor that would oblige the vendor to continue the prepetition relationship, and the Debtors are otherwise without adequate leverage to compel performance on commercially reasonable terms; and (g) the Debtors will suffer immediate and irreparable harm if the vendor is not specially incentivized to continue providing essential goods or services. The Debtors' will use commercially reasonable efforts to require the vendor to sign a postpetition agreement with normalized terms and conditions that contractually bind the vendor to

[4] Additionally, the Debtors acknowledge that while some of these Critical Vendors are not the only vendors in the area that provide these vital goods or services, switching to other providers at this critical juncture will incur substantial time, energy, and unnecessary distraction during the extensive transitional period.

continue providing essential goods and services postpetition (the "Critical Vendor Agreement"). A brief description of each category of Critical Vendors follows.

i. Uncompensated Care and On-Call Coverage Physicians

The Debtors require the service of various physicians who provide care to patients who lack the ability to compensate the Debtors for their medical treatment (individually, "Uncompensated Care Contract Physicians") and the physicians who provide on-call services to cover the Debtors' six active emergency departments, one of which is an essential Level II Trauma (individually, "On-Call Coverage Physicians"). The Uncompensated Care Contract Physicians routinely provide the following vital Patient services: (i) Emergency Room coverage; (ii) surgical procedures for any Patient who is uninsured or underinsured; (iii) psychiatry; and (iv) cardiac services. The On-Call Coverage Physicians make themselves available to the Debtors for certain periods of time to ensure that a specialist is available at all times for emergency situations, including such emergent conditions as cardiac arrest and immediate trauma. The On-Call Coverage Physicians routinely provide the following areas of expertise: (i) urology; (ii) general surgery; (iii) orthopedics; (iv) cardiology; (v) neurosurgery; (vi) thoracic surgery; (vii) cardiac surgery; (viii) radiation oncology; (ix) neurology, (x) psychiatry; (xi) nephrology; (xii) gastroenterology; (xiii) pediatric surgery; and (xiv) obstetrics. Due to the strong economy and the tight labor market for professionals with expertise, Uncompensated Care and On-Call Coverage Physicians have a vast array of working opportunities available to them, and to the extent the Debtors are unable to ensure payment for prepetition claims, these Uncompensated Care and On-Call Coverage Physicians will work at other hospitals, resulting in a devastating impact on Patient care and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

ii. Medical Directors

The Debtors require the sevices of various physicians who serve as Medical Directors. As Medical Directors, it is their responsibility to ensure the hospital provides quality Patient care

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efficiently and according to local, state, and federal mandates in order to ensure Patient care. These Medical Directors supervise and coordinate the On-Call Coverage Physicians, provide vital operating and administrative services, such as supervision of certain departments or programs, including but not limited to, (i) the Long Term & Sub-Acute Unit; (ii) Advanced Wound Care; (iii) the Comprehensive Spine Care Program; (iv) the Stroke Program; (v) Cardiac & Pulmonary Rehabilitation; (vi) Oncology; (vii) Non-Invasive Cardiology; (viii) Radiation Therapy; (ix) the Intensive Care Unit and Neonatal Intensive Care Unit; (x) the Antimicrobial Stewardship Program; (xi) Interventional Neurology; (xii) the Bioethics Program; (xiii) the Catherization Laboratory; (xiv) the Skilled Nursing Facility, the Stroke Program; (xv) Thoracic Surgery; (xvi) the Dialysis Center; and (xvii) Nuclear Medicine and Vascular Laboratory. They also are vital for program quality, oversight, and risk management. There are approximately 60 physicians serving as Medical Directors. Similar to the Uncompensated Care and On-Call Coverage Physicians, and due to the strong economy and the tight labor market for professionals with expertise, Medical Directors are in demand and have a vast array of working opportunities available to them. To the extent the Debtors are unable to ensure payment for prepetition claims to Medical Directors, these Medical Directors will work at other hospitals, resulting in a devastating impact on Patient care and irreparable harm to the smooth transition into chapter 11 and preservation and maximization of value for the benefit of the Debtors' creditors.

iii. Medical Leadership

The Debtors require the services of various physicians who serve as medical staff officers and in other leadership positions, as required by each Hospital's accreditation with The Joint Commission (the "TJC"). Medical Leadership includes the Chiefs of Staff and all Department Chairs required by each of the Debtors' Medical Staff Bylaws, and by Title 22, including physician oversight for cardiology, pulmonary, laboratory, stroke, and ST-elevation myocardial infarction departments. The Chief Medical Officers are essential to ensure quality and risk oversight. Without these physicians, who can easily find competitive opportunities elsewhere, the Debtors' will suffer irreparable harm to the Debtors' chapter 11 Case.

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iv. Physician Educators

The Debtors require the services of various physicians who provide teaching services in the Debtors' graduate medical education (the "GME") program, a legal requirement with which the Debtors must comply. The GME program simultaneously provides: (i) training for interns, residents, and fellows until they become independent and licensed phsysicians; and (ii) access to healthcare for elderly and impoverished Patients. Physician Educators are in high demand because the State of California mandates that every teaching hospital support the efforts to provide access to high quality healthcare to its most vulnerable population. To maintain Level II Trauma status, the Debtors must maintain the GME program. Therefore, Physician Educators are vital to maintaining the Debtors' teaching hospital status and affording access to healthcare, both of which are key to the Debtors' Patient care and ongoing operations and/or potential sale of its assets for the benefit of its creditors and the Estates.

v. Medical Services Providers

The Debtors require the services of various Medical Services Providers, including, but not limited to, those who provide services such as surgical anesthesia coverage, organ harvesting and organ matching services, medical equipment sanitization, diagnostic interventional cardiology services, interventional neuroradiology, imaging services, advanced wound care, pathology and laboratory services, dialysis services, lithotripsy services, sterile compounding services, rehabilitation staffing and management services, subacute management services, psychiatric management services, hospitalist services, intensivist program services, medical screening services, and medical instrument repair services. These services are vital to the Debtors. The Debtor will suffer immediate irreparable harm should the Court deny the Debtors' request to include the Medical Services Providers as Critical Vendors subject to payment on prepetition claims.

vi. Medical Supplies and Equipment Providers

The Debtors require the use of various medical supplies and medical equipment, including, but not limited to, blood and plasma, heart valves, coronary intervention products,

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defibrillators, laparoscopic and minimally invasive surgical supplies, neurosurgical supplies and neurology devices, other surgical medical products, bone substitute biologics, regenerative vascular grafts, vaccinations and other pharmaceuticals, nuclear medicines, medical gases, anesthesia medical equipment, laboratory medical supplies, radiation equipment, gastrointestinal supplies, cochlear implants, orthopedic implants, spinal implants, intraocular lenses and ophthalmology supplies, sterilization equipment and products, and fetal monitoring systems. Equipment includes medical equipment rentals, biomedical repair tools and equipment, patient beds and stretchers, vital sign monitoring, infusion pumps, medication supply stations, gastro-intestinal lab equipment, cardiac catherization lab equipment, operating room equipment, imaging equipment, laboratory equipment, pharmacy dispensing equipment, and transplant program equipment. The medical supplies and medical equipment the Debtors receive from the Medical Supplies and Equipment Providers are vital to the Debtors. The Debtors will suffer immediate irreparable harm should the Court not grant the Debtors' request to include the Medical Supplies and Equipment Providers as Critical Vendors subject to payment on prepetition claims.

vii. Clinical Staffing

The Debtors require various medical staffing agencies and other hospital-based services providers to provide nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff.

Additionally, regarding the provision of nurses, the staffing supplementation is essential because: (1) California has a mandatory statutory nurse to patient ratio, and so the Debtors are required by law to meet certain ratios in order to operate on a daily basis; and (2) it is difficult to recruit experienced staff—as opposed to recent graduates—for short-term assignments. Indeed, these staffing agencies provide the requisite "registry" nurses who take short single-day assignments and "traveler" nurses who take longer-term assignments to fill in during busier seasons—*e.g.*, flu season—and understaffed periods—*e.g.*, during nurses strikes of represented

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nurses—where the Debtors may not otherwise have sufficient numbers of nurses between their core and per diem nurses.

Moreover, many of the Clinical Staffing who provide physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff to the Debtors will not staff the Debtors' business if there is any interruption or delay in the payment of the amounts due to them. Given the Debtors' reliance on the medical services provided by the Clinical Staffing to provide Patient care and otherwise fulfill the Debtors' daily medical services needs, and the fact that the Clinical Staffing can simply shift their services to a medical services company, it is crucial that the Debtors be authorized to pay any prepetition amounts due to the Clinical Staffing as Critical Vendors in the ordinary course of business.

viii. Non-Medical Services Providers

The Debtors require services of various non-medical service providers, including, but not limited to, those who provide services such as payroll tax services, financial audit services, billing services, cost reporting services, revenue cycle management services, consulting and education services for various required national, state, and local accreditations and mandates, environmental services, record retention services, building maintenance services, medical equipment maintenance services, management services, and other similar services, as well as to seismic contractors. Seismic contractors are designers, engineers, suppliers and constructors who are engaged in the statutory work of retrofitting hospital structures to meet the SB1953 and subsequent amendments that are required to be completed by December 31, 2019. Delay of the projects will cause the Debtors to miss the regulated deadlines risking California Department of Public Health license and suspension of such. These non-medical services are vital to the Debtors' day-to-day operations and the Debtors' ability to comply with regulatory requirements set by the State of California legislature, and the Debtors will suffer immediate irreparable harm

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should the Court not grant the Debtors' request to include the Non-Medical Services Providers as Critical Vendors.

ix. IT Services Providers

The Debtors require use of various information technology services, including, but not limited to, those who provide services such as diagnostic technology, interoperability between devices, risk management and software services, revenue cycle management billing software and services, teleradiology services, customer relationship management, networking solutions services, multi-function copiers, voice over internet protocol system services, hosting services for applications, and point of care data management system services. Critical patient care systems such as electronic health record systems and enterprise resource planning systems must be maintained to ensure continuity of patient care. These information technology services are vital to the Debtors' day-to-day operations, and the Debtor will suffer immediate irreparable harm should the Court not grant the Debtors' request to include the IT Services Providers as Critical Vendors subject to payment on prepetition claims.

x. Benefits Providers

The Debtors have incentivized their employees to continue working through the continuation of company-subsidized benefits, such as workers compensation, medical, dental, vision, short term and long term care, leave of absence, and life insurance. If the Debtors are not permitted to pay any prepetition premium amounts due to these Benefits Providers, the employees' insurance coverage will be jeopardized and the employees will likely seek employment elsewhere. Specifically, any disruption to payment of the employee benefits in the ordinary course (and in the Debtors' discretion), would adversely affect the Debtors' goals in this Case because such events are likely to cause some employees to terminate their employment with the Debtors, will cause all employees to be distracted from their duties to care for the Patients and the operations of the Hospitals, and will inevitably hurt employee morale at a particularly sensitive time for all employees, resulting in severe repercussions on the Debtors' ability to provide Patient care, and to preserve their assets and administer the Estates, to the detriment of all

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constituencies. Since the Debtors do not have the ability to quickly or cost-effectively replace their employees who provide vital medical and non-medical services on a daily basis, it is critical that the Debtors be allowed to continue these benefits in order to retain their employees and maintain their business operations to preserve the full value of their assets for the benefit of their creditors. Therefore, the Court should include Benefits Providers as Critical Vendors.

IV. RELIEF REQUESTED

By this Motion, the Debtors seek authority to continue to pay and/or honor the prepetition claims of the Uncompensated Care and On-Call Coverage Physicians, the Medical Directors, the Medical Leadership, the Physician Educators, the Medical Services Providers, the Medical Supplies and Equipment Providers, the Clinical Staffing, the Non-Medical Services Providers, the IT Services Providers, and the Benefits Providers as Critical Vendors, up to $20 Million (the "Critical Vendor Cap"), with (i) an interim amount of up to $5 Million and only as needed to avoid immediate and irreparable harm; and (ii) an additional amount of up to $15 Million and only as needed to avoid immediate and irreparable harm—as mentioned in the Declaration of Richard Adcock in Support of the Emergency Motions filed concurrently herewith (the "Adcock Declaration"), and in the Debtors' discretion and in the ordinary course of the Debtors' business, and pursuant to a carefully-designed Protocol overseen by a core, centralized team consisting of senior members of Debtors' management and professional advisors. Specifically, the Debtors seek entry of an interim order (substantially in the form attached hereto as **Exhibit "A"**, the "Interim Order") authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after an interim hearing, in an interim amount of up to $5 Million and only as needed to avoid immediate and irreparable harm), and entry of a final order within thirty (30) days after filing the above-captioned chapter 11 bankruptcy cases (the "Final Order", together with the Interim Order, the "Critical Vendors Order") authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (after a final hearing, in an amount up to an additional $15 Million, for a total of up to $20 Million and only as needed to avoid immediate and irreparable harm), of their Critical Vendors. The amounts proposed to be paid to the Critical

Vendors are already provided for in the Debtors' operating budget (the "Budget") submitted in connection with the Debtors' motion for authority to use cash collateral and to obtain debtors in possession financing from the Debtors' senior secured lender (the "Cash Collateral Motion") which is supported by the Declaration of Anita M. Chou (the "Chou Declaration") filed concurrently herewith.

Regarding the Protocol, there shall be a Critical Vendor Cap of $20 Million, which will be the most the Debtors may pay to the Critical Vendors. The Debtors, at their discretion, using their business judgment, and pursuant to the Protocol, shall pay the Critical Vendors, subject to certain accountability requirements (the "Accountability Requirements"). The Accountability Requirements shall include: (i) filing under seal a report on a monthly basis that details the Critical Vendor payments (the "Interim Critical Vendors Report"), with a final report filed under seal once the cap has been met (the "Final Critical Vendors Report"), with viewing privileges only for the Debtors, the Official Committee of Unsecured Creditors, and the United States Trustee, to include: (a) a list of the Critical Vendors; (b) the amount paid to each individual Critical Vendor; (c) a description of the supplies or services provided to the Debtors; and (d) an explanation for how each payment was determined by the carefully-designed Protocol overseen by a core, centralized team consisting of senior members of Debtors' management and professional advisors;[5] (ii) an *in camera* hearing during which the Court may review the foregoing information in the presence of the Debtors, the Official Committee of Unsecured Creditors, and the United States Trustee; and (iii) if there is an objection to any payment by any party in interest, such objection may be heard by this Court at a hearing in open court. Furthermore, to ensure timely payment to Critical Vendors, the Debtors propose that the Interim Order be issued, subject to final approval by the Court in the Final Order, each of which provides authorization for the Debtors to make rolling payment of (i) an interim amount of up to $5

[5] Due to the sensitive nature of certain confidential proprietary data, this material will be filed under seal. Furthermore, the Debtors believe that keeping the identity of potential Critical Vendors confidential may assist in reducing the number of prepetition claims that must be paid in order to continue receiving critical goods and services. Accordingly, a schedule of Critical Vendors will not be made publicly available.

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Million; and (ii) an additional final amount of up to $15 Million, towards the prepetition claims (up to the Critical Vendor Cap) to Critical Vendors.

As a safeguard to the Debtors' Patients, other creditors, and the Estates, the Debtors propose certain terms and conditions (the "Terms and Conditions") of the payment to the Critical Vendors if a Critical Vendor, after signing the Critical Vendor Agreement, thereafter refuses to supply the critical goods or services to the Debtor throughout the course of the bankruptcy proceeding, as provided under the Critical Vendor Agreement (the "Defaulting Vendor"). These Terms and Conditions allow the Debtors: (i) to deem such payment to the Defaulting Vendor as a voidable postpetition transfer pursuant to § 549(a); and (ii) to demand the immediate return of any and all payments made to the Defaulting Vendor pursuant to this Motion, to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or setoffs of any type whatsoever, and the Defaulting Vendor's prepetition claim shall be reinstated in such an amount as to restore the Debtors and the Defaulting Vendor to their original positions, as if the Critical Vendor Agreement had never been entered into and the payment of the Defaulting Vendor's prepetition claim had not been made. In short, the Debtors will return the parties to their positions immediately prior to the entry of the order approving the relief sought herein.

The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, provided, however, that: (i) funds are available in the Debtors' accounts to cover the checks and fund transfers; and (ii) all of the banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check as approved by the attached proposed Interim Order.

The Debtors respectfully submit that the relief requested herein is necessary and appropriate to ensure a smooth transition into chapter 11 and maintain high-quality patient care,

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to normalize and maintain existing relationships with the Debtors' Critical Vendors during the turbulent early stages of this bankruptcy case, and to preserve and maximize value for the benefit of the Debtors' creditors. One of the keys to the Debtors' successful sales or reorganization will be maintaining harmonious relationships with their employees, medical services providers, most critical vendors, and customers, and preserving the quality of patient care and ultimately the going-concern value of the Debtors' business. The Debtors rely heavily upon these supplies and services provided by the Critical Vendors to fulfill the Debtors' daily medical services needs.

Failure to make payment to the Critical Vendors on their prepetition claims will result in harm to the Debtors' Patients, as well as the Debtors being unable to fulfill their medical services needs, resulting in a substantial loss of revenue. Accordingly, it is crucial that the Debtors be authorized to continue to pay and/or honor the prepetition claims—in (i) an interim amount of up to $5 Million; and (ii) an additional final amount of up to $15 Million, for a total amount of $20 Million—to the Critical Vendors, in the ordinary course of the Debtors' business and at the Debtors' discretion, pursuant to the Protocol, and pursuant to the Interim Order and the Final Order.

As noted in the Adcock Declaration, the Debtors intend to market and sell some or all of their assets, therefore, the Debtors need to maintain their business operations and preserve the value of their assets, which in turn, requires the Debtors to preserve their existing relationships with their Critical Vendors and to retain their employees.

Additionally, the Debtors anticipate that the mere filing of their bankruptcy cases will raise concerns among the Debtors' Patients, vendors, employees, and other parties in interest within the medical services industry. The Debtors' vendors will understandably be concerned that the Debtors will not be able to continue paying the amounts due to them, and the Debtors' Patients will be concerned that the Debtors will not be able to fulfill their medical services, due to the Debtors' financial condition. The Debtors' vendors and Patients may therefore look to shift their business elsewhere, and the automatic stay imposed by § 362(a) will be inadequate to address the issue. The Debtors believe that the most effective way to counter these perceptions

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and concerns within their industry is to continue to make payments to their most critical vendors, in the ordinary course of their business, in accordance with the Debtors' Protocol, the Interim Order, and the Budget submitted with the Cash Collateral Motion filed concurrently herewith, at least in the immediate term.6

The Debtors' Budget already includes the proposed payments to the Critical Vendors, which payments are set forth in **Exhibit "2"** to the Chou Declaration. The Debtors' goals in these chapter 11 cases are to facilitate an orderly administration of their bankruptcy cases and to maintain efficient and seamless operations for the benefit of the Patients who seek medical care in the hospitals, medical centers, and clinics operated by the Debtors in order to maximize the value of their assets for the benefit of all stakeholders. Accordingly, it is imperative to the accomplishment of the Debtors' goals in these cases that the Debtors minimize any adverse impact of the chapter 11 filing on the Debtors' workforce, on the Patients, on the operations of the Hospitals, and on the orderly administration of these Cases.

Accordingly, the Debtors respectfully request that the Court grant the Motion.

V. DISCUSSION

By this Motion, the Debtors seek to protect their Patients and preserve and maintain their relationships with their Critical Vendors, employees, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, and admission department staff during the turbulent early stages of their bankruptcy case in order to preserve the reputation of the Debtors' business and the value of the Debtors' assets. Such action has been recognized as a legitimate practice in bankruptcy proceedings by the Supreme Court. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985, 197 L. Ed. 2d 398 (2017) (listing critical vendor orders that allow payment of essential supplier prepetition invoices as legitimate exceptions to the

[6] A true and correct copy of the Budget is attached as an exhibit to the Debtors' Cash Collateral Motion filed concurrently herewith.

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common priority scheme).[7] Indeed, the Supreme Court reasoned that critical vendor orders supported "significant Code-related objectives." *Id.* In *Jevic*, the Supreme Court offered several appropriate considerations for courts in determining whether to grant motions for payment of critical vendors: (a) preserve the debtor as a going concern; (b) make the disfavored creditors better off; (c) promote the possibility of a confirmable plan; (d) restore the status quo *ante*; or (e) protect reliance interests. *Id.*[8] Granting the Debtors' Motion will meet these objectives, and is authorized pursuant to the Court's powers under § 105(a). 11 U.S.C. § 105 ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].").

Furthermore, bankruptcy judges in this district have routinely granted similar critical vendors motions. *See, e.g.*, Order (A) Authorizing the Debtor to Pay Prepetition Claims of Emergency Room Doctors, Medical Director Doctors, and Nursing Registries who are Critical Service Providers and (B) Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtor Relating to the Foregoing, *In re Victor Valley Community Hospital*, No. 6:10-bk-39537-CB (Bankr. C.D. Cal. Sept. 17, 2010) (No. 34); Final DIP Order (A) Authorizing Debtor to Obtain Postpetition Financing; (B) Granting Superpriority Expense Claims and Security Interests; and (C) Granting Other Relief Under 11 U.S.C. §§ 105, 361, 362, 363 and 364, F.R.B.P. 2002 and 4001; and LBRs 2002-1 and 4001-2 at 14, 33, *In re Downey Regional Medical Center-Hosp., Inc.*, No. 2009-BK-34714-BB (Bankr. C.D. Cal. Oct. 19, 2009) (No. 148) (J. Bluebond) (allowing for process to pay "critical vendor claims"); Order Authorizing The Debtor To Pay Prepetition Claims Of Critical Vendors, at 2, *American Suzuki Motor Corporation*, No. 8:12-bk-22808-SC (Bankr C.D. Cal. Nov. 7, 2012) (No. 69) (J. Clarkson) ("The Debtor is authorized, but not directed, to pay in its sole discretion the prepetition claims of Critical Vendors

[7] Some have misconstrued *Matter of B & W Enterprises, Inc.*, 713 F.2d 534 (9th Cir. 1983) as prohibiting Critical Vendors Motions altogether. Such notions are contrary to the Supreme Court's analysis in *Jevic*. Instead, *B & W Enterprises, Inc.* should be narrowly construed: the debtor may not use 11 U.S.C. § 510 to subvert the Bankruptcy Code's priority scheme without evidence of misconduct by the creditor not receiving payment on prepetition expenses. *Matter of B & W Enterprises, Inc.*, 713 F.2d at 537.

[8] This list is non-exhaustive.

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in the ordinary course of the Debtor's business relating to undisputed prepetition claims that the Debtor, in its business judgment, determines is necessary and appropriate for the operation of its business); Final Order Authorizing: 1) the Debtors to Pay Prepetition Lien Claimants; and 2) Certain Financing Institutions to Honor All Related Checks and Electronic Payment Request at 2, *California Coastal Communities, Inc.*, No. 8:09-bk-21712-TA (Bankr. C.D. Cal. Dec. 9, 2009) (No. 87) (J. Albert) (granting "critical vendor" motion and authorizing vendors "to continue supplying goods and services to the Debtors on the same trade terms given to them prior to the Petition Date or upon such other agreed trade terms as the Debtor may recommend"); Order Granting Evergreen Oil, Inc.'s Emergency Motion For Entry Of An Order Authorizing Debtor To Honor Pre-Petition Obligations To Critical Vendors And To Continue Vendor Programs at 2, *In re Evergreen Oil, Inc.*, No. 8:13-bk-13163 (Bankr. C.D. Cal. Apr. 10, 2013) (No. 32) (J. Clarkson) (granting critical vendors motion); Order Granting Debtor's Emergency First Day Motion for an Order Authorizing Debtor to Pay Pre-Petition Claims of Certain Critical Vendors at 2, *In re HDOS Enterprises*, No. 2:14-BK-12028-NB (Bankr. C.D. Cal. Feb. 6, 2014) (No. 66) (J. Bason) (granting critical vendors motion); Order Granting Motion For Entry Of An Order Authorizing Debtor To Honor Pre-Petition Obligations To Critical Vendors, *In re Green Fleet Systems, LLC*, No. 2:15-bk-11542-BR (Bankr. C.D. Cal. Mar. 16, 2015) (No. 81) (J. Russell) (granting critical vendors motion).

Allowing a debtor to honor prepetition obligations under §105(a) authority is appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Sav. Assoc. v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999).

Moreover, the amount of the Critical Vendor Cap is reasonable—up to $20 Million. In other cases of similar magnitude but with much less at stake than the lives of Patients, such as for grocery chains like In re The Great Atlantic & Pacific Tea Co., et. al and In re Tops Holding II Corporation, et. al., courts have allowed significantly higher amounts. See Final Order

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Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claims, Approving Related Procedures, and Granting Related Relief, I*n re The Great Atlantic & Pacific Tea Co., et al.*, No. 10-24549-RDD (Bankr. S.D.N.Y. Jan. 13. 2011) (No. 504) (authorizing payment of up to $62 Million to critical vendors); Order signed Authorizing Debtors to Pay Certain Prepetition Obligations to Critical Vendors, Approving Related Procedures and Granting Related Relief at 3, *In re Tops Holding II Corporation, et al.*, No. 18-22279-RDD (Bankr. S.D.N.Y. Mar. 22, 2018) (No. 181) (authorizing payment of up to $36 Million to critical vendor cap).

Recognizing that, as here, payment of certain prepetition claims may be required to achieve legislative goals of preserving going concern value and maximizing the property available to satisfy creditors, bankruptcy courts have granted relief consistent with the relief requested herein for similarly-situated debtors. *See, e.g.*, Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claims, Approving Related Procedures, and Granting Related Relief, *In re The Great Atlantic & Pacific Tea Co., et al.*, (Bankr. S.D.N.Y. Dec. 14, 2010) (No. 55) (interim and final orders authorizing payment of up to $62 Million on account of claims held by critical vendors); Interim Order Pursuant to 11 U.S.C. §§ 105(a), 363(b) And 503(b)(9) (i) Authorizing, But Not Directing, Debtors to Pay Prepetition Obligations of Critical Vendors, and (ii) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers and Order Pursuant to 11 U.S.C. §§ 503(b)(9) And 105(a) (i) Approving Procedures for the Assertion, Resolution, and Satisfaction of Claims Asserted Pursuant to 11 U.S.C. § 503(b)(9) and (ii) Prohibiting Vendors from Pursuing Such Claims Outside the Procedures at 4, *In re Chassix Holdings, Inc.*, No. 15-10578 (Bankr. S.D.N.Y. Mar. 13, 2015) (No. 85) (interim order authorizing payment of up to $5 Million on account of claims held by critical vendors); Order Approving Procedures for the Assertion, Resolution, and Satisfaction of Claims Asserted and Prohibiting Vendors from Pursuing Such Claims Outside the Procedures, *In re Chassix Holdings, Inc.*, No. 15-10578 (Bankr. S.D.N.Y. Apr. 14, 2015) (No. 275) (final order authorizing payment of up to $40 Million on account of

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claims held by critical vendors) (citing Motion of Debtors Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 503(b)(9) for Entry of Order (I) Authorizing, But Not Directing, Debtors to Pay Prepetition Obligations of Critical Vendors, and (II) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers at 12, *id.* (Bankr. S.D.N.Y. Mar. 12, 2015) (No. 24)); Interim Order Authorizing the Debtors to Pay the Pre-petition Claims of Certain Essential Suppliers and Service Providers and Granting Certain Related Relief; *In re Hostess Brands, Inc.*, No. 12-22052 (Jan. 13, 2012) (No. 76) (interim and final orders authorizing payment of up to $14 Million on account of claims held by critical vendors); Order Granting Motion of Debtors and Debtors in Possession, Pursuant to Sections 105(a), 363(b) and 503(b)(9) of the Bankruptcy Code, for Interim and Final Orders Authorizing Them to Pay the Prepetition Claims of Certain Essential Suppliers and Service Providers and Granting Certain Related Relief, *In re Hostess Brands, Inc.*, No. 12-22052 (Jan. 27, 2012) (No. 196) (interim and final orders authorizing payment of up to $14 Million on account of claims held by critical vendors); Final Orders Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Lien Claimants, Approving Related Procedures and Authorizing and Directing All Financial Institutions to Honor All Related Payment Requests at 3, *In re The Readers Digest Ass'n, Inc.*, No. 09-23529 (Bankr. S.D.N.Y. Sept. 17, 2009) (No. 91) (authorizing payment of up to $25 Million to critical vendors).

The Debtors also move under §§ 363, 503, and/or 549, as more fully discussed below.

Moreover, local, state, and federal law places certain compliance requirements on the Debtors, which can only be fulfilled through continued, uninterrupted access to various goods and services these Critical Vendors provide. More specifically, as outlined above, as the operator of hospitals licensed under California state law and certified to participate in the Medicare and Medicaid programs, the Debtors must comply with all hospital licensing and certification requirements, including those found in the Health and Safety Code and in Title 22 of the California Code of Regulations, as well as the applicable Medicare conditions of participation and corresponding Medicaid requirements. *See, e.g.*, Cal. Health & Safety Code §§ 1250 *et seq.*; 22

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Cal. Code Regs §§ 70001, *et seq.*; 22 Cal. Code Regs. § 51207; 42 C.F.R. §§ 482 *et. seq.* In addition to complying with these overarching requirements, the Debtors must monitor and comply with all of the other licensing and operational requirements that apply to the different service lines and programs offered by the hospitals, including, for example, those applicable to the hospital pharmacies and laboratories. *See, e.g.*, Cal. Bus. & Prof. Code §§ 1200 *et. seq.*, Cal. Bus. & Prof. Code §§ 4000 *et. seq.*, Cal. Health & Safety Code §§ 11000 *et. seq.*, 16 Cal. Code Regs. §§ 1700 *et. seq.* These extensive, comprehensive requirements must be met in order to ensure that the Hospitals can continue to operate in a compliant fashion, delivering quality health care to the patients and communities they service. The Debtors require the assistance of its Critical Vendors in order to do so. It is imperative the Debtors are able to rely on a consistent, quality supply of the Critical Vendors.

i. Section 363 Allows the Debtors to Honor Critical Vendor's Prepetition Claims Under the Business Judgment Rule

Section 363, which permits a debtor in possession to use, sell, or lease estate property, provides authority for the Debtors to continue to pay and/or honor the prepetition claims (up to the Critical Vendor Cap)—with (i) an interim amount of up to $5 Million; and (ii) an additional amount of up to $15 Million, for a total of $20 Million—of the Critical Vendors, in the amounts set forth in the Budget attached to the Chou Declaration, in the ordinary course of the Debtors' business and in the Debtors' discretion, and pursuant to the Protocol. Under § 363 a court may authorize a debtor in possession to expend funds outside the ordinary course of business where, in the debtor's judgment, the expenditure is in the best interest of the bankruptcy estate. *See e.g.*, Order signed Authorizing Debtors to Pay Certain Prepetition Obligations to Critical Vendors, Approving Related Procedures and Granting Related Relief at 3, *In re Tops Holding II Corporation, et al.*, (Bankr. S.D.N.Y. Mar. 22, 2018) (No. 181) (authorizing the debtors under § 363 to use their sole reasonable business judgment to pay critical vendors up to a $36 Million critical vendor cap).

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Other courts have reached similar conclusions in other factual scenarios related to prepetition debts. For example, the Ninth Circuit Court of Appeals has permitted the payment of prepetition debts when necessary for rehabilitation. *See Burchinal v. Central Washington Bank* (*In re Adams Apple, Inc.*), 829 F.2d 1484, 1490 (9th Cir. 1987) ("Cases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts."). Similarly, in *In re Structuralite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988), the court found that payment of prepetition claims was justified where otherwise the Debtors' rehabilitative effort would have been immediately aborted. *See also Armstrong World Indus., Inc. v. James A. Phillips, Inc.* (*In re James A.Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on § 363 to allow contractor to pay prepetition claims for suppliers).

The Debtors have determined, in the exercise of their business judgment, that continuing to pay and/or honor the prepetition claims (up to the Critical Vendor Cap) of the Critical Vendors in the amounts set forth in the Budget attached to the Chou Declaration, in the Debtors' discretion and pursuant to the Protocol, is in the overwhelming best interests of their Estates. Granting the Debtors the authority to pay and/or honor such prepetition claims (up to the Critical Vendor Cap) greatly benefits the Estates by preserving the Debtors' relationships with their most critical vendors and employees, without whom the Debtors cannot adequately provide medical services or comply with statutory requirements necessary for certification, and by maintaining the value of the company, so that the Debtors can continue business operations while they continue upon a marketing and sale process for their business.

Simply put, if the Debtors are not permitted to continue making and/or honoring the prepetition claims of the Critical Vendors, the Debtors will not be able to provide medical services or meet the requirements of local, state, and federal law, such as the federal Medicare program, California's Title XII requirements, or 22 Cal. Code Regs §§ 70001, *et seq.*, Cal. Health & Safety Code §§ 1250 *et seq.*, and the Debtors will be unable to generate sufficient revenue to

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continue their business operations. This, in turn, will drastically and negatively impact the value of the Debtors' business as a going-concern (and correspondingly, the value of the Debtors' assets), jeopardize the Debtors' ability to sell their business and assets, and potentially eliminate the Debtors' ability to successfully reorganize in this case.

The decision to pay Critical Vendors is a valid exercise of the Debtors' business judgment. The business judgment rule is satisfied where "the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc.* (*In re Integrated Res., Inc.*), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993); *accord In re Pomona Valley Med. Group, Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) ("in evaluating the [business] decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.").

Moreover, if "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *F.D.I.C. v. Faigin*, No. CV 12–03448-DDP, 2013 WL 3389490, at *5 (C.D. Cal. July 8, 2013) ("The California business judgment rule . . . establishes a presumption that directors' decisions are based on sound business judgment, and it prohibits courts from interfering in business decisions made by the directors in good faith and in the absence of a conflict of interest.") (citations omitted). Courts should decline to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board's decisions as long as such decisions are attributable to any "rational business purpose." *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep't Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)); *In re Pomona Valley Med. Group, Inc.*, 476 F.3d 665; *In re AWTR Liquidation Inc.*, 548 B.R. 300, 314

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(Bankr. C.D. Cal. 2016) ("The effect of the business judgment rule is to raise the burden of proof from ordinary negligence to gross negligence—"i.e., failure to exercise even slight care."); *Mann v. GTCR Golder Rauner, L.L.C.*, 483 F. Supp. 2d 884, 902 (D. Ariz. 2007) ("because the business judgment rule is a powerful presumption, it can only be rebutted in those rare cases where the decision under attack is so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith.") (citations omitted).

ii. Section 105 Empowers the Court to Grant Critical Vendor Relief

Section 105 relief is necessary here for the Debtors to carry out their fiduciary duties under § 1107(a). Section 105(a) empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Section 1107(a) "contains an implied duty of the debtor-in-possession" to "protect and preserve the estate, including an operating business' going-concern value," on behalf of a debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle* (*In re Penick Pharm., Inc.*), 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.").

As life-saving medical service providers, the Debtors are in a vulnerable position—without the continual flow of vital medical services, medical supplies, medical equipment, physicians, nurses, nurse practitioners, physicians assistants, professional technicians such as, imaging technicians, surgical technicians, sterile processing technicians and interim clinical/management staff, coders, admission department staff, as well as non-medical services, information technology support, and/or benefits, the entire mission of the Debtors' business would immediately unravel, irreparably harming the Debtors and their Patients.

Additionally, failure to grant the relief requested by this Motion could result in the Debtors' inability to meet certain requirements set forth by local, state, and federal law. See, e.g.,

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22 Cal. Code Regs §§ 70001, et seq.; Cal. Health & Safety Code §§ 1250 et seq. Furthermore, the Critical Vendors in this case have little incentive to continue services with the Debtors should the Court fail to grant the Debtors' Motion, and indeed, many have indicated as much. And, the automatic stay of § 362(a) is inadequate to address the issue. In support of the Motion, however, is the fact that even the most disfavored creditors will be as well off, if not better well off, if the Court grants the Debtors' Motion.

As noted above, the Debtors intend to market and sell their Hospitals and other assets as a going concern. Therefore, it is critical that, while the Debtors proceed with an expedited marketing and sale process for their Hospitals and other assets, the Debtors maintain their medical and business operations and preserve the value of their assets. The Debtors can only do so by continuing to retain their employees or contractors, operate their medical facilities, or meet their Patients' daily medical services needs and statutory compliance requirements in the ordinary course of business, which the Debtors simply cannot do without the services and goods provided by the Critical Vendors.

iii. Section 503(b)(9) Allows for Prepetition Payment on Goods Received within Twenty (20) Days Prior to Petition Date

Alternatively, § 503(b)(9) provides administrative priority for the "value of any goods received by the debtor within twenty (20) days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." *See also In re Brown & Cole Stores, LLC*, 375 B.R. 873, 878 (B.A.P. 9th Cir. 2007) (recognizing that § 503(b)(9) applies to critical vendors supplying goods). These claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A).

In fact, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. As administrative claims incurred in the ordinary course of business, the Debtors submit that they may pay such claims in accordance with their business judgment pursuant to § 363(c)(1). Courts have regularly authorized the payment of claims arising under § 503(b)(9) in the ordinary course of business. *See, e.g.*, Order Pursuant to 11 U.S.C. §§ 503(b)(9) and 105(a) (i) Approving Procedures for the Assertion, Resolution, and Satisfaction of Claims Asserted

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Pursuant to 11 U.S.C. § 503(b)(9) and (ii) Prohibiting Vendors from Pursuing Such Claims Outside the Procedures at 4, *In re Chassix Holdings, Inc.*, No. 15-10578 (Bankr. S.D.N.Y. Apr. 14, 2015) (No. 275) (authorizing debtors to pay vendors' claims entitled to priority under § 503(b)(9) "in the ordinary course if the Debtors determine it is in the estates' best interests to do so"); Interim Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claims, Approving Related Procedures, and Granting Related Relief, *In re The Great Atlantic & Pacific Tea Co., et al.,* No. 10-24549 (Bankr. S.D.N.Y. Dec. 14, 2010) (No. 55) (interim and final orders authorizing payment of claims entitled to administrative priority pursuant to § 503(b)(9) up to $5 Million); Final Order Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and Section 503(b)(9) Claims, Approving Related Procedures, and Granting Related Relief, *In re The Great Atlantic & Pacific Tea Co., et al.*, (Bankr. S.D.N.Y. Jan. 13. 2011) (No. 504) (interim and final orders authorizing payment of claims entitled to administrative priority pursuant to § 503(b)(9) up to $5 Million); Interim Order Authorizing, But Not Directing, Payments Of Pre-Petition Claims Of Certain Critical Vendors And Administrative Claim Holders And Granting Related Relief; *In re Lear Corp.*, No. 09-14326 (Bankr. S.D.N.Y. July 8, 2009) (No. 68) (interim and final orders authorizing payment of claims entitled to administrative priority pursuant to § 503(b)(9) up to $23.15 Million and $46.3 Million, respectively); Final Order Authorizing, But Not Directing, Payments of Prepetition Claims of Certain Critical Vendors and Administrative Claimholders and Granting Related Relief, *In re Lear Corp.*, (Bankr. S.D.N.Y. July 31, 2009) (No. 245) (interim and final orders authorizing payment of claims entitled to administrative priority pursuant to § 503(b)(9) up to $23.15 Million and $46.3 Million, respectively); Final Order Authorizing the Debtors to Pay the Prepetition Claims of Certain Essential Suppliers and Administrative Claimholders, Continuing the Debtors' Troubled Supplier Program and Granting Certain Related Relief at 6, *In re Chrysler LLC*, No. 09-50002 (Bankr. S.D.N.Y. May 20, 2009) (No. 1318) (authorizing debtors to pay uncapped "claims of any creditors or claimants entitled to administrative priority pursuant to section 503(b)(9) . . .

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in the ordinary course of the Debtors' businesses and on such terms and conditions as the Debtors deem appropriate," subject to the terms of debtors' DIP facility).

Thus, payment of the Medical Supplies and Equipment Providers' claims for supplies received by the Debtors within 20 days prior to the Petition Date must be allowed as administrative expenses, and this Court should allow the Debtors to pay these claims in accordance with the relief requested in this Motion.

iv. Section 549 Provides the Court Authority to Approve Postpetition Transfers of Property Such as Payment to Critical Vendors

Finally, § 549(a)(2)(B), which governs postpetition transfers, provides in part that "the trustee may avoid a transfer of property of the estate made after the commencement of the case; and [] that is not authorized [] by the court." 11 U.S.C. § 549(a)(2)(B). Therefore, it logically follows that the Court may authorize certain postpetition payments to satisfy prepetition debts. In fact, as one district court noted: "[i]t would appear that proposed transfers [to pay prepetition claims] could be presented in advance to a bankruptcy court for its approval and would thereafter be insulated from attack[.]" *In re Isis Foods, Inc.*, 37 B.R. 334, 336 n.3 (W.D. Mo.), *appeal dismissed*, 738 F.2d 445 (8th Cir. 1984).

In this case, honoring the prepetition claims of the Debtors' Critical Vendors will have no negative impact on the payment of other creditors' claims. In fact, honoring the prepetition claims of the Critical Vendors will only maintian the quality of Patient care, improve the Debtors' chances of successfully reorganizing or selling assets, and repaying their other creditors. Any benefit to the Estates that could be gained by not paying the Critical Vendors' claims would be more than outweighed by the detriment to the Estates caused by the loss of the Debtors' relationships with such Critical Vendors. As noted above, if the Critical Vendors refuse to provide any further services or goods, the Debtors will not be able to retain their employees, operate their business, or—most imortantly—fulfill their Patients' daily medical services needs. Indeed, the Debtors will not be able to generate sufficient revenue to maintain the quality of patient care and otherwise continue their business operations. This, in turn, will put Patients at risk, cripple the Debtors' business operations, and potentially squash any chance of

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consummating a sale of the Debtors' business as a going concern for maximum value and any chance for the Debtors to successfully reorganize in this case.

v. Policy Considerations for Granting this Motion

In cases of similar magnitude filed in the Southern District of New York, Delaware, and Texas bankruptcy courts routinely grant debtors' motions to pay and/or honor the prepetition claims of the critical vendors in the debtors' discretion and in the ordinary course of the debtors' business pursuant to similar protocols as the Protocal proposed herein. *See, e.g.*, Transcript at 35, *In re The Reader's Digest Ass'n, Inc.*, No. 09-23529 (Bankr. S.D.N.Y. Aug. 25, 2009) (No. 34); *see also* Transcript at 56, *In re The Great Atlantic & Pacific Tea Co., et al.*, No. 15-23007 (Bankr. S.D.N.Y. July 20, 2015) (No. 667) (approving interim critical vendor relief where the process was supervised by "senior people who understand the tension involved in paying prepetition debt as against the net benefit to the debtor of having critical supplies in essence for their stores").

Furthermore, allowing the Debtors to pay the Critical Vendor Claims, pursuant to all or some of the above-referenced provisions, is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999). Indeed, reflecting the recognition that payment of prepetition claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to preserve going-concerns and maximize creditor recovery—thereby increasing prospects for a successful reorganization and/or sale—courts have regularly granted relief consistent with that which the Debtors are seeking in this Motion. Final Order (I) Authorizing, But Not Directing, Debtors to Pay Pre-Petition Claims of Critical Vendors and (II) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers, *In re Geokinetics Inc.*, No. 18-33410 (Bankr. S.D. Tex. July 16, 2018) (No. 196); Final Order (I) Authorizing Debtors To Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief, *In re GST AutoLeather, Inc.*, No. 17-12100 (Bankr. D. Del. Nov. 13, 2017) (No. 254); Order (FINAL) Authorizing the Debtors to Pay

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Prepetition Claims of Certain Critical Vendor, *In re M&G USA Corporation*, No. 17-12307 (Bankr. D. Del. Nov. 30, 2017) (No. 292); Order (Final) Authorizing the Debtors to Pay or Honor Prepetition Obligations to Certain Critical Vendors, *In re Appvion, Inc.*, No. 17-12082 (Bankr. D. Del. Oct. 30, 2017) (No. 210); Order [FINAL] (A) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief, *In re True Religion Apparel, Inc.*, No. 17-11460 (Bankr. D. Del. July 31, 2017) (No. 233); Order Granting Motion for Payment of Critical Vendors, *In re Emas Chiyoda Subsea Ltd.*, No. 17-31146 (Bankr. S.D. Tex. Mar. 28, 2017) (No. 173); Order Granting Motion For Authority To Pay Or Honor Pre-Petition Obligations To Certain Critical Vendors, *In re Goodrich Petroleum Corp.*, No. 16-31975 (Bankr. S.D. Tex. May 12, 2016) (No. 165).

Moreover, as noted above, the amounts proposed to be paid to the Debtors' most critical vendors, up to the Critical Vendor Cap—as mentioned in the Declaration of Richard Adcock in Support of the Emergency Motions filed concurrently herewith—in the Debtors' discretion and in the ordinary course of the Debtors' business, and pursuant to the Protocol, have already been included in the Budget that has been approved by the Debtors' senior secured lender, as set forth in the Chou Declaration. Accordingly, the Debtors have the financial ability to make the payments proposed to be made to the Debtors' most critical vendors, and such payments will not render the Debtors' Estates administratively insolvent.

For the reasons noted above, the Debtors' ability to pay and/or honor the prepetition claims (up to the Critical Vendor Cap) of the Critical Vendors is instrumental to the Debtors' maintenance of the quality of patient care and reorganization efforts and is in the best interests of the Estates and their creditors. Any disruption in the Debtors' ability to pay and/or honor such claims (up to the Critical Vendor Cap) would undoubtedly cause immediate and irreparable harm to the value of the Debtors' business and assets, and potentially eradicate any chance for the Debtors to consummate a sale of their business and assets. To avoid this result, the Debtors should be permitted to pay and/or honor the prepetition claims of the Critical Vendors, as listed in

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the exhibits to the Chou Declaration, in the Debtors' discretion and in the ordinary course of the Debtors' business, and in accordance with the Protocol, terms, and conditions set forth herein.

VI. CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court hold an emergency hearing on the Motion and issue an Interim Order:

(1) affirming the adequacy of the notice given;

(2) granting the Motion in the interim;

(3) authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (up to $5 Million) of the Critical Vendors, in the ordinary course of the Debtors' business, in the Debtors' discretion, and in accordance with the Protocol and the Budget; and

(4) granting such other and further relief as the Court deems just and proper under the circumstances.

WHEREFORE, the Debtors also respectfully request that this Court hold a final hearing on the Motion and issue a Final Order:

(1) affirming the adequacy of the notice given;

(2) granting the Motion in its entirety;

(3) authorizing, but not directing, the Debtors to continue to pay and/or honor the prepetition claims (up to a total of $20 Million) of the Critical Vendors, in the ordinary course of the Debtors' business, in the Debtors' discretion, and in accordance with the Protocol and the Budget; and

(4) granting such other and further relief as the Court deems just and proper under the circumstances.

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Dated: August 31, 2018

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TAB 6

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *ET AL.*, Debtors.	Case 2:18-bk-20151-ER Jointly Administered Chapter 11 Cases **RENEWED RESERVATION OF RIGHTS OF U.S. BANK NATIONAL ASSOCIATION, AS SERIES 2015 NOTE TRUSTEE AND SERIES 2017 NOTE TRUSTEE, TO 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**

U.S. Bank National Association, not individually but in its respective capacities as Series 2015 Note Trustee ("*2015 Note Trustee*") and as Series 2017 Note Trustee ("*2017 Note Trustee*" and together with the 2015 Note Trustee, the "*Notes Trustee*"), hereby submits this renewed reservation of rights with respect to the *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Docket No. 31] (the "*DIP Motion*") and respectfully states as follows:

I. Jurisdiction and Venue

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

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Background

3. Prior to the interim hearing on the DIP Motion, the Notes Trustee filed a *Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to 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* [Docket No. 67] (the "*Initial Reservation*").[1]

4. As described in the Initial Reservation, as a result of various security documents and intercreditor agreements, the Notes are secured by (i) a senior first priority security interest and lien on certain of the Debtors' assets, including (x) Accounts of 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*" and collectively, the "*Hospitals*") and

[1] Capitalized terms used but not defined herein shall have the meanings given to them in the Initial Reservation or the DIP Motion, as applicable. The Notes Trustee incorporates herein by reference the Background section of the Initial Reservation.

(y) real property and certain personal property comprising St. Francis Medical Center and Saint Louise Regional Hospital (collectively, the "*Senior Note Collateral*"); and (ii) a parity security interest and lien (held through the Master Trustee) on the collateral pledged to secure all of the Obligations under the Master Indenture, including the Series 2005 Bonds. The 2017 Notes are additionally secured by the Moss Deed of Trust (as defined in the Interim Order, defined below).

5. 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.[2] A true and correct copy of the Intercreditor Agreement is attached hereto as **Appendix A**.

6. At the first day hearing on September 5, 2018, after extensive and complex negotiations between the Debtors, the DIP Lender, and the Prepetition Secured Creditors, the Court entered an order approving the DIP Motion on an interim basis with the consent of all of the Prepetition Secured Creditors (the "*Interim Order*") [Docket No. 86]. The Interim Order provided for adequate protection for each of the Prepetition Secured Creditors in the form of, among other things, Prepetition Replacement Liens junior only to the DIP Liens and Carve Out in all of the Debtors' present and future assets to the extent of the Diminution in Value of the Prepetition Secured Creditors' respective interests in the Prepetition Collateral.

7. Importantly, the Interim Order protected the preexisting relative priorities among the Prepetition Secured Creditors by establishing corresponding priority rules for the Prepetition

[2] *See, e.g.*, Intercreditor Agreement, § 2.1 ("Each Party covenants and agrees, and the Master Trustee covenants and agrees, notwithstanding anything to the contrary contained in the Master Indenture or any of the documents related to the Master Indenture or as a matter of law, that in or outside of any Proceeding any Lien of the Master Trustee with respect to the property constituting Priority Assets shall be and is hereby expressly made subordinate . . . .") and § 2.3 ("The Master Trustee, on behalf of itself and the Holders of all outstanding Obligations under the Master Indenture, agrees that it will not, and will not cause or support any other Person to, at any time contest, seek to avoid or subordinate the validity, perfection, priority, extent or enforceability of the Notes, the Note Documents, this Agreement or any Liens and security interests of the Note Trustee in the Note Collateral securing the Notes.").

Replacement Liens.

8. Specifically, Paragraph 4(a) of the Interim Order (the "*Replacement Lien Provision*") provides:

> (a) **Adequate Protection Replacement Liens**. To the extent of the Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition Collateral, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), 364(d) of the Bankruptcy Code additional, valid, perfected and enforceable replacement security interests and Liens in the DIP Collateral, excluding the prepetition collateral held by WTNA with respect to the Clean Fund Bonds and the NR2 Petros Bonds, donor restricted funds held at the Philanthropic Founds and Avoidance Actions and any proceeds thereof (the "***Prepetition Replacement Liens***"), which shall be junior only to (1) the Carve Out, (2) to the DIP Liens securing the DIP Obligations, and (3) any perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and that certain Deed of Trust with Fixture Filing and Security Agreement and Assignment of Leases and Rents by Holdings in favor of U.S. Bank as 2017 Note Trustee and Deed of Trust Beneficiary, dated as of September 15, 2017, as further amended or modified (the "***Moss Deed of Trust***") to secure the 2017 Working Capital Notes; *provided*, *however*, that any Prepetition Replacement Liens granted to the 2015 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the Intercreditor Agreement shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (i) the Carve Out, (ii) the DIP Liens securing the DIP Obligations, and (iii) perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, and *further provided* that any Prepetition Replacement Liens granted to the holders of deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (x) the Carve Out, (y) the DIP Liens securing the DIP Obligations, and (z) perfected, unavailable, prepetition liens of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on property other than the property subject to the Moss Deed of Trust. With respect to the Prepetition Collateral that is subject to the Intercreditor Agreement, any proceeds of such Prepetition Collateral or Prepetition Replacement Liens related thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement.

III. Reservation of Rights

9. As the Debtors made clear at the first day hearing, their current strategy is to maximize value for the estates through a series of asset sales. Consequently, there is a risk that the

sale proceeds of the two most cash flow positive Hospitals, St. Francis Medical Center and Saint Louise Regional Hospital, in which the Notes Trustee holds senior liens, may be used in whole or in part to repay the DIP Facility. In this scenario, the Notes Trustee would suffer a significant Diminution in Value as a result of the loss of its senior Cash Collateral. Any Prepetition Replacement Lien granted on account of such Diminution in Value must maintain the same senior priority that existed prepetition in order to afford the Notes Trustee adequate protection.

10. The Replacement Lien Provision as set forth in the Interim Order properly protects and preserves the relative lien rights of each of the Prepetition Secured Creditors against the risk that their priority or exclusively-pledged Cash Collateral will be used to repay the DIP Loan, and must be included in any final order approving the DIP Motion (such order, the "*Final Order*").

11. The Notes Trustee reserves its right to object to any modification, without its consent, of the Replacement Lien Provision in the Final Order. Among other things, to the extent that any modification purports to subordinate the senior Prepetition Replacement Lien of the Notes Trustee to the liens and security interests of the Master Trustee, it would violate the express terms of the Intercreditor Agreement.[3]

12. Separately, the Notes Trustee continues to discuss with the Debtors the inclusion of other protections in the Final Order for the benefit of the Notes Trustee as well as the other Prepetition Secured Creditors. These provisions include conditions to the continued use of Cash Collateral, including asset sale and bankruptcy case milestones, termination rights, budgeting and reporting requirements, and other protections in connection with anticipated asset sales.

13. As with the Interim Order, the Notes Trustee will continue its good faith efforts to address any concerns it may have with the Final Order through dialogue and negotiations with the Debtors and other parties in interest. Nonetheless, the Notes Trustee hereby expressly reserves all of

[3] The Intercreditor Agreement is enforceable in these Chapter 11 Cases pursuant to section 510(a) of the Bankruptcy Code and its express terms. *See* 11 U.S.C. § 510(a); Intercreditor Agreement, § 15 ("This Agreement is a continuing agreement of subordination pursuant to its terms and in accordance with Section 510(a) of the Bankruptcy Code . . . . Master Trustee hereby acknowledges that the provisions of this Agreement are intended to be enforceable at all times, whether before or after the commencement of a Proceeding, and hereby waives any right it may have under applicable law to revoke this Agreement or any provisions hereof.").

its rights, claims, objections, and remedies with respect to the Final Order, on any grounds, as may be appropriate. Further, the Notes Trustee reserves its right to amend or supplement this reservation of rights, or to file a separate pleading in support of the entry of the Final Order, based upon any facts or arguments that come to light prior to the hearing on these issues.

Dated: September 19, 2018

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 Series 2015 Note Trustee and Series 2017 Note Trustee, respectively

Appendix A

Intercreditor Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CHICAGO TITLE COMPANY
COMMERCIAL DIVISION

Attn: Catrina C. Cohn, Esq.
Squire Patton Boggs (US) LLP
275 Battery St., Suite 2600
San Francisco, CA 94111

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SECOND AMENDED AND RESTATED INTERCREDITOR AGREEMENT

3

SECOND AMENDED AND RESTATED INTERCREDITOR AGREEMENT

THIS SECOND AMENDED AND RESTATED **INTERCREDITOR AGREEMENT** (this "***Agreement***") entered into as of December 1, 2017 amends and restates the Amended and Restated Intercreditor Agreement, dated as of September 1, 2017, recorded in Los Angeles County as Instrument Number 20171060070 on September 18, 2017 at 8:00 a.m. (the "First Amended and Restated Intercreditor Agreement"), which amended and restated the Intercreditor Agreement, dated as of December 1, 2015 recorded in Los Angeles County as Instrument Number 20151573372 on December 15, 2015 at 8:00 a.m. and recorded in Santa Clara County as Instrument Number 23173258 on December 16, 2015 at 8:00 a.m., by and among Verity Health System of California, Inc., a nonprofit public benefit corporation incorporated under the laws of the State of California ("the "***Corporation***"), on behalf of itself and each Obligated Group Member listed on the attached **Schedule A** (each, an "***Obligor***" and collectively, the "***Obligors***"), U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, as trustee (together with any successor thereto in any such capacity, the "***Note Trustee***") under (i) the Indentures, dated as of December 1, 2015 (as they may be supplemented and amended in accordance with their terms, the "***2015 Indentures***") with respect to the 2015 Notes (as defined below), (ii) the Indenture, dated as of September 1, 2017 (as it may be supplemented and amended in accordance with its terms, the "***2017 Indenture***"), with respect to the 2017 Notes (defined below), and (iii) the Indenture, dated as of December 1, 2017 (as it may be supplemented and amended in accordance with its terms, the "***2017B Indenture***" and, together with the 2015 Indentures and the 2017 Indenture, the "***Note Indentures***") with respect to the 2017B Notes (as defined below), each between the Note Trustee and the California Public Finance Authority (the "***Authority***"), and U.S. Bank National Association, a national banking association organized and existing under the laws of the United States of America, as master trustee (together with its successors in such capacity, the "***Master Trustee***") pursuant to the Master Indenture of Trust, dated as of December 1, 2001 (as supplemented and amended in accordance with its terms, the "***Master Indenture***"), between the Corporation, the Initial Members (as defined therein) and the Master Trustee.

RECITALS

A. The Authority and the Corporation have entered into four Loan Agreements as identified on the attached **Schedule B** (as the same may be amended, restated, supplemented, or otherwise modified from time to time as permitted hereunder, the "***2015 Loan Agreements***") with respect to the Series 2015A Notes in the original principal amount of $60 Million (the "***2015A Notes***"), the Series 2015B Notes in the original principal amount of $45 Million (the "***2015B Notes***"), the Series 2015C Notes in the original principal amount of $10 Million (the "***2015C Notes***"), and the Series 2015D Notes in the original principal amount of $45 Million (the "***2015D Notes***", and collectively, the "***2015 Notes***") and one Loan Agreement as identified on the attached **Schedule B** (as the same may be amended, restated, supplemented, or otherwise modified from time to time as permitted hereunder, the "***2017 Loan Agreement***") with respect to the Series 2017 Notes in the original principal amount of $21 Million (the "***2017 Notes***") and are expected to enter into one Loan Agreement identified on the attached **Schedule B** (as the same may be amended, restated, supplemented, or otherwise modified from time to time as permitted hereunder, the "***2017B Loan Agreement***" and, together with the 2015 Loan Agreements and 2017 Loan Agreement, the "***Loan Agreements***") with respect to the 2017B Notes in the original

principal amount of $21 Million (the "***2017B Notes***" and, together with the 2015 Notes and the 2017 Notes, the "***Notes***"), pursuant to which, among other things, the Authority has made or has agreed to make, subject to the terms and conditions set forth in the Loan Agreements, loans and financial accommodations to the Corporation to be used for refinancing, working capital and other purposes for each Obligor and certain affiliates. All of the Corporation's Obligations (as defined in the Loan Agreements) are secured by liens on and security interests in certain property of the Corporation and the Obligors (the "***Note Collateral***") as set forth in **Schedule C**, and are further secured by certain obligations (the "***MTI Note Obligations***") issued under the Master Indenture pursuant to the Supplemental Master Indentures for the MTI Note Obligations as set forth in **Schedule D**.

B. The Obligors listed in **Schedule C** entered into Security Agreements with the Note Trustee, dated as of December 14, 2015 in connection with the 2015 Notes and amended and restated those Security Agreements, dated as of September 1, 2017 in connection with, and to include, the 2017 Notes, and amended and restated those Security Agreements, dated as of December 1, 2017 in connection with, and to include, the 2017B Notes (as the same may be amended, restated, supplemented or otherwise modified from time to time as permitted hereunder, the "***Security Agreements***") as set forth in **Schedule E**. All of the Corporation's obligations pursuant to the Loan Agreements are secured by the accounts receivable of the Obligors listed on **Schedule C**.

C. The Corporation, on behalf of each of St. Francis Medical Center and Saint Louise Regional Hospital have executed and delivered the St. Francis Deeds of Trust and the Saint Louise Deed of Trust, respectively, on certain of their respective real and personal property as set forth in **Schedule C** and have delivered to the Note Trustee Subordination Agreements executed by the Master Trustee relating to the Master Trustee's liens on such real and personal property. All of the Corporation's obligations pursuant to the Loan Agreements are secured by these Deeds of Trust on a senior lien basis in accordance with the related Subordination Agreements.

D. The Note Collateral (as defined in **Schedule C**) was granted as an inducement to and as one of the conditions precedent to the agreement of the Corporation and the Authority to consummate the transactions contemplated by the 2015 Loan Agreements. The purchasers of the 2015 Notes (the "***2015 Holders***") required the execution and delivery of the Original Agreement by the Master Trustee, the 2015 Trustee and the Obligors in order to set forth the relative rights and priorities of the Note Trustee and Master Trustee under the 2015 Note Documents (as defined below) and the Master Indenture.

E. The Note Collateral (as defined in **Schedule C**) was granted as an inducement to and as one of the conditions precedent to the agreement of the Corporation and the Authority to consummate the transactions contemplated by the 2017 Loan Agreement. The purchasers of the 2017 Notes (the "***2017 Holders***") required the execution and delivery of the First Amended and Restated Intercreditor Agreement by the Master Trustee, the Note Trustee and the Obligors in order to set forth the relative rights and priorities of the Note Trustee, as trustee for the holders of the 2015 Notes and the 2017 Notes, and Master Trustee under the Note Documents (as defined below) and the Master Indenture.

F. The Note Collateral (as defined in **Schedule C**) is granted as an inducement to and as one of the conditions precedent to the agreement of the Corporation and the Authority to consummate the transactions contemplated by the 2017B Loan Agreement. The purchasers of the 2017B Notes (the ***"2017B Holders"*** and, together with the 2015 Holders and the 2017 Holders, the ***"Note Holders"***) required the execution and delivery of this Agreement by the Master Trustee, the Note Trustee and the Obligors in order to set forth the relative rights and priorities of the Note Trustee, as trustees for the holders of the 2015 Notes, the 2017 Notes and the 2017B Notes, and Master Trustee under the Note Documents (as defined below) and the Master Indenture.

G. The 2015 MTI Obligations have been executed by the Corporation, authenticated by the Master Trustee and delivered to the 2015 Trustee for the benefit of the 2015 Holders as additional security for the obligations of the Corporation under the 2015 Loan Agreements; the 2017 MTI Obligation has been executed by the Corporation, authenticated by the Master Trustee and delivered to the 2017 Trustee for the benefit of the 2017 Holders as additional security for the obligations of the Corporation under the 2017 Loan Agreement; and the 2017B MTI Obligation has been executed by the Corporation, authenticated by the Master Trustee and delivered to the 2017B Trustee for the benefit of the 2017B Holders as additional security for the obligations of the Corporation under the 2017B Loan Agreement. Pursuant to the MTI Note Obligations and the Master Indenture, the MTI Note Obligations are secured under the Master Indenture on equal rank without preference, priority or distinction of any Obligation issued under the Master Indenture over any other such Obligations (the ***"MTI Collateral"***). The MTI Collateral includes a pledge of the Gross Revenues (as defined in the Master Indenture) of the Obligated Group which includes accounts receivable.

H. Pursuant to Section 5.01(B) of each of the 2015 Indenture and the 2017 Indenture, the Authority has assigned to the 2015 Trustee or 2017 Trustee, as applicable, for the benefit of the Holders from time to time of the respective Notes, its security interest in the Note Collateral which has been pledged to the Authority to support the obligations of the Corporation in the 2015 Loan Agreements and the 2017 Loan Agreement, as applicable.

I. As of the issuance of the 2017B Notes, the Obligations Outstanding under the Master Indenture secure the repayment of: (i) the 2005A Bonds in the outstanding principal amount of $246,345,000, the 2005G Bonds in the outstanding principal amount of $10,855,000, the 2005H Bonds in the outstanding principal amount of $8,985,000 (total outstanding principal amount of 2005 Bonds is $266,185,000) (collectively, the "2005 Bonds"), (ii) the 2015 Notes, (iii) the 2017 Notes, and (iv) the 2017B Notes.

J. The 2005 Bonds are subject, under certain circumstances, to certain Remediation Requirements pursuant to the provisions of the Internal Revenue Code as indicated in the Tax Certificates for the 2005 Bonds. In the event of an action which results in the need for a remediation of certain outstanding 2005 Bonds, the Authority or the Corporation will seek an opinion of Nationally Recognized Bond Counsel as to what application of the amount of proceeds of any sale or disposition of the applicable property financed by the 2005 Bonds is required in connection with the applicable change in use of any bond financed property. The 2005 Bonds are callable at par as of July 1, 2015.

K. The Master Indenture contains certain covenants as to Additional Indebtedness (Sec 3.05) and Against Encumbrances (Sec 3.04).

L. The 2015 Notes and the 2017 Notes were, and the 2017B Notes are, issued as Additional Indebtedness in accordance with the provisions of Sec 3.05(d) of the Master Indenture as certified by the Chief Financial Officer of the Corporation.

M. The liens supporting the 2015 Notes and the 2017 Notes were, and the liens supporting the 2017B Notes are, granted as Permitted Liens: 1) pursuant to subsection (m) of the defined term Permitted Liens as to the grant of liens on accounts receivable as certified by the Vice President and Treasurer of the Corporation; and 2) pursuant to subsection (q) of the defined term Permitted Liens as to the Deeds of Trust and the security interest in the Property related thereto as certified by the Vice President and Treasurer of the Corporation.

N. Pursuant to Section 3.04(d) of the Master Indenture, the Master Trustee is directed to execute and deliver a reasonably requested subordination in connection with the grant of a Permitted Lien.

NOW, THEREFORE, in order to induce the 2017B Holders to purchase the 2017B Notes and the Note Trustee and the Authority to consummate the transactions contemplated by the 2017B Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

1. **Definitions**.

(a) As used herein, capitalized terms shall have the meanings given to them in the Loan Agreements, the Indentures, the Master Indenture, the Security Agreements, the Deeds of Trust and the Subordination Agreements executed in connection with the Deeds of Trust, except as otherwise defined herein or as the context otherwise requires.

(b) Any term used in the Uniform Commercial Code as adopted in the State of California, as it may hereafter be amended (***"UCC"***) and not defined in this Agreement or in the documents set forth in subsection (a) above has the meaning given to the term in the UCC.

"***Bankruptcy Code***" means Title 11 of the United States Code, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

"Deeds of Trust" means, collectively, the St. Francis Deeds of Trust and the Saint Louise Deed of Trust.

"***Lien***" means any lien, security interest, pledge, bailment, mortgage, hypothecation, deed of trust, conditional sales and title retention agreement (including any lease in the nature thereof), charge, encumbrance or other similar arrangement or interest in real or personal property, now owned or hereafter acquired, whether such interest is based on common law, statute or contract.

"***Nationally Recognized Bond Counsel***" means Squire Patton Boggs (US) LLP or any other bond counsel firm with a national reputation for delivering opinions with respect to the tax-exemption of interest on municipal bonds for federal income tax purposes that is retained by the Corporation or the Authority for the purpose of rendering an opinion as to Remediation Requirements.

"***Note Documents***" means, collectively, the 2015 Note Documents, the 2017 Note Documents and the 2017B Note Documents, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"***Person***" means any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

"***Priority Assets***" means the assets constituting the Note Collateral identified on **Schedule C** hereto.

"***Priority Lien***" means the Lien on the Priority Assets.

"***Proceeding***" means any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.

"***Remediation Requirements***" mean those certain requirements for remediation of the 2005 Bonds to the extent arising from the ownership or use of Priority Assets financed or refinanced with proceeds of the 2005 Bonds, as set forth in the Tax Certificates executed in connection with the 2005 Bonds and as to any specific instance addressed in the opinion of Nationally Recognized Bond Counsel.

"***St. Francis Deeds of Trust***" means (a) that certain Second Amended and Restated Deed of Trust With Fixture Filing and Security Agreement relating to 3630 East Imperial Highway, Lynwood, California, dated as of December 28, 2017, executed by the Corporation on behalf of St. Francis Medical Center, as trustor, in favor of Chicago Title Company, as trustee for the benefit of each trustee for the Notes, as trustee for the holders of the Notes, as beneficiaries, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof; (b) that certain Second Amended and Restated Deed of Trust With Fixture Filing and Security Agreement relating to 2700 E. Slauson Avenue, Huntington Park, California, dated as of December 28, 2017, executed by the Corporation, on behalf of St. Francis Medical Center, as trustor, in favor of Chicago Title Company, as trustee for the benefit of each trustee for the Notes, as trustee for the holders of the Notes, as beneficiaries, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof; and (c) that certain Second Amended and Restated Deed of Trust With Fixture Filing and Security Agreement relating to 5953 Atlantic Blvd. (also known as 5931 and 5957 Atlantic Blvd, including surface parking), Maywood, California, dated as of December 28, 2017, executed by the Corporation, on behalf of St. Francis Medical Center, as trustor, in favor

of Chicago Title Company, as trustee for the benefit of each trustee for the Notes, as trustee for the holders of the Notes, as beneficiaries, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof.

"Saint Louise Deed of Trust" means that certain Amended and Restated Deed of Trust With Fixture Filing and Security Agreement relating to 9400 No Name Uno, Gilroy, California, dated as of December 28, 2017, executed by the Corporation on behalf of Saint Louise Regional Hospital, as trustor, in favor of Chicago Title Company, as trustee for the benefit of each trustee for the Notes, as trustee for the holders of the Notes, as beneficiaries, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof.

"2015 Note Documents" means the 2015 Notes, the 2015 Loan Agreements, the 2015 Indentures, the Security Agreements, the Deeds of Trust, the Subordination Agreements executed in connection with the Deeds of Trust, this Agreement, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"2017 Note Documents" means the 2017 Notes, the 2017 Loan Agreement, the 2017 Indenture, the Security Agreements, the Deeds of Trust, the Subordination Agreements executed in connection with the Deeds of Trust, this Agreement, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"2017B Note Documents" means the 2017B Notes, the 2017B Loan Agreement, the 2017B Indenture, the Security Agreements, the Deeds of Trust, the Subordination Agreements executed in connection with the Deeds of Trust, this Agreement, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

2. Subordination.

2.1 **Subordination of Master Trustee's Lien to Priority Lien**. Each Party covenants and agrees, and the Master Trustee covenants and agrees, notwithstanding anything to the contrary contained in the Master Indenture or any of the documents related to the Master Indenture or as a matter of law, that in or outside of any Proceeding any Lien of the Master Trustee with respect to the property constituting Priority Assets shall be and is hereby expressly made subordinate, to the extent and in the manner hereinafter set forth, to the Lien of the Note Trustee in such Priority Assets (whether or not such Lien of the Note Trustee is a perfected Lien). Irrespective of the timing of such acquisition, each Note Holder shall be deemed to have acquired its Notes in reliance upon the provisions contained in this Agreement. Each Party, including the Note Trustee, covenants and agrees that notwithstanding the Priority Lien in the Priority Assets granted to the Note Trustee, the application of amounts subject to such Priority Lien shall be subject to the Remediation Requirements as set forth herein, and each Party, including the Master Trustee, covenants and agrees that the existence of the Remediation Requirements and the provisions hereof with respect thereto shall not in any manner affect the existence of a first Priority Lien to the Note Trustee in the Priority Assets and that any proceeds

of the Priority Assets or the Note Collateral that, in accordance with the terms hereof, are applied to the Remediation Requirements shall not be deemed to have been applied to or reduce in any manner the payment obligations of the Corporation or the Obligors under the Note Documents or the MTI Note Obligations. Without limiting the foregoing, notwithstanding the date, time, manner or order of grant, attachment or perfection of any Liens and security interests of the Master Trustee in the Note Collateral, until the principal of, interest on and premium, if any, on the Notes have been indefeasibly paid in full in cash, any Liens and security interests of the Master Trustee in the Note Collateral which may exist from time to time (whether the same exist on the date hereof or otherwise) shall be and hereby are subordinated for all purposes and in all respects to the Priority Liens and security interests of the Note Trustee in the Note Collateral.

2.2 **Incorrect Payments**. In the event that, notwithstanding the provisions of this Agreement, the Master Trustee receives any payment of any kind or character, whether in cash, property, or securities, in violation of the terms of this Agreement, such payment shall be delivered forthwith to the Note Trustee for application to the payment of the 2015 Notes, 2017 Notes or 2017B Notes, as applicable, to the extent necessary to pay or defease all 2015 Notes, 2017 Notes or 2017B Notes, as applicable, in full or otherwise held or applied pursuant to this Agreement. The Note Trustee is irrevocably authorized and appointed attorney-in-fact for the Master Trustee to supply any required endorsement or assignment. Until so delivered, any such payment or collateral shall be held by the Master Trustee in trust for the Note Trustee and shall not be commingled with other funds or property of the Master Trustee.

2.3 **No Contest of Priority Liens and Security Interests**. The Master Trustee, on behalf of itself and the Holders of all outstanding Obligations under the Master Indenture, agrees that it will not, and will not cause or support any other Person to, at any time contest, seek to avoid or subordinate the validity, perfection, priority, extent or enforceability of the Notes, the Note Documents, this Agreement or any Liens and security interests of the Note Trustee in the Note Collateral securing the Notes.

2.4 **Unconditional Subordination**. No action which the Note Trustee may take or omit to take in connection with any of the Note Documents or the MTI Note Obligations, any of the Notes, or any security therefor, and no course of dealing of the Note Trustee with any Obligor, the Master Trustee, or any other Person, shall release or diminish the Master Trustee's obligations, liabilities, agreements or duties hereunder, affect this Agreement in any way, or afford the Master Trustee any recourse against the Note Trustee, regardless of whether any such action or inaction may increase any risks to or liabilities of the Note Trustee, the Master Trustee or any Obligor or increase any risk to or diminish any safeguard of any security. Without limiting the foregoing, the Master Trustee hereby expressly agrees that the Note Trustee may, from time to time, without notice to or the consent of the Master Trustee:

i. amend, change or modify, in whole or in part, any one or more of the Note Documents and give or refuse to give any waivers or other indulgences with respect thereto;

ii. neglect, delay, fail, or refuse to take or prosecute any action for the collection or enforcement of any of the obligations of the Obligors under the Note Documents or the MTI Note Obligations, to (i) foreclose or take or prosecute any action in connection with the Note

Documents, (ii) bring suit against an Obligor or any other Person, or (iii) take any other action concerning the Notes, the Note Documents or the MTI Note Obligations;

iii. accelerate, change, rearrange, extend, or renew the time, terms, or manner for payment or performance of any one or more of the obligations of the Obligors under the Note Documents or the MTI Note Obligations;

iv. compromise or settle any unpaid or unperformed obligations of the Obligors under the Note Documents or the MTI Note Obligations;

v. take, exchange, amend, eliminate, surrender, release, or subordinate any or all security for any or all of the obligations of the Obligors under the Note Documents or the MTI Note Obligations, accept additional or substituted security therefor, or perfect or fail to perfect the Note Trustee's rights in any or all security;

vi. discharge, release, substitute or add obligors with respect to the obligations of the Obligors under the Note Documents or the MTI Note Obligations; and

vii. apply all monies received from the Authority, the Obligors or others, or from any security for any of the Note Documents, as the Note Trustee may determine to be in its best interest, without in any way being required to apply all or any part of such monies upon any particular Notes.

No change of law or circumstances shall release or diminish the Master Trustee's obligations, liabilities, agreements, or duties hereunder, affect this Agreement in any way, or afford the Master Trustee any recourse against the Note Trustee. Without limiting the foregoing, no obligations, liabilities, agreements, or duties of the Master Trustee under this Agreement shall be released, diminished, impaired, reduced, or affected by the occurrence of any of the following from time to time, even if occurring without notice to or without the consent of the Master Trustee:

i. any Proceeding or any discharge, impairment, modification, release, or limitation of the liability of, or stay of actions or lien enforcement proceedings against, any properties of any Obligor, or the estate in bankruptcy of any Obligor in the course of or resulting from any such Proceedings;

ii. the failure by the Note Trustee to file or enforce a claim in any Proceeding described in the immediately preceding clause (i) or to take any other action in any Proceeding to which any Obligor is a party;

iii. the release by operation of law of any Obligor from any of its obligations under the Note Documents or the MTI Note Obligations or any other obligations to the Note Trustee;

iv. the invalidity, deficiency, illegality, or unenforceability of any of the Note Documents or the obligations of the Obligors under the Note Documents or the MTI Note Obligations, in whole or in part, any bar by any statute of limitations or other law of recovery on any of the obligations of the Obligors under the Note Documents or the MTI Note Obligations,

or any defense or excuse for failure to perform on account of force majeure, act of God, casualty, impossibility, impracticability, or other defense or excuse whatsoever;

v. the failure of the Note Trustee or any other Person to sign any instrument or agreement; and

vi. without limiting any of the foregoing, any fact or event (whether or not similar to any of the foregoing) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defense other than the actual payment of the obligations of the Obligors under the Note Documents or the MTI Note Obligations and the performance by the Master Trustee under this Agreement.

2.5 **Requirement of Notice**. The Master Trustee agrees to notify the Note Trustee promptly upon obtaining knowledge of the happening of any of the following: (i) the occurrence of any default or event of default under the Master Indenture; (ii) the waiver by the Master Trustee of any default or event of default under the Master Indenture; or (iii) the exercise of any remedies under the Master Indenture. The Note Trustee agrees to notify the Master Trustee promptly upon obtaining knowledge of the happening of any of the following: (i) the occurrence of any event of default under any of the Note Documents; (ii) the waiver by the Note Trustee of any event of default under any of the Note Documents; or (iii) the exercise of any remedies under the Note Documents. Failure to provide any notice required hereby shall not affect the subordination of the Master Trustee's Lien in the Priority Assets effected hereby.

3. Intercreditor Provisions.

3.1 **Marshaling and Similar Rights**. In foreclosing or realizing on any Priority Assets, the Note Trustee may proceed in any manner and in any order which the Note Trustee, in its sole discretion, shall choose, even though a higher price might have been realized if the Note Trustee had proceeded to foreclose or realize on its security interests in another manner or order. The Note Trustee shall not be required to marshal its claims against one or more assets securing the Notes.

3.2 **Rights of Note Trustee under the MTI Note Obligations**. The Note Trustee is the holder of MTI Note Obligations for all Notes and is entitled to enforce payment and performance of the MTI Note Obligations and to exercise all rights and powers given to it under any of the Note Documents.

3.3 **Specific Performance**. The Note Trustee is hereby authorized to demand specific performance of this Agreement at any time when the Master Trustee shall have failed to comply with any provision hereof. The Master Trustee hereby irrevocably waives any defenses based on the adequacy of a remedy at law which might be asserted as a bar to the action of the Note Trustee.

3.4 **No Duties**. The Master Trustee hereby agrees that (i) the Note Trustee shall not have any responsibility or duty to the Master Trustee with respect to any of the Priority Assets except for such duties as are imposed by law and which cannot be waived by agreement, and (ii) the Note Trustee shall be free to take or omit to take any and all such action with respect

to the Priority Assets as it may so choose, without consent by the Master Trustee and without regard to or consideration of the interests of the Master Trustee or the holders of the 2005 Bonds.

4. **Representations and Warranties**.

4.1 **Representations and Warranties of Master Trustee**. The Master Trustee hereby represents and warrants to the Note Trustee that (a) it is a duly formed and validly existing national bank; (b) it has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action; (c) the execution of this Agreement by it will not violate or conflict with its organizational documents, the Master Indenture or any other material agreement binding upon it or any law, regulation or order or require any consent or approval which has not been obtained; and (d) this Agreement is the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.

4.2 **Representations and Warranties of the Note Trustee**. The Note Trustee hereby represents and warrants to the Master Trustee that as of the date hereof: (a) it is a duly formed and validly existing national bank; (b) it has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action; (c) the execution of this Agreement by it will not violate or conflict with its organizational documents, any material agreement binding upon it or any law, regulation or order or require any consent or approval which has not been obtained; and (d) this Agreement is the legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally or by equitable principles.

5. **Remediation Requirements**. The Corporation and the Obligors hereby represent that (i) in the event of foreclosure, deed in lieu of foreclosure or other disposition or transfer of the St. Francis Medical Center property located at 3630 East Imperial Highway, Lynwood, CA to an entity that is not a non-federal governmental entity or an exempt entity under Section 501(c)(3) using the applicable property in a manner that does not constitute unrelated business use, or private use, the amount of proceeds that may be required to be applied pursuant to the Remediation Requirements for the principal amount of the 2005 Bonds shall not exceed $68,000,000 plus outstanding interest on such allocable 2005 Bonds as of the date of Remediation, (ii) in the event of foreclosure, deed in lieu of foreclosure or other disposition or transfer of the Saint Louise Regional Hospital property located at 9400 No Name Uno, Gilroy, CA to an entity that is not a non-federal governmental entity or an exempt entity under Section 501(c)(3), using the applicable property in a manner that does not constitute unrelated business use, or private use, the maximum amount of proceeds that may be required to be applied pursuant to the Remediation Requirements for the principal amount of the 2005 Bonds shall not exceed $5,500,000 plus outstanding interest on such allocable 2005 Bonds as of the date of Remediation, and (iii) there are no Remediation Requirements with respect to the properties located at 2700 E. Slauson Avenue, Huntington Park, CA and 5957 Atlantic Blvd., Maywood, CA. In the event of a foreclosure, deed in lieu of foreclosure or other disposition or transfer

described in clauses (i) or (ii) of the preceding sentence, the actual amount required to be applied to Remediation Requirements shall be as set forth in an opinion of Nationally Recognized Bond Counsel addressed to the Trustee for the 2005 Bonds (the "2005 Trustee") and the Note Trustee, but shall not exceed the maximum amounts set forth in the preceding sentence. Until the date of receipt by the 2005 Trustee and the Note Trustee of such an opinion setting forth the amount required to be applied to Remediation Requirements in the event the Note Trustee receives cash proceeds from such event or transaction, the Note Trustee agrees to segregate the lesser of such cash proceeds received under (i) or (ii), as applicable, or the amount referenced in clause (i) or (ii) above, as applicable (as applicable, the "***Potential Remediation Amounts***") and not to apply any Potential Remediation Amounts to the payment of the Notes or for any other purpose. Upon receipt of an opinion of Nationally Recognized Bond Counsel addressed to the 2005 Trustee and the Note Trustee stating that a specified amount of a Potential Remediation Amount must be applied to Remediation Requirements for the 2005 Bonds in order to preserve the tax-exemption of interest on the 2005 Bonds and when so applied will preserve the tax-exemption of interest on the 2005 Bonds, the Note Trustee shall transfer such specified amount of cash proceeds to the 2005 Trustee for application as required by such opinion of Nationally Recognized Bond Counsel, and the balance, if any, of such Potential Remediation Amounts thereafter may be applied by the Note Trustee without regard to the Remediation Requirements. The Note Trustee agrees that unless the Note Trustee and 2005 Trustee have received an opinion of Nationally Recognized Bond Counsel addressed to the Note Trustee and the 2005 Trustee stating that such action will not adversely affect the tax-exemption of interest on the 2015 Bonds, no foreclosure, deed in lieu of foreclosure or other disposition or transfer to an entity that is not a non-federal governmental entity or an exempt entity under Section 501(c)(3) using the applicable property in a manner that does not constitute unrelated business use, or private use shall be consummated by the Note Trustee other than in a transaction in which the consideration received is exclusively cash within the meaning of 26 CFR 1.141-12(d)(2). The Note Trustee agrees that no foreclosure, deed in lieu of foreclosure or other disposition or transfer to an entity that is a non-federal governmental entity or an exempt entity under Section 501(c)(3) shall be consummated by the Note Trustee unless the Note Trustee and the 2005 Trustee have received an opinion of Nationally Recognized Bond Counsel addressed to the Note Trustee and the 2005 Trustee stating that either (a) anticipatory remedial action within the meaning of 26 CFR 1.141-12(d)(3) has occurred with respect to the 2005 Bonds, or the 2005 Trustee has received cash and instructions as to the application thereof to the redemption of 2005 Bonds in a manner that will constitute anticipatory remedial action within the meaning of 26 CFR 1.141-12(d)(3), such that the applicable foreclosure, deed in lieu of foreclosure or other disposition or transfer will not adversely affect the tax-exemption of interest on the 2005 Bonds irrespective of the subsequent use or ownership of the transferred property or (b) the applicable transferee has delivered covenants, with respect to which the 2005 Trustee is a third party beneficiary, as to the use and ownership of such property by such transferee and any further transferee thereof in a manner consistent with the preservation of the tax-exemption of interest on the 2005 Bonds.

6. **Entire Agreement; Modification**. This Agreement evidences the entire agreement of the parties regarding the ordering of interests set forth herein, and all prior oral discussions and writings are merged into this Agreement. Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by the Note Trustee, the Master Trustee and the Corporation, and then such modification, waiver or consent shall be

effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

7. **Further Assurances**. Each party to this Agreement will promptly execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

8. **Notices**. Unless otherwise specifically provided herein, any notice delivered under this Agreement shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier service or certified or registered United States mail and shall be deemed to have been given (a) if delivered in person, when delivered; (b) if delivered by telecopy or electronic mail, on the date of transmission if transmitted on a Business Day before 12:00 p.m. (California time) or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, one Business Day after delivery to such courier properly addressed; or (d) if by United States mail, four Business Days after deposit in the United States mail, postage prepaid and properly addressed.

Notices shall be addressed as follows:

If to the Master Trustee:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services

with copies to (which shall not constitute notice):

U.S. Bank National Association
2300 W. Sahara, Suite 200
LM-NV-NFC2
Las Vegas, NV 89102
Attn: Global Corporate Trust Services

and to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attn: Len Weiser-Varon, Esq.

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If to the Corporation or any Obligor:

Verity Health System of California, Inc.
203 Redwood Shores Parkway, Suite 800
Redwood City, CA 94065
Attn: Chief Financial Officer

with copies to (which shall not constitute notice):

Squire Patton Boggs
275 Battery Street, Suite 2600
San Francisco, CA 94111
Attn: Robyn Helmlinger

If to Note Trustee:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Global Corporate Trust Services

with copies to (which shall not constitute notice):

Dorsey & Whitney LLP
600 Anton Boulevard
Suite 2000
Costa Mesa, CA 92626-7655
Attn: Dennis Wong

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 8.

9. **Successors and Assigns**. This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Note Trustee, the Master Trustee, the Corporation or any other Obligor. To the extent permitted under the Note Documents, the Note Holders may, from time to time, without notice to the Master Trustee, assign or transfer any or all of the Notes or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Notes shall, subject to the terms hereof, be and remain Notes for purposes of this Agreement, and every permitted assignee or transferee of any of the Notes or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Notes, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto. The 2005 Trustee, on behalf of the holders of the 2005 Bonds, shall be a third party beneficiary of Section 5 hereof, and neither such Section 5 nor this sentence shall be amended, modified or waived without the consent of the 2005 Trustee.

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10. Relative Rights. This Agreement shall define the relative rights of the Note Trustee on the one hand and the Master Trustee on the other hand. Nothing in this Agreement shall (a) impair, as among the Corporation, the Master Trustee and the Note Trustee and as between the Corporation and the Master Trustee, the obligation of the Corporation or any other Obligor with respect to the payment of the Notes in accordance with their respective terms or (b) affect the relative rights of the Note Trustee or the Master Trustee with respect to any other creditors of the Corporation.

11. No Waiver. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall constitute a waiver of any rights any Holder may have, or any duties the Master Trustee may have, to direct or take any action permitted or required by the Master Indenture, in the event that any amendment, change or modification to any one or more of the Note Documents or any calculation of the amount described in subsection (m) or (q) of the defined term Permitted Lien causes any portion of the Priority Lien not to be a Permitted Lien.

12. Headings. The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

14. Severability. In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

15. Continuation of Subordination; Termination of Agreement. This Agreement is a continuing agreement of subordination pursuant to its terms and in accordance with Section 510(a) of the Bankruptcy Code and shall remain in full force and effect until (i) the indefeasible payment in full in cash of the principal of, interest on and premium, if any, on the Notes, and (ii) the documents and instruments evidencing the Notes have been terminated or performed, in each case in accordance with their respective terms after which this Agreement shall terminate without further action on the part of the parties hereto. The liability and obligations of the Master Trustee hereunder shall be reinstated and revived and the Note Trustee's rights shall continue, with respect to any amount at any time paid on account of the Notes which shall thereafter be required to be restored or returned by the Note Trustee in any Proceeding (including, without limitation, any repayment made pursuant to any provision of Chapter 11 of the Bankruptcy Code, or with respect to any fraudulent transfer or conveyance law), all as though such amount had not been paid. Master Trustee hereby acknowledges that the provisions of this Agreement are intended to be enforceable at all times, whether before or after the commencement of a Proceeding, and hereby waives any right it may have under applicable law to revoke this Agreement or any provisions hereof.

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16. **Applicable Law**. This Agreement shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of California, without regard to conflicts of law principle, but giving effect to federal laws applicable to national banks.

17. **CONSENT TO JURISDICTION. EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS HEREBY CONSENTS TO THE JURISDICTION OF THE STATE COURTS OF THE STATE OF CALIFORNIA AND OF THE FEDERAL COURTS LOCATED IN CALIFORNIA AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE LITIGATED IN SUCH COURTS. EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.**

18. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE NOTE DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN ITS RELATED FUTURE DEALINGS. EACH OF THE NOTE TRUSTEE, THE MASTER TRUSTEE, THE CORPORATION AND THE OBLIGORS WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

19. **NO ORAL AGREEMENTS. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS AMONG THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS AMONG THE PARTIES.**

[*The Remainder of this Page Intentionally Left Blank*]

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IN WITNESS WHEREOF, the Note Trustee, the Master Trustee, the Corporation and each other Obligor have caused this Agreement to be executed as of the date first above written.

NOTE TRUSTEE:

U.S. BANK NATIONAL ASSOCIATION
as Note Trustee

By: _____
Julia Hommel
Vice President

Vice President

(Signature Page to Intercreditor Agreement)

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE *of* CALIFORNIA)
) ss:
COUNTY *of* LOS ANGELES)

On December 21, 2017, before me, Reuel Espeleta Doce, Notary Public personally appeared Julia Hommel, who proved to me on the basis of satisfactory evidence to be the person whose name are subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

REUEL ESPELETA DOCE
Commission # 2072580
Notary Public - California
Los Angeles County
My Comm. Expires Jul 23, 2018

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MASTER TRUSTEE:

U.S. BANK NATIONAL ASSOCIATION
as Master Trustee

By: _____
Julia Hommel
Vice President

(Signature Page to Intercreditor Agreement)

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE *of* CALIFORNIA)
) ss:
COUNTY *of* LOS ANGELES)

On December 21, 2017, before me, Reuel Espeleta Doce, Notary Public personally appeared Julia Hommel, who proved to me on the basis of satisfactory evidence to be the person whose name are subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

REUEL ESPELETA DOCE
Commission # 2072580
Notary Public - California
Los Angeles County
My Comm. Expires Jul 23, 2018

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VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a nonprofit corporation, on behalf of itself and each Obligor

By: _____
AVA TY H. CONNER
Ty Conner
Vice President and Treasurer

(Signature Page to Intercreditor Agreement)

23

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE of CALIFORNIA)
) ss:
COUNTY of San Mateo)

On 12/20/17, 2017, before me, Matthew E. Hopper, Notary Public personally appeared Ty H Comer who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

MATTHEW E. HOPPER
COMM. #2169580
Notary Public - California
San Mateo County
My Comm. Expires Oct. 25, 2020

[Seal]

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SCHEDULE A

OBLIGORS

Verity Health System of California, Inc. (the "Corporation")

O'Connor Hospital

Saint Louise Regional Hospital

Seton Medical Center

St. Francis Medical Center

St. Vincent Medical Center

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SCHEDULE B

2015 LOAN AGREEMENTS

1.) Loan Agreement dated as of December 1, 2015 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $60,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2015A, as amended by the Amendment to the Loan Agreement dated as of March 2, 2016

2.) Loan Agreement dated as of December 1, 2015 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $45,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2015B, as amended by the Amendment to the Loan Agreement dated as of March 2, 2016

3.) Loan Agreement dated as of December 1, 2015 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $10,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2015C (FEDERALLY TAXABLE), as amended by the Amendment to the Loan Agreement dated as of March 2, 2016

4.) Loan Agreement dated as of December 1, 2015 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $45,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2015D, as amended by the Amendment to the Loan Agreement dated as of March 2, 2016

2017 LOAN AGREEMENT

5.) Loan Agreement dated as of September 1, 2017 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $21,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2017

2017B LOAN AGREEMENT

6.) Loan Agreement dated as of December 1, 2017 between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the $21,000,000 California Public Finance Authority Revenue Notes (Verity Health System) Series 2017B

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SCHEDULE C

NOTE COLLATERAL

"Note Collateral" means:

(m) Accounts of:

St. Francis Medical Center
St. Vincent Medical Center
O'Connor Hospital
Saint Louise Regional Hospital
Seton Medical Center including Seton Coastside

(q) Real property located at, and personal property located at, used in connection with or otherwise described in the St. Francis Deeds of Trust and Saint Louise Deed of Trust, respectively, as to the following Property the aggregate Book Value of which Property secured by said Deeds of Trust and created or permitted to exist pursuant to clause (q) of the definition of Permitted Liens shall not exceed 20% of the aggregate Book Value of all Property of the Obligated Group:

St. Francis Medical Center

- 3630 East Imperial Highway, Lynwood, CA
- 2700 E. Slauson Avenue, Huntington Park, CA
- 5953 Atlantic Blvd., Maywood, CA (also known as 5931 and 5957 Atlantic Blvd., including surface parking)

Saint Louise Regional Hospital

- 9400 No Name Uno, Gilroy, CA

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SCHEDULE D

MASTER TRUST INDENTURE NOTE OBLIGATIONS

2015 MTI Obligations

Master Trust Indenture Obligation No. 16 in the amount of $60,000,000

Master Trust Indenture Obligation No. 17 in the amount of $45,000,000

Master Trust Indenture Obligation No. 18 in the amount of $10,000,000

Master Trust Indenture Obligation No. 19 in the amount of $45,000,000

2017 MTI Obligation

Master Trust Indenture Obligation No. 21 in the amount of $21,000,000

2017B MTI Obligation

Master Trust Indenture Obligation No. 22 in the amount of $21,000,000

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SCHEDULE E

SECURITY AGREEMENTS

1. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of O'Connor Hospital, and U.S. Bank National Association, as Trustee, as assignee under the Loan Agreements between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2015 Notes, Series 2017 Notes and Series 2017B Notes.

2. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of Saint Louise Regional Hospital, and U.S. Bank National Association, as Trustee, as assignee under the Loan Agreements between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2015 Notes, Series 2017 Notes and Series 2017B Notes.

3. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of Seton Medical Center, and U.S. Bank National Association, as Trustee; as assignee under the Loan Agreements between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2015 Notes, Series 2017 Notes and Series 2017B Notes.

4. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of Seton Coastside, a division of Seton Medical Center, and U.S. Bank National Association, as Trustee; as assignee under the Loan Agreement between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2017B Notes.

5. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of St. Francis Medical Center, and U.S. Bank National Association, as Trustee, as assignee under the Loan Agreements between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2015 Notes, Series 2017 Notes and Series 2017B Notes.

6. Second Amended and Restated Security Agreement dated as of December 1, 2017 between the Corporation, on behalf of St. Vincent Medical Center, and U.S. Bank National Association, as Trustee, as assignee under the Loan Agreements between the California Public Finance Authority and Verity Health System of California, Inc. executed in connection with the Series 2015 Notes, Series 2017 Notes and Series 2017B Notes.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

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

A true and correct copy of the foregoing document entitled Renewed Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and as Series 2017 Note Trustee, to Emergency Motion of Debtors for 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 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 19, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

The United States Trustee
Hatty K. Yip hatty.yip@usdoj.gov
Alvin Mar Alvin.mar@usdoj.gov

ATTORNEYS FOR DEBTOR
Samuel R. Maizel samuel.maizel@dentons.com
John A. Moe john.moe@dentons.com
Tania M. Moyron tania.moyron@dentons.com

Gregory A. Bray, Mark Shinderman, and James C. Behrens on behalf of the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.
gbray@milbank.com, mshinderman@milbank.com, jbehrens@milbank.com

Emily P. Rich, Tracy L. Mainguy, and Caitlin E. Gray on behalf of Stationary Engineers Local 39, SEIU United Healthcare Workers-West, Stationary Engineers Local 39 Pension Trust Fund, and Stationary Engineers Local 39 Health & Welfare Trust Fund
bankruptcycourtnotices@unioncounsel.net, erich@unioncounsel.net, tmainguy@unioncounsel.net, cgray@unioncounsel.net

Hutchinson B. Meltzer on behalf of the Deputy Attorney General
hutchinson.meltzer@doj.ca.gov

Mary H. Rose
mrose@buchalter.com

Mark A. Neubauer
mneubauer@carltonfields.com

Abigail V. O'Brient
avobrient@mintz.com

Lori L. Purkey on behalf of Stryker Corporation, et al.
purkey@purkeyandassociates.com

Kyrsten B. Skogstad and Nicole J. Daro on behalf of California Nurses Association
kskogstad@calnurses.org, ndaro@calnurses.org

Jennifer Nassiri on behalf of Old Republic Insurance Company
jennifernassiri@quinnemanuel.com

Ralph J. Swanson
Ralph.swanson@berliner.com

Lori A. Butler, Melissa T. Ngo, Damarr M. Butler on behalf of Pension Benefit Guaranty Corporation
Butler.lori@pbgc.com
Ngo.melissa@pbgc.gov
Butler.damarr@pbgc.gov

Aaron Davis
Aaron.davis@bclplaw.com

John Ryan Yant, Donald R. Kirk on behalf of St. Vincent IPA Medical Corporation

Latonia Williams on behalf of AppleCare Medical Management, LLC, et al.
lwilliams@goodwin.com, bankruptcy@goodwin.com

Darryl S. Laddin on behalf of Sysco Los Angeles, Inc.
Darryl.laddin@agg.com, bkrfilings@agg.com

Craig G. Margulies
craig@marguliesfaithlaw.com, victoria@marguliesfaithlaw.com, helen@marguliesfaithlaw.com

Steven T. Gubner
sgubner@bg.law

Matthew S. Walker
Matthew.walker@pillsburylaw.com

Michael B. Reynolds
mreynolds@swlaw.com, kcollins@swlaw.com

Alicia Berry
Alicia.berry@doj.ca.gov

Kenneth K. Wang on behalf of California Department of Health Care Services
Kenneth.wang@doj.ca.gov

Richard A. Lapping on behalf of Retirement Plan for Hospital Employees
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☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On September 19, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

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

Sam J. Alberts, Dentons US LLP, 1900 K Street NW, Washington, DC 20006-1100

☐ 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 Hon. Ernest M. Robles ___, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 19, 2018	Jason D. Strabo	/s/
Date	*Printed Name*	*Signature*

TAB 7

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Attorneys for Retirement Plan for Hospital Employees

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 Robles

RETIREMENT PLAN FOR HOSPITAL EMPLOYEES' NOTICE OF MOTION AND MOTION TO ALTER OR AMEND FINAL ORDER (I) AUTHORIZING POST PETITION FINANCING, ETC. (DKT. 409) (FRBP 9023)

Hearing:
Date: TO BE SET BY COURT
Time:
Place: Courtroom 1568
United States Bankruptcy Court
255 East Temple Street
Los Angeles, California 90012

Trodella & Lapping LLP
540 Pacific Avenue
San Francisco, CA 94133

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at the above referenced date, time and location, Retirement Plan for Hospital Employees ("RPHE") will move the Court to alter or amend the *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* [Docket No. 409] (the "Financing Order") pursuant to Federal Rule of Bankruptcy Procedure 9023 and Federal Rule of Civil Procedure 59(e), to require Verity Health System of California, Inc. ("VHS") and the above-referenced affiliated debtors (collectively, the "Debtors"), to reserve or fund commencing as of September 1, 2018 for post-petition contributions to RPHE accruing weekly in the amount of $250,100, or such other amount as determined by the Court, as part of the DIP Budget, as defined in the Financing Order.

PLEASE TAKE FURTHER NOTICE that this Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points And Authorities, the Objection of Retirement Plan for Hospital Employees to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post petition Financing etc. [Docket 218] (the "RPHE Objection"), the Declaration of Michael Holdsworth in support of the RPHE Objection [Docket 218-1] (the "Holdsworth Declaration"), supporting statements, arguments and representations of a counsel who will appear at the hearing on the Motion, the record in this case, and any other evidence properly brought before the Court in all other matters of which this Court may properly take judicial notice.

PLEASE TAKE FURTHER NOTICE that any party opposing or responding to the Motion must file and serve the response ("Response") on the moving party and the United States Trustee not later than 14 days before the date designated for the hearing. A Response must be a complete written statement of all reasons in opposition thereto or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities.

PLEASE TAKE FURTHER NOTICE that, pursuant to LBR 9013-1(h), the failure to

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file and serve a timely objection to the Motion may be deemed by the Court to be consent to the relief requested herein.

Dated: October 17, 2018

TRODELLA & LAPPING LLP

By: /s/ Richard A. Lapping
Richard A. Lapping
Attorneys for
Retirement Plan for Hospital Employees

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Court's tentative ruling [Docket 392], the RPHE Objection to the Debtors' motion to obtain the Financing Order ("Financing Motion") was apparently overruled by the following statement: "For the reasons set forth in the tentative ruling issued in connection with the Prepetition Wages Motion, the objections asserted by the unions representing the Debtors' employees are overruled." However, the Prepetition Wages Motion [Docket 22] concerned only prepetition wages and benefits, and the Court's ruling, which remains under submission, applied case law that in the main only pertained to prepetition claims and Bankruptcy Code section 1113. The RPHE Objection and now this Motion seek recognition of the Debtor's ongoing obligations with respect to post-petition administrative claims. To the extent that the authorities cited in the tentative ruling on the Prepetition Wages Motion apply to RPHE's post-petition claims, then the ruling falls into the category of clear error of law under the standards applicable to Federal Rule of Civil Procedure 59(e).

II. FACTS

RPHE is a multiemployer qualified defined benefit retirement plan under Section 401(a) of the Internal Revenue Code. VHS and certain of its affiliates, O'Connor Hospital, Saint Louise Regional Hospital, and Seton Medical Center, including Seton Medical Center Coastside, are participants in RPHE and pursuant to collective bargaining agreements ("CBAs") with the California Nurses Association ("CNA"), are obligated to make contributions to RPHE on behalf

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of members of CNA currently working at the above facilities. (Holdsworth Declaration, para. 2.)

Under the terms of the RPHE Trust Agreement and the Plan Document and Summary Plan Description applicable to VHS and its affiliates, IRS rules, and actuarial determinations, RPHE issues an annual Invoice to VHS requiring payment of the previous year's accrued contributions in three installments, due on February 15, May 15 and August 15 of the following calendar year.[1] Thus, for 2017 contributions, RPHE issued Invoices to VHS for February 15, 2018 in the amount of $4,791,218, for May 15, 2018 in the amount of $4,791,218, and for August 15, 2018 in the amount of $4,791,217. VHS paid the February 15 and May 15 Invoices, but did not pay the Invoice for August 15. (Holdsworth Declaration, para. 3.)

Although RPHE has not issued VHS any Invoices for 2018, the contribution obligations continue to accrue, and have accrued for 8 months through August 31, 2018, the petition date. Thus, RPHE will have an unsecured prepetition claim for the August 15, 2018 Invoice (related to 2017 accruals) plus the accrued contributions for January through August, 2018, which is two-thirds of a year. From and after September 1, 2018, VHS's contribution obligations will accrue continuously post-petition as part of the benefits earned by CNA members who staff the VHS facilities, even though in the ordinary course RPHE would not bill for any 2018 accrued contributions until the three scheduled dates in 2019.

The contributions that Debtors are required to make to RPHE for any period fall into two categories. The first is based on the normal cost of benefits, the expected administrative expenses and a component of interest, all determined by IRS rules and actuarial determinations ("normal costs"). The second category is Debtor's share of the Unfunded Actuarial Accrued Liability of the RPHE plan under ERISA, which is paid over a ten-year amortization ("non-normal costs"). RPHE's actuarial estimate for these VHS contributions for Plan Year 2018 is attached as Exhibit A to the Holdsworth Declaration. As indicated on Exhibit A, the first category is $1,756,757 for

[1] In reply to the RPHE Objection, Debtor submitted the RPHE Plan Funding Policy for the Plan Year Beginning January 3, 2017 as Exhibit 3, at Docket 310-3. That document simply confirms the timing of payments, but it should be noted that the final paragraph of Exhibit 3 states: "The Board reserves the right to amend this Funding Policy at a future date." To characterize the timing of when invoices are issued as an immutable obstacle, as the Debtor does, is not a sound principle in or out of bankruptcy.

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September 1 through December 31, 2018. Over 17 weeks for that period in the budget, this equals $103,339 per week. The second category, non-normal costs, this equates to $146,761 per week, or $2,494,941 over the 17-week period to the end of 2018.

In reply to the RPHE Objection (and to CNA), Debtors offered the Declaration of Carlos De la Parra [Docket 310-1] (the "Parra Declaration").[2] The Parra Declaration and its exhibit illustrate that Debtors propose to pay only normal costs and then only one-third of the normal costs on the 2019 invoices, in recognition that all 2019 invoices relate to 2018 accruals, and only one-third of the year remains after September 1. But Mr. Parra is incorrect when he states in Paragraph 10 that his amount, $1,704,170 for the entire year "corresponds very closely to the amount of $1,756,757 asserted by RPHE in its objection to the Final Order for DIP financing." As indicated above, $1,756,757 measures only the normal cost for the last 17 weeks of 2018.

Although discussing and comparing numbers in actuary charts can become complex, the issue presented by this Motion and the RPHE Objection is not: Are the contribution obligations for non-normal costs administrative expenses under 11 U.S.C. sections 503(b) and 507(a)(2). RPHE contends that the matter is settled by *In re Pacific Far East Line, Inc.*, 713 F.2d 476 (9th Cir. 1983) (construing the predecessor provision for administrative expenses under the Bankruptcy Act). As such, these necessary expenses should be included in the DIP Budget authorized by the Financing Motion.

III. ARGUMENT

A. Motions Under Rule 59(e)

The Ninth Circuit summarized the function of a Rule 59(e) motion to alter or amend a judgment thusly:

> Rule 59(e) provides a mechanism by which a trial judge may alter, amend, or vacate a judgment. *See Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962). Rule 59(e) provides an efficient mechanism by which a trial court judge can correct an otherwise

[2] Debtor's submitted two replies that addressed the issues in this Motion, one with respect to the Financing Motion [Docket 309] and one as to the Prepetition Wages Motion [Docket 310]. We will cite throughout to the Docket numbers to avoid confusion.

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> erroneous judgment without implicating the appellate process. As noted by this court in *United States v. Walker*, 601 F.2d 1051, 1058 (9th Cir. 1979): "Errors in the trial court may be most speedily corrected by the trial judge. Frequently a trial judge has had to rule on difficult questions under time pressures and without thorough briefing by the parties. A motion for reconsideration may, in some instances, avoid the necessity of an appeal."

Clipper Exxpress v. Rocky Mt. Motor Tariff Bureau, 674 F.2d 1252, 1260 (9th Cir. 1982). The motion can be granted in the discretion of the trial judge to correct clear error. *399 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1998).

Here, the Motion addresses an additional problem. At the hearing of the Financing Motion, counsel for RPHE's argument was stopped by the Court and deferred to the hearing on the Prepetition Wages Motion. [Transcript, 46:12-15.] Counsel requested that the Financing Motion be reopened if the Court ruled in RPHE's favor, which the Court agreed: "I think I understand the request, and that's without prejudice, yes." [Transcript 46:24 – 47:5.] However, the Finance Order was entered on October 4, 2018, with a looming appeal deadline of October 18, whereas, at the date of this Motion, the Prepetition Wage Motion remains under submission. Under a Rule 59(e) motion, the Court remains able to reopen the Financing Motion if appropriate.

B. Non-Normal Costs Accruing Post-Petition Are Administrative Expenses

In the RPHE Objection, RPHE cited *Columbia Packing Co. v Pension Ben. Guaranty Corp.*, 81 B.R. 205, 208-09, 18 CBC2d 1005 (D. Mass. 1988), for the proposition that a current postpetition pension fund contribution obligation based on reference to prepetition events should be an administrative expense. *Columbia Packing* cited and followed the reasoning in *In re Pacific Far East Line, Inc.*, 713 F.2d 476 (9th Cir. 1983).

Here, as in *Columbia Packing* and *Pacific Far East Line*, the RPHE has Unfunded Actuarial Accrued Liability, which is the difference between Actuarial Accrued Liability (for expected benefits owed to plan participants) and the Actuarial Value of Assets in the plan, which can result from a number of causes, including shortfalls in contributions or, more likely,

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fluctuations in the value of investments or legally required changes in actuarial assumptions (e.g., mortality). Debtors speculate that the underfunding is past earnings not paid, and attempt to categorize them as prepetition claims. But their actuary concedes that "The Target Normal Cost is an estimate based on assumptions about future events that cannot be predicted with any certainty." (Parra Declaration, Para. 6, Docket 310-1.) When the estimates need to be revised, as they were due to the Great Recession, then subsequent contributions must increase as required by ERISA.

RPHE does not contend that prepetition obligations such as the failure by Debtors to make the August 15, 2018 payment should be elevated to administrative claim status. Nonetheless, Debtors argue extensively in opposition to the RPHE Objection citing efforts by various parties to use Bankruptcy Code Section 1113 as a device to gain administrative recognition for prepetition pension claims. The RPHE Objection does not rely on Section 1113.

Undeterred, Debtors cite to numerous cases that reject Section 1113 arguments, as if they apply to the RPHE Objection. Even further, they rely heavily on an unpublished opinion, *In re Steiny and Company, Inc.*, 2017 WL 1788414 (Bankr. C.D. Cal. 2017). *Steiny* is a case where pension trustees argued that prepetition benefits were administrative expenses because the debtor had not rejected the collective bargaining agreements under Section 1113, citing, *inter alia*, *In re Unimet Corp.*, 842 F.2d 879 (6th Cir. 1988), an outlier case whose reasoning was rejected by *In re World Sales, Inc.*, 183 B.R. 872 (B.A.P. 9th Cir. 1995) and *In re Certified Air Techs, Inc.*, 300 B.R. 355 (Bankr. C.D. Cal. 2003).[3]

Debtors also contend, based solely on a passing statement in *Steiny*, that *Pacific Far East Line*, a Ninth Circuit case, is no longer good law, and that *Steiny* "rejected the argument advanced by the RPHE and the principal case on which it relies . . . ." This argument illustrates why unpublished opinions provide unstable footing. True, out of context, *Steiny* says: "The Trustees argue that [*Pacific Far East Line*] is controlling Ninth Circuit authority that this court is bound to follow. This Court disagrees." (Passage cited by Debtor at p. 9, Docket 310.) What is left unstated is what proposition the Trustees cited it for. In the Steiny Brief, it becomes clear. The Trustees argue: "Contributions payable post-petition for hours worked pre-petition are properly

[3] See brief filed by the pension trustees in the Steiny Case, Docket 117-1, filed in Case No. 2:16-bk-25619-WB, copy attached hereto as Exhibit A, at p. 6 ("Steiny Brief").

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considered administrative expenses." And for this widely rejected point they cite *Pacific Far East Line*, which does not support the contention. Again, RPHE is not arguing that prepetition claims should be accorded administrative status, not under Section 1113, or under any other authority.

RPHE relies on *Pacific Far East Line* and *Columbia Packing* for the narrow proposition applicable here, that where a benefit earned by post-petition work is calculated based on prepetition events, then such calculation is "an actuarial unit of measure for determining the employer's current periodic contribution than as compensation for work performed" prepetition. *Columbia Packing*, 81 B.R. at 208-09. And under these cases, the contribution thus calculated is an administrative expense. The rationale is best explained in *In re Sunarhauserman, Inc.*, 126 F.3d 811 (6th Cir. 1997). *Sunarhauserman* involved the issue here, whether non-normal cost accrued post-petition was eligible for administrative priority. The majority in *Sunarhauserman* held contrary to the Ninth Circuit in a complex case. In a dissent that does line up with the Ninth Circuit, Circuit Judge Kennedy made the basic case.

> Here, the debtor and its employees continued to participate in the pension plan. The cost of continuing in the plan was determined by the plan and ERISA. . . . If compliance with a given statute or regulation is necessary to operate as a business, then the costs of such compliance necessarily should be an administrative expense.

126 F.3d at 822. Here, federal law mandates the actuarial calculation and that the contributions be made so long as the employees work under the collective bargaining agreement that provides for the pension fund. When that work occurs postpetition, it is the measure of their wages and the administrative cost of doing business.

C. Debtors' Contributions to RPHE Are Operating Expenses That Under the Financing Order Must Be Included in the DIP Budget

Debtors also argue that nothing requires them to pay or reserve for administrative expenses that will, under the unique circumstances here, not be invoiced for up to a year or more in ordinary circumstances. Debtors aver there is no authority for RPHE's proposal to reserve funds to pay the accruing liabilities. That argument ignores reality. The whole point of the Financing Motion and

the Financing Order is to enable Debtors to pay operating expenses in order to continue operations and preserve going concern value. Not some operating expenses; all of them. Expenses are something a Debtor has to pay. Debtors concede as much as they agree to pay when invoiced, i.e., when outside of bankruptcy, they have to pay, assuming they have the funds.

Consistent with the foregoing, the Financing Order mandates that the proceeds of the DIP Facility be used in accordance with the DIP Budget, which is entirely based on necessary operating expenses. (Financing Order, Para. L; Para. 2(e).) It is impossible to view the entire financing process as an exercise to omit paying employees who work post-petition their agreed salary and benefits.

Here, Debtors expect the RPHE and the nurses to take it on faith that the Debtors will have the ability to pay all administrative expenses after the assets have been sold. If there is a shortfall, the employees lose. Moreover, Debtors run the risk that they will not be able to confirm a plan if they cannot pay administrative expenses because the secured creditors receive all the proceeds. It is imperative for all constituencies that they take this opportunity to reserve funds for these expenses and preserve their ability to confirm a plan.

IV. CONCLUSION

For the reasons stated above, the Court should order the Debtors to reserve or fund commencing as of September 1, 2018 for post-petition contributions to RPHE accruing weekly in the amount of $250,100, or such other amount as determined by the Court, as part of the DIP Budget, as defined in the Financing Order.

Dated: October 17, 2018

TRODELLA & LAPPING LLP

By: /s/ Richard A. Lapping
Richard A. Lapping
Attorneys for
Retirement Plan for Hospital Employees

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EXHIBIT A

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Counsel for Creditors, Trustees of the Southern California IBEW-NECA Pension Plan, et al.

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re: STEINY AND COMPANY, INC., Debtor.	CASE NO.: 2:16-bk-25619-WB Chapter 11 ASSIGNED TO THE HONORABLE JULIA W. BRAND **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ADMINISTRATIVE EXPENSES** HEARING DATE Date: February 2, 2017 Time: 10:00 a.m. Ctrm: 1375 Edward R. Roybal Federal Building 255 E. Temple Street Los Angeles, California 90012

I. PRELIMINARY STATEMENT

Pursuant to 11 U.S.C. §503(b) and 11 U.S.C. §1113, creditors Trustees ("Trustees") of the Southern California IBEW-NECA Pension Plan, Southern California IBEW-NECA Defined Contribution Trust Fund, Southern California IBEW-NECA Health Trust Fund ("Health Fund"), Southern California IBEW-NECA Supplemental Unemployment Benefit Trust Fund, Los Angeles County Electrical Educational and Training Trust Fund, National Electrical Benefit Fund, Southern California IBEW-NECA Labor-Management Cooperation Committee, National NECA-IBEW Labor-Management Cooperation Committee Trust Fund, Contract Compliance Fund, and Los Angeles Electrical Workers Credit Union (collectively "Trusts"), hereby move this Court for an order requiring the debtor, Steiny and Company, Inc. ("Steiny") to immediately fund post-petition fringe benefit contribution reports and pay damages accruing post-petition.

II. STATEMENT OF FACTS RELEVANT TO THIS MOTION

The Trusts are express trusts created pursuant to written declarations of trust ("Trust Agreements") between various local unions of the International Brotherhood of Electrical Workers ("IBEW"), and various chapters of the National Electrical Contractors Association ("NECA"). (Declaration of Raul Rodriguez ("Decl. Rodriguez"), ¶ 6.) The Trusts are now, and were at all times material to this motion, labor-management multiemployer trusts created and maintained pursuant to §302(c)(5) of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. §186(c)(5). (Decl. Rodriguez, ¶ 6.) Steiny is bound to various collective bargaining agreements ("Master Agreements") between various local unions of the IBEW and various chapters of NECA that require Steiny to make contributions on a timely basis to the Trusts for each hour of covered work performed by its employees. (Decl. Rodriguez, ¶ 8.) At all times material herein, Steiny has been obligated to the terms and provisions of the Master Agreements and the related Trust Agreements. (Decl. Rodriguez, ¶¶ 8 and 10.)

Steiny has not rejected the Master Agreements pursuant to 11 U.S.C. §1113. (Decl. Rodriguez, ¶ 9; Declaration of Matthew Bechtel ("Decl. Bechtel"), ¶ 3.) Because Steiny relies on labor provided by the local unions of the IBEW to run its business, the Trustees do not anticipate that Steiny will seek to reject the Master Agreements. (Decl. Rodriguez, ¶ 9.)

Steiny is an "employer" as defined and used in §3(5) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1002(5). (Decl. Rodriguez, ¶ 9.) Therefore, Steiny is "obligated to make contributions to a multiemployer plan" within the meaning of §515 of ERISA, 29 U.S.C. §1145. Steiny is also an "employer" engaged in "commerce" in an "industry affecting commerce," as those terms are defined and used in §501(1) and §501(3) of the LMRA, 29 U.S.C. §142(1) and §142(3), and within the meaning and use of §301(a) of the LMRA, 29 U.S.C. §185(a). Section 515 of ERISA, 29 U.S.C. §1145, provides that every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

Steiny filed its Chapter 11 bankruptcy petition on November 28, 2016. After filing bankruptcy, Steiny submitted to the Trusts fringe benefit contribution reports ("Monthly Reports") wherein Steiny admits owing the Trusts at least $169,337.88 for fringe benefit contributions which became due on December 10, 2016 (post-petition). (Decl. Rodriguez, ¶ 13; Exhibit G). The Trustees only seek to collect $139,911.40 of the $169,337.88 total amount owed based on Steiny's Monthly Reports for November 2016, as the Trustees only collect defined benefit contributions under Steiny's collective bargaining agreements with Local 441 and Local 477. (Decl. Rodriguez, ¶ 13.) As of the date of this motion, Steiny has failed to submit payment of any of the

///

contributions owed to the Trustees that became due on December 10, 2016, and delinquent on December 15, 2016. (Decl. Rodriguez, ¶ 15.)

There is no legal excuse for Steiny's breach or violation of the Master Agreements, related Trust Agreements or §515 of ERISA, 29 U.S.C. §1145. (Decl. Rodriguez, ¶ 14.) Due to Steiny's non-performance, unpaid post-petition fringe benefit contributions are now due, owing and unpaid to the Trust Funds as evidenced by the reports submitted by Steiny and the declaration of Raul Rodriguez. (Decl. Rodriguez, ¶ 13.)

Pursuant to Section 502 of ERISA, 29 U.S.C. §1132(g)(2)(B), Steiny is obligated to pay to the Trustees interest on the fringe benefit contributions not paid in a timely manner at the rate prescribed under § 6621 of the Internal Revenue Code of 1986. An award of interest was made mandatory by the addition of § 502 (g)(2)(B) of ERISA [29 U.S.C. § 1132(g)(2)(B)]. In actions under ERISA to collect fringe benefit contributions, interest must be awarded. Operating Engineers Pension Trust v. Reed, s*upra*, 726 F.2d at 513, 514. Prejudgment interest is "determined by using the rate provided under the plan, or, if not provided, the rate prescribed under [26 U.S.C. § 6621]." 29 U.S.C. § 1132(g)(2). Here, the Master Agreements and related Trust Agreements provide for the recovery of interest. (Decl. Rodriguez, ¶ 16.) However, three of the four applicable collective bargaining agreements are silent as to the interest rate, while fourth agreement provide for an interest rate of 8% per annum. (Decl. Rodriguez, ¶ 16.) Therefore, for simplicity, interest has been calculated pursuant to the rate prescribed under § 6621, which states "[t]he underpayment rate established under this section shall be the sum of – (A) the Federal short-term rate determined under subsection (b), plus (B) 3 percentage points." 26 U.S.C. § 6621(a)(2). (Decl. Rodriguez, ¶ 16.) Under § 6621, interest is compounded on a daily basis. (Decl. Rodriguez, ¶ 16.) Therefore, in addition to the other amounts requested relating to the amounts due pursuant to the Monthly Reports for November 2016, the Trustees are seeking prejudgment interest in the total amount of $829.49, calculated

from the date the contributions became due until February 2, 2017 (the hearing date on this motion). (Decl. Rodriguez, ¶ 16; Exhibit H.) There is no legal excuse for Steiny's failure to pay the accrued interest.

Like prejudgment interest, liquidated damages are also mandatory under § 502 of ERISA [29 U.S.C. § 1132(g)], which requires an award of liquidated damages on unpaid contributions in an amount equal to the greater of: (a) the amount of prejudgment interest, or (b) liquidated damages provided for under the plan in an amount not in excess of 20%. 29 U.S.C. § 1132(g)(2)(C). Various federal courts, in recognition of the administrative costs involved in processing and pursuing delinquencies, have upheld and enforced liquidated damages provisions where, as here, the amount of liquidated damages are reasonable. U.S. for the use of Sherman v. Carter, 353 U.S. 210, 220 (1957); United O.A.B. & S.M.U. 21 v. Thorlief Larson & Son, Inc., 519 F.2d 331, 337 (9th Cir. 1975).

The Master Agreements and related Trust Agreements provide for liquidated damages ranging from 1.5% to 18% depending on the length of time an employer remains delinquent. (Decl. Rodriguez, ¶ 17.) Liquidated damages for the unpaid contributions based on Steiny's Monthly Reports November 2016 calculated from the date the contributions became due through February 2, 2017 (the hearing date on this motion)), at the rate provided in the Master Agreements and related Trust Agreements, amounts to $4,197.34. (Decl. Rodriguez, ¶ 17; Exhibit H.) Since this amount is greater than the amount of prejudgment interest $829.49) the Trustees seek liquidated damages for unpaid and untimely paid contributions in the amount of $4,197.34. Decl. Rodriguez, ¶ 17; Exhibit H).

Pursuant to the Master Agreement, Trust Agreements and Section 502 of ERISA, 29 U.S.C. § 1132(g)(2)(D), Steiny is obligated to pay to the Trustees' attorneys' fees and costs incurred to effect collection of delinquent contributions. The amount of attorneys' fees incurred to bring this motion, and anticipated fees to argue

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the motion, total $5,847.00. (Decl. Rodriguez, ¶¶ 18-19 and Declaration of Michael Y. Jung ("Decl. Jung") ¶¶ 4-8.)

III. ARGUMENT

A. Steiny Has a Duty to Abide by the Master Agreements.

A debtor operating an ongoing business has a duty to abide by contracts that it has not sought to abrogate and is thereby subject to the terms of a collective bargaining agreement until it is rejected. Matter of Canton Castings, Inc., 103 B.R. 874, 876 (Bankr. N.D. Ohio 1989). An unexpired collective bargaining agreement is an executory contract under the bankruptcy code. N.L.R.B. v. Bildisco and Bildisco, 465 U.S. 513, 516 (1984); In re Unimet Corp., 842 F.2d 879, 881 (6th Cir. 1988), cert. denied 488 U.S. 828 (1988). A trustee or debtor-in-possession may assume or reject a collective bargaining agreement only in accordance with the provisions of 11 U.S.C. §1113. This statute applies to all provisions of a collective bargaining agreement. In re Unimet Corp., *supra*, 842 F.2d 879 at 885. Furthermore, the debtor-in-possession is required to comply with all provisions of the collective bargaining agreement "unless and until rejection was permitted by the court." In re Unimet Corp., *supra*, 842 F.2d at p. 882; Matter of Canton Castings, Inc., *supra*, 103 B.R. at p. 876; and In re St. Louis Globe-Dispatch. Inc., 86 B.R. 606, 609 (Bankr. E.D. Mo. 1988). "No provision of this title [Title 11 U.S.C. §§101 et seq.] shall be construed to permit a trustee to unilaterally terminate or alter any provision of a collective bargaining agreement prior to compliance with the provisions of this section" (11 U.S.C. §1113(f)) and 11 U.S.C. §1113 "unequivocally prohibits the employer from unilaterally modifying any provision of the collective bargaining agreement." In re Unimet Corp., *supra*, 842 F.2d at p. 884.

In the instant case, Steiny has not filed a petition to reject the Master Agreements or related Trust Agreements pursuant to the procedures mandated by 11 U.S.C. §1113. (Declaration of Matthew Bechtel ("Decl. Bechtel"), ¶ 3; Decl. Rodriguez, ¶ 9.) In fact, Steiny has taken advantage of the benefits of its union status

while failing to submit agreed to, and federally protected, fringe benefit contributions to the Trusts pursuant to the Master Agreements. (Decl. Rodriguez, ¶ 9.)

B. The Trustees Have the Right to Obtain Payment of Fringe Benefit Contributions and Related Liquidated Damages and Interest Owed as Administrative Expenses, As Well As Attorneys' Fees Incurred in Bringing this Motion

11 U.S.C. § 503(b)(1)(A) provides: "¶ (b) After notice and a hearing, there shall be allowed as administrative expenses. . . ¶(1)(A) the actual necessary costs and expenses of preserving the estate, including wages, salaries or commissions for services rendered after the commencement of the case."

Contributions due pursuant to a collective bargaining agreement are actual and necessary costs or expenses of preserving the estate if the obligation to contribute arose post-petition. Columbia Packing Co. v. Pension Benefit Guaranty Corp., 81 B.R. 205. Contributions payable post-petition for hours worked pre-petition are properly considered administrative expenses. Pacific Far East Line, Inc. v. Pacific Maritime Association, 713 F.2d 476 (9th Cir. 1983); see also In Re World Sales, 183 B.R. 872. Damages are likewise treated as administrative expenses, as are expenses and liabilities incurred. Reading Company v. Brown, 391 U.S. 471, 476-79 (1968); N.L.R.B. v. Bildisco and Bildisco, supra, 465 U.S. at p. 532; In re Unimet Corp., supra, 842 F.2d at p. 881.

In the instant case, pursuant to the provisions of the Master Agreements and related Trust Agreements, Steiny voluntarily submitted to the Trustees its Monthly Reports for the work month of November 2016, which became due December 10, 2016, wherein Steiny admits owing the Trusts fringe benefit contributions totaling $169,337.88, of which the Trustees seek to recover the amount of $139,911.40 by way of this motion. (Decl. Rodriguez, ¶ 13.) This amount remains unpaid and is now considered *delinquent* pursuant to the Master Agreements and Trust Agreements. (Decl. Rodriguez, ¶ 15.) Steiny's own Monthly Reports are admissible against the

Steiny as admissions of contributions due. Fed. R. Civ. P. 801(d)(2); Gaspard & Co. v. Government of Guam, 427 F.2d 276 (9th Cir. 1970); Brick Masons Pension Trust v. Industrial Fence & Supply, Inc., 839 F.2d 1333 (9th Cir. 1988); Trs. of the S. Cal. IBEW-NECA Pension Trust Fund v. Flores, 519 F.3d 1045 (9th Cir. 2008); Cent. States v. Cent. Transport, Inc., 472 U.S. 559, 105 S.Ct. 2833, 86 L. Ed. 2d 447 (1985). In addition, due and payable from the Steiny is $829.49 for accrued interest, $4,197.34 for liquidated damages, and $5,847.00 for attorneys' fees. (Decl. Rodriguez, ¶¶ 16-19, Decl. Jung, ¶¶ 4-5.)

IV. CONCLUSION

The Trustees request, and justice demands, that the Court order the following:

1. Within ten (10) calendar days following entry of the order, Steiny shall pay to the Trustees $150,785.23, which consists of $139,911.40 for fringe benefit contributions, $829.49 for accrued interest, $4,197.34 for liquidated damages, and $5,847.00 for attorneys' fees.

DATED: January 9, 2017

LAQUER, URBAN, CLIFFORD & HODGE LLP

By: */S/ Michael Y. Jung*
Counsel for Creditors, Trustees of the Southern California IBEW-NECA Pension Plan. et al.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

540 Pacific Avenue, San Francisco, CA 94133

A true and correct copy of the foregoing document entitled (*specify*): RETIREMENT PLAN FOR HOSPITAL EMPLOYEES' NOTICE OF MOTION AND MOTION TO ALTER OR AMEND FINAL ORDER (I) AUTHORIZING POST PETITION FINANCING, ETC. (DKT. 409) (FRBP 9023)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 10/17/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☑ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) 10/17/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Ernest Robles
U.S. Bankruptcy Court
255 E. Temple Street
Los Angeles, CA 90012

☑ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/17/2018	Richard A. Lapping	/s/ Richard A. Lapping
Date	*Printed Name*	*Signature*

Attachment to Proof of Service of Document

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOST ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

MOTION PURSUANT TO BANKRUPTCY RULE 7052(B) FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF (DOC. 409)

Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

Swinerton Builders ("Swinerton"), a creditor secured by a mechanic's lien on the Seton Medical Center real property, moves for an additional finding and a corresponding amendment of the judgment 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 ("Final Order") (Doc. No. 409). Swinerton's motion is made pursuant to Federal Rule of Bankruptcy Procedure 7052(b), which allows a court to amend its findings or make additional findings and to amend the judgment accordingly.

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

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

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

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

Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

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

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

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

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

Dated: October 17, 2018

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Nathan A. Schultz
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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 and Debtors In Possession.	Lead Case No. 18-20151-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-20171-ER Chapter 11 Cases Hon. Judge Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ 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.	**OBJECTION TO SWINERTON BUILDERS' MOTION PURSUANT TO BANKRUPTCY RULE 7052(B) FOR AMENDMENT OF FINDINGS IN FINAL DIP ORDER** **[Related to Docket Nos. 565, 409]**

Verity Health System Of California, Inc. and the above-referenced affiliated debtors (collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases, hereby file this Objection (the "Objection") to *Swinerton Builders' ["Swinerton"] Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superproprity Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (the "Motion"), filed on October 17, 2018 [Docket No. 564] and, in further support of this Objection, state the following:

I.

STATEMENT OF FACTS

1. On August 31, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[1] The cases are currently being jointly administered before the Bankruptcy Court . Since the commencement of this case, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. On August 31, 2018, the Debtors filed the *Emergency Motion 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* [Docket No. 31] (the "DIP Financing Motion").

3. On September 6, 2018, the Court entered an interim order approving the DIP Financing Motion [Docket No. 86] (the "Interim DIP Financing Order").

4. On September 24, 2018, Swinerton filed their objection to the DIP Financing Motion [Docket No. 269] (the "Swinerton Objection"), asserting that they hold an inchoate mechanics lien on the Debtors' real property and arguing that the DIP Financing Motion and

[1] All references to "§" or "section" herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. as amended, unless otherwise noted.

proposed order failed to account for Swinerton's lien and failed to provide Swinerton with adequate protection.

5. On October 3, 2018, the Court held a hearing on the DIP Financing Motion. At that hearing, the Court heard argument from Swinerton's counsel on the Swinerton Objection and overruled the Swinerton Objection on the record.

6. Also on October 3, 2018, the Court issued its tentative ruling approving the DIP Financing Motion (the "Tentative Ruling") [Docket No. 392]. The Tentative Ruling provides that Swinerton's Objection is overruled.

7. On October 4, 2018, the Court entered the Final DIP Financing Order approving the DIP Financing Motion (the "Final DIP Financing Order") [Docket No. 409].

II.

ARGUMENT

A. The Applicable Legal Standard.

Swinerton seeks to take advantage of Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7052(b), which provides that "on a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings - or make additional findings - and amend the judgment accordingly." Bankruptcy Rule 7052(b) incorporates Federal Rule Civil Procedure ("Civil Rule") 52(b). Fed. R. Bank. P. 7052(b). To warrant alteration or amendment of court's decision under either rule, the moving party must show: (a) manifest error of law and fact, or (b) existence of newly discovered evidence which was not available at time of original hearing. *Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner)*, 208 B.R. 69, 72 (B.A.P. 9th Cir.1997), *rev'd on other grounds*, 161 F.3d 1216 (9th Cir. 1998). However, a Civil Rule 52(b) motion "should not be employed ... to relitigate old issues ... or to secure a rehearing on the merits." *Matkovich v. Costco Wholesale Corp.*, 2017 WL 6527335, at *2 (C.D. Cal. Aug. 24, 2017) (citing *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986)); *see also U.S. Fidelity & Guar. Co. v. Lee Investments LLC*, 2009 WL 3162236, at *1 (E.D. Cal. Sept. 29, 2009) ("Rule [52(b)] is not intended to serve as a vehicle for rehearing."). "The decision to alter or amend findings is committed to the sound discretion of the trial judge." *Id.* (citing *Gutierrez v. Wells*

Fargo Bank, N.A., 2010 WL 4072240, at *5 (N.D. Cal. Oct. 18, 2010)).[2] A party may not use a Civil Rule 52(b) motion to introduce any new facts or legal theories that were available to them at trial, much less re-litigate facts and legal theories that have previously been rejected by the court. *Sentinel Offender Services, LLC v. G4S Secure Solutions (USA) Inc.*, 2017 WL 3485781, at *1 (C.D. Cal. Mar. 22, 2017) (citing *ATS Products Inc. v. Ghiorso*, No. C10–4880 BZ, 2012 WL 1067547, at *1 (N.D. Cal. Mar. 28, 2012).

The court's findings of fact and conclusions of law are entitled to a "presumption of validity", and the party seeking to amend those findings bears the "heavy burden of establishing a sufficiently serious factual or legal error that would warrant such." *Antoninetti v. Chipotle Mexican Grill, Inc.*, 2008 WL 1805828, at *2 (S.D. Cal. Apr. 21, 2008) (*citing Purer & Co. v. Aktiebolaget Addo*, 410 F.2d 871, 878 (9th Cir. 1969). Furthermore, a motion to amend a court's factual and legal findings is properly denied where the proposed additional facts would not affect the outcome of the case or are immaterial to the court's conclusions. *Id.* (citing *Weyerhaeuser Co. v. Atropos Island*, 777 F.2d 1344, 1352 (9th Cir. 1985)); *see also Mendez v. County of Los Angeles*, 2013 WL 12162132, at *9 (C.D. Cal. Nov. 20, 2013).

B. Swinerton's Motion to Amend the Final DIP Order Should Be Denied.

There is no dispute that the Swinerton Objection was squarely overruled by the Court. There is also no dispute that the Court deliberately modified the Debtors' submitted order prior to its entry on the docket. Swinerton nonetheless alleges that this Court erroneously failed to amend the proposed Final DIP Financing Order to provide them with the same negotiated adequate protection and superpriority claims package granted to the Prepetition Secured Creditors (as such term is defined in the Final DIP Order). Swinerton's assertion of error by the Court contends that certain language in the Court's Tentative Ruling implies that the modifications to the Final DIP

[2] Swinerton has not made a motion for reconsideration under Bankruptcy Rule 7059, but if it had, such motion also should be denied. A bankruptcy court should deny a motion for reconsideration unless the movant can make a showing of one of the enumerated grounds for relief that justify reconsideration including (i) an intervening change in controlling law, (ii) the availability of new evidence or (iii) the need to correct a clear error of law or manifest injustice. *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364, 369 (9th Cir.1989). Swinerton did not raise any of the *Pyramid* factors in its Motion.

Financing Order identified in the Swinerton Motion are necessary to conform the Final DIP Financing Order to the Tentative Ruling. As such, Swinerton argues that the court should "remedy this omission" by amending the Final DIP Financing Order accordingly.

The Swinerton assertion of implied error has not demonstrated either a manifest error of law and fact, or the existence of newly discovered evidence which was not available at time of original hearing. Swinerton has offered no new facts or law to support their interpretation of the Court's Tentative Ruling or to support its request to amend the findings of fact in the Final Financing DIP Order under Bankruptcy Rule 7052(b).[3] Further, Swinerton has presented no evidence to suggest that the facts fail to support the Court's ruling in the Tentative Ruling and the Final DIP Financing Order. As such, Swinerton's Motion should be denied.

C. The Court's Tentative Ruling is Clear.

The Court's Tentative Ruling provided that: "There is no reason why Swinerton's lien should not be primed in the same manner as the liens of other secured creditors." Tentative Ruling, at 12. Swinerton mistakenly has interpreted this to mean that since they are being primed "in the same manner as the liens of the other secured creditors" they should also therefore be entitled to the exact same negotiated protections as the identified Prepetition Secured Creditors. But this proffered interpretation of the Final DIP Financing Order ignores the differences among the secured creditor groups and between the Prepetition Secured Creditors and other secured creditors. For example, Swinerton ignores that the Special Assessment secured creditors do not have the same rights as the Prepetition Secured Creditors. Further, Swinerton fails to note that McKesson has replacement liens only in Verity Medical Foundation assets, while the MOB Financing Parties, the 2015 and 2017 Notes Trustee, the 2005 Bond Trustee and the Master Trustee have replacement liens in multiple Debtors. Any suggestion that all secured creditors except Swinerton obtained the same negotiated protections beyond the "equity cushion" in

[3] Local Bankruptcy Rule ("LBR") 9013-1(c)(3)(A) provides that "There must be served and filed with the motion and as a part thereof: (A) Duly authenticated copies of all photographs and documentary evidence that the moving party intends to submit in support of the motion, in addition to the declarations required or permitted by FRBP 9006(d)." LBR 9013-1(i) provides "Factual contentions involved in any motion, opposition or other response to a motion, or reply, must be presented, heard, and determined upon declarations and other written evidence."

manifestly incorrect. Thus Swinerton's request for this Court to amend the Final DIP Financing Order to provide them with both adequate protection and a superpriority claim, similar to those provided to the Debtors' Prepetition Secured Creditors, is a post record closing for relief the Debtors did not offer to Swinerton, and the Court did not "mistakenly" fail to extend to Swinerton.

The source of Swinerton's error appears to be that it has misconstrued the Court's Tentative Ruling. The full relevant text of the Court's Tentative Ruling provides:

> The financing package negotiated by the Debtor primes the liens of all secured creditors, not just Swinerton's. There is no reason why Swinerton's lien should not be primed in the same manner as the liens of other secured creditors. Swinerton's objection is overruled.

When, read in context, it is clear that the negotiated "package" is a reference to the DIP Lender's "financing" package, and that Court is concluding that Swinerton is no more or less exempt from having its lien primed by the Debtors' postpetition borrowing and DIP Liens than any other prepetition creditor in these Cases. Attempting to read into the Tentative Ruling a suggestion that the Court was also intending to grant Swinerton the same protections as it granted to the Prepetition Secured Creditors is simply incorrect.

D. The Court Did Not Accidentally Fail to Amend the Final DIP Financing Order.

Had the Court intended to grant Swinerton those protections, it could have done so in one of two ways. First, the Court could have required that the Debtors add a reference to Swinerton in the portions of the Final DIP Financing Order that grant adequate protection and superpriority claims to the Prepetition Secured Creditors. Second, the Court could have made the changes on its own accord, as the Court did ultimately make modifications to the proposed Final DIP Financing Order, as submitted by the Debtors. But the Court did neither. As such, the Court's Tentative Ruling meant that Swinerton's Objection was overruled because the Court agreed that Swinerton is adequately protected through the equity cushion that the Debtors' described, and provided evidence of, in their Omnibus Reply to the Objections to the DIP Motion [Docket No. 355] (the "DIP Reply") and in the Declarations of Anita Chou and James Moloney in support

thereof [Docket Nos. 309-2 and 309-3]. The Debtors believe that Swinerton is entitled to nothing more than that equity cushion.

Further, Swinerton does not argue here that the record on adequate protection that they have, through the Debtors' well established equity cushion, is insufficient. Swinerton did not raise arguments on the adequacy of the equity cushion at the final hearing on the DIP Financing Motion, and they do not now challenge the Court's findings on the record, only the terms of the Final DIP Financing Order.

Nonetheless, Debtors reiterate here what they successfully argued in their DIP Financing Reply: that there is "ample value in the Debtors' estates to ensure payment of any properly noticed, filed and recorded mechanics' lien, including if applicable, one filed by Swinerton…. Should the Debtors determine to cease operating at Seton, or any other hospital facility, it would do so to avoid further losses and to preserve the value of the real estate on which Swinerton purports to have a lien thereby decreasing the risk of any diminution of value." DIP Reply,at 3-4. The Debtors continue to believe that "no additional adequate protection, beyond the equity cushion, is required to preserve the junior lien position of Swinerton vis a vis the unsecured creditors of Seton." DIP Reply, at 5. Since Swinerton has not established any grounds or provided any evidence on which the Court should amend the Final DIP Financing Order, the Swinerton Motion should be denied.

Should anything change with respect to the Debtors' established equity cushion, Swinerton can, at that time, return to the Court to renew its request for adequate protection. But as of now, the Debtors continue to believe, as set forth in the Moloney Declaration, that there is an ample equity cushion available to creditors, like Swinerton, in this Case.

E. Swinerton's Situation is Distinguishable from the Prepetition Secured Creditors.

As demonstrated above, there are differences between secured creditors with respect to adequate protection. In addition, the Debtors' relationship with the Prepetition Secured Creditors is different from the Debtors' relationship with Swinerton in that the Prepetition Secured Creditors have authorized the use of their cash collateral, for the benefit of the Debtors' estates and creditors. The Debtors needed access to that cash collateral in order to effectuate an orderly

sale of its assets, which benefits all creditors, including Swinerton. As such, the Prepetition Secured Creditors, whose liens are senior to that of Swinerton, are entitled to additional adequate protection per §§ 364(d)(1) and 361. Swinerton, on the other hand, is a purported mechanics' lienholder who alleges to hold a lien on certain of the Debtors' real property. Swinerton's lien is subordinate to those of the 2005 Bonds and the 2015 and 2017 Notes, who are among the Prepetition Secured Creditors, as the Mortgages held by the Master Trustee were recorded before the commencement of work. *See* Docket No. 355, Exhibit 2. Swinerton's Motion does not challenge any of these facts and since Swinerton's status vis- à -vis the Debtors is not the same as that of the Prepetition Secured Creditors, the disparate treatment here is justifiable.

III.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that the Court: (i) deny the Motion; (ii), alternatively, set the Motion for hearing on December 19, 2018, at 10:00 a.m.; and (iii) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: October 31, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By */s/ Tania M. Moyron*
Tania M. Moyron

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TAB 10

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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 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
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☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

NOTICE OF HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]; AND

REPLY OF SWINERTON BUILDER IN SUPPORT OF MOTION [RELATED TO DOCKET NOS. 732, 564, 409, 392, 355, 309 AND 269]

Hearing:
Date: December 4, 2018
Time: 10:00 a.m.

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to Local Rule 9013-1(o)(4), the *Motion Pursuant to Bankruptcy Rule 7052(b) For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral; (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (Doc. No. 564) (the "Motion") is hereby being set for hearing on **December 4, 2018 at 10:00 a.m. at the United States Bankruptcy Court, Courtroom 1568, 255 E. Temple Street, Los Angeles, California**.

Dated: November 13, 2018

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Nathan A. Schultz
Robert N. Amkraut (Admitted Pro Hac Vice)
Nathan A. Schultz
Attorneys for Swinerton Builders

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REPLY

Swinerton Builders ("Swinerton"), a creditor secured by a $1.2 million mechanic's lien on the Seton Medical Center real property, submits this Reply in support of the Motion.

As stated in the Motion, Swinerton requests two amendments to the Final Order (Doc. No. 409) clarifying the Final Order so that it conforms to the Court's ruling. Specifically, Swinerton requests the Court clarify (1) that Swinerton's lien is adequately protected by an equity cushion, something that even Debtors accept, and (2) that if the adequate protection ultimately proves inadequate, Swinerton is entitled to a superpriority claim consistent with other prepetition secured creditors. For the Court's convenience, the two specific proposed amendments provided in Swinerton's Motion are reprinted at the end of this Reply.

A. Bankruptcy Rule 7052(b) is Appropriate to Clarify the Court's Order.

The Motion seeks to clarify the Final Order as it relates to Swinerton. As such, it is squarely within the scope and purpose of Bankruptcy Rule 7052(b), a rule that allows a court to clarify or amend findings or make additional findings. *In re King*, 2017 WL 1944123, at 2

(Bankr. C.D. Cal 2017) ("A motion to amend under F.R.Civ.P 52(b) may be used 'to clarify essential findings or conclusions, correct errors of law or fact, or to present newly discovered evidence.'") (*quoting* Collier on Bankruptcy ¶ 7052.03 (16th ed. 2015) (further cites omitted); *In re Charron*, 541 B.R. 822, 825 (Bankr. W.D. Mich. 2015) ("The main purpose of Rule 52(b) is 'to create a record upon which the appellate court may obtain the necessary understanding of the issues to be determined on appeal.'" (*citing In re St. Marie Development Corp. of Montana, Inc.*, 334 B.R. 663, 675 n. 3 (Bankr. D. Mont. 2005) and 9C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure § 2582* (3d ed. 2015); *In re Smith Corona Corporation, SCM* 212 B.R. 59, 60 (Bankr. D. Del. 1997) ("The purpose of a motion pursuant to Rule 52(b) is to correct findings of fact and legal conclusions where the trial court deems it appropriate." (*citing United States Gypsum Co. v. Schiavo Bros. Inc.,* 668 F.2d 172, 180 n. 9 (3d Cir. 1981)).

As shown in Swinerton's Motion and as further explained below, Swinerton seeks clarification of the Final Order. A motion pursuant to Bankruptcy Rule 7052(b) is the appropriate vehicle for requesting clarifying additional findings.

B. <u>The Court Should Clarify the Final Order to Conform with its Ruling Regarding Swinerton to State that Swinerton's Lien is Adequately Protected by an Equity Cushion and that Swinerton is Entitled to a Superpriority Claim Similar to Other Secured Creditors</u>.

On September 24, 2018, Swinerton filed the Limited Objection of Swinerton Builders to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc. (Doc. 269). In the Limited Objection, Swinerton objected that the Debtors' motion and proposed order failed to provide adequate protection of Swinerton's mechanic's lien as required by Bankruptcy Code 364(d)(1)(B). The Court overruled Swinerton's objection. In reaching its decision, the Court found:

> The approximate realizable value of the Debtors' assets, in excess of prepetition secured liabilities, is between $150 and $225 million *Id.* That is, secured creditors are protected by an equity cushion of between 26% to 40%. It is well established that an equity cushion of 20% or more constitutes adequate protection. *See, e.g., In re James River Associates,* 148 B.R. 790, 796 (E.D. Va. 1992).

Tentative Ruling at 9 (Doc. No. 392), incorporated into the Final Order (Doc. No. 409) at 6. With regard to adequate protection of secured claims, the Court said:

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> In addition to adequate protection through the equity cushion, the replacement liens and superpriority claims provide the secured creditors additional adequate protection.

Tentative Ruling at 9 (Doc. 392).

With regard to Swinerton's lien, the Court ruled: "There is no reason why Swinerton's lien should not be primed in the same manner as the liens of the other secured creditors." Tentative Ruling at 12.

The Final Order, however, alters the Tentative Ruling, insofar as the Final Order does not prime Swinerton's lien "in the same manner as the liens of the other secured creditors." The Final Order provides the other secured creditors with adequate protection in the forms of: (1) an equity cushion; (2) superpriority claims; and (3) replacement liens. The Final Order is silent with regard to adequate protection of Swinerton's lien.

Swinerton requests that the Court remedy this omission by clarifying the Final Order to provide Swinerton's lien with adequate protection similar to the adequate protection provided to the liens of other secured creditors. Specifically, Swinerton requests that the Final Order be amended by adding provisions stating that: (1) Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion; and (2) to the extent of the diminution in value of Swinerton's interest in the Seton Medical Center property, Swinerton shall be granted an allowed superpriority administrative expense claim (subject to the same limitations as the superpriority administrative expense claims granted to the other Prepetition Secured Creditors in the Final Order).[1]

It should not be controversial to amend the Final Order to add a Finding that Swinerton's lien on the Seton Medical Center property is protected by an equity cushion. Even the Debtors acknowledge that:

> Swinerton is adequately protected through the equity cushion that the Debtors' described, and provided evidence of, in their Omnibus Reply to the Objections to the DIP Motion [Docket No. 355] and in the Declarations of Anita Chou and James Moloney in support thereof [Docket Nos. 309-2 and 309-3].

[1] Because Swinerton's collateral is real property--not inventory or accounts receivable which are consumed and replaced--Swinerton is not seeking the replacement liens given to the other secured creditors.

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Objection to Swinerton Builders' Motion (Doc. 732) at 5.

Although the Debtors' concede that Swinerton is adequately protected by an equity cushion, the Debtors persist in their objection to amending the Final Order to provide adequate protection similar to the adequate protection provided to the liens of other secured creditors.[2] If the equity cushion should prove to be inadequate, the Debtors would deprive Swinerton of the remedy that the Bankruptcy Code provides in section 507(b). The Debtors confidently assure the Court that there is "ample value in the Debtors' estates to ensure payment of any properly noticed, filed and recorded mechanics' lien, including if applicable, one filed by Swinerton." Debtors' Objection to Swinerton Builders' Motion p. 6 (Doc. 732) (*quoting* Debtors' Omnibus Reply to the Objections to the DIP Motion, at 3-4 (Doc. 355). If the Debtors' assurance is correct, Swinerton will have no need for a section 507(b) superpriority claim.

But the Debtors might be wrong. If the equity cushion proves inadequate, then consistent with the Final Order, Swinerton should be entitled to a superpriority claim. This also, of course, follows Bankruptcy Code section 507(b) which provides a remedy when adequate protection is insufficient. That remedy is a superpriority claim. The Court, having stated that Swinerton is adequately protected, should not deprive Swinerton of the remedy provided by Congress in section 507(b).

C. Conclusion

Amending the Final Order to add the two requested provisions would effectuate the Tentative Ruling by priming Swinerton's lien "in the same manner as the liens of the other secured creditors." The requested amendments would also bring the Final Order into compliance with Bankruptcy Code section 364(d)(1)(B), which states that the court may authorize post-petition borrowing secured by a priming lien "only if" there is adequate protection of the subordinated lien.

For the Court's convenience, the two requested amendments from Swinerton's BR 7052(b) Motion are reprinted below:

[2] Notably, no creditors, including the Secured Creditors (as defined in the Final Order) and the Unsecured Creditors Committee, objected to the Motion.

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

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

WHEREFORE, Swinerton respectfully requests that the Court overrule the Debtors' Objection and grant the Motion.

Dated: November 13, 2018

Respectfully submitted,

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By: /s/ Nathan A. Schultz
Robert N. Amkraut (Admitted Pro Hac Vice)
Nathan A. Schultz
Attorneys for Swinerton Builders

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 345 California Street, Suite 2200, San Francisco, CA 94014-2734

A true and correct copy of the foregoing document entitled (*specify*): _____

NOTICE OF HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING [...]; AND REPLY OF SWINERTON BUILDER IN SUPPORT OF MOTION

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 13, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) November 13, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/13/2018	Nathan A. Schultz	/s/ Nathan A. Schultz
Date	*Printed Name*	*Signature*

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

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TAB 11

[Docket Entry Only]

TAB 12

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Attorneys for Swinerton Builders

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 Lynnwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED TO DOCKET NOS. 812, 732, 564, 409, 392, 355, 309 AND 269]

This Stipulation is entered between Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), in the above-referenced jointly administered Chapter 11 bankruptcy cases, on the one hand, and Swinerton Builders ("Swinerton"), on the other, with respect to the following:

1. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

2. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order ... (Doc. 409)* [Doc. 564] (the "Swinerton Motion").

3. On October 31, 2018, the debtors filed their Objection [Doc. 732] to the Swinerton Motion.

4. On November 13, 2018, Swinerton filed a Notice of Hearing [Doc. 812] setting the Swinerton Motion for hearing on December 4, 2018 at 10:00 a.m.

5. On November 28, 2018, the Court entered an order continuing the hearing on the Swinerton Motion to December 5, 2018 at 10:00 a.m., a copy of which order is attached hereto as Exhibit 1.

6. Based upon the pending sale of the facility that is the subject of the Swinerton Claim, the Debtors and Swinerton have determined that it would be desirable to further continue the hearing on the Swinerton Motion to January 23, 2019 at 10:00 a.m.

NOW, THEREFORE, all of the parties to this Stipulation hereby stipulate and agree as follows:

A. The hearing on the Swinerton Motion shall be continued to January 23, 2019 at 10:00 a.m.

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1001 4th Ave. Suite 4500
Seattle, WA 98154

Verity Health System of California, Inc., et al.

By: _____
Samuel R. Maizel
Tania M. Moyron
Claude D. Montgomery *(admitted Pro Hac Vice)*
Dentons US LLP
Counsel to Debtors and Debtors In Possession

Swinerton Builders

By: /s/ Nathan A. Schultz
Nathan A. Schultz
Robert N. Amkraut *(admitted Pro Hac Vice)*
Fox Rothschild LLP
Counsel to Swinerton Builders

Fox Rothschild LLP
1001 4th Ave. Suite 4500
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EXHIBIT 1

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 Verity Health System of California, Inc.
☐ 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
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☐ Affects St. Francis Medical Center of Lynwood Medical 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
Chapter: 11

ORDER SETTING DECEMBER 5, 2018 AS CONSOLIDATED HEARING DATE FOR MATTERS INITIALLY NOTICED FOR DECEMBER 4 AND 5, 2018

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.

CONSOLIDATED HEARING DATE:

Date: December 5, 2018

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Case 2:18-bk-20151-ER Doc 388 Filed 11/28/18 Entered 11/28/18 14:01:01 Desc
Main Document Page 2 of 2

Good cause appearing, the Court HEREBY ORDERS as follows:

1) The hearing on the *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 564] (the "Rule 7052(b) Motion"), set for December 4, 2018, at 10:00 a.m., is CONTINUED to **December 5, 2018, at 10:00 a.m.**, to take place concurrently with the hearing on the *Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Deposits and Overpayments* [Doc. No. 815].
2) This Order shall not affect the briefing deadlines on the Rule 7052(b) Motion.
3) By no later than **November 30, 2018**, Swinerton Builders shall serve this Order upon interested parties, and shall file a proof of service so indicating.

IT IS SO ORDERED.

###

Date: November 28, 2018

Ernest M. Robles
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 345 California Street, Suite 2200, San Francisco, CA 94014-2734

A true and correct copy of the foregoing document entitled (*specify*): _____
STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]
_____
will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) December 3, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) December 3, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/3/2018	Nathan A. Schultz	/s/ Nathan A. Schultz
Date	*Printed Name*	*Signature*

1. Served By the Court via Notice of Electronic Filing (NEF):

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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 and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

SECOND STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED TO DOCKET NOS. 974, 968, 732, 564, 409, 392, 355, 309 AND 269]

This Stipulation is entered between Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), in the above-referenced jointly administered Chapter 11 bankruptcy cases, on the one hand, and Swinerton Builders ("Swinerton"), on the other, with respect to the following:

1. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

2. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order … (Doc. 409)* [Doc. 564] (the "Swinerton Motion").

3. On October 31, 2018, the debtors filed their Objection [Doc. 732] to the Swinerton Motion.

4. On November 13, 2018, Swinerton filed a Notice of Hearing [Doc. 812] setting the Swinerton Motion for hearing on December 4, 2018 at 10:00 a.m.

5. On November 28, 2018, the Court entered an order continuing the hearing on the Swinerton Motion to December 5, 2018 at 10:00 a.m.

6. On December 3, 2018, in light of an expected sale of the facility that is subject to Swinerton's Lien, the Debtors and Swinerton filed a Stipulation to Continue Hearing [Doc. 968].

7. On December 4, 2018, the Court entered an Order Approving Stipulation to Continue Hearing [Doc. 974]

8. Debtors have informed Swinerton that they expect to file pleadings in the coming days relating to the sale of the facility that is subject to Swinerton's lien. Based upon the prospect of this pending sale, the Debtors and Swinerton have determined that it would be desirable to further continue the hearing on the Swinerton Motion to February 20, 2019 at 10:00 a.m.

NOW, THEREFORE, all of the parties to this Stipulation hereby stipulate and agree as follows:

A. The hearing on the Swinerton Motion shall be continued to February 20, 2019 at 10:00 a.m.

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Verity Health System of California, Inc., et al.

By: _____
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Tania M. Moyron
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Swinerton Builders

By: /s/ Nathan A. Schultz
Nathan A. Schultz
Robert N. Amkraut *(admitted Pro Hac Vice)*
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Counsel to Swinerton Builders

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 345 California Street, Suite 2200, San Francisco, CA 94014-2734

A true and correct copy of the foregoing document entitled (*specify*): _____

SECOND STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

_____

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) January 17, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) January 17, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

1/17/2019	Nathan A. Schultz	/s/ Nathan A. Schultz
Date	*Printed Name*	*Signature*

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

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TAB 14

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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*., Debtor(s).	CASE NO.: 2:18-bk-20151-ER ADVERSARY NO.: (*if applicable*) CHAPTER: 11
Plaintiff(s) (*if applicable*). vs.	**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*.

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff
☐ Defendant
☐ Other (*describe*):

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor
☐ Creditor
☐ Trustee
■ Other (*describe*): Official Committee of Unsecured Creditors

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

   Paragraphs 2(d), 2(h), 5(d), 5(f), 19, and 28(e) of the *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") [Docket No. 409] solely with respect to the Prepetition Secured Creditors (as defined in the Final DIP Order).

2. The date the judgment, order, or decree was entered: 10/4/2018

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Debtors Verity Health System of California, Inc., et al.

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2. Party:

   Attorney:

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

James E. Behrens

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Date: 11/29/2018

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

2029 Century Park E, 33rd Floor, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): ***NOTICE OF APPEAL AND STATEMENT OF ELECTION*** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 29, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) November 29, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) November 29, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 29, 2018	Ricky Windom	/s/ Ricky Windom
Date	*Printed Name*	*Signature*

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TAB 15

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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 and Debtors In Possession.

Affects:

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

Debtors and Debtors In Possession.

Lead Case No. 18-20151-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. Ernest M. Robles

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO SECOND STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […] [DKT. 1280]

[RELATED TO DOCKET NOS. 1280, 974, 968, 732, 564, 409, 392, 355, 309, AND 269]

The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al.* (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby files this objection (the "Objection") to the *Second Stipulation to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]* [Docket No. 1280] (the "Second Stipulation") filed by Swinerton Builders ("Swinerton") on January 17, 2019 and entered into between Swinerton, Verity Health System of California, Inc. ("VHS"), and the Debtors, and in support thereof represents as follows:

FACTUAL BACKGROUND

1. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court").

2. On September 4, 2018, the Debtors filed their *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108; Memorandum of Points and Authorities in Support Thereof* [Docket No. 31] (the "DIP Motion").

3. On September 24, 2018, Swinerton filed its *Limited Objection of Swinerton Builders to Motion of the Debtors for Final Orders Authorizing the Debtors to Obtain Post Petition Financing* [Docket No. 269] (the "Swinerton DIP Objection"), which requested, in relevant part, adequate protection for mechanics liens that Swinerton contends accrued in its favor for work done for the Debtors and attached to Debtor assets at Seton Medical Center ("Seton Medical Center" or "Seton").

4. On September 27, 2019, the Committee filed its *Limited Objection to Debtors' Motion to Obtain Postpetition Financing and Related Relief* [Docket No. 316] (the "Committee DIP Objection"), which raised, among other issues, the DIP Motion's proposed waiver of protections available to the Debtors and their estates under sections 506(c) and 552(b) of the Bankruptcy Code.

5. On October 4, 2018, the Court overruled, among others, the Swinerton DIP Objection and the Committee DIP Objection, and entered the *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* [Docket No. 409] (the "Final DIP Order").

6. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order … (Doc. 409)* [Docket No. 564] (the "Swinerton Rule 7052(b) Motion").

7. On October 31, 2018, the Debtors filed their *Objection to Swinerton Builders' Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final DIP Order* [Docket No. 732] (the "Debtors' Rule 7052(b) Objection").

8. On November 13, 2018, Swinerton filed a *Notice of Hearing On Motion For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing; and Reply of Swinerton Builder in Support of Motion [Related to Docket Nos. 732, 564, 409, 392, 355, 309 and 269]* [Docket No. 812], setting the Swinerton Rule 7052(b) Motion for hearing on December 4, 2018 at 10:00 a.m.

9. On November 28, 2018, the Court entered its *Order Continuing the Hearing on the Swinerton Motion* to December 5, 2018 at 10:00 a.m.

10. On November 29, 2018—after waiting almost two months for the Swinerton 7052 Motion to be resolved—the Committee filed its *Notice of Appeal and Statement of Election*, seeking to commence an appeal (the "DIP Appeal") with respect to the Final DIP Order [Docket No. 932].

11. On December 3, 2018, the Debtors and Swinerton filed a *Stipulation to Continue Hearing* [Docket No. 968], which proposed to adjourn the hearing on the Swinerton Rule 7052(b) Motion to January 23, 2019.

12. On December 4, 2018, the Court entered an *Order Approving Stipulation to Continue Hearing* [Docket No. 974].

13. On December 14, 2018, the Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") issued an Order suspending briefing as to the DIP Appeal because, "[e]ven though a notice of appeal was filed on November 29, 2018, the bankruptcy court has jurisdiction to hear the timely tolling motion, and the notice of appeal is held in abeyance until the motion is resolved." [BAP Docket No. 4] (the "BAP Suspension Order").

14. On December 19, 2018, the Debtors filed their *Appellee Verity Health System Of California, Inc.'s Statement of Election to Transfer Appeal to the United States District Court for the Central District Of California* [BAP Docket No. 3] (the "Debtor Statement of Election"), which resulted in the transfer of the DIP Appeal to the United States District Court for the Central District of California (the "District Court") and its assignment to Judge R. Gary Klausner [BAP Docket No. 5].

15. The continued pendency of the Swinerton Rule 7052(b) Motion has impeded the perfection and prosecution of the DIP Appeal because Bankruptcy 8002(b) provides, in relevant part, that (i) "[i]f a party timely files in the bankruptcy court [a motion to amend or make additional findings under Rule 7052] and does so within the time allowed by these rules, the time to file an

appeal runs for all parties from the entry of the order disposing of [such] motion;" and (ii) "[i]f a party files a notice of appeal after the court announces or enters a judgment, order, or decree—but before it disposes of any motion listed in subdivision (b)(1)—the notice becomes effective when the order disposing of the last such remaining motion is entered." Fed. R. Bankr. P. 8002(b).

OBJECTION

16. The Committee objects to entry of an Order approving the Second Stipulation because the further adjournment the Second Stipulation will continue to prejudice the Committee's right to pursue an expeditious appeal from the Final DIP Order. The Committee informed the Debtors shortly after entry of the Final DIP Order that it intended to pursue an appeal of that Order on a number of the grounds set forth in the Committee DIP Objection. (Declaration of Dennis C. O'Donnell ("O'Donnell Decl.") ¶ 3.) The Committee has been prepared to pursue the DIP Appeal ever since, but it has been hindered from doing so by the continued pendency of the Swinerton Rule 7052(a) Motion. (*Id*.)

17. As mandated by Bankruptcy Rule 8002(a) and evidenced by the BAP Suspension Order, neither the BAP nor the District Court (to which the DIP Appeal has now been transferred at the request of the Debtors) can assume full jurisdiction overthe DIP Appeal until disposition by the Bankruptcy Court of the Swinerton Rule 7052(b) Motion. That Motion, which has been briefed by both parties, seeks straightforward and readily addressed relief—adequate protection for a secured claim—that was already denied once by the Court in the Final Dip Order. This attempted proverbial second bite at the apple by Swinerton could have been decided by the Court or consensually resolved by the Debtors months ago.

18. Instead the Debtors, with the apparent cooperation of Swinerton, have deferred resolution of the Swinerton Rule 7052(b) Motion repeatedly for reasons that have never been clearly articulated. (O'Donnell Decl. ¶ 5.) The rationale proffered this time is that "the

Debtors have informed Swinerton that they expect to file pleadings in the coming days relating to the sale of the facility [*i.e.*, Seton Medical Center] that is subject to Swinerton's lien." (Stipulation ¶ 8.) Last time, the rationale was similar and made reference to "the pending sale of the facility that is the subject of the Swinerton Claim." (First Stipulation ¶ 6.)

19. However, on neither occasion did the Debtors seek to explain how the sale of Seton Medical Center could have any relevant impact on the adequate protection for which Swinerton argued in the Swinerton DIP Objection and continues to seek in the Swinerton Rule 7052(b) Motion. (O'Donnell Decl. ¶ 6.) As with most section 363 sales, Swinerton's secured claims (to the extent deemed valid) and any entitlement to adequate protection flowing from such claims will simply attach to the proceeds of the Seton sale. (*See, e.g.*, Santa Clara Sale Order ¶ 5.)[1] No more needs to be said or done, so why a further adjournment of the Swinerton Rule 7052(b) Motion should be required is in no way apparent from the Debtors' publicly filed statements on this issue.

20. The Committee is concerned that the pending Swinerton Rule 7052(b) Motion is now being used tactically to delay prosecution of the DIP Appeal as long as possible in order to keep the section 506(c) and 552(b) issues that the Committee raised in the Committee DIP Objection and now seeks to address in the DIP Appeal from being relevant to discussions with respect to a liquidating plan for the Debtors in the next several months. (O'Donnell Decl. ¶ 7.)

21. This Court should not permit the use of Bankruptcy Rule 8002(b) in this way, whether it is intended or not. The statutory "stay" conferred by Bankruptcy Rule 8002(b) was intended to permit parties in interest to fully and fairly litigate, and the bankruptcy court to finally

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[1] *Order (A) Authorizing the Sale of Certain of the Debtors' Assets To Santa Clara County Free and Clear of Liens, Claims, Encumbrances, And Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* ¶ 5 ("Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sales Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent, effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing.")

determine, all matters related to key chapter 11 issues before these issues are ceded to appellate courts for further review. *See* Fed. R. Bankr. P. 8002(b); *Miller v. Marriott Int'l, Inc.*, 300 F.3d 1061, 1064 & n.1 (9th Cir. 2002) (noting that appeals court lacked jurisdiction until tolling motions were resolved by the trial court); *In re Central European Industrial Development Co. LLC*, 288 B.R. 572, 575 n.4 (Bankr. N.D. Cal. 2003) (trial court "has jurisdiction to hear a reconsideration motion, and the notice of appeal is held in abeyance until the motion is resolved").

22. The issues in the Swinerton Rule 7052(b) Motion were already addressed by the Court in the Final DIP Order. If Swinerton is unhappy with that result, it is free to appeal just as the Committee has done. There is nothing in the record or the pleadings filed in connection with the Swinerton Rule 7052(b) Motion that justifies months of delay in its resolution. *See Overlook Gardens Properties, LLC v. Orix USA, L.P.*, 2017 WL 4953905, at * 6 (11th Cir., November 6, 2017).("To allow for additional delay while an appeal is litigated prejudices the right of the Plaintiffs to have their claims heard in a "just, speedy, and inexpensive" manner."); *see generally Doescher v. Estelle*, 454 F. Supp. 943, 945 (N.D. Tex. 1978 ("An inordinate and unjustified delay in processing an appeal . . . can frustrate the petitioner's rights and render the appeal ineffective.")

23. Simply stated, the Second Stipulation needlessly seeks to further extend the time for a decision on the Swinerton Rule 7052(b) Motion, which can and should be decided now. The fact that the Swinerton Rule 7052(b) Motion remains undecided impedes the Committee's ability to proceed with DIP Appeal. The Committee is entitled to prompt action on its appeal, as the Final DIP Order was entered over three months ago, on October 4, 2018. It would be procedurally improper and substantively unfair to allow the use of Bankruptcy Rule 8002(b) in this way to impede the Committee's expeditious pursuit of the DIP Appeal and, thus, frustrate its efforts to fully protect the rights of the estates' unsecured creditors.

WHEREFORE, the Committee respectfully requests that the Court (i) decline to enter an Order approving the Stipulation in its entirety for the reasons set forth herein; (ii) direct that the Swinerton 7052(b) Motion remain on for hearing before the Court on January 23, 2019 or be decided on the first available date on the Court's calendar thereafter; and (iii) grant such other and further relief as may be just and proper.

DATED: January 20, 2019

MILBANK, TWEED, HADLEY & McCLOY

/s/ Gregory A. Bray
GREGORY A. BRAY
MARK SHINDERMAN
JAMES C. BEHRENS

Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

DECLARATION OF DENNIS C. O'DONNELL

I, DENNIS C. O'DONNELL, declare:

1. I am Of Counsel at Milbank Tweed Hadley & McCloy LLP, counsel to the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al.* (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the debtors and debtors-in-possession (the "Debtors").

2. I submit this Declaration in support of the *Official Committee Of Unsecured Creditors' Objection To Second Stipulation To Continue Hearing On Motion For Amendment Of Findings In Finalorder (I) Authorizing Postpetition Financing* (the "Objection") [2] filed by the Committee with respect to the *Second Stipulation to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]* [Docket No. 1280] (the "Second Stipulation") filed by Swinerton Builders ("Swinerton") on January 17, 2019 and entered into between Swinerton, Verity Health System of California, Inc. ("VHS"), and the Debtors.

3. I am over 18 years of age. I have personal knowledge of the facts stated below or have gained knowledge of them from relevant documents and, if called as a witness, I could and would testify competently thereto.

DIP Appeal and Second Swinerton Stipulation

3. The Committee informed the Debtors shortly after entry of the Final DIP Order that it intended to pursue an appeal of that Order on a number of the grounds set forth in the Committee DIP Objection. The Committee has been prepared to pursue the DIP Appeal ever since, but it has been hindered from doing so by the continued pendency of the Swinerton Rule 7052(a) Motion.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Objection.

4. As mandated by Bankruptcy Rule 8002(a) and evidenced by the BAP Suspension Order, neither the BAP nor the District Court (to which the DIP Appeal has now been transferred) can assume full jurisdiction over, or permit briefing and argument to proceed as to, the DIP Appeal until disposition by the Bankruptcy Court of the Swinerton Rule 7052(b) Motion. That Motion seeks straightforward and readily addressed relief—adequate protection for a secured claim—that was already denied once by the Court in the Final Dip Order. This attempted proverbial second bite at the apple by Swinerton could have been decided by the Court or consensually resolved by the Debtors months ago.

5. It has not been, and the Debtors, with the apparent cooperation of Swinerton, have deferred resolution of the Swinerton Rule 7052(b) Motion repeatedly for reasons that have never been clearly articulated. The rationale proffered this time is that "the Debtors have informed Swinerton that they expect to file pleadings in the coming days relating to the sale of the facility [*i.e.*, Seton Medical Center] that is subject to Swinerton's lien." (Stipulation ¶ 8.) Last time, the rationale was similar and made reference to "the pending sale of the facility that is the subject of the Swinerton Claim." (First Stipulation ¶ 6.)

6. However, on neither occasion did the Debtors seek to explain how the sale of Seton Medical Center could have any relevant impact on the adequate protection for which Swinerton argued in the Swinerton DIP Objection and continues to seek in the Swinerton Rule 7052(b) Motion. As with most section 363 sales, Swinerton's secured claims (to the extent deemed valid) and any entitlement to adequate protection flowing from such claims will simply attach to the proceeds of the Seton sale. (*See, e.g.*, Santa Clara Sale Order ¶ 5.)[3] No more needs to be said or

[3] *Order (A) Authorizing The Sale Of Certain Of The Debtors' Assets To Santa Clara County Free And Clear Of Liens, Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An Unexpired Lease Related Thereto; And (C) Granting Related Relief* ¶ 5 ("Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sales Proceeds of such Purchased Assets with each such Encumbrance having the same

done, so why a further adjournment of the Swinerton Rule 7052(b) Motion should be required is in no way apparent from the Debtors' publicly filed statements on this issue.

7. The Committee is concerned that the pending Swinerton Rule 7052(b) Motion is now being used tactically to delay prosecution of the DIP Appeal as long as possible in order to keep the section 506(c) and 552(b) issues that the Committee raised in the Committee DIP Objection and now seeks to address in the DIP Appeal from being relevant to discussions with respect to a liquidating plan for the Debtors in the next several months.

Relevant Documents

8. Annexed hereto as Exhibit A is a true and correct copy of the *Limited Objection of Swinerton Builders to Motion of the Debtors for Final Orders Authorizing the Debtors to Obtain Post Petition Financing* [Docket No. 269].

9. Annexed hereto as Exhibit B is a true and correct copy of the *Official Committee's Limited Objection to Debtors' Motion to Obtain Postpetition Financing and Related Relief* [Docket No. 316]

10. Annexed hereto as Exhibit C is a true and correct copy of the *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* [Docket No. 409].

11. Annexed hereto as Exhibit D is a true and correct copy of the *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order … (Doc. 409)* [Docket No. 564].

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force, extent, effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing.")

12. Annexed hereto as Exhibit E is a true and correct copy of the *Objection to Swinerton Builders' Motion Pursuant to Bankruptcy Rule 7052(b)) for Amendment of Findings in Final DIP Order* [Docket No. 732].

13. Annexed hereto as Exhibit F is a true and correct copy of the *Notice of Hearing On Motion For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing […];and Reply of Swinerton Builder in Support of Motion [Related to Docket Nos. 732, 564, 409, 392, 355, 309 and 269]* [Docket No. 812].

14. Annexed hereto as Exhibit G is a true and correct copy of the *Order Continuing the Hearing on the Swinerton Motion* to December 5, 2018 at 10:00 a.m.

15. Annexed hereto as Exhibit H is a true and correct copy of the *Notice of Appeal and Statement of Election* filed by the Committee [Docket No. 932].

16. Annexed hereto as Exhibit I is a true and correct copy of the *Stipulation to Continue Hearing* [Docket No. 968].

17. Annexed hereto as Exhibit J is a true and correct copy of the *Order Approving Stipulation to Continue Hearing* [Docket No. 974].

18. Annexed hereto as Exhibit K is a true and correct copy of the *Order Suspending Briefing Schedule* issued by the Bankruptcy Appellate Panel for the Ninth Circuit [BAP Docket No. 4].

19. Annexed hereto as Exhibit L is a true and correct copy of the *Appellee Verity Health System of California, Inc.'s Statement of Election to Transfer Appeal to the United States District Court for the Central District of California* [BAP Docket No. 3].

20. Annexed hereto as Exhibit M is a true and correct copy of relevant excerpts of the *Order (A) Authorizing the Sale of Certain of the Debtors' Assets To Santa Clara County Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and*

Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief [Docket No. 1153].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of January 2019, at New York, New York.

Dennis C. O'Donnell

EXHIBIT A

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Attorneys for Swinerton Builders

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
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☐ 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
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CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

LIMITED OBJECTION OF SWINERTON BUILDERS TO MOTION OF DEBTORS FOR FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO OBTAIN POST PETITION FINANCING ETC.

Final Hearing:

Date: October 3, 2018
Time: 10:00 a.m. (PST)
Place: United States Bankruptcy Court
Courtroom 1568
255 East Temple Street
Los Angeles, California 90012

Trodella & Lapping LLP
540 Pacific Avenue
San Francisco, CA 94133

Swinerton Builders, a secured creditor in this bankruptcy ("Swinerton"), hereby makes this Limited Objection ("Objection") to Debtors' Motion for a Final Order (A) Authoring 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 ("Motion").

I. INTRODUCTION

The Motion and the interim order ("Order") attached to the Notice of Final Hearing filed with this court on September 17, 2018 (Doc. 201) fail to address Swinerton's mechanics lien and do not provide adequate protection for Swinerton as required by 11 U.S.C. § 364 (d)(1)(B). The Order must be revised to protect Swinerton's lien. Swinerton does not object to the Motion except for the priming of Swinerton's lien.

Swinerton holds an inchoate mechanics lien on real property owned by one of the debtors, Seton Medical Center. Pursuant to 11 U.S.C. §§ 546(b)(1)(A) and 362(b)(3), Swinerton intends to record its lien against this property in the coming weeks as authorized by California law. Once recorded, the lien will relate back and become a lien effective as of the date work first commenced at Seton Medical Center.

The Motion and Order fail to account for Swinerton's lien and would allow a new lien senior to Swinerton. The priming of a lien is not allowed under the Bankruptcy Code unless the lien is adequately protected. The Motion provides no adequate protection for Swinerton's lien.

This Objection is supported by the declaration of Curtis Johnson filed concurrently herewith ("Johnson Dec.").

II. BACKGROUND

On May 15, 2017, Swinerton entered into a contract with Seton Medical Center under which Swinerton was to provide, among other things, seismic improvements for the medical center. Johnson Dec, ¶ 2. In accordance with California law, Swinerton delivered a California Preliminary Notice advising of its right to record a claim of lien. Johnson Dec., ¶ 3. Swinerton

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commenced installation work on or about October 16, 2017. Johnson Dec., ¶ 4. Swinerton continued seismic improvement work until it received a Stop Work Order dated July 18, 2018 from Seton Medical Center. Johnson Dec., ¶ 5. Swinerton proceeded to stop work and demobilize, a process that was completed on or about August 3, 2018. Johnson Dec., ¶ 6. Swinerton has not received a request to resume work. Johnson Dec., ¶ 7. As of the petition date in this bankruptcy, Swinerton was owed $1,206,886.22. Johnson Dec., ¶ 8.

III. ARGUMENT

A. Swinerton Holds a Lien on Property Owned by Debtor Seton Medical Center.

Swinerton holds an inchoate lien on the Seton Medical Center property, with the right under California law and under the Bankruptcy Code to perfect its lien post-petition by recording a claim of lien. California's Mechanics Lien Statute provides that a lien attaches upon commencing work to improve property and has priority over any lien unrecorded as of the commencement of work. Cal. Civ. Code § 8450. To perfect a lien, a direct contractor such as Swinerton must record a claim of lien in the county where the property is located up to ninety days after completion of the work of improvement. Cal. Civ. Code § 8412. Where there is a cessation of labor, completion occurs upon occupation by the owner, or when the cessation of labor has continued for a sixty day period. Cal. Civ. Code §8180. Thus, the ninety day time period for Swinerton to file its claim of lien began on or about August 3, 2018 at the earliest, the date Swinerton demobilized. This ninety day period has not yet expired.

A claim of lien relates back to the date work commenced on the real property. Cal. Civ. Code § 8450. Therefore, when Swinerton records its claim of lien, it will have a lien effective as of the date work commenced. Swinerton's lien will be senior to any liens recorded subsequent to that date.

The Bankruptcy Code specifically allows Swinerton to record its claim of lien post-petition. Bankruptcy Code Section 362(b)(3) provides that the automatic stay does not apply to "any act to perfect, or to maintain or continue the perfection of, an interest in property to the

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extent that the trustee's rights and powers are subject to perfection under section 546(b) of this title . . . ." Bankruptcy Code Section 546 (b)(1)(A) states:

> The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.

Cases interpreting these statutes are clear. Where state law permits a mechanics lien to relate back to a pre-petition date, a creditor asserting a mechanics lien may record a lien post-petition and the lien will relate back to the pre-petition period as provided by state law. *See, e.g., Greenblatt v. Utley*, 240 F.2d 243, 247 (9th Cir. 1956) ("Under California law it is clear that the mechanic's lien, having arisen before bankruptcy, is preserved notwithstanding the advent of bankruptcy.") (*Citing* a prior version of the California statute.); *In re KDR Bldg. Specialties, Inc.,* 76 B.R. 778, 780 (Bankr. S.D. CA 1987) (*quoting* legislative history of Bankruptcy Code Section 546(b): "The purpose of the subsection is to protect, in spite of the surprise intervention of a bankruptcy petition, those whom state law protects by allowing them to perfect their liens or interest as of an effective date that is earlier than the date of perfection.") The leading bankruptcy treatise is also clear and on point:

> Thus, the filing of a bankruptcy petition does not prevent the holder of an interest in property from perfecting its interest under applicable law, if, absent the bankruptcy filing, the interest holder could have perfected its interest against an entity acquiring rights in the property before the date of perfection.

5 Collier on Bankruptcy, ¶ 546(b)(1)(A), (Richard Levin & Henry J. Sommer eds., 16th ed. Rev. 2018).

Under California law and under Bankruptcy Code §§ 546(b)(1)(A) and 362(b)(3), Swinerton holds an inchoate lien, and will hold a perfected lien relating back to the date work commenced, when Swinerton records its claim of lien in the coming days.

B. <u>The Motion and Proposed Order Violate 11 U.S.C. § 364(d)(1)(B).</u>

The Bankruptcy Code requires that lien holders in estate property receive adequate protection before new liens are allowed that would be senior or equal in priority to the existing

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liens. 11 U.S.C. § 364(d)(1)(B). The trustee has the burden of proof to show the adequate protection. 11 U.S.C. § 362(d)(2). A motion for authority to obtain credit must describe the adequate protection that will be provided to pre-petition lien holders. Fed. R. Bankr. P. 4001. Here, Swinerton holds a lien on the Seton Medical Center property. However, the Motion and the Order fail to provide adequate protection to Swinerton. Therefore, the Motion cannot be granted in its current form and the Order must be amended to preserve the priority of Swinerton's lien.

There should be no dispute that the Motion and Order fail to address Swinerton's lien and fail to provide adequate protection. The Bankruptcy Rule 4001 Statement section of the Motion identifies secured creditors, but does not name Swinerton. Motion, p. 16. The Order does not name Swinerton as one of the prepetition secured lenders. Order, p. 6-7. The Motion and Order are also clear that the priming liens proposed for the DIP Lender would be senior to Swinerton. Among other things, the Order provides the DIP Lender with first-priority security interests and liens "on all of the Debtors' property." Order, p. 13.

Because the Order does not provide adequate protection to Swinerton, the Motion must be denied.[1]

IV. REPLY DEADLINE

Pursuant to a Stipulation between Swinerton and the Debtors, any Reply to this Limited Objection is due on or before October 2, 2018 at 12:00 p.m. (Pacific Daylight Time). *See* (Doc. 251).

V. CONCLUSION

The Motion and Order fail to provide adequate protection for Swinerton's lien. Therefore, the Motion must be denied or the Order revised to preserve the priority of Swinerton's mechanics lien on the Seton Medical Center real property. To preserve this priority, the following proviso should be inserted in the Order: "Provided, however, that nothing in this Order shall subordinate Swinerton's mechanics lien on the Seton Medical Center property to any lien(s) or

[1] Swinerton recognizes that Debtors may have failed to address Swinerton's lien because the lien has not yet been recorded even though Seton Medical Center was aware of Swinerton's inchoate lien. In advance of the October 3, 2018 hearing on the Motion, Swinerton anticipates working with the Debtors to address Swinerton's lien.

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claim(s)granted herein, whether to the DIP Lenders, the Prepetition Secured Creditors or otherwise."

WHEREFORE, Swinerton respectfully requests that the Court (i) condition any final approval of the Motion on insertion of the foregoing language into the Order and/or such other adequate protection of Swinerton's interest in the Seton Medical Center real property as is warranted under the Bankruptcy Code, and (ii) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 24, 2018

FOX ROTHSCHILD LLP

By: /s/ Nathan A. Schultz
Nathan A. Schultz
Robert N. Amkraut (Pro Hac Vice To Be Filed)

Attorneys for Swinerton Builders

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 345 California Street, Suite 2200, San Francisco, CA 94014-2734

A true and correct copy of the foregoing document entitled (*specify*): _____

LIMITED OBJECTION OF SWINERTON BUILDERS TO MOTION OF DEBTORS FOR FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO OBTAIN POST PETITION FINANCING ETC.

_____

_____

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 24, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) September 24, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) September 24, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
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.

09/24/2018	Nathan A. Schultz	/s/ Nathan A. Schultz
Date	*Printed Name*	*Signature*

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

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Proposed Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

Affects:

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

Debtors and Debtors In Possession.

Lead Case No. 18-20151
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Ernest M. Robles

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

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The Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby file this limited objection (the "Objection") to the *Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108; Memorandum of Points and Authorities in Support Thereof* [Docket No. 31] (the "DIP Motion"), and in support thereof represents as follows:

I. PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

- Adequate Protection Liens and Claims
  (Final DIP Order ¶¶ 5(a), 5(b), and 5(c).)
- Waiver of Section 506(c)
  (Final DIP Order ¶ 5(e).)
- Waiver of Section 552(b)
  (Final DIP Order ¶ 5(e).)
- Waiver of Marshaling Principles
  (Final DIP Order ¶ 28(e).)
- Asset Sale Process Milestones, Covenants, and Events of Default
  (DIP Credit Agreement ¶ 9.1(q)(x).)
- Secured Creditor Fees and Expenses
  (Final DIP Order ¶ 5(b).)
- Committee Fees and Expenses
  (Final DIP Order ¶, Ex. 2 (Budget).)
- Investigation Period
  (Final DIP Order ¶ 5(d).)
- Investigation Budget
  (Final DIP Order ¶ 5(d).)
- Carve-Out Amount
  (Final DIP Order ¶ 16.)
- Exercise of Remedies
  (Final DIP Order ¶ 24.)
- Reports and Budgets
  (Final DIP Order ¶ 7.)
- Credit Bidding
  (Final DIP Order ¶ 15.)
- Asset Sale Proceeds Allocation
  (Final DIP Order ¶ M.)

II. OBJECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Adequate Protection Liens and Claims

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

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

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

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

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

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

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

- Limiting the scope of the Prepetition Secured Creditor replacement liens and superpriority claims to the Debtors' already encumbered assets or, if extended to unencumbered assets, only in an amount that is capped at the amount of DIP Facility proceeds actually used by each Debtor for its own benefit;

- Mandating, through the invocation of marshaling principles (as set forth *infra* ¶ D), that such adequate protection claims should only be payable out of unencumbered property after the secured lenders exhaust recoveries from their own collateral;

- Ensuring that surcharge under section 506(c) and section 552(b) relief remain available (as set forth *infra* ¶¶ B, C), to the Debtors to permit their estates to recover for the benefit of unsecured creditors some or all of the funds that will be expended under the DIP Facility to support the Debtors' ongoing operations;

- To address any mismatch between collateral value and DIP Facility liability, providing that any Debtor that pays off the DIP Facility claims against another Debtor should be subrogated to the DIP Facility's superpriority claims and liens for the benefit of unsecured creditors ahead of any claim for diminution in value by the Prepetition Secured Creditors;[2] and

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

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

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

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

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

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

[4] *Id.* at 569.

- ***The Adequate Protection Claim Should Be Limited by Debtor Entity***: The Debtors' estates are being jointly administered but have not been substantively consolidated. Consequently, to the extent a secured creditor can assert an adequate protection claim for diminution, it must be asserted solely against the secured creditor's counterparty, not against all of the Debtors.[5]

- ***The Adequate Protection Claim Remains Subordinate To Post-Petition Borrowings:*** Some of the Debtors are supported by funding by other Debtors. To the extent a borrowing Debtor obtains proceeds directly from the DIP Facility and/or a lending Debtor provides post-petition funds to a borrowing Debtor, the claim arising from the post-petition lending must be senior in right to the adequate protection claim. In short, whomever provides post-petition financing (or satisfies that financing) is entitled to a senior claim ahead of the adequate protection claim. That is the import of the Prepetition Secured Creditors' consent to being primed.

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

B. Section 506(c) Waiver

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

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[5] *Id.*

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

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

C. Section 552(b) Waiver

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

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

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

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

D. Waiver of Marshaling Principles

31. The Final DIP Order also contains a waiver, ***applicable solely to the DIP Lender***, of the estates' rights under the marshaling doctrine. (Final DIP Order ¶ 28(e).) The equitable doctrine of marshaling requires a secured creditor first to seek recovery from assets against which other creditors do not have a claim before looking to common assets. Marshaling "prevent[s]

[6] At a minimum, the order should be without prejudice to any party's rights to seek relief under section 552(b) based on any facts that arise after the date of the Final Order. *See, e.g.*, *In re Excel Maritime Carriers, Ltd.*, Case No. 13-23060-RDD, ECF No. 133 at p. 13 (Bankr. S.D.N.Y. Aug. 6, 2013) (containing such a reservation).

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

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

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

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

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

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

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

E. Secured Creditor Fees and Expenses

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

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

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

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

36. The DIP Credit Agreement improperly dictates the parameters of the Debtors' asset sale process. For example, the DIP Credit Agreement includes a requirement that a motion seeking approval of a sale of substantially all of the Debtors' assets must be presented for Court approval ***a mere 60 days after the Petition Date for a price that could be as low as $700 million***,[11] a sum that likely would leave little to no recovery for unsecured creditors. (DIP Credit Agreement ¶ 9.1(q)(x).) Further, if the Court fails to grant the motion within 30 days of filing, an event of default occurs under the DIP Credit Agreement allowing the DIP Lender to exercise full remedies

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[10] The Committee reserves all of its rights and remedies as to the receipt of *any* special benefits, including by way of adequate protection or otherwise, by the Insiders under the Final DIP Order. The Insiders' involvement in the affairs of the Debtors and related non-debtors is suspect, and the Committee fully intends to investigate the conduct, liens and claims of the Insiders and their affiliates, subsidiaries, agents, officers, directors, employees, attorneys, and advisors with respect to the Debtors. To extent that their secured claims are ever determined to be subject to recharacterization or subordination, the Committee will seek invalidation and/or disgorgement of any adequate protection afforded to them.

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

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

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

G. Committee Fees and Expenses

38. The Prepetition Secured Creditors seek to minimize the role of the Committee, as the primary watchdog of the Debtors' estates in these Chapter 11 Cases, by refusing to furnish adequate resources in the Budget to fund its activities. The need for active involvement by the Committee in not-for-profit cases is underscored by the Debtors' fiduciary duty to their "mission," rather than to the stakeholders in these cases. (*See supra*, ¶ 13.) The Budget currently allocates $100,000 per month to Milbank and $50,000 per month to FTI, whereas the Debtors' professionals are allotted a monthly budget in excess of $1 million. Given the critical role the Committee is anticipated to play in these cases, the professional fee amounts budgeted for the Committee will most likely prove inadequate, and they will have to be increased to address the Committee's actual and necessary funding needs. The Committee frankly questions the need for any budget as to the Committee's fees. Such costs will be dictated by the events in the Chapter 11 Cases and the advisors' fees and expenses are subject to court approval regardless.

[12] The DIP Credit Agreement provides that the Court has 30 Days to Approve Asset Sale Bid Procedures. The Events of Default set forth in the Credit Agreement indicate a default will occur the following occurs: "(xvi) the failure of the Bankruptcy Court to approve any Asset Sale Bid Procedure Order or the Consolidated Sale Motion within thirty (30) days of the filing of the applicable Asset Sale Bid Procedure Order or Consolidated Sale Motion, respectively" (DIP Credit Agreement § 9.1(q)(xvi).)

H. Investigation Period

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

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

I. Investigation Budget

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

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

J. Carve-Out

42. In the same vein, the Prepetition Secured Creditors seek to keep the Committee on a short leash by allocating to it a share of the Carve-Out that is far too low ($150,000). (Final DIP Order ¶ 16.) If the default required to trigger access to the Carve-Out were to occur, the Committee would need to be fully armed to preserve what could be saved for the benefit of unsecured creditors. The proposed $150,000 amount would not come close to satisfying the Committee's likely funding needs, so this amount should be adjusted upward to a point where (whatever the aggregate amount of Carve-Out) the ratio as between the Debtors and the Committee is two to one (*e.g.*, at $2,000,000, the Debtors' share would be $1,333,333 and the Committee's share would be $666,667).

[13] This amount is in accordance with other large postpetition financing approved in other districts. *See; In re Great Atl. & Pac. Tea Co.*, No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 11, 2011) [Docket No. 479] (approving, upon committee's objection, increase in cap on committee's investigation budget from $100,000 to $250,000); *In re TerreStar Networks, Inc.*, No. 10-15446 (SHL) (Bankr. S.D.N.Y. Nov. 18, 2010) [Docket No. 181] (approving, upon committee's objection, increase in cap on committee's investigation budget from $200,000 to $250,000); *In re Saint Vincents Catholic Med. Ctr. of New York*, No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 17, 2010) [Docket No. 285] (approving, upon committee's objection, increase in cap on committee's investigation budget from $20,000 to $250,000)

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

K. Exercise of Remedies

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

L. Reports and Budget

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

M. Credit Bidding

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

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

N. Asset Sale Proceeds

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

III. RESERVATION OF RIGHTS

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

IV. CONCLUSION

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

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

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

DATED: September 27, 2018

MILBANK, TWEED, HADLEY & McCLOY

/s/ Gregory A. Bray
GREGORY A. BRAY
MARK SHINDERMAN
JAMES C. BEHRENS

Proposed Counsel for the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.

[14] To be clear, only a few of the Committee's concerns and issues apply to the proposed DIP Lender and protections offered that lender. Almost all relate to the proposed adequate protection for the Prepetition Secured Creditors.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

2029 Century Park E, 33rd Floor, Los Angeles, CA 90067.

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

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 27, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) September 27, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) September 27, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 27, 2018	Ricky Windom	/s/ Ricky Windom
Date	*Printed Name*	*Signature*

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CHANGES MADE BY COURT

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. 18-20151
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20171-ER

Chapter 11 Cases

Hon. Ernest M. Robles

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

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Upon the emergency motion (the "***DIP Motion***")[1], dated August 31, 2018, filed by Verity Health System of California, Inc., O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, Verity Holdings, LLC, Verity Medical Foundation, O'Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical Center of Lynwood Medical Foundation, St. Vincent Foundation, St. Vincent Dialysis Center, Inc., Seton Medical Center Foundation, Verity Business Services, DePaul Ventures, LLC, and DePaul Ventures - San Jose Dialysis, LLC (collectively, the "***Debtors***"), as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the "***Chapter 11 Cases***"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code (the "***Bankruptcy Code***"), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and Rule 4001-2 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California (the "***Local Rules***" or "***LBR***"), for entry of an emergency order (the "***Interim Order***") following conclusion of the interim hearing (the "Interim Hearing") authorizing the Debtors, on an interim basis, and following the conclusion of a final hearing (the "***Final Hearing***") on the DIP Motion, for entry of a final order (the "***Final Order***") authorizing the Debtors, on a final basis to, among other things: ~~*inter alia:*~~

(i) Obtain senior secured post-petition financing (the "***DIP Financing***" or "***DIP Facility***") pursuant to the terms and conditions of the DIP Financing Agreements (as defined below), the Interim Order, and this Final Order, pursuant to sections 364(c)(1), 364(d), and 364(e) of the Bankruptcy Code and Rule 4001(c) of the Bankruptcy Rules;

(ii) Enter into a Debtor-in-Possession Credit Agreement (the "***DIP Credit Agreement***"), substantially in the form attached as Exhibit 2 to the Supplemental Chou Declaration ("**Supp. Chou Decl.**") [Docket 309-2], and other related financing documents (together with the DIP Credit Agreement and DIP Security Agreement, the "***DIP Financing Agreements***"), by and among each

[1] Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the DIP Motion.

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of the Debtors and Ally Bank ("***Ally***"), in its capacity as agent ("***DIP Agent***") and in its capacity as lender ("***DIP Lender***,") under the DIP Credit Agreement;

(iii) Borrow, on an interim basis, pursuant to the DIP Financing Agreements, postpetition financing of up to $30,000,000 on a revolving basis (the "***Interim DIP Loan***") and seek other financial accommodations from the DIP Agent and DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Agreements and the Interim Order;

(iv) Borrow, on a final basis, pursuant to the DIP Financing Agreements, post-petition financing of up to an additional $155,000,000, for a total of up to $185,000,000, on a revolving basis, which includes the Interim DIP Loan (the "***Final DIP Loan***," and together with the Interim DIP Loan, the "***DIP Loan***") and seek other financial accommodations from the DIP Agent and DIP Lender pursuant to the DIP Credit Agreement, the other DIP Financing Agreements, and this Final Order;

(v) Execute and deliver the DIP Credit Agreement and the other DIP Financing Agreements;

(vi) Grant the DIP Agent and DIP Lender allowed super-priority administrative expense claims, pursuant to section 364(c)(1) of the Bankruptcy Code, in each of the Chapter 11 Cases and any Successor Cases (as defined below) for the DIP Financing and all obligations of the Debtors owing under the DIP Financing Agreements (collectively, and including all "***Obligations***" of the Debtors as defined and described in the DIP Credit Agreement, the "***DIP Obligations***") subject only to the Carve Out (defined below) as set forth below;

(vii) Grant the DIP Agent and DIP Lender automatically perfected first priority senior security interests in and liens on all of the DIP Collateral (as defined below) pursuant to section 364(d)(1) of the Bankruptcy Code, which liens shall not be subordinate to any other liens, charges, security interests or surcharges under section 506(c) or any other section of the Bankruptcy Code, with the exception of the Carve Out (defined below) as set forth below;

(viii) Obtain authorization to use the proceeds of the DIP Financing in all cases in accordance with the 13 week budget, as updated from time to time attached as Exhibit 1, Supp.

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Chou Decl. (the "***DIP Budget***") and as otherwise provided in the DIP Financing Agreements, the Interim Order and this Final Order;

(ix) Provide adequate protection to certain of the Prepetition Secured Creditors (defined herein) and McKesson (defined herein) pursuant to the terms of this Final Order for any diminution in value of their respective interests in the Prepetition Collateral or VMF Collateral (each as defined herein) resulting from the DIP Liens (as defined herein) on the Prepetition Collateral or VMF Collateral, subordination to the Carve Out (as defined herein), or Debtors' use, sale, or lease of Prepetition Collateral or VMF Collateral, including cash collateral within the meaning of 11 U.S.C. §363(a) (such cash collateral that is Prepetition Collateral or VMF Collateral hereafter defined as "***Cash Collateral***");

(x) Grant authorization based upon the consent of the Prepetition Secured Creditors and McKesson to use of Cash Collateral in accordance with the DIP Budget upon the terms and conditions set forth herein;

(xi) Vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms of the DIP Financing Agreements, the Interim Order, and this Final Order;

(xii) Following the conclusion of a final hearing (the "***Final Hearing***") to consider entry of an order (the "***Final Order***") granting all other relief requested in the DIP Motion on an interim and final basis; and

(xiii) Waive any applicable stay as provided in the Bankruptcy Rules (expressly including Rule 6004) and provide for immediate effectiveness of this Final Order.

The Court, having considered the DIP Motion, the Declarations of Anita M. Chou, Chief Financial Officer filed in support of the DIP Motion and Rich Adcock, Chief Executive Office filed in support of the First Day Motions each as Officers of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings, the DIP Motion, the DIP Financing Documents, and the Supplemental Declaration of Anita Chou in Support of Debtors' Reply in Support of the DIP Motion, and the exhibits attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing and the *Final Hearing*; and due and proper notice of the

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DIP Motion, the Interim Hearing, entry of the Interim Order, and Final Hearing having been provided in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and LBR 4001-2 and no other or further notice being required under the circumstances; and the Interim Hearing and Final Hearing having been held and concluded; and it appearing that approval of the final relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their estates and their creditors, and is essential for the preservation of the value of the Debtors' assets; and the Court having considered the *Objection to Debtor's Proposed Form of Order on Motion of Debtors for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Doc. No. 398] filed by UMB Bank, N.A. ("UMB Bank"), the *Response of U.S. Bank National Association, as Series 2017 Note Trustee, to Objection to Debtors' Proposed Form of Order on Motion of Debtors for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Doc. No. 401] (the "UMB Objection"), and the *Response of Verity MOB Financing LLC and Verity MOB Financing II LLC With Respect to Objection to Debtors' Proposed Form of Order on Motion of Debtors for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 105, 363, 364, 1107 and 1108* [Doc. No. 402]; and the Court having overruled the UMB Objection to entry of this Final Order[2]; and any other objections ~~all objections, if any,~~ to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and for the

[2] At the Final Hearing, the Debtors read into the record proposed language intended to resolve the objections asserted by UMB Bank. UMB Bank's counsel stated that the proposed language was acceptable. After the Debtors lodged a proposed form of order incorporating the language that the Debtors had read into the record, UMB filed the UMB Objection. The Court finds that by assenting to the proposed language on the record at the Final Hearing, UMB Bank has waived its ability to object to the form of this Final Order.

reasons set forth in the Court's tentative ruling [Doc. No. 392], incorporated herein by reference; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. **Petition Date**. On August 31, 2018 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Central District of California (the "***Court***"). The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. **Jurisdiction and Venue**. This Court has jurisdiction over the Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334(b), and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue for these Chapter 11 Cases and proceedings on the DIP Motion is proper before this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** The Office of the United States Trustee (the "***U.S. Trustee***") provided notice of the appointment of an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code, the members of which are identified by the Office of the United States Trustee in that Notice of Appointment and Appointment of Committee of Creditors Holding Unsecured Claims dated September 17, 2018 [Docket No 197] (the "***Committee***").

D. **Notice**. The Court entered the Interim Order on September 6, 2018 [Docket 86]. Notice of entry of the Interim Order and Notice of the Final Hearing on the DIP Motion [Docket

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

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201] has been provided by the Debtors to: (i) the Office of the United States Trustee for the Central District of California (the "***U.S. Trustee***"); (ii) the United States Securities and Exchange Commission; (iii) the Office of the United States Attorney for the Central District of California; (iv) the Internal Revenue Service; (v) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (vi) counsel to each of the Prepetition Secured Creditors (as defined below); (vii) counsel to the DIP Agent and the DIP Lender; (viii) the Office of the Attorney General for the State of California, Charities Division; (ix) proposed counsel to the Committee; and (x) all other parties known to assert a lien on any of the Debtors' assets. Under the circumstances, such notice of the Final Hearing and the DIP Motion constitute due, sufficient and appropriate notice and complies with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b), and the Local Rules, and no other or further notice is required under the circumstances.

E. **Findings Regarding Corporate Authority**. As set forth in the resolutions accompanying the Petitions and the Adcock Declaration, each Debtor has all requisite corporate power and authority to execute and deliver the DIP Financing Agreements to which it is a party, to grant the DIP Liens (as defined herein) and to perform its obligations thereunder.

F. **Intercreditor Agreement**. Pursuant to section 510(a) of the Bankruptcy Code, the Second Amended and Restated Intercreditor Agreement dated December 1, 2017 (the "***Intercreditor Agreement***") and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Secured Documents (i) shall remain in full force and effect, with respect to prepetition and post-petition assets of the Debtors as provided thereunder, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition Secured Creditors (including the relative priorities, rights and remedies of such parties with respect to the Prepetition Replacement Liens and Adequate Protection Superpriority Claims granted, or amounts payable, by the Debtors under the Interim Order, this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered or modified by the terms of this Final Order or the DIP Financing Agreements, unless expressly set forth herein.

G. **Prepetition Secured Credit Facilities**. As of the Petition Date, the Debtors were indebted and liable to the Prepetition Secured Creditors as follows:

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(i) UMB Bank, N.A., ("***UMB Bank***") as successor Master Trustee (in such capacity, the "***Master Trustee***") under the Master Trust of Trust dated as of December 1, 2001, as amended and supplemented (the "***Master Indenture***") with respect to the MTI Obligations (defined below) securing the repayment by the Obligated Group (defined below) of its loan obligations with respect to (1) the California Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health System) Series 2005 A, G and H (the "***2005 Bonds***"), (2) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2015 A, B, C and D (the "***2015 Working Capital Notes***"), and (3) the California Public Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B (the "***2017 Working Capital Notes***" and, collectively with the 2015 Working Capital Notes, the "***Working Capital Notes***"). The joint and several obligations issued under the Master Indenture by Verity Health System of California, Inc., O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center (collectively, the "***Obligated Group***") in respect of the 2005 Bonds and the Working Capital Notes are collectively referred to as the "***MTI Obligations***". Wells Fargo Bank National Association ("***Wells Fargo***") serves as bond indenture trustee under the bond indentures relating to the 2005 Bonds. U.S. Bank National Association ("***U.S. Bank***") serves as the note indenture trustee and as the collateral agent under each of the note indentures relating to the 2015 Working Capital Notes and the 2017 Working Capital Notes, respectively. The MTI Obligations are secured by, inter alia, security interests granted to the Master Trustee in the prepetition accounts of, and mortgages on the principal real estate assets of, the members of the Obligated Group.

In addition to the security provided to the Master Trustee to secure the MTI Obligations, U.S. Bank, as Note Trustee for the 2015 Working Capital Notes and the 2017 Working Capital Notes is secured by prepetition first priority liens upon and security interests in the Obligated Group's accounts and deeds of trust on the principal real estate assets of Saint Louise Regional Hospital and St. Francis Medical Center (collectively, the "***Priority Collateral***"). U.S. Bank as Notes Trustee for the 2017 Working Capital Notes has also been granted a deed of trust,

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dated as of December 1, 2017, by Verity Holdings in certain real property located in San Mateo California (the "***Moss Deed of Trust***") to further secure the 2017 Working Capital Notes.

(ii) Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together, the "***MOB Lenders***") hold security interests in Verity Holdings' accounts, including rents arising from the prepetition MOB Financing, and mortgages on medical office buildings owned by Verity Holdings (the "***MOB Financing***").

The Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S. Bank as Note Trustee for the Working Capital Notes, and the MOB Lenders are collectively hereafter referred to as the "***Prepetition Secured Creditors***;" the MTI Obligations, the Obligated Group's loan obligations with respect to the Working Capital Notes and the MOB Financing are hereinafter referred to as the "***Prepetition Secured Obligations***;" the prepetition interests (including the liens and security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are hereinafter referred to as the "***Prepetition Liens***;" and the documents, writings and agreements evidencing the Prepetition Secured Obligations are hereinafter referred to as the "***Prepetition Secured Documents***".

H. **Prepetition Secured Trade Vendor Arrangement**. Prior to the Petition Date, Debtor Verity Medical Foundation ("***VMF***") entered into agreements for the sole source purchasing of certain critical chemotherapy and other pharmaceutical products and medical-surgical products with McKesson Corporation and certain affiliates ("***McKesson***"), and on or about March 27, 2018 granted to McKesson a prepetition perfected security interest ("***VMF Liens***") in VMF tangible and intangible personal property, including accounts (the "***VMF Collateral***"), but such perfected security interest excluded VMF cash (to the extent such cash does not represent proceeds of the VMF Collateral), personal property requiring possession for perfection and real property interests. As of the Petition Date, McKesson was owed approximately $3,055,000.00 (the "***McKesson Prepetition Debt***"). Postpetition, and subject to McKesson's internal credit review and approval process, McKesson has agreed to resume providing certain secured trade credit to VMF and the physician practices ordering through VMF for the purchase of pharmaceutical and medical-surgical

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products on 30 days from invoice payment terms (the "***McKesson Post-Petition Trade Credit***"). The McKesson Post-Petition Trade Credit will continue to be secured by the VMF Liens.

I. **Prepetition Collateral**. In order to secure the Prepetition Secured Obligations and the Prepetition Secured Trade Vendor Arrangement (as described in paragraph H above), the Debtors, excluding the Philanthropic Foundations, granted the Prepetition Liens and the VMF Liens to the Prepetition Secured Creditors and McKesson, respectively as provided and described in the Prepetition Secured Documents and the documents pertaining to the VMF Collateral. The assets subject to the Prepetition Liens (the "***Prepetition Collateral***") and the VMF Collateral constitute substantially all of the assets of the Debtors, excluding cash and assets of the Philanthropic Foundations.

J. **Prepetition Agreements to Pay Special Assessments.** Seton Medical Center, a Debtor, ("***SMC***") and California Statewide Communities Development Authority ("***CSCDA***") entered into an (i) Agreement to Pay Assessment and Finance Improvements dated May 11, 2017 under the CSCDA CaliforniaFirst Program ("***Clean Fund Agreement to Pay Assessment***"), and (ii) Agreement to Pay Assessment and Finance Improvements dated May 18, 2017 under the CSCDA CaliforniaFirst Program ("***Petros Agreement to Pay Assessment***", collectively, with Clean Fund Agreement to Pay Assessment, the "***Assessment Agreements*** "), each for the limited purpose of providing financing for certain renewable energy, energy efficiency, water efficiency and seismic improvements permanently affixed to real property owned by SMC located in Daly City, California under the CSCDA CaliforniaFirst Program in the aggregate amount of $40,000,000. As of the Petition Date, after payment of tax exempt bond issuance fees for the Clean Fund Bonds and the NR2 Petros Bonds (each as defined in the DIP Motion) and retention of capitalized interest reserves approximately $34,379,450 is being held for authorized improvements (the "***Program Funds***") by Wilmington Trust N.A. ("***WTNA***") as indenture trustee, pursuant to, *inter alia*, the terms of two Indentures between CSCDA and WTNA dated as of May 11, 2017 and May 18, 2017 and the Assessment Agreements. Notwithstanding SMC's status as a tax exempt California not for profit corporation, SMC agreed and consented to the CSCDA special tax assessments imposed pursuant to and under the Assessment Agreements (the "***CSCDA Special Assessments***"). The Debtors

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acknowledge that the CSCDA Special Assessments have the same lien priority and methods of collection as general municipal taxes on real property. Notices of Assessment and Payment of the Special Assessments were recorded in the official records of the County of San Mateo against the real property owned by SMC and consented to by the Prepetition Secured Creditors. The Debtors acknowledge that the Program Funds and other proceeds of the issuance of the Clean Fund Bonds or NR2 Petros Bond which are being held by WTNA are not property of the Debtors' estates, and are not subject to the Prepetition Liens, the DIP Liens, or the Prepetition Replacement Liens.

K. **Findings Regarding the Postpetition Financing**.

(i) **Consensual Priming of the Prepetition Liens**. The priming of the Prepetition Liens of the Prepetition Secured Creditors on the Prepetition Collateral, and the VMF Liens on the VMF Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Financing Agreements, as authorized by the Interim Order and this Final Order, and as further described below, is consented to by the Prepetition Secured Creditors and McKesson, and will enable the Debtors to continue borrowing under the DIP Facility and to continue operating their businesses for the benefit of their estates and creditors. The Prepetition Secured Creditors and McKesson are each entitled to receive adequate protection as set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value (as defined herein) of each of their respective interests in the Prepetition Collateral (including Cash Collateral) or VMF Collateral.

(ii) **Good Cause; Need for Postpetition Financing**. Good cause has been shown for the entry of this Final Order. An immediate and continuing need exists for the Debtors to obtain funds from the DIP Loan in order to continue operations, continue to serve the Debtors mission to provide vital, lifesaving patient care for vulnerable populations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and to maximize a return for all creditors requires the availability of working capital from the DIP Loan, the absence of which would immediately and irreparably harm the Debtors, their estates and their creditors and the possibility for a successful

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reorganization or sale of the Debtors' assets as a going concern or otherwise. The proposed DIP Loan is in the best interests of the Debtors, their estates, and their creditors.

(iii) **No Credit Available on More Favorable Terms**. The Debtors have been unable to obtain (a) unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense, (b) credit for money borrowed secured solely by a lien on property of the estate that it not otherwise subject to a lien, (c) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, (d) or credit otherwise on more favorable terms and conditions than those provided in the DIP Credit Agreement and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Agent and DIP Lender the DIP Protections (as defined below).

L. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) are to be utilized by the Debtors until the DIP Facility Termination Date in accordance with the DIP Budget and in a manner consistent with the terms and conditions of the DIP Credit Agreement, and this Final Order.

M. **Application of Sale Proceeds of DIP Collateral.** As provided by the Interim Order, this Final Order and the DIP Credit Agreement, the DIP Liens shall attach as first priority liens and security interests, pursuant to section 364(d) of the Bankruptcy Code and the DIP Financing Agreements, to all proceeds of any sale or other disposition of the Debtors' property, including, without limitation, the Healthcare Facilities (as defined in the DIP Credit Agreement) and any other DIP Collateral (as defined below) (the "***Sale Proceeds***"). The Sale Proceeds shall be held in escrow in one or more deposit accounts subject to a deposit account control agreement in favor of the DIP Agent (the "***Escrow Deposit Account***"). Any funds held in the Escrow Deposit Account shall not be commingled with any other funds of the selling Debtor, the Sale Proceeds of any other Debtor or otherwise. The DIP Agent is granted a first priority lien on the Escrow Deposit Account and all Sale Proceeds, including any deposit provided by any buyer in connection with any asset sale, and such proceeds, deposits, and the Escrow Deposit Account shall constitute Collateral under the DIP Credit Agreement and DIP Collateral under this Final Order. On the Revolving Loan Termination

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Date (as defined in the DIP Credit Agreement), the DIP Agent and the DIP Lender shall apply any and all amounts remaining on deposit in the Escrow Deposit Account to the outstanding principal amount of the DIP Loan, together with accrued and unpaid DIP Obligations, with any remaining balance to be delivered to the Debtors subject to any Prepetition Liens, VMF Liens, Prepetition Replacement Liens and VMF Replacement Liens; provided, however, that upon any Debtor's request and with the consent of the DIP Agent and DIP Lender (which consent may, for the avoidance of doubt, be withheld in its sole discretion), any Sale Proceeds and deposits provided in connection with any asset sale may be disbursed to the Prepetition Secured Creditors or McKesson on terms and conditions that are acceptable to the DIP Agent and DIP Lender in its sole discretion and upon further order of this Court.

N. **Adequate Protection for Prepetition Secured Creditors and McKesson.** The priming of the Prepetition Secured Creditors' Prepetition Liens and the VMF Liens to the extent set forth in the Interim Order and this Final Order, pursuant to section 364(d) of the Bankruptcy Code is necessary to obtain the DIP Financing. In exchange for the priming of the Prepetition Liens and the VMF Liens set forth below, the Prepetition Secured Creditors and McKesson shall be entitled to receive adequate protection, as set forth in this Final Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any diminution in the value of their respective interests in the Prepetition Collateral or VMF Collateral resulting from, among other things, the subordination to the Carve Out (as defined herein) and to the DIP Liens (as defined herein), the Debtors' use, sale or lease of such Prepetition Collateral or VMF Collateral, including Cash Collateral, and the imposition of the automatic stay from and after the Petition Date (collectively, and solely to the extent of such diminution in value, the "***Diminution in Value***"). As to the VMF Collateral, any adequate protection, as set forth in this Final Order, pursuant to sections 361, 363 and 364 of the Bankruptcy Code, for any Diminution in Value of Prepetition Secured Creditors' interests in the Prepetition Collateral are subordinated to any similar adequate protection provided to McKesson. VMF shall also pay McKesson (A) $3,055,000.00 in satisfaction of the balance of McKesson's Prepetition Secured Debt on the following schedule: (1) October 5, 2018 - $1,700,000.00; (2) October 26, 2018 - $700,000.00; and (3) November 2, 2018 - $655,000.00 (plus

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McKesson's attorneys' fees and costs incurred through October 31, 2018) (the "***McKesson Secured Payments***"). The McKesson Secured Payments will be included within the DIP Budget line item for Debtors' critical vendor program. Payment of McKesson's attorneys' fees will be included in the DIP Budget line item for Prepetition Secured Creditor Adequate Protection Payments. The Prepetition Secured Creditors have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral to help fund the administration of the Debtors' estates along with the proceeds of the DIP Financing. Based on the DIP Motion and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Secured Creditors and McKesson; provided, however, that nothing herein shall limit the rights of any of the Prepetition Secured Creditors or McKesson to hereafter seek new, additional, or different adequate protection; provided further, that nothing herein shall limit the rights of all parties in interest to assert or challenge any determination or assertion with respect to the existence or quantification of any Diminution of Value.

O. **Extension of Financing**. The DIP Agent and DIP Lender have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement.

P. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The terms and conditions of the DIP Facility and the DIP Financing Agreements, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration;

(ii) The DIP Financing Agreements were negotiated in good faith and at arms' length between the Debtors, the DIP Agent and the DIP Lender;

(iii) The proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses; and

(iv) Each of the DIP Agent and DIP Lender has acted to date and is acting in good faith with respect to the DIP Facility and the terms and conditions of the DIP Credit

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Agreement and the other DIP Financing Agreements. The DIP Agent's and DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Financing Agreements will not be affected or avoided by any subsequent reversal or modification of this Final Order, as provided in section 364(e) of the Bankruptcy Code.

Q. **Relief Essential; Best Interest; Good Cause**. The relief requested in the DIP Motion (and as provided in this Final Order) is necessary, essential, and appropriate for the preservation of the Debtors' assets, business and property. It is in the best interest of the Debtors' estates to be allowed to establish the DIP Facility contemplated by the DIP Credit Agreement. Good cause has been shown for the relief requested in the DIP Motion (and as provided in this Final Order).

R. **Consent to Use of Cash Collateral**. Each of the Prepetition Secured Creditors and McKesson have consented to the use of their respective interests in Cash Collateral, subject to the terms and conditions set forth in this Order.

NOW, THEREFORE, on the DIP Motion and the record before this Court with respect to the DIP Motion, including the record created during the Interim Hearing and the Final Hearing, and with the consent of the Debtors, the Prepetition Secured Creditors and the DIP Agent and DIP Lender to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Motion Granted**. The DIP Motion is granted on a final basis in accordance with the terms and conditions set forth in this Final Order and the DIP Credit Agreement. Any objections to the DIP Motion with respect to entry of this Final Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled.

2. **DIP Financing Agreements.**

(a) **Approval of Entry into DIP Financing Agreements**. The Debtors are authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final

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Order and the DIP Financing Agreements, and to execute and deliver all instruments and documents which may be required or necessary for the performance by the Debtors under the DIP Financing Agreements and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, indemnities and other amounts described in the DIP Financing Agreements as such amounts become due and payable without need to obtain further Court approval, including closing fees, unused line fees, administrative agent's fees, collateral agent's fees, and the reasonable fees and disbursements of the DIP Agent's and the DIP Lenders' respective attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Final Order or the DIP Financing Agreements. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations or otherwise, will be deposited and applied as required by this Final Order and the DIP Financing Agreements. The DIP Financing Agreements represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms, including, without limitation, commitment fees and reasonable attorneys' fees and disbursements as provided for in the DIP Credit Agreement, which amounts shall not otherwise be subject to approval of this Court,. The Debtors shall pay the deferred balance of the commitment fee required by section 2.9(a) of the DIP Credit Agreement upon entry of this Final Order.

(b) **Authorization to Borrow and/or Guarantee**. To enable them to continue to preserve the value of their estates and dispose of their assets in an orderly fashion, during the period prior to termination of the DIP Credit Agreement and subject to the terms and conditions of this Final Order, upon the execution of the DIP Credit Agreement and the other DIP Financing Agreements the Debtors are hereby authorized to borrow the DIP Loan up to a total committed amount of $185,000,000 under the DIP Financing Agreements.

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(c) **Conditions Precedent.** Neither the DIP Agent nor the DIP Lender have any obligation to make the DIP Loan or any loan or advance under the DIP Credit Agreement unless the conditions precedent to making such loan under the DIP Credit Agreement have been satisfied in full or waived by the DIP Agent and DIP Lender in their sole discretion.

(d) **DIP Collateral; DIP Liens**. Effective immediately upon the entry of this Final Order, on account of the DIP Loan, the DIP Agent shall be and is hereby granted first-priority security interests and liens (which shall immediately be valid, binding, permanent, continuing, enforceable, perfected and non-avoidable) on all of the Debtors' property, including, without limitation, the Sale Proceeds and the Escrow Deposit Account, whether arising before or after the Petition Date (collectively, the "***DIP Collateral***," and all such liens and security interests granted on or in the DIP Collateral pursuant to this Final Order and the DIP Financing Agreements, the "***DIP Liens***"), but shall exclude the Program Funds, and proceeds of the Clean Fund Bonds and NR2 Petros Bonds held by WTNA, donor restricted funds held at Philanthropic Foundations, Avoidance Actions (defined below) and any proceeds thereof and any funds held by the Prepetition Secured Creditors (set forth on **Exhibit 1** to the Chou Decl.), provided, however, for the avoidance of doubt, any amounts held in accounts owned by the Debtors, whether or not such accounts are subject to control agreements in favor of the Prepetition Secured Creditors, shall constitute DIP Collateral. The DIP Collateral shall not be subject to any surcharge under section 506(c) or any other provision of the Bankruptcy Code or other applicable law, nor by order of this Court.

(e) **DIP Lien Priority**. Subject only to the Carve Out (as defined below) and the prepetition tax lien arising in connection with the CSCDA Special Assessments, the DIP Liens shall, pursuant to section 364(d)(1) of the Bankruptcy Code, be perfected, continuing, enforceable, non-avoidable first priority senior priming liens and security interests on the DIP Collateral, and shall prime all other liens and security interests on the DIP Collateral, including any liens and security interests in existence on the Petition Date against the Prepetition Collateral and VMF Collateral, and any other current or future liens granted on the DIP Collateral, including any adequate protection or replacement liens granted on the DIP Collateral (collectively, the "***Primed Liens***") (other than the Debtors' claims and causes of action under sections 502(d), 544, 545, 547,

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548, 549, 550 and 553 of the Bankruptcy Code, and any other avoidance or similar actions under the Bankruptcy Code or similar state law (the "***Avoidance Actions***"), whether received by judgment, settlement or otherwise. Without limiting the foregoing, the DIP Liens shall not be made subject to, subordinate to, or *pari passu* with any lien or security interest by any court order heretofore or hereafter granted in the Chapter 11 Cases. The DIP Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any "***Successor Cases***"), and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Case, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Liens.

(f) **Enforceable Obligations**. The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, their estates and any successors thereto and their creditors or representatives thereof, in accordance with their terms.

(g) **Protection of DIP Agent, DIP Lender and Other Rights**. From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Credit Agreement and this Final Order and in strict compliance with the DIP Budget (subject to any variances thereto permitted by the DIP Credit Agreement).

(h) **Additional Protections of DIP Agent and DIP Lender: Superpriority Administrative Claim Status**. Subject to the Carve Out (as defined below), all DIP Obligations shall constitute an allowed superpriority administrative expense claim (the "***DIP Superpriority Claim***" and, together with the DIP Liens, the "***DIP Protections***") with priority in all of the Chapter 11 Cases and Successor Cases over all other administrative expense claims under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the

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kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 1113 and 1114 and any other provision of the Bankruptcy Code except as otherwise set forth herein, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The DIP Superpriority Claim shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and all proceeds thereof. Without limiting the foregoing, the DIP Superpriority Claim shall not be made subject to, subordinate to, or *pari passu* with any other administrative claim in the Chapter 11 Cases or Successor Cases, except for the Carve Out (as defined below). Other than the Carve Out, no costs, expenses, claims, or liabilities that have been or may be incurred by Debtors during these Chapter 11 Cases, or in any Successor Cases, will be senior to, prior to, or on parity with the DIP Superpriority Claim.

3. **Authorization to Use Proceeds of DIP Facility**. Pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement and the other DIP Financing Agreements, and in accordance with the DIP Budget and the variances thereto set forth in the DIP Credit Agreement, the Debtors are authorized to use the advances under the DIP Credit Agreement during the period commencing immediately after the entry of this Final Order and terminating upon the termination of the DIP Credit Agreement in accordance with its terms and subject to the provisions hereof.

4. **Application of Sale Proceeds of DIP and Prepetition Secured Creditor Collateral.** The DIP Liens shall attach as first priority liens and security interests, pursuant to section 364(d) of the Bankruptcy Code, the Interim Order, this Final Order and the DIP Financing Agreements, to the Sale Proceeds. The Sale Proceeds shall be allocated by Debtors and held in escrow in the Escrow Deposit Accounts. Funds held in any Escrow Deposit Account shall not be commingled with any other funds of the applicable Debtor or any of the other Debtors and, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and this Final Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use Cash Collateral of any of the Prepetition Secured Creditors held in any Escrow Deposit Account for any purpose without first

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obtaining the consent of the applicable Prepetition Secured Creditor or obtaining an order of the Court pursuant to Section 363 of the Bankruptcy Code after notice and a hearing. The DIP Agent is granted a first priority lien on the Escrow Deposit Accounts and all Sale Proceeds, including any deposit provided by any buyer in connection with any asset sale, and such proceeds, deposits, and the Escrow Deposit Account shall constitute Collateral under the DIP Credit Agreement and DIP Collateral under this Final Order. On the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the DIP Agent may apply amounts held in Escrow Deposit Accounts to the outstanding DIP Obligations due under the DIP Credit Agreement. Without limiting the foregoing, and subject and subordinate in all respects to the first priority priming DIP Lien and Prepetition Replacement Liens to the extent set forth in this Final Order, the Prepetition Secured Creditors' Prepetition Liens shall be deemed to attach to the Escrow Deposit Accounts and the Sale Proceeds with the same relative priority, validity, force, extent and effect as the Prepetition Liens attached to the Prepetition Collateral giving rise to such Sale Proceeds. Each of the Prepetition Secured Creditors shall have the right to seek a declaration of their respective rights in and to any of the Sale Proceeds and funds held in a Deposit Escrow Account, consistent with and subject to the terms and conditions of this Final Order and the DIP Financing Agreements, and the Court shall determine all such disputes in accordance with this Final Order, the DIP Financing Agreements, the Prepetition Secured Documents, and applicable law.

5. **Adequate Protection for Prepetition Secured Creditors**. As adequate protection for the interests of the Prepetition Secured Creditors in the Prepetition Collateral and McKesson in the VMF Collateral, on account of the granting of the DIP Liens, subordination to the Carve Out (as defined below), any Diminution in Value arising out of the Debtors' use, sale, or disposition or other depreciation of the Prepetition Collateral, including Cash Collateral or the VMF Collateral, resulting from the automatic stay, the Prepetition Secured Creditors and McKesson shall receive adequate protection as follows:

(a) **Adequate Protection Replacement Liens**. To the extent of the Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition Collateral that secures their respective claims, each of the affected Prepetition Secured Creditors shall be granted,

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subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code additional valid, perfected and enforceable replacement security interests and Liens in the DIP Collateral, (the "***Prepetition Replacement Liens***"), which Prepetition Replacement Liens shall be junior only to (1) the Carve Out, (2) ~~to~~ the DIP Liens, (3) the VMF Liens in VMF Collateral and (4) any perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and that certain Deed of Trust with Fixture Filing and Security Agreement and Assignment of Leases and Rents by Holdings in favor of U.S. Bank as 2017 Note Trustee and Deed of Trust Beneficiary, dated as of September 15, 2017, as further amended or modified (the "***Moss Deed of Trust***") to secure the Series 2017 Working Capital Notes; *provided, however*, that any Prepetition Replacement Liens granted to the 2015 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the Intercreditor Agreement shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (i) the Carve Out, (ii) the DIP Liens securing the DIP Obligations, and (iii) perfected, unavoidable, prepetition liens granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, and *further provided* that any Prepetition Replacement Liens granted to the holders of deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to the Prepetition Replacement Liens granted to any other Prepetition Secured Creditors and junior to (x) the Carve Out, (y) the DIP Liens securing the DIP Obligations, and (z) perfected, unavoidable, prepetition liens of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on property other than the property subject to the Moss Deed of Trust. With respect to the Prepetition Collateral that is subject to the Intercreditor Agreement, any proceeds of such Prepetition Collateral or Prepetition Replacement Liens related thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement. Unless otherwise ordered by the Court, the Intercreditor Agreement shall not be deemed to be amended, altered or modified by the terms of this Final Order or the DIP Financing Agreements. With respect to the VMF Collateral, McKesson

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shall be entitled to a replacement lien on the postpetition assets of VMF, excluding Avoidance Actions ("***VMF Replacement Lien***"), to the extent of (1) any Diminution in Value in such VMF Collateral, and (2) any McKesson Post-Petition Trade Credit, which amounts shall be senior to the Prepetition Replacement Liens, but junior to the (m) Carve Out, and (n) the DIP Liens.

(b) **Adequate Protection Payments and Protections**. So long as there is no Default or Event of Default under the Interim Order, this Final Order, or the DIP Financing Agreements, the Debtors are also authorized and directed to provide (I) to the Prepetition Secured Creditors monthly adequate protection payments equal to (A) the amount of postpetition, non-default contractual interest on the outstanding balances of the Prepetition Secured Obligations, provided that reference to the non-default contractual rate of interest shall not include any Penalty Rate, Default Rate or the Tax Rate as defined in the Prepetition Secured Documents, plus (B) monthly payment of reasonable trustee fees for each of (1) Wells Fargo, (2) UMB Bank as Master Trustee, (3) U.S. Bank as 2015 Note Trustee, and (4) U.S. Bank as 2017 Note Trustee, respectively, and (C) reimbursement of reasonable attorney's fees for one set of attorneys for (1) Wells Fargo as the successor indenture trustee for the 2005 Bonds, (2) UMB Bank as Master Trustee, (3) U.S. Bank as 2015 Note Trustee, (4) U.S. Bank as 2017 Note Trustee, and (5) MOB Financing and reimbursement of reasonable financial advisor fees for one set of financial advisors for (1) Wells Fargo as the successor indenture trustee for the 2005 Bonds and UMB Bank as Master Trustee, (2) U.S. Bank as 2015 Note Trustee and 2017 Note Trustee and (3) MOB Financing; and (II) payments by the Debtors to McKesson consistent with certain terms of the interim and final orders authorizing the Critical Vendor Program (as defined in the Debtors First Day Motions) in an amount of $3,055,000.00 (collectively I and II are the "***Prepetition Adequate Protection Payments***"). Notwithstanding the foregoing, to the extent the Court enters a final and non-appealable order that determines, pursuant to sections 506(a) or (b) of the Bankruptcy Code, that the Prepetition Adequate Protection Payments under (I) and (II) above are not properly entitled to payment of interest and fees on one or more of the respective Prepetition Secured Obligations to which they were made, the Prepetition Adequate Protection Payments may be re-characterized as payment(s) applied to the principal amount of the respective Prepetition Secured Obligations.

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(c) **McKesson Secured Payments.** As set forth herein, so long as no Revolving Loan Termination Event has occurred under the DIP Credit Agreement, the Debtors are hereby authorized and directed to make all McKesson Secured Payments on or before their respective due dates and are authorized to make payments on McKesson's Post-Petition Trade Credit, on the terms agreed to between McKesson and the Debtors provided herein.

(d) **Prepetition Superpriority Claim**. To the extent of the Diminution in Value of the interest of the respective Prepetition Secured Creditors in Prepetition Collateral, each of the affected Prepetition Secured Creditors shall be granted, subject to the terms and conditions set forth below, an allowed superpriority administrative expense claim (the "***Prepetition Superpriority Claims***"), which shall have priority (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) any claims granted by Holdings pursuant to those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust) in the Chapter 11 Cases under sections 363(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising of any kind or nature whatsoever including, without limitation, administrative expenses of the kind specified or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d) 552, 726, 1113 and 1114 of the Bankruptcy Code, and upon entry of this Final Order, section 506(c) of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment; *provided, however*, that any Prepetition Superpriority Claim granted to the 2015 Note Trustee and/or 2017 Note Trustee on account of the Diminution in Value of the Priority Assets as defined in the Intercreditor Agreement shall have priority over the Prepetition Superpriority Claims granted to any other Prepetition Secured Creditors (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) claims associated with the MOB Financing and the Moss Deed of Trust) and *further provided* that any Prepetition Superpriority Claim granted to the holders of those certain deeds of trust issued in connection with the MOB Financing and the Moss Deed of Trust, on account of the Diminution in Value of such Prepetition Collateral shall be senior to the Prepetition Superpriority Claims granted

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to any other Prepetition Secured Creditors (except with respect to (i) the DIP Liens, (ii) the DIP Superpriority Claim, (iii) the Carve Out, and (iv) the claims of the Master Trustee, the 2015 Note Trustee and/or the 2017 Note Trustee on property other than the property subject to the Moss Deed of Trust). With respect to the Prepetition Collateral that is subject to the Second Amended and Restated Intercreditor Agreement, any proceeds of such Prepetition Collateral or Prepetition Superpriority Claim related thereto shall be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement.

(e) **Validity, Perfection and Amount of Prepetition Liens**. The Debtors further acknowledge and agree that, as of the Petition Date, (a) the Prepetition Liens securing the Prepetition Secured Obligations on the Prepetition Collateral and the VMF Liens on the VMF Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Creditors and McKesson, (b) the Prepetition Liens were senior in priority over any and all other Liens on the Prepetition Collateral except the prepetition tax lien arising in connection with the CSCDA Special Assessments, and (c) the VMF Liens were senior in priority over any and all other Liens on VMF Collateral. 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

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without further ~~a~~ 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. The foregoing limitation on use of Prepetition Collateral or its proceeds shall only be amended upon further order of this Court and the consent of both the Prepetition Secured Creditors, the DIP Agent and the DIP Lender. The Debtors shall not use the Prepetition Collateral, VMF Collateral or their proceeds to investigate or prosecute claims against the Prepetition Secured Creditors or McKesson, including Avoidance Actions, *provided however* that the Committee may investigate the existence of such claims and have allowed fees paid from the Prepetition Collateral or VMF Collateral and the proceeds of the DIP Facility up to the amount of $250,000, *provided further however* that no Prepetition Collateral or VMF Collateral, the proceeds thereof or the proceeds of the DIP Facility may be used to prosecute claims against Prepetition Secured Creditors or McKesson. For the avoidance of doubt, the Debtors, on behalf of their estates, do not release or indemnify the Prepetition Secured Creditors or McKesson from any Challenge raised by third parties, including the Committee, to the validity, amount or enforceability of the Prepetition Secured Obligations and the Prepetition Liens or the VMF Liens.

(f) **Sections 506(c) and 552(b)**. In light of the Prepetition Secured Creditors' and McKesson's' agreements that their Prepetition Liens and VMF Liens, respectively, shall be subject to the Carve Out and subordinate to the DIP Liens, the Prepetition Secured Creditors and McKesson 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.

(g) Nothing contained in this Final Order shall prevent the Prepetition Secured Creditors from application or use of the funds held thereby that are not DIP Collateral in accordance with the Prepetition Secured Documents. Each of the Prepetition Secured Creditors reserves the right to seek additional or further adequate protection from the Court. The Debtors and the Committee each reserves the right to object to any such request for additional or further adequate protection.

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6. **Budget Maintenance**. The proceeds of the DIP Loan under the DIP Facility and the use of Cash Collateral shall be subject to, and in accordance with, the terms and conditions of the DIP Financing Agreements and the DIP Budget. The DIP Budget shall be delivered to the DIP Agent with such supporting documentation as reasonably requested by the DIP Agent. The DIP Budget shall be prepared in good faith based upon assumptions that the Debtors believe to be reasonable. A copy of any DIP Budget shall be delivered to counsel for the Committee and the U.S. Trustee and counsel for the Prepetition Secured Creditors after it has been approved in accordance with the DIP Financing Agreements. The Debtors shall provide at least two (2) business days' notice to counsel for the Committee and the Prepetition Secured Creditors prior to the effective date of any change in the DIP Budget.

7. **Budget Compliance and Reporting**. The proceeds of the DIP Facility and the use of Cash Collateral shall be subject to, and used in accordance with, the terms and conditions of the DIP Financing Agreement and the DIP Budget (subject to the variances set forth therein). Debtors acknowledge and confirm that the DIP Budget includes the payment of CSCDA Special Assessments. The Debtors shall provide all reports and other information as required in the DIP Credit Agreement (subject to the grace periods provided therein), with copies delivered substantially contemporaneously to counsel for the Prepetition Secured Creditors and counsel to the Committee, such information to include reasonably complete details on the payments contemplated by the Critical Vendors Motion and the Utilities Motion, as defined in the Adcock Declaration, and such information to be timely provided, sufficient for the Prepetition Secured Creditors to file an objection with this Court on two business days' notice. The Debtors' failure to comply with the DIP Budget (including the variances set forth in the DIP Credit Agreement) or to provide the reports and other information required in the DIP Credit Agreement shall constitute an Event of Default (as defined herein), following the expiration of any applicable grace period set forth in the DIP Credit Agreement. Subject to the execution and continuation of valid and binding confidentiality agreements, the Debtors shall provide to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee information concerning (i) the Debtors' efforts to obtain debtor in possession financing proposals, including any proposals the Debtors received, and

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(ii) the Debtors' ongoing efforts to market their assets, including all marketing materials used by the Debtors in this process, information identifying the parties the Debtors have contacted, copies of any proposals or expressions of interest, and other information concerning these matters as the DIP Agent or the Prepetition Secured Creditors may reasonably request.

8. **Postpetition Lien Perfection.** This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens, the Prepetition Replacement Liens and the VMF Replacement Lien, and all rights granted in and to the Escrow Deposit Accounts and the Sale Proceeds, without the necessity of filing or recording any financing statement, deeds of trust, mortgages, or other instruments or documents which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or obtaining possession of any possessory collateral) to validate or perfect the DIP Liens, Prepetition Replacement Liens or VMF Replacement Lien, or to entitle the DIP Liens, Prepetition Replacement Liens and VMF Replacement Lien the respective priorities granted herein. Notwithstanding and without limiting the foregoing, the DIP Agent may file such financing statements, mortgages, deeds of trust, notices of liens and other similar documents as it deems appropriate, and it is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, deeds of trust, notices and other documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases. Notwithstanding and without limiting the foregoing provisions regarding the validity, perfection, and priority of the DIP Liens, the Debtors shall execute and deliver to the DIP Agent and DIP Lender all such financing statements, mortgages, deeds of trust, deposit account control agreements, notices and other documents as the DIP Agent and DIP Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens granted pursuant hereto and the DIP Financing Agreements. Any such financing statements, mortgages, deeds of trust, deposit account control agreements, notices and other documents shall be considered DIP Financing Agreements for all intents and purposes. The DIP Agent, in its discretion, may file a certified copy of this Final Order as a financing statement with any recording officer designated

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to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the recording officer shall be authorized to file or record such copy of this Final Order. To the extent that any Prepetition Secured Creditor is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Secured Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable.

9. **Application of Proceeds of Collateral**. As a condition to the continued extension of credit under the DIP Facility and the continued authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the Closing Date the Debtors shall apply all advances under the DIP Facility, as follows: (i) *first*, to fund the day to day operations and general corporate purposes of the Debtors' estates; (ii) *second*, to pay the administrative expenses of the Chapter 11 Cases; and (iii) *third*, to make the Prepetition Adequate Protection Payments all in accordance with the DIP Budget.

10. **Proceeds of Subsequent Financing**. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Chapter 11 Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) or in violation of the DIP Financing Agreements at any time prior to the indefeasible repayment in full of all DIP Obligations and Prepetition Secured Obligations (to the extent such remain outstanding), and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, including subsequent to the confirmation of any chapter 11 plan of reorganization with respect to any or all of the Debtors and the Debtors' estates, and such facility is secured by any DIP Collateral, then all the cash proceeds derived from such credit or debit shall immediately be turned over to the DIP Agent to be applied in accordance with this Final Order and the DIP Financing Agreements.

11. **Cash Collection**.

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(a) From and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral and all Cash Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in accounts as specified in the DIP Credit Agreement (or in such other accounts as are designated by the DIP Agent from time to time) (collectively, the "***Cash Collection Accounts***"), which accounts shall be subject to the sole dominion and control of the DIP Agent. It is understood and agreed by the Debtors and the DIP Agent that, unless a "Default" or an "Event of Default" under the DIP Credit Agreement has occurred and is continuing, for so long as there are no amounts outstanding under the DIP Facility, proceeds in the Cash Collection Accounts shall be returned to the Debtors and the Debtors shall be authorized to use such Cash Collateral in accordance with this Final Order. All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP Agent for application in accordance with the DIP Financing Agreements. Unless otherwise agreed to in writing by the DIP Agent and the Prepetition Secured Creditors or as set forth in this Final Order, the Debtors shall maintain no accounts except those identified in the interim cash management order entered by the Court with respect thereto (the "***Cash Management Order***"), whether now existing or hereafter established. The Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in the Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP Agent. To the extent that a Prepetition Secured Creditor's perfection in or control over bank accounts or investment accounts, including any funds or investments therein, may be affected by reason of the transfer of control to the DIP Agent or any agent of the DIP Lenders in accordance with this Final Order, the perfection and control rights of such Prepetition Secured Creditor therein shall be deemed to continue, subject to the senior, priming rights of the DIP Lender and the DIP Lien in such bank accounts or investment accounts, for so long as the DIP Obligations remain outstanding, and thereafter shall revert back to such Prepetition Secured Creditor.

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(b) Notwithstanding anything in this Final Order or any of the DIP Financing Agreements, from and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall promptly be deposited into a depository account furnished by a depository bank acceptable to the DIP Agent and such account shall be in the name of the DIP Agent and subject to the sole dominion and control of the DIP Agent (such account, the "***DIP Collateral Account***"). The Debtors' use of the proceeds in the DIP Collateral Account shall be subject to this Final Order and the DIP Financing Agreements.

12. **Maintenance of DIP Collateral**. Until the indefeasible payment in full of all DIP Obligations, all Prepetition Secured Obligations, and the termination of the DIP Agent's and the DIP Lenders' obligation to extend credit under the DIP Facility, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facility or the Prepetition Secured Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by the Cash Management Order and this Final Order, and maintain books and records sufficient to account for postpetition intercompany transfers in a manner required by the Cash Management Order and the DIP Credit Agreement at section 5.6 or as otherwise agreed to by the DIP Agent or otherwise required or permitted by the DIP Financing Agreements or this Final Order.

13. **DIP and Other Expenses**. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of the (1) DIP Agent, (including the fees, expenses, and disbursements of Waller, Lansden, Dortch & Davis, LLP, as counsel to the DIP Agent), (2) the DIP Lenders in connection with the DIP Facility, as provided herein and in the DIP Financing Agreements, or, if requested by the Debtors, incurred with a proposed conversion of the DIP Facility into exit financing (including the preparation and negotiation of the documentation relating to the exit facility), and (3) the Prepetition Secured Creditors and McKesson, whether or not the transactions contemplated hereby are consummated, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses. Payment of all

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such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors and McKesson shall not be required to comply with the U.S. Trustee fee guidelines; however, any time that such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its invoices to the U.S. Trustee contemporaneously with the delivery of such invoices to the Debtors. Any objections raised by the Debtors, the U.S. Trustee or the Committee, with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) days of the receipt of such invoice; if after ten (10) days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Agent, the DIP Lenders and the Prepetition Secured Creditors incurred on or prior to such date without the need for any professional engaged by such parties to first deliver a copy of its invoice or other supporting documentation. No attorney or advisor to the DIP Agent, the DIP Lenders any Prepetition Secured Creditor or McKesson shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Upon entry of this Final Order, any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Agent or the DIP Lenders in connection with or with respect to the DIP Facility, and (ii) Prepetition Secured Creditors and McKesson in connection with or with respect to these matters, were approved in full and shall not be subject to avoidance, disgorgement or any similar form of recovery by the Debtors or any other person.

14. **Indemnification**. The Debtors shall indemnify and hold harmless the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Credit Agreement.

15. **Right to Credit Bid**. The DIP Lender shall have the right, but not the obligation, to "credit bid" the DIP Obligations during any sale of the DIP Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy

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Code. Subject to the indefeasible payment in full of the DIP Obligations, the Prepetition Secured Creditors shall have the right but not the obligation to credit bid the Prepetition Secured Obligations during any sale of the Prepetition Collateral, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code.

16. **Carve Out**. The DIP Liens, DIP Superpriority Claim, and Prepetition Replacement Liens are subordinate only to the following: (i) all fees required to be paid to the clerk of the Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) (the "***U.S. Trustee Fees***"), together with interest, if any, at the statutory rate; and (ii) all allowed claims for unpaid fees, costs and expenses incurred by persons or firms retained by the Debtors or the Committee, if any, whose retention is approved by the Court pursuant to any one or more of sections 327, 328, 363, and 1103 of the Bankruptcy Code, to the extent such claims for fees, costs and expenses are both (a) allowed by the Court pursuant to a final order, and (b) in accordance with, and solely up to the total respective amounts set forth in the DIP Budget for the applicable time frame (the "***Carve Out Expenses***"); provided that the aggregate amount of such Carve Out Expenses shall not exceed (a) $2,000,000 with respect to persons or firms retained by the Debtors, and (b) $150,000 with respect to persons or firms retained by the Committee (collectively, the "***Carve Out Amount***"). Any payment or reimbursement made after the Carve Out Trigger Date in respect of any Carve Out expenses shall permanently reduce the Carve Out Amount on a dollar-for-dollar basis.

17. **Limitation of Use of Proceeds**. Notwithstanding anything set forth herein and except as provided in the following paragraph, the Carve Out shall exclude any fees and expenses incurred in connection with initiating or prosecuting any claims, causes of action, adversary proceedings, or other litigation against the DIP Agent, the DIP Lender or any of the Prepetition Secured Creditors, including, without limitation, the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (i) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, (a) the DIP Obligations, (b) the Prepetition Secured Obligations, (c) the Prepetition Liens, (d) the VMF Liens or (e) the DIP Liens, or (ii) preventing, hindering or delaying, whether directly or indirectly, the DIP Agent's, the DIP

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Lender's, the Prepetition Secured Creditors' or McKesson's assertion or enforcement of their liens or security interests or realization upon any DIP Collateral, Prepetition Collateral, or VMF Collateral, or (iii) prosecuting any Avoidance Actions against the DIP Agent, the DIP Lender, any Prepetition Secured Creditor or McKesson, or (iv) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Secured Obligations, or the McKesson Prepetition Debt, or the adequate protection granted herein, *provided however*, that nothing in this Final Order shall limit the right of the Debtors to challenge the reasonableness of attorney and financial advisory fees paid or proposed to be paid to Prepetition Secured Creditors or McKesson as adequate protection payments.

18. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors or the Committee or shall affect the right of the DIP Agent, the DIP Lender, the Prepetition Secured Creditors or McKesson to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the DIP Budget.

19. **Section 506(c) Claims; Equities of the Case**. Nothing contained in this Final Order shall be deemed a consent by the DIP Agent, the DIP Lender or any Prepetition Secured Creditor to any charge, lien, assessment or claim against the DIP Collateral under Section 506(c) of the Bankruptcy Code or otherwise. The "equities of the case" exception under Section 552(b) of the Bankruptcy Code and surcharge powers under section 506(c) of the Bankruptcy Code are waived as to the Prepetition Creditors and all pre and postpetition collateral securing their claims.

20. **Collateral Rights.** Unless the DIP Agent and DIP Lender have provided their prior written consent or all DIP Obligations have been paid in full in cash (or will be paid in full in cash upon entry of an order approving indebtedness described in subparagraph (a) below), and all commitments by the DIP Agent and the DIP Lender to lend have terminated:

(a) The Debtors shall not seek entry, in these proceedings, or in any Successor Case, of any order which authorizes the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral and/or entitled to priority administrative status which is senior or *pari passu* to the DIP

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Liens granted to the DIP Lender pursuant to this Final Order, the DIP Financing Agreements or otherwise;

(b) The Debtors shall not consent to relief from the automatic stay by any person other than the DIP Agent with respect to all or any portion of the DIP Collateral without the express written consent of the DIP Agent and the DIP Lender;

(c) In the event that the Debtors seek entry of an order in violation of subsection (a) hereof, the DIP Agent and DIP Lender shall be granted relief from the automatic stay with respect to the DIP Collateral pursuant to the notice procedures set forth in this Order; and

(d) The Parties to the DIP Credit Agreement agree that the Final Order does not impair the claims, rights, or ability, if any, to recoup, setoff or otherwise recover Medicare overpayments related to prepetition services by a Debtor ("***Prepetition Medicare Overpayments***") of the United States, its agencies, departments, agents or entities (collectively, "***United States***") from the payments made to such Debtor for services rendered after the Petition Date ("***Postpetition Medicare Payments***"), in accordance with the Medicare statutes, regulations, policies and procedures. The Parties to the DIP Credit Agreement further agree that the Final Order does not impair the United States' claims, rights or ability, if any, to recoup, setoff or otherwise recover any other prepetition debt a Debtor may owe to the United States from the Postpetition Medicare Payments due such Debtor in accordance with applicable law.

21. **Commitment Termination Date.** All DIP Obligations of the Debtors to the DIP Agent and the DIP Lender shall be immediately due and payable, and the Debtors' authority to use the proceeds of the DIP Facility shall cease, on the date that is the earliest to occur of: (i) September 7, 2019 (the "***Scheduled Termination Date***"); (ii) the date of revocation of this Final Order, as applicable; (iii) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "*effective date*") of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Court; (iv) the consummation of a sale of all or substantially all of the DIP Collateral; (v) the date the Court orders the conversion of the Chapter 11 Cases to a Chapter 7 liquidation or the dismissal of the Chapter 11 Cases or the appointment of a trustee or examiner with expanded power in the Chapter 11 Cases;

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and (vi) the acceleration of the DIP Loan and the termination of the commitments with respect to the DIP Facility in accordance with the DIP Financing Agreements (the earliest of such dates, the "***Commitment Termination Date***"). The occurrence of the Commitment Termination Date, shall also constitute, subject to further Court order, termination of the Prepetition Secured Creditors' and McKesson consent to the Debtors' use of their prepetition Cash Collateral (the "**Carve Out Trigger Date**").

22. **Disposition of Collateral**. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Agent and the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Agent or the DIP Lender or an order of this Court), except as provided in the DIP Financing Agreements and this Final Order and approved by the Court to the extent required under applicable bankruptcy law. Nothing herein shall prevent the Debtors from making sales in the ordinary course of business to the extent consistent with the DIP Budget and as permitted in the DIP Financing Agreements.

23. **Events of Default.** The occurrence of a "Default" or an "Event of Default" pursuant to Section 9.1 the DIP Credit Agreement, including, without limitation, the "Bankruptcy Defaults" enumerated in Section 9.1(q) of the DIP Credit Agreement, shall constitute an event of default under this Final Order, unless expressly waived in writing in accordance with the consents required in the DIP Financing Agreements.

24. **Rights and Remedies Upon Event of Default.**

(a) Any otherwise applicable automatic stay is hereby modified so that after the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, the DIP Agent and the DIP Lender shall be entitled to exercise its rights and remedies with respect to the Debtors and the DIP Collateral provided in the DIP Financing Agreements and by applicable law, including, without limitation, foreclosing on and selling the DIP Collateral, without the need for further court approval or the consent of any other party.

(b) Notwithstanding the preceding paragraph, immediately following the giving of notice by the DIP Agent of the occurrence and continuance of an Event of Default, the DIP

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Agent shall have the right in its sole discretion to take any or all of the following actions: (i) declare the commitment of the DIP Lender to make the DIP Loan to be terminated; (ii) declare the unpaid principal amount of all outstanding DIP Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other DIP Financing Agreements to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by any Debtor; (iii) reduce the advance rates in respect of Eligible Accounts (as defined in the DIP Credit Agreement) or take additional reserves against or otherwise modify the Borrowing Base; and (iv) exercise all rights and remedies available to the DIP Agent and the DIP Lenders under the DIP Financing Agreements, including any right of set-off under Section 11.21 of the DIP Credit Agreement, or under the UCC or any other applicable law; *provided, however*, that upon the occurrence of an Event of Default under the DIP Credit Agreement, the obligation of the DIP Lenders to make the DIP Loan shall automatically terminate, the unpaid principal amount of all outstanding DIP Loans and other DIP Obligations and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the DIP Agent or any DIP Lender.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the DIP Agent's or the DIP Lender's rights to seek any other or supplemental relief in respect of the DIP Agent's and the DIP Lender's rights, as provided in the DIP Credit Agreement.

25. **Limitation on Lender Liability**. Nothing in this Final Order, any of the DIP Financing Agreements, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders or the Prepetition Secured Parties Creditors of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Agent, the DIP Lenders and the Prepetition Secured Creditors shall not, solely by reason of having made loans under the DIP Facility, be deemed in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§

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9601 et seq., as amended, or any similar federal or state statute). Nothing in this Final Order or the DIP Financing Agreements shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, the DIP Lenders, or any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

26. **Insurance Proceeds and Policies**. As of the entry of this Final Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders) and the Prepetition Secured Creditors, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and as lender's loss payee with the priority as to all rights and remedies as set forth herein and in the DIP Credit Agreement.

27. **Proofs of Claim**. Neither the DIP Agent nor the DIP Lender will be required to file proofs of claim in the Chapter 11 Cases. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Creditors.

28. **Other Rights and Obligations**.

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code**. **No Modification or Stay of this Final Order.** The Debtors, the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and McKesson have acted in good faith in connection with negotiating the DIP Financing Agreements, extending credit under the DIP Facility, and authorizing use of Cash Collateral and rely on this Final Order in good faith. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter reversed, modified amended or vacated by a subsequent order of this or any other Court, the DIP Agent, DIP Lender, Prepetition Secured Creditors and McKesson are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such reversal, modification, amendment or *vacatur* shall not affect the validity and enforceability of any advances made pursuant to this Final Order or the DIP Financing Agreements, nor shall it affect the validity, priority, enforceability, or perfection of the DIP Liens, the Prepetition Replacement Liens or the

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VMF Replacement Lien. Any claims or DIP Protections granted to the DIP Agent and the DIP Lender hereunder, or adequate protection granted to the Prepetition Secured Creditors and McKesson hereunder, arising prior to the effective date of such reversal, modification, amendment or *vacatur*, shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Lender, Prepetition Secured Creditors and McKesson shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections and adequate protection granted herein, with respect to any such claims. Since the loans made pursuant to the DIP Credit Agreement are made in reliance on this Final Order, the obligations owed to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors or McKesson prior to the effective date of any reversal or modification of this Final Order cannot, as a result of any subsequent order in the Chapter 11 Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors or McKesson under this Final Order and/or the DIP Financing Agreements.

(b) **Binding Effect**. The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Agent, DIP Lender, the Debtors, the Prepetition Secured Creditors, McKesson, the Committee, all other Parties in Interest, and all creditors, and each of their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case.

(c) **No Waiver**. The failure of the DIP Agent or the DIP Lender to seek relief or otherwise exercise its rights and remedies under the DIP Financing Agreements, the DIP Facility, this Final Order or otherwise, as applicable, shall not constitute a waiver of the DIP Agent's or the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the DIP Agent or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the DIP Agent and DIP

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Lender to (i) request conversion of the Chapter 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) the DIP Agent or DIP Lender may have pursuant to this Final Order, the DIP Financing Agreements, or applicable law. Nothing in this Final Order shall interfere with the rights of any party with respect to any non-Debtors.

(d) **No Third Party Rights**. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

(e) **No Marshaling**. The DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

(f) **Amendment.** The Debtors, the DIP Agent and the DIP Lender may amend or waive any provision of the DIP Financing Agreements, on notice to the Office of the U.S. Trustee, the Committee, the Prepetition Secured Creditors and McKesson. The Debtors shall give each Prepetition Secured Creditor and McKesson notice concurrent with giving such notice or request to the DIP Agent for any amendment or waiver of the DIP Financing Agreements and, without prejudice to the effectiveness of any such amendment or waiver, each Prepetition Secured Creditor shall have the right to file a motion objecting to such amendment. Nothing in this Final Order shall authorize the DIP Agent or DIP Lenders to increase the commitments in excess of the commitments set forth in this Final Order, increase the contract interest rate, defined in the DIP Credit Agreement as the Applicable LIBOR Margin, increase the Default Rate or extend the maturity date, defined in the DIP Credit Agreement as the "Scheduled Termination Date". Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Financing Agreements shall be effective unless set forth in writing, signed on behalf of all the Debtors, the DIP Agent and the DIP Lender, and, if material, approved by the Court. Nothing herein shall preclude the Debtors, the DIP Agent and the DIP Lender from implementing any amendment or waiver of any provision of the DIP Financing Agreements.

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(g) **Estate Subrogation**. Debtor Verity Holdings shall have an allowed unsecured superpriority administrative expense claim granted to it pursuant to section 364(c)(1), against each of the other Debtors that is a "Net Borrower" (as defined below) based on the consolidated cash management process and DIP Loan, which claim shall be subordinate to the DIP Obligations, including the DIP Superpriority Claim, and to the Adequate Protection Claims of the Prepetition Secured Creditors and McKesson, but shall have priority over all other administrative claims, in an amount equal to the sum of (a) the amount, if any, by which Debtor Verity Holdings' assets that are used to satisfy the DIP Loan, the Prepetition Replacement Liens or VMF Liens, exceeds the amount, if any, of any draws on the DIP Loan used by Verity Holdings plus interest, and (b) any postpetition net intercompany advances by Verity Holdings to any other Debtor. "Net Borrower" shall mean any Debtor for which the sum of all cash received from the concentration account or draws on the DIP Loan and its allocation of interest paid or payable under the DIP Loan based on amounts received by it and amounts received by other Debtors, exceeds any cash it has transferred to the concentration account during the Chapter 11 Cases.

29. **Survival of Final Order and Other Matters.** The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered in these Bankruptcy Cases, including without limitation, an order (i) confirming any Plan in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or any Successor Cases, (iii) to the extent authorized by applicable law, dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court. The terms and provisions of this Final Order including the DIP Protections granted pursuant to this Final Order and the DIP Financing Agreements, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections shall maintain their priority as provided by this Final Order until all the Obligations of the Debtors to the DIP Agent and the DIP Lender pursuant to the DIP Financing Agreements have been indefeasibly paid in full and in cash and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Financing Agreements which survive such discharge by

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their terms). The terms and provisions of this Final Order including any protections granted to the Prepetition Secured Creditors and McKesson, shall continue in full force and effect notwithstanding the entry of such order, and such protections for the Prepetition Secured Creditors and McKesson shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the Prepetition Secured Creditors and McKesson pursuant to applicable documentation have been discharged. The DIP Obligations shall not be discharged by the entry of an order confirming a plan of reorganization, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

(a) **Inconsistency**. In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements and of this Final Order, the provisions of this Final Order shall govern and control.

(b) **Enforceability**. This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry of this Final Order. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

(c) **Objections Overruled**. All objections to the DIP Motion to the extent not withdrawn or resolved, are hereby overruled.

(d) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Agent and the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or the DIP Lender.

(e) **No Effect on Non-Debtor Collateral**. Notwithstanding anything set forth herein, neither the liens nor claims granted in respect of the Carve Out shall be senior to any liens or claims of the DIP Agent or the DIP Lender with respect to any other non-Debtor or any of their assets.

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Date: October 4, 2018

Ernest M. Robles
United States Bankruptcy Judge

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EXHIBIT D

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOST ANGELES DIVISION

In re:

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

MOTION PURSUANT TO BANKRUPTCY RULE 7052(B) FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF (DOC. 409)

Swinerton Builders ("Swinerton"), a creditor secured by a mechanic's lien on the Seton Medical Center real property, moves for an additional finding and a corresponding amendment of the judgment 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 ("Final Order") (Doc. No. 409). Swinerton's motion is made pursuant to Federal Rule of Bankruptcy Procedure 7052(b), which allows a court to amend its findings or make additional findings and to amend the judgment accordingly.

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

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

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

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

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

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

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

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

Dated: October 17, 2018

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Nathan A. Schultz
Robert N. Amkraut (Admitted Pro Hac Vice)
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EXHIBIT E

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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 and Debtors In Possession.	Lead Case No. 18-20151-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-20171-ER Chapter 11 Cases Hon. Judge Ernest M. Robles **OBJECTION TO SWINERTON BUILDERS' MOTION PURSUANT TO BANKRUPTCY RULE 7052(B) FOR AMENDMENT OF FINDINGS IN FINAL DIP ORDER** **[Related to Docket Nos. 565, 409]**
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ 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.	

Verity Health System Of California, Inc. and the above-referenced affiliated debtors (collectively, the "Debtors"), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases, hereby file this Objection (the "Objection") to *Swinerton Builders' ["Swinerton"] Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superproprity Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (the "Motion"), filed on October 17, 2018 [Docket No. 564] and, in further support of this Objection, state the following:

I.

STATEMENT OF FACTS

1. On August 31, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[1] The cases are currently being jointly administered before the Bankruptcy Court . Since the commencement of this case, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. On August 31, 2018, the Debtors filed the *Emergency Motion 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* [Docket No. 31] (the "DIP Financing Motion").

3. On September 6, 2018, the Court entered an interim order approving the DIP Financing Motion [Docket No. 86] (the "Interim DIP Financing Order").

4. On September 24, 2018, Swinerton filed their objection to the DIP Financing Motion [Docket No. 269] (the "Swinerton Objection"), asserting that they hold an inchoate mechanics lien on the Debtors' real property and arguing that the DIP Financing Motion and

[1] All references to "§" or "section" herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. as amended, unless otherwise noted.

proposed order failed to account for Swinerton's lien and failed to provide Swinerton with adequate protection.

5. On October 3, 2018, the Court held a hearing on the DIP Financing Motion. At that hearing, the Court heard argument from Swinerton's counsel on the Swinerton Objection and overruled the Swinerton Objection on the record.

6. Also on October 3, 2018, the Court issued its tentative ruling approving the DIP Financing Motion (the "Tentative Ruling") [Docket No. 392]. The Tentative Ruling provides that Swinerton's Objection is overruled.

7. On October 4, 2018, the Court entered the Final DIP Financing Order approving the DIP Financing Motion (the "Final DIP Financing Order") [Docket No. 409].

II.

ARGUMENT

A. The Applicable Legal Standard.

Swinerton seeks to take advantage of Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7052(b), which provides that "on a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings - or make additional findings - and amend the judgment accordingly." Bankruptcy Rule 7052(b) incorporates Federal Rule Civil Procedure ("Civil Rule") 52(b). Fed. R. Bank. P. 7052(b). To warrant alteration or amendment of court's decision under either rule, the moving party must show: (a) manifest error of law and fact, or (b) existence of newly discovered evidence which was not available at time of original hearing. *Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner)*, 208 B.R. 69, 72 (B.A.P. 9th Cir.1997), *rev'd on other grounds*, 161 F.3d 1216 (9th Cir. 1998). However, a Civil Rule 52(b) motion "should not be employed ... to relitigate old issues ... or to secure a rehearing on the merits." *Matkovich v. Costco Wholesale Corp.*, 2017 WL 6527335, at *2 (C.D. Cal. Aug. 24, 2017) (citing *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986)); *see also U.S. Fidelity & Guar. Co. v. Lee Investments LLC*, 2009 WL 3162236, at *1 (E.D. Cal. Sept. 29, 2009) ("Rule [52(b)] is not intended to serve as a vehicle for rehearing."). "The decision to alter or amend findings is committed to the sound discretion of the trial judge." *Id.* (citing *Gutierrez v. Wells*

Fargo Bank, N.A., 2010 WL 4072240, at *5 (N.D. Cal. Oct. 18, 2010)).[2] A party may not use a Civil Rule 52(b) motion to introduce any new facts or legal theories that were available to them at trial, much less re-litigate facts and legal theories that have previously been rejected by the court. *Sentinel Offender Services, LLC v. G4S Secure Solutions (USA) Inc.*, 2017 WL 3485781, at *1 (C.D. Cal. Mar. 22, 2017) (citing *ATS Products Inc. v. Ghiorso*, No. C10–4880 BZ, 2012 WL 1067547, at *1 (N.D. Cal. Mar. 28, 2012).

The court's findings of fact and conclusions of law are entitled to a "presumption of validity", and the party seeking to amend those findings bears the "heavy burden of establishing a sufficiently serious factual or legal error that would warrant such." *Antoninetti v. Chipotle Mexican Grill, Inc.*, 2008 WL 1805828, at *2 (S.D. Cal. Apr. 21, 2008) (*citing Purer & Co. v. Aktiebolaget Addo*, 410 F.2d 871, 878 (9th Cir. 1969). Furthermore, a motion to amend a court's factual and legal findings is properly denied where the proposed additional facts would not affect the outcome of the case or are immaterial to the court's conclusions. *Id.* (citing *Weyerhaeuser Co. v. Atropos Island*, 777 F.2d 1344, 1352 (9th Cir. 1985)); *see also Mendez v. County of Los Angeles*, 2013 WL 12162132, at *9 (C.D. Cal. Nov. 20, 2013).

B. Swinerton's Motion to Amend the Final DIP Order Should Be Denied.

There is no dispute that the Swinerton Objection was squarely overruled by the Court. There is also no dispute that the Court deliberately modified the Debtors' submitted order prior to its entry on the docket. Swinerton nonetheless alleges that this Court erroneously failed to amend the proposed Final DIP Financing Order to provide them with the same negotiated adequate protection and superpriority claims package granted to the Prepetition Secured Creditors (as such term is defined in the Final DIP Order). Swinerton's assertion of error by the Court contends that certain language in the Court's Tentative Ruling implies that the modifications to the Final DIP

[2] Swinerton has not made a motion for reconsideration under Bankruptcy Rule 7059, but if it had, such motion also should be denied. A bankruptcy court should deny a motion for reconsideration unless the movant can make a showing of one of the enumerated grounds for relief that justify reconsideration including (i) an intervening change in controlling law, (ii) the availability of new evidence or (iii) the need to correct a clear error of law or manifest injustice. *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364, 369 (9th Cir.1989). Swinerton did not raise any of the *Pyramid* factors in its Motion.

Financing Order identified in the Swinerton Motion are necessary to conform the Final DIP Financing Order to the Tentative Ruling. As such, Swinerton argues that the court should "remedy this omission" by amending the Final DIP Financing Order accordingly.

The Swinerton assertion of implied error has not demonstrated either a manifest error of law and fact, or the existence of newly discovered evidence which was not available at time of original hearing. Swinerton has offered no new facts or law to support their interpretation of the Court's Tentative Ruling or to support its request to amend the findings of fact in the Final Financing DIP Order under Bankruptcy Rule 7052(b).[3] Further, Swinerton has presented no evidence to suggest that the facts fail to support the Court's ruling in the Tentative Ruling and the Final DIP Financing Order. As such, Swinerton's Motion should be denied.

C. <u>The Court's Tentative Ruling is Clear.</u>

The Court's Tentative Ruling provided that: "There is no reason why Swinerton's lien should not be primed in the same manner as the liens of other secured creditors." Tentative Ruling, at 12. Swinerton mistakenly has interpreted this to mean that since they are being primed "in the same manner as the liens of the other secured creditors" they should also therefore be entitled to the exact same negotiated protections as the identified Prepetition Secured Creditors. But this proffered interpretation of the Final DIP Financing Order ignores the differences among the secured creditor groups and between the Prepetition Secured Creditors and other secured creditors. For example, Swinerton ignores that the Special Assessment secured creditors do not have the same rights as the Prepetition Secured Creditors. Further, Swinerton fails to note that McKesson has replacement liens only in Verity Medical Foundation assets, while the MOB Financing Parties, the 2015 and 2017 Notes Trustee, the 2005 Bond Trustee and the Master Trustee have replacement liens in multiple Debtors. Any suggestion that all secured creditors except Swinerton obtained the same negotiated protections beyond the "equity cushion" in

[3] Local Bankruptcy Rule ("LBR") 9013-1(c)(3)(A) provides that "There must be served and filed with the motion and as a part thereof: (A) Duly authenticated copies of all photographs and documentary evidence that the moving party intends to submit in support of the motion, in addition to the declarations required or permitted by FRBP 9006(d)." LBR 9013-1(i) provides "Factual contentions involved in any motion, opposition or other response to a motion, or reply, must be presented, heard, and determined upon declarations and other written evidence."

manifestly incorrect. Thus Swinerton's request for this Court to amend the Final DIP Financing Order to provide them with both adequate protection and a superpriority claim, similar to those provided to the Debtors' Prepetition Secured Creditors, is a post record closing for relief the Debtors did not offer to Swinerton, and the Court did not "mistakenly" fail to extend to Swinerton.

The source of Swinerton's error appears to be that it has misconstrued the Court's Tentative Ruling. The full relevant text of the Court's Tentative Ruling provides:

> The financing package negotiated by the Debtor primes the liens of all secured creditors, not just Swinerton's. There is no reason why Swinerton's lien should not be primed in the same manner as the liens of other secured creditors. Swinerton's objection is overruled.

When, read in context, it is clear that the negotiated "package" is a reference to the DIP Lender's "financing" package, and that Court is concluding that Swinerton is no more or less exempt from having its lien primed by the Debtors' postpetition borrowing and DIP Liens than any other prepetition creditor in these Cases. Attempting to read into the Tentative Ruling a suggestion that the Court was also intending to grant Swinerton the same protections as it granted to the Prepetition Secured Creditors is simply incorrect.

D. <u>The Court Did Not Accidentally Fail to Amend the Final DIP Financing Order.</u>

Had the Court intended to grant Swinerton those protections, it could have done so in one of two ways. First, the Court could have required that the Debtors add a reference to Swinerton in the portions of the Final DIP Financing Order that grant adequate protection and superpriority claims to the Prepetition Secured Creditors. Second, the Court could have made the changes on its own accord, as the Court did ultimately make modifications to the proposed Final DIP Financing Order, as submitted by the Debtors. But the Court did neither. As such, the Court's Tentative Ruling meant that Swinerton's Objection was overruled because the Court agreed that Swinerton is adequately protected through the equity cushion that the Debtors' described, and provided evidence of, in their Omnibus Reply to the Objections to the DIP Motion [Docket No. 355] (the "<u>DIP Reply</u>") and in the Declarations of Anita Chou and James Moloney in support

thereof [Docket Nos. 309-2 and 309-3]. The Debtors believe that Swinerton is entitled to nothing more than that equity cushion.

Further, Swinerton does not argue here that the record on adequate protection that they have, through the Debtors' well established equity cushion, is insufficient. Swinerton did not raise arguments on the adequacy of the equity cushion at the final hearing on the DIP Financing Motion, and they do not now challenge the Court's findings on the record, only the terms of the Final DIP Financing Order.

Nonetheless, Debtors reiterate here what they successfully argued in their DIP Financing Reply: that there is "ample value in the Debtors' estates to ensure payment of any properly noticed, filed and recorded mechanics' lien, including if applicable, one filed by Swinerton…. Should the Debtors determine to cease operating at Seton, or any other hospital facility, it would do so to avoid further losses and to preserve the value of the real estate on which Swinerton purports to have a lien thereby decreasing the risk of any diminution of value." DIP Reply,at 3-4. The Debtors continue to believe that "no additional adequate protection, beyond the equity cushion, is required to preserve the junior lien position of Swinerton vis a vis the unsecured creditors of Seton." DIP Reply, at 5. Since Swinerton has not established any grounds or provided any evidence on which the Court should amend the Final DIP Financing Order, the Swinerton Motion should be denied.

Should anything change with respect to the Debtors' established equity cushion, Swinerton can, at that time, return to the Court to renew its request for adequate protection. But as of now, the Debtors continue to believe, as set forth in the Moloney Declaration, that there is an ample equity cushion available to creditors, like Swinerton, in this Case.

E. <u>Swinerton's Situation is Distinguishable from the Prepetition Secured Creditors.</u>

As demonstrated above, there are differences between secured creditors with respect to adequate protection. In addition, the Debtors' relationship with the Prepetition Secured Creditors is different from the Debtors' relationship with Swinerton in that the Prepetition Secured Creditors have authorized the use of their cash collateral, for the benefit of the Debtors' estates and creditors. The Debtors needed access to that cash collateral in order to effectuate an orderly

sale of its assets, which benefits all creditors, including Swinerton. As such, the Prepetition Secured Creditors, whose liens are senior to that of Swinerton, are entitled to additional adequate protection per §§ 364(d)(1) and 361. Swinerton, on the other hand, is a purported mechanics' lienholder who alleges to hold a lien on certain of the Debtors' real property. Swinerton's lien is subordinate to those of the 2005 Bonds and the 2015 and 2017 Notes, who are among the Prepetition Secured Creditors, as the Mortgages held by the Master Trustee were recorded before the commencement of work. *See* Docket No. 355, Exhibit 2. Swinerton's Motion does not challenge any of these facts and since Swinerton's status vis- à -vis the Debtors is not the same as that of the Prepetition Secured Creditors, the disparate treatment here is justifiable.

III.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that the Court: (i) deny the Motion; (ii), alternatively, set the Motion for hearing on December 19, 2018, at 10:00 a.m.; and (iii) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: October 31, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By */s/ Tania M. Moyron*
Tania M. Moyron

Attorneys for the Chapter 11 Debtors and Debtors In Possession

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Attorneys for Swinerton Builders

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 Lynnwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

NOTICE OF HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]; AND

REPLY OF SWINERTON BUILDER IN SUPPORT OF MOTION [RELATED TO DOCKET NOS. 732, 564, 409, 392, 355, 309 AND 269]

Hearing:
Date: December 4, 2018
Time: 10:00 a.m.

Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to Local Rule 9013-1(o)(4), the *Motion Pursuant to Bankruptcy Rule 7052(b) For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral; (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* (Doc. No. 564) (the "Motion") is hereby being set for hearing on **December 4, 2018 at 10:00 a.m. at the United States Bankruptcy Court, Courtroom 1568, 255 E. Temple Street, Los Angeles, California**.

Dated: November 13, 2018

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Nathan A. Schultz
Robert N. Amkraut (Admitted Pro Hac Vice)
Nathan A. Schultz
Attorneys for Swinerton Builders

REPLY

Swinerton Builders ("Swinerton"), a creditor secured by a $1.2 million mechanic's lien on the Seton Medical Center real property, submits this Reply in support of the Motion.

As stated in the Motion, Swinerton requests two amendments to the Final Order (Doc. No. 409) clarifying the Final Order so that it conforms to the Court's ruling. Specifically, Swinerton requests the Court clarify (1) that Swinerton's lien is adequately protected by an equity cushion, something that even Debtors accept, and (2) that if the adequate protection ultimately proves inadequate, Swinerton is entitled to a superpriority claim consistent with other prepetition secured creditors. For the Court's convenience, the two specific proposed amendments provided in Swinerton's Motion are reprinted at the end of this Reply.

A. Bankruptcy Rule 7052(b) is Appropriate to Clarify the Court's Order.

The Motion seeks to clarify the Final Order as it relates to Swinerton. As such, it is squarely within the scope and purpose of Bankruptcy Rule 7052(b), a rule that allows a court to clarify or amend findings or make additional findings. *In re King*, 2017 WL 1944123, at 2

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(Bankr. C.D. Cal 2017) ("A motion to amend under F.R.Civ.P 52(b) may be used 'to clarify essential findings or conclusions, correct errors of law or fact, or to present newly discovered evidence.'") (*quoting* Collier on Bankruptcy ¶ 7052.03 (16th ed. 2015) (further cites omitted); *In re Charron*, 541 B.R. 822, 825 (Bankr. W.D. Mich. 2015) ("The main purpose of Rule 52(b) is 'to create a record upon which the appellate court may obtain the necessary understanding of the issues to be determined on appeal.'" (*citing In re St. Marie Development Corp. of Montana, Inc.*, 334 B.R. 663, 675 n. 3 (Bankr. D. Mont. 2005) and 9C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure § 2582* (3d ed. 2015); *In re Smith Corona Corporation, SCM* 212 B.R. 59, 60 (Bankr. D. Del. 1997) ("The purpose of a motion pursuant to Rule 52(b) is to correct findings of fact and legal conclusions where the trial court deems it appropriate." (*citing United States Gypsum Co. v. Schiavo Bros. Inc.,* 668 F.2d 172, 180 n. 9 (3d Cir. 1981)).

As shown in Swinerton's Motion and as further explained below, Swinerton seeks clarification of the Final Order. A motion pursuant to Bankruptcy Rule 7052(b) is the appropriate vehicle for requesting clarifying additional findings.

B. <u>The Court Should Clarify the Final Order to Conform with its Ruling Regarding Swinerton to State that Swinerton's Lien is Adequately Protected by an Equity Cushion and that Swinerton is Entitled to a Superpriority Claim Similar to Other Secured Creditors</u>.

On September 24, 2018, Swinerton filed the Limited Objection of Swinerton Builders to Motion of Debtors for Final Orders (A) Authorizing the Debtors to Obtain Post Petition Financing Etc. (Doc. 269). In the Limited Objection, Swinerton objected that the Debtors' motion and proposed order failed to provide adequate protection of Swinerton's mechanic's lien as required by Bankruptcy Code 364(d)(1)(B). The Court overruled Swinerton's objection. In reaching its decision, the Court found:

> The approximate realizable value of the Debtors' assets, in excess of prepetition secured liabilities, is between $150 and $225 million *Id.* That is, secured creditors are protected by an equity cushion of between 26% to 40%. It is well established that an equity cushion of 20% or more constitutes adequate protection. *See, e.g., In re James River Associates,* 148 B.R. 790, 796 (E.D. Va. 1992).

Tentative Ruling at 9 (Doc. No. 392), incorporated into the Final Order (Doc. No. 409) at 6. With regard to adequate protection of secured claims, the Court said:

> In addition to adequate protection through the equity cushion, the replacement liens and superpriority claims provide the secured creditors additional adequate protection.

Tentative Ruling at 9 (Doc. 392).

With regard to Swinerton's lien, the Court ruled: "There is no reason why Swinerton's lien should not be primed in the same manner as the liens of the other secured creditors." Tentative Ruling at 12.

The Final Order, however, alters the Tentative Ruling, insofar as the Final Order does not prime Swinerton's lien "in the same manner as the liens of the other secured creditors." The Final Order provides the other secured creditors with adequate protection in the forms of: (1) an equity cushion; (2) superpriority claims; and (3) replacement liens. The Final Order is silent with regard to adequate protection of Swinerton's lien.

Swinerton requests that the Court remedy this omission by clarifying the Final Order to provide Swinerton's lien with adequate protection similar to the adequate protection provided to the liens of other secured creditors. Specifically, Swinerton requests that the Final Order be amended by adding provisions stating that: (1) Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion; and (2) to the extent of the diminution in value of Swinerton's interest in the Seton Medical Center property, Swinerton shall be granted an allowed superpriority administrative expense claim (subject to the same limitations as the superpriority administrative expense claims granted to the other Prepetition Secured Creditors in the Final Order).[1]

It should not be controversial to amend the Final Order to add a Finding that Swinerton's lien on the Seton Medical Center property is protected by an equity cushion. Even the Debtors acknowledge that:

> Swinerton is adequately protected through the equity cushion that the Debtors' described, and provided evidence of, in their Omnibus Reply to the Objections to the DIP Motion [Docket No. 355] and in the Declarations of Anita Chou and James Moloney in support thereof [Docket Nos. 309-2 and 309-3].

[1] Because Swinerton's collateral is real property--not inventory or accounts receivable which are consumed and replaced--Swinerton is not seeking the replacement liens given to the other secured creditors.

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Objection to Swinerton Builders' Motion (Doc. 732) at 5.

Although the Debtors' concede that Swinerton is adequately protected by an equity cushion, the Debtors persist in their objection to amending the Final Order to provide adequate protection similar to the adequate protection provided to the liens of other secured creditors.[2] If the equity cushion should prove to be inadequate, the Debtors would deprive Swinerton of the remedy that the Bankruptcy Code provides in section 507(b). The Debtors confidently assure the Court that there is "ample value in the Debtors' estates to ensure payment of any properly noticed, filed and recorded mechanics' lien, including if applicable, one filed by Swinerton." Debtors' Objection to Swinerton Builders' Motion p. 6 (Doc. 732) (*quoting* Debtors' Omnibus Reply to the Objections to the DIP Motion, at 3-4 (Doc. 355). If the Debtors' assurance is correct, Swinerton will have no need for a section 507(b) superpriority claim.

But the Debtors might be wrong. If the equity cushion proves inadequate, then consistent with the Final Order, Swinerton should be entitled to a superpriority claim. This also, of course, follows Bankruptcy Code section 507(b) which provides a remedy when adequate protection is insufficient. That remedy is a superpriority claim. The Court, having stated that Swinerton is adequately protected, should not deprive Swinerton of the remedy provided by Congress in section 507(b).

C. Conclusion

Amending the Final Order to add the two requested provisions would effectuate the Tentative Ruling by priming Swinerton's lien "in the same manner as the liens of the other secured creditors." The requested amendments would also bring the Final Order into compliance with Bankruptcy Code section 364(d)(1)(B), which states that the court may authorize post-petition borrowing secured by a priming lien "only if" there is adequate protection of the subordinated lien.

For the Court's convenience, the two requested amendments from Swinerton's BR 7052(b) Motion are reprinted below:

[2] Notably, no creditors, including the Secured Creditors (as defined in the Final Order) and the Unsecured Creditors Committee, objected to the Motion.

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

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

WHEREFORE, Swinerton respectfully requests that the Court overrule the Debtors' Objection and grant the Motion.

Dated: November 13, 2018

Respectfully submitted,

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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
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A true and correct copy of the foregoing document entitled (*specify*): ______________________________

NOTICE OF HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]; AND REPLY OF SWINERTON BUILDER IN SUPPORT OF MOTION

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 13, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:
On (*date*) November 13, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
Roybal Federal Building
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Los Angeles, CA 90012

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) ___________, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/13/2018	Nathan A. Schultz	/s/ Nathan A. Schultz
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Rose Zimmerman on behalf of Interested Party City of Daly City
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EXHIBIT G

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 Verity Health System of California, Inc.
☐ 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 Medical 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
Chapter: 11

ORDER SETTING DECEMBER 5, 2018 AS CONSOLIDATED HEARING DATE FOR MATTERS INITIALLY NOTICED FOR DECEMBER 4 AND 5, 2018

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.

CONSOLIDATED HEARING DATE:

Date: December 5, 2018

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Good cause appearing, the Court HEREBY ORDERS as follows:

1) The hearing on the *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 564] (the "Rule 7052(b) Motion"), set for December 4, 2018, at 10:00 a.m., is CONTINUED to **December 5, 2018, at 10:00 a.m.**, to take place concurrently with the hearing on the *Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Deposits and Overpayments* [Doc. No. 815].
2) This Order shall not affect the briefing deadlines on the Rule 7052(b) Motion.
3) By no later than **November 30, 2018**, Swinerton Builders shall serve this Order upon interested parties, and shall file a proof of service so indicating.

IT IS SO ORDERED.

###

Date: November 28, 2018

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT H

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

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☐ *Individual appearing without attorney*
■ *Counsel for: Official Committee of Unsecured Creditors of Verity Health System of California, Inc., et al.*

FOR COURT USE ONLY

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

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

Debtor(s).

CASE NO.: 2:18-bk-20151-ER

ADVERSARY NO.:
(*if applicable*)

CHAPTER: 11

Plaintiff(s) (*if applicable*).

vs.

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s): Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al.*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff
☐ Defendant
☐ Other (*describe*):

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor
☐ Creditor
☐ Trustee
■ Other (*describe*): Official Committee of Unsecured Creditors

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from:

   Paragraphs 2(d), 2(h), 5(d), 5(f), 19, and 28(e) of the *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") [Docket No. 409] solely with respect to the Prepetition Secured Creditors (as defined in the Final DIP Order).

2. The date the judgment, order, or decree was entered: 10/4/2018

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (*attach additional pages if necessary*):

1. Party: Debtors Verity Health System of California, Inc., et al.

   Attorney:

   SAMUEL R. MAIZEL (Bar No. 189301)
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   JOHN A. MOE, II (Bar No. 066893)
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   Tel: (213) 623-9300 / Fax: (213) 623-9924

2. Party:

   Attorney:

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

James C. Behrman

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Date: 11/29/2018

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

2029 Century Park E, 33rd Floor, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled (*specify*): ***NOTICE OF APPEAL AND STATEMENT OF ELECTION*** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 29, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) November 29, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) November 29, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 29, 2018	Ricky Windom	/s/ Ricky Windom
Date	*Printed Name*	*Signature*

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(Via NEF)

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Attorneys for Swinerton Builders

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 Lynnwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures – San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED TO DOCKET NOS. 812, 732, 564, 409, 392, 355, 309 AND 269]

This Stipulation is entered between Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), in the above-referenced jointly administered Chapter 11 bankruptcy cases, on the one hand, and Swinerton Builders ("Swinerton"), on the other, with respect to the following:

1. On August 31, 2018, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

2. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order ... (Doc. 409)* [Doc. 564] (the "Swinerton Motion").

3. On October 31, 2018, the debtors filed their Objection [Doc. 732] to the Swinerton Motion.

4. On November 13, 2018, Swinerton filed a Notice of Hearing [Doc. 812] setting the Swinerton Motion for hearing on December 4, 2018 at 10:00 a.m.

5. On November 28, 2018, the Court entered an order continuing the hearing on the Swinerton Motion to December 5, 2018 at 10:00 a.m., a copy of which order is attached hereto as Exhibit 1.

6. Based upon the pending sale of the facility that is the subject of the Swinerton Claim, the Debtors and Swinerton have determined that it would be desirable to further continue the hearing on the Swinerton Motion to January 23, 2019 at 10:00 a.m.

NOW, THEREFORE, all of the parties to this Stipulation hereby stipulate and agree as follows:

A. The hearing on the Swinerton Motion shall be continued to January 23, 2019 at 10:00 a.m.

Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

Verity Health System of California, Inc., et al.

By: _____
Samuel R. Maizel
Tania M. Moyron
Claude D. Montgomery *(admitted Pro Hac Vice)*
Dentons US LLP
Counsel to Debtors and Debtors In Possession

Swinerton Builders

By: /s/ Nathan A. Schultz
Nathan A. Schultz
Robert N. Amkraut *(admitted Pro Hac Vice)*
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EXHIBIT 1

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 Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
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☐ 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
Chapter: 11

ORDER SETTING DECEMBER 5, 2018 AS CONSOLIDATED HEARING DATE FOR MATTERS INITIALLY NOTICED FOR DECEMBER 4 AND 5, 2018

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.

CONSOLIDATED HEARING DATE:

Date: December 5, 2018

Time: 10:00 a.m.

Location: Ctrm. 1568
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Good cause appearing, the Court HEREBY ORDERS as follows:

1) The hearing on the *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Doc. No. 564] (the "Rule 7052(b) Motion"), set for December 4, 2018, at 10:00 a.m., is CONTINUED to **December 5, 2018, at 10:00 a.m.**, to take place concurrently with the hearing on the *Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Deposits and Overpayments* [Doc. No. 815].
2) This Order shall not affect the briefing deadlines on the Rule 7052(b) Motion.
3) By no later than **November 30, 2018**, Swinerton Builders shall serve this Order upon interested parties, and shall file a proof of service so indicating.

IT IS SO ORDERED.

###

Date: November 28, 2018

Ernest M. Robles
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 345 California Street, Suite 2200, San Francisco, CA 94014-2734

A true and correct copy of the foregoing document entitled (*specify*): _____

STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) December 3, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) December 3, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Ernest Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/3/2018	Nathan A. Schultz	/s/ Nathan A. Schultz
Date	*Printed Name*	*Signature*

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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 and Debtors In Possession.

☒ Affects All Debtors

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

Debtors and Debtors In Possession.

Lead Case No.: 2:18-bk-20151-ER
Jointly administered with:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

Hon. Judge Ernest Robles

ORDER APPROVING STIPULATION TO CONTINUE HEARING ON MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED TO DOCKET NOS. 968, 812, 732, 564, 409, 392, 355, 309 AND 269

The Court, having reviewed the *Stipulation to Continue Hearing on Motion for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing […]* [Doc. 968], entered between Verity Health System Of California, Inc. and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (jointly administered), on the one hand, and Swinerton Builders, on the other, and good cause appearing, the Court

HEREBY ORDERS AS FOLLOWS:

1. The Stipulation is approved.

2. The hearing on the *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order … (Doc. 409)* [Doc. 564] is continued to **January 23, 2019 at 10:00 a.m.**

IT IS SO ORDERED.

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Fox Rothschild LLP
1001 4th Ave. Suite 4500
Seattle, WA 98154

Date: December 4, 2018

Ernest M. Robles
United States Bankruptcy Judge

EXHIBIT K

FILED

DEC 14 2018

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-18-1322
	)	
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., ET AL.,	)	Bk. No. 2:18-bk-20151-ER
	)	
Debtors.	)	
	)	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VERITY HEALTH SYSTEM OF CALIFORNIA, INC., ET AL.,	)	
	)	
Appellant,	)	
	)	
v.	)	**ORDER SUSPENDING BRIEFING SCHEDULE**
	)	
VERITY HEALTH SYSTEM OF CALIFORNIA, INC., ET AL.,	)	
	)	
Appellees.	)	

Before: Laura S. Taylor, Bankruptcy Judge.

This appellate case file has been reviewed. Within fourteen days of entry of the order on appeal, Swinerton Builders filed a motion for additional findings regarding the order on appeal. *See* bankruptcy docket no. 564. Pursuant to Federal Rule of Bankruptcy Procedure 8002(b)(2), the appellant's notice of appeal will not become effective until entry of the order disposing of Swinerton Builders' motion.

Even though a notice of appeal was filed on November 29, 2018, the bankruptcy court has jurisdiction to hear the timely tolling motion, and the notice of appeal is held in abeyance until the motion is resolved. *See* Fed. R. Bankr. P. 8002(b); *Miller v. Marriott Int'l, Inc.*, 300 F.3d 1061, 1064 & n.1 (9th Cir. 2002) (noting that appeals court lacked jurisdiction until tolling motions were resolved by the trial court); *In re Central European Industrial Development Co. LLC*, 288 B.R. 572, 575 n.4 (Bankr. N.D. Cal. 2003) (trial court "has jurisdiction to hear a reconsideration motion, and the notice of appeal is held in abeyance until the motion is resolved").

The bankruptcy court docket shows that appellee's motion is currently set for hearing on January 23, 2019. *See* bankruptcy docket no. 974. After entry of an order disposing of the motion, one or more parties may decide to file a notice of appeal or an amended notice of appeal. *See* Fed. R. Bankr. P. 8002(b)(3).

Therefore, the briefing schedule in this appeal is hereby ORDERED SUSPENDED. Appellant is directed to promptly notify the Panel when an order is entered by the bankruptcy court disposing of the tolling motion. The Panel will issue an order notifying the parties when briefing is to resume.

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UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

CV18-10675-RGK

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession.	BAP. No. CC-18-1322 Bk. No. 2:18-bk-20151-ER **APPELLEE VERITY HEALTH SYSTEM OF CALIFORNIA, INC.'S STATEMENT OF ELECTION TO TRANSFER APPEAL TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Appellant, v. VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al., Appellees.	

Pursuant to 28 U.S.C. § 158(c)(1), Rule 8001 of the Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 8001-1, Verity Health System of California, Inc., and its affiliated entities (Debtors and "Appellees"), hereby files its Statement of Election to transfer this Appeal from the Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") to the United States District Court for the Central District of California.

The Debtors hereby elect to transfer this appeal to the United States District Court for the Central District of California.

Dated: December 19, 2018

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

By */s/ Samuel R. Maizel*
Samuel R. Maizel

Proposed Attorneys for the Chapter 11 Debtors and Debtors In Possession

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, I electronically filed the foregoing documents entitled: **APPELLEE VERITY HEALTH SYSTEM OF CALIFORNIA, INC.'S STATEMENT OF ELECTION TO TRANSFER APPEAL TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA** with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the CM/ECF system.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

I declare that I have been retained by a member of the bar of this Court at whose direction this service was made.

I hereby certify under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2018, at Los Angeles, California.

Alicia Aguilar

EXHIBIT M

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FILED & ENTERED

DEC 27 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

CHANGES MADE BY COURT

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

☐ Affects Verity Health System of California, Inc.
☐ 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

Hon. Judge Ernest M. Robles

ORDER (A) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS TO SANTA CLARA COUNTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE RELATED THERETO; AND (C) GRANTING RELATED RELIEF

Hearing:
Date: December 19, 2018
Time: 10:00 am
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

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This matter came before the Court on the *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances* (the "Motion") [Docket No. 365], filed by Verity Health System of California, Inc. ("VHS"), and the above-referenced affiliated debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (the "Debtors"), for the entry of an order, pursuant to §§ 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014, and LBR 6004-1.[1]

At the previous hearing on the Motion on October 31, 2018 (the "Bidding Procedures Hearing"), the Court considered various objections (the "Premature Objections") filed by: (i) the Federal Communications Commission ("FCC") [Docket No. 437]; (ii) the United States Department of Health and Human Services ("HHS") [Docket No. 447, 562, and 613]; (iii) the California Attorney General ("CAG") [Docket No. 463, 599, 605, 608, and 619]; (iv) entities who are parties to or benefit from various collective bargaining agreements with the Debtors [Docket No. 450, 458, 460, 465, and 597]; (v) the Pension Benefit Guaranty Corporation ("PBGC") [Docket No. 439]; (vi) the Retirement Plan for Hospital Employees [Docket No. 460]; (vii) OCH Forest 1 [Docket Nos. 452 and 561]; (viii) Premier and Infor [Doc. Nos. 444, 561, and 592]; and (ix) the MOB Financing Entities [Docket No. 500]. The Debtors filed an omnibus reply to the majority of the objections [Docket No. 561], and separate replies to the HHS [Docket No. 562], and the CAG [Docket No. 560] objections. The Court ruled that the Premature Objections were premature and preserved for the Sale Hearing, as set forth in order granting the Motion (the

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "LBR" references are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

"Bidding Procedures Order") [Docket No. 724]. Any additional objections that were filed and overruled at the Bidding Procedures Hearing are not listed herein.

The Court, having reviewed the Memorandum [Docket No. 1041] and the notice of errata related thereto [Docket No. 1050], the Declarations of Richard Adcock [Docket Nos. 8 and 393], James Moloney [Docket Nos. 394 and 1041] and Jeffrey Smith [Docket No. 1044] in support of the Motion, the *Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be Assumed and Assigned* [Docket No. 998], the *Notice That No Auction Shall Be Held* [Docket No. 1005], the response by the CAG [Docket No. 1066], the *Amended Notice of Contracts Designated by Santa Clara County for Assumption and Assignment* [Docket No. 1110], the objections filed by various counter-parties to certain contracts and leases [Docket Nos. 882, 889, 904-05, 913-14, 919, 920-21, 923, 928-29, 931, 933, 946, 970, 986, 1016, 1018, 1043, 1046, 1057-59, 1062, 1068-69, 1070-71,1080, 1085, 1088-89, 1091-96, 1120-21], as set forth on **Exhibit "A"** attached to the *Notice Of Filing Listing Objections To Proposed Cure Amounts And Assumption And Assignment Of Certain Unexpired Executory Contracts And Unexpired Leases* (the "Cure Objections") [Docket No. 1145], the California Department of Health Care Services ("DHCS") [Docket No. 906], and the California Nurses Association and Stationary Engineers Local 39 [Docket Nos. 1057-1062, 1067-1071], the Premature Objections and any withdrawals thereof [Docket Nos. 1090 and 1100], the statements, arguments and representations of the parties made at the Sale Hearing; and the entire record of these cases; and the Court, having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and their shareholders, and that the legal and factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the relief granted herein and for the reasons set forth in the *Memorandum of Decision Overruling Objections of the California Attorney General to the Debtor's Sale Motion* [Docket No. 1146]; ~~Court's tentative ruling [Docket No. ___], the *Order Providing Notice Of The Court's Intent To Authorize The Debtors To Sell Hospitals Free And*~~

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~~*Clear Of The 2015 Conditions Asserted By The California Attorney General* [Docket No. 1125], and the responses thereto [Docket Nos. 1136–37, 1139-41];~~ and all objections to the Motion, if any, having been withdrawn or overruled; and after due deliberation and sufficient good cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT:[2]

A. Jurisdiction and Venue. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief requested in the Motion are (i) §§ 105(a), 363(b), (f), (k), (l) and (m), and 365, (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014, and (iii) LBR 6004-1 and 9013-1.

C. Notice. As evidenced by the affidavits of service previously filed with the Court, the Debtors have provided proper, timely, adequate and sufficient notice with respect to the following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the transfer and sale of the assets (the "Purchased Assets"), as set forth in the Asset Purchase Agreement, dated October 1, 2018, a copy of which is attached as Exhibit "A" to Docket No. 365 (the "APA"); (ii) the Sale Hearing; (iii) the *Notice That No Auction Shall Be Held*; and (iv) the assumption and assignment of the executory contracts and unexpired leases and proposed cure amounts owing under such executory contracts and unexpired leases (the "Cure Amounts"); and no further notice of the Motion, the relief requested therein or the Sale Hearing is required. The Debtors have also complied with all obligations to provide notice of the Auction, the Sale

[2] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052, made applicable to this proceeding pursuant to Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

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Hearing, the proposed sale and otherwise, as required by the Bidding Procedures Order. A reasonable opportunity to object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. Arm's Length Transaction. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtors and the County of Santa Clara, a political subdivision of the State of California ("SCC"), as Purchaser under the APA without collusion, in good faith and through an arm's length bargaining process. Neither SCC nor any of its affiliates or representatives is an "insider" of the Debtors, as that term is defined in § 101(31). None of the Debtors, SCC, or their respective representatives engaged in any conduct that would cause or permit the APA, any of the other Transaction Documents or the Transaction to be avoided under § 363(n), or have acted in any improper or collusive manner. The terms and conditions of the APA and the other Transaction Documents, including, without limitation, the consideration provided in respect thereof, are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be assessed against SCC or any other party, as set forth in § 363(n). The consideration provided by SCC is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable laws of the United States, including the State of California.

E. Good Faith Purchaser. SCC has proceeded in good faith and without collusion in all respects in connection with the sale process, in that: (i) SCC, in proposing and proceeding with the Transaction in accordance with the APA, recognized that the Debtors were free to deal with other interested parties; (ii) SCC agreed to provisions in the APA that would enable the Debtors to accept a higher and better offer; (iii) SCC complied with all of the provisions in the Bidding Procedures Order applicable to SCC; (iv) all payments to be made by SCC and other agreements entered into or to be entered into between SCC and the Debtors in connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA and related Transaction Documents were conducted in good faith and constituted an arm's length transaction;

(vi) SCC did not induce or cause the chapter 11 filings by the Debtors; and (vii) the APA was not entered into, and the Transaction being consummated pursuant to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors. SCC is therefore entitled to all of the benefits and protections provided to a good-faith purchaser under § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Transaction shall not affect the validity of the Transaction or SCC's status as a "good faith" purchaser.

F. Justification for Relief. Good and sufficient reasons for approval of the APA and the other Transaction Documents and the Transaction have been articulated to this Court in the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale Order is in the best interests of the Debtors, their estates, and their creditors. The Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the ordinary course of business, and (iii) such transfer and sale is an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

G. Free and Clear. In accordance with §§ 363(b) and 363(f), the consummation of the Transaction pursuant to the Transaction Documents will be a legal, valid, and effective transfer and sale of the Purchased Assets and will vest in SCC, through the consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased Assets, free and clear of all liens, claims, interests, rights of setoff, netting and deductions, rights of first offer, first refusal and any other similar contractual property, legal or equitable rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"). The Debtors have demonstrated that one or more of the standards set forth in § 363(f)(1)-(5) have been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to § 363(f)(2). Those holders of Encumbrances who did object fall within one or more of the other subsections

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of § 363(f). All holders of the Encumbrances in the Purchased Assets are adequately protected by having their respective Encumbrances attach to the Debtors' interests in the proceeds of the sale of the Purchased Assets under the APA (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed), and any related documents or instruments delivered in connection therewith, whenever and wherever received (the "Sale Proceeds") to the extent and manner herein provided.

H. Prompt Consummation. The Debtors have demonstrated good and sufficient cause to waive the stay requirement under Rules 6004(h) and 6006(d). Time is of the essence in consummating the Transaction, and it is in the best interests of the Debtors and their estates to consummate the Transaction within the timeline set forth in the Motion and the APA. The Court finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth in this Order.

I. Assumption of Executory Contracts and Unexpired Leases. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign to SCC the Currently Identified Designated Contracts (as defined and identified in paragraph 15 below) and to the extent subsequently identified by SCC pursuant to paragraph 16 below, the Subsequently Identified Designated Contracts (as defined in paragraph 16 below) (the Currently Identified Designated Contracts and the Subsequently Identified Contracts are collectively referred to herein as the "Designated Contracts") in connection with the consummation of the Transaction, and the assumption and assignment of the Designated Contracts is in the best interests of the Debtors and their estates.

J. Cure/Adequate Assurance. In connection with the Closing, and pursuant to the APA, the Debtors (i.e., O'Connor Hospital ("OCH") and Saint Louise Regional Hospital ("SLRH")) will have cured, unless otherwise ordered, any and all defaults existing on or prior to the Closing under any of the Designated Contracts, within the meaning of § 365(b)(1)(A), by payment of the amounts and in the manner set forth below. SCC has provided or will provide adequate assurance of future performance of and under the Designated Contracts within the

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meaning of § 365(b)(1)(C) and § 365(f)(2)(B), and shall have no further obligation to provide assurance of performance to any counterparty to a Designated Contract. Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors and assigned to SCC under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, SCC notwithstanding any provision in such Designated Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other parties to any of the Designated Contracts has incurred any actual pecuniary loss resulting from a default on or prior to the Closing under any of the Designated Contracts within the meaning of § 365(b)(1)(B). Pursuant to § 365(f), the Designated Contracts to be assumed by the Debtors and assigned to SCC at the Closing shall be assigned and transferred to, and remain in full force and effect for the benefit of, SCC notwithstanding any provision in such contracts or other restrictions prohibiting their assignment or transfer.

K. <u>Rejection of Executory Contracts and Unexpired Leases</u>. The Debtors have demonstrated that it is a reasonable and appropriate exercise of their sound business judgment for OCH and SLRH to reject all of their executory contracts and unexpired leases, excluding (i) Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor, which matters shall be scheduled for determination as provided in paragraph 33 below. Each such executory contract rejection is subject only to the conditions set forth in paragraphs 18, 31, and 32. The Debtors shall file an appropriate motion to reject such contracts, covered by this paragraph K, prior to Closing and shall request therein that the rejection be effective as of the Closing or as otherwise appropriate.

L. <u>Highest or Otherwise Best Offer</u>. The Debtors solicited offers and noticed the Auction in accordance with the provisions of the Bidding Procedures Order. The Auction was duly noticed, the sale process was conducted in a non-collusive manner and the Debtors afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise

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better offer to purchase the Purchased Assets. No other Qualified Bid (as defined in the Bidding Procedures Order) was received by the Partial Bid Deadline or the Bid Deadline (as defined in the Bidding Procedures Order). Accordingly, on December 7, 2018, the Debtors filed the *Notice That No Auction Shall Be Held*. The transfer and sale of the Purchased Assets to SCC on the terms set forth in the APA constitutes the highest or otherwise best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination, in consultation with the Official Committee of Unsecured Creditors (the "Committee") and the Prepetition Secured Creditors (as defined in the Final DIP Order defined below), that the APA constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

M. No *De Facto* or *Sub Rosa* Plan of Reorganization. The sale of the Purchased Assets does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity or membership interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent chapter 11 safeguards, including those set forth in §§ 1125 and 1129, or (iv) classify claims or equity or membership interests.

N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED and APPROVED in all respects to the extent provided herein.

2. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled, or provided for herein or in the Bidding Procedures Order, including any reservation of rights included in such objections, are overruled on the merits with prejudice. To the extent of any inconsistency between this Sale Order and the Bidding Procedures Order, the terms of this Sale Order shall prevail.

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3. Pursuant to §§ 105(a), 363(b), 363(f), and 365, the Transaction, including the transfer and sale of the Purchased Assets to SCC on the terms set forth in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate the Transaction in accordance with the APA, including, without limitation, by executing all of the Transaction Documents (and any ancillary documents or instruments that may be reasonably necessary or desirable to implement the APA or the Transaction) and taking all actions necessary and appropriate to effectuate and consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration of the Purchase Price (as defined in Section 1.1 of the APA) upon the terms set forth in the APA, including, without limitation, assuming and assigning to SCC the Designated Contracts. The Debtors and SCC shall have the right to make any mutually agreeable, non-material changes to the APA, which shall be in writing signed by both parties, without further order of the Court provided, that after reasonable notice, the Committee, the DIP Agent (as defined in the Final DIP Order defined below), and the Prepetition Secured Creditors, do not object to such changes. Any timely objection by the aforementioned parties to any agreed non-material changes to the APA may be resolved by the Court on shortened notice.

4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid, enforceable and effective transfer and sale of the Purchased Assets to SCC free and clear of all Encumbrances, as further set forth in the APA and this Sale Order; and (ii) the APA, and the other Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, any successor thereto including a trustee or estate representative appointed in the Bankruptcy Cases, the Debtors' estates, all holders of any Claim(s) (as defined in the Bankruptcy Code) against the Debtors, whether known or unknown, any holders of Encumbrances on all or any portion of the Purchased Assets, all counterparties to the Designated Contracts and all other persons and entities.

5. Encumbrances in and to Purchased Assets shall attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds of such Purchased Assets with each such Encumbrance having the same force, extent,

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effect, validity and priority as such Encumbrance had on the Purchased Assets giving rise to the Sale Proceeds immediately prior to the Closing. For the avoidance of doubt, the foregoing force, extent, effect, validity and priority shall: (i) reflect the security interests, liens (including any Prepetition Replacement Liens arising for diminution of value, if any) and rights, powers and authorities that have been granted to the DIP Agent, the DIP Lender and to the Prepetition Secured Creditors, as applicable, pursuant to that certain *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* [Docket No. 409] (the "Final DIP Order"); and (ii) be subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed. In addition, the Intercreditor Agreement (as defined in the Final DIP Order) shall apply with respect to the rights of the parties thereto in and to the Sale Proceeds and the Escrow Deposit Account, to the extent of and in accordance with its terms with all parties reserving all rights thereunder.

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6. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order shall, as of the Closing, be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of the Debtors' rights, title and interest in and to the Purchased Assets to SCC. Consistent with, but not in limitation of the foregoing, each and every federal, state, and local governmental agency or department, except as stated herein, is hereby authorized and directed to accept all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and approved in this Sale Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

7. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of

such Purchased Assets either to (a) the Debtors before the Closing or (b) to SCC or its designee upon the Closing.

8. The transfer of the Purchased Assets pursuant to the Transaction Documents shall be a legal, valid, and effective transfer and shall, in accordance with §§ 105(a) and 363(f), and upon consummation of the Transaction, including, without limitation, payment of the Purchase Price to the Debtors, vest SCC with all right, title, and interest in the Purchased Assets, free and clear of all Encumbrances. Upon closing of the Transaction, SCC shall take title to and possession of the Purchased Assets, subject only to the Assumed Obligations, as set forth in the APA. The transfer of the Purchased Assets from the Debtors to SCC constitutes a transfer for reasonable equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of California.

9. Following the Closing, no holder of any Encumbrance against the Debtors or upon the Purchased Assets shall interfere with SCC's respective rights in, title to or use and enjoyment of the Purchased Assets. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to SCC, including the assumption and assignment of the Designated Contracts.

10. SCC shall not be deemed, as a result of any action taken in connection with, or as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their estates by reason of any theory of law or equity, including, without limitation, any bulk sales law, doctrine or theory of successor liability, or any theory or basis of liability regardless of source of origin; or (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be a mere continuation, *alter ego*, or substantial continuation of the Debtors. Other than the Assumed Liabilities, SCC is not assuming any of the Debtors' debts.

11. This Sale Order (i) shall be effective as a determination that, on Closing, all Encumbrances existing against the Purchased Assets before the Closing have been

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unconditionally released, discharged and terminated, and that the transfers and conveyances described herein have been effected, and (ii) shall be binding upon and shall govern the acts of all persons and entities. If, following a reasonable written request made by the Debtors, any person or entity that has filed financing statements or other documents or agreements evidencing any Encumbrances against the Purchased Assets shall not have delivered to the Debtors for use at or in connection with Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to the Purchased Assets, then SCC and/or the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets. For the avoidance of doubt, such statements, instruments, releases and other documents shall not impair Encumbrances that attach (subject to any Challenge within the meaning of the Final DIP Order that has been, or may be, timely filed) to the Sale Proceeds or the terms of this Order, including, but not limited to paragraphs 5 and 13 hereof.

12. In accordance with the APA, concurrently with the Closing, SCC shall pay that portion of the Purchase Price due at Closing, by wire transfer of immediately available funds, to Debtors' Escrow Deposit Accounts (defined below), subject to the adjustments set forth in Section 1.1.1 of the APA. Any direct expenses of the Sale shall be disclosed by Debtors to the DIP Agent, the Prepetition Secured Creditors, and the Committee in advance of the Closing.

13. The terms and conditions of the Final DIP Order shall apply with respect to the Sale Proceeds and Escrow Deposit Accounts (defined herein). Without limiting the foregoing, the Debtors shall comply with paragraph 4 of the Final DIP Order in the following manner:

(a) the Debtors shall direct SCC and any post-closing escrow agent appointed pursuant to the terms of the APA to remit all Sale Proceeds to be received by the Debtors at Closing or thereafter in cash, to deposit such Sale Proceeds in separate accounts labeled "Santa Clara Sale Proceeds Account," in the name of each Debtor that is a Seller within the meaning of the APA (each such hereafter referred to as "Escrow Deposit Account");

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(b) in giving direction to SCC pursuant to sub-paragraph (a), above, the Debtors shall exercise their reasonable business judgment, in good faith, and allocate the Sale Proceeds among the Escrow Deposit Accounts on the basis of the value of each Debtor's Purchased Assets as of the Closing (which allocation, for the avoidance of doubt, shall be subject to the reservations of rights in paragraph 4 of the Final DIP Order and footnote 5 of Exhibit 1 of the Bidding Procedures Order); provided further that nothing in this paragraph shall waive or limit any rights the Committee may have in connection with the confirmation of a proposed chapter 11 plan for any of the Debtors' cases (including the right to seek to reallocate estate values);

(c) without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order, no funds held in any Escrow Deposit Account shall be (i) commingled with any other funds of the applicable Debtor or any of the other Debtors or (ii) used by the Debtors for any purpose, except as provided in this Order, the DIP Credit Agreements or Final DIP Order without further order of this Court, after reasonable notice under the circumstances to the DIP Agent, the Prepetition Secured Creditors and the Committee;

(d) each Escrow Deposit Account shall be subject to a deposit account control agreement in favor of the DIP Agent and DIP Lender, and subject to, without limitation of the rights of the DIP Agent and DIP Lender under the DIP Financing Agreements and the Final DIP Order with respect to the Sale Proceeds and Escrow Deposit Account, including, without limitation, following the occurrence of an Event of Default or the Revolving Loan Termination Date (as defined in the DIP Credit Agreement), the Debtors shall not be permitted to use the funds held in any Escrow Deposit Account for any purpose, except as provided in paragraph 14, 15, 16, and 17 of this Order, and to fund any Purchase Price adjustment in favor of the Purchaser, without first obtaining the consent of the DIP Agent, DIP Lender and the Prepetition Secured Creditors or obtaining an order of the Court pursuant to §§ 363 or 1129 after reasonable notice under the circumstances to the DIP Agent, the DIP Lender, the Prepetition Secured Creditors and the Committee and, if necessary, a hearing thereon.

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14. Concurrently with the Closing or as soon thereafter as is possible, and in accordance with the APA, the Debtors (i.e., the Hospital Debtors defined in the APA) shall pay out of the Sale Proceeds to the counter-parties to the Designated Contracts the cure amounts set forth in the *Debtors' Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Docket No. 810], the *Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors That May be Assumed and Assigned* [Docket No. 998], the *Amended Notice of Contracts Designated by Santa Clara County for Assumption and Assignment* [Docket No. 1110] (collectively, the "Cure Notices"), or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties thereto or ordered by this Court after a continued hearing on the Cure Objections (the "Designated Cure Amounts").

15. To the extent that any of the contracts and/or leases, which give rise to the Designated Cure Amounts and are set forth in the *Amended Notice of Contracts Designated by Santa Clara County for Assumption and Assignment* [Docket No. 1110] (the "Currently Identified Designated Contracts") are executory contracts or unexpired leases (over which the Court is not making any such determination at this time), then in connection with the Closing, the Debtors shall be deemed to have assumed all such Currently Identified Designated Contracts (so that they are deemed part of the Designated Contracts) and to have assigned them to SCC, and SCC shall have assumed all obligations owing under all such Currently Identified Designated Contracts arising after and following the Closing. In the event that the Court ultimately determines that any such counter-parties to the Currently Identified Designated Contracts (the "Currently Identified Designated Contract Counter-Parties") have an allowed claim against the Debtors which exceeds the Designated Cure Amounts, the difference will be paid by the Debtors out of the Sale Proceeds and shall not be the responsibility of SCC. The Court shall resolve any and all disputes which may arise between the Debtors, SCC and any of the Currently Identified Designated Contract Counter-Parties over whether the Currently Identified Designated Contracts are executory contracts or unexpired leases and whether any of the Currently Identified Designated Contract

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Counter-Parties are entitled to an allowed claim against the Debtors which exceeds the Designated Cure Amounts.

16. All of the Currently Identified Designated Contracts, to the extent they are executory contracts or unexpired leases, shall be part of the Designated Contracts that will be assumed by the Debtors and assigned to SCC at the Closing. In the event that SCC elects to add any other of the Debtors' executory contracts or unexpired leases to the list of Designated Contracts (the "Subsequently Identified Designated Contracts"), the Debtors shall (i) file a notice with the Court, by January 23, 2019, identifying all such Subsequently Identified Designated Contracts and their respective cure amounts, and (ii) serve such notice by over-night mail on all counter-parties to the Subsequently Identified Designated Contracts (the "Subsequently Identified Designated Contract Counter-Parties"). All Subsequently Identified Designated Contracts shall be assumed by the Debtors and assigned to SCC at the Closing, with the Debtors to be obligated to pay all cure amounts owing to such Subsequently Identified Designated Contract Counter-Parties concurrently with the Closing, as set forth in the Debtors' notice, or as otherwise agreed to by the Debtors, SCC and the applicable counter-parties thereto, or ordered by the Court in accordance with paragraph 36 below (the "Additional Cure Amounts").

17. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or transfer each of the Designated Contracts to SCC, including the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts (all counterparties to the Currently Identified Designated Contracts and any Subsequently Identified Designated Contracts collectively, the "Contract Counter-Parties"). At the Closing, the Debtors shall pay out of the Sale Proceeds (i) ~~to~~ the Designated Cure Amounts identified in paragraph 14 above, and (ii) the Additional Cure Amounts. Payment by the Debtors of such Designated Cure Amounts and Additional Cure Amounts are deemed the necessary and sufficient amounts to "cure" all "defaults" with respect to all such Currently Identified Designated Contracts and Subsequently Identified Designated Contracts under § 365(b). The payment by the Debtors shall (i) effect a cure of all defaults existing under all such Currently Identified Designated Contracts, and (ii) compensate all such Contract Counter-Parties for any actual

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pecuniary loss resulting from any such default. The Debtors shall then have assumed and assigned to SCC, effective as of the Closing, all of the Designated Contracts (comprised of both all Currently Identified Designated Contracts and all Subsequently Identified Designated Contracts, if any), and, pursuant to § 365(f), the assignment by the Debtors of all such Designated Contracts to SCC shall not be a default thereunder. After the payment of the Designated Cure Amounts and the Additional Cure Amounts by the Debtors, neither the Debtors nor SCC shall have any further liabilities to any Contract Counter-Parties, other than SCC's obligations under the Designated Contracts that accrue and become due and payable after the Closing Date. In addition, adequate assurance of future performance has been demonstrated by or on behalf of SCC with respect to all of the Designated Contracts within the meaning of §§ 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B). For the avoidance of doubt, the Debtors shall be liable for the payment of all cure costs with respect to the Designated Contracts as may be required under § 365(b)(1). SCC shall not be liable for the payment of any cure costs with respect to the Designated Contracts as may be required under § 365(b)(1) or for the payment of any liabilities or obligations arising from or related to (a) such Designated Contracts on or prior to the Closing of the Transaction, (b) any executory contracts which the Debtors intend to reject by appropriate motion at a later date and which are not being assumed and assigned to SCC as part of the Transaction, (c) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, or (d) any collective bargaining agreement, pension plan, or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor.

18. The Debtors intend to reject, pursuant to § 365(a), all executory contracts to which OCH and SLRH are a party, excluding (i) Designated Contracts, (ii) any prepetition multiparty contract affecting more than one Debtor in addition to OCH and/or SLRH, and (iii) any collective bargaining agreement, pension plan or health and welfare plan providing collectively bargained benefits to which OCH and/or SLRH is a party or sponsor. The Debtors shall file an appropriate motion to reject such contracts prior to Closing. Notwithstanding the prior statement, Closing is conditioned upon the rejection, termination and/or modification of all applicable CBAs

related to OCH and SLRH, pursuant to § 1113 or as otherwise agreed to between the Debtors, the respective unions, and as approved by the Court.

19. All of the Contract Counter-Parties are forever barred, estopped, and permanently enjoined from (i) raising or asserting against the Debtors or SCC, or any of their property, any assignment fee, acceleration, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Designated Contracts, existing as of the Closing, or arising by reason of the consummation of the Transaction contemplated by the APA, including, without limitation, the Transaction and the assumption and assignment of the Designated Contracts, including any asserted breach relating to or arising out of the change-in-control provisions in such Designated Contracts, or any purported written or oral modification to the Designated Contracts and (ii) asserting against SCC any claim, counterclaim, breach, or condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of the transfer of the Purchased Assets, except for the Assumed Obligations.

20. Any provisions in any Designated Contracts that prohibit or condition the assignment of such Designated Contract or allow the counterparty to such Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect with respect to the Debtors' assumption and assignment of such Designated Contract to SCC in accordance with the APA, pursuant to § 363(f). Notwithstanding the foregoing, the rights of Contract Counter-Parties to assert that a Designated Contract may not be assumed and assigned absent consent, on the ground that such Designated Contract pertains to the licensing of intellectual property, are preserved, and any such objections may be asserted in accordance with the procedures set forth in paragraphs 34, 35, and 36; provided, however, that any Contract Counter-Party that has failed to object within the deadlines set forth in the applicable Cure Notice is now forever barred from asserting its objection.

21. The terms and provisions of this Sale Order, as well as the rights granted under the Transaction Documents, shall continue in full force and effect and are binding upon any successor,

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reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding any such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or in any order confirming such a plan, nor any order dismissing the cases or converting the cases to a case under chapter 7, shall conflict with or derogate from the provisions of the APA, any documents or instruments executed in connection therewith, or the terms of this Sale Order, provided however, that in the event of a conflict between this Sale Order and an express or implied provision of the APA, this Sale Order shall govern. The provisions of this Sale Order and any actions taken pursuant hereto shall survive any conversion or dismissal of the cases and the entry of any other order that may be entered in the cases, including any order (i) confirming any plan of reorganization; (ii) converting the cases from chapter 11 to chapter 7; (iii) appointing a trustee or examiner in the cases; or (iv) dismissing the cases.

22. The Transaction contemplated by the APA and other Transaction Documents are undertaken without collusion and in "good faith," as that term is defined in § 363(m) of the Bankruptcy Code. SCC is a good faith purchaser within the meaning of § 363(m) and, as such, is entitled to the full protections of § 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein by this Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased Assets to SCC. The APA and the Transactions contemplated thereby cannot be avoided under § 363(n).

23. The failure to specifically include any particular provision of the APA or the other Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

24. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or any other LBR or otherwise, this Sale Order shall not be stayed for 14-days after the entry hereof, but shall be effective

and enforceable immediately upon entry pursuant to Rule 6004(h) and 6006(d). Time is of the essence in approving the Transaction (including the transfer and the sale of the Purchased Assets).

25. The automatic stay in effect pursuant to § 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to (i) allow SCC to deliver any notice provided for in the APA and Transaction Documents and (ii) allow SCC to take any and all actions permitted under the APA and Transaction Documents in accordance with the terms and conditions thereof.

26. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order shall govern.

27. This Court shall retain exclusive jurisdiction to interpret, construe, and enforce the provisions of the APA and this Sale Order in all respects, and further, including, without limitation, to (i) hear and determine all disputes between the Debtors and/or SCC, as the case may be, and any other non-Debtor party to, among other things, the Designated Contracts concerning, among other things, assignment thereof by the Debtors to SCC and any dispute between SCC and the Debtors as to their respective obligations with respect to any asset, liability, or claim arising hereunder; (ii) compel delivery of the Purchased Assets to SCC free and clear of Encumbrances; (iii) compel the delivery of the Purchase Price or performance of other obligations owed to the Debtors; (iv) interpret, implement, and enforce the provisions of this Sale Order; and (v) protect SCC against (A) claims made related to any of the Excluded Liabilities (as defined in the APA), (B) any claims of successor or vicarious liability (or similar claims or theories) related to the Purchased Assets or the Designated Contracts, or (C) any Encumbrances asserted on or against SCC or the Purchased Assets.

28. Following the date of entry of this Sale Order, the Debtors and SCC are authorized to make changes to the APA without the need for any further order of the Court provided that all such changes have been approved in writing by the Debtors, SCC, the Committee, the DIP Agent, and Prepetition Secured Creditors. Any other changes to the APA or this Sale Order require a further order of the Court, after reasonable notice under the circumstances and a hearing.

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29. Notwithstanding any other provision of this Sale Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the FCC shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent not inconsistent with the applicable provisions of the Bankruptcy Code.

30. To the extent the Purchased Assets contain records of the Verity Health System Retirement Plan A and Verity Health System Retirement Plan B (collectively, the "Pension Plans") or employment records of participants of the Pension Plans, the SCC shall store, and preserve any such records until the PBGC has completed its investigation regarding the Pension Plans and shall make such documents available to the PBGC for inspection and copying. Such records include, but are not limited to, any Pension Plan governing documents, actuarial documents, and employment records (collectively, the "Pension Plan Documents"). The Debtors shall retain and not abandon any Pension Plan Documents that are not Purchased Assets for not less than twelve (12) months after Closing and shall make such documents available to the PBGC for inspection and copying.

31. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements or (b) DHCS will file a supplemental objection to the proposed transfer of the Medi-Cal Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medi-Cal Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to

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Medi-Cal Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the DHCS or a Court order resolving the DHCS's objections.

32. No later than January 18, 2019, either (i) the Debtors will file a notice of a resolution of the issues regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements or (b) HHS will file a supplemental objection to the proposed transfer of the Medicare Provider Agreements. If necessary, the Debtors will file any reply to the supplemental objection no later than 4:00 p.m. (Pacific Time), on January 25, 2019, and a hearing will be held on the issues raised regarding the transfer and/or proposed assumption and assignment or rejection of the Medicare Provider Agreements on January 30, 2019, at 10:00 a.m. (Pacific Time); and all parties' rights, claims, and defenses are preserved until that hearing. Nothing in this Sale Order shall apply to Medicare Provider Agreements until and unless there is a Court order approving a settlement between the Debtors and the HHS or a Court order resolving the HHS's objections.

33. The Debtors must have resolution of the collective bargaining agreements (the "CBAs") that cover employees at Saint Louise Regional Hospital and O'Connor Hospital prior to SCC closing on the proposed Sale pursuant to the APA. The hearing on the Debtors' motion(s) with respect to the rejection and/or modification of such CBAs (the "CBA Motions") will occur on January 30, 2019, at 10:00 a.m. (Pacific Time). Debtors shall file the CBA Motions by no later than January 2, 2019. Any objection to the CBA Motions shall be filed on January 16, 2019, and any reply shall be filed on January 23, 2019.

34. A continued hearing on the Cure Objections shall be held on January 30, 2019, at 10:00 a.m. (Pacific Time). As to the Currently Identified Designated Contracts, by no later than Friday, January 18, 2019, the Debtors shall file a notice containing a list of (a) the Cure Objections that have been resolved, and (b) the Cure Objections as to which Court intervention is required. As to the Cure Objections for which Court intervention is required, the following briefing schedule shall apply: ~~(2)~~ (1) the Debtors' opposition to each outstanding Cure Objection shall be submitted by no later than Friday, January 18, 2019; and ~~(3)~~ (2) the counterparties' reply in support of its Cure Objections shall be submitted by no later than Friday, January 25, 2019. Nothing in this Sale Order constitutes a finding or

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determination on any Cure Objection. All Cure Objections are preserved until resolved either by agreement between the Debtors and the contract counterparty or further order of the Court.

35. As to any executory contracts or unexpired leases that were listed on the Initial Designated Contract List, but not listed on any prior Cure Notices, any counterparty thereto may file an objection to the cure amount or assumption thereof by January 11, 2019, and all other provisions in paragraph 34 shall apply to resolution thereof.

36. As to Subsequently Identified Designated Contracts, (i) the Debtors shall file a notice with the Court, by January 23, 2019, identifying all Subsequently Identified Designated Contracts and provide service thereof in accordance with paragraph 16, and (ii) to the extent that any Subsequently Identified Designated Contracts were not listed on any of the prior Cure Notices, counterparties subject to contracts who object to assumption and/or the proposed cure amounts must file an objection no later than January 30, 2019, and any reply shall be filed on February 6, 2019. The request by Medical Office Building of California LLC for an extension of the January 30, 2019 objection deadline in the event that its lease is designated as a Subsequently Identified Designated Contract is overruled. To the extent that a negotiated resolution cannot be achieved, any objections filed in connection with the Subsequently Identified Designated Contracts shall be adjudicated on February 13, 2018, at 10:00 a.m. (Pacific Time), where the Court shall resolve any and all disputed issues related to the objection.

37. The Committee's and the Prepetition Secured Creditors' rights, and their ability to participate and be heard at the hearings described in paragraphs 31-36 of this Sale Order, are hereby reserved. To the extent that the DIP Agent, DIP Lender, Prepetition Secured Creditors or the Committee desire to file pleadings related to such hearings, their respective times for filing an objection or response to any of the requests for relief described in paragraphs 31-36 herein shall be the same as granted to the Debtors pursuant to the notice in each such instance.

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IT IS SO ORDERED.

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Date: December 27, 2018

Ernest M. Robles
United States Bankruptcy Judge

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TAB 16

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Attorneys for the Chapter 11 Debtors and 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.	Lead Case No. 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 Hon. Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ 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 ASC, LLC Debtors and Debtors In Possession.	**STIPULATION BETWEEN DEBTORS AND SWINERTON BUILDERS, RESOLVING RULE 7052 MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […] [RELATED DOCKET NOS. 1315, 1306, 1280, 974, 968, 732, 564, 409, 392, 355, 309 AND 269]** [No Hearing Required Unless Requested - Local Bankruptcy Rule 9013-1(o)]

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This Stipulation is entered between Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), in the above-referenced jointly administered Chapter 11 bankruptcy cases, on the one hand, and Swinerton Builders ("Swinerton") on the other, with respect to the following:

1. On or about August 31, 2018, the Debtors filed their voluntary Chapter 11 petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code").

2. On September 17, 2018, the Debtors filed and served their Notice of Hearing regarding 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 filed by Debtor Verity Health System of California, Inc.) [Docket No. 201] to which Swinerton objected on September 24, 2018 (the "Swinerton Objections")[Docket No. 269]

3. On October 3, 2018, the Court rendered its tentative ruling on the Debtors Emergency Motion 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 filed by Debtor Verity Health System of California, Inc.), (the "Tentative Ruling") [Docket 392] overruling the Swinerton Objections, at p. 12, and on October 4, 2018 entered its 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 and incorporating at p. 6, its Tentative Ruling (the "Final DIP Order") [Docket No. 409].

4. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV), Granting Adequate Protection, (V) Modifying Automatic Stay,*

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and (VI) Granting Related Relief (Doc. 409) [Docket No. 564] (the "Swinerton Rule 7052 Motion").

5. On October 31, 2018, the Debtors filed their Objection to the Swinerton Rule 7052 Motion [Docket No. 732].

6. On November 13, 2018, Swinerton filed a Notice of Hearing [Docket No. 812] setting the Swinerton Rule 7052 Motion for hearing on December 4, 2018 at 10:00 a.m.

7. On November 28, 2018, the Court entered an order continuing the hearing on the Swinerton Rule 7052 Motion to December 5, 2018 at 10:00 a.m.

8. On December 3, 2018, in light of an expected sale of Seton Medical Center and the facility that is subject to Swinerton' s Lien, the Debtors and Swinerton filed a Stipulation to Continue Hearing (the "First Stipulation") [Docket No. 968].

9. On December 4, 2018, the Court approved the First Stipulation and entered an Order Approving Stipulation to Continue Hearing [Docket No. 974].

10. On January 18, 2019, the Parties filed a Second Stipulation to Continue Hearing [Docket No. 1280.]

11. On January 20, 2019, the Official Committee of Unsecured Creditors (the "Committee") objected to the hearing continuation that had been agreed pursuant to the Second Stipulation [Docket No. 1306], to which objection both the Debtors and Swinerton Builders responded on January 21, 2019, and January 22, 2019 [Docket Nos. 1311 and 1315, respectively]. Thereafter the Court required the parties to participate in a hearing.

12. On January 23, 2018, the Court held the hearing on the Swinerton Rule 7052 Motion and the Debtors, Swinerton and the Committee advised the Court that they had reached an accommodation that is now reflected in the Stipulations set forth below:

.

NOW, THEREFORE, all of the parties to this Stipulation hereby stipulate and agree as follows:

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A. The Debtors and Swinerton agree that the Court's Tentative Ruling [Docket No. 392] incorporated into the Final DIP Order [Docket 409] at p.6, shall be amended to add the following sentence at p. 12: "Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion in that property."

B. The Debtors and Swinerton agree that the inclusion of the quoted language in paragraph A above resolves matters raised in the Swinerton Rule 7052 Motion.

C. The Debtors stipulate that they have no objection to the validity, perfection or amount of the Swinerton's lien on the Seton Medical Center property as a lien junior to the liens of the Prepetition Secured Creditors.

D. The Debtors, Swinerton, and the Committee further agree that the Committee shall have up to ninety (90) days from entry of the order approving this Stipulation to challenge the validity, perfection or amount of Swinerton's lien.

D. The Debtors, and Swinerton and the Committee each ask the Court to enter an order in the form filed concurrently with this Stipulation approving the Stipulation and closing the record with respect to the Final DIP Order.

[Signature Page Follows]

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