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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

9 In re

10 VERITY HEALTH SYSTEM OF
11 CALIFORNIA, INC., *et al.*,
12 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;

- 13 Affects All Debtors
- 14 Affects O'Connor Hospital
- 15 Affects Saint Louise Regional Hospital
- 16 Affects St. Francis Medical Center
- 17 Affects St. Vincent Medical Center
- 18 Affects Seton Medical Center
- 19 Affects O'Connor Hospital Foundation
- 20 Affects Saint Louise Regional Hospital Foundation
- 21 Affects St. Francis Medical Center of Lynwood Foundation
- 22 Affects St. Vincent Foundation
- 23 Affects St. Vincent Dialysis Center, Inc.
- 24 Affects Seton Medical Center Foundation
- 25 Affects Verity Business Services
- 26 Affects Verity Medical Foundation
- 27 Affects Verity Holdings, LLC
- 28 Affects De Paul Ventures, LLC
- Affects De Paul Ventures - San Jose Dialysis, LLC

Chapter 11 Cases
Hon. Judge Ernest M. Robles

NOTICE OF HEARING AND JOINT MOTION FOR AN ORDER APPROVING: (I) PROPOSED DISCLOSURE STATEMENT; (II) SOLICITATION AND VOTING PROCEDURES; (III) NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF AMENDED JOINT PLAN; (IV) SETTING ADMINISTRATIVE CLAIMS BAR DATE; AND (V) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date and Time:

Date: [Application for OST filed concurrently herewith]

Location: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012



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1 **PLEASE TAKE NOTICE** that, at the above referenced date, time and location, before
2 the Honorable Ernest M. Robles, United States Bankruptcy Judge, by telephone or, if deemed
3 necessary, in Courtroom 1568 located at 255 E. Temple Street, Los Angeles, California 90012, or
4 as soon thereafter as the Court may hear the matter, the Court shall hold a hearing on the *Joint*
5 *Motion for an Order Approving: (I) Proposed Disclosure Statement; (II) Solicitation And Voting*
6 *Procedures; (III) Notice And Objection Procedures for Confirmation Of Amended Joint Plan; (IV)*
7 *Setting Administrative Claims Bar Date; and (V) Granting Related Relief* (the “Motion”) filed by
8 Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors and
9 debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the
10 “Debtors”), and UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo Bank, National
11 Association, as Indenture Trustee for the 2005 Bonds (the “Trustees,” and together with the
12 Debtors, the “Movants”). On June 16, 2020, the Debtors, the Prepetition Secured Creditors (as
13 defined in the Plan) and the Official Committee of Unsecured Creditors (collectively, the “Plan
14 Proponents”) filed the *Amended Joint Chapter 11 Plan of Liquidation (Dated June 16, 2020) of*
15 *the Debtors, the Prepetition Secured Creditors, and the Committee* (the “Plan”) and related
16 disclosure statement (the “Disclosure Statement”) filed concurrently herewith.

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

23 **PLEASE TAKE FURTHER NOTICE** that any party may review and obtain a copy of
24 the Motion, Plan, and Disclosure Statement, by visiting the following website
25 <https://www.kccllc.net/verityhealth>. Parties may also contact and request a copy from: Kurtzman
26 Carson Consultants LLC (“KCC”), the Debtors’ Solicitation Agent, by sending a written request
27 via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222 N.
28 Pacific Coast Highway, Suite 300, El Segundo, CA 90245. Additionally, copies of the Motion,

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1 Disclosure Statement, and Plan are on file with the Office of the Clerk of the Bankruptcy Court for
2 review during normal business hours and are also available on the KCC website at
3 <https://www.kccelle.net/verityhealth>. A copy may also be obtained by e-mail request to:
4 Verityinfo@kccllc.com.

5 **PLEASE TAKE FURTHER NOTICE** that any party opposing or responding to the
6 Motion must file and serve the response (“Response”), pursuant to Local Bankruptcy Rule 9013-
7 1(f), on the Movants and the Office of the United States Trustee as follows: (i) counsel to the
8 Debtors: Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn:
9 Tania M. Moyron (tania.moyron@dentons.com)); (ii) counsel to the Trustees: Mintz, Levin, Cohn,
10 Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111 (Attn: Daniel S. Bleck
11 and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com); and (iii) counsel to the U.S. Trustee,
12 Office of the United States Trustee, 915 Wilshire Boulevard, Suite 1850, Los Angeles, California
13 90017 (Attn: Hatty K. Yip (hatty.yip@usdoj.gov)). A Response must be a complete written
14 statement of all reasons in opposition thereto or in support, declarations and copies of all evidence
15 on which the responding party intends to rely, and any responding memorandum of points and
16 authorities.

17 **PLEASE TAKE FURTHER NOTICE** that, concurrently herewith, the Debtors are filing
18 an application under Local Bankruptcy Rule 9075-1(b) for this Motion to be heard on shortened-
19 notice on July 2, 2020 at 10:00 a.m. (Pacific Time) (the “Application”). After the Application is
20 ruled on, the Debtors will provide notice of Response and reply deadlines to the Motion. In the
21 Application, the Debtors request that the Court set a Response deadline of June 23, 2020, and set a
22 reply deadline of June 29, 2020, at 12:00 p.m. (Pacific Time).

23 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
24 1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to
25 be consent to the relief requested therein.

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1 Dated: June 16, 2020

DENTONS US LLP

2

3

By: /s/ Tania M. Moyron

4

Samuel R. Maizel

Tania M. Moyron

Nicholas A. Koffroth

5

Counsel to the *Debtors and Debtors In Possession*

6

7

8 Dated: June 16, 2020

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.

9

10

By: /s/ Paul J. Ricotta¹

11

Paul J. Ricotta

Daniel S. Bleck

12

Counsel to *UMB Bank, N.A., as Master Indenture Trustee and Wells Fargo Bank, National Association, as Indenture Trustee for the 2005 Bonds*

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24 ¹ Pursuant to the Court's Amended General Order 20-02, the Debtors (i) are unable to obtain the
25 foregoing party's holographic signatures due to a lack of required technology, (ii) obtained the
26 party's permission to sign this document on the party's behalf, and (iii) will obtain and file the
27 holographic signature required pursuant to LBR 9011-1(a) as soon as practicable. *See In re*
28 *Amended Procedures for Public Emergency Related to COVID-19 Outbreak*, Amended General
Order 20-02, at ¶ 7 (Bankr. C.D. Cal. Apr. 1, 2020); *see also* Third Amended General Order 20-
02, at ¶ 1 (Bankr. C.D. Cal. May 28, 2020) (extending Amended General Order 20-02 through
June 30, 2020).

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1 11 U.S.C. § 3282

2 11 U.S.C. § 50219

3 11 U.S.C. § 11072

4 11 U.S.C. § 11082

5 11 U.S.C. § 11252, 6, 10, 11

6 11 U.S.C. § 1125(a).....1, 5, 6, 7

7 11 U.S.C. § 11262, 12, 13, 16, 19

8 11 U.S.C. § 1129(a).....21, 22

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10 28 U.S.C. § 1571

11 28 U.S.C. § 13341

12 28 U.S.C. § 14081

13 28 U.S.C. § 14091

14 **Other Authorities**

15 Fed. R. Bankr. P. 200214, 15, 23

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17 Fed. R. Bankr. P. 3017(c).....15, 22

18 Fed. R. Bankr. P. 3017(d)..... *passim*

19 Fed. R. Bankr. P. 301818, 19

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21 Fed. R. Bankr. P. 3020(b).....24

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23 Local Bankruptcy Rules 2002-12

24 Local Bankruptcy Rule 3018-12, 22

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26 H.R. Rep. No. 595, at 408-09, 95th Cong. (1st Sess. 1977).....7

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Verity Health System of California, Inc. (“VHS”) and the affiliated debtors, the debtors
5 and debtors in possession in the above-captioned chapter 11 bankruptcy cases (each a “Debtor”
6 and, collectively, the “Debtors”), and UMB Bank, N.A., as Master Indenture Trustee and Wells
7 Fargo Bank, National Association, as Indenture Trustee for the 2005 Bonds (together with the
8 Debtors, the “Movants”), request (the “Motion”) approval of (i) the *Disclosure Statement*
9 *Describing Amended Joint Chapter 11 Plan Of Liquidation (Dated June 16, 2020) of the Debtors,*
10 *the Prepetition Secured Creditors, and the Committee* (the “Disclosure Statement”)¹ filed
11 concurrently herewith, (ii) the solicitation and voting procedures proposed herein, (iii) the
12 proposed notice and objection procedures for confirmation of the *Amended Joint Chapter 11 Plan*
13 *Of Liquidation (Dated June 16, 2020) of the Debtors, the Prepetition Secured Creditors, and the*
14 *Committee* (the “Plan”) filed concurrently herewith, and (iv) granting related relief as set forth
15 more fully herein. In support of the Motion, the Movants refer to the *Declaration of Richard G.*
16 *Adcock In Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”).
17 Concurrently herewith, the Debtors have filed an application for an order setting the hearing on
18 this Motion on shortened notice. The Movants respectfully submit that Disclosure Statement
19 contains “adequate information,” as that phrase is defined in § 1125(a)(1),² and, thus, request the
20 Court grant the Motion.

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

25 ² Unless specified otherwise, all chapter and section references are to title 11 of the United States
26 Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and all “Bankruptcy Rule” references
27 are to the Federal Rules of Bankruptcy Procedure. All “Local Bankruptcy Rule” references are to
the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of
28 California.

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II.

JURISDICTION, VENUE, AND REQUESTED RELIEF

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

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

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

III.

BACKGROUND

A. General Background.

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

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, on the Petition Date, operated six acute care hospitals: O’Connor Hospital (“OCH”), Saint Louise Regional Hospital (“SLRH”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), Seton Medical Center (“SMC”), and Seton Medical Center Coastside (“Seton Coastside” and, together with OCH, SLRH, SFMC, and SVMC, the “Hospitals”). SMC and Seton Coastside (collectively, “Seton”) operated under one consolidated acute care hospital license.

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

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1 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately
2 480,000 outpatients. *Id.*, at 4, ¶ 12.

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

7 **B. Events Leadings to the Bankruptcy Cases.**

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

14 6. In 2015, DCHS marketed the health system for sale and focused on offers that
15 maintained the system as a whole, including the assumption of all existing obligations. In July
16 2015, the DCHS Board of Directors selected BlueMountain Capital Management LLC
17 (“BlueMountain”), a private investment firm, to recapitalize its operations and transition
18 leadership of the health system to the new Verity Health System (the “BlueMountain
19 Transaction”). In connection with the BlueMountain Transaction, BlueMountain agreed to make a
20 capital infusion of \$100 million, arrange loans for another \$160 million to the system, and manage
21 operations, with an option to buy the health system at a future time. In addition, the parties
22 entered into a System Restructuring and Support Agreement (the “Restructuring Agreement”).
23 DCHS’ name was changed to VHS, and Integrity Healthcare, LLC (“Integrity”) was formed to
24 carry out the management services under a new management agreement.

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

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

5 9. Despite BlueMountain's infusion of cash and retention of various consultants and
6 experts to assist in improving cash flow and operations, the health system continued to incur
7 losses.

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

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

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

20 **C. Appointment of Committee.**

21 13. On September 17, 2018, the Office of the United States Trustee appointed an
22 Official Committee of Unsecured Creditors (the "Committee") in the Debtors' Cases. [Docket No.
23 197].

24 **D. The Initial Administrative Claims Bar Date**

25 14. On August 8, 2019, the Debtors filed a motion [Docket No. 2878] to set an
26 administrative claims bar date for certain claims arising under § 503(b)(1), which the Debtors
27 supplemented [Docket Nos. 2929, 2958]. On August 28, 2019, the Court entered an order [Docket
28 No. 2961] granting the motion and setting October 7, 2019 as the interim administrative claims bar

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1 date (the “Initial Administrative Claims Bar Date”) for claims, as that term is defined in § 101(5),
2 against the Debtors or the Debtors’ estates pursuant to §§ 503(b) and 507(a)(2), that were incurred,
3 accrued or arose during the period from and after the Petition Date, which was August 31, 2018,
4 through the Initial Administrative Claims Bar Date, including, but not limited to, (i) the actual,
5 necessary costs and expenses of preserving the Debtors’ estates and operating the business of the
6 Debtors, including wages, salaries, payments or commissions for services rendered after the
7 commencement of the chapter 11 cases and (ii) claims or causes of action arising after the Petition
8 Date, including obligations due vendors, alleged personal injuries, medical malpractice and
9 employment law claims, among others, whether or not such claim is reduced to judgment,
10 liquidated, unliquidated, fixed, contingent, insured or uninsured, matured, unmatured, disputed,
11 undisputed, legal, equitable, secured or unsecured. On September 4, 2019, the Debtors filed a
12 notice [Docket No. 3006] of the Initial Administrative Claims Bar Date (the “Initial
13 Administrative Claims Bar Date Notice”).

14 **E. The First Plan and Disclosure Statement**

15 15. On September 3, 2019, the Debtors filed a proposed plan of liquidation [Docket
16 No. 2993] and corresponding disclosure statement [Docket No. 2994], the terms of which were
17 contingent on the closing of the sale of the Debtors’ remaining operating hospitals to Strategic
18 Global Management, Inc. (“SGM”). On September 4, 2019, the Debtors filed a motion [Docket
19 No. 2995] for an order approving (1) the disclosure statement and (2) solicitation, voting, and
20 objection procedures relating to the plan. On December 26, 2019, after SGM failed to close the
21 sale, the Court entered an order [Docket No. 3859] vacating the continued hearing on the motion
22 to approve the prior disclosure statement.

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1 IV.

2 **DISCLOSURE STATEMENT AND PLAN**

3 Concurrently herewith, the Debtors, the Committee, and the Prepetition Secured Creditors³
4 (collectively, the “Plan Proponents”) filed the proposed Plan and related Disclosure Statement.
5 The Plan Proponents worked diligently with their advisors to prepare the Plan, which maximizes
6 value for the estates for the benefit of creditors. The Plan essentially implements a comprehensive
7 settlement and compromise between the holders of the Secured 2005 Revenue Bond Claims, the
8 Debtors and the Committee, which enables the Plan to become effective in these Chapter 11 Cases
9 immediately after the sale of the Debtors’ remaining Hospital assets, ends the incurrence and
10 expenditure of continuing administrative expenses of the Debtors, permits cash payments to be
11 made to certain creditors on or about the Effective Date of the Plan and thereafter, and resolves the
12 remaining litigation pending against the Prepetition Secured Creditors in these proceedings.
13 Further, the Plan Proponents concluded, after a careful analysis of the Debtors’ complex corporate
14 and financial structure, that a single plan of liquidation contemplating the “deemed” substantive
15 consolidation of all Debtors—rather than seventeen separate plans—will maximize value and
16 avoid unnecessary costs and potential litigation. Thus, as more fully described in the Disclosure
17 Statement, the Plan provides for the “deemed” substantive consolidation of the Debtors solely for
18 purposes of implementation of the Plan and distributions to creditors otherwise in accordance with
19 the Bankruptcy Code’s distribution and classification provisions. The Disclosure Statement
20 describes further facts and legal bases that support substantive consolidation.

21 As set forth in the Disclosure Statement, the Plan Proponents (i) anticipate the net sale
22 proceeds of the sales of the Hospitals will be the primary source of funding for distributions under
23 the Plan, and (ii) also anticipate other sources of recovery, including, but not limited to, recovery
24

25 _____
26 ³ The Prepetition Secured Creditors are UMB Bank, N.A., as Master Trustee, Wells Fargo Bank,
27 National Association, as 2005 Revenue Bonds Trustee, U.S. Bank, National Association as 2015
28 Notes Trustee and 2017 Notes Trustee, Verity MOB Financing LLC and Verity MOB Financing
II, LLC.

1 of certain receivables and fees after the Effective Date and the net proceeds of Causes of Action,
2 including Avoidance Actions, to be pursued by the Liquidating Trust.

3 The Movants propose the following key dates in connection with the approval of the
4 Disclosure Statement and confirmation of the Plan:⁴

Event Date/Deadline	Event Date/Deadline
Disclosure Statement Objection Deadline	June 23, 2020
Deadline to File Reply to Disclosure Statement Objections	June 29, 2020 at 12:00 p.m. (Pacific Time)
Disclosure Statement Hearing	July 2, 2020 at 10:00 a.m. (Pacific Time)
Voting Record Date	July 2, 2020
Entry of Disclosure Statement Order	July 2, 2020
Solicitation Commencement Deadline ⁵	July 9, 2020
Deadline to Object or to File a Motion to Estimate Claims for Voting Purposes	July 23, 2020
Voting Objection Deadline	July 23, 2020
Administrative Claims Bar Date	July 29, 2020
Voting Deadline	July 30, 2020 at 4:00 p.m. (Pacific Time)
Confirmation Objection Deadline	July 30, 2020
Deadline to File Tabulation Report, Memorandum of Law in Support of Confirmation, Proposed Confirmation Order and Response to Objections to the Confirmation	August 5, 2020
Confirmation Hearing	August 12, 2020 at 10:00 a.m. (Pacific Time)

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

22 _____
23 ⁴ The Debtors filed an application for an order setting the hearing on this Motion on shortened
24 notice contemporaneously herewith. The dates set forth herein are subject to the Court’s ruling on
25 the Debtors’ application and the Court’s availability with respect to the proposed confirmation
26 schedule.

26 ⁵ The solicitation commencement deadline, and subsequent deadlines, are contingent on the date
27 of the entry of the order approving the Disclosure Statement. For purposes of this proposed
28 timeline, the Movants assume entry of the order approving the Disclosure Statement on July 2,
2020.

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1 establishing the deadline for the receipt of ballots, and (f) approving procedures for tabulating
2 acceptances and rejections of the Plan; (iii) establishing procedures with respect to, and the
3 deadline for filing objections to, the confirmation of the Plan; (iv) fixing July 29, 2020, (the
4 “Administrative Claims Bar Date”) as the deadline for holders of Administrative Claims to file
5 requests for payment of Administrative Claims arising, or anticipated to arise, between the Initial
6 Administrative Claims Bar Date and August 12, 2020 (the “Administrative Claim Period”), and
7 (v) granting related relief.

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10 **V.**

11 **ARGUMENT**

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

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

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

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

1 *Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re*
2 *Arnold*, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

3 In examining the adequacy of the information contained in a disclosure statement, the
4 Bankruptcy Court has broad discretion. *See Art & Architecture Books of the 21st Century*, 2016
5 WL 1118743, at *14 (“Bankruptcy judges have broad discretion in reviewing disclosure
6 statements and what constitutes adequate information and any particular instance will develop on a
7 case-by-case basis.”); *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (same); *Kirk v.*
8 *Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more
9 clear in granting broad discretion to bankruptcy judges under § 1125(a)”); *Menard-Sanford v.*
10 *Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 696 (4th Cir. 1989); *Tex. Extrusion Corp. v.*
11 *Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988); *see also In re*
12 *Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (Congress intentionally drew vague
13 contours of what constitutes adequate information so that bankruptcy courts may exercise
14 discretion to tailor them to each case’s particular circumstances); *In re Dakota Rail Inc.*, 104 B.R.
15 138, 143 (Bankr. D. Minn. 1989) (a bankruptcy court has “wide discretion to determine . . .
16 whether a disclosure statement contains adequate information, without burdensome, unnecessary,
17 and cumbersome detail”).

18 Accordingly, the determination of whether a disclosure statement contains adequate
19 information is to be made on a case-by-case basis, focusing on the unique facts and circumstances
20 of each case. *See In re Diversified Inv’rs Fund XVII*, 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988)
21 (“According to the legislative history, the parameters of what constitutes adequate information are
22 intended to be flexible.”); *see also In re PC Liquidation Corp.*, 383 B.R. 856 at 866 (E.D.N.Y.
23 2008); *In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination is
24 largely within the discretion of the bankruptcy court.”); *In re Egan*, 33 B.R. 672, 674-75 (Bankr.
25 N.D. Ill. 1983). This discretion provides flexibility and facilitates the effective reorganization of
26 the different types of chapter 11 debtors by accommodating the varying circumstances
27 accompanying chapter 11 cases. *See H.R. REP. NO. 595*, at 408-09, 95th Cong. (1st Sess. 1977).

28

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

6 **B. The Proposed Disclosure Statement Meets the Applicable Standards.**

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

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

28 The Disclosure Statement also provides adequate notice of the release, exculpation, and
injunction provisions in the Plan. Pursuant to Bankruptcy Rule 3016(c), “[i]f a plan provides for

1 an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure
2 statement [must] describe in specific and conspicuous language all acts to be enjoined and identify
3 the entities that would be subject to the injunction.” FED. R. BANKR. P. 3016(c). The Disclosure
4 Statement provides a detailed description of releases and exculpations to be provided under the
5 Plan. *See* Disclosure Statement, § IX.B., C., D.

6 Furthermore, the Disclosure Statement provides an analysis of the alternatives to
7 confirmation and consummation of the Plan, which demonstrates that an impaired claimant or
8 interest holder that does not accept the Plan will receive or retain under the Plan property of a
9 value greater than the amount that such holder would receive or retain if the Debtors were forced
10 to liquidate under chapter 7 of the Bankruptcy Code. *See id.*, § XIII.K. (setting forth the Debtors’
11 liquidation analysis). Accordingly, the Plan Proponents recommend that holders of claims eligible
12 to vote on the Plan vote to accept the Plan because it is the most efficient and effective means to
13 provide remaining recoveries to holders of claims against the Debtors’ estates.

14 The Disclosure Statement also contains a detailed description of means of implementation,
15 which includes the “deemed” substantive consolidation of the Debtors and the applicable factors
16 and legal basis. The Disclosure Statements sets forth adequate information concerning (i) the
17 legal requirements to establish deemed substantive consolidation, and (ii) the factual bases
18 supporting the Plan Proponents’ request for deemed substantive consolidation. It also provides
19 notice that the Disclosure Statement and Plan shall be deemed a motion requesting that the
20 Bankruptcy Court approve the deemed substantive consolidation contemplated by the Plan at the
21 Confirmation Hearing, unless otherwise separately scheduled. *See* Disclosure Statement, Section
22 XV.

23 Additionally, the Disclosure Statement sets forth the effect of deemed substantive
24 consolidation and the facts of the cases that satisfy the standard for deemed substantive
25 consolidation in the Ninth Circuit. The facts relevant to the Ninth Circuit analysis and identified
26 in the Disclosure Statement include: (i) the impact of the conditions imposed by the Attorney
27 General and the extent to which the conditions required that the Debtors act as a single economic
28 unit; (ii) the manner in which the Debtors booked significant transfers on their general account

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1 ledgers between entities and the effect the claims will have on recoveries among the unsecured
2 creditors of each Debtor; (iii) the issues raised by reconciliation of claims and the allocation of
3 liabilities among the Debtors; (iv) the Debtors' lending and business relationships with the
4 creditors and the extent to which the Debtors dealt with creditors as a single enterprise; and
5 (v) facts reflecting the extent to which the proposed deemed substantive consolidation is
6 administratively convenient and benefits creditors. Accordingly, the Disclosure Statement
7 contains the pertinent information necessary for holders of impaired claims to make an informed
8 decision about whether to vote to accept or reject the Plan, including, among other things,
9 information regarding the effect and basis for the Plan Proponents' request for deemed substantive
10 consolidation.

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

16 **VI.**

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

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

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

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

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;

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- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

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

FED. R. BANKR. P. 3017(d).

As further discussed below, if the Bankruptcy Court approves the Disclosure Statement as containing adequate information pursuant to § 1125, the Debtors propose to distribute by First Class Mail to holders of claims in the classes entitled to vote on the Plan (the “Voting Classes”)⁶ the Confirmation Hearing Notice (as defined below), as well as a package containing solicitation materials (the “Solicitation Package”) including:

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

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

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

3 Kurtzman Carson Consultants LLC (“KCC”) will serve as the Plan Proponents’
4 Solicitation Agent (the “Solicitation Agent”) and provide access to Solicitation Packages, among
5 other things. Solicitation Packages (except for Ballots) will be available (i) for download at
6 <https://www.kccllc.net/verityhealth>, (ii) by email request to verityinfo@kccllc.com, (iii) by written
7 request via standard overnight or hand delivery to: Verity Ballot Processing Center, c/o KCC, 222
8 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245, and (iv) on the Bankruptcy Court’s
9 website.⁷

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

11 Upon approval of the Disclosure Statement pursuant Disclosure Statement Order, the
12 Movants will serve or cause to be served the following documents on the following parties, as
13 applicable: (i) a written notice to the Voting Classes (the “Confirmation Hearing Notice”) of
14 (a) the Bankruptcy Court’s approval of the Disclosure Statement, (b) the deadline for voting on the
15 Plan, (c) the time, date, and place for the hearing to consider confirmation of the Plan, and (d) the
16 deadline and procedures for filing objections to the confirmation of the Plan, together with the
17 Solicitation Package; (ii) a written notice to the non-voting accepting classes (the “Notice of Non-
18 Voting Accepting Status and Confirmation Hearing”) that sets forth such parties’ Plan treatment, a
19 summary of the Plan’s release, injunction, and exculpation provisions, and certain information
20 regarding the hearing to consider confirmation of the Plan and related deadlines; and (iii) a written
21 notice to the non-voting rejecting classes (the “Notice of Non-Voting Rejecting Status and
22 Confirmation Hearing”) that sets forth such parties’ Plan treatment, a summary of the Plan’s
23 release, injunction, and exculpation provisions, and certain information regarding the hearing to
24 consider confirmation of the Plan and related deadlines. The relevant notices will be served on the
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27 ⁷ <http://www.cacb.uscourts.gov/> (a PACER login and password are required to access documents
28 on the Bankruptcy Court’s website).

1 appropriate parties by First Class Mail. The Debtors will file the proposed form of notices prior to
2 the hearing on this Motion.

3 Consistent with § 1126(f) and Bankruptcy Rule 3017(d), the Movants propose to send the
4 Notice of Non-Voting Accepting Status and Confirmation Hearing to holders of Administrative
5 Claims, Professional Claims, Statutory Fees, Priority Tax Claims, Administrative DIP Lender
6 Claims, Other Priority Claims, and Secured PACE Tax Financing Claims (the
7 “Unclassified/Unimpaired Claimholders”), which classes are unclassified or deemed to accept the
8 Plan,.

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

12 The Movants submit that such notices satisfy the requirements of the Bankruptcy Code and
13 Bankruptcy Rule 3017(d). Accordingly, the Movants request that the Bankruptcy Court determine
14 that the Movants are not required to distribute copies of the Plan, Disclosure Statement, or
15 Disclosure Statement Order to any of the Unclassified/Unimpaired Claimholders, holders of
16 Subordinated General Unsecured Claims, or Interest holders, unless otherwise requested in writing
17 or by the terms of the Disclosure Statement Order.

18 **C. Establishment of Voting Record Date and Approving of Procedures for Distribution**
19 **of Solicitation Packages.**

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

26 The Movants request that the Bankruptcy Court establish July 2, 2020, as the record date
27 (the “Voting Record Date”), for purposes of determining the claimholders that are entitled to vote
28 (subject to the voting procedures set forth below) on the Plan or, in the case of non-voting classes,

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1 for purposes of determining the claimholders to receive certain Plan-related materials. The
2 Debtors expect that they will be able to commence distribution of (i) the Confirmation Hearing
3 Notice and Solicitation Package to the Voting Classes and (ii) the Notice of Non-Voting
4 Accepting Status and Confirmation Hearing and/or Notice of Non-Voting Rejecting Status and
5 Confirmation Hearing to parties-in-interest outside of the Voting Classes, as applicable, as set
6 forth herein, within six (6) calendar days after the date of entry of the Disclosure Statement Order,
7 or as soon as reasonably practicable thereafter (the “Solicitation Commencement Date”). The
8 Movants anticipate that, subject to entry of an order granting this Motion, that the Solicitation
9 Commencement Date will be July 9, 2020.

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

23 The Movants shall cause to be distributed electronically the Disclosure Statement Order
24 (excluding exhibits thereto), the Confirmation Hearing Notice, the Disclosure Statement (together
25 with the Plan and other exhibits attached thereto), and such other materials as the Bankruptcy
26 Court may direct (excluding a Ballot) to, among other parties (to the extent such parties did not
27 otherwise receive the Solicitation Package):

28 a) the U.S. Trustee;

- 1 b) the Internal Revenue Service;
- 2 c) the California Attorney General; and
- 3 d) all persons and entities that have filed a request for service of filings in the
- 4 Debtors' Cases pursuant to Bankruptcy Rule 2002.

5 The Debtors anticipate that some of the notices served in the Debtors' Cases, including
6 notices of the hearing to approve the Disclosure Statement and notices of the commencement of
7 the Debtors' Cases, have been or may be returned, including because certain notice parties have
8 foreign addresses. The Debtors believe that it would be costly and inefficient to distribute the
9 Solicitation Package to the same addresses to which undeliverable notices were previously
10 distributed. Therefore, the Movants seek the Bankruptcy Court's approval for a departure from
11 the strict notice rule, excusing the Debtors from distributing Solicitation Packages to those entities
12 listed at such addresses if the Debtors are not provided with updated addresses for such entities
13 before the Solicitation Commencement Date. Further, if the Debtors send Solicitation Packages
14 that are deemed undeliverable and are not provided with a forwarding or more updated address,
15 the Movants seek that the Debtors be excused from attempting to re-deliver Solicitation Packages
16 to such entities. The Movants submit that good cause exists for implementing the aforementioned
17 notice and service procedures.

18 **D. Approval of Forms of Ballot**

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

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

2 Bankruptcy Rule 3017(c) provides that, on or before approval of a disclosure statement,
3 the court shall fix a time within which the holders of claims or equity security interests may accept
4 or reject a plan. The Movants have developed the proposed schedule to allow for a solicitation
5 period in the Debtors' Cases of approximately 21 days, which the Movants believe is appropriate
6 in light of the circumstances of the case and consistent with the requirements set forth in
7 Bankruptcy Rule 2002(b). Accordingly, the Movants propose that in order to be counted as a vote
8 to accept or reject the Plan, each Ballot must be properly executed, completed, and delivered to the
9 Debtors so as to be received by the Debtors no later than **4:00 p.m. (Pacific Time) on July 30,**
10 **2020** or as otherwise ordered by the Bankruptcy Court (the "Voting Deadline") as set forth below.

11 The Movants submit that such solicitation period is a sufficient period within which creditors can
12 make an informed decision to accept or reject the Plan in light of the circumstances of these Cases.

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

17 Verity Ballot Processing Center
18 c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
19 El Segundo, CA 90245
(888) 249-2741(domestic)
20 (310) 751-2635 (international)

21 Master Ballots submitted by Nominees holding Class 4 (Secured 2005 Revenue Bond Claims),
22 must be delivered to the Solicitation Agent at:

23 Verity Ballot Processing Center
24 c/o Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, Suite 300
25 El Segundo, CA 90245
(877) 499-4509 (domestic)
26 (917) 281-4800 (international)
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1 In addition to accepting hard copy Ballots via first class mail, overnight courier, and hand
2 delivery, the Movants request authorization to accept Ballots via electronic, online transmissions,
3 solely through a customized online balloting portal on the Debtors' case website. Parties entitled
4 to vote may cast an electronic Ballot and electronically sign and submit a Ballot instantly by
5 utilizing the online balloting portal (which allows a holder to submit an electronic signature).
6 Instructions for electronic, online transmission of Ballots shall be set forth on the forms of Ballots.
7 The encrypted ballot data and audit trail created by such electronic submission shall become part
8 of the record of any Ballot submitted in this manner and the creditor's electronic signature will be
9 deemed to be immediately legally valid and effective. For the avoidance of doubt, the Movants
10 request that Ballots submitted via the customized online balloting portal be deemed to contain an
11 original signature.

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

15 **F. Approval of Procedures for Vote Tabulation**

16 Section 1126(c) provides as follows:

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

21 11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that "the court after notice and
22 hearing may temporarily allow the claim or interest in an amount which the court deems proper for
23 the purpose of accepting or rejecting a plan." FED. R. BANKR. P. 3018(a).

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

27 a) The amount of the claim listed in the Debtors' schedules of assets and
28 liabilities (the "Schedules"); provided that (i) such claim is not scheduled as

1 any of contingent, unliquidated, undetermined, disputed, or in a zero dollar
2 amount, and (ii) no proof of claim has been timely filed (or otherwise
3 deemed timely filed by the Bankruptcy Court under applicable law) with
respect to such claim.

4 b) The noncontingent and liquidated amount specified in a proof of claim
5 timely filed with the Bankruptcy Court (or otherwise deemed timely filed
6 by the Bankruptcy Court under applicable law) to the extent the proof of
7 claim is not the subject of an objection filed by **July 23, 2020** (the "Voting
8 Objection Deadline") (or, if such claim has been resolved for allowance
and/or voting purposes pursuant to a stipulation or order entered by the
Bankruptcy Court, or otherwise resolved by the Bankruptcy Court, the
amount set forth in such stipulation or order).

9 c) If a proof of claim has been timely filed prior to the applicable bar date and
10 such claim is asserted in the amount of \$0.00, such claim shall not be
entitled to vote.

11 d) Notwithstanding anything to the contrary in these tabulation rules, the
12 holder of any claim that has been indefeasibly paid, in full or in part, shall
13 only be permitted to vote the unpaid amount of such claim, if any, to accept
or reject the Plan.

14 e) The amount temporarily allowed or estimated by the Bankruptcy Court for
15 voting purposes, pursuant to Bankruptcy Rule 3018(a), subject to notice
16 consistent with the procedures set forth herein, the Bankruptcy Code, the
Bankruptcy Rules and the Local Bankruptcy Rules shall be the amount of
the claim for voting purposes.

17 f) If a claim for which a proof of claim has been timely filed for unknown or
18 undetermined amounts (as determined on the face of the claim or after a
19 reasonable review of the supporting documentation by the Movants) and
20 such claim has not been allowed, such Claim shall be temporarily allowed
for voting purposes only, and not for purposes of allowance or distribution,
at \$1.00.

21 g) If a claim is listed on a timely filed proof of claim as either wholly or
22 partially contingent or unliquidated, such claim is temporarily allowed in
23 the amount that is the greater of (i) the liquidated and non-contingent
amount and (ii) \$1.00, for voting purposes only, and not for purposes of
allowance or distribution.

24 h) If a claim is deemed allowed under the Plan, such claim is allowed for
25 voting purposes in the deemed allowed amount set forth in the Plan.

26 i) If a claim is not listed in the Schedules or is listed in the Schedules as
27 contingent, unliquidated, or disputed (or in a zero amount) and a proof of
28 claim was not (i) filed by the applicable bar date for the filing of proofs of
claim established by the Bankruptcy Court or (ii) deemed timely filed by an

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1 order of the Bankruptcy Court prior to the Voting Deadline, such claim
2 shall be disallowed for voting purposes.

- 3 j) If a proof of claim has been amended by a later proof of claim that is filed
4 on or prior to the Voting Record Date, the later filed amending claim shall
5 be entitled to vote in a manner consistent with these tabulation rules, and
6 the earlier filed claim shall be disallowed for voting purposes, regardless of
7 whether the Debtors have objected to such amended claim. Except as
8 otherwise ordered by the Bankruptcy Court, any amendments to proofs of
9 claim after the Voting Record Date shall not be considered for purposes of
10 these tabulation rules.

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

16 Additionally, the Movants seek authorization from the Bankruptcy Court for the Movants
17 to object to any claim (as defined in § 101(5)) solely for Plan voting purposes by filing a
18 determination motion (the “Determination Motion”), no later than the Voting Objection Deadline.
19 If an objection to a claim (made by way of a Determination Motion or otherwise) filed on or
20 before the Voting Objection Deadline requests that such claim be reduced or reclassified, such
21 claimant’s Ballot shall be counted in such reduced amount or as falling into the reclassified
22 category. Further, if a creditor casts a Ballot and has timely filed a proof of claim (or has
23 otherwise had a proof of claim deemed timely filed by the Bankruptcy Court under applicable
24 law), but the creditor’s claim is the subject of an objection (made by way of a Determination
25 Motion or otherwise) filed no later than the Voting Objection Deadline, the Movants request, in
26 accordance with Bankruptcy Rule 3018, that the creditor’s Ballot not be counted to the extent it is
27 challenged by the objection, unless such claim is temporarily allowed by the Bankruptcy Court for
28

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1 voting purposes pursuant to Bankruptcy Rule 3018(a) after the creditor files a motion for such
2 temporary allowance (the “Claims Estimation Motion”).⁸

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

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

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

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

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

26 ⁸ This proposed procedure is consistent with § 1126, which provides that a plan may be accepted
27 or rejected by the holder of a claim allowed under § 502. In turn, § 502(a) provides that a filed
28 proof of claim is deemed allowed “unless a party in interest . . . objects.” 11 U.S.C. § 502(a).

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

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

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

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

17 The Movants submit that such procedures provide for a fair and equitable voting process.

18 **G. Establishment of Deadline and Procedures for Filing Objections to the Confirmation**
19 **of the Plan.**

20 **a. Scheduling the Confirmation Hearing**

21 Bankruptcy Rule 3017(c) provides:

22 On or before approval of the disclosure statement, the court shall fix
23 a time within which the holders of claims and interests may accept or
24 reject the plan and may fix a date for the hearing on confirmation.

25 FED. R. BANKR. P. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Debtors request that
26 a hearing on confirmation of the Plan (the “Confirmation Hearing”) be scheduled for **August 12,**
27 **2020 at 10:00 a.m. (Pacific Time).**

28 The Movants propose that, no later than **August 5, 2020**, the Movants will file with the
Bankruptcy Court a tabulation report for Plan voting, a proposed form of confirmation order, a
memorandum in support of confirmation addressing the requirements of § 1129(a) and any
declarations or other evidence in support thereof, and replies to any objections received by the
Confirmation Objection Deadline. In light of these deadlines, the Movants respectfully request

1 that the Court shorten the ballot tabulation deadline set forth in Local Bankruptcy Rule 3018-1(b)
2 from fourteen days to seven days.

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

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

10 Bankruptcy Rules 2002(b) and 3017(d) require not less than twenty-eight (28) days' notice
11 to all creditors and equity security holders of the time fixed for filing objections and the hearing to
12 consider confirmation of a chapter 11 plan. The Movants propose to provide to all creditors and
13 interest holders a copy of either the Confirmation Hearing Notice, the Notice of Non-Voting
14 Accepting Status and Confirmation Hearing, or the Notice of Non-Voting Rejecting Status and
15 Confirmation Hearing as proposed herein, setting forth, among other things, (a) the date of
16 approval of the Disclosure Statement, (b) the Voting Record Date, (c) the Voting Deadline, (d) the
17 time fixed for filing objections to confirmation of the Plan, and (e) the time, date, and place for the
18 Confirmation Hearing. Such notice will be sent at least twenty-one (21) days before the deadline
19 to object to confirmation of the Plan. Accordingly, the Movants request that the Court shorten the
20 deadline set forth in Bankruptcy Rules 2002(b) and 3017(d) to 21 days.

21 Bankruptcy Rule 2002(1) permits the Bankruptcy Court to "order notice by publication if it
22 finds that notice by mail is impracticable or that it is desirable to supplement the notice." FED. R.
23 BANKR. P. 2002(1). In addition to mailing the Confirmation Hearing Notice, the Movants propose
24 to publish the Confirmation Hearing Notice once, as soon as reasonably practical after the entry of
25 the Disclosure Statement Order, in the following newspapers: *Los Angeles Times*, *San Francisco*
26 *Chronicle*, *San Jose Mercury News* and *USA Today*. The Movants believe that publication of the
27 Confirmation Hearing Notice will provide sufficient notice of the approval of the Disclosure
28 Statement; the Voting Record Date; the Voting Deadline; the time fixed for filing objections to

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1 confirmation of the Plan; and the time, date, and place of the Confirmation Hearing to persons
2 who do not otherwise receive actual written notice by mail as provided for in the Disclosure
3 Statement Order.

4 The Movants submit that the foregoing procedures will provide adequate notice of the
5 Confirmation Hearing and, accordingly, requests that the Bankruptcy Court approve such notice as
6 adequate.

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

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

- 12 a) be in writing;
- 13 b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules;
- 14 c) set forth the name of the objector and the nature and amount of any Claim
15 asserted by the objector against or in the Debtors;
- 16 d) state with particularity the legal and factual bases for the objection and, if
17 practicable, a proposed modification to the Plan that would resolve such
objection; and
- 18 e) be filed with the Bankruptcy Court, together with proof of service, and
19 served so that they are actually received by the Notice Parties (as defined
20 below) no later than **July 30, 2020** which deadline may be extended by the
Debtors (the “Confirmation Objection Deadline”).

21 The Movants request that Court require any confirmation objection to be served on the
22 following parties (collectively, the “Notice Parties”): (i) counsel to the Debtors: Dentons US LLP,
23 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017 (Attn: Tania M. Moyron
24 (tania.moyron@dentons.com)); (ii) counsel to the Committee: Milbank LLP, 2029 Century Park
25 East, 33rd Floor, Los Angeles, CA 90067 (Attn: Mark Shinderman
26 (mshinderman@milbank.com)); (iii) counsel to the Master Trustee and Series 2005 Bond Trustee:
27 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111
28 (Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com)); (iv) counsel

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1 to the Series 2015 Notes Trustee: McDermott Will & Emery LLP, 444 West Lake Street, Suite
2 4000, Chicago, IL 60606 (Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com;
3 mpreusker@mwe.com)); (v) counsel to the Series 2017 Notes Trustee: Maslon, LLP, 3300 Wells
4 Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402 (Attn: Clark Whitmore
5 (clark.whitmore@maslon.com)); (vi) counsel to the MOB Lenders: Jones Day, 250 Vesey Street,
6 New York, NY 10281 (Attn: Bruce Bennett, Benjamin Rosenblum, and Peter Saba
7 (bbennett@jonesday.com, brosenblum@jonesday.com, psaba@jonesday.com); and (vii) counsel
8 to the U.S. Trustee, Office of the United States Trustee, 915 Wilshire Boulevard, Suite 1850, Los
9 Angeles, California 90017 (Attn: Hatty K. Yip (hatty.yip@usdoj.gov)).

10 The proposed timing for filing and service of objections and proposed modifications, if
11 any, will afford the Bankruptcy Court, the Plan Proponents, and other parties in interest sufficient
12 time to consider the objections and proposed modifications prior to the Confirmation Hearing.

13 VII.

14 ESTABLISHING AN ADMINISTRATIVE CLAIMS BAR DATE

15 The Plan contemplates that the Court set an Administrative Claims Bar Date not later than
16 14 days prior to the Confirmation Hearing. *See* Plan at § 1.14. The Movants request that the
17 Court fix the Administrative Claims Bar Date consistent with the Plan to allow the Plan
18 Proponents to more fully evaluate the Administrative Claims pool and the funding needs related to
19 the Administrative Claims Reserve set forth in the Plan. *See* Plan at § 1.15. Rule 3003(c)(3)
20 provides, in pertinent part, that “the court shall fix and for cause shown may extend the time
21 within which proofs of claim or interest may be filed.” FED. R. BANKR. P. 3003(c)(3). Rule
22 2002(a)(7) provides for twenty-one days’ notice of a court fixed bar date for filing proofs of claim
23 in a chapter 11 case. The proposed Administrative Claims Bar Date of **July 29, 2020**, will be
24 more than twenty-one days from service or the order granting this Motion and thus will comply
25 with Rule 2002(a)(7).

26 Sections 105 and 502, together with Rule 9007, permit the Court to approve the form and
27 sufficiency of a proposed notice of Administrative Claims Bar Date (the “Administrative Claims
28 Bar Date Notice”). 11 U.S.C. §§ 105, 502; FED. R. BANK. P. 9007. The Movants shall file a

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1 proposed form of Administrative Claims Bar Date Notice as a supplement to this Motion
2 substantially in the same form as the Interim Administrative Claims Bar Date Notice. The
3 proposed Administrative Claims Bar Date Notice will notify potential claimants of the
4 Administrative Claims Bar Date and contain information regarding who must file an
5 Administrative Claim and the consequences of the failure to file such claims or provide the
6 supporting information. The proposed Administrative Claims Bar Date Notice will also include
7 all of the language contained in the court-approved form of notice of bar date, and, in particular,
8 will advise interested parties of, among other things: (1) the Administrative Claims Bar Date of
9 July 29, 2020, for Administrative Claims arising during the Administrative Claim Period, and (2)
10 the need to assert Administrative Claims on or before the Administrative Claims Bar Date. The
11 Movants submit that the Court should approve the form of Administrative Claims Bar Date
12 notice to be filed before the hearing on this Motion.

13 The Administrative Claims Bar Date shall not apply to the following holders of
14 Administrative Claims (“Excluded Claims”):

- 15 a. Administrative Claims based upon liabilities that the Debtors incur in the ordinary
16 course of their business to providers of goods and services;
- 17 b. Professional Claims subject to allowance under § 330;
- 18 c. Professional Claims for professionals employed by the Prepetition Secured
19 Creditors under paragraph 5(b) of the Final DIP Order;
- 20 d. Claims relating to the assumption and cure of an executory contract under § 365(b);
- 21 e. Administrative Claims arising out of the employment by one or more of the
22 Debtors of an individual from and after the Petition Date, but only to the extent that
23 such Administrative Claim is solely for outstanding wages, commissions, or
24 reimbursement of business expenses; and
- 25 f. U.S. Trustee fees.

26 The Administrative Claims Bar Date Notice shall specifically identify the foregoing Excluded
27 Claims.

28

1 As with the Interim Administrative Claims Bar Date Notice, the Movants propose to serve
2 the Administrative Claims Bar Date Notice on the following categories of potential claimants
3 which may hold Administrative Claims during the Administrative Claim Period: (1) employees
4 employed by the Debtors postpetition, (2) vendors providing postpetition services to the Debtors,
5 (3) counterparties to executory contracts and unexpired leases with the Debtors and (4) holders of
6 postpetition causes of action. The Debtors also intend to publish the Administrative Expense
7 Claims Bar Date Notice only in the Los Angeles Times, the San Jose Mercury News, the San
8 Francisco Chronicle, and USA Today at least twenty-one (21) days prior to the Administrative
9 Expense Claims Bar Date. The use of the foregoing, proposed Administrative Claim procedures
10 are necessary due to the size of the Debtors' bankruptcy cases and the large number of creditors.

11 **VIII.**

12 **CONCLUSION**

13 WHEREFORE, the Movants respectfully request that the Bankruptcy Court enter an order:
14 (i) approving the Disclosure Statement; (ii) approving the solicitation and voting procedures;
15 (iii) approving the proposed notice and objection procedures for confirmation of the Plan; (iv)
16 approving the Administrative Claims Bar Date and related procedures; and (v) granting such other
17 and further relief as the Bankruptcy Court deems just and proper.

18
19 Dated: June 16, 2020

DENTONS US LLP

20
21 By: /s/ Tania M. Moyron

Samuel R. Maizel

Tania M. Moyron

Nicholas A. Koffroth

22
23
24 Counsel to the *Debtors and Debtors In*
Possession

1 Dated: June 16, 2020

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.

2

3

By: /s/ Paul J. Ricotta⁹

4

Paul J. Ricotta
Daniel S. Bleck

5

6

Counsel to *UMB Bank, N.A., as Master
Indenture Trustee and Wells Fargo Bank,
National Association, as Indenture Trustee for
the 2005 Bonds*

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⁹ Pursuant to the Court's Amended General Order 20-02, the Debtors (i) are unable to obtain the foregoing party's holographic signatures due to a lack of required technology, (ii) obtained the party's permission to sign this document on the party's behalf, and (iii) will obtain and file the holographic signature required pursuant to LBR 9011-1(a) as soon as practicable. *See In re Amended Procedures for Public Emergency Related to COVID-19 Outbreak*, Amended General Order 20-02, at ¶ 7 (Bankr. C.D. Cal. Apr. 1, 2020); *see also* Third Amended General Order 20-02, at ¶ 1 (Bankr. C.D. Cal. May 28, 2020) (extending Amended General Order 20-02 through June 30, 2020).

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