

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 5, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing

RE: [22] E 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

Docket 22

Matter Notes:

9/6/2018

The amended tentative ruling will be the order.
Party to lodge order: Movant

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Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Prepetition Wages Motion. ~~on a final basis.~~ (Amended after hearing in RED to clarify that the Court is granting only interim relief, and is not making any final ruling regarding the Debtors' obligation, if any, to make post-petition payments, in the ordinary course of business, on account of various Union Obligations (as defined in the Motion).)

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Debtors for 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 [Doc. No. 22] (the "Prepetition Wages Motion"



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CONT... Verity Health System of California, Inc. Chapter 11

or "Motion")

- a) Declaration of Richard Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
- b) Order Setting Hearing on First Day Motions [Doc. No. 18]
- c) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
- d) Declaration of Service by Kurtzman Carson Consultants, LLC re Emergency First-Day Motions, Exhibit B [Doc. No. 50]

I. Facts and Summary of Pleadings

Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

A. The Motion

The Debtors move for authorization to pay prepetition wages and employee benefits, and making the following arguments and representations in support of the Motion:

Debtors employ approximately 7,385 employees. Debtors seek authorization to pay prepetition wages in the aggregate amount of \$14,287,757, for services performed from August 19, 2018 to August 30, 2018. With respect to any payments to insiders, the Debtors will serve *Notices of Setting/Increasing Insider Compensation* and will not pay insiders except in accordance with the procedures set forth by the United States Trustee.

Debtor also seeks to make payments for contributions to employee benefit plans. None of the contemplated payments will exceed the priority amounts set forth in § 507(a)(4) or (a)(5).

II. Findings and Conclusions

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim. Additionally, § 507(a)(4) imposes a limit of \$12,850.00 for each individual employee for priority status. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay

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CONT...

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Chapter 11

prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify 'first day' orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

COLLIER ON BANKRUPTCY ¶ 507.06[2] (16th ed. 2017). Local Bankruptcy Rule 2081-1(a) provides that a motion to pay prepetition payroll must be supported by evidence that establishes the following: "(A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect of reorganization; (E) Whether the employees are insiders; (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and that (G) The payment will not render the estate administratively insolvent."

Similar to Section 507(a)(4), §507(a)(5) provides that contributions to an employee benefit plan, up to the amount of \$12,850 per employee, are entitled to administrative priority status.

Having reviewed the declaration of Richard G. Adcock, the Debtors' Chief Executive Officer, the Court finds that the Debtors have established the necessity of paying the prepetition wages, employee benefits, and employee benefit plan contributions as set forth in the Motion. The employees that are the subject of the Motion remain employed by the Debtors and are critical to the Debtors' continued operations. The Debtors will not pay any employee wages or benefits in excess of the priority amount set forth in §507(a)(4), and the Debtors will not make employee benefit plan contributions in excess of the amounts set forth in §507(a)(5). In view of the contemplated DIP Facility, the payments will not render the estate administratively insolvent. Finally, Debtors have made a sufficient showing that they have a reasonable prospect of selling assets or otherwise prosecuting this case to a conclusion consistent with the objectives of the Bankruptcy Code.

Based upon the foregoing, the Court is prepared to GRANT the Motion in its entirety.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

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CONT... Verity Health System of California, Inc.

Chapter 11

Samuel R Maizel

John A Moe

Tania M Moyron