Docket #1306 Date Filed: 1/20/2019

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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]

1820151190121000000000012

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
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☐ 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:
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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.

June 2012

F 9013-3.1.PROOF.SERVICE

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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.

###

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.

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"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;

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(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. Rejection of Executory Contracts and Unexpired Leases. 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. Highest or Otherwise Best Offer. 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.

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

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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

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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

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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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EXHIBIT B

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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.

[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

DENTONS US LLP
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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.

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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)

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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
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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. <u>Swinerton's Motion to Amend the Final DIP Order Should Be Denied.</u>

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. 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. <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*
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Attorneys for the Chapter 11 Debtors and Debtors In Possession

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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

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)
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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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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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Neal L Wolf on behalf of Creditor Sports, Orthopedic and Rehabilitation Associates
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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	FOR COURT USE ONLY
GREGORY A. BRAY (Bar No. 115367) gbray@milbank.com MARK SHINDERMAN (Bar No. 136644) mshinderman@milbank.com JAMES C. BEHRENS (Bar No. 280365) jbehrens@milbank.com MILBANK, TWEED, HADLEY & McCLOY LLP 2029 Century Park East, 33rd Floor Los Angeles, CA 90067 Telephone: (424) 386-4000 / Facsimile: (213) 629-5063 ☐ *Individual appearing without attorney* ■ *Proposed Counsel for: 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*., 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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   Los Angeles, California 90017-5704
   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. 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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(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]

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

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
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Counsel to Swinerton Builders

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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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