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INSTRUCTIONS AT DOCKET NO. 2966. NO
CHANGES HAVE BEEN MADE TO THE
MOTION THAT APPEARS AS DOCKET NO.
2962.

1 SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
2 TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
3 CLAUDE D. MONTGOMERY (Admitted *Pro Hac Vice*)
claudemontgomery@dentons.com
4 DENTONS US LLP
601 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

6 Attorneys for the Chapter 11 Debtors and
7 Debtors In Possession

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

10 In re

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

13 Debtors and Debtors In Possession.

- 14 Affects All Debtors
- 15 Affects Verity Health System of California, Inc.
- 16 Affects O'Connor Hospital
- 17 Affects Saint Louise Regional Hospital
- 18 Affects St. Francis Medical Center
- 19 Affects St. Vincent Medical Center
- 20 Affects Seton Medical Center
- 21 Affects O'Connor Hospital Foundation
- 22 Affects Saint Louise Regional Hospital Foundation
- 23 Affects St. Francis Medical Center of Lynwood Foundation
- 24 Affects St. Vincent Foundation
- 25 Affects St. Vincent Dialysis Center, Inc.
- 26 Affects Seton Medical Center Foundation
- 27 Affects Verity Business Services
- 28 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 M. Robles

DEBTORS' NOTICE OF MOTION AND MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL AND (B) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ANITA CHOU IN SUPPORT THEREOF

Hearing:

Date: [TBD]

Time: [TBD]

Location: Courtroom 1568
255 East Temple Street
Los Angeles, California 90012-3300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



1 **PLEASE TAKE NOTICE** that at the above referenced date, time and location, Verity
2 Health System of California, Inc., a California nonprofit benefit corporation and the Debtor herein,
3 and the above-referenced affiliated entities, the debtors and debtors in possession (collectively, the
4 “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Cases”), will move (the
5 “Motion”) the Court for entry of an order, pursuant to Local Bankruptcy Rule 4001-2 and 11 U.S.C.
6 §§ 105(a), 361, 362, 363: (i) authorizing (a) use of cash collateral, (b) granting liens on postpetition
7 accounts and inventory as adequate protection to prepetition secured parties, and (c) authorizing
8 the Debtors to pay off the existing debtor in possession financing (the “DIP Financing”); and
9 (ii) granting the Debtors such other and further relief as is necessary.

10 As fully described in the Motion, the Debtors’ DIP Financing with Ally Bank is due to
11 expire and mature in accordance with its terms on September 7, 2019 (the “Maturity Date”). The
12 Debtors and their prepetition secured creditors have reached an agreement on the consensual use
13 of cash collateral (the “Cash Collateral Agreement”), which, among other things, avoids new
14 financing fees estimated at approximately \$3 million through the end of October 2019 and \$5
15 million through the end of 2019 (based on the financing proposal the Debtors received). The Cash
16 Collateral Agreement also allows the Debtors to use certain escrowed sale proceeds to pay off the
17 DIP Financing before or on the Maturity Date. The Debtors propose to use cash collateral in
18 accordance with the Cash Collateral Agreement, the terms of which are set forth in the proposed
19 supplemental cash collateral order attached to the Declaration of Anita Chou as Exhibit “1,” and in
20 accordance with the budget attached to the Declaration of Anita Chou as Exhibit “2.”

21 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and
22 Motion, the attached Memorandum of Points and Authorities , the *Declaration of Richard Adcock*
23 *in Support of Emergency First-Day Motions* [Docket No. 8], the *Declaration of Anita Chou in*
24 *Support of Motion for Interim Order Authorizing (A) Use of Cash Collateral, (B) Debtor in*
25 *Possession Credit Agreement, (C) Grant of Superpriority Priming Liens to DIP Lender, (D) Grant*
26 *of Junior Liens on Postpetition Accounts and Inventory as Adequate Protection to Prepetition*
27 *Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), And 364(C) And (D)* [Docket No. 32],
28 the attached Declaration of Anita Chou, and other admissible evidence properly brought before the

1 Court at or before the hearing on this Motion, if any. In addition, the Debtors request that the Court
2 take judicial notice of all documents filed with the Court in this case.

3 **PLEASE TAKE FURTHER NOTICE** any party opposing or responding to the Motion
4 must file and serve the response (“Response”), pursuant to Local Bankruptcy Rule 9013-1(f), on
5 the moving party and the United States Trustee. A Response must be a complete written statement
6 of all reasons in opposition thereto or in support, declarations and copies of all evidence on which
7 the responding party intends to rely, and any responding memorandum of points and authorities.

8 **PLEASE TAKE FURTHER NOTICE** that, concurrently herewith, the Debtors are filing
9 an application under Local Bankruptcy Rule 9075-1(b) for this Motion to be heard on shortened-
10 notice on September 6, 2019 (the “Application”). The Debtors have discussed the requested
11 expedited timing with the prepetition secured creditors and the Official Committee of Unsecured
12 Creditors; they do not oppose such request. After the Application is ruled on, the Debtors will
13 provide notice of Response and reply deadlines to the Motion. In the Application, the Debtors
14 request that the Court set a Response deadline of September 4, 2019, and allow replies to be
15 addressed at the hearing on the Motion.

16 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
17 1(h), the failure to file and serve a timely objection to the Motion may be deemed by the Court to
18 be consent to the relief requested herein.

19
20 Dated: August 28, 2019

DENTONS US LLP

SAMUEL R. MAIZEL
TANIA M. MOYRON
CLAUDE D. MONTGOMERY

21
22
23 By /s/ Tania M. Moyron
Tania M. Moyron

24 Attorneys for the Chapter 11 Debtors and
25 Debtors In Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Verity Health System of California, Inc., a California nonprofit benefit corporation and the
3 Debtor herein (“VHS”), and the above-referenced affiliated entities, the debtors and debtors in
4 possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the
5 “Cases”), respectfully request (the “Motion”) the entry of an order: (i) authorizing (a) use of cash
6 collateral, (b) granting liens on postpetition accounts and inventory as adequate protection to
7 prepetition secured parties, pursuant to §§105(a), 361, 362, 363(c)(2),¹ without prejudice to the
8 Debtors seeking further extensions, and (c) authorizing the Debtors to pay off the existing debtor
9 in possession financing; and (ii) granting the Debtors such other and further relief as is necessary.
10 The proposed cash collateral budget (the “Cash Collateral Budget”) and the proposed order (the
11 “Supplemental Cash Collateral Order”) are attached to the Declaration of Anita Chou (the “Chou
12 Declaration”), as Exhibit “1” and Exhibit “2,” respectively. In support of the Motion, the Debtors
13 respectfully submit the Chou Declaration and make reference to the *Declaration of Richard Adcock*
14 *in Support of Emergency First-Day Motions* [Docket No. 8] (the “First-Day Declaration”).

15 The Debtors worked with the Prepetition Secured Creditors (as defined below) and the
16 Official Committee of Unsecured Creditors (the “Committee”) regarding consensual use of cash
17 collateral. The Committee raised certain issues concerning the initial draft of the Supplemental
18 Cash Collateral Order, the majority of which the Debtors and the Prepetition Secured Creditors
19 have addressed in the Supplemental Cash Collateral Order. Based on the foregoing, and for the
20 reasons more fully set forth below, the Debtors respectfully request that the Court grant the Motion.

21 **I.**

22 **JURISDICTION, VENUE, AND BASIS FOR RELIEF**

23 The Court has subject matter jurisdiction to consider and determine this Motion pursuant to
24 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The

25 _____
26 ¹ Unless specified otherwise, all chapter and section references in this Motion and the
27 accompanying Memorandum are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all
28 “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure. All references to
“LBR” are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central
District of California.

1 Debtors consent to entry of final orders and judgments by the bankruptcy judge. Venue is proper
2 before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3 The statutory predicate for the relief requested herein is § 363(c)(2).

4 **II.**

5 **BACKGROUND FACTS**

6 **A. General Background.**

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

11 2. As of the Petition Date, VHS, the hospitals, and their affiliated entities (collectively,
12 “Verity Health System”) operated as a nonprofit health care system, with approximately 1,680
13 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and
14 a host of medical specialties, including tertiary and quaternary care. *See* First-Day Decl., at 4, ¶
15 12. The scope of the services provided by the Verity Health System is exemplified by the fact that
16 in 2017, the hospitals provided medical services to over 50,000 inpatients and approximately
17 480,000 outpatients. *Id.*, at 4, ¶ 12.

18 3. Additional background facts on the Debtors, including an overview of the Debtors’
19 business, information on the Debtors’ capital structure and additional events leading up to these
20 chapter 11 Cases, are set forth in the First-Day Declaration.

21 4. On September 14, 2018, the Office of the United States Trustee appointed the
22 Committee [Docket No. 197].

23 **B. Sales of the Hospitals and Current Status.**

24 5. On December 27, 2018, the Court entered an order approving the sale (the “SCC
25 Sale”) of all assets (excluding cash, accounts receivables and causes of action) of O’Connor
26 Hospital (“OCH”) and Saint Louise Regional Hospital (“SLRH”) to the County of Santa Clara
27 (“SCC”), a political subdivision of the State of California [Docket No. 1153] (the “SCC Sale
28 Order”). The SCC Sale closed on February 28, 2019.

1 6. On April 17, 2019, the Court held a hearing to approve the sale (the “SGM Sale”)
2 of substantially all assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent
3 Dialysis Center, and Seton Medical Center, including Seton Coastside, to Strategic Global
4 Management, Inc. (“SGM”). On May 2, 2019, the Court entered an order approving the SGM Sale
5 [Docket No. 2306].

6 7. The SGM Sale is subject to review by the California Attorney General (the “AG”)
7 under applicable non-bankruptcy law. If the AG takes the entire amount of time allowed under the
8 applicable state statute to review the SGM Sale, the AG would issue his decision in late September
9 2019. However, the Debtors and the Committee have requested a more expedited review of the
10 transaction from the AG.

11 8. With the SCC Sale complete, and the SGM Sale approved by the Court, the Debtors
12 have focused on formulating a plan of liquidation (the “Plan”).

13 9. The Debtors have also undertaken a wind down of operations of Verity Medical
14 Foundation (“VMF”). In connection with such wind down, the Debtors have effectuated the
15 disposition and/or transfer of certain physician practices through sales and/or settlements with the
16 owners of such practices. *See, e.g.*, Docket Nos. 1338, 1367, 1368, 1915, 1919, 2429.

17 **C. Status of Debtors’ Plan of Liquidation.**

18 10. On December 28, 2018, the Court entered an order extending the exclusive period
19 within which the Debtors could file and solicit votes on a Plan from December 29, 2018 and
20 February 27, 2019, to April 28, 2019 and June 27, 2019, respectively [Docket No. 899].

21 11. On June 7, 2019, the Court entered an order further extending the exclusive period
22 within which the Debtors can file and solicit votes on a Plan to August 26, 2019 and October 25,
23 2019, respectively [Docket No. 2520].

24 12. The Debtors have made significant progress in resolving a number of matters that
25 directly impact the formulation of the Plan. In connection therewith, the Debtors also prepared a
26 draft plan of liquidation and related disclosure statement, and began discussions with the
27 Committee and the Prepetition Secured Creditors regarding the same. The discussions are ongoing,
28 but the Debtors anticipate filing the plan and the related disclosure statement shortly.

1 13. On August 14, 2019, the Debtors filed their second *Motion for Entry of an Order*
2 *Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a*
3 *Chapter 11 Plan and Solicit Acceptances* [Docket No. 2913] and requested an extension of the
4 exclusivity periods to October 25, 2019 (filing a plan) and December 24, 2019 (obtaining
5 acceptances), without prejudice to the Debtors seeking further extensions.

6 **D. The DIP & Cash Collateral Motion.**

7 14. On August 31, 2018, the Debtors filed their *Emergency Motion Of Debtors For*
8 *Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B)*
9 *Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To*
10 *Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108* [Docket
11 No. 31] (the “DIP Motion”). Under the DIP Motion, the Debtors, sought (i) postpetition, debtor-
12 in-possession financing (the “DIP Financing”) from Ally Bank (“Ally” or the “DIP Lender”) under
13 a credit agreement (the “DIP Credit Agreement”), and (ii) permission to use the cash collateral of
14 the Prepetition Secured Creditors (the “Cash Collateral”).

15 15. On October 4, 2018, the Court entered a *Final Order (I) Authorizing Postpetition*
16 *Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing*
17 *Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying*
18 *Automatic Stay, and (VI) Granting Related Relief* [Docket No. 409] (the “Final DIP Order”).²
19 Pursuant to the DIP Credit Agreement, the DIP Financing is due to expire and mature in accordance
20 with its terms on September 7, 2019 (the “Maturity Date”). See Docket No. 309-2 (DIP Credit
21 Agreement at 27, § 9.12, at 80) (providing for “Scheduled Termination Date” of September 7,
22 2019).

23
24
25 ² The Committee filed a notice of appeal to the Bankruptcy Appellate Panel from the Final DIP
26 Order on November 29, 2018 [Docket No. 932] (the “Committee Appeal”). The Debtors
27 transferred the Committee Appeal to the United States District Court for the Central District of
28 California on December 20, 2018 [Docket No. 1114]. On August 2, 2019, the District Court
dismissed the Committee Appeal as moot (the “District Court Order”). On August 26, 2019, the
Committee appealed the District Court Order to the Ninth Circuit [Docket No. 2961].

1 16. The Debtors were authorized to draw up to \$185 million from their DIP Financing,
2 subject to terms, including maintaining adequate protection for their Prepetition Secured Creditors
3 (as defined in the Final DIP Order and below).

4 17. As of the Petition Date, the Debtors were indebted and liable to the Prepetition
5 Secured Creditors as follows:

6 (i) UMB Bank, as the Master Trustee (in such capacity, the “Master Trustee”) under
7 the Master Indenture of Trust dated as of December 1, 2001, as amended and supplemented (the
8 “Master Indenture”), with respect to the MTI Obligations (defined below) securing the repayment
9 by the Obligated Group (defined below) of its loan obligations with respect to (1) the California
10 Statewide Communities Development Authority Revenue Bonds (Daughters of Charity Health
11 System) Series 2005, A, G, and H (the “2005 Bonds”), (2) the California Public Finance Authority
12 Revenue Notes (Verity Health System) Series 2015 A, B, C and D (the “2015 Working Capital
13 Notes”), and (3) the California Public Finance Authority Revenue Notes (Verity Health System)
14 Series 2017 A and B (the “2017 Working Capital Notes” and, collectively with the 2015 Working
15 Capital Notes, the “Working Capital Notes”). The joint and several obligations issued under the
16 Master Indenture by O’Connor Hospital, Saint Louise Regional Hospitals, St. Francis Medical
17 Center, St. Vincent Medical Center, and Seton Medical Center (collectively, the “Obligated
18 Group”) in respect of the 2005 Bonds and the Working Capital Notes are collectively referred to as
19 the “MTI Obligations.” Wells Fargo Bank National Association (“Wells Fargo”) serves as bond
20 indenture trustee under the bond indentures relating to the 2005 Bonds. U.S. Bank National
21 Association (“U.S. Bank”) serves as the note indenture trustee and as the collateral agent under
22 each of the note indentures relating to the 2015 Working Capital Notes and the 2017 Working
23 Capital Notes, respectively. The MTI Obligations are secured by, inter alia, security interests
24 granted to the Master Trustee in the prepetition accounts of, and mortgages on the principal real
25 estate assets of, the members of the Obligated Group.

26 In addition to the security provided to the Master Trustee to secure the MTI Obligations,
27 U.S. Bank, as Note Trustee for the 2015 Working Capital Notes and the 2017 Working Capital
28 Notes is secured by prepetition first priority liens upon and security interests in the Obligated

1 Group’s accounts and deeds of trust on the principal real estate assets of Saint Louise Regional
2 Hospital and St. Francis Medical Center. U.S. Bank as Notes Trustee for the 2017 Working Capital
3 Notes has also been granted a deed of trust, dated as of December 1, 2017, by Verity Holdings,
4 LLC (“Holdings”) in certain real property located in San Mateo California to further secure the
5 2017 Working Capital Notes.

6 (ii) Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together, “MOB
7 Lenders”) hold security interests in Holdings’ accounts, including rents arising from the prepetition
8 MOB Financing, and mortgages on medical office buildings owned by Holdings (the “MOB
9 Financing”).

10 The Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S. Bank
11 as indenture trustee for the Working Capital Notes, and the MOB Lenders are each referred to
12 herein as the “Prepetition Secured Creditors,” the MTI Obligations, the Obligated Group’s loan
13 obligations with respect to the Working Capital Notes, and the MOB Financing are each referred
14 to herein as a “Prepetition Secured Obligation,” the prepetition interests (including the liens and
15 security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors are
16 each referred to herein as such Prepetition Secured Creditor’s “Prepetition Lien,” and the
17 documents, writings and agreements evidencing the Prepetition Secured Obligations of each
18 Prepetition Secured Creditor are hereinafter referred to as the “Prepetition Secured Documents”.

19 **E. SCC Sale Proceeds.**

20 18. The proceeds of the SCC Sale (the “SCC Sale Proceeds”) were placed into “sales
21 proceeds” deposit accounts in the name of the relevant selling Debtor at Bank of America, each
22 denominated by the Debtors as a “Escrow Deposit Account” within the meaning of paragraph M
23 of the Final DIP Order (and “Escrow Deposit Account(s)” used herein has the same meaning as in
24 the Final DIP Order). *See* SCC Sale Order at ¶ 12 (requiring SCC Sale Proceeds to be placed into
25 “Escrow Deposit Accounts”); *see id.* at ¶ 13 (“The terms and conditions of the Final DIP Order
26 shall apply with respect to the [SCC] Sale Proceeds and Escrow Deposit Accounts.”).

27 19. Pursuant to the terms of the Final DIP Order, the Escrow Deposit Accounts are
28 subject to the senior and priming liens of the DIP Lender. As a result, the Escrow Deposit Accounts

1 are subject to deposit account control agreements in favor of the DIP Lender. Final DIP Order at ¶
2 M (“The Sale Proceeds shall be held in escrow in one or more deposit accounts subject to a deposit
3 account control agreement in favor of the DIP Agent (the ‘Escrow Deposit Account’)”).

4 20. Pursuant to the Final DIP Order, the liens of the Prepetition Secured Creditors also
5 attached as liens on the SCC Sale Proceeds, as well as the proceeds from the VMF sales (“VMF
6 Sales Proceeds”), junior only to the DIP Lender priority liens “with the same relative priority,
7 validity, force, extent and effect as the Prepetition Liens.” See Final DIP Order at ¶ 4. Further, in
8 accordance with the Final DIP Order, the Debtors can only use the monies in the Escrow Deposit
9 Accounts for repayment of the DIP Loans at maturity, absent express consent of the Prepetition
10 Secured Creditors as well as the DIP Lender. *Id.* at ¶ M. It is the intention of the Debtors to utilize
11 the funds in the Escrow Deposit Accounts to timely defease the obligations under the DIP Credit
12 Agreement and repay all outstanding borrowings pursuant to the terms of the DIP Financing.

13 21. The Debtors were required to establish and maintain a \$23.5 million post-closing
14 escrow (the “Post-closing Escrow”), pursuant to the asset purchase agreement between certain
15 Debtors (the “SCC Selling Debtors”) and SCC [Docket No. 365-1] (the “SCC APA”). See SCC
16 APA at §§ 1.1.2, 1.2. First American Title Insurance Co. will hold that Post-closing Escrow for a
17 period of one year from the SCC Sale closing and release those funds either to the SCC Selling
18 Debtors or SCC under the terms of the SCC APA. *Id.* at § 1.1.2. While neither the DIP Lender nor
19 the Prepetition Secured Creditors have control agreements over the SCC Post-closing Escrow, the
20 SCC Sale Order provided that the security interests of the DIP Lender and the Prepetition Secured
21 Creditors attached to the SCC Sale Proceeds to the same extent as their security interests in the
22 property sold pursuant to the SCC Sale. See SCC Sale Order at ¶ G.

23 22. The SCC Selling Debtors, in accordance with their reasonable judgment and
24 consistent with the SCC APA, allocated the SCC Sale Proceeds to the relevant SCC Selling
25 Debtor’s Escrow Deposit Accounts. However, the actual allocation of cash proceeds into the
26 Escrow Deposit Accounts for each SCC Selling Debtor is not considered final and binding on the
27 Committee or any of the Prepetition Secured Creditors under the Final DIP Order. See Final DIP
28 Order at ¶ 4 (“Each of the Prepetition Secured Creditors shall have the right to seek a declaration

1 of their respective rights in and to any of the Sale Proceeds and funds held in a Deposit Escrow
2 Account[.]”).

3 23. Similarly, the Committee has exercised its right to challenge the Debtors’ allocation
4 of SCC Sales Proceeds into the relevant Escrow Deposit Accounts. In particular, the Committee
5 has exercised in rights under ¶ 5(e) of the Final DIP Order (effectively incorporated under ¶ 13 of
6 the SCC Sale Order) and challenged the Debtors’ stipulations regarding perfection for the
7 Prepetition Secured Creditors’ interests in quality assurance fee (“QAF”) payments. *See*
8 *Complaint[s] for Determination of Validity, Priority and Extent of Liens and Security Interests*
9 [Docket Nos. 2546 & 2547]. By stipulation, the Committee extended its challenge deadline to
10 September 6, 2019 as to Verity MOB Financing, LLC and Verity MOB Financing II, LLC
11 (together, the “MOB Entities”) interests in certain accounts. *See* Docket Nos. 2610 and 2611.

12 24. Based on the SCC APA, the SCC Sales Proceeds do not constitute consideration for
13 QAF payments or receivables. *See* SCC APA, § 1.9.25 at 21 (listing QAF payments for services
14 provided prior to the “Effective Time” of the SCC APA as excluded assets); § 1.22.9 at 21 (listing
15 “Accounts Receivable” as excluded assets). Similarly, with respect to the MOB Entities, SCC did
16 not purchase any of the Debtors’ cash accounts or receivables. *See id.* (SCC APA, § 1.1.9 at 19)
17 (listing cash and cash equivalents as excluded assets). The VMF Sales Proceeds also were placed
18 into the appropriate Escrow Deposit Account and the Committee has not challenged any VMF
19 related liens.

20 25. Pursuant to the SCC Sale Order and the various orders authorizing the sales of assets
21 to and the settlement of disputes with various physician services practice groups [Dockets Nos.
22 1338, 1367, 1368, 1915, 1919, 2429], the Escrow Deposit Accounts hold approximately
23 \$187,320,909 in the aggregate allocated as follows: (1) OCH Santa Clara Sales Proceeds—
24 \$111,146,241; (2) SLRH Santa Clara Sales Proceeds—\$57,347,776; (3) Holdings’ Santa Clara
25 Sales Proceeds—\$15,835,079; (4) VMF Sales Proceeds—\$2,268,607, and (5) VHS Santa Clara
26 Sales Proceeds—\$723,203 (collectively the amount of the Debtors’ Escrowed Cash Collateral, as
27 that term is defined below). *See* Chou Decl., at 4, ¶ 13. No portion of the Escrowed Cash Collateral
28

1 constitutes the proceeds of any of the Debtors' accounts receivable, including pre and postpetition
2 QAF payments.

3 **F. The DIP Proposal & Cash Collateral Proposal.**

4 26. Under the terms of the DIP Credit Agreement, all of the Debtors' collections are
5 swept to the DIP Lender daily, and the Debtors borrow funds from the DIP Lender to extent needed
6 pursuant to the terms of the budget (the "DIP Budget"). As of August 21, 2019, the Debtors had a
7 borrowing balance with the DIP Lender of approximately \$50 million.

8 27. The Debtors sold OCH and SLRH pursuant to the SCC Sale and have largely
9 wound-down VMF's operations, but they continue to operate St. Francis Medical Center, St.
10 Vincent Medical Center, St. Vincent Dialysis Center, Seton Medical Center, and Seton Coastsides
11 (together, the "Remaining Hospitals") and related facilities pending the SGM Sale. Despite their
12 smaller economic footprint, the Debtors incur ongoing losses from these operations (at a rate of
13 approximately \$450,000 per day). Chou Decl., at 4-5, ¶ 15.

14 28. Under the DIP Budget, the Debtors expect to have a borrowing balance of \$86
15 million on the September 7, 2019 Maturity Date. Chou Decl., at 6, ¶ 20. If the SGM Sale closes
16 by the end of October 2019, the Debtors expect to need access to an additional \$50 million in cash
17 resources (excluding supplemental payments such as QAF due to the uncertainty in timing of
18 payment receipt). *See id.* All of the Debtors current cash accounts, other than donor restricted cash
19 held by the charitable foundations Debtors,³ constitutes collateral of the Prepetition Secured
20 Creditors either as the proceeds of prepetition collateral or as adequate protection liens to the extent
21 of any diminution of value arising from the Debtors' continued postpetition business operations.

22 29. Given the Maturity Date of the DIP, the Debtors obtained an offer of continued
23 debtor in possession financing by means of an extension of the DIP Credit Agreement until the
24 earlier of the SGM Sale Closing or December 31, 2019. The DIP Lender proposed to charge a 60-
25 basis points extension fee, while the interest rate and covenants would remain unchanged. In light

26 ³ Donor restricted funds belonging to the "Charitable Foundations," as defined in the Final DIP
27 Order, are excluded from granting DIP Liens. *See* Final DIP Order, at § 4(a). As a result, they are
28 excluded from the Adequate Protection Replacement Liens as defined in the Final DIP Order. *See*
id., at §5(a).

1 of the continued accrual and payment of adequate protection payments to Prepetition Secured
2 Creditors, the Debtors have estimated the incremental cost of the extension through the end of
3 October to be \$3 million, and \$5 million for an extension through the end of the year.

4 30. The Debtors received a cash collateral proposal from UMB Bank and Wells Fargo.
5 The premise of the proposal is that the Debtors would use the Escrowed Cash Collateral to fully
6 defease the Obligations (as that term is defined in the DIP Credit Agreement), as of the Maturity
7 Date and payoff the outstanding borrowing balance as of that date. The cost of the proposed
8 consensual use of Cash Collateral would be a continuation of the adequate protection payments
9 without changing the material covenants of the DIP Credit Agreement, charging extension fees, or
10 charging any due diligence or other upfront fees.

11 **G. The Cash Collateral Agreement.**

12 31. Based on discussions with Prepetition Secured Creditors and the Committee, the
13 Debtors understand that all constituents prefer the UMB Bank cash collateral proposal over the
14 extension of the DIP Financing, as do the Debtors given the costs saved to the estates.

15 32. The Prepetition Secured Creditors have consented to the Debtors' use of cash
16 collateral, pursuant to the terms of the Supplemental Cash Collateral Order and in accordance with
17 the Cash Collateral Budget (the "Cash Collateral Agreement"), which are attached to the Chou
18 Decl. as Exhibit "1" and Exhibit "2," respectively.

19 33. The terms of the Cash Collateral Agreement accurately reflect the Debtors' cash
20 management structure and the manner in which the need for operating cash manifests itself, and
21 the limitations imposed by the Final DIP Order regarding access to the Sale Proceeds (as defined
22 in Section M of the Final Dip Order) deposited by the Debtors in to the Escrow Deposit Accounts,
23 in accordance with ¶ 4 of the Final DIP Order (the "Escrowed Cash Collateral"), absent the consent
24 of the Prepetition Secured Creditors. Chou Decl., at 6, ¶ 21.

25 **H. Establishment of the VHS-Disbursement Account.**

26 34. Pursuant to the terms of the DIP Financing, the Debtors established a deposit
27 account at Bank of America for the purpose of receiving draws under the DIP Credit Agreement
28 designated the "VHS - DIP Loan Proceeds Account." Chou Decl., at 6, ¶ 23. Such deposit account

1 did not exist on the Petition Date, but the Debtors have determined in their reasonable business
2 judgement that, upon funding of the payoff amount of the DIP, pursuant to the Cash Collateral
3 Agreement, the account should be renamed the “VHS-Disbursement Account.” *Id.* Also, as a result
4 of the DIP Financing, the Debtors established a concentration deposit account for purposes of
5 remitting cash receipts from each Debtor to the DIP Agent denominated the “VHS-Concentration
6 Account.” *Id.* at 24.

7 35. The Debtors have determined in the reasonable exercise of their business judgment
8 that, following the transfer of funds from the OCH Escrow Deposit Account to satisfy the payoff
9 amount of the DIP, the VHS-Disbursement Account is the appropriate deposit account into which
10 (i) all Permitted Withdrawals (as defined below) from the Escrow Deposit Accounts, and (ii) all
11 collections on pre and postpetition accounts receivables, including, but not limited, to patient
12 receivables, governmental receivables and lease rents should be deposited. Chou Decl., at 6-7, ¶
13 25. The Prepetition Secured Creditors have requested use of a single disbursement account to trace
14 intercompany advances using cash collateral and have consented to the above described
15 modifications of the Final DIP Order and the Cash Management Order.

16 **I. Bankruptcy Rule 4001 Statement**

17 36. In accordance with Bankruptcy Rule 4001, the following sets forth a concise
18 summary of material terms of the proposed Cash Collateral Agreement:⁴

<p>19 20 21 22</p> <p>SECURED CREDITORS: BR 4001(c)(1)(B); LBR 4001-2⁵</p>	<p>UMB Bank, as successor Master Trustee for the California Statewide Communities Development Authority Revenue Bonds Series 2005 (the “2005 Bonds”), in the principal amount outstanding of</p>
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24 ⁴ All capitalized terms in the below table shall have the same meaning as in the Final DIP Order unless otherwise defined herein.

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28 ⁵ These Secured Creditor designations exclude (a) Ally Bank as DIP Lender pursuant to the DIP Credit Agreement, whose financing expires on September 7, 2019 for whom the Debtors propose to defease under the terms of the DIP Credit Agreement, (b) equipment lessors who have filed UCC-1s or certain purchase money equipment financiers whose collateral is being sold pursuant to in the SGM Sale and (c) Swinerton Builders as an acknowledged mechanics lien holder [See Docket No. 1457], whose executory contract is being assumed pursuant to the SGM Sale.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>\$259,445,000, and for the Working Capital Notes (the Working Capital Notes and the 2005 Bonds are the “MTI Obligations”).</p> <p>U.S. Bank National Association, as Note Trustee and Collateral Agent for California Public Finance Authority Revenue Notes Series 2015 and Series 2017 (the “Working Capital Notes”), in the principal amount outstanding of \$202,000,000.</p> <p>Verity MOB Financing, LLC, as Holder of Promissory Note Secured by Deed of Trust from Verity Holdings, LLC, outstanding in the amount of \$46,220,000 (the “Series 2017 MOB Note”).</p> <p>Verity MOB Financing II, LLC, as Holder of Promissory Note Secured by Deed of Trust from Verity Holdings, LLC, outstanding in the amount of \$20,000,000.</p> <p>Wilmington Trust National Association, as Trustee for the California Statewide Communities Development Authority CaliforniaFIRST Clean Fund Program (the “Clean Fund Bonds”), in the amount outstanding of \$20,000,000.</p> <p>Wilmington Trust National Association, as Trustee for the California Statewide Communities Development Authority CaliforniaFIRST Seismic Program (the “NR2 Petros Bonds”), in the amount outstanding of \$20,000,000.</p>
<p>DEBTORS: BR 4001(c)(1)(B);LBR 4001-2</p>	<p>Verity Health System of California, Inc., O’Connor Hospital., Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center and Seton Coastside, Verity Holdings LLC and Verity Medical Foundation, O’Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical</p>

	Center of Lynwood Medical Foundation, St. Vincent Foundation, St. Vincent Dialysis Center, Inc., Seton Medical Center Foundation, Verity Business Services, De Paul Ventures, LLC.
<p>GUARANTORS: BR 4001(c)(1)(B); LBR 4001-2</p>	None
<p>FEES: BR 4001(b)(1)(B)(ii), (c)(1)(B) LBR 4001-2</p>	None.
<p>CARVE OUT: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>The DIP Liens, DIP Superpriority Claim (as defined below), (each solely to the extent not defeased following entry of the Cash Collateral Agreement), the Prepetition Liens, the Prepetition Replacement Liens, and the Prepetition Superpriority Claims are subordinate only to the following (collectively, the “Carve Out”):</p> <p>(a) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest, if any, at the statutory rate (without regard to the notice set forth in (c) below);</p> <p>(b) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all allowed claims for unpaid fees, costs and expenses incurred by persons or firms retained by the Borrowers or the Committee if any, whose retention is approved by the Bankruptcy Court pursuant to any one or more of §§ 327, 363, and 1103 (“<u>Estate Professionals</u>”), to the extent such claims for fees, costs and expenses are (i) allowed by the Bankruptcy Court pursuant to a final order at any time, and (ii) in accordance with, and solely up to the total respective amounts set forth in, the Cash Collateral Budget (as defined below) for the applicable timeframe (the “Carve-Out Expenses”); provided that the aggregate amount of such Carve-Out Expenses shall</p>

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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>(not exceed (i) \$3,000,000 with respect to persons or firms retained by the Borrowers, and (ii) \$300,000 with respect to persons or firms retained by the Creditors’ 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. The Debtors also shall be permitted to use Cash Collateral after the Carve Out Trigger Date on account of Pre-Trigger Date services by Estate Professionals that appear in the Cash Collateral Budget and for which fee applications have been timely made and allowed by the Court, shall not reduce the Carve Out Amount.</p>
<p>ADEQUATE PROTECTION: BR 4001(b)(1)(B)(iv), (c)(1)(B)(i), (c)(1)(B)(ii), (d)(1)(A)(i) LBR 4001-2</p>	<p>Nothing contained in this Supplemental Cash Collateral Order shall terminate, restrict or modify the adequate protection granted to the Prepetition Secured Creditors pursuant to the Final DIP Order (the “Existing Adequate Protection”) on account of the use of Cash Collateral, including the Escrowed Cash Collateral. In addition to the Existing Adequate Protection provided to the Prepetition Secured Creditors in the Final DIP Order, the Prepetition Secured Creditors shall also be entitled to the following rights and benefits as adequate protection (“Supplemental Adequate Protection”) pursuant to §§ 361 and 363 on account of the use of the Escrowed Cash Collateral pursuant to the terms of this Supplemental Cash Collateral Order as follows:</p> <p>(a) To the extent of its interests in any Escrowed Cash Collateral that is withdrawn from the Escrow Deposit Accounts (which interests shall be determined in accordance with the Final DIP Order and any applicable Sale Order, and fully subject to the rights of the parties to the Intercreditor Agreement), each of the Prepetition Secured Creditors shall be granted a fully perfected, first priority lien and security interest (the “Supplemental Cash Collateral Lien”) in all property and assets of the Debtors, of any kind or nature, whether now existing or hereafter arising,</p>

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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excluding the proceeds of any Avoidance Actions; provided, however, such Supplemental Cash Collateral Lien shall be (i) subject and subordinate to any Prepetition Lien held by any of the Prepetition Secured Creditors in respect of each such creditors' respective Prepetition Collateral, and (ii) shall be subject to the Carve Out.

(b) The Supplemental Cash Collateral Liens granted to any of the Prepetition Secured Creditors hereunder shall, for each dollar of the Escrowed Cash Collateral withdrawn from any of the Escrow Deposit Accounts, have the same relative priority among them as the Prepetition Replacement Liens as and to the extent set forth in Paragraph 5 of the Final DIP Order

The interest of each Prepetition Secured Creditor in the Supplemental Cash Collateral Lien shall be equal in dollar amount to the interest of each such Prepetition Secured Creditor in the Escrowed Cash Collateral as such interest existed immediately prior to withdrawal of the Escrowed Cash Collateral from the Escrow Deposit Accounts, and the relative rights and priorities of such interests shall be determined and governed by the rights and obligations between or among such Prepetition Secured Creditors as set forth in the Final DIP Order and the Intercreditor Agreement.

(d) Nothing contained in paragraph 4(a)-(c) of the Cash Collateral Order is intended, or shall constitute a modification of the rights or priorities of any Prepetition Secured Creditor as they exist under the Final DIP Order and the Intercreditor Agreement.

Existing Protections: All Existing Adequate Protection granted to the Prepetition Secured Creditors in the Final DIP Order, whether on account of the use of Cash Collateral, including the Escrowed Cash Collateral, or on account of any other right or entitlement, shall continue pursuant to the terms of the Final DIP Order, and shall remain in full force in effect; provided, however, the restrictions contained in paragraph 4 of the Final DIP

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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Order that prohibit the withdrawal of amounts from the VHS-Disbursement Account shall be deemed to be modified solely to the extent necessary to permit the use of Escrowed Cash Collateral pursuant to the terms of the Cash Collateral Order. The scope, validity, perfection, priority, and the amount of the Supplemental Cash Collateral Lien shall not now, and shall not become, the subject of any Challenge within the meaning of paragraph five (5) of the Final DIP Order.

Existing Adequate Protections: (1) adequate protection payments, (2) replacement lien, (3) preservation of Debtors' equity cushion through continuous maintenance of real property, and (4) super priority expenses of administration for any proven Diminution of Value, as follows: (1) adequate protection payments, (2) replacement lien, (3) preservation of Debtors' equity cushion through continuous maintenance of real property, and (4) super priority expenses of administration for any proven Diminution of Value, as follows:

First, use of Cash Collateral in accordance with the Cash Collateral Budget to provide adequate protection payments to provide (I) to the Prepetition Secured Creditors monthly adequate protection payments equal to (A) the amount of postpetition, nondefault 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 premium, Penalty Rate, Default Rate or the Taxable 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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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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 (collectively the “Prepetition Adequate Protection Payments”). Notwithstanding the foregoing, to the extent the Court enters a final and non-appealable order that determines, pursuant to §§ 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.

Second, to the extent of the Diminution of Value of the interest of the Prepetition Secured Creditors in the Prepetition Collateral the Debtors propose to provide replacement liens. The Prepetition Secured Creditors shall have, subject to the terms and conditions set forth below, pursuant to §§ 361, 363(e), and 364(d) additional and replacement security interests and Liens in the DIP Collateral, excluding Clean Fund Bonds and NR2 Petros Bonds collateral held by WTNA and Bankruptcy Recoveries (the “Prepetition Replacement Liens”), which shall be junior only to the Carve Out and the DIP Liens securing the DIP Obligations, and for 2005 Revenue Notes only MTI Permitted Prior Liens. Proceeds of Prepetition Replacement Liens shall be allocated amongst Prepetition Secured Creditors in accordance with the terms of the Second Amended and Restated Intercreditor Agreement. “Bankruptcy Recoveries” shall mean any claims and causes of action to which the Debtor may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtor or the estate of the Debtor under Chapter 5 of the Bankruptcy Code and any and all recoveries and settlements thereof.

Third, to preserve the prepetition value of the Debtors real property and

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>improvements, the Debtors will use Cash Collateral in accordance with the Cash Collateral Budget and in the ordinary course to continue to maintain all of the pre-petition real property securing the Debtors’ obligations due to the Prepetition Secured Creditors in good repair.</p> <p>Fourth, to the extent of the Diminution of Value of the allowed interests of the Prepetition Secured Creditors in the Prepetition Collateral, the Prepetition Secured Creditors shall have an allowed superpriority administrative expense claim (the “Prepetition Superpriority Claim”), which shall have priority (except with respect to the Carve Out), in the Cases under § 364(c)(1), 503(b), and 507(b) 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 kinds specified in or ordered pursuant to §§ 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 552, 726, 1113, and 1114, and, upon entry of the Final Order, § 506(c), whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment. Other than the DIP Liens, the DIP Superpriority Claim, and the Carve Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under §§ 328, 330, and 331, or otherwise, that have been or may be incurred in the Cases, or in any successor case, will be senior to, prior to, or on parity with the Prepetition Superpriority Claim (for purposes hereof, such liens will be deemed part of the “Prepetition Replacement Liens”).</p>
<p>FINANCIAL REPORTING: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>The Debtors shall provide the same financial reporting to each of the Prepetition Secured Creditors, as they were required to provide to the DIP Agent and the DIP Lender, pursuant to the terms</p>

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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of the DIP Credit Agreement and in the Final DIP Order (e.g., § 7), as in existence immediately prior to the date of the payment of the Payoff Amount.

The use of Cash Collateral shall be subject to, and used in accordance with, the terms and conditions of the Cash Collateral Budget (subject to the variances set forth therein). Debtors acknowledge and confirm that the Cash Collateral Budget includes the payment of CSCDA Special Assessments. The Debtors shall provide all reports and other information as previously required in the DIP Credit Agreement (subject to the grace periods provided therein), 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 First-Day 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 Cash Collateral Budget (including the variances previously set forth in the DIP Credit Agreement) or to provide the reports and other information previously required in the DIP Credit Agreement shall constitute an Event of Default (as defined herein), following the expiration of any applicable grace period as previously 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 Prepetition Secured Creditors and the Committee information concerning such other information concerning such matters as the Prepetition Secured Creditors may reasonably request.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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<p>AFFIRMATIVE AND NEGATIVE COVENANTS: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>Customary for financings of this type, as those contained in the Final DIP Order, shall remain in place for the benefit of the Prepetition Secured Creditors, including the following financial covenants:</p> <p>Maximum Budget Variance: Borrowers shall not permit the (a) aggregate actual disbursements under the Cash Collateral Budget for any consecutive four (4) week period ending on the then most recent Saturday (taken as one accounting period), as tested weekly (the “Test Period”), to exceed the aggregate budgeted disbursements for such Test Period by more than seven and one half percent (7.5%) of the aggregate budgeted amount for such Test Period; provided that with respect to the foregoing clause (a), the amount by which the actual disbursements thereunder during such period are less than the relevant budgeted disbursements may be carried forward to reduce the disbursements under clause (a) in the next succeeding periods until used in full; or (b) aggregate actual cash receipts under the Cash Collateral Budget for any Test Period (as tested weekly) to be less ninety-two and one half percent (92.5%) of the aggregate budgeted cash receipts for such Test Period; provided that with respect to the foregoing clause (b), the amount by which the actual cash receipts thereunder during such period are greater than the relevant budgeted cash receipts may be carried forward to increase the cash receipts under clause (b) in the next succeeding periods until used in full. For the avoidance of doubt, the aggregate cash receipts and the aggregate cash disbursements carryforward balances from prior to the defeasance of the DIP will continue to carryforward through the cash collateral term.</p>
<p>REPRESENTATIONS AND WARRANTIES: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>Nothing in the Cash Collateral Agreement modifies any findings by the Court or representations by the Debtors in the Final DIP Order.</p>
<p>EVENTS OF DEFAULT: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>The Final DIP Order is hereby amended to provide that the occurrence of the Termination Date under this Supplemental</p>

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>Cash Collateral Order shall constitute a “Scheduled Termination Date” under the Final DIP Order.</p> <p>The occurrence of the following shall constitute an event of default (an “Event of Default”) under this Supplemental Cash Collateral Order, unless expressly waived in writing by the Prepetition Secured Creditors:</p> <p>(i) the failure of the Debtors to be in compliance with any term or provision of this Supplemental Cash Collateral Order or the Final DIP Order, including, without limitation, the failure of the Debtors to make any payments to the Prepetition Secured Creditors as required by the Final DIP Order, and the failure of the Debtors to be in compliance with the Cash Collateral Budget;</p> <p>(ii) the failure of the Debtors to (x) file a plan of reorganization by September 15, 2019; (y) confirm such plan of reorganization by December 15, 2019; and (z) failure of such plan of reorganization to become effective by December 31, 2019;</p> <p>(iii) the amendment or other modification of this Supplemental Cash Collateral Order in any respect, in whole or in part, without the prior written consent of the Prepetition Secured Creditors;</p> <p>(iv) the termination of that certain Asset Purchase Agreement by and among Verity Health System of California, Inc. Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., Seton Medical Center, and Strategic Global Management, Inc., dated January 8, 2019 (the “SGM APA”);</p>
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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>(v) the dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to a chapter 7 case, or suspension of the Chapter 11 Case under section 305 of the Bankruptcy Code;</p> <p>(vi) in the event of a closing pursuant to the SGM APA, solely to the extent necessary to avoid an adverse determination of taxability as to the holders of (x) the 2005 Bonds, (y) the 2015 Working Capital Notes or (z) the 2017 Working Capital Notes, failure of the Debtors to timely defease such Bonds or the Working Capital Notes; and</p> <p>(vii) any event that would constitute an Event of Default under Section 9.1(q) of the of the DIP Credit Agreement, excluding therefrom items 9.1(q) (i), (vi), (viii),(xv), (xviii) and (xxi).</p>
<p>CONDITIONS PRECEDENT: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>(1) Entry of an Order approving the Cash Collateral Agreement.</p> <p>(2) Payment to the DIP Lender such amounts as shall defease all Obligations under the DIP Credit Agreement within two (2) business days of entry of the Order referred to in (1) above.</p>
<p>CONDITIONS TO CONTINUED USE OF CASH COLLATERAL: BR 4001(c)(1)(B); LBR 4001-2</p>	<p>Include, inter alia: (i) no default or event of default shall have occurred, (ii) accuracy of representations in all material respects, and (iii), the Final DIP Order shall be in full force and effect, except to the extent expressly modified by the Cash Collateral Order, and (iv) the Cash Collateral Order shall be in full force and effect, and (v) the Debtors shall be in compliance with the terms and limitations of the Cash Collateral Budget.</p>
<p>INDEMNIFICATION AND RELEASE: BR 4001(c)(1)(B)(viii),(c)(1)(B)(ix); LBR 4001-2</p>	<p>(1) Nothing in the Cash Collateral Order shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Secured 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</p>

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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	<p>these Chapter 11 Cases. The Prepetition Secured Creditors shall not 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. §§ 9601 et seq., as amended, or any similar federal or state statute).</p> <p>(2) Nothing in this Supplemental Cash Collateral Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the Prepetition Secured Creditors of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors</p> <p>(3) Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of the Prepetition Secured Creditors, 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. Provided, the Debtors, on behalf of their estates, do not release or indemnify the Prepetition Secured Creditors 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.</p>
<p>LIFT OF AUTOMATIC STAY: BR 4001 (c)(1)(B)(iv); LBR 4001-2</p>	<p>Upon the occurrence of a Termination Date, (i) the Debtors’ ability to withdraw Escrowed Cash Collateral from the VHS-Disbursement Account and utilize such Escrowed Cash Collateral shall immediately terminate without further order of the Court, and (ii) any one or more of the Prepetition Secured Creditors may move the Court, on three days’ notice</p>

DENTONS US LLP
 601 SOUTH FIGUEROA STREET, SUITE 2500
 LOS ANGELES, CALIFORNIA 90017-5704
 (213) 623-9300

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	to the Debtors and the Committee, for relief from the automatic stay to exercise rights and remedies under this Supplemental Cash Collateral Order, the Final DIP Order and the Prepetition Secured Documents, and any other Prepetition Secured Creditor may support or object to such motion. Nothing in this paragraph shall preclude or affect the rights of the Debtors, the Committee or other interested parties from (i) opposing such motion, and/or (ii) requesting further use of cash collateral.
PLAN FILING DEADLINE: BR 4001(c)(1)(B)(vi); LBR 4001-2	September 15, 2019
PLAN EFFECTIVE DATE DEADLINE BR 4001(c)(1)(B)(vi); LBR 4001-2	December 31, 2019.
RELEASE, WAIVER, OR LIMITATION OF ANY RIGHT UNDER § 506(c)	The “equities of the case” exception under § 552(b) and surcharge powers under § 506(c) are waived as to the Prepetition Secured Creditors and all pre and postpetition collateral securing their respective claims.

J. Modification of Carve Out.

37. The DIP Liens, DIP Superpriority Claim (each solely to the extent not defeased following entry of the Cash Collateral Agreement), the Prepetition Liens, the Prepetition Replacement Liens, and the Prepetition Superpriority Claims are subordinate only to the following (collectively, the “Carve Out”):

(a) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest, if any, at the statutory rate (without regard to the notice set forth in (c) below); and

(b) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all allowed claims for unpaid fees, costs and expenses incurred by persons or firms retained by the Borrowers or the Committee if any, whose retention is approved by the Bankruptcy Court pursuant to any one or more of §§ 327, 363, and 1103 (“Estate Professionals”), to the extent such claims for fees, costs and expenses are (i) allowed by the Bankruptcy Court pursuant to a final

1 order at any time, and (ii) in accordance with, and solely up to the total respective amounts set forth
2 in, the Cash Collateral Budget (as defined below) for the applicable timeframe (the “Carve-Out
3 Expenses”); provided that the aggregate amount of such Carve-Out Expenses shall (not exceed (i)
4 \$3,000,000 with respect to persons or firms retained by the Borrowers, and (ii) \$300,000 with
5 respect to persons or firms retained by the Creditors’ Committee (collectively, the “Carve-Out
6 Amount”). Any payment or reimbursement made after the Carve Out Trigger Date in respect of
7 any Carve-Out Expenses shall permanently reduce the Carve-Out Amount on a dollar-for-dollar
8 basis. The Debtors also shall be permitted to use Cash Collateral after the Carve Out Trigger Date
9 on account of Pre-Trigger Date services by Estate Professionals that appear in the Cash Collateral
10 Budget and for which fee applications have been timely made and allowed by the Court, shall not
11 reduce the Carve Out Amount.

12 **K. Modifications to the Final DIP Order and Cash Management Order.**

13 38. In addition to the modifications of the Final DIP Order discussed above (e.g.,
14 payment of the DIP, the supplemental adequate protection to the Prepetition Secured Creditors, and
15 the modified Carve-Out), the Final DIP Order shall also be modified, as follows:

16 (i) to provide additional working capital to the Debtors, in accordance with the Cash
17 Collateral Budget (the “Permitted Withdrawals”), in order to supplement the collection of the
18 Debtors’ cash receipts and bridge to the closing of the sale of their remaining assets and through
19 the effective date of the Debtors’ Plan, provided, that, the Debtors shall first use funds from its cash
20 receipts, other than Escrowed Cash Collateral, and then, if such cash receipts are insufficient to pay
21 amounts permitted by the Cash Collateral Budget, draw funds from the Escrow Deposit Accounts
22 in the following order (i) OCH, (ii) SLRH, (iii) VHS, (iv) Holdings, and (v) VMF; and

23 (ii) to modify the Debtors’ cash management order [Docket No. 76] to permit use and
24 creation of the VHS-Disbursement Account, as the required account into which any draws of
25 Escrowed Cash Collateral permitted by the Supplemental Cash Collateral Order and the Cash
26 Collateral Budget shall be transferred, other than the funding of the DIP, and as further described
27 in the Supplemental Cash Collateral Order.

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1 **L. No Change to Lien Exclusions or Reports.**

2 39. The DIP Collateral did not include any specified excluded collateral agreed to by
3 the DIP Lenders, and donor restricted funds at the Philanthropic Foundations, the Pace collateral
4 (which consists solely of use restricted proceeds of a conduit California tax exempt financing under
5 the control of WTNA as Trustee and the associated Daly City special property tax assessments on
6 the applicable properties) and claims and causes of action of the Borrowers' bankruptcy estates
7 under chapter 5 of the Bankruptcy Code ("Avoidance Actions").

8 40. Nothing in the Cash Collateral Agreement, the Supplemental Cash Collateral Order
9 or the Cash Collateral Budget changes the exclusions from DIP Collateral or makes available such
10 assets as Replacement Lien Collateral.

11 41. *Financial Reporting:*

12 (a) The Debtors delivered to the Prepetition Secured Creditors the Cash Collateral Budget
13 (Exhibit "1"), which is a 13-week cash flow forecast of receipts and disbursements that was in form
14 and substance satisfactory to the DIP Agent and the DIP Lenders. It has been expanded to cover
15 the 13-week period commencing the week ending September 7, 2019.

16 (b) Weekly Reporting. The Debtors will continue to provide weekly to the Prepetition
17 Secured Creditors a certified "Variance Report" containing: (a) a report (i) showing actual cash
18 receipts and disbursements for the immediately preceding week (or weeks, depending on the
19 applicable testing period), noting therein all variances, on a line-item basis, from amounts set forth
20 for such period in the Cash Flow Forecast (as defined herein), and including explanations for all
21 material variances (including: (A) if known, the degree to which the variance is a permanent
22 variance from the Cash Collateral Budget, (B) the cause of the variance, (C) if appropriate, how the
23 source of such variance will be addressed in subsequent forecasts and (D) whether this variance is
24 expected to impact the Cash Collateral Budget) and (ii) an update of the Cash Flow Forecast (as
25 defined herein) to reflect the prior week's actual cash receipts and disbursements, and, as
26 appropriate, an update to the remaining weeks under the then-current Cash Flow Forecast (as
27 defined herein), and (b) an aged report listing current accounts receivable and current post-petition
28 accounts payable.

1 (c) Monthly Reporting. On the first Thursday of each month following entry of the Order
2 approving the Cash Collateral Agreement, the Debtors shall provide a new certified 13-week cash
3 flow forecast (each an “Updated 13 Week Cash Flow Forecast”, and, together with the Initial 13
4 Week Cash Flow Forecast, the “Cash Flow Forecast”) that has been extended four weeks beyond
5 the ending date for the prior Cash Flow Forecast. Each Updated 13 Week Cash Flow Forecast shall
6 additionally contain: (a) a reconciliation of the prior month’s actual results to the corresponding
7 period in the Cash Collateral Budget; (b) as appropriate, an Updated Budget covering the period
8 of the ending December 31, 2019 or such other end date as the Prepetition Secured Creditors may
9 reasonably request; and (c) as appropriate, a reconciliation of the prior month’s actual results to the
10 corresponding period in the Cash Collateral Budget.

11 **M. No Waivers or Modifications.**

12 42. Except as expressly provided in the Supplemental Cash Collateral Order or in the
13 Final DIP Order, nothing in the Supplemental Cash Collateral Order shall alter any rights, claims,
14 entitlements or defenses of the Debtors, the Prepetition Secured Creditors or the Committee,
15 including any timely Challenges (as defined in the Final DIP Order).

16 **N. Need for Use Of Cash Collateral.**

17 43. To avoid irreparable harm, the Debtors have an immediate and continuing need to
18 use cash to satisfy the DIP Loan, to continue operations, to serve the Debtors’ mission to provide
19 vital and lifesaving patient care to vulnerable populations, to administer and preserve the value of
20 their estates until the anticipated sale and transfer of the remainder of their facilities, and to dis-
21 tribute the assets of their estates to creditors. Chou Decl., at 7 ¶ 26.

22 44. Pursuant to the Supplemental Cash Collateral Order, the Debtors will be able to (i)
23 use Escrowed Cash Collateral to satisfy and discharge the DIP Obligations, (ii) use cash collateral
24 to ensure the Debtors have access to sufficient funds necessary to continue to operate their
25 businesses, including meeting payroll and other obligations critical to maintain the Remaining
26 Hospitals and to deliver effective patient care, (iii) efficiently manage the accounting for use of
27 cash collateral from all sources, (iv) avoid the need to incur fees to refinance or extend the current
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1 DIP Facility, and (v) avoid the accrual and payment of interest for postpetition borrowed money.
2 Chou Decl., at 7 ¶ 27.

3 45. Based on the foregoing, the Debtors respectfully submit that the facts and
4 circumstances of these Cases demonstrate that the above-described provisions, which are set forth
5 in greater detail below, are necessary and appropriate and should be authorized and approved by
6 this Court.

7 **III.**

8 **ARGUMENT**

9 **A. The Use of Cash Collateral Is Appropriate Under the Current Circumstances and**
10 **Should Be Authorized under §§ 363(c)(2) and (e)**

11 The Debtors use of property of the estates is governed by § 363. Section 363(c)(1) provides
12 in pertinent part:

13 If the business of the debtor is authorized to be operated under section
14 [...] 1108 [...] of this title and unless the court orders otherwise, the
15 trustee may enter into transactions, including the sale or lease of
16 property of the estate, in the ordinary course of business, without
17 notice or a hearing, and may use property of the estate in the ordinary
18 course of business without notice or a hearing.

19 A debtor in possession has all of the rights and powers of a trustee with respect to property
20 of the estate, including the right to use property of the estate in compliance with § 363. *See* 11
21 U.S.C. §1107(a).

22 “Cash collateral” is defined as “cash, negotiable instruments, documents of title, securities,
23 deposit accounts or other cash equivalents in which the estate and an entity other than the estate
24 have an interest [.]” 11 U.S.C. §363(a). Section 363(c)(2) sets forth the requirements for a debtor’s
25 proposed use of cash collateral. Specifically, § 363(c)(2) provides, in pertinent part:

26 The trustee may not use, sell, or lease cash collateral under paragraph
27 (1) of this subsection unless - (A) each entity that has an interest in
28 such cash collateral consents; or (B) the court, after notice and a
hearing, authorizes such use, sale, or lease in accordance with the
provisions of this section.

11 U.S.C. § 363(c)(2). Additionally, § 105(a) provides that “[t]he court may issue any order,
process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy
Code].” 11 U.S.C. § 105(a). Further, § 363(e) provides that “on request of an entity that has an

1 interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without
2 a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate
3 protection of such interest.” 11 U.S.C. § 363(e). *In re Licking River Mining, LLC*, 911 F.3d 806,
4 809 (6th Cir. 2018); (“As is common practice in Chapter 11 proceedings, the Lenders consented to
5 the use of cash collateral for operating funds through a negotiated agreement with the debtors. The
6 culmination of the negotiations resulted in a [stipulated cash collateral order].”); *In re*
7 *AppliedTheory Corp.*, 02-11868(REG), 2008 WL 1869770, at *8 (Bankr. S.D.N.Y. Apr. 24, 2008)
8 (“As is common . . . the Debtors secured a cash collateral stipulation from the Lenders, which
9 thereafter became a cash collateral order, upon its approval by the Court after a hearing on the cash
10 collateral order terms.”).

11 It is well settled that it is appropriate for a chapter 11 debtor to use cash collateral for a
12 reasonable period of time for the purpose of maintaining and operating its property. *In re California*
13 *Coastal Communities, Inc.*, 8:09-21712-TA, 2010 WL 4739487, at *6 (Bankr. C.D. Cal. Mar. 2,
14 2010) (“The Debtors have an immediate and critical need to use the Cash Collateral to continue to
15 operate their business, and effectuate a reorganization of their businesses and the use of Cash
16 Collateral will minimize disruption to the Debtors’ estates.”); *In re Oak Glen R-Vee*, 8 B.R. 213,
17 216 (Bankr. C.D. Cal 1981). For an ongoing business enterprise, liens on future revenues can
18 constitute adequate protection. *Peaje Inves. LLC v. Garcia-Padilla*, 2016 U.S. Dist. LEXIS 153711
19 (November 2, 2016, D. P.R.), *aff’d.*, 848 F.3rd 505 (1st Cir 2017); *In re Licking River Mining,*
20 *LLC*, 911 F.3d 806, 809 (6th Cir. 2018) (“to protect the prepetition liens on the cash collateral, the
21 Lenders were granted . . . adequate protection liens to protect from diminution in the value of their
22 collateral.”).

23 Where, as here, the debtors is operating a business, it is extremely important that the access
24 to cash collateral be allowed to facilitate the survival of the debtors business units as going
25 concerns: “the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash
26 collateral is necessary to operate a business.” *In re Dynaco Corp.*, 162 B.R. 389 (Bankr. D.N.H.
27 1993), quoting *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982); *In re Tuscon Indus. Partners,*
28 129 B.R. 614 (9th Cir. BAP 1991), *vacated as moot, In re Tucson Indus. Partners*, 990 F.2d 1099

1 (9th Cir. 1993); *In re Visicon Shareholders Tr.*, 478 B.R. 292, 314 n. 42 (Bankr. S.D. Ohio 2012)
2 (“secured lenders ... frequently consent to the use of cash collateral to pay the ordinary, necessary,
3 and reasonable operating expenses of a business ... and courts frequently authorize such usage of
4 cash collateral under § 363(c)(2)(B) because use of the cash collateral for those purposes maintains
5 the total value of the bundle of collateral and rights which a secured lender with a blanket lien on
6 the debtor's assets holds. Thus, use of the cash collateral for such purposes maintains the going
7 concern value of the business, maintains the goodwill of the business, allows for preservation and
8 maintenance of the physical collateral, and allows for replacement of that cash collateral with new
9 replacement cash collateral.”).

10 The Court should authorize the Debtors’ continued use of cash collateral to maintain the
11 Debtors’ going concern value so the Debtors can maximize value for all creditors and parties in
12 interest and protect patient care. *See In re S&B Surgery Center.*, Case No. 2:09-bk-19825-DS,
13 Docket No. 81, at 2 (Bankr. C.D. Cal. Jun. 15, 2009) (authorizing cash collateral use for medical
14 facility)). As set forth above, use of cash collateral is essential to the Debtors’ continued operations,
15 including, but not limited to, the Debtors’ ongoing obligations related to patient care, employee
16 wages, facilities maintenance, supply procurement, and the administration of these Cases. Indeed,
17 preservation of estate value is consistent with the interests of the Debtors and aligned with the
18 adequate protection needs of the Prepetition Secured Creditors. *In re Princeton Square Associates,*
19 *L.P.*, 201 B.R. 90, 96 (Bankr. S.D.N.Y. 1996) (adequate protection case) (“The debtor in
20 possession’s desire to manage the property appropriately should equal or exceed that of the secured
21 creditor. Both of their interests are served by a well-managed property.”). Thus, the Debtors require
22 use in accordance with the Budget to enable the Debtors to (i) pay all of their normal and ordinary
23 operating expenses as they come due in the ordinary course of business, (ii) pay off the existing
24 DIP from the Escrowed Cash Collateral, and (iii) avoid immediate and irreparable harm. The
25 Debtors’ proposed use of Cash Collateral thus prejudices no one; it affirmatively and directly
26 benefits the Debtors’ estates and creditors, including the Prepetition Secured Creditors, and
27 enhances the prospects of a successful outcome in this case.
28

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 **B. The Proposed Adequate Protection for the Prepetition Secured Creditors Is**
2 **Appropriate under §§ 105, 361(d), and 363(e).**

3 In considering whether to authorize use of cash collateral, a court generally must find that
4 the interests of the holder of the secured claim are adequately protected. See 11 U.S.C. § 363(e).
5 Section 362(d)(1) provides for adequate protection of interests in property due to the imposition of
6 the automatic stay, *In re Continental Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc), and § 361
7 provides examples of possible forms of adequate protection, such as granting replacement liens and
8 administrative claims. However, it is the courts that must decide what constitutes sufficient
9 adequate protection on a case-by-case basis. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir 1984); *In*
10 *re Macombs Properties VI, Ltd.*, 88 B.R. 261, 265 (Bankr. C.D. Cal. 1988). See also, *In re*
11 *Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Satcon Tech. Corp.*, No. 12-
12 12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012); *In re N.J. Affordable Homes*
13 *Corp.*, No. 05-60442 (DHS), 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re*
14 *Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18,
15 1992); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on
16 Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993)).

17 In determining the appropriateness of proffered adequate protection, courts have frequently
18 stressed the importance of a promoting a debtor’s business reorganization. *In re O’Connor*, 808
19 F.2d 1393, 1398 (10th Cir. 1987). Section 363(e) provides that “on request of an entity that has an
20 interest in property proposed to be used, sold, or leased, by the trustee [or Debtors in possession],
21 the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is
22 necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). The Debtors’ use
23 of Cash Collateral is conditioned upon adequate protection being provided to the Prepetition
24 Secured Creditors, as set forth in the proposed Cash Collateral Agreement.

25 Here, the Debtors propose four forms of adequate protection for their Prepetition Secured
26 Creditors: (1) adequate protection payments; (2) replacement liens; (3) preservation of Debtors’
27 equity cushion through continuous maintenance of real property; and (4) super priority expenses of
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1 administration for any proven diminution of value, as defined in the Final DIP Order ¶ N
2 (“Diminution of Value”).

3 First, the Debtors will use Cash Collateral in accordance with the Cash Collateral Budget.
4 Under the Cash Collateral Budget, the Debtors will make adequate protection payments equivalent
5 to postpetition, non-default interest on the outstanding balances of the MTI Obligations and MOB
6 Financing, plus reasonable attorneys’ fees and financial advisor fees for one set of attorneys and
7 financial advisors for each of U.S. Bank as Trustee and Collateral Agent for the Working Capital
8 Notes, UMB Bank for the MTI Obligations, and the MOB Entities for the MOB Financing.

9 Second, to the extent of the Diminution of Value of the interest of the Prepetition Secured
10 Creditors in the Prepetition Collateral, the Debtors propose to provide replacement liens in the same
11 property of the Debtors that had been subject to the DIP Liens under the Final DIP Order, i.e., the
12 DIP Collateral. The Prepetition Secured Creditors shall have, subject to the terms and conditions
13 set forth below, additional and replacement security interests and liens in the DIP Collateral
14 pursuant to §§ 361, 363(e), and 364(d), excluding Clean Fund Bonds and NR2 Petros Bonds
15 collateral held by WTNA and Bankruptcy Recoveries⁶ (the “Prepetition Replacement Liens”),
16 which shall be junior only to the Carve Out and the DIP Liens securing the DIP Obligations;
17 provided, however, that any Prepetition Replacement Liens granted to U.S. Bank, as Series 2015
18 and Series 2017 Note Trustee, on account of the Diminution in Value of any Prepetition Collateral
19 in which it holds senior priority security interests shall be senior, to the extent otherwise consistent
20 with the Intercreditor Agreement, to the replacement liens granted to any other Prepetition Secured
21 Creditors and junior only to the Carve Out. With respect to the Prepetition Collateral that is subject
22 to the Second Amended and Restated Intercreditor Agreement (as that term is defined in the Final
23 DIP Order), any proceeds of such Prepetition Collateral or Replacement Liens related thereto shall
24 be allocated among the Prepetition Secured Creditors in accordance with the terms of the Second
25 Amended and Restated Intercreditor Agreement.

26 _____
27 ⁶ “Bankruptcy Recoveries” shall mean any claims and causes of action to which the Debtors may
28 be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Debtors
or their estates under Chapter 5 of the Bankruptcy Code and any and all recoveries and settlements
thereof.

1 Third, it is the Debtors' business judgment based upon the current book value of the
2 Debtors' assets, that the realizable value of the prepetition collateral securing the obligations due
3 the Prepetition Secured Creditors, exceeds the value of such obligations. *See In re Mellor*, 734
4 F.2d 1396, 1400 n. 2 (9th Cir. 1984) (equity cushion includes "the value in the property, above the
5 amount owed to the creditor with a secured claim, that will shield that interest from loss due to any
6 decrease in the value of the property during [the applicable] time").

7 Fourth, to the extent of the diminution of value of the allowed interests of the Prepetition
8 Secured Creditors in the Prepetition Collateral, the Prepetition Secured Creditors shall have an
9 allowed superpriority administrative expense claim (the "Prepetition Superpriority Claim"), which
10 shall have priority (except with respect to the Carve Out), in the Chapter 11 Case under §§
11 364(c)(1), 503(b), and 507(b) and otherwise over all administrative expense claims and unsecured
12 claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature
13 whatsoever including, without limitation, administrative expenses of the kinds specified in or
14 ordered pursuant to §§ 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 552,
15 726, 1113, and 1114, and, upon entry of the Final Order, § 506(c), whether or not such expenses or
16 claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment,
17 provided, however, that any Prepetition Superpriority Claim granted to the Note Trustee on account
18 of the Diminution in Value of any Prepetition Collateral in which it holds senior priority security
19 interests shall be senior, to the extent otherwise consistent with the Intercreditor Agreement, to any
20 Prepetition Superpriority Claim granted to other Prepetition Secured Creditors. Other the Carve
21 Out, no costs or expenses of administration, including, without limitation, professional fees allowed
22 and payable under §§ 328, 330, and 331, or otherwise, that have been or may be incurred in the
23 Cases, or in any successor case(s), will be senior to, prior to, or on parity with the Prepetition
24 Superpriority Claim (for purposes hereof, such liens will be deemed part of the "Prepetition
25 Replacement Liens").

26 Thus, use of the Cash Collateral will preserve the going concern value of the Debtors'
27 assets. Courts routinely have held that adequate protection may be demonstrated by a simple
28 showing that the going concern value of the Debtors is preserved by the Debtors' continuing

1 operations and use of cash collateral. *See, e.g., In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1087-89
2 (4th Cir. 1986) (trustee reported that ski resort would lose 50% to 90% of its fair market value if it
3 ceased operations); *see also In re McCombs Properties VI, Ltd.*, 88 B.R. 261, 267 (Bankr. C.D.
4 Cal. 1988) (granting use of cash collateral and finding that debtor's use of cash collateral for needed
5 repairs, renovations and operating expenses would eliminate the risk of diminution of the secured
6 creditor's interest in cash collateral and would actually increase the debtor's rental income); *In re*
7 *Gunnison Ctr. Apartments, LP*, 320 B.R. 391, 397-99 (Bankr. D. Colo. 2005) (finding that a secured
8 creditor was adequately protected where the cash collateral was utilized to "operate the property in
9 good fashion, pay the expenses of operation and the costs of maintenance to preserve and protect
10 the property, and account for the monies received and the expenses paid"); *In re Mt. Olive Hosp.,*
11 *LLC*, CIV. 13-3395 RBK, 2014 WL 1309953, at *4 (D.N.J. Mar. 31, 2014) ("if the maintenance of
12 a [business] is critical to the Debtor's continued success and economic viability, putting the Debtor
13 in a position where it was unable to fund ... and meet its obligations ... might result in a decrease
14 in the [going concern value]").

15 Here, the Debtors propose to grant commonplace replacement liens and superpriority claims
16 as adequate protection. *In re AppliedTheory Corp.*, 02-11868 (REG), 2008 WL 1869770, at *8
17 (Bankr. S.D.N.Y. Apr. 24, 2008) ("As is also common in chapter 11 cases where cash collateral is
18 to be used, the cash collateral order provided the Lenders with 'adequate protection' of their
19 interests in the cash collateral—in this case by a substitute lien, and a superpriority claim, two of
20 the most common means of providing adequate protection."); *In re O'Connor*, 808 F.2d at 1396-
21 98 (allowing the debtors to replace a lien on cash with a lien on property likely to be worth five
22 times as much); *Owens-Corning Fiberglas Corp. v. Ctr. Wholesale, Inc. (In re Ctr. Wholesale*
23 *Inc.)*, 759 F.2d 1440, 1450 (9th Cir. 1985) (observing that a lien on additional property of the
24 debtors would likely constitute adequate protection for the secured creditor); *In re Wrecclesham*
25 *Grange, Inc.*, 221 B.R. 978, 981 (Bankr. M.D. Fla. 1997) (noting that a replacement lien of equal
26 value on postpetition rents is adequate protection); *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa.
27 1982) (continued lien on debtors' crops, livestock and equipment resulted in an increase rather than
28 a decrease in collateral, and debtors were granted authority to use cash collateral to meet operating

1 expenses during chapter 11 proceedings). Additionally, the MTI Obligations, on one hand, and the
2 MOB Financing, on the other, each have an sufficient equity cushion arguably entitling them to
3 postpetition interest, which they are being paid in the form of adequate protection payments.
4 However, the Final DIP Order makes clear, that in the event that there is no cushion for the payment
5 of postpetition interest, the monies paid will be recharacterized as principal reductions.

6 For the foregoing reasons, the Debtors respectfully submit that the adequate protection
7 proposed by the Debtors previously provided under the Final DIP Order and in the proposed
8 Supplemental Cash Collateral Order are appropriate and should be approved.

9 **IV.**

10 **REQUEST FOR AN FINAL HEARING UNDER RULE 4001(B)(2)**

11 Pursuant to Bankruptcy Rule 4001(b)(2), the Debtors respectfully request that the Court set
12 a date for the hearing no later than September 6, 2019, and a final hearing 24 days from entry of
13 the Supplemental Cash Collateral Order or September 30, 2019.

14 **V.**

15 **CONCLUSION**

16 For the foregoing reasons, the Debtors respectfully request that this Court enter an order
17 (i) granting the Motion, and (ii) granting such further relief as the Court deems appropriate.
18

19 Dated: August 28, 2019

DENTONS US LLP

SAMUEL R. MAIZEL
TANIA M. MOYRON
CLAUDE D. MONTGOMERY

22 By /s/ Tania M. Moyron
23 TANIA M. MOYRON

24 Attorneys for the Chapter 11 Debtors and
25 Debtors In Possession
26
27
28

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DECLARATION OF ANITA CHOU

I, Anita Chou, submit this Declaration in support of the *Debtors' Motion for Order Authorizing (A) Continuing Use of Cash Collateral* ["Cash Collateral"] *(B) Granting Adequate Protection to Prepetition Secured Parties* (the "Motion"), and hereby state and declare as follows:

1. I am the Chief Financial Officer ("CFO") of Verity Health System of California, Inc. ("VHS"). I became the Debtors' acting CFO on August 20, 2018, and on August 29, 2018, the board of directors appointed me as the CFO. Prior to my appointment as acting CFO, I served as the VHS SVP Hospital Finance, with oversight responsibilities over all of Verity Health System hospitals' CFOs from February 1, 2018 until August 19, 2018, and as the St. Vincent Medical Center CFO from March 2016 to February 2018. My career has included three years at Prospect Medical Holdings from March 2013 to March 2016 in various senior level corporate finance positions including Hospital System CFO, ten years as the controller for three different hospitals and hospital systems (e.g., Saint John's Health Center & Affiliates, Valley Presbyterian Hospital, and USC Kenneth Norris Jr. Cancer Hospital), and three years as a Financial Market Analyst for El Camino Hospital. I received my Masters in Health Administration from the University of Southern California in 2005, and my Bachelor of Science from University of California, San Diego in 1998.

2. I hereby incorporate the statements made by me in two earlier declarations in support of the Debtors' requests for interim and final orders approving Debtor in Possession Financing.¹ The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CFO for VHS.

¹ See (1) *Declaration of Anita Chou in support of the Debtors' Motion for Interim Order Authorizing (A) Use of Cash Collateral, (B) Debtor in Possession Credit Agreement, Grant of Superpriority Priming Liens to DIP Lender, (C) Grant of Junior Liens on Post Petition Accounts and Inventory as Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), And 364(C) And (D)* [Docket No. 32] ("Chou Decl. No.1"); and (2) *Supplemental Declaration of Anita Chou, Chief Financial Officer, In Support of Motion for Final Order (A) Authorizing the Debtors to Obtain Post Petition Financing (B) Authorizing the Debtors to Use Cash Collateral (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107 And 1108* [Docket No. 309-2] ("Chou Decl. No. 2").

1 **I. Sales of the Hospitals and Current Status**

2 3. On December 27, 2018, the Court entered an order approving the sale (the “SCC
3 Sale”) of all assets (excluding cash, accounts receivables and causes of action) of O’Connor
4 Hospital (“OCH”) and Saint Louise Regional Hospital (“SLRH”) to the County of Santa Clara
5 (“SCC”), a political subdivision of the State of California [Docket No. 1153] (the “SCC Sale
6 Order”). The SCC Sale closed on February 28, 2019.

7 4. On April 17, 2019, the Court held a hearing to approve the sale (the “SGM Sale”)
8 of substantially all assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent
9 Dialysis Center, and Seton Medical Center, including Seton Coastsides, to Strategic Global
10 Management, Inc. (“SGM”) for \$610 million, subject to certain adjustments, plus the payment of
11 cure costs and assumption of certain liabilities, as more fully set forth in that certain asset purchase
12 agreement. On May 2, 2019, the Court entered an order approving the SGM Sale (the “SGM Sale
13 Order”) [Docket No. 2306].

14 5. The Debtors have also undertaken a wind down of operations of Verity Medical
15 Foundation (“VMF”). In connection with such wind down, the Debtors have effectuated the
16 disposition and/or transfer of certain assets through sales and/or settlements. *See, e.g.*, Docket Nos.
17 1338, 1367, 1368, 1915, 1919, 2429].

18 6. With the SCC Sale complete, and the SGM Sale approved by the Court, and the
19 wind down of VMF underway, the Debtors have focused on formulating a plan of liquidation (the
20 “Plan”).

21 **A. The Final DIP Order and Creation of Escrow Deposit Accounts.**

22 7. On August 31, 2018, the Debtors filed their *Emergency Motion Of Debtors For*
23 *Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B)*
24 *Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To*
25 *Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108* [Docket
26 No. 31] (the “First DIP Motion”). Under the First DIP Motion, the Debtors, sought postpetition,
27 debtor-in-possession financing (the “DIP Financing”) from Ally Bank (“Ally” or the “DIP Lender”)
28 under a credit agreement (the “DIP Credit Agreement”) and for permission to use the cash-collateral

1 of their applicable secured creditors (the “Cash Collateral”).

2 8. On October 4, 2018, the Court entered the *Final Order (I) Authorizing Postpetition*
3 *Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing*
4 *Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying*
5 *Automatic State, and (VI) Granting Related Relief* [Docket No. 409] (the “Final DIP Order”).
6 Pursuant to the DIP Credit Agreement, the DIP Financing is due to expire and mature in accordance
7 with its terms on September 7, 2019 (the “Scheduled Termination Date”). *See* Docket No. 309-2
8 (DIP Credit Agreement at 27, § 9.12 at 80).

9 9. The Debtors were authorized to draw up to \$185 million from their DIP Financing,
10 subject to terms, including maintaining adequate protection for the Prepetition Secured Creditors
11 (as defined in the Motion). As of August 28, 2019, the DIP Loan balance is approximately \$58
12 million on a gross basis.

13 10. Pursuant to ¶ M, and § 2, in Final DIP Order, the Debtors have established Escrow
14 Deposit Accounts (defined below) for Sales Proceeds (defined below) of assets constituting DIP
15 Collateral (as defined in the Final DIP Order). In each instance, the Sales Proceeds have been
16 allocated by the Debtors among the Escrow Deposit Accounts for selling Debtors in their reasoned
17 business judgment.

18 **B. SCC Sale Proceeds and Escrow Deposit Balances.**

19 11. Consistent with the terms of the Final DIP Order, the proceeds of the SCC Sale (the
20 “SCC Sale Proceeds”) were placed into a “sales proceeds” deposit accounts in the name of the
21 relevant selling Debtor at Bank of America, N.A., each designated by the Debtors as a “Escrow
22 Deposit Account,” within the meaning of paragraph M of the Final DIP Order² (and see SCC Sale
23 Order at ¶ 12 (requiring SCC Sale Proceeds to be placed into “Escrow Deposit Accounts”); *see id.*
24 at ¶ 13 (“The terms and conditions of the Final DIP Order shall apply with respect to the [SCC]
25 Sale Proceeds and Escrow Deposit Accounts.”).

26 12. The Debtors were required to establish and maintain a \$23.5 million post-closing
27 escrow (the “Post-closing Escrow”), pursuant to the asset purchase agreement between certain
28

² “Escrow Deposit Account(s)” used herein has the same meaning as in the Final DIP Order.

1 Debtors (the “SCC Selling Debtors”) and SCC [Docket No. 365-1] (the “SCC APA”). *See* SCC
2 APA at §§ 1.1.2, 1.2. First American Title Insurance Co. will hold that Post-closing Escrow for a
3 period of one year from the SCC Sale closing and release those funds either to the SCC Selling
4 Debtors or SCC under the terms of the SCC APA. *Id.* at § 1.1.2. While neither the DIP Lender nor
5 the Prepetition Secured Creditors have control agreements over the SCC Post-closing Escrow, the
6 SCC Sale Order provides that the security interests of the DIP Lender and the Prepetition Secured
7 Creditors attached to the SCC Sale Proceeds to the same extent as their security interests in the
8 property sold pursuant to the SCC Sale. *See* SCC Sale Order at ¶ G.

9 13. Pursuant to the terms of the SGM Sale, the Debtors have deposited the Purchaser’s
10 Deposit (as defined in the SGM APA) in an Escrow Deposit Account denominated the “VHS - Non
11 Santa Clara Sales Proceeds Account.” Such account holds \$30,315,368, as of August 28, 2019.
12 The SCC Selling Debtors, in accordance with their reasonable judgment and consistent with the
13 SCC APA, allocated the SCC Sale Proceeds to the relevant SCC Selling Debtor’s Escrow Deposit
14 Accounts. Pursuant to the SCC Sale Order and the various orders related to VMF referenced above
15 [Dockets Nos. 1338, 1367, 1368, 1915, 1919, 2429], the Escrow Deposit Accounts hold
16 approximately \$ 187,320,909, in the aggregate, allocated as follows: (1) OCH Santa Clara Sales
17 Proceeds—\$111,146,241; (2) SLRH Santa Clara Sales Proceeds—\$57,347,776; (3) Verity
18 Holdings, LLC Santa Clara Sales Proceeds—\$15,835,079; (4) VMF Sales Proceeds—\$2,268,607;
19 and (5) VHS Santa Clara Sales Proceeds—\$723,203.

20 **C. The DIP Proposal & Cash Collateral Proposal.**

21 14. Under the terms of the DIP Credit Agreement, all the Debtors’ collections are swept
22 to the DIP Lender daily, and the Debtors borrow funds from the DIP Lender to extent needed
23 pursuant to the terms of the budget (the “DIP Budget”).

24 15. The Debtors continue to operate St. Francis Medical Center, St. Vincent Medical
25 Center, St. Vincent Dialysis Center, Seton Medical Center, and Seton Coastside (together, the
26 “Remaining Hospitals”) and related facilities pending the SGM Sale. Despite their smaller
27 economic footprint, the Debtors incur ongoing losses from these operations (at a rate of
28 approximately \$450,000 per day).

1 16. Given the Scheduled Termination Date of the DIP Credit Agreement, the Debtors
2 obtained an offer of continued debtor in possession financing by means of an extension of the DIP
3 Credit Agreement until the earlier of the SGM Sale closing, the effective date of the Plan, or
4 December 31, 2019. The DIP Lender proposed to charge a 60-basis points extension fee while the
5 interest rate and covenants would remain unchanged. In light of the continued accrual and payment
6 of adequate protection payments to Prepetition Secured Creditors, the Debtors have estimated the
7 incremental cost of the extension through the end of October to be approximately \$3 million, and
8 \$5 million for an extension through the end of the year.

9 17. The Debtors also received a cash collateral proposal from UMB Bank, N.A., as
10 master indenture trustee for the master indenture obligations (“UMB Bank”) and Wells Fargo Bank,
11 National Association, as bond trustee for Series 2005 Revenue Bonds. The premise of the proposal
12 is that the Debtors would use the Escrowed Cash Collateral (as defined in the Motion) to fully
13 defease the Obligations (as that term is defined in the DIP Credit Agreement) and payoff the
14 outstanding DIP borrowing balance.

15 18. Based on discussions with Prepetition Secured Creditors and the Official Committee
16 of Unsecured Creditors, the Debtors understand that those constituents prefer the cash collateral
17 proposal over the extension of the DIP Financing, as proposed by the DIP Lender, as do the Debtors
18 given the incremental costs avoided by the estates.

19 **D. The Material Terms of the Cash Collateral Agreement.**

20 19. The Prepetition Secured Creditors specifically consent to the form of order, attached
21 hereto as Exhibit “2” (the “Cash Collateral Order”), which constitutes the agreement to use cash
22 collateral between the Debtors and the Prepetition Secured Creditors (the “Supplemental Cash
23 Collateral Agreement”). The material terms of the use of cash collateral and the adequate protection
24 provided to the Prepetition Secured Creditors are set forth in Exhibit “2.”

25 20. Pursuant to the Cash Collateral Agreement (as defined below) reached with the
26 Prepetition Secured Creditors, the Debtors intend to use Escrowed Cash Collateral to fund the
27 payoff amount (the “Payoff Amount”) to defease the DIP financing obligations under the DIP
28 Credit Agreement. Under the budget (the “Cash Collateral Budget”), attached hereto as Exhibit

1 “1,” the Debtors currently expect to have a borrowing balance of approximately \$86 million on the
2 Scheduled Termination Date. If the SGM Sale closes by the end of October 2019, the Debtors
3 expect to need access to an additional \$50 million in cash resources (excluding supplemental
4 payments such as QAF due to the uncertainty in timing of payment receipt). All of the Debtors
5 current cash accounts, other than donor restricted cash held by the Charitable Foundations (as
6 defined in the Final DIP Order), constitutes collateral of the Prepetition Secured Creditors either as
7 the proceeds of prepetition collateral or as collateral subject to Prepetition Replacement Lines (as
8 defined in the Final DIP Order).

9 21. The material terms of the Cash Collateral Agreement accurately reflect the reality
10 of the Debtors cash management structure and the manner in which the need for operating cash
11 manifests itself and the limitations imposed by the Final DIP Order on access to the Escrowed Cash
12 Collateral absent the consent of the Prepetition Secured Creditors.

13 22. Following entry of the Final DIP Order, all of the Debtors’ patient or other
14 receivables, whether pre or postpetition, have passed through deposit accounts under the control of
15 the DIP Lender, Ally Bank.

16 23. Pursuant to the terms of the DIP Financing, the Debtors established a deposit
17 account at Bank of America for the purpose of receiving draws under the DIP Credit Agreement
18 denominated the “VHS - DIP Loan Proceeds Account.” Such deposit account did not exist on the
19 Petition Date, but the Debtors determined in their reasonable business judgment that the account
20 should be renamed the “VHS-Disbursement Account” upon funding of the Payoff Amount pursuant
21 to the Supplemental Cash Collateral Order.

22 24. Also, as a result of the DIP Financing, the Debtors established a concentration
23 deposit account for purposes of remitting cash receipts from each Debtor to the DIP Agent
24 denominated the “VHS - Concentration Account.”

25 25. The largest Escrow Deposit Account is the OCH Sales Proceeds Account, and the
26 Debtors have determined that is the preferable Escrow Deposit Account from which to draw funds
27 to satisfy the Payoff Amount. As a matter of accounting simplicity and current cash management
28 techniques, the Debtors have determined, in the reasonable exercise of their business judgment,

1 that after the Payoff Amount has been satisfied, the following deposits should be made into the
2 VHS-Disbursement Account: (i) all Permitted Withdrawals from the Escrow Deposit Accounts;
3 and (ii) all collections on prepetition and postpetition accounts receivable, including, but not limited
4 to, patient receivables, governmental receivables and lease rents. The Prepetition Secured Creditors
5 requested use of a single disbursement account to trace intercompany advances using cash collateral
6 and consented to the above-described modifications of the Final DIP Order and the Cash
7 Management Order.

8 E. **Need for Use of Cash Collateral**

9 26. To avoid irreparable harm, the Debtors have an immediate and continuing need to
10 use cash to pay the DIP Loan, to continue operations, to serve the Debtors' mission to provide vital
11 and lifesaving patient care to vulnerable populations, to administer and preserve the value of their
12 estates until the anticipated sale and transfer of the Remaining Hospitals, and to distribute the assets
13 of their estates to creditors.

14 27. Pursuant to the Supplemental Cash Collateral Order, the Debtors will be able to (i)
15 use Escrowed Cash Collateral to pay and discharge the DIP Obligations, (ii) use cash collateral to
16 ensure the Debtors have access to sufficient funds necessary to continue to operate their businesses,
17 including meeting payroll and other obligations critical to maintain the Remaining Hospitals and
18 to deliver effective patient care, (iii) efficiently manage the accounting for use of cash collateral
19 from all sources, (iv) avoid the need to incur fees to refinance or extend the current DIP Facility,
20 and (v) avoid the accrual and payment of interest for postpetition borrowed money.

21 28. Absent granting access to the Debtors' Escrowed Cash Collateral and cash
22 collateral, the Debtors will not be able to (a) payoff the DIP Loan and avoid a default as to the
23 Scheduled Termination Date, or (b) access funds subject to the Prepetition Secured Creditors liens
24 or their Adequate Protection Replacement Liens for the continued operation of the Debtors in order
25 to make payroll or meet other obligations critical to the maintenance of safe facilities and the
26 delivery of effective acute care services for its patients and staff prior to the SGM Sale. In essence,
27 I believe that use of Escrowed Cash Collateral and the use of cash collateral is critical to the
28 continued existence of the Remaining Hospitals and their ability to sell as going concerns. In light

1 of the Final DIP Order constraints on the Debtors' access to funds in the Escrow Deposit Accounts,
2 absent the consent of the Prepetition Secured Creditors, the entry of the Supplemental Cash
3 Collateral Order is essential to the Debtors' and their estates.

4 29. The Supplemental Cash Collateral Order contemplates and supports the speedy
5 resolution of these chapter 11 Cases. Such liquidity is critical to both the Debtors' operations, and
6 their ability to preserve the value of the Remaining Hospitals and medical building assets pending
7 the results of the Debtors' postpetition sale process.

8 **II. Adequate Protection for Pre-Petition Secured Creditors.**

9 30. The Debtors propose adequate protection for use of cash collateral, as set forth in
10 the Supplemental Cash Collateral Order, attached as Exhibit "2."

11 31. In addition, under the Cash Collateral Agreement, the Debtors may use Escrowed
12 Cash Collateral (as defined in the Motion) notwithstanding the restrictions placed on access to the
13 Escrow Deposit Accounts under the Final DIP Order in order to supplement the Debtors' use of
14 ordinary accounts receivable collections, including quality assurance fee collections, subject to
15 compliance with the Cash Collateral Budget. The rolling 13-week Cash Collateral Budget will
16 periodically update and initially will be based substantially upon the last DIP Budget approved by
17 the DIP Lender. The Cash Collateral Budget, as agreed to by the Prepetition Secured Creditors
18 includes payment of adequate protection payments equivalent to post-petition, non-default interest
19 on the outstanding balances of the 2005 Bonds, Working Capital Notes and MOB Financings, plus
20 reasonable attorneys' fees and financial advisor fees for (i) one set of attorneys and financial
21 advisors for U.S. Bank as Trustee and Collateral Agent for the Working Capital Notes and the 2005
22 Bonds, and (ii) one set of attorneys and financial advisors for the MOB Notes.

23 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
24 inquiry, the foregoing is true and correct.

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Dated: August 28, 2019

VERITY HEALTH SYSTEM

By: 
Anita Chou
Chief Financial Officer

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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EXHIBIT 1
Cash Collateral Budget

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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EXHIBIT 2

Agreed Supplemental Cash Collateral Order

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 SAMUEL R. MAIZEL (Bar No. 189301)
2 samuel.maizel@dentons.com
3 TANIA M. MOYRON (Bar No. 235736)
4 tania.moyron@dentons.com
5 CLAUDE D. MONTGOMERY (Admitted *pro hac vice*)
6 Claude.montgomery@dentons.com
7 DENTONS US LLP
8 601 South Figueroa Street, Suite 2500
9 Los Angeles, California 90017-5704
10 Tel: (213) 623-9300/Fax: (213) 623-9924
11 Attorneys for the Chapter 11 Debtors
12 and Debtors In Possession

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

10 In re

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

13 Debtors and Debtors In
14 Possession.

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

24 Debtors and Debtors In
25 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

**ORDER (A) AUTHORIZING CONTINUED USE
OF CASH COLLATERAL, (B) GRANTING
ADEQUATE PROTECTION, (C) MODIFYING
AUTOMATIC STAY, AND (D) GRANTING
RELATED RELIEF**

1 Upon the Debtors’ *Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash*
2 *Collateral and (B) Granting Adequate Protection to Prepetition Secured Creditors* [Docket No.
3 _____], (the “**Supplemental Cash Collateral Motion**”)¹, dated August 28, 2019, and filed by
4 Verity Health System of California, Inc. (“**VHS**”), O’Connor Hospital (“**OCH**”), Saint Louise
5 Regional Hospital (“**SLRH**”), St. Francis Medical Center (“**SFMC**”), St. Vincent Medical Center
6 (“**SVMC**”), Seton Medical Center (“**SMC**”), Verity Holdings, LLC (“**Holdings**”), Verity Medical
7 Foundation (“**VMF**”), O’Connor Hospital Foundation, Saint Louise Regional Hospital
8 Foundation, St. Francis Medical Center of Lynwood Medical Foundation, St. Vincent Foundation,
9 St. Vincent Dialysis Center, Inc., Seton Medical Center Foundation, Verity Business Services,
10 DePaul Ventures, LLC, and DePaul Ventures-San Jose Dialysis, LLC (collectively, the
11 “**Debtors**”), as debtors and debtors in possession in the above captioned chapter 11 cases
12 (collectively, the “**Chapter 11 Cases**”), pursuant to §§ 105, 361, 362, 363 and 507 of title 11 of
13 the United States Code (the “**Bankruptcy Code**”),² Rules 2002 and 4001 of the Federal Rules of
14 Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Bankruptcy Rules
15 for the United States Bankruptcy Court for the Central District of California (the “**Local Rules**” or
16 “**LBR**”), for entry of an order (the “**Supplemental Cash Collateral Order**”): (i) authorizing (a)
17 continued use of cash collateral; (b) granting of liens on postpetition accounts and inventory as
18 adequate protection to prepetition secured parties; and (c) authorizing the Debtors to pay off the
19 existing debtor in possession financing; and (ii) granting the Debtors such other and further relief
20 as is necessary and appropriate to supplement the relief previously granted to the Prepetition
21 Secured Creditors in that certain *Final Order (I) Authorizing Postpetition Financing, (II)*
22 *Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority*
23 *Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay,*
24 *and (VI) Granting Related Relief*, dated October 4, 2018 [Docket No. 409] (the “**Final DIP**

25 _____
26 ¹ Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Supplemental Cash
Collateral Motion and the Final DIP Order.

27 ² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101, et
seq., as amended.

1 **Order**) following the conclusion of the hearing (the "**Hearing**"), based upon the aforesaid rights
2 and protections afforded to the consenting Prepetition Secured Creditors, authorizing the Debtors
3 to, among other things:

4 (i) Execute the Payoff Letter, and pay and transfer to Ally Bank, in its capacity
5 as agent ("**DIP Agent**") and in its capacity as lender ("**DIP Lender**") under the Debtors In
6 Possession Revolving Credit Agreement, dated as of September 7, 2018, as amended,
7 supplemented, or otherwise modified and in effect from time to time, the "**DIP Credit**
8 **Agreement**," and together with all other agreements, documents, notes certificates, and
9 instruments executed and/or delivered with, to or in favor of the DIP Lender, the "**DIP Financing**
10 **Agreements**"), the Payoff Amount (as defined herein), whereupon (x) the security interests and
11 liens of the DIP Agent and the DIP Lender on the DIP Collateral, including, but not limited to, the
12 Escrow Deposit Accounts and the Sales Proceeds granted to the DIP Agent and DIP Lender
13 pursuant to the Final DIP Order, shall be released and terminated, (y) the allowed super-priority
14 administrative expense claims granted to the DIP Agent and the DIP Lender pursuant to the Final
15 DIP Order for the DIP Financing and all financial and other obligations of the Debtors owing under
16 the DIP Financing Agreements (collectively, and including all "**Obligations**" of the Debtors as
17 defined and described in the DIP Credit Agreement, the "**DIP Obligations**") shall be terminated
18 and discharged, and (z) the DIP Agent and DIP Lender shall be released and discharged by the
19 Debtors from all claims under the DIP Credit Agreement and Final DIP Order;

20 (ii) Permit the Debtors continuing use of cash collateral of the Prepetition
21 Secured Creditors, including cash collateral subject to Replacement Liens granted by the Final
22 DIP Order;

23 (iii) Modify the Final DIP Order to permit use of Sales Proceeds in the Escrow
24 Deposit Accounts (the "**Escrowed Cash Collateral**") (each as defined in the Final DIP Order), (x)
25 to fund the Payoff Amount and to satisfy and discharge the DIP Obligations in full within one (1)
26 business day after the entry of this Supplemental Cash Collateral Order, and (y) to provide
27

1 additional working capital to the Debtors in accordance with the Cash Collateral Budget (as
2 defined herein) (“*Permitted Withdrawals*”) in order to supplement the collection of the Debtors’
3 cash receipts and bridge to the closing of the sale of their remaining assets and through the effective
4 date of the Debtors’ plan of liquidation, as set forth below, provided that the Debtors shall first use
5 funds from its cash receipts other than Escrowed Cash Collateral and then, if such cash receipts
6 are insufficient to pay amounts permitted by the Cash Collateral Budget, draw funds from the
7 Escrow Deposit Accounts in the following order (i) OCH, (ii) SLRH, (iii) VHS, (iv) Holdings, and
8 (v) VMF;

9 (iv) Modify the Cash Management Order to permit use and creation of the VHS-
10 Disbursement Account as defined below, as the required account into which any draws of
11 Escrowed Cash Collateral permitted by this Supplemental Cash Collateral Order and the Cash
12 Collateral Budget shall be transferred, other than the funding of the Payoff Amount, and as further
13 described below;

14 (v) Provide the Supplemental Adequate Protection to the Prepetition Secured
15 Creditors (as defined herein) pursuant to the terms of this Supplemental Cash Collateral Order for
16 the continued use of cash collateral and the use of the Escrowed Cash Collateral ;

17 (vi) Modify the Final DIP Order with respect to the Carve Out as defined
18 therein;

19 (vii) Modify the automatic stay imposed by § 362 solely to the extent necessary
20 to implement and effectuate the terms of this Supplemental Cash Collateral Order; and

21 (viii) Waive any applicable stay as provided in the Bankruptcy Rules, and provide
22 for immediate effectiveness of this Supplemental Cash Collateral Order.

23 The Court, having considered the Supplemental Cash Collateral Motion, the Declaration
24 of Anita Chou filed in support of the Supplemental Cash Collateral Motion, and the exhibits
25 attached thereto, the record established in connection with the Final DIP Order and the evidence
26 submitted by declaration or testimony adduced and the arguments of counsel made at the Hearing;

1 and due and proper notice of the Supplemental Cash Collateral Motion and the Hearing having
2 been provided in accordance with Bankruptcy Rules 2002, 4001(b) and (d), and 9014 and LBR
3 4001-2, and no other or further notice being required under the circumstances; and the Hearing
4 having been held and concluded; and it appearing that approval of the relief requested in the
5 Supplemental Cash Collateral Motion is necessary to avoid immediate and irreparable harm to the
6 Debtors and is otherwise fair and reasonable and in the best interests of the Debtors, their estates
7 and their creditors, and is essential for the preservation of the value of the Debtors' assets; and all
8 objections, if any, to the entry of this Supplemental Cash Collateral Order having been withdrawn,
9 resolved or overruled by the Court; and after due deliberation and consideration, and for good and
10 sufficient cause appearing therefor:

11 **BASED UPON THE RECORD ESTABLISHED AT THE HEARING, THE COURT**
12 **MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³**

13 A. **Petition Date.** On August 31, 2018 (the "***Petition Date***"), each of the Debtors filed
14 a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States
15 Bankruptcy Court for the Central District of California (the "***Court***"). The Debtors have
16 continued in the management and operation of their businesses and properties as debtors in
17 possession pursuant to §§ 1107 and 1108. On September 17, 2018, an official committee of
18 unsecured creditors (the "***Committee***") was appointed in these Chapter 11 Cases.

19 B. **Jurisdiction and Venue.** This Court has jurisdiction over the Chapter 11 Cases,
20 the Supplemental Cash Collateral Motion, and the parties and property affected hereby pursuant
21 to 28 U.S.C. §§ 157(b) and 1334(b), and over the persons and property affected hereby.
22 Consideration of the Supplemental Cash Collateral Motion constitutes a core proceeding as
23 defined in 28 U.S.C. § 157(b)(2). Venue for these Chapter 11 Cases and the proceedings on the
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25
26 ³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant
27 to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that
28 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.

1 Supplemental Cash Collateral Motion is proper before this district pursuant to 28 U.S.C. §§ 1408
2 and 1409.

3 C. **Prepetition Secured Credit Facilities.** As of the Petition Date, the Debtors were
4 indebted and liable to the Prepetition Secured Creditors as follows:

5 (i) UMB Bank, N.A., (“**UMB Bank**”) as successor Master Trustee (in such
6 capacity, the “**Master Trustee**”) under the Master Indenture of Trust dated as of December 1, 2001,
7 as amended and supplemented (the “**Master Indenture**”) with respect to the MTI Obligations
8 (defined below) securing the repayment by the Obligated Group (defined below) of its loan
9 obligations with respect to (1) the California Statewide Communities Development Authority
10 Revenue Bonds (Daughters of Charity Health System) Series 2005, A, G, and H (the “**2005**
11 **Bonds**”), (2) the California Public Finance Authority Revenue Notes (Verity Health System)
12 Series 2015 A, B, C and D (the “**2015 Working Capital Notes**”), and (3) the California Public
13 Finance Authority Revenue Notes (Verity Health System) Series 2017 A and B (the “**2017**
14 **Working Capital Notes**” and, collectively with the 2015 Working Capital Notes, the “**Working**
15 **Capital Notes**”). The joint and several obligations issued under the Master Indenture by OCH,
16 SLRH, SFMC, SVMC, and SMC (collectively, the “**Obligated Group**”) in respect of the 2005
17 Bonds and the Working Capital Notes are collectively referred to as the “**MTI Obligations.**” Wells
18 Fargo Bank National Association (“**Wells Fargo**”) serves as bond indenture trustee under the bond
19 indentures relating to the 2005 Bonds. U.S. Bank National Association (“**U.S. Bank**”) serves as
20 the note indenture trustee and as the collateral agent under each of the note indentures relating to
21 the 2015 Working Capital Notes and the 2017 Working Capital Notes, respectively. The MTI
22 Obligations are secured by, *inter alia*, security interests granted to the Master Trustee in the
23 prepetition accounts of, and mortgages on the principal real estate assets of, the members of the
24 Obligated Group. Certain of the collateral securing the foregoing obligations has been sold by the
25 Obligated Parties, with the Sales Proceeds (as defined in the Final DIP Order) being held in the
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1 Escrow Deposit Accounts as required by the Final DIP Order and the sale order [Docket No. 2306]
2 (the “**Sale Order**”).

3 (ii) In addition to the security provided to the Master Trustee to secure the MTI
4 Obligations, U.S. Bank, as Note Trustee for the 2015 Working Capital Notes and the 2017
5 Working Capital Notes is secured by prepetition first priority liens upon and security interests in
6 the Obligated Group’s accounts and by deeds of trust on the principal real estate assets of Saint
7 Louise Regional Hospital and St. Francis Medical Center (collectively, the “**Priority Collateral**”).
8 U.S. Bank as Notes Trustee for the 2017 Working Capital Notes was also granted a deed of trust,
9 dated as of December 1, 2017, by Holdings in certain real property located in San Mateo,
10 California to further secure the 2017 Working Capital Notes. Certain of the collateral securing the
11 foregoing obligations has been sold by the Obligated Parties, with the proceeds thereof currently
12 being held in the Escrow Deposit Accounts as required by the Final DIP Order .

13 (iii) Verity MOB Financing, LLC and Verity MOB Financing II, LLC (together,
14 “**MOB Lenders**”) hold security interests in Holdings’ accounts, including rents arising from the
15 prepetition MOB Financing, and mortgages on medical office buildings owned by Holdings (the
16 “**MOB Financing**”). The Debtors sold certain of the collateral securing the MOB Financing, and
17 the proceeds thereof are currently held in the Escrow Deposit Accounts as required by the Final
18 DIP Order. The Master Trustee, Wells Fargo as bond indenture trustee for the 2005 Notes, U.S.
19 Bank as indenture trustee for the Working Capital Notes, and the MOB Lenders are each referred
20 to herein as a “**Prepetition Secured Creditor**,” the MTI Obligations, the Obligated Group’s loan
21 obligations with respect to the Working Capital Notes, and the MOB Financing are each referred
22 to herein as a “**Prepetition Secured Obligation**,” the prepetition interests (including the liens and
23 security interests) of each Prepetition Secured Creditor in the property and assets of the Debtors
24 are each referred to herein as such Prepetition Secured Creditor’s “**Prepetition Lien**,” and the
25 documents, writings and agreements evidencing the Prepetition Secured Obligations of each
26 Prepetition Secured Creditor are hereinafter referred to as the “**Prepetition Secured Documents**.”

1 D. **Prepetition Collateral.** In order to secure each Prepetition Secured Creditor’s
2 Prepetition Secured Obligations, the Debtors, excluding the Philanthropic Foundations, granted
3 the Prepetition Liens to the Prepetition Secured Creditors as provided and described in each of
4 the Prepetition Secured Creditor’s respective Prepetition Secured Documents. The assets subject
5 to the Prepetition Liens (the “*Prepetition Collateral*”) constitute substantially all of the assets of
6 the Debtors, excluding cash and assets of the Philanthropic Foundations.

7 E. **Intercreditor Agreement.** Pursuant to § 510(a) and the Final DIP Order, the
8 Second Amended and Restated Intercreditor Agreement, dated December 1, 2017 (the
9 “*Intercreditor Agreement*”), and any other applicable intercreditor or subordination provisions
10 contained in any of the Prepetition Secured Documents (i) shall remain in full force and effect
11 with respect to the prepetition and post-petition assets of the Debtors as provided thereunder,
12 including the Escrowed Cash Collateral, (ii) shall continue to govern the relative priorities, rights
13 and remedies of the Prepetition Secured Creditors, including with respect to their Prepetition
14 Liens, all liens granted to them pursuant to the Final DIP Order, and the Supplemental Cash
15 Collateral Lien granted pursuant to the terms of this Supplemental Cash Collateral Order, and (iii)
16 shall not be deemed to be amended, altered or modified by the terms of this Supplemental Cash
17 Collateral Order, or the Final DIP Order. No party has waived any rights or remedies under the
18 Intercreditor Agreement by virtue of the entry of this Supplemental Cash Collateral.

19 F. **Escrow Deposit Account Balances.** As a result of the Court’s approval of the
20 sales of certain assets by OCH, SLRH, VHS, Holdings, and VMF, and the deposit of the related
21 Sales Proceeds into the Escrow Deposit Accounts, as of August 23, 2019, five Escrow Deposit
22 Accounts held an aggregate amount of \$187,320,909 as follows: (1) OCH Santa Clara Sales
23 Proceeds—\$111, 146,241; (2) SLRH Santa Clara Sales Proceeds—\$57,347,776; (3) VH Santa
24 Clara Sales Proceeds—\$15,835,079.77; (4) VMF Sales Proceeds—\$2,268,607.47 and (5) VHS
25 Santa Clara Sales Proceeds—\$723,203 (collectively, the amount of the Debtors’ Escrowed Cash
26 Collateral). No portion of the Escrowed Cash Collateral constitutes the proceeds of any of the
27

1 Debtors' accounts receivable, including pre or postpetition QAF. Notwithstanding the foregoing,
2 nothing in this paragraph or this Supplemental Cash Collateral Order shall waive or limit the rights
3 of the Prepetition Secured Creditors or the Committee to challenge the allocation of the Sale
4 Proceeds held in the Escrow Deposit Accounts (including the right to seek a reallocation of
5 thereof), and this Order shall be subject to the reservations of rights in Paragraph 4 of the Final
6 DIP Order.

7 **G. Establishment of VHS-Disbursement Account.** Pursuant to the terms of the DIP
8 Financing, the Debtors established a deposit account at Bank of America for the purpose of
9 receiving draws under the DIP Credit Agreement denominated the "VHS - DIP Loan Proceeds
10 Account." Such deposit account did not exist on the Petition Date, but the Debtors have
11 determined in their reasonable business judgement that, upon funding of the Payoff Amount
12 pursuant to this Supplemental Cash Collateral Order, the account should be renamed the "VHS-
13 Disbursement Account." Also as a result of the DIP Financing, the Debtors established a
14 concentration deposit account for purposes of remitting cash receipts from each Debtor to the DIP
15 Agent denominated the "VHS - Concentration Account". The Debtors have determined in the
16 reasonable exercise of their business judgment that, following the transfer of funds from the OCH
17 Escrow Deposit Account to satisfy the Payoff Amount, the VHS - Disbursement Account is the
18 appropriate deposit account into which (i) all Permitted Withdrawals from the Escrow Deposit
19 Accounts, and (ii) all collections on pre and postpetition accounts receivables, including but not
20 limited to patient receivables, governmental receivables and lease rents should be deposited. The
21 Prepetition Secured Creditors have requested use of a single disbursement account to trace
22 intercompany advances using cash collateral and have consented to the above described
23 modifications of the Final DIP Order and the Cash Management Order.⁴

24
25
26 ⁴ Final Order Granting Emergency Motion of the Debtors to Authorize (1) Continued Use of Existing Cash
27 Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Mangement System
28 in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense
Priority for Postpetition Intercompany Claims and (5) Obtain Related Relief entered October 31, 2018 [Docket No.
738] (the "Cash Management Order").

1 H. **Satisfaction of the DIP Obligations and Consent to Use of Escrowed Cash**
2 **Collateral.**

3 (i) **Need for Cash; Good Cause.** An immediate and continuing need exists
4 for the Debtors to use cash in order to satisfy the DIP Loan, continue operations, continue to serve
5 the Debtors' mission to provide vital, lifesaving patient care for vulnerable populations, to
6 administer and preserve the value of their estates until the anticipated sale and transfer of the
7 remainder of its facilities to an acquirer, and to distribute the assets of the Debtors' estates to its
8 creditors. The ability of the Debtors to finance their operations, to preserve and maintain the value
9 of the Debtors' assets and to maximize a return for creditors requires the availability of working
10 capital, the absence of which would immediately and irreparably harm the Debtors, their estates
11 and their creditors and the sale of the Debtors' assets as a going concern or otherwise. Pursuant to
12 the terms of the Final DIP Order and the DIP Financing Agreements, the Scheduled Termination
13 Date for the DIP Financing under DIP Credit Agreement and the Final DIP Order is September 7,
14 2019. Pursuant to this Supplemental Cash Collateral Order, the Debtors will be able to (i) use
15 Escrowed Cash Collateral to satisfy and discharge the DIP Obligations, (ii) use Escrowed Cash
16 Collateral to ensure Debtors access to sufficient funds necessary to continue to operate their
17 business, (iii) efficiently manage the accounting for use of cash collateral from all sources, (iv)
18 avoid the need to incur fees to refinance or extend the current DIP Facility, and (v) avoid the
19 accrual and payment of interest for postpetition borrowed money. Accordingly, good cause has
20 been shown for the entry of this Supplemental Cash Collateral Order, and the use of the Escrowed
21 Cash Collateral is in the best interests of the Debtors, their estates, and their creditors.

22 (ii) **Consent to Use Of Escrowed Cash Collateral.** Notwithstanding Sections
23 M and Paragraph 4 of the Final DIP Order requiring the escrow and segregation of proceeds of the
24 sale of certain hospital facilities and related assets of the Debtors, the Prepetition Secured Creditors
25 consent to the use of the Escrowed Cash Collateral as provided in this Supplemental Cash
26 Collateral Order in consideration of the additional adequate protection provided hereby, and the
27

1 Debtors, the Committee and the Prepetition Secured Creditors agree that such use shall not
2 constitute a violation of the Final DIP Order.

3 I. **Use of Cash Collateral.** The Cash Collateral of the Prepetition Secured Creditors,
4 including the Escrowed Cash Collateral, is to be utilized by the Debtors until the occurrence of a
5 Termination Date (as defined herein) in accordance with that certain budget, as modified from
6 time to time as permitted herein, attached hereto as *Exhibit A* (the “*Cash Collateral Budget*”).
7 The Cash Collateral Budget shall be deemed to include any variances set forth therein or as
8 permitted by the terms of the DIP Credit Agreement as in effect immediately prior to the payment
9 of the Payoff Amount, including but not limited to the Maximum Budget Variance as follows: the
10 Debtors shall not permit (a) the aggregate actual disbursements under the Cash Collateral Budget
11 for any consecutive four (4) week period ending on the then most recent Saturday (taken as one
12 accounting period), as tested weekly (the “*Test Period*”), to exceed the aggregate budgeted
13 disbursements for such Test Period by more than seven and one half percent (7.5%) of the
14 aggregate budgeted amount for such Test Period; provided that with respect to the foregoing clause
15 (a), the amount by which the actual disbursements thereunder during such period are less than the
16 relevant budgeted disbursements may be carried forward to reduce the disbursements under clause
17 (a) in the next succeeding periods until used in full; or (b) aggregate actual cash receipts under the
18 Cash Collateral Budget for any Test Period (as tested weekly) to be less ninety-two and one half
19 percent (92.5%) of the aggregate budgeted cash receipts for such Test Period; provided, that, with
20 respect to the foregoing clause (b), the amount by which the actual cash receipts thereunder during
21 such period are greater than the relevant budgeted cash receipts may be carried forward to increase
22 the cash receipts under clause (b) in the next succeeding periods until used in full. For the
23 avoidance of doubt, the aggregate cash receipts and the aggregate cash disbursements carryforward
24 balances (each as defined in the DIP Credit Agreement) existing immediately prior to the date of
25 payment of the Payoff Amount will continue to carryforward for purposes of the Cash Collateral
26 Budget under the Supplemental Cash Collateral Order.

1 J. **Supplemental Adequate Protection for Use of Escrowed Cash Collateral.**

2 Each of the Prepetition Secured Creditors is entitled to Supplemental Adequate Protection (as
3 defined below) pursuant to §§ 361 and 363 for its respective interest in each dollar of the
4 Escrowed Cash Collateral that is withdrawn from the VHS-Disbursement Account.

5 K. **Continuation of Existing Adequate Protection Under the Final DIP Order.** In

6 addition to Supplemental Adequate Protection, as provided in this Supplemental Cash Collateral
7 Order, the Prepetition Secured Creditors remain entitled to adequate protection, as set forth in the
8 Final DIP Order, pursuant to §§ 361 and 363, for any Diminution in Value of their respective
9 interests in the Prepetition Collateral, including, without limitation, their respective interests in
10 the Escrowed Cash Collateral.

11 L. **Relief Essential; Best Interest; Good Cause; Good Faith.** The relief requested

12 in the Supplemental Cash Collateral Motion (and as provided in this Supplemental Cash
13 Collateral Order) is necessary, essential, and appropriate for the preservation of the Debtors'
14 assets, business and property, and is in the best interest of the Debtors' estates. Good cause has
15 been shown for the relief requested in the Supplemental Cash Collateral Motion (and as provided
16 in this Supplemental Cash Collateral Order). The Supplemental Adequate Protection has in all
17 respects been negotiated in good faith by the Debtors and the Prepetition Secured Creditors.

18 **NOW, THEREFORE**, on the Supplemental Cash Collateral Motion and the record before
19 this Court with respect to the Supplemental Cash Collateral Motion, including the record created
20 during the Hearing, and with the consent of the Debtors and the Prepetition Secured Creditors to
21 the form and entry of this Supplemental Cash Collateral Order, and good and sufficient cause
22 appearing therefor,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

24 **1. Motion Granted.** The Supplemental Cash Collateral Motion is granted on a final
25 basis in accordance with the terms and conditions set forth in this Supplemental Cash Collateral
26 Order. Any objections to the Supplemental Cash Collateral Motion with respect to entry of this
27

1 Supplemental Cash Collateral Order to the extent not withdrawn, waived or otherwise resolved,
2 and all reservations of rights included therein, are hereby denied and overruled.

3
4 **2. Satisfaction of the DIP Obligations and Release of the DIP Liens.**

5 (a) **Payoff of DIP Obligations.** The DIP Agent shall provide the Debtors and
6 the Prepetition Secured Creditors with a payoff letter (a) setting forth the calculation of the
7 outstanding amounts due and payable in respect of the DIP Obligations (the "**Payoff Amount**") as
8 of a date that is one (1) business day after the date of entry of this Supplemental Cash Collateral
9 Order and (b) releasing the Debtors from all Obligations under the DIP Credit Agreement and the
10 Final DIP Order (the "**Payoff Letter**"). Subject to the Debtors' and the Prepetition Secured
11 Creditors' confirmation of the Payoff Amount, within one (1) business day from entry of this
12 Supplemental Cash Collateral Order, the Debtors are authorized, empowered and directed to pay
13 the DIP Agent and the DIP Lender the Payoff Amount from the OCH Escrow Deposit Account in
14 full and final satisfaction of all amounts due under the DIP Financing Agreements. The Debtors
15 are hereby authorized and directed to do and perform all acts and execute all documents required
16 by the DIP Financing Agreements in connection with the satisfaction of the DIP Obligations and
17 the termination of the DIP Facility, and the DIP Lender shall cooperate with the Debtors to do all
18 acts and execute all documents that are necessary to evidence the full payment of the DIP
19 obligations and the release and termination of all liens and security interests in any of the Debtors'
20 assets. Upon payment of the Payoff Amount and execution of the Payoff Letter, the DIP
21 Obligations shall be deemed for all purposes to be indefeasibly paid in full and discharged.

22 (b) **Release of DIP Collateral and Superpriority Claim.** Effective
23 immediately upon payment of the Payoff Amount, all DIP Protections granted to the DIP Agent
24 and the DIP Lenders pursuant to the Final DIP Order shall terminate and shall be of no further
25 force and effect, and (i) the DIP Liens shall be deemed released, dissolved, terminated, and of no
26 further force and effect without the need for further order of the Court or the filing of any
27 document, and (ii) neither the DIP Agent nor the DIP Lender shall be entitled to the DIP

1 Superpriority Claim, provided, however, that the Prepetition Replacement Liens in DIP Collateral
2 shall not be affected thereby and shall remain in full force and effect. To the extent the DIP Agent
3 and/or the DIP Lender filed any documents, including, but not limited to, deeds of trust and
4 financing statements, or executed deposit account control agreements and government receivable
5 account agreements in connection with the DIP Liens, the DIP Agent and/or the DIP Lender shall
6 file and/or record all necessary termination statements and notices in the form acceptable to the
7 Debtors and the Prepetition Secured Creditors within five (5) business days of the later of the entry
8 of this Supplemental Cash Collateral Order or the payment of the Payoff Amount.

9
10 **3. Authorization to Use Cash Collateral, Including Escrowed Cash Collateral.**

11 The Debtors are authorized to use Escrowed Cash Collateral from the OCH Escrow Deposit
12 Account to pay the Payoff Amount. In addition, the Debtors are authorized to use Cash Collateral
13 and cash collateral subject to Prepetition Replacement Liens of the Prepetition Lenders in the
14 amounts and at the times specified in the Cash Collateral Budget, as modified from time to time
15 as permitted herein until the occurrence of the Termination Date; provided, that, the Debtors shall
16 first use funds from cash receipts other than Escrowed Cash Collateral and then, if such cash
17 receipts are insufficient to pay amounts permitted by the Cash Collateral Budget, draw funds from
18 the Escrow Deposit Accounts as identified in paragraph F, above. Prior to any use of Cash
19 Collateral or cash collateral subject to Prepetition Replacement Liens, the Debtors shall transfer to
20 the VHS-Disbursement Account all pre and postpetition cash receipts, including but not limited to
21 all collected patient receivables, governmental receivables and lease rents.

22 **4. Adequate Protection for Use of Escrowed Cash Collateral.** Nothing contained
23 in this Supplemental Cash Collateral Order shall terminate, restrict or modify the adequate
24 protection granted to the Prepetition Secured Creditors pursuant to the Final DIP Order (the
25 ***“Existing Adequate Protection”***) on account of the use of Cash Collateral, including the Escrowed
26 Cash Collateral. In addition to the Existing Adequate Protection provided to the Prepetition
27

1 Secured Creditors in the Final DIP Order, the Prepetition Secured Creditors shall also be entitled
2 to the following rights and benefits as adequate protection (“**Supplemental Adequate Protection**”)
3 pursuant to §§ 361 and 363 on account of the use of the Escrowed Cash Collateral pursuant to the
4 terms of this Supplemental Cash Collateral Order as follows:

5 (a) To the extent of its interests in any Escrowed Cash Collateral that is
6 withdrawn from the Escrow Deposit Accounts (which interests shall be determined
7 in accordance with the Final DIP Order and any applicable Sale Order, and fully
8 subject to the rights of the parties to the Intercreditor Agreement), each of the
9 Prepetition Secured Creditors shall be granted a fully perfected, first priority lien
10 and security interest (the “**Supplemental Cash Collateral Lien**”) in all property and
11 assets of the Debtors, of any kind or nature, whether now existing or hereafter
12 arising, excluding the proceeds of any Avoidance Actions; provided, however, such
13 Supplemental Cash Collateral Lien shall be (i) subject and subordinate to any
14 Prepetition Lien held by any of the Prepetition Secured Creditors in respect of each
15 such creditors’ respective Prepetition Collateral, and (ii) shall be subject to the
16 Carve Out.

17 (b) The Supplemental Cash Collateral Lien granted to any of the Prepetition
18 Secured Creditors hereunder shall, for each dollar of the Escrowed Cash Collateral
19 withdrawn from any of the Escrow Deposit Accounts, have the same relative
20 priority among them as the Prepetition Replacement Liens as and to the extent set
21 forth in Paragraph 5 of the Final DIP Order.

22 (c) The interest of each Prepetition Secured Creditor in the Supplemental Cash
23 Collateral Lien shall be equal in dollar amount to the interest of each such
24 Prepetition Secured Creditor in the Escrowed Cash Collateral as such interest
25 existed immediately prior to withdrawal of the Escrowed Cash Collateral from the
26 Escrow Deposit Accounts, and the relative rights and priorities of such interests
27

1 shall be determined and governed by the rights and obligations between or among
2 such Prepetition Secured Creditors as set forth in the Final DIP Order and the
3 Intercreditor Agreement.

4 (d) Nothing contained in paragraph 4(a)-(c) herein is intended, or shall
5 constitute a modification of the rights or priorities of any Prepetition Secured
6 Creditor as they exist under the Final DIP Order and the Intercreditor Agreement.

7
8 **5. Continuation of Existing Adequate Protection Pursuant to Final DIP Order.**

9 All Existing Adequate Protection granted to the Prepetition Secured Creditors in the Final DIP
10 Order, whether on account of the use of Cash Collateral, including the Escrowed Cash Collateral,
11 or on account of any other right or entitlement, shall continue pursuant to the terms of the Final
12 DIP Order, and shall remain in full force in effect, including any limitations that may arise from
13 any authorized and timely Challenge within the meaning of the Final DIP Order; provided,
14 however, the restrictions contained in paragraph 4 of the Final DIP Order that prohibit the
15 withdrawal of amounts from the VHS-Disbursement Account shall be deemed to be modified
16 solely to the extent necessary to permit the use of Escrowed Cash Collateral pursuant to the terms
17 of this Supplemental Cash Collateral Order. The scope, validity, perfection, priority, and the
18 amount of the Supplemental Cash Collateral Lien shall not now, and shall not become, the subject
19 of any Challenge within the meaning of paragraph 5 of the Final DIP Order.

20 **6. Budget Maintenance.** The use of Escrowed Cash Collateral shall be subject to,
21 and in accordance with, the terms and conditions of the Cash Collateral Budget. The Cash
22 Collateral Budget attached as Exhibit "1" to the Declaration of Anita Chou has been approved by
23 the Prepetition Lenders. Following entry of the Supplemental Cash Collateral Order, the Cash
24 Collateral Budget may be modified by the Debtors by giving the Prepetition Secured Creditors at
25 least five (5) business days written notice of the proposed modification, which modification shall
26 be deemed approved unless objected to by one or more of the Prepetition Secured Creditors. Any
27

1 modified Cash Collateral Budget shall be delivered to counsel for the Committee and the U.S.
2 Trustee no later than three (3) business days prior to the effective date of such modified Cash
3 Collateral Budget.

4 **7. Modification of Carve Out.** Paragraph 16 of Final DIP Order is modified in its
5 entirety as follows: “The Prepetition Liens, the Prepetition Replacement Liens, and the Prepetition
6 Superpriority Claims are subordinate only to the following (collectively, the “Carve Out”):

7
8 (a) all fees required to be paid to the clerk of the Bankruptcy Court and to the Office
9 of the United States Trustee under § 1930(a) of title 28 of the United States Code plus
10 interest, if any, at the statutory rate (without regard to the notice set forth in (c) below);

11 (b) to the extent allowed at any time, whether by interim order, procedural order or
12 otherwise, all allowed claims for unpaid fees, costs and expenses incurred by persons or
13 firms retained by the Debtors or the Committee if any, whose retention is approved by the
14 Bankruptcy Court pursuant to any one or more of §§ 327, 363, and 1103 (“Estate
15 Professionals”), to the extent such claims for fees, costs and expenses are (i) allowed by
16 the Bankruptcy Court pursuant to a final order at any time, and (ii) in accordance with, and
17 solely up to the total respective amounts set forth in, the Cash Collateral Budget for the
18 applicable timeframe prior to the Debtors’ receipt of a Carve Out Trigger Notice (the
19 “*Carve-Out Expenses*”); provided that the aggregate amount of such Carve-Out Expenses
20 shall (not exceed (i) \$3,000,000 with respect to persons or firms retained by the Debtors,
21 and (ii) \$300,000 with respect to persons or firms retained by the Creditors’ Committee
22 (collectively, the “*Carve-Out Amount*”). Any payment or reimbursement made after the
23 Carve Out Trigger Date in respect of any Carve-Out Expenses shall permanently reduce
24 the Carve-Out Amount on a dollar-for-dollar basis. The Debtors also shall be permitted to
25 use Cash Collateral after the Carve Out Trigger Date on account of Pre-Trigger Date
26 services by Estate Professionals that appear in the Cash Collateral Budget and for which
27

1 fee applications have been timely made and allowed by the Court, which use shall not
2 reduce the Carve Out Amount.

3 (c) Upon the occurrence of the Termination Date (as defined herein), any one or more
4 of the Prepetition Secured Creditors may give notice to the Debtors that the Carve Out
5 Trigger Date has occurred (the "*Carve Out Trigger Notice*").
6

7 **8. Financial Reporting.** The Debtors shall provide the same financial reporting to
8 each of the Prepetition Secured Creditors as they were required to provide to the DIP Agent and
9 the DIP Lender pursuant to the terms of the DIP Credit Agreement as in existence immediately
10 prior to the date of the payment of the Payoff Amount. The Debtors shall continue to provide the
11 Committee and the U.S. Trustee all information required by the Final DIP Order.

12 **9. Postpetition Lien Perfection.** This Supplemental Cash Collateral Order shall be
13 sufficient and conclusive evidence of the validity, perfection and priority of the Supplemental Cash
14 Collateral Lien without the necessity of any filing or recording of any financing statement, deeds
15 of trust, mortgages, or other instruments or documents which may otherwise be required under the
16 law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt,
17 entering into any deposit account control agreement or obtaining possession of any possessory
18 collateral) to validate or perfect the Supplemental Cash Collateral Lien, or to entitle the
19 Supplemental Cash Collateral Lien the priority granted herein.
20

21 **10. Payment of Compensation.** Nothing herein shall be construed as consent to the
22 allowance of any professional fees or expenses of any of the Debtors or the Committee or shall
23 affect the right of the Prepetition Secured Creditors to object to the allowance and payment of such
24 fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Cash
25 Collateral Budget. In addition, except as expressly set forth herein, nothing contained herein shall
26 be deemed to be a consent or authorization to use Cash Collateral, including Escrowed Cash
27

1 Collateral, for any purpose that is restricted, prohibited or limited by the terms of the Final DIP
2 Order, all of which restrictions, prohibitions and limitations shall continue and shall be applicable
3 to the Cash Collateral, including Escrowed Cash Collateral.

4 **11. Section 506(c) Claims; Equities of the Case.** Nothing contained in this
5 Supplemental Cash Collateral Order shall be deemed a consent by any Prepetition Secured
6 Creditor to any charge, lien, assessment or claim against the Escrowed Cash Collateral under
7 § 506(c) or otherwise. The “equities of the case” exception under § 552(b) and surcharge powers
8 under § 506(c) are waived as to the Prepetition Secured Creditors and all pre and postpetition
9 collateral securing their respective claims.

10 **12. Termination Date.** Debtors’ authority to use the Escrowed Cash Collateral shall
11 cease on the date (the “**Termination Date**”) that is the earliest to occur of: (i) December 31, 2019;
12 (ii) the date of any stay, revocation, reversal, amendment or other modification, in whole or in part,
13 of the Final DIP Order or this Supplemental Cash Collateral Order; (iii) the occurrence of an Event
14 of Default (as defined below); (iv) the substantial consummation (as defined in Section 1101 of
15 the Bankruptcy Code and which for purposes hereof shall be no later than the “*effective date*”) of
16 a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered
17 by the Court; and (v) the date the Court orders the conversion of the Chapter 11 Cases to a Chapter
18 7 liquidation or the dismissal of the Chapter 11 Cases or the appointment of a trustee or examiner
19 with expanded power in the Chapter 11 Cases.

20 **13. Events of Default.** The occurrence of the following shall constitute an event of
21 default (an “**Event of Default**”) under this Supplemental Cash Collateral Order, unless expressly
22 waived in writing by the Prepetition Secured Creditors:
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- 24
25 (i) the failure of the Debtors to be in compliance with any term or provision of
26 this Supplemental Cash Collateral Order or the Final DIP Order, including,
27 without limitation, the failure of the Debtors to make any payments to the
28 Prepetition Secured Creditors as required by the Final DIP Order, and the
failure of the Debtors to be in compliance with the Cash Collateral Budget;

- 1 (ii) the failure of the Debtors to (x) file a plan of reorganization by September
2 15, 2019; (y) confirm such plan of reorganization by December 15, 2019;
3 and (z) failure of such plan of reorganization to become effective by
4 December 31, 2019;
- 5 (iii) the amendment or other modification of this Supplemental Cash Collateral
6 Order in any respect, in whole or in part,;
- 7 (iv) the termination of that certain Asset Purchase Agreement by and among
8 Verity Health System of California, Inc. Verity Holdings, LLC, St. Francis
9 Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center,
10 Inc., Seton Medical Center, and Strategic Global Management, Inc., dated
11 January 8, 2019 (the “*SGM APA*”);
- 12 (v) the dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to
13 a chapter 7 case, or suspension of the Chapter 11 Case under section 305 of
14 the Bankruptcy Code;
- 15 (vi) in the event of a closing pursuant to the SGM APA, solely to the extent
16 necessary to avoid an adverse determination of taxability as to the holders
17 of (x) the 2005 Bonds, (y) the 2015 Working Capital Notes or (z) the 2017
18 Working Capital Notes, failure of the Debtors to timely defease such Bonds
19 or Working Capital Notes; and
- 20 (vii) any event that would constitute an Event of Default under Section 9.1(q) of
21 the of the DIP Credit Agreement, excluding therefrom items 9.1(q) (i), (vi),
22 (viii),(xv), (xviii) and (xxi).

23 **14. Rights and Remedies Upon Termination Date.**

24 (a) Upon the occurrence of a Termination Date, (i) the Debtors’ ability to
25 withdraw Escrowed Cash Collateral from the VHS-Disbursement Account and utilize such
26 Escrowed Cash Collateral shall immediately terminate without further order of the Court, and (ii)
27 any one or more of the Prepetition Secured Creditors may move the Court for relief from the
28 automatic stay (the “Relief from Stay Motion”), on not less than five (5) days’ notice, to exercise
rights and remedies under this Supplemental Cash Collateral Order, the Final DIP Order and the
Prepetition Secured Documents, and any other Prepetition Secured Creditor may support or object
to such motion. Nothing in this paragraph shall preclude or affect (i) the Debtors’ right to file an
emergency motion requesting further use of cash collateral, and (ii) the rights of the Debtors, the
Committee or other interested parties from opposing the Relief from Stay Motion.

1 (b) Nothing included herein shall prejudice, impair, or otherwise affect the
2 Prepetition Secured Creditors' rights to seek any other or supplemental relief in respect of the
3 Prepetition Secured Creditors' rights, as provided in the Prepetition Secured Documents.

4 **15. Cross Default with Final DIP Order.** The Final DIP Order is hereby amended to
5 provide that the occurrence of the Termination Date under this Supplemental Cash Collateral Order
6 shall constitute a "Scheduled Termination Date" under the Final DIP Order.

7
8 **16. Limitation on Lender Liability.** Nothing in this Supplemental Cash Collateral
9 Order shall in any way be construed or interpreted to impose or allow the imposition upon the
10 Prepetition Secured Creditors of any liability for any claims arising from any activities by the
11 Debtors in the operation of their businesses or in connection with the administration of these
12 Chapter 11 Cases. The Prepetition Secured Creditors shall not be deemed in control of the
13 operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with
14 respect to the operation or management of the Debtors (as such terms, or any similar terms, are
15 used in the United States Comprehensive Environmental Response, Compensation and Liability
16 Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute). Nothing in this
17 Supplemental Cash Collateral Order shall in any way be construed or interpreted to impose or
18 allow the imposition upon any of the Prepetition Secured Creditors of any liability for any claims
19 arising from the prepetition or postpetition activities of any of the Debtors.

20 **17. Continued Applicability of Final DIP Order.** This Supplemental Cash Collateral
21 Order supplements, is in addition to, and does not replace the Final DIP Order, and nothing
22 contained herein shall constitute a release, termination, suspension, replacement, substitution or
23 modification of the Final DIP Order except as expressly provided herein, including, without
24 limitation, all findings of fact and conclusions of law contained in the Final DIP Order, the granting
25 of all adequate protection to the Prepetition Secured Creditors in the Final DIP Order, the granting
26 of Prepetition Replacement Liens, Supplemental Liens and administrative claims, the stipulations,
27

1 waivers and releases by the Debtors, and the obligation of the Debtors to make Prepetition
2 Adequate Protection Payments, all of which shall continue in full force and effect. The Final DIP
3 Order shall apply to the Escrowed Cash Collateral and, except as modified by this Supplemental
4 Cash Collateral Order, to the use thereof by the Debtors; and the Supplemental Adequate
5 Protection provided to the Prepetition Secured Creditors herein with respect to the Escrowed Cash
6 Collateral shall be in addition to, and not in substitution or replacement for, the Adequate
7 Protection provided to the Prepetition Secured Creditors with respect to the Escrowed Cash
8 Collateral in the Final DIP Order.

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10 **18. Binding Effect.** The provisions of this Supplemental Cash Collateral Order shall
11 be binding upon the Debtors, the Prepetition Secured Creditors, the Committee, all other Parties
12 in Interest, and all creditors, and each of their respective successors and assigns (including any
13 trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with
14 respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any
15 Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case.

16 **19. No Waiver.** The failure of any Prepetition Secured Creditor to seek relief or
17 otherwise exercise its rights and remedies under this Supplemental Cash Collateral Order or
18 otherwise, as applicable, shall not constitute a waiver of the Prepetition Secured Creditor's rights
19 hereunder. The entry of this Supplemental Cash Collateral Order is without prejudice to, and does
20 not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights of the
21 Prepetition Secured Creditors under the Bankruptcy Code or under non-bankruptcy law, including
22 without limitation, the rights of the Prepetition Secured Creditors to (i) request conversion of the
23 Chapter 11 Cases to cases under Chapter 7, dismissal of the Chapter 11 Cases, or the appointment
24 of a trustee in the Chapter 11 Cases, (ii) propose, subject to the provisions of section 1121 of the
25 Bankruptcy Code, a plan of reorganization, or (iii) exercise any of the rights, claims or privileges
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1 (whether legal, equitable or otherwise) the Prepetition Secured Creditor may have pursuant to this
2 Supplemental Cash Collateral Order, or applicable law.

3 **20. No Third Party Rights.** Except as explicitly provided for herein, this
4 Supplemental Cash Collateral Order does not create any rights for the benefit of any third party,
5 creditor, equity holder or any direct, indirect, or incidental beneficiary.

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7 **21. No Marshaling.** The Prepetition Secured Creditors shall not be subject to the
8 equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the
9 Prepetition Collateral or the Postpetition Collateral.

10 **22. Survival of Supplemental Cash Collateral Order.** The provisions of this
11 Supplemental Cash Collateral Order and any actions taken pursuant hereto shall survive entry of
12 any order in these Chapter 11 Cases, including, without limitation, an order (i) confirming any
13 Plan in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter
14 7 of the Bankruptcy Code or any Successor Cases, (iii) to the extent authorized by applicable law,
15 dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter
16 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction
17 of any of the Chapter 11 Cases in this Court. The terms and provisions of this Supplemental Cash
18 Collateral Order, including any protections granted to the Prepetition Secured Creditors, shall
19 continue in full force and effect notwithstanding the entry of such order, and such protections for
20 the Prepetition Secured Creditors shall maintain their priority as provided in this Supplemental
21 Cash Collateral Order until all the obligations of the Debtors to the Prepetition Secured Creditors
22 have been discharged.

23
24 **23. Enforceability.** This Cash Collateral Order shall constitute findings of fact and
25 conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect immediately upon
26 entry of this Supplemental Cash Collateral Order. Notwithstanding Bankruptcy Rules 4001(a)(3),
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1 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this
2 Supplemental Cash Collateral Order shall be immediately effective and enforceable upon its entry
3 and there shall be no stay of execution or effectiveness of this Supplemental Cash Collateral Order.

4 **24. No Waivers or Modification.** Except as expressly provided in this
5 Supplemental Cash Collateral Order or the Final DIP Order, nothing herein shall alter any rights,
6 claims, entitlements or defenses of the Debtors, the Prepetition Secured Creditors or the
7 Committee, including any timely Challenges as defined in the Final DIP Order.
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