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7 *Unsecured Creditors of Verity Health System of*
8 *California, Inc., et al.*

9 **UNITED STATES BANKRUPTCY COURT**
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 Possession.

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

Debtors and Debtors In Possession.

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

Chapter 11 Cases

Hon. Ernest M. Robles

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS’ RESPONSE
TO THE DEBTORS’ MOTION
FOR ENTRY OF AN ORDER
(A) AUTHORIZING THE DEBTORS TO
USE CASH COLLATERAL AND
(B) GRANTING ADEQUATE
PROTECTION TO PREPETITION
SECURED CREDITORS [DKT. 2968]**

Hearing:

Date: September 6, 2019

Time: 10:00 a.m.

Location: Courtroom 1568



1 The Official Committee of Unsecured Creditors of Verity Health System of California, Inc.,
2 *et al.* (the “Committee”), appointed in connection with the chapter 11 cases of the above-captioned
3 debtors and debtors-in-possession (the “Debtors”), hereby submits this response to the Debtors’
4 *Motion for Entry of an Order (A) Authorizing the Debtors to Use Cash Collateral and (B) Granting*
5 *Adequate Protection to Prepetition Secured Creditors* (the “Motion”) [Docket No. 2968], which seeks
6 the entry of supplemental order authorizing the Debtors’ use of cash collateral (the “Supplemental
7 Cash Collateral Order”), on terms that are different from the use of cash collateral granted to the
8 Debtors under the Final DIP Order.¹

9 The Committee supports the Debtors’ proposed use of cash collateral on the terms set forth in
10 the Supplemental Cash Collateral Order, given the anticipated financial savings of using the proceeds
11 of asset sales in lieu of a debtor-in-possession loan, subject to a few clarifications:

12 1. The proposed Supplemental Cash Collateral Order should not eliminate or reduce any
13 of the Committee’s investigation and challenge rights set forth in the Final DIP Order, as such rights
14 may have been extended from time to time. The Committee believes that the order should make that
15 absolutely clear.

16 2. Since the Final DIP Order was entered, the Committee has determined that the secured
17 creditors did not have deposit account control agreements (commonly known as DACAs) covering
18 approximately \$71 million held in the Debtors’ deposit accounts as of the petition date. As such, the
19 secured creditors were not properly perfected in those assets, except to the extent that some of those
20 funds may constitute identifiable cash proceeds of collateral. The Committee also contends that
21 postpetition Quality Assurance Fee (“QAF”) payments, arising as a result of the Debtors’ postpetition
22 operations, do not constitute proceeds of the secured creditors’ prepetition collateral. Those
23 postpetition QAF payments are expected to total approximately \$82 million based on the Debtors’
24 continuing operations. Likewise, the secured creditors, although having a lien on much of the Debtors’
25 assets, do not have a lien on the going concern premium to be recognized from the sale of the Debtors’
26 business as a going concern, with such value being generated in large measure by the hard work of the
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¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 management, doctors, nurses, and other employees of the Debtors. (Of course, the secured creditors
2 contend otherwise).

3 3. The Committee has commenced adversary actions regarding these and other matters,
4 and the parties are going to mediation on September 9, 2019, before the Honorable Judge Barash. Out
5 of an abundance of caution, and because the proposed Supplemental Cash Collateral Order states that
6 the secured creditors have liens on substantially all of the Debtors' assets, the Committee wants to
7 ensure that the Supplemental Cash Collateral Order does not adversely affect those adversary actions
8 or arguments.

9 4. Nor should the proposed Supplemental Cash Collateral Order affect the Committee's
10 pending appeal of the section 506 and section 552 waivers set forth in the Final Dip Order or this
11 Court's ability to revisit that decision as needed. Among other things, the Debtors sought those
12 waivers without presenting a full, accurate factual record (such as the extent of liens, the lack of
13 DACAs) and granted those waivers to induce the secured creditors to support use of cash collateral
14 and a priming DIP Loan even though: (a) the Debtors contended that the secured creditors were
15 oversecured, such that their consent was not needed; and (b) the secured creditors had no choice but
16 to consent to the use of cash collateral and the priming DIP Loan if they wanted to unlock the going
17 concern value of their collateral. Without the use of cash collateral and the DIP Loan, the secured
18 creditors would, at best, recognize only the liquidation value of their collateral less the significant
19 winding down cost of caring for and moving patients.

20 5. The matter is presently on appeal to the Ninth Circuit, and the proposed Supplemental
21 Cash Collateral Order, which reiterates those waivers, should not affect the Committee's prosecution
22 of the appeal or this Court's ability to revisit the issue as appropriate.

23 Based on the foregoing, the Committee supports the Motion so long as the Supplemental Cash
24 Collateral Order expressly preserves the Committee's challenge rights set forth in the Final DIP Order,
25 the Committee's appeal of the Final DIP Order, and this Court's ability to reconsider the section 506
26 and section 552 waivers (to the extent appropriate).

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DATED: September 4, 2019

MILBANK LLP

/s/ Mark Shinderman
GREGORY A. BRAY
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JAMES C. BEHRENS

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