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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' REPLY TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' RESPONSE TO MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL AND (B) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED CREDITORS**

[RELATES TO DOCKET NOS. 2962 & 3000]

Hearing:

Date: September 6, 2019  
Time: 10:00 a.m.  
Location: Courtroom 1568

255 East Temple Street  
Los Angeles, California 90012-3300



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1 Verity Health System of California, Inc. and the above-referenced affiliated entities, the  
2 debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11  
3 bankruptcy cases, hereby submit this reply to the response [Docket No. 3000] filed by the Official  
4 Committee of Unsecured Creditors (the “Committee”) to the Debtors’ motion (the “Motion”) for  
5 entry of an order, pursuant to Local Bankruptcy Rule 4001-2 and 11 U.S.C. §§ 105(a), 361, 362,  
6 363: (i) authorizing (a) use of cash collateral, (b) granting liens on postpetition accounts and  
7 inventory as adequate protection to prepetition secured parties, and (c) authorizing the Debtors to  
8 pay off the existing debtor in possession financing (the “DIP Financing”); and (ii) granting the  
9 Debtors such other and further relief as is necessary, as follows:

10 **I.**

11 **THE SUPPLEMENTAL CASH COLLATERAL ORDER**

12 As fully set forth in the Motion, the Debtors and their prepetition secured creditors (the  
13 “Secured Creditors”) have reached an agreement regarding the consensual use of cash collateral  
14 (the “Cash Collateral Agreement”), which significantly benefits the Debtors’ estates and creditors.  
15 Specifically, the Cash Collateral Agreement (i) allows the Debtors to continue to operate their  
16 hospitals and provide essential patient care without disruption, and (ii) avoids new financing fees  
17 estimated at approximately \$3 million through the end of October 2019 and \$5 million through the  
18 end of 2019 (based on the financing proposal the Debtors received from their existing DIP lender,  
19 Ally Bank).

20 The Committee states that it “supports the Debtors’ proposed use of cash collateral on the  
21 terms set forth in the Supplemental Cash Collateral Order, given the anticipated financial savings  
22 of using the proceeds of asset sales in lieu of a debtor-in-possession loan.” Response, at 2. The  
23 Committee then conditions its support “so long as the Supplemental Cash Collateral Order  
24 expressly preserves the Committee’s challenge rights set forth in the Final DIP Order, the  
25 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).” Committee’s Response, at 3.

27 The Committee recognizes the clear economic benefits of the Cash Collateral Agreement,  
28 but nonetheless is explicitly withholding its support for the Debtors’ Motion and the Cash Collateral

1 Agreement unless the proposed Supplemental Cash Collateral Order is modified. The Committee  
2 appears to seek the addition of specific language related to (a) its challenge rights under the Final  
3 DIP Order and (b) its appeal of the Final DIP Order (currently at the Ninth Circuit Court of  
4 Appeals). However, (i) the proposed Supplemental Cash Collateral Order already preserves those  
5 timely Challenges under ¶ 5(e) of the Final DIP Order, and (ii) the Committee’s language regarding  
6 its appeal stretches this Court’s jurisdiction to a breaking point, particularly since the District Court  
7 dismissed the Committee’s appeal as moot.

8 A careful review of the language that the Committee requests be inserted into the  
9 Supplemental Cash Collateral Order and the Debtors responses thereto (in italics) is instructive:

- 10 • The Committee “supports the Motion so long as the Supplemental Cash Collateral Order  
11 expressly preserves the Committee’s challenge rights set forth in the Final DIP Order.” *The*  
12 *Supplemental Cash Collateral Order expressly preserves the Committee’s challenge to the*  
13 *Secured Creditors’ prepetition liens under the Final DIP Order. See Docket No. 2962,*  
14 *Exhibit 2, Agreed Supplemental Cash Collateral Order, at 24, ¶ 24.<sup>1</sup>*
- 15 • The Committee “supports the Motion so long as the Supplemental Cash Collateral Order  
16 expressly preserves [...] the Committee’s appeal of the Final DIP Order.” *As this Court*  
17 *would be the first to observe, appellate rules govern whether parties have properly*  
18 *preserved and/or perfected an appeal. A bankruptcy court cannot interpret, modify or*  
19 *interfere with the Ninth Circuit’s interpretation or application of the appellate rules in*  
20 *connection with the Committee’s appeal of the Final DIP Order. Further, neither the*  
21 *Debtors or the Secured Creditors have any desire to suggest to this Court that an appeal*  
22 *from the Final DIP Order is not in fact moot as found by the District Court. See Docket*  
23 *No. 2847.*

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25 <sup>1</sup> “**No Waivers or Modification.** Except as expressly provided in this Supplemental Cash  
26 Collateral Order or the Final DIP Order, nothing herein shall alter any rights, claims, entitlements  
27 or defenses of the Debtors, the Prepetition Secured Creditors or the Committee, including any  
28 timely Challenges as defined in the Final DIP Order.”

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- 1 • The Committee “supports the Motion so long as the Supplemental Cash Collateral Order  
2 expressly preserves [...] this Court’s ability to reconsider the section 506 and section 552  
3 waivers (to the extent appropriate).” *The Committee’s requested language creates a*  
4 *jurisdictional swamp. The Supplemental Cash Collateral Order cannot expressly preserve*  
5 *the Bankruptcy Court’s ability to reconsider issues that the District Court ruled are moot.*  
6 *To the extent that the Committee is inviting review of something that the District Court ruled*  
7 *is moot, the Bankruptcy Court has no jurisdiction to do it because the Ninth Circuit has*  
8 *jurisdiction over the appeal. See, e.g., Matter of Thorp, 655 F.2d 997, 998 (9th Cir. 1991)*  
9 *(“When a proper notice of appeal has been timely filed, the general rule is that jurisdiction*  
10 *over any matters involved in the appeal is immediately transferred from the district court*  
11 *to the court of appeals.”). Further, on a more fundamental level, the Supplemental Cash*  
12 *Collateral Order should not be used a mechanism to enhance the record on appeal for the*  
13 *Committee.*

14 Based upon the foregoing, the Debtors respectfully requests that the Court reject the  
15 Committee’s request for any additional language in Supplemental Cash Collateral Order and  
16 instead enter the Supplemental Cash Collateral Order in the form attached as Exhibit 2 to the  
17 Motion.

## 18 II.

### 19 CONCLUSION

20 Accordingly, the Debtors respectfully request that the Court grant the Motion and enter the  
21 Supplemental Cash Collateral Order.

22 Dated: September 5, 2019

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28 Debtors In Possession