

1 GREGORY A. BRAY (Bar No. 115367)  
gbray@milbank.com  
2 MARK SHINDERMAN (Bar No. 136644)  
mshinderman@milbank.com  
3 JAMES C. BEHRENS (Bar No. 280365)  
jbehrens@milbank.com  
4 MILBANK LLP  
2029 Century Park East, 33rd Floor  
5 Los Angeles, CA 90067  
Telephone: (424) 386-4000/Facsimile: (213) 629-5063

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7 *Counsel for the Official Committee of  
Unsecured Creditors of Verity Health System of  
California, Inc., et al.*

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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  
15 **Affects:**

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

**OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS’ OMNIBUS REPLY TO  
RESPONSES TO THE COMMITTEE’S  
CASH COLLATERAL OBJECTION**

**[RELATES TO DOCKET NOS. 4225  
AND 4226]**

Hearing:

Date: March 11, 2020  
Time: 10:00 a.m.  
Location: Courtroom 1568  
255 E. Temple St.,  
Los Angeles, CA



1 Pursuant to the Court’s *Order Setting Hearing on Official Committee of Unsecured Creditors’*  
2 *Objection to Third Amended Cash Collateral Stipulation* [Docket No. 4200] regarding the *Stipulation*  
3 *to (A) Amend the Second Supplemental Cash Collateral Order, (B) Authorize Continued Use of Cash*  
4 *Collateral, (C) Grant Adequate Protection, (D) Modify Automatic Stay, and (E) Grant Related Relief*  
5 (the “Third Amended Cash Collateral Stipulation”) [Docket No. 4184], the Committee<sup>1</sup> hereby files  
6 this reply (the “Reply”) to the responses of the Prepetition Secured Creditors [Docket No. 4225] and  
7 the Debtors [Docket No. 4226] (collectively, the “Responses”) to the Committee’s objection (the  
8 “Objection”) [Docket No. 4199].

9 **REPLY**

10 1. Both Responses implicitly concede that there is uncertainty as to whether  
11 administrative claims that accrue but do not become payable during the budget period will be paid.  
12 (*See, e.g.*, Debtors’ Response at 7 and Prepetition Secured Creditors’ Response at 3, 8.) However,  
13 nowhere in the Third Amended Cash Collateral Stipulation did the Debtors and Prepetition Secured  
14 Creditors inform the Court and parties in interest that administrative claims might not be paid.

15 2. To be clear, the Committee does not dispute the Prepetition Secured Creditors’ ability  
16 to consent or not consent to the Debtors’ proposed use of cash collateral. Where the Committee has  
17 an issue is with the Debtors’ failure to propose a budget that provides for the payment of all  
18 administrative claims the Debtors will incur.

19 3. It is axiomatic that a debtor should not incur debts that it cannot pay. A debtor in  
20 possession has a fiduciary duty to operate the debtors’ business prudently and with a view to its  
21 available resources. *See In re Signature Apparel Group LLC.*, 577 B.R. 54, 56 (Bankr. S.D.N.Y. 2017)  
22 (a debtor in possession has “duty of care” that requires that it “use that amount of care which ordinarily  
23 careful and prudent men would use in similar circumstances and consider all material information  
24 reasonably available in making business decisions”). Any failure by the debtor to do so by, for  
25 example, incurring administrative debt it could never pay would, a minimum, be cause for conversion  
26 of the case under section 1112(b). *See In re W. Pac. Airlines, Inc.*, 218 B.R. 590, 594 (Bankr. D. Colo.  
27

28 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Third Amended Cash Collateral Stipulation.

1 1998) (finding that “cause” for conversion under section 1112 had been shown where “the Debtor  
2 [was] continuing to incur significant administrative expenses with no assurance of payment to  
3 administrative claimants”); *In re Gateway Access Sols., Inc.*, 374 B.R. 556, 564 (Bankr. M.D. Pa.  
4 2007) (“Negative cash flow and an inability to pay current expenses as they come due can satisfy the  
5 continuing loss or diminution of the estate standard for purposes of § 1112(b).”).

6 4. While it is true that the choice of whether to permit the use of cash collateral belongs  
7 to the Prepetition Secured Creditors, the decision as to which administrative creditors can be paid does  
8 not rest with the Prepetition Secured Creditors—any more than it rests with the Debtors, who are not  
9 permitted to pay “some, but not all” administrative claims. *See In re Nunzio’s Pizza, Inc.*, 202 B.R.  
10 159 (Bankr. D. N.M. 1996) (“In fairness to the administrative claimants, the trustee should not pay  
11 some of the not yet allowed claimants, but omit others.”). To the contrary, “the Bankruptcy Code’s  
12 scheme for allowance and priority [as to administrative claims] is very clearly set forth in the statute,”  
13 and neither the debtor nor a secured creditor is free to vary this scheme, by, for example, “fashion[ing]  
14 their own rules of super-priorities or sub-priorities within any given priority class,” and thereby permit  
15 payment of one administrative claim ahead of another. *In re Granada, Inc.*, 88 B.R. 369, 373 (Bankr.  
16 D. Utah 1988).

17 5. Thus, a debtor should not continue to operate if its secured creditor stipulated that its  
18 cash collateral could be used only to pay, say, 25% of all administrative claims or, likewise, provided  
19 only for the payment of certain claims while leaving other claimants uncompensated.<sup>2</sup> While a secured  
20 creditor can protect itself by having the right to revisit its consent for the use of cash collateral if the  
21 approved budget is exceeded, nothing in the Bankruptcy Code provides a secured creditor with the  
22 ability to pick and choose which claims to pay, in what amount, or at what time.

23 6. The Committee is rightly concerned that administrative creditors—such as the nurses,  
24 hospital workers, and medical groups providing postpetition services—should be paid their claims that  
25  
26

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27 <sup>2</sup> Despite the Prepetition Secured Creditors’ contention to the contrary (*see* Prepetition Secured Creditors’ Response at  
28 7, ft. nt. 7), the Committee is not trying to end run the limit on professional fees for investigating the extent, priority,  
and validity of the Prepetition Secured Creditors’ claim. The Committee’s Objection is and has always been about  
paying creditors that help unlock the value of the estate.

1 accrue postpetition.<sup>3</sup> The Debtors' giving these parties an administrative claim that may or may not  
2 be paid is not fair and just compensation for their work. This is especially true considering that (a)  
3 such creditors could not have simply stopped working due to their contractual (and ethical)  
4 commitments to the Debtors and (b) the Debtors' attempt to maximize value required the services of  
5 such creditors. *See In re Ridgeline Structures, Inc.*, 154 B.R. 831, 832–33 (Bankr. D.N.H. 1993) (“[I]n  
6 my judgment, [it] is just a matter of elementary fairness when an entity is operating under Court orders  
7 and people assume that if they supply goods and services they will have an administrative claim that  
8 will not simply be wiped out by the unilateral action of another party.”).

9 7. The Debtors' suggestion that parties other than the Prepetition Secured Creditors also  
10 may benefit from the Debtors' use of cash collateral (Debtors' Response at 2) is not a sufficient  
11 response to the concern about the cases being run for the benefit of the Prepetition Secured  
12 Creditors. Of course, money-losing operations must eventually cease, given the limited funding  
13 available, but such cessation certainly does not benefit employees, patients, or local  
14 communities. Stemming losses is important, but this would simply preserve the value of Debtors'  
15 assets—all of which constitute the Prepetition Secured Creditors' collateral according to the Debtors  
16 and the Prepetition Secured Creditors.<sup>4</sup>

17 8. The Committee's Objection is not a collateral attack on the Final DIP Order, as the  
18 Responses contend. (Debtors' Response at 8; Prepetition Secured Creditors' Response at 3-4, 8-9.)  
19 Rather, it is the Debtors' waiver of important estate rights in the Final DIP Order that necessitates the  
20 Committee's Objection. More specifically, because the Debtors waived the right to surcharge the  
21 Prepetition Secured Creditors' collateral, over the Committee's objection, the estates no longer have  
22 a way to bring in funds to compensate those creditors who provide value to the estates and/or provide  
23

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24 <sup>3</sup> The Debtors suggest that the Committee never suggested which administrative creditors were at risk of non-payment.  
25 Debtors' Response at ft. nt. 2. That simply is not true. The Committee clearly informed the Debtors that union  
26 employees who rendered services postpetition and thus accrued postpetition severance claims were at risk. Recently,  
27 the Debtors suggested that St. Vincent IPA be given an administrative claim but did not commit to paying that claim.  
28 *See the Debtors' Objection to St. Vincent IPA's Motion to Enforce Critical Vendor Agreement* [Docket No. 4214] at  
6, 7.

<sup>4</sup> The Committee has been mostly supportive of the Debtors' decisions regarding operations to date. And, indeed, the  
Committee appreciates that Debtors are mindful of their duties as a not-for-profit enterprise and, as such, that the  
Debtors continuously consider the impact on patient care and jobs. But, given the financial circumstances, those  
concerns give way to value preservation—and these other constituents are not necessarily the beneficiaries of value  
preservation.

1 an opportunity for the estates to maximize the value of the Prepetition Secured Creditors' collateral.  
2 It is precisely because this ability has been cut off that the Committee seeks to ensure that all allowed  
3 administrative claims can be paid. But for the waivers, the estates would have had the ability to seek  
4 to surcharge the Prepetition Secured Creditors' collateral to recover funds to pay such claims.

5 9. With regard to another argument raised by the Prepetition Secured Creditors, the  
6 Committee does not wish to terminate the Debtors' operations as the Prepetition Secured Creditors  
7 allege. (Prepetition Secured Creditors' Response at 1, 5.) Indeed, that threat is found only in the  
8 Prepetition Secured Creditors' Response. Stated differently, in their Response, the Prepetition Secured  
9 Creditors seem to be threatening to terminate the right to use cash collateral if asked to consent to a  
10 budget that provides for the payment of the administrative costs incurred in a bankruptcy process that  
11 helps them maximize the value of their collateral. Instead, the Prepetition Secured Creditors would  
12 have all postpetition creditors continue to provide value to the estate, but only compensate some of  
13 those creditors.

14 10. Of course, the Prepetition Secured Creditors do not really wish the Debtors to terminate  
15 operations. Were that to happen, the Prepetition Secured Creditors would fail to recognize significant  
16 value from their collateral. Indeed, the Prepetition Secured Creditors recognize the likelihood of  
17 "liquidation of...assets at fire sale prices" in that event. (Prepetition Secured Creditors' Response  
18 at 1.)

19 11. The Committee does not understand the vitriol found in both Responses. That the  
20 Committee did not object to the previous stipulation and budget is irrelevant. The Committee has  
21 made its concern about the potential non-payment of administrative claims known for some time.  
22 And, to be clear, the Committee did not object to the previous cash collateral stipulations because, at  
23 the time of those stipulations, it appeared that all claims would be paid in full—which is no longer the  
24 case. Recent pleadings filed by the unions underscore this concern.<sup>5</sup> (*See SEIU-UHW's Opposition*

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25  
26 <sup>5</sup> As for notice, Debtors provided the Committee with a draft of the proposed stipulation hours before filing it with the  
27 Court. The Committee immediately and timely sent Debtors an email indicating its objection. The Debtors did NOT  
28 respond to that email but, rather, went ahead and filed the Third Amended Cash Collateral Stipulation. The Third  
Amended Cash Collateral Stipulation did NOT indicate that the Committee had an objection as it should have.  
Notwithstanding this concern, the Committee would like the Court to understand that the Debtors are cooperating and  
consulting with the Committee on virtually all issues. Indeed, the Prepetition Secured Creditors, the Committee, and  
the Debtors all share the same ultimate goals and have been working efficiently together to promote common goals

1 to Debtors' Motion for Entry of an Order Amending Key Employee Incentive Plan and Key Employee  
2 Retention Plan [Docket No. 4202] at 5-7 and the California Nurses Association's Complaint for  
3 Damages, Civil Penalties, Attorneys Fees [Docket No. 4218] at 3, 11-13.) Besides the Debtors and  
4 Prepetition Secured Creditors chose not to operate under one stipulation or one budget but, rather, seek  
5 to refresh both. Regardless, situations change, thus prompting the Committee's Objection.

6 12. In addition to these points, the Committee notes that the Debtors have raised a question  
7 of the Committee's standing to challenge the Third Amended Cash Collateral Stipulation, albeit  
8 acknowledging the broad standing afforded a committee. (Debtors' Response at 6.) The Committee  
9 should be heard because the Debtors' failure to pay administrative claims would adversely affect the  
10 estate's ability to pay unsecured claims. The Committee also notes that the creditors the Committee  
11 is trying to protect by its Objection are unsecured creditors, not secured creditors. That such unsecured  
12 creditors are entitled to administrative priority does not change the unsecured nature of their claims.  
13 The Debtors' statement that the Court could appoint an administrative committee under section 1102  
14 (Debtors' Response at 6) supports the Committee's point. No one ever sees an administrative claims  
15 committee in a chapter 11 case because such claims are to be paid in full.

### 16 CONCLUSION

17 For all of the reasons set forth in the Committee's Objection and this Reply, the Committee  
18 respectfully requests that the Court not approve the Third Amended Cash Collateral Stipulation absent  
19 the commitment and funding to pay all allowed administrative claims in full.

20 DATED: March 8, 2020

MILBANK LLP

21 /s/ Mark Shinderman  
22 GREGORY A. BRAY  
23 MARK SHINDERMAN  
24 JAMES C. BEHRENS

25 Counsel for the Official Committee of  
26 Unsecured Creditors of Verity Health System of  
27 California, Inc., et al.

28 \_\_\_\_\_  
despite their differences on a few material items (such as the extent of liens, which dispute may be rendered moot as a  
result of SGM's breach, and the use of cash collateral/payment of administrative claims). Regardless of how the  
issue raised by the Committee's Objection is resolved, the Committee expects that such cooperation will continue.  
The Debtors' principals and counsel, as well as members of the Committee, have made it clear that they encourage  
such cooperation.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**2029 Century Park E, 33<sup>rd</sup> Floor, Los Angeles, CA 90067.**

A true and correct copy of the foregoing document entitled (*specify*): OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OMNIBUS REPLY TO RESPONSES TO THE COMMITTEE'S CASH COLLATERAL OBJECTION will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) March 8, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) March 8, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) March 8, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 8, 2020  
Date

James C. Behrens  
Printed Name

/s/ James C. Behrens  
Signature

**SERVICE LIST**

(Via NEF)

- **Alexandra Achamallah** aachamallah@milbank.com, rliubicic@milbank.com
- **Melinda Alonzo** ml7829@att.com
- **Robert N Amkraut** ramkraut@foxrothschild.com
- **Kyra E Andrassy** kandrassy@swelawfirm.com,  
lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- **Simon Aron** saron@wrslawyers.com
- **Lauren T Attard** lattard@bakerlaw.com, agrosso@bakerlaw.com
- **Allison R Axenrod** allison@claimsrecoveryllc.com
- **Richard T Baum** rickbaum@hotmail.com, rickbaum@ecf.inforuptcy.com
- **Cristina E Bautista** cristina.bautista@kattenlaw.com, ecf.lax.docket@kattenlaw.com
- **James Cornell Behrens** jbehrens@milbank.com,  
gbray@milbank.com;mshinderman@milbank.com;dodonnell@milbank.com;jbrewster@milbank.com;JWeber@  
milbank.com
- **Ron Bender** rb@lnbyb.com
- **Bruce Bennett** bbennett@jonesday.com
- **Peter J Benvenuti** pbenvenuti@kellerbenvenuti.com, pjbenven74@yahoo.com
- **Leslie A Berkoff** lberkoff@moritthock.com, hmay@moritthock.com
- **Steven M Berman** sberman@slk-law.com, mceriale@shumaker.com
- **Stephen F Biegenzahn** efile@sfblaw.com
- **Karl E Block** kblock@loeb.com, jvazquez@loeb.com;ladocket@loeb.com;kblock@ecf.courtdrive.com
- **Dustin P Branch** branchd@ballardspahr.com, carolod@ballardspahr.com;hubenb@ballardspahr.com
- **Michael D Breslauer** mbreslauer@swsslaw.com,  
wyones@swsslaw.com;mbreslauer@ecf.courtdrive.com;wyones@ecf.courtdrive.com
- **Chane Buck** cbuck@jonesday.com
- **Lori A Butler** butler.lori@pbgc.gov, efile@pbgc.gov
- **Howard Camhi** hcamhi@ecjlaw.com, tcastelli@ecjlaw.com;amatsuoka@ecjlaw.com
- **Barry A Chatz** barry.chatz@saul.com, jurate.medziak@saul.com
- **Shirley Cho** scho@pszjlaw.com
- **Shawn M Christianson** cmcintire@buchalter.com, schristianson@buchalter.com
- **Louis J. Cisz** lcisz@nixonpeabody.com, jzic@nixonpeabody.com
- **Leslie A Cohen** leslie@lesliecohenlaw.com, jaime@lesliecohenlaw.com;olivia@lesliecohenlaw.com
- **Marcus Colabianchi** mcolabianchi@duanemorris.com
- **Kevin Collins** kevin.collins@btlaw.com, Kathleen.lytle@btlaw.com
- **Joseph Corrigan** Bankruptcy2@ironmountain.com
- **David N Crapo** dcrapo@gibbonslaw.com, elrosen@gibbonslaw.com
- **Mariam Danielyan** md@danielyanlawoffice.com, danielyan.mar@gmail.com
- **Brian L Davidoff** bdavidoff@greenbergglusker.com,  
calendar@greenbergglusker.com;jking@greenbergglusker.com
- **Aaron Davis** aaron.davis@bryancave.com, kat.flaherty@bryancave.com
- **Lauren A Deeb** lauren.deeb@nelsonmullins.com, maria.domingo@nelsonmullins.com
- **Daniel Denny** ddenny@milbank.com
- **Anthony Dutra** adutra@hansonbridgett.com
- **Kevin M Eckhardt** kevin.eckhardt@gmail.com, keckhardt@hunton.com
- **Lei Lei Wang Ekvall** lekvall@swelawfirm.com,  
lgarrett@swelawfirm.com;gcruz@swelawfirm.com;jchung@swelawfirm.com
- **David K Eldan** david.eldan@doj.ca.gov, cynthia.gomez@doj.ca.gov
- **Andy J Epstein** taxcpaesq@gmail.com
- **Richard W Esterkin** richard.esterkin@morganlewis.com
- **Christine R Etheridge** christine.etheridge@ikonfin.com
- **M Douglas Flahaut** flahaut.douglas@arentfox.com



- **Michael G Fletcher** mfletcher@frandzel.com, sking@frandzel.com
- **Joseph D Frank** jfrank@fgllp.com, mmatlock@fgllp.com;csmith@fgllp.com;jkleinman@fgllp.com;csucic@fgllp.com
- **William B Freeman** bill.freeman@kattenlaw.com, nicole.jones@kattenlaw.com,ecf.lax.docket@kattenlaw.com
- **John-Patrick M Fritz** jpf@lnbyb.com, JPF.LNBYB@ecf.inforuptcy.com
- **Eric J Fromme** efromme@tocounsel.com, lchapman@tocounsel.com
- **Amir Gamliel** amir-gamliel-9554@ecf.pacerpro.com, cmallahi@perkinscoie.com;DocketLA@perkinscoie.com
- **Jeffrey K Garfinkle** jgarfinkle@buchalter.com, docket@buchalter.com;dcyrankowski@buchalter.com
- **Thomas M Geher** tmg@jmmb.com, bt@jmmb.com;fc3@jmmb.com;tmg@ecf.inforuptcy.com
- **Lawrence B Gill** lgill@nelsonhardiman.com, rrange@nelsonhardiman.com;ksherry@nelsonhardiman.com;mmarkwell@nelsonhardiman.com
- **Paul R. Glassman** pglassman@sycr.com
- **Matthew A Gold** courts@argopartners.net
- **Eric D Goldberg** eric.goldberg@dlapiper.com, eric-goldberg-1103@ecf.pacerpro.com
- **Marshall F Goldberg** mgoldberg@glassgoldberg.com, jbailey@glassgoldberg.com
- **Richard H Golubow** rgolubow@wghlawyers.com, pj@wghlaw.com;jmartinez@wghlawyers.com;Meir@virtualparalegalservices.com
- **David M. Guess** guessd@gtlaw.com
- **Anna Gumport** agumport@sidley.com
- **Melissa T Harris** harris.melissa@pbgc.gov, efile@pbgc.gov
- **James A Hayes** jhayes@zinserhayes.com, jhayes@jamesahayesapl.com
- **Michael S Held** mheld@jw.com
- **Lawrence J Hilton** lhilton@onellp.com, lthomas@onellp.com,info@onellp.com,rgolder@onellp.com,lhyska@onellp.com,nlichtenberger@onellp.com
- **Robert M Hirsh** rhirsh@lowenstein.com
- **Florice Hoffman** fhoffman@socal.rr.com, floricehoffman@gmail.com
- **Lee F Hoffman** leehoffmanjd@gmail.com, lee@fademlaw.com
- **Michael Hogue** hoguem@gtlaw.com, SFOLitDock@gtlaw.com;navarrom@gtlaw.com
- **Matthew B Holbrook** mholbrook@sheppardmullin.com, mmanns@sheppardmullin.com,amartin@sheppardmullin.com
- **David I Horowitz** david.horowitz@kirkland.com, keith.catuara@kirkland.com;terry.ellis@kirkland.com;elsa.banuelos@kirkland.com;ivon.granados@kirkland.com
- **Virginia Hoyt** scif.legal.bk@scif.com
- **Brian D Huben** hubenb@ballardspahr.com, carolod@ballardspahr.com
- **Joan Huh** joan.huh@cdtfa.ca.gov
- **Benjamin Ikuta** bikuta@hml.law
- **Lawrence A Jacobson** laj@cohenandjacobson.com
- **John Mark Jennings** johnmark.jennings@kutakrock.com, mary.clark@kutakrock.com
- **Monique D Jewett-Brewster** mjb@hopkinscarley.com, eamaro@hopkinscarley.com
- **Crystal Johnson** M46380@ATT.COM
- **Gregory R Jones** gjones@mwe.com, rnhunter@mwe.com
- **Jeff D Kahane** jkahane@duanemorris.com, dmartinez@duanemorris.com
- **Steven J Kahn** skahn@pszyjw.com
- **Cameo M Kaisler** salembier.cameo@pbgc.gov, efile@pbgc.gov
- **Ivan L Kallick** ikallick@manatt.com, ihernandez@manatt.com
- **Ori Katz** okatz@sheppardmullin.com, cshulman@sheppardmullin.com;ezisholtz@sheppardmullin.com;lsegura@sheppardmullin.com
- **Payam Khodadadi** pkhodadadi@mcguirewoods.com, dkiker@mcguirewoods.com
- **Christian T Kim** ckim@dumas-law.com, ckim@ecf.inforuptcy.com
- **Jane Kim** jkim@kellerbenvenuti.com
- **Monica Y Kim** myk@lnbrb.com, myk@ecf.inforuptcy.com

- **Gary E Klausner** gek@lnbyb.com
- **David A Klein** david.klein@kirkland.com
- **Nicholas A Koffroth** nick.koffroth@dentons.com, chris.omeara@dentons.com
- **Joseph A Kohanski** jkohanski@bushgottlieb.com, kprestegard@bushgottlieb.com
- **David S Kupetz** dkupetz@sulmeyerlaw.com, dperez@sulmeyerlaw.com;dperez@ecf.courtdrive.com;dkupetz@ecf.courtdrive.com
- **Jeffrey S Kwong** jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- **Darryl S Laddin** bkrfilings@agg.com
- **Robert S Lampl** advocate45@aol.com, rlisarobinsonr@aol.com
- **Richard A Lapping** richard@lappinglegal.com
- **Paul J Laurin** plaurin@btlaw.com, slmoore@btlaw.com;jboustani@btlaw.com
- **Nathaniel M Leeds** nathaniel@mitchelllawsf.com, sam@mitchelllawsf.com
- **David E Lemke** david.lemke@wallerlaw.com, chris.cronk@wallerlaw.com;Melissa.jones@wallerlaw.com;cathy.thomas@wallerlaw.com
- **Lisa Lenherr** llenherr@wendel.com, bankruptcy@wendel.com
- **Elan S Levey** elan.levy@usdoj.gov, tiffany.davenport@usdoj.gov
- **Kerri A Lyman** klyman@mwe.com, lbates@mwe.com
- **Tracy L Mainguy** bankruptcycourtnotices@unioncounsel.net, tmainguy@unioncounsel.net
- **Samuel R Maizel** samuel.maizel@dentons.com, alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
- **Alvin Mar** alvin.mar@usdoj.gov, dare.law@usdoj.gov
- **Craig G Margulies** Craig@MarguliesFaithlaw.com, Vicky@MarguliesFaithlaw.com;Helen@MarguliesFaithlaw.com;Angela@MarguliesFaithlaw.com
- **Hutchison B Meltzer** hutchison.meltzer@doj.ca.gov, Alicia.Berry@doj.ca.gov
- **John J Menchaca (TR)** jmenchaca@menchacacpa.com, ca87@ecfcbis.com;igaeta@menchacacpa.com
- **Christopher Minier** becky@ringstadlaw.com, arlene@ringstadlaw.com
- **John A Moe** john.moe@dentons.com, glenda.spratt@dentons.com
- **Susan I Montgomery** susan@simontgomerylaw.com, assistant@simontgomerylaw.com;simontgomerylawecf.com@gmail.com;montgomerysr71631@notify.bestcase.com
- **Monserrat Morales** Monsi@MarguliesFaithLaw.com, Vicky@MarguliesFaithLaw.com;Helen@marguliesfaithlaw.com;Angela@MarguliesFaithlaw.com
- **Kevin H Morse** kmorse@clarkhill.com, blambert@clarkhill.com
- **Marianne S Mortimer** mmartin@jmbm.com
- **Tania M Moyron** tania.moyron@dentons.com, chris.omeara@dentons.com;nick.koffroth@dentons.com;Sonia.martin@dentons.com;Isabella.hsu@dentons.com;lee.whidden@dentons.com;Jacqueline.whipple@dentons.com
- **Alan I Nahmias** anahmias@mbnlawyers.com, jdale@mbnlawyers.com
- **Akop J Nalbandyan** jnalbandyan@LNtriallawyers.com, cbautista@LNtriallawyers.com
- **Jennifer L Nassiri** jennifernassiri@quinnemanuel.com
- **Charles E Nelson** nelsonc@ballardspahr.com, wassweilerw@ballardspahr.com
- **Sheila Gropper Nelson** shedoesbklaw@aol.com
- **Mark A Neubauer** mneubauer@carltonfields.com, mlrodriguez@carltonfields.com;smcloughlin@carltonfields.com;schau@carltonfields.com;NDunn@carltonfields.com;ecfla@carltonfields.com
- **Fred Neufeld** fneufeld@sycr.com, tingman@sycr.com
- **Nancy Newman** nnewman@hansonbridgett.com, ajackson@hansonbridgett.com;calendarclerk@hansonbridgett.com
- **Bryan L Ngo** bngo@fortislaw.com, BNgo@bluecapitallaw.com;SPicariello@fortislaw.com;JNguyen@fortislaw.com;JNguyen@bluecapitallaw.com
- **Abigail V O'Brient** avobrient@mintz.com, docketing@mintz.com;DEHashimoto@mintz.com;nleali@mintz.com;ABLevin@mintz.com;GJLeon@mintz.com

- **John R OKeefe** jokeefe@metzlewis.com, slohr@metzlewis.com
- **Scott H Olson** solson@vedderprice.com, scott-olson-2161@ecf.pacerpro.com,ecfsfdocket@vedderprice.com,nortega@vedderprice.com
- **Giovanni Orantes** go@gobklaw.com, gorantes@orantes-law.com,cmh@gobklaw.com,gobklaw@gmail.com,go@ecf.inforuptcy.com;orantesgr89122@notify.bestcase.com
- **Keith C Owens** kowens@foxrothschild.com, khoang@foxrothschild.com
- **R Gibson Pagter** gibson@ppilawyers.com, ecf@ppilawyers.com;pagterr51779@notify.bestcase.com
- **Paul J Pascuzzi** ppascuzzi@ffwplaw.com
- **Lisa M Peters** lisa.peters@kutakrock.com, marybeth.brukner@kutakrock.com
- **Christopher J Petersen** cjpetersen@blankrome.com, gsolis@blankrome.com
- **Mark D Plevin** mplevin@crowell.com, cromo@crowell.com
- **Steven G. Polard** spolard@ch-law.com, calendar-lao@rmkb.com;melissa.tamura@rmkb.com;anthony.arriola@rmkb.com
- **David M Powlen** david.powlen@btlaw.com, pgroff@btlaw.com
- **Christopher E Prince** cprince@lesnickprince.com, jmack@lesnickprince.com;cprince@ecf.courtdrive.com
- **Lori L Purkey** bareham@purkeyandassociates.com
- **William M Rathbone** wrathbone@grsm.com, jmydlandevans@grsm.com;sdurazo@grsm.com
- **Jason M Reed** Jason.Reed@Maslon.com
- **Michael B Reynolds** mreynolds@swlaw.com, kcollins@swlaw.com
- **J. Alexandra Rhim** arhim@hrhlaw.com
- **Emily P Rich** erich@unioncounsel.net, bankruptcycourtnotices@unioncounsel.net
- **Robert A Rich** , candonian@huntonak.com
- **Lesley A Riis** lriis@dpmclaw.com
- **Debra Riley** driley@allenmatkins.com
- **Jason E Rios** jrios@ffwplaw.com
- **Julie H Rome-Banks** julie@bindermalter.com
- **Mary H Rose** mrose@buchalter.com
- **Gregory A Rougeau** grougeau@brlawssf.com
- **Megan A Rowe** mrowe@dsrhealthlaw.com, lwestoby@dsrhealthlaw.com
- **Nathan A Schultz** nschultz@goodwinlaw.com
- **Mark A Serlin** ms@swllplaw.com, mor@swllplaw.com
- **Seth B Shapiro** seth.shapiro@usdoj.gov
- **David B Shemano** dshemano@shemanolaw.com
- **Joseph Shickich** jshickich@riddellwilliams.com
- **Mark Shinderman** mshinderman@milbank.com, dmuhrez@milbank.com;dlbatie@milbank.com
- **Kyrsten Skogstad** kskogstad@calnurses.org, rcraven@calnurses.org
- **Michael St James** ecf@stjames-law.com
- **Andrew Still** astill@swlaw.com, kcollins@swlaw.com
- **Jason D Strabo** jstrabo@mwe.com, cfuraha@mwe.com
- **Sabrina L Streusand** Streusand@slollp.com
- **Ralph J Swanson** ralph.swanson@berliner.com, sabina.hall@berliner.com
- **Michael A Sweet** msweet@foxrothschild.com, swillis@foxrothschild.com;pbasa@foxrothschild.com
- **James M Toma** james.toma@doj.ca.gov, teresa.depaz@doj.ca.gov
- **Gary F Torrell** gtorrell@health-law.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov
- **Cecelia Valentine** cecelia.valentine@nlrb.gov
- **Jason Wallach** jwallach@ghplaw.com, g33404@notify.cincompass.com
- **Kenneth K Wang** kenneth.wang@doj.ca.gov, Jennifer.Kim@doj.ca.gov;Stacy.McKellar@doj.ca.gov;yesenia.caro@doj.ca.gov
- **Phillip K Wang** phillip.wang@rimonlaw.com, david.kline@rimonlaw.com
- **Sharon Z. Weiss** sharon.weiss@bclplaw.com, raul.morales@bclplaw.com
- **Adam G Wentland** awentland@tocounsel.com, lkwon@tocounsel.com
- **Latonia Williams** lwilliams@goodwin.com, bankruptcy@goodwin.com

- **Michael S Winsten** mike@winsten.com
- **Jeffrey C Wisler** jwisler@connollygallagher.com, dperkins@connollygallagher.com
- **Neal L Wolf** nwolf@hansonbridgett.com, calendarclerk@hansonbridgett.com, lchappell@hansonbridgett.com
- **Claire K Wu** ckwu@sulmeyerlaw.com,  
mviramontes@sulmeyerlaw.com;ckwu@ecf.courtdrive.com;ckwu@ecf.inforuptcy.com
- **Steven D Wyllie** steven.wyllie@nlrb.gov
- **Hatty K Yip** hatty.yip@usdoj.gov
- **Andrew J Ziaja** aziaja@leonardcarder.com,  
sgroff@leonardcarder.com;msimons@leonardcarder.com;lbadar@leonardcarder.com
- **Rose Zimmerman** rzimmerman@dalycity.org

**SERVICE LIST**  
(Via First Class Mail)

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

2040 E. Mariposa Avenue  
El Segundo, CA 90245

**Samuel R. Maizel**

Dentons US LLP  
601 South Figueroa Street  
Suite 2500  
Los Angeles, CA 90017

**SERVICE LIST**  
(Via Personal Delivery)

**The Honorable Ernest M. Robles**  
United States Bankruptcy Court  
Central District of California  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1560/Courtroom 1568  
Los Angeles, CA 90012-3300

**SERVICE LIST**

(Via Email)

**Attorneys for Chapter 11 Debtors and Debtors in Possession**

Samuel R. Maizel – [samuel.maizel@dentons.com](mailto:samuel.maizel@dentons.com)

John A. Moe, II – [john.moe@dentons.com](mailto:john.moe@dentons.com)

Tania M. Moyron – [tania.moyron@dentons.com](mailto:tania.moyron@dentons.com)

Nick Koffroth – [nick.koffroth@dentons.com](mailto:nick.koffroth@dentons.com)

**UMB Bank, N.A., c/o Mintz**

Daniel Bleck – [DSBleck@mintz.com](mailto:DSBleck@mintz.com)

Paul Ricotta – [PRicotta@mintz.com](mailto:PRicotta@mintz.com)

**Wells Fargo Bank, N.A., c/o Mintz**

Daniel Bleck – [DSBleck@mintz.com](mailto:DSBleck@mintz.com)

Paul Ricotta – [PRicotta@mintz.com](mailto:PRicotta@mintz.com)

**U.S. Bank, N.A., c/o Maslon LLP & McDermott Will & Emery**

Clark Whitmore – [clark.whitmore@maslon.com](mailto:clark.whitmore@maslon.com)

Nathan F. Coco – [ncoco@mwe.com](mailto:ncoco@mwe.com)

**MOB Financing, LLC and MOB Financing II, LLC c/o Jones Day**

Bruce Bennett – [bbennett@jonesday.com](mailto:bbennett@jonesday.com)

Benjamin Rosenblum – [brosenblum@jonesday.com](mailto:brosenblum@jonesday.com)

Peter S. Saba – [psaba@jonesday.com](mailto:psaba@jonesday.com)