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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION – LOS ANGELES

In re:

Verity Health System of California, Inc., *et al.*,[1]

Debtors and Debtors In Possession.

Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al.*,

Appellant,

v.

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

Appellee.

District Court Case Number:

2:18-cv-10675-RGK

Bankruptcy Court Lead Case Number:

2:18-bk-20151-ER

Adversary Case Number: N/A

APPELLANT OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF VERITY HEALTH SYSTEM OF CALIFORNIA, INC., ET AL.'S (I) STATEMENT REGARDING THE RESOLUTION OF A MOTION FOR RECONSIDERATION THAT HAD PREVENTED THIS APPEAL FROM PROCEEDING AND (II) REQUEST FOR BRIEFING SCHEDULE

[1] The other Debtors in the chapter 11 cases, being jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

Appellant, the Official Committee of Unsecured Creditors of Verity Health System of California, Inc., *et al*. (the "Committee") appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (the "Debtors"), hereby files this statement regarding the resolution of a motion for reconsideration that had prevented this appeal from proceeding, and in support thereof represents as follows:

STATEMENT

1. The subject of this appeal is the Bankruptcy Court's *Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Bankruptcy Dkt. No. 409] (the "Final DIP Order").

2. Subsequent to the Bankruptcy Court's entry of the Final DIP Order, creditor Swinerton Builders LLC ("Swinerton") filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Bankruptcy Dkt. No. 564] (the "Motion to Reconsider").

3. On November 29, 2018—after waiting almost two months for the Motion to Reconsider to be resolved—the Committee filed its *Notice of Appeal and Statement of Election* [Bankruptcy Dkt. No. 932], seeking to commence an appeal (the "Committee DIP Appeal") with respect to the Final DIP Order.

4. Pursuant to Federal Rule of Bankruptcy Procedure 8002(b)(2), the Committee's notice of appeal could not become effective, and this Court could not assume jurisdiction over the Committee DIP Appeal, until entry of an order resolving the Motion to Reconsider.

4. Pursuant to a stipulation [Bankruptcy Docket No. 1437] (a true and correct copy of which is attached hereto as Exhibit A), and the Bankruptcy Court's order thereon [Bankruptcy Docket No. 1457] (a true and correct copy of which is attached hereto as Exhibit B), the Motion to Reconsider has been resolved, and, accordingly, the Committee DIP Appeal may proceed.

CONCLUSION

WHEREFORE, the Committee respectfully requests that the District Court set a record and briefing schedule for this appeal.

Dated: February 7, 2019

MILBANK, TWEED, HADLEY & McCLOY LLP

By: /s/ *Gregory A. Bray*
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Attorneys for the Chapter 11 Debtors and Debtors In Possession

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

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*, Debtors and Debtors In Possession.	Lead Case No. 18-bk-20151-ER Jointly Administered With: Case No. 2:18-bk-20162-ER Case No. 2:18-bk-20163-ER Case No. 2:18-bk-20164-ER Case No. 2:18-bk-20165-ER Case No. 2:18-bk-20167-ER Case No. 2:18-bk-20168-ER Case No. 2:18-bk-20169-ER Case No. 2:18-bk-20171-ER Case No. 2:18-bk-20172-ER Case No. 2:18-bk-20173-ER Case No. 2:18-bk-20175-ER Case No. 2:18-bk-20176-ER Case No. 2:18-bk-20178-ER Case No. 2:18-bk-20179-ER Case No. 2:18-bk-20180-ER Case No. 2:18-bk-20181-ER Hon. Ernest M. Robles
☒ Affects All Debtors ☐ Affects Verity Health System of California, Inc. ☐ Affects O'Connor Hospital ☐ Affects Saint Louise Regional Hospital ☐ Affects St. Francis Medical Center ☐ Affects St. Vincent Medical Center ☐ Affects Seton Medical Center ☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose ASC, LLC Debtors and Debtors In Possession.	**STIPULATION BETWEEN DEBTORS AND SWINERTON BUILDERS, RESOLVING RULE 7052 MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […] [RELATED DOCKET NOS. 1315, 1306, 1280, 974, 968, 732, 564, 409, 392, 355, 309 AND 269]** [No Hearing Required Unless Requested - Local Bankruptcy Rule 9013-1(o)]

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This Stipulation is entered between Verity Health System Of California, Inc. ("VHS") and the above-referenced affiliated debtors, the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the "Debtors"), in the above-referenced jointly administered Chapter 11 bankruptcy cases, on the one hand, and Swinerton Builders ("Swinerton") on the other, with respect to the following:

1. On or about August 31, 2018, the Debtors filed their voluntary Chapter 11 petitions for relief under Title 11 of the United States Code (the "Bankruptcy Code").

2. On September 17, 2018, the Debtors filed and served their Notice of Hearing regarding Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors filed by Debtor Verity Health System of California, Inc.) [Docket No. 201] to which Swinerton objected on September 24, 2018 (the "Swinerton Objections")[Docket No. 269]

3. On October 3, 2018, the Court rendered its tentative ruling on the Debtors Emergency Motion For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant to 11 U.S.C. § 105,363,364,1107, And 1108 filed by Debtor Verity Health System of California, Inc.), (the "Tentative Ruling") [Docket 392] overruling the Swinerton Objections, at p. 12, and on October 4, 2018 entered its Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use Of Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, And (VI) Granting Related Relief and incorporating at p. 6, its Tentative Ruling (the "Final DIP Order") [Docket No. 409].

4. On October 17, 2018, Swinerton filed its *Motion Pursuant to Bankruptcy Rule 7052(b) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV), Granting Adequate Protection, (V) Modifying Automatic Stay,*

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and (VI) Granting Related Relief (Doc. 409) [Docket No. 564] (the "Swinerton Rule 7052 Motion").

5. On October 31, 2018, the Debtors filed their Objection to the Swinerton Rule 7052 Motion [Docket No. 732].

6. On November 13, 2018, Swinerton filed a Notice of Hearing [Docket No. 812] setting the Swinerton Rule 7052 Motion for hearing on December 4, 2018 at 10:00 a.m.

7. On November 28, 2018, the Court entered an order continuing the hearing on the Swinerton Rule 7052 Motion to December 5, 2018 at 10:00 a.m.

8. On December 3, 2018, in light of an expected sale of Seton Medical Center and the facility that is subject to Swinerton' s Lien, the Debtors and Swinerton filed a Stipulation to Continue Hearing (the "First Stipulation") [Docket No. 968].

9. On December 4, 2018, the Court approved the First Stipulation and entered an Order Approving Stipulation to Continue Hearing [Docket No. 974].

10. On January 18, 2019, the Parties filed a Second Stipulation to Continue Hearing [Docket No. 1280.]

11. On January 20, 2019, the Official Committee of Unsecured Creditors (the "Committee") objected to the hearing continuation that had been agreed pursuant to the Second Stipulation [Docket No. 1306], to which objection both the Debtors and Swinerton Builders responded on January 21, 2019, and January 22, 2019 [Docket Nos. 1311 and 1315, respectively]. Thereafter the Court required the parties to participate in a hearing.

12. On January 23, 2018, the Court held the hearing on the Swinerton Rule 7052 Motion and the Debtors, Swinerton and the Committee advised the Court that they had reached an accommodation that is now reflected in the Stipulations set forth below:

.

NOW, THEREFORE, all of the parties to this Stipulation hereby stipulate and agree as follows:

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A. The Debtors and Swinerton agree that the Court's Tentative Ruling [Docket No. 392] incorporated into the Final DIP Order [Docket 409] at p.6, shall be amended to add the following sentence at p. 12: "Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion in that property."

B. The Debtors and Swinerton agree that the inclusion of the quoted language in paragraph A above resolves matters raised in the Swinerton Rule 7052 Motion.

C. The Debtors stipulate that they have no objection to the validity, perfection or amount of the Swinerton's lien on the Seton Medical Center property as a lien junior to the liens of the Prepetition Secured Creditors.

D. The Debtors, Swinerton, and the Committee further agree that the Committee shall have up to ninety (90) days from entry of the order approving this Stipulation to challenge the validity, perfection or amount of Swinerton's lien.

D. The Debtors, and Swinerton and the Committee each ask the Court to enter an order in the form filed concurrently with this Stipulation approving the Stipulation and closing the record with respect to the Final DIP Order.

[Signature Page Follows]

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Official Committee of Unsecured Creditors

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FILED & ENTERED

FEB 04 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gonzalez DEPUTY CLERK

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

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
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☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose ASC, 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
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Case No. 2:18-bk-20178-ER
Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Judge Ernest M. Robles

ORDER APPROVING STIPULATION BETWEEN DEBTORS AND SWINERTON BUILDERS, RESOLVING RULE 7052 MOTION FOR AMENDMENT OF FINDINGS IN FINAL ORDER (I) AUTHORIZING POSTPETITION FINANCING […]

[RELATED DOCKET NOS. 1315, 1306, 1280, 974, 968, 732, 564, 409, 392, 355, 309 AND 269]

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The Court, having reviewed the *Stipulation Between Debtors and Swinerton Builders, Resolving Rule 7052 Motion For Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]*(the "Stipulation"), filed as Docket No. 1437, entered between the above-captioned debtors and debtors in possession (the "Debtors"), Swinerton Builders and the Official Committee of Unsecured Creditors (the "Committee") and good cause appearing therefore,

HEREBY ORDERS AS FOLLOWS:

1. The Stipulation is approved.

2. The Court's Tentative Ruling [Docket No. 392] incorporated into the Final DIP Order [Docket 409] at p. 6, is hereby amended to add the following sentence at p. 12: "Swinerton's lien on the Seton Medical Center property is adequately protected by an equity cushion in that property."

3. This Order resolves the Swinerton Motion made under Bankruptcy Rule 7052(b) and closes the record with respect to Docket No. 409.

4. The Debtors have waived any objection to the validity, perfection or amount of Swinerton's lien as a prepetition lien junior to the liens of the Prepetiton Secured Creditors.

5. The Committee shall have up to ninety (90) days from entry of this order to challenge the validity, perfection or amount of, or to otherwise challenge Swinerton's lien.

IT IS SO ORDERED.

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###

Date: February 4, 2019

Ernest M. Robles
United States Bankruptcy Judge

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