

ANDREW H. SHERMAN (Admitted *pro hac vice*)
asherman@sillscummis.com
BORIS I. MANKOVETSKIY (Admitted *pro hac vice*)
bmankovetskiy@sillscummis.com
SILLS CUMMIS & GROSS P.C.
One Riverfront Plaza
Newark, New Jersey 07102
Telephone: 973 643 7000
Facsimile: 973 643 6500

*Co-Counsel for the Official
Committee of Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re:

BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
(A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al*,¹

Debtors,

Lead Case No. 2:23-bk-12359-SK

Jointly administered with:
Case No. 2:23-bk-12360-SK
Case No. 2:23-bk-12361-SK

Hon. Sandra R. Klein
Chapter 11 Cases

- ☒ Affects all Debtors
- ☐ Affects Beverly Community
Hospital Association
- ☐ Montebello Community Health
Services, Inc.
- ☐ Beverly Hospital Foundation

**NOTICE OF MOTION AND MOTION OF
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO EXPAND
THE SCOPE OF MEDIATION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
STEVEN T. GUBNER**

Date: TBD
Time: TBD
Place: Zoom.Gov – or - Courtroom 1575
255 East Temple Street
Los Angeles, California 90012

**TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES BANKRUPTCY JUDGE,
THE OFFICE OF THE UNITED STATES TRUSTEE, THE CHAPTER 11 TRUSTEE, AND
OTHER INTERESTED PARTIES:**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640



1 **PLEASE TAKE NOTICE** that at the above-referenced date, time, and location, the
2 Official Committee of Unsecured Creditors (the “Committee”), appointed in the cases of the above-
3 captioned debtors and debtors-in-possession (the “Debtors”), will move (the “Motion”) to
4 (a) expand the scope of the mediation between the Committee and U.S. Bank Trust Company,
5 National Association, as master trustee (the “US Bank”) and (b) to add the Chapter 11 Trustee,
6 Howard M. Ehrenberg in his capacity as Chapter 11 Trustee as a party in the mediation (the
7 “Trustee”).

8 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion
9 and Motion, the accompanying Memorandum of Points and Authorities, the attached Declaration
10 of Steven T. Gubner, the supporting statements, arguments, and representations of counsel who
11 will appear at any hearing on the Motion, the record in the above-captioned cases, and any other
12 evidence properly brought before the Court in all other matters of which this Court may properly
13 take judicial notice.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Rule 9013-1(f), any party
15 opposing or responding to the Motion must file a response with the Court and serve a copy of it
16 upon the Committee no later than fourteen days prior to the above-referenced hearing date.² Any
17 response must include a complete written statement of all reasons in opposition to the Motion or in
18 support, declarations and copies of all evidence on which the responding party intends to rely, and
19 any responding memorandum of points and authorities.

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

23
24
25
26
27 _____
28 ² The Committee is concurrently filing an application for an order setting the hearing on the motion on shortened notice
and anticipate the Court will enter an order thereon. Pending that application, the hearing date and time of the Motion
has been listed as TBD and the local rule regarding a response date under LBR 9013-1(f) has been referenced.

1 Dated: February 15, 2024

Respectfully submitted,

2
3 SILLS CUMMIS & GROSS P.C.

4 By: 

5 ANDREW H. SHERMAN (Admitted *pro hac vice*)
6 asherman@sillscummis.com

7 BORIS I. MANKOVETSKIY (Admitted *pro hac*
8 bmankovetskiy@sillscummis.com *vice*)

9 One Riverfront Plaza

10 Newark, New Jersey 07102

11 Telephone: 973 643 7000

12 Facsimile: 973 643 6500

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
*Co-Counsel for The Official
Committee Of Unsecured Creditors*

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	JURISDICTION.....	2
III.	STATEMENT OF FACTS	2
A.	Background Facts.....	2
B.	US Bank’s Collateral.....	2
C.	The Cash Collateral Order and DIP Facility Order.....	4
1.	The Interim Cash Collateral Order.....	4
2.	The Interim DIP Facility Order.....	4
3.	US Bank’s Objection to Cash Collateral and the DIP Facility and the Final Orders.....	6
D.	The Sale of Debtors’ Assets.....	7
E.	The Adversary Proceeding.....	11
F.	Appointment of the Trustee and the Trustee’s Proposed Agreement with US Bank	11
G.	The Mediation and the Trustee’s Proposed Agreement with US Bank	12
H.	Requested Relief.	13
IV.	ARGUMENT	13
A.	The Court Has Expansive Authority to Designate Issues for Mediation and Require Attendance by Parties in Interest, Such as the Trustee.....	13
B.	Surcharge Claims Are Valuable and Preserved and Available under Applicable Law	14
C.	The Agreement with US Bank Would Be Inconsistent with Trustee’s Fiduciary Duties	19
V.	CONCLUSION	22

TABLE OF AUTHORITIES

Page(s)

Cases

<i>In re 800Ideas.com, Inc.</i> , 527 B.R. 701 (Bankr. S.D. Cal. 2015)	20, 21
<i>In re AFI Holding, Inc.</i> , 530 F.3d 832 (9th Cir. 2008).....	19, 21
<i>In re Cass</i> , Case No. 2:12-bk-16090-RK, 2015 WL 2194796 (Bankr. C.D. Cal. May 7, 2015)	15, 17
<i>In re Choo</i> , 273 B.R. 608 (B.A.P. 9th Cir. 2002).....	15
<i>In re Cochise College Park, Inc.</i> , 703 F.2d 1339 (9th Cir. 1983).....	19, 21
<i>Comerica Bank-California v. GTI Capital Holdings, LLC (In re GTI Capital Holdings, LLC)</i> , Case No. BAP AZ-06-1096-PaDS, 2007 WL 7532277 (B.A.P. 9th Cir. Mar. 29, 2007)	15
<i>Commodity Futures Trading Comm’n v. Weintraub</i> , 471 U.S. 343 (1985).....	19
<i>Compton Impressions. Ltd. v. Queen City Bank, N.A. (In re Compton Impressions)</i> , 217 F.3d 1256 (9th Cir. 2000).....	16
<i>In re Cooper Commons LLC</i> , 512 F.3d 533 (9th Cir. 2008).....	16
<i>Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp., Inc. (In re Debbie Reynolds Hotel & Casino, Inc.)</i> , 255 F.3d 1061 (9th Cir. 2001)	16
<i>First Western Savings & Loan v. Anderson</i> , 252 F.2d 544 (9th Cir. 1958).....	16
<i>In re Goffena</i> , 175 B.R. 386 (Bankr. D. Mont. 1994)	20, 21
<i>In re Grodel Mfg., Inc.</i> , 33 B.R. 693 (Bankr. D. Conn. 1983)	19
<i>Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.</i> , 530 U.S. 1 (2000).....	15
<i>In re Rosenberg</i> , 495 B.R. 196 (Bankr. E.D.N.Y. 2010).....	20, 21
<i>Security Leasing Partners, LP v. ProAlert, LLC (In re ProAlert, LLC)</i> , 314 B.R. 436 (B.A.P. 9th Cir. 2004).....	15, 16
<i>In re Tollenaar Holsteins</i> , 538 B.R. 830 (Bankr. E.D. Cal. 2015)	15, 16, 17

1	<i>Matter of Troy Dodson Const. Co., Inc.,</i>	
2	993 F.2d 1211 (5th Cir. 1993).....	20
3	<i>In re Western Farmers Ass’n,</i>	
4	13 B.R. 132 (Bankr. W.D. Wash 1981)	20
5	<i>Wolf v. Weinstein,</i>	
6	372 U.S. 644 (1963)	19
7	Statutes	
8	11 U.S.C. § 105(a)	13
9	11 U.S.C. § 506(c)	14
10	11 U.S.C. § 1106	19
11	11 U.S.C. § 1129(a)(9)	20, 21

MEMORANDUM OF POINTS AND AUTHORITIES

The Official Committee of Unsecured Creditors (the “Committee”), appointed in the cases (the “Cases”) of the above-captioned debtors and debtors-in-possession (the “Debtors”), by and through the undersigned legal counsel, hereby moves (the “Motion”) to expand the scope of the mediation (the “Mediation”) by and between the Committee and U.S. Bank Trust Company, National Association, as Master Trustee (the “US Bank”). In support of this Request, the Committee states as follows:

I. INTRODUCTION

The Committee requests that the Court expand the scope of the Mediation between the Committee and US Bank to include the Chapter 11 Trustee, Howard M. Ehrenberg (the “Trustee”) and material issues related to the rights of these chapter 11 estates to surcharge US Bank’s collateral. Specifically, the Trustee indicated in his status report that US Bank will agree to a surcharge of its collateral to pay for his wind-down expenses *only* if he agrees to waive any other surcharge claims that may be available to fund the payment of the unsecured creditors, including administrative and professional fees, that were incurred prior to his appointment [Docket No. 915, at 10]. The Trustee also correctly stated that any motion to approve such agreement would be vigorously contested and litigated by the Committee and pre-appointment professionals. *Id* at 10-11. At the status conference held by the Court on January 24, 2024, the Trustee informed the Court that his discussions with US Bank regarding the consensual surcharge with US Bank had terminated, but might be renewed at a later date.

To avoid litigation and the potential waste of judicial resources, the Committee requests the Court expand the scope of the mediation because: (i) the right to surcharge the US Bank collateral for costs incurred by the Debtors’ estates (the “Estates”) in the Cases prior to the appointment of the Trustee exists both under the cash collateral orders and applicable law; (ii) waiver of surcharge rights would extinguish those preserved valuable rights¹ and undermine the efforts to fairly allocate the costs of these Cases between secured and unsecured creditors; and (iii) such an agreement would

¹ As set forth at length below, the Committee believes that there are claims arising under section 506(c) of at least \$12.6M and could be as high as \$26M.

1 be inconsistent with the Trustee's fiduciaries duties to other administrative expense holders and
2 general unsecured creditors. Although the mediator does not take a position on any of these issues,
3 the mediator has indicated he is available to mediate additional issues if the Court enters an order
4 expanding the Mediation.

5 Based on the foregoing, and as more fully set forth below, the Committee respectfully
6 requests that the Court grant the Motion.

7 **II. JURISDICTION**

8 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is
9 a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue over this matter and the above-
10 captioned Cases in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

11 **III. STATEMENT OF FACTS**

12 **A. Background Facts**

13 1. On April 19, 2023 (the "Petition Date"), each of the Debtors filed a voluntary
14 petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").²
15 The cases have been consolidated for procedural purposes and are being jointly administered
16 pursuant to Bankruptcy Rule 1015(b).

17 2. Prior to the Petition Date, the Debtors' assets consisted of the real estate owned by
18 the Hospital, operations, and certain other assets of Beverly Community Hospital (the "Hospital
19 Assets") as well as certain parcels of real property owned by Debtor Montebello Health (the "Real
20 Estate Assets," and together with the Hospital Assets, the "Assets").

21 3. On May 10, 2023, the United States Trustee for the Central District of California
22 (the "U.S. Trustee") appointed the Committee [Docket No. 235].

23 **B. US Bank's Collateral**

24 4. The Debtors, as borrowers, and US Bank, acting as Master Trustee, entered that
25 certain Master Indenture, dated as of December 1, 2015 (including all supplemental indentures

26
27 ² All references to "section" (or "sections"), or "§" (or "§§") are to sections of Title 11 of the United States Code, 11
28 U.S.C. § 101-1532. All references to "Bankruptcy Rules" are to the Federal Rules of Bankruptcy Procedure. All
references to "Local Rules" are to the Local Rules of the United States Bankruptcy Court for the Central District of
California.

1 issued in connection therewith, as amended and supplemented, the “Master Indenture”). Although
2 the validity, extent and priority of the US Bank’s security interest is at issue in the Adversary
3 Proceeding (defined and described below), the outstanding amount of the bond facility as of the
4 Petition Date was approximately \$67,940,098.

5 5. After the Debtors and US Bank entered the Master Indenture, the Debtors entered
6 (a) the First Supplemental Master Indenture, dated as of December 1, 2015, by and between Beverly
7 Hospital, as Obligated Group Representative, and US Bank (the “First Supplemental Master
8 Indenture”), and (b) that certain Loan Agreement, dated as of December 1, 2015, by and between
9 the California Statewide Communities Development Authority, and Beverly Hospital. On May 1,
10 2017, the Debtors entered into a certain Second Supplemental Master Indenture, by and between
11 Beverly Hospital, as Obligated Group Representative, and US Bank (the “Second Supplemental
12 Master Indenture”).

13 6. Pursuant to that certain Revolving Loan Agreement, dated as of August 1, 2019 (the
14 “Hanmi Revolving Loan”), by and between Beverly Hospital, as Borrower, and Hanmi Bank, as
15 Lender, Hanmi Bank agreed to provide a revolving loan with a maximum draw of \$10 million to
16 Beverly Hospital for the purpose of supplemental working capital as needed for its business. On
17 August 1, 2019, Beverly Hospital, as Obligated Group Representative, issued an Obligation
18 pursuant to the Master Indenture to secure the obligations of the Hanmi Revolving Loan relating to
19 the extension of a revolving loan (the “Fourth Supplemental Master Indenture”).

20 7. The grant of “collateral” as security for the First Supplemental Master Indenture,
21 the Second Supplemental Master Indenture, and the Fourth Supplemental Master Indenture is
22 pursuant to and described in (a) the Deed of Trust, Assignment of Rents, Security Agreement and
23 Fixture Filing, made December 1, 2015, effective December 2, 2015, by Beverly Hospital, as
24 trustor, to Chicago Title Company, as trustee, for the benefit of US Bank, recorded in the Office of
25 the Los Angeles County Recorder on December 2, 2015, instrument no. 20151510207 (the “Deed
26 of Trust”), and (b) the Master Indenture (collectively, the “US Bank Collateral”).

27 8. The assets securing the US Bank’s liens pursuant to the Deed of Trust do not include
28 the Real Estate Assets previously owned by Debtor Montebello Health. As a result, the Real Estate

Assets were not encumbered by the US Bank's liens and were not included in the US Bank Collateral. As discussed herein, such Real Estate Assets served as the primary collateral for the DIP Lender and the liquidity to fund the Debtors' going concern operations prior to the sale of substantially all of the assets.³

C. The Cash Collateral Order and DIP Facility Order

1. The Interim Cash Collateral Order

9. On the Petition Date, the Debtors filed *Debtors' Emergency Motion for Entry of an Order Granting Debtors' Emergency Motion (I) Approving Debtors' Use of Cash Collateral; and (II) Scheduling a Final Hearing on the Use of Cash Collateral* [Docket No. 27] (the "Cash Collateral Motion") seeking approval of the Debtors' proposed use of cash collateral of US Bank in accordance with a budget on a three-week interim basis and, after a hearing, on an additional ten-week basis.

10. On April 25, 2023, the Court granted the Cash Collateral Motion on an interim basis with the consent of US Bank [Docket No. 124]. Subsequent interim orders were entered thereafter with the consent of US Bank, as the Debtors and US Bank engaged in settlement negotiations to resolve disputes related to the Cash Collateral Motion.

2. The Interim DIP Facility Order

11. On the Petition Date, the Debtors also filed *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors, and (III) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof* (the "DIP Motion") [Docket No. 31]. Pursuant to the DIP Motion, the Debtors sought approval of a senior secured, superpriority debtor in possession financing facility with HRE Montebello, LLC (the "DIP Lender") in an amount not

³ The Committee asserts that other assets of the Debtors were also not encumbered by the US Bank's liens. As set forth herein, in the Adversary Proceeding, the Committee has sought, among other challenges, a determination that US Bank does not have a valid and perfected security interest in the Debtors' deposit accounts, certain personal property, QAF program payments, as well as a determination that a UCC-1 filing by US Bank dated December 12, 2022 (the "2022 UCC-1 Financing Statement") asserting an "all asset" lien on the Debtors' assets (i) was not properly authorized, (ii) is ineffective and of no legal effect, and (iii) cannot expand the security interests granted to US Bank pursuant to the terms of the Deed of Trust and Master Indenture. [Adv. Docket No. 11 at ¶ 3].

1 to exceed \$6,000,000 in the interim period and up to \$13,250,000 total (the “DIP Facility”). *See*
2 *Declaration of Alice Cheng in Support of Chapter 11 Petitions and Emergency First Day Motions*,
3 dated April 20, 2023 [Docket No. 9] (the “Cheng First Day Declaration”), Ex. B. at 34-36.

4 12. With respect to the liens securing the DIP Facility, the DIP Motion provided that
5 such liens would be “[f]irst-priority security interest in the Unencumbered Real Estate and rents,
6 tenant deposits and proceeds thereof.” *Id.*, at 12.

7 13. On May 2, 2023, after substantial negotiations among the Debtors, the US Bank,
8 and the DIP Lender, the Court entered its *Interim Order: (I) Authorizing the Debtors to Obtain Post-*
9 *Petition Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors,*
10 *(III) Scheduling a Final Hearing and (IV) Granting Related Relief (the “Stipulation”)* the Debtors
11 *also filed Debtors’ Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to*
12 *Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition Secured*
13 *Creditors, and (III) Granting Related Relief; Memorandum of Points and Authorities in Support*
14 *Thereof* [Docket No. 182] (the “Interim DIP Order”). The Interim DIP Order granted the DIP
15 Lender first priority security interests in and liens on (collectively, the “DIP Liens”) the property
16 identified as “Collateral” in the DIP Loan Agreement (the “DIP Collateral”). *See* Interim DIP
17 Order, ¶ 13. The DIP Collateral included the assets of the Montebello Health estate but did not
18 include the Hospital Assets.

19 14. The Interim DIP Order provided that “[f]or avoidance of doubt, and except as
20 expressly provided for in this paragraph, the DIP Liens shall not attach to or otherwise encumber
21 the [US Bank] Collateral and [US Bank’s] liens and security interests shall not attach to or
22 otherwise encumber the DIP Collateral . . . such that the DIP Liens shall be the sole and exclusive
23 liens and security interests (except for Permitted Prior Liens) on all ‘Real Property,’ the
24 ‘Improvements,’ the ‘Leases,’ and/or the proceeds thereof . . .” *Id.* Furthermore, “[t]he DIP
25 Collateral does not include any real property and other assets that are used by the hospital in its
26 operations as a health facility . . .” *Id.*, ¶ 13(e).

3. US Bank’s Objection to Cash Collateral and the DIP Facility and the Final Orders

15. On May 23, 2023, US Bank filed its joint objection to the Cash Collateral Motion and the DIP Motion [Docket No. 302] (the “Cash Collateral and DIP Objection”), arguing that the Court should not permit the Debtors to encumber the assets of the Montebello Health estate to fund professional fees of its co-debtors, and alleged, among other things, that such restriction was “necessary to ensure that there would be sufficient funds available to continue to fund Hospital operations during the sale process,” that the process to sell its collateral was flawed and that US Bank had not been allowed to participate in the sale process. *See* Cash Collateral and DIP Obj., at 5, 18, n.13.

16. On June 6, 2023, the Court entered its *Final Order: (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors, and (III) Granting Related Relief* [Docket No. 396] (the “Final DIP Order”). In the Final DIP Order, the Debtors and US Bank agreed to defer seeking this Court’s approval of payment of their respective fees and expenses until either the Hospital was sold, the Debtors and US Bank agreed that payment could be sought, or the Cases were closed. Final DIP Order, ¶ 14(b).

17. Similar to the Interim DIP Order, the Final DIP Order provided that “[f]or avoidance of doubt, and except as expressly provided for in this paragraph, the DIP Liens shall not attach to or otherwise encumber the [US Bank] Collateral and [US Bank’s] liens and security interests shall not attach to or otherwise encumber the DIP Collateral . . . such that the DIP Liens shall be the sole and exclusive liens and security interests (except for Permitted Prior Liens) on all ‘Real Property,’ the ‘Improvements,’ the ‘Leases,’ and/or the proceeds thereof . . .” *Id.*, ¶ 12(c). Furthermore, “[t]he DIP Collateral does not include any real property and other assets that are used by the hospital in its operations as a health facility . . .” *Id.*, ¶ 12(e).

18. Thereafter, on August 23, 2023, the Court entered its *Final Order (I) Authorizing the Debtors to Use the Cash Collateral of U.S. Bank Trust Company National Association, as Master Trustee; (II) Providing U.S. Bank Trust Company National Association, as Master Trustee,*

1 *Adequate Protection; and (III) Granting Related Relief* [Docket No. 738] (the “Cash Collateral
2 Order”).

3 19. The Cash Collateral Order did not include waivers of either equities of the case
4 rights under § 552(b) or surcharge rights and claims under § 506(c).

5 **D. The Sale of Debtors’ Assets**

6 20. From the onset, the Debtors emphasized the need “to accomplish the Debtors’ goals
7 in these chapter 11 cases—namely, an expedited sale of Beverly Hospital . . .” *See* Cheng First Day
8 Dec., at 8. On May 23, 2023, in accordance with the goal to achieve an expeditious sale, the Debtors
9 filed the *Debtors’ Notice of Motion and Motion for the Entry of an Order (I) Approving Asset*
10 *Purchase Agreement for Stalking Horse Purchaser and for Prospective Overbidders,*
11 *(II) Approving Bid Protections, (III) Approving Bidding Procedures, (IV) Scheduling Certain Dates*
12 *Thereto, (V) Approving Form of Notice, and (VI) Scheduling Court Hearing to Approve Sale Free*
13 *and Clear To The Successful Bidder* [Docket No. 308] (the “Bidding Procedures Motion”).

14 21. On May 26, 2023, US Bank objected to the Bidding Procedures Motion [Docket
15 No. 337] (the “Bid. Pro. Objection”), alleging, among other things, that it was “not permitted to
16 participate in the liquidation of its collateral . . .” Bid. Pro. Obj., at 10.

17 22. The Debtors responded to US Bank’s assertion in their omnibus reply in support of
18 the Bidding Procedures Motion [Docket No. 354] (the “Debtors’ Bid. Pro. Reply”), advising the
19 Court of the “dozens of telephone calls among counsel, countless e-mail exchanges, and regular
20 reporting in connection with the DIP loan facility” and that “the Debtors did not provide the draft
21 Bidding Procedures Motion to [US Bank], but this was simply the product of [US Bank’s] counsel’s
22 unwillingness to be bound by customary confidentiality obligations.” Debtors’ Bid. Pro. Reply, at
23 5. The Debtors also advised the Court that they had supplied US Bank’s counsel with the contact
24 information for counsel to the proposed Stalking Horse Bidder and noted that “[a]s of today, [US
25 Bank’s] counsel has refused to contact the proposed Stalking Horse Bidder’s counsel.” *Id.*

26 23. Based in part on US Bank’s assertions, the Court granted US Bank material
27 consultation rights and provided US Bank with significant involvement in the sales process; all
28 such rights were subsequently and extensively exercised by US Bank.

24. On June 2, 2023, the Court entered the *Order (I) Approving Asset Purchase Agreement for Stalking Horse Purchaser and for Prospective Overbidders, (II) Approving Bid Protections, (III) Approving Bidding Procedures, (IV) Scheduling Certain Dates Thereto, (V) Approving Form of Notice and (VI) Scheduling Court Hearing to Approve Sale Free and Clear to the Successful Bidder* [Docket No. 378] (the “Bidding Procedures Order”), and the Debtors held an auction (the “Auction”) for the sale of substantially all Assets on June 27, 2023. US Bank’s representatives actively participated in the conduct of the Auction. At the conclusion of the Auction, the Debtors, in consultation with US Bank, named American Healthcare Systems Foundation Inc. (“AHS”) and Layton 26, LLC (“Layton”), as the successful bidders, and the AHS bid and the Layton bid, together, as the successful bid. On July 5, 2023, the Debtors filed their *Motion for Entry of an Order (I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 537] seeking the Court’s approval of the proposed sale to AHS and Layton, pursuant to the terms of the successful bid.

25. Subsequently, as the Court is aware, the sale to AHS and Layton began to unravel, as AHS refused, among other things, to fulfill its original bid. Describing the circumstances that led to the foregoing, on July 28, 2023, the Debtor filed the *Statement Regarding Status of Sale Process and Other Pending Matters* [Docket No. 598], and, on July 31, 2023, US Bank filed a response thereto [Docket No. 602], indicating additional circumstances leading up to US Bank’s unwillingness to consent to a sale to AHS. As detailed in the *Debtors’ Response to Master Trustee Regarding Status of Sale Process and Other Pending Matters*, filed on August 1, 2023 [Docket No. 617] (the “Debtors Aug. 1, 2023 Response”), US Bank had an active and substantial role in the sale process (including its request during the Auction that the Debtors select AHS’s bid as the winning bid for the Hospital Assets), as well as access to data. *See Debtors Aug. 1, 2023 Response*, at 3. US Bank also made direct demands to AHS to finalize the sale transaction and noted that the bondholders would rather take the chance on a full recovery in the future rather than fixing their recovery at a significant discount, all the while acknowledging the execution risk inherent in AHS’s bid. *Debtors Aug. 1, 2023 Response*, at 3.

1 26. On August 2 and 3, 2023, the Court held status conferences to discuss next steps
2 and provided new filing dates and deadlines related to the Sale.

3 27. On August 7, 2023, the Debtors filed the *Motion for Entry of an Order*
4 *(I) Authorizing the Sale of Substantially All of the Debtors' Assets to White Memorial Medical*
5 *Center d/b/a Adventist Health White Memorial Free and Clear of All Liens, Claims, and*
6 *Encumbrances; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts*
7 *and Unexpired Leases* [Docket No. 638] (the "Renewed Sale Motion") that explained that the
8 proposed sale to White Memorial Medical Center d/b/a Adventist Health White Memorial
9 ("AHWM") "contemplates a specific amount for the Real Estate Assets that will pay off the *DIP*
10 *Facility* in full." Debtors Aug. 1, 2023 Response, at 4.

11 28. The Debtors also maintained that "[a]ny determination to distribute proceeds of the
12 Sale directly to [US Bank] pursuant to a Sale Order would be premature, run afoul of the *sub rosa*
13 plan doctrine, and effectively strip the Debtors of their ability to seeks [sic] a section 506(a)
14 surcharge from [US Bank]." Renewed Sale Motion, at 4, n.9.

15 29. In their August 11, 2023, *Omnibus Reply in Support of Debtor's Notice of Motion*
16 *and Motion for Entry of an Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets*
17 *to White Memorial Medical Center d/b/a Adventist Health White Memorial Free and Clear of All*
18 *Liens, Claims, and Encumbrances; (II) Authorizing the Assumption and Assignment of Certain*
19 *Executory Contracts and Unexpired Leases* [Docket No. 681] (the "Debtors Omnibus Sale Reply"),
20 the Debtors argued that the Court should deny US Bank's demand to "direct 100% of the proceeds
21 to [US Bank], leaving the Estates administratively insolvent" and noted "[a]t any point during these
22 cases, had [US Bank] not liked the Debtors' and Debtors' professionals' marketing and sale
23 process, [US Bank] could have obtained stay relief and realized upon its pledged collateral . . . [o]r
24 . . . retained its own financial experts, which the Debtors agreed . . . , to oversee the Debtors'
25 marketing process." Debtors Omnibus Sale Reply, at 2.

26 30. On August 11, 2023, the Debtors also advised the Court in their response to the
27 statements of the Committee and US Bank [Docket No. 679] (the "Debtors Aug. 11, 2023
28 Response") that "[i]n the six weeks since the auction, the Debtors have expended an immense

1 amount of time and resources attempting to mediate between [US Bank] and AHS to reach
2 resolution to qualify AHS's initial proposal." Debtors Aug. 11, 2023 Resp., at 4.

3 31. On August 16, 2023, the Debtors filed the *Stipulation Between Debtors and HRE*
4 *Montebello, LLC Re DIP Facility* [Docket No. 698], wherein the parties agreed, among other
5 things, that the DIP Lender would be paid by the Debtors in cash from the sale proceeds regardless
6 of whether the DIP Obligations exceeded the \$14,250,000 cap in the asset purchase agreement.
7 [Docket No. 698, at 4]. US Bank and the Committee were not consulted by the Debtors prior to the
8 entry of the foregoing stipulation.

9 32. The next day, on August 17, 2023, at the hearing on the Renewed Sale Motion,
10 counsel for US Bank noted that: "So -- well, I guess up until, you know, the AHS bid fell apart and
11 before we were aware of this, you know, last minute stipulation filed in connection with the DIP
12 lender, we're prepared to consent to the sale to Adventist . . . But I mean, other than that issue, I
13 think we were prepared to go forward and consent to the proposed sale." *See* Aug. 17, 2023
14 Transcript [Docket No. 737] at 14:20-15:19.

15 33. The Court inquired whether it would be productive to take a brief recess to try to
16 come to an agreement. *See* Aug. 17, 2023 [Docket No. 737] at 16:14-19. The Committee requested
17 to be part of the discussion, but US Bank suggested that the Debtors, the DIP Lender and US Bank
18 initially speak "to see if there's something to be resolved and then we can loop the Committee in
19 to discuss what the resolution is and then, you know, maybe get their buy-in or not." *Id.*, at 18:18-
20 19:18. The Court agreed. *Id.* Thereafter, the Debtors, the DIP Lender and US Bank met wherein
21 the Debtors agreed to pay \$10,000,000 to US Bank from the sale proceeds at closing in exchange
22 for US Bank's consent to the sale. After the Debtors and US Bank reached this agreement, the
23 Committee was invited to the Zoom meeting for a few minutes, with only enough time so the terms
24 of the agreement could be relayed to the Committee, as the recess had ended and parties needed to
25 rejoin the Court's Zoom.

26 34. On August 18, 2023, the Court entered its *Order (A) Authorizing the Sale of*
27 *Debtors' Assets to Purchaser Free and Clear of Liens, Claims, Interests, and Other Interests;*
28 *(B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases*

1 *Related Thereto; and (C) Granting Related Relief* [Docket No. 718] (the “Sale Order”), which
2 granted the Renewed Sale Motion, approved the asset purchase agreement, and authorized the
3 Debtors’ proposed sale to AHWM.

4 35. The Sale Order provided that, among other things, upon the closing of the Sale, sale
5 proceeds would be used to pay the DIP Lender in full and \$10,000,000 would be paid to US Bank
6 – the remaining sale proceeds would be held in escrow pending further order of the Court. *See Sale*
7 *Order*, ¶¶ 29-31.

8 36. The sale closed on September 6, 2023, with closing effective on September 7, 2023.
9 *See* Docket No. 789.

10 **E. The Adversary Proceeding**

11 37. On June 20, 2023, the Committee filed its complaint against US Bank, commencing
12 an adversary proceeding, Case No. 2:23-ap-01289-SK (the “Adversary Proceeding”) [Adv. Docket
13 No. 1]. On August 15, 2023, the Committee amended its complaint. [Adv. Docket No. 11]. The
14 Adversary Proceeding seeks, among other things, a determination that US Bank does not have a
15 valid and perfected security interest in the Debtors’ Deposit Accounts, certain Excluded Personal
16 Property, and certain QAF Program payments (each as defined in the Adversary Complaint), as
17 well as a determination that the 2022 UCC-1 Financing Statement (i) was not properly authorized,
18 (ii) is ineffective and of no legal effect, and (iii) cannot expand the security interests granted to US
19 Bank pursuant to the terms of the Deed of Trust and Master Indenture. [Adv. Docket No. 11 at ¶ 3.]

20 38. On August 29, 2023, US Bank filed its *Motion to Dismiss the Amended Complaint*.
21 [Docket No. 12.]

22 39. On October 4, 2023, the Committee and US Bank filed a *Joint Status Report* in the
23 Adversary Proceeding, wherein the Committee requested mediation. [Adv. Docket No. 18.]

24 **F. Appointment of the Trustee and the Trustee’s Proposed Agreement with US Bank**

25 40. On September 11, 2023, US Bank filed the *U.S. Bank Trust Company, National*
26 *Association, as Master Trustee’s Emergency Request for Status Conference and Order to Show*
27 *Cause Why a Chapter 11 Trustee Should Not Be Appointed* [Docket No. 791] seeking appointment
28 of a Chapter 11 trustee. The Court entered the *Order re: U.S. Bank Trust Company, National*

1 *Association, as Master Trustee’s Emergency Request for Status Conference and Order to Show*
2 *Cause Why a Chapter 11 Trustee Should Not Be Appointed* on September 11, 2023 [Docket No.
3 792] and set a status conference on September 13, 2023 (the “Show Cause Hearing”).

4 41. At the Show Cause Hearing, counsel for US Bank represented: “We get our
5 responsibility for having to help wind this down. We’re willing to do it, in the Chapter 11 trustee
6 context, which is what we’re suggesting ought to happen here.” [Docket No. 810 at 37].
7 Additionally, counsel for US Bank stated that US Bank “is willing to talk to a Chapter 11 trustee
8 to talk about what a budget looks like with respect to a trustee.” [Docket No. 810 at 44]. Further,
9 counsel for US Bank stated, “we will work with the Chapter 11 trustee to come up with a go-
10 forward cash collateral order and budget.” *Id.* at 55.

11 42. At the conclusion of the Show Cause Hearing, the Court indicated that it would
12 appoint a chapter 11 trustee. On September 15, 2023, the Court entered its *Order Approving the*
13 *Appointment of a Chapter 11 Trustee* [Docket No. 813] (the “Ch. 11 Trustee Order”), which
14 appointed the Trustee.

15 **G. The Mediation and the Trustee’s Proposed Agreement with US Bank**

16 43. During a status conference in the Adversary Proceeding, on October 18, 2023, the
17 Court ordered the Committee and US Bank to the Mediation. [Docket No. 859 at 19]. The Court
18 also provided that the Trustee was permitted to participate in the Mediation. *Id.* at 24-25. On
19 October 30, 2023, the Court entered the *Order Assigning Matter to Mediation Program and*
20 *Appointing Mediator and Alternate Mediator* [Adv. Docket No. 20] (the “Mediation Order”), which
21 established the Honorable Martin R. Barash as mediator (the “Mediator”).

22 44. As set forth above, the Committee and US Bank are participating in the Mediation,
23 as ordered.

24 45. On January 10, 2024, the Trustee filed the *Chapter 11 Trustee’s Second Status*
25 *Report* [Docket No. 915], which stated that the Trustee is negotiating with US Bank for an agreed
26 surcharge of US Bank’s alleged collateral in exchange for a waiver of all other surcharge claims
27 that may be available to fund the payment of unsecured creditors, including administrative and
28 professional fees.

H. Requested Relief.

46. The Committee seeks an order (i) expanding the scope of the Mediation to include mediation of material issues in dispute related to rights to surcharge US Bank's collateral, which rights were preserved under the Cash Collateral Order, and (ii) including the Trustee in the Mediation.

47. As set forth above, the Mediator has indicated he is available to mediate additional issues if the Court enters an order expanding the Mediation.

IV. ARGUMENT

A. The Court Has Expansive Authority to Designate Issues for Mediation and Require Attendance by Parties in Interest, Such as the Trustee

Section 105 of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Appendix III of the Local Rules is titled the *Adoption of Mediation Program for Bankruptcy Cases and Adversary Proceedings* ("Appendix III") and sets forth the procedures for mediations in this District. Pursuant to § 5.2 of Appendix III, a judge, "acting *sua sponte* or on the request of a party, may designate specific Matters for inclusion in the Mediation Program."

The Court has expansive authority pursuant to the Bankruptcy Code and Local Rules to designate specific matters for mediation. Here, the existing Mediation was authorized to resolve disputes in the Adversary Proceeding which relate to the US Bank Collateral. However, US Bank and the Trustee are apparently nearing an agreement to pay wind-down expenses in exchange for the waiver of surcharge rights and claims that are valuable, critical and necessary assets of these estates (with a potential value of between \$12.6M and \$26M) and that are preserved under the Cash Collateral Order [Docket No. 915].

Surcharge of the US Bank Collateral has been and remains a critical issue in these Cases. Maintaining, preserving, and disposing of the US Bank Collateral has been an expensive and time-consuming task, which has benefited US Bank and its constituents. However, the costs for such disposition have been incurred by the Estates rather than US Bank. Further, an agreement between the Trustee and US Bank to waive those valuable rights would be inconsistent with the Trustee's

1 fiduciary obligations to holders of administrative expense claims and general unsecured creditors
2 because it would jeopardize any potential significant recovery by those parties while providing for
3 full payments for only some administrative expenses holders (namely the Trustee and his
4 professionals). While the parties could litigate the proposed settlement separately, litigating these
5 issues—while simultaneously mediating related disputes—will result in unnecessary expense to the
6 Estates. Litigation over a proposed waiver of surcharge rights for the benefit of a limited segment
7 of administrative expenses and without regard for unsecured creditors would lead to discovery,
8 including document production and depositions, as well as extensive briefing and almost certain
9 appeals by the losing party. The relief requested herein will preserve resources of the Estates, the
10 parties, and the Court and avoid such litigation in this Court.

11 **B. Surcharge Claims Are Valuable and Preserved and Available under Applicable Law**

12 The Trustee has indicated that he anticipates filing a motion to approve a surcharge
13 agreement between him and US Bank. *See* Status Report [Docket 915], at 10-11. While that motion
14 or any motion to surcharge US Bank’s Collateral is not before this Court yet, the Committee
15 respectfully submits that surcharge is an economically significant and critical issue in these Cases
16 that should be included in the pending Mediation to at least afford the parties an opportunity to
17 reach a resolution before extended litigation ensues before this Court. As set forth above, surcharge
18 rights were preserved in the Cash Collateral Order, and under the facts of these Cases, are
19 appropriate under the Bankruptcy Code and applicable United States Court of Appeals for the Ninth
20 Circuit (the “Ninth Circuit”) precedent. Resolving these issues through mediation is important to
21 ensure that the explicitly preserved surcharge rights and claims are not extinguished and the efforts
22 of all parties to sell the Hospital are not undermined to provide a windfall to US Bank and the
23 Trustee’s professionals.

24 Section 506(c) provides:

25 The trustee may recover from property securing an allowed secured
26 claim the reasonable, necessary costs and expenses of preserving, or
27 disposing of, such property to the extent of any benefit to the holder
of such claim, including the payment of all ad valorem property taxes
with respect to the property.

28 11 U.S.C. § 506(c).

1 The Ninth Circuit has long recognized that when a debtor's estate is administratively
2 insolvent, a bankruptcy court has the authority to decide the extent to which a secured lender's
3 collateral may be surcharged for administrative costs and expenses. *Comerica Bank-California v.*
4 *GTI Capital Holdings, LLC (In re GTI Capital Holdings, LLC)*, Case No. BAP AZ-06-1096-PaDS,
5 2007 WL 7532277 at *13 (B.A.P. 9th Cir. Mar. 29, 2007) (citing *Silver State Sav. & Loan Ass'n v.*
6 *Young*, 252 F.2d 236, 238–39 (9th Cir. 1958) (“Where the free assets involved in an unsuccessful
7 reorganization proceeding are insufficient to cover allowances, the extent to which mortgaged
8 property should be charged therewith rests with the sound discretion of the trial judge.”)). The
9 Ninth Circuit has held that “[t]he underlying rationale for charging a lienholder with the costs and
10 expenses of preserving or disposing of the secured collateral is that the general estate and unsecured
11 creditors should not be required to bear the cost of protecting what is not theirs.” *Security Leasing*
12 *Partners, LP v. ProAlert, LLC (In re ProAlert, LLC)*, 314 B.R. 436, 442 (B.A.P. 9th Cir. 2004)
13 (quoting *In re Senior GA Operating Co., Inc.*, 957 F.2d 1290, 1298 (5th Cir. 1992)).

14 Under § 506(c), the fundamental assessment is whether, based on the benefits provided by
15 the resources and efforts of the estate, the outcome will result in a windfall to a secured creditor.
16 See *In re Cass*, Case No. 2:12-bk-16090-RK, 2015 WL 2194796 at *15 (Bankr. C.D. Cal. May 7,
17 2015) (citations omitted). Section 506(c) authorizes a debtor to “recover from property securing an
18 allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of,
19 such property to the extent of any benefit to the holder of such claim.” *In re Choo*, 273 B.R. 608,
20 611 (B.A.P. 9th Cir. 2002); see also *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*,
21 530 U.S. 1, 6 (2000). Courts in the Ninth Circuit have also concluded § 506(c) “incorporates the
22 pre-Code practice that allowed a bankruptcy court to surcharge a secured creditor's collateral based
23 on express or implied consent, or when the secured creditor caused the expenses to be surcharged.”
24 *In re Tollenaar Holsteins*, 538 B.R. 830, 838 (Bankr. E.D. Cal. 2015).

25 Accordingly, in the Ninth Circuit, surcharges pursuant to § 506(c) are authorized under one
26 of two alternative tests: (1) the subjective test under which the surcharge claimant may establish
27 the secured creditor “consented to” or “caused” the expenses to be surcharged; or (2) the objective
28 test, which requires the surcharge claimant to satisfy the § 506(c) elements by demonstrating

1 reasonable and necessary expenses that provided a quantifiable benefit to the secured creditor. *See*
2 *Compton Impressions. Ltd. v. Queen City Bank, N.A. (In re Compton Impressions)*, 217 F.3d 1256,
3 1260 (9th Cir. 2000); *see also Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp., Inc. (In re*
4 *Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1068 (9th Cir. 2001); *In re ProAlert*, 314
5 B.R. at 440; *Tollenaar Holsteins*, 538 B.R. at 834. Consent to surcharge can be either express or
6 implied. *In re Cooper Commons LLC*, 512 F.3d 533 (9th Cir. 2008); *First Western Savings & Loan*
7 *v. Anderson*, 252 F.2d 544, 547 (9th Cir. 1958).

8 During the course of these Cases, the Debtors utilized in excess of \$26 million in assets that
9 the Committee asserts were otherwise unencumbered (*i.e.*, the proceeds of the debtor-in-possession
10 financing, deposit accounts, and other unencumbered assets) and incurred substantial expenses
11 preserving and thereafter selling property in which the US Bank asserts liens and security interests.
12 Importantly, US Bank never loaned or otherwise provided monies to the Debtors to fund these
13 cases, including the orderly sale process, yet benefitted from the bankruptcy sale process, all of
14 which was materially funded by otherwise unencumbered assets. US Bank also actively
15 participated in the sale process, which caused significant and material expenses to be incurred by
16 the Estates. Further, having already received \$10 million from the sale of assets and claiming
17 entitlement to the remaining sale proceeds held in escrow, US Bank now appears to refuse to pay
18 its share of the costs incurred in connection with the preservation and sale of such assets. Such an
19 outcome would leave millions of dollars of unpaid administrative expenses and jeopardize any
20 recovery to general unsecured creditors. Such an outcome would also be contrary to applicable
21 Ninth Circuit precedent, and basic fairness and equities of these Cases and should not be permitted.

22 To avoid such an improper outcome, instead of waiving surcharge rights, the Trustee should
23 seek a surcharge of the US Bank Collateral for what the Bankruptcy Code intends—the reasonable
24 and necessary administrative expenses that the Debtors incurred for the benefit of US Bank through
25 a value maximizing sales process to which US Bank consented (both expressly and impliedly) and
26
27
28

1 was an active participant. It would be inconsistent with Ninth Circuit precedent⁴ and inequitable
2 for these Estates to bear the costs for the preservation and liquidation of the US Bank Collateral for
3 US Bank to not pay its fair share of such expenses after consenting to the Estates' preservation and
4 sale of such assets.

5 Specifically, the US Bank Collateral should be surcharged under § 506(c) by at least
6 \$12.6 million (the amount of DIP financing proceeds that were indisputably unencumbered assets
7 spent to maintain operations and enable the sale of the Debtors' assets as a going concern), subject
8 to the rights of the Committee to augment such request after a determination of the balance of the
9 Debtors' assets which are otherwise unencumbered, based upon the statutory elements thereof (*i.e.*,
10 reasonableness, necessity, and benefit) and based upon the fact that US Bank expressly consented
11 to the preservation and sale of its collateral and impliedly consented to a surcharge through its
12 active participation and conduct during these Cases. Both of these elements have been endorsed by
13 applicable Ninth Circuit precedent as a basis for surcharge.

14 Further, if surcharge were litigated, the Committee asserts that both the subjective and
15 objective tests for surcharge would be satisfied.⁵ These Cases are precisely the scenario where the
16 benefits provided by the recourses and efforts of the Estates have resulted in an outcome that would
17 provide a windfall to US Bank without surcharge. *In re Cass*, 2015 WL 2194796, at *15. As to the
18 subjective test, the Debtors utilized unencumbered assets, including the amounts obtained pursuant
19 to the DIP Facility that was collateralized using unencumbered assets, to fund these Cases which
20 significantly benefitted US Bank. Absent the use of such unencumbered assets, these Cases would
21 have been administratively insolvent, and the Hospital would have shut down, all of which would
22 have significantly depreciated the value of the assets sold and US Bank's recovery. US Bank was
23 fully aware of the administrative insolvency. As such, the only reason US Bank was able to recover

25 ⁴ For example, see *In re Tollenaar Holsteins*, 538 B.R. at 838 (secured creditors with liens on substantially all the
26 assets of jointly administered chapter 11 estates, and with knowledge that each estate was administratively insolvent,
27 impliedly consented to surcharge of their respective collateral for expenses that trustee and trustee's professionals
incurred in administration of estates).

28 ⁵ To the extent the issue of surcharge is litigated before this Court, the Committee reserves all rights and arguments
related thereto.

1 as much as it did on its collateral is because the Debtors agreed to expend such unencumbered
2 assets.

3 Moreover, as set forth thoroughly in the facts above, US Bank actively participated in the
4 sale process. In fact, US Bank's conduct during the sale process increased administrative expenses,
5 particularly where (i) it demanded that AHS be treated as a qualified bidder and selected as the
6 successful bidder and (ii) further demanded, under threat of withholding its consent to the proposed
7 sale to AHS, that the Debtors require AHS to (a) supplement its bid by \$1.7 million for a deposit
8 (even though it was a debt assumption offer), (b) provide a corporate guaranty from its affiliate
9 entities to US Bank, and (c) retain outside counsel to advise on the transaction, none of which were
10 required under the Bidding Procedures Order. *See* Debtors Aug. 1, 2023 Response at 4-6.
11 US Bank's actions increased estate professional fees—which fees were necessary and reasonable.
12 Despite its numerous opportunities throughout the Cases, US Bank declined to exercise its own
13 rights such as stay relief or a credit bid and instead allowed the sale process to proceed. By using
14 and benefiting from the Cases, US Bank avoided the costs and burdens associated with enforcing
15 its security interests and benefited from the efforts of the Estates to have its collateral sold as a
16 going concern.

17 As to the objective test, again, the Committee asserts that surcharge would be appropriate
18 if the issue were litigated. Significant reasonable and necessary were caused to preserve and
19 ultimately dispose of the US Bank Collateral through the sale of the Hospital as a going concern,
20 which provided a substantial benefit to US Bank, which would have received substantially less
21 value had such expenses not been incurred as the Debtors continued to suffer ongoing losses with
22 no other sources of credit other than assets which were otherwise unencumbered. And, having
23 already received \$10 million of the sale proceeds pursuant to the Sale Order, US Bank now hopes
24 to effectuate elimination of surcharge rights through a stipulation with the Trustee. Such an
25 agreement would allow US Bank to avoid paying the costs of selling its collateral as a going concern
26 that directly benefited US Bank at the expense of professionals and other administrative claim
27 holders. Accordingly, the Committee requests that the Court expand the scope of the Mediation to
28 include disputes related to surcharge.

C. The Agreement with US Bank Would Be Inconsistent with Trustee's Fiduciary Duties

While a formal agreement between US Bank and the Trustee that waives surcharge rights and claims is not currently before the Court, the Committee submits that, to the extent that such agreement is being prepared and, if granted, would not only be improvident, it would be inconsistent with the Trustee's fiduciary duties.⁶ As such, the surcharge issue and proposed settlement should be included in the Mediation.

To establish a claim for breach of fiduciary duty, a party must show "(1) the existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damages." *Slaieh v. Simons*, 584 B.R. 28, 41 (C.D. Cal. 2018). It is well settled⁷ that a trustee's duties contained in § 1106 and throughout the Bankruptcy Code are fiduciary in nature. 11 U.S.C. § 1106; *see Wolf v. Weinstein*, 372 U.S. 644, 650 (1963); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355-56 (1985) ("[T]he fiduciary duty of the trustee runs to shareholders as well as to creditors."). "This [fiduciary] relationship is all pervasive. All a trustee's obligations are fiduciary obligations. Accordingly, trustees are held to the highest standards of conduct . . ." *In re Grodel Mfg., Inc.*, 33 B.R. 693, 694-95 (Bankr. D. Conn. 1983). "A bankruptcy or reorganization trustee is a fiduciary of each creditor of the estate . . . As such, he has a duty to treat all creditors fairly and to exercise that measure of care and diligence that an ordinarily prudent person under similar circumstances would exercise." *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1357 (9th Cir. 1983) (internal citations omitted). A trustee "may not be the representative of any particular creditor, but must represent all creditors without partiality." *In re AFI Holding, Inc.*, 530 F.3d 832, 844 (9th Cir. 2008) (quoting *Gross v. Russo (In re Russo)*, 18 B.R. 257, 270-71 (Bankr. E.D.N.Y. 1982)). "It follows that a bankruptcy trustee must have no adverse interest to the estate, nor profit from her handling of the estate." *Id.* at 845.

⁶ To the extent a formal agreement between U.S. Bank and the Trustee is brought before the Court, the Committee reserves all rights and arguments related thereto.

⁷ Even US Bank acknowledged that the Trustee is a "paid fiduciary." [Docket No. 810 at 36.]

1 In line with a trustee's duty of loyalty and fairness to all creditors, § 1129(a)(9) provides
2 that § 507(a)(2) priority claims, such as administrative expenses, must be paid in cash on the
3 effective date of a chapter 11 plan unless the holder of the claim has agreed otherwise. 11 U.S.C.
4 § 1129(a)(9). "When a debtor's assets may not be sufficient to pay all expenses of administration
5 in full, it is improper . . . to pay one such expense during the progress of the case and to defer
6 payment of another expense of the same class to a later time." *In re Western Farmers Ass'n*, 13
7 B.R. 132, 135 (Bankr. W.D. Wash 1981). Allowing interim payments of some administrative
8 expenses may result in "differing priorities among administrative claims." 4 Collier on Bankruptcy
9 ¶ 503.03[2] (16th ed. 2024). For example, if an estate is administratively insolvent, "those creditors
10 that were paid on an ongoing basis during the case might be paid in full, while those creditors that
11 were paid on a less regular basis or were required to wait for plan confirmation might only receive
12 partial or perhaps no payment on account of their claims." *Id.* A trustee is not able to circumvent
13 the requirements of the Bankruptcy Code, particularly due to the trustee's fiduciary duties of loyalty
14 and fairness to creditors. *Matter of Troy Dodson Const. Co., Inc.*, 993 F.2d 1211, 1216 (5th Cir.
15 1993) ("It is not clear that a trustee could ethically agree to shortchange one set of creditor's
16 interests in the debtor's estate . . ."); *In re 800Ideas.com, Inc.*, 527 B.R. 701, 704-05 (Bankr. S.D.
17 Cal. 2015) (Holding that the trustee has a fiduciary duty to unsecured creditors but cannot
18 circumvent the requirements of the Bankruptcy Code to classify an administrative claim as an
19 unsecured claim); *In re Rosenberg*, 495 B.R. 196, 202 (Bankr. E.D.N.Y. 2010) (Holding that a
20 trustee has duty to treat all parties in the case fairly and that a stipulation that contained provisions
21 that conflicted with the Bankruptcy Code could not be approved); *In re Goffena*, 175 B.R. 386, 392
22 (Bankr. D. Mont. 1994) (holding that a secured creditor and a trustee can agree to the assignment
23 of sales proceeds, "but that agreement cannot be made contrary to §§ 506(c) and 726").

24 Here, the contemplated agreement between US Bank and the Trustee would pay certain
25 administrative claims—specifically the Trustee's fees and the fees of his professionals—while not
26 providing payment for other administrative expenses, including professional claims owed by the
27 Estates to Debtors' and Committee's professionals or § 503(b)(9) claims and, further, extinguish
28 the right to seek payment of such fees and expenses through surcharge. The proposed agreement to

1 pay the Trustee and his professionals ahead of all other administrative expenses would place the
2 Trustee in a position where he would act in a manner inconsistent with his fiduciary duties to the
3 estate, including duties of care and loyalty, and the duty to treat all creditors fairly. *See, e.g., In re*
4 *AFI Holding, Inc.*, 530 F.3d at 844-45; *In re Cochise College Park, Inc.*, 703 F.2d at 1357; *In re*
5 *800Ideas.com, Inc.*, 527 B.R. at 704-05; *In re Rosenberg*, 495 B.R. at 202 (“A chapter 11 trustee
6 owes a fiduciary duty to the estate, and cannot be bound by an agreement between the debtor and
7 a creditor that conflicts with the trustee’s obligations under the Bankruptcy Code.”); *In re Goffena*,
8 175 B.R. 386, 391-392 (Bankr. D. Mont. 1994).

9 Further, such an agreement is in direct contravention to the Bankruptcy Code, which
10 requires equitable treatment for creditors. 11 U.S.C. § 1129(a)(9); *In re Rosenberg*, 495 B.R. at
11 202; *In re Goffena*, 175 B.R. 391-392. This matter is analogous to the situation in *In re Goffena*,
12 where a chapter 7 trustee and an undersecured creditor agreed—based on the undersecured
13 creditors’ implied consent to the sale—to carve out the chapter 7 trustee’s fees from the sale
14 proceeds. 175 B.R. at 387-89. However, the estate in *Goffena* was administratively insolvent and
15 post-petition priority tax claims remained unpaid. *Id.* There, the court found that the fee allocated
16 to the trustee was actually “rewarded [to] the estate (and not the Trustee individually for the Trustee
17 is a fiduciary of the estate) [and] the sum allocated for the Trustee’s fee is property of the
18 bankruptcy estate to be distributed pursuant to § 726.” *Id.* at 392.

19 Finally, as set forth herein, this proposed agreement would cause significant damage to
20 other creditors as the cases are currently administratively insolvent⁸ and the ability to surcharge the
21 US Bank Collateral would be stripped from the Debtors’ estate. Thus, the Committee submits that
22 the appropriate solution to attempt to avoid such inequity – and subsequent litigation – is to expand
23 the scope of the Mediation and allow a resolution that provides for equitable treatment of all
24 creditors.

25 Accordingly, the Committee respectfully requests that the Court expand the scope of the
26 Mediation to include mediation of material issues in dispute related to rights to surcharge US

27
28 ⁸ Pending a resolution of the issues relating to section 506(c) and the Adversary Proceeding.

1 Bank's collateral and add the Trustee as a party in the Mediation to facilitate a consensual resolution
2 of these issues.

3 **V. CONCLUSION**

4 WHEREFORE, for the foregoing reasons and such additional reasons as may be advanced
5 at or prior to any hearing on this Motion, the Committee respectfully requests that this Court enter
6 an order (i) expanding the scope of the Mediation to include mediation of material issues in dispute
7 related to rights to surcharge US Bank's collateral, (ii) adding the Trustee as a party to the
8 Mediation with respect to the foregoing issues, and (iii) granting such other and further relief as is
9 proper under the circumstances.

10
11 Dated: February 15, 2024

SILLS CUMMIS & GROSS P.C.

12 By: 

13 ANDREW H. SHERMAN (Admitted *pro hac vice*)
14 asherman@sillscummis.com

15 BORIS I. MANKOVETSKIY (Admitted *pro hac*
16 *vice*)

bmankovetskiy@sillscummis.com

One Riverfront Plaza

Newark, New Jersey 07102

17 Telephone: 973 643 7000

18 Facsimile: 973 643 6500

Co-counsel for The Official

19 Committee Of Unsecured Creditors
20
21
22
23
24
25
26
27
28

DECLARATION OF STEVEN T. GUBNER

I, Steven T. Gubner, declare:

1. I am the managing partner of BG Law LLP, which is counsel to Outset Medical, Chair of the Official Committee of Unsecured Creditors (the “Committee”) of Beverly Community Hospital Association and its affiliated debtors in these jointly administered chapter 11 cases.

2. I make this declaration in support of the *Motion of the Official Committee of Unsecured Creditors to Expand the Scope of Mediation* (the “Motion”).⁹

3. All facts stated herein are known to me to be true to the best of my personal knowledge, information and belief, and I would and could competently testify thereto in a court of law if called upon to do so.

4. The Committee and US Bank are participating in a mediation ordered in the Adversary Proceeding.

5. I am aware that the chapter 11 trustee appointed in these cases (the “Trustee”) is considering entering into an agreement with US Bank, wherein US Bank will agree to a surcharge of its alleged collateral to pay for the Trustee’s expenses and other wind-down costs in exchange for the Trustee’s waiver of any other surcharge rights and claims.

6. It is my belief that such an agreement would result in significant litigation and expense and would be detrimental to the Estates herein.

7. It is my belief that expanding the scope of the Mediation to encompass material issues related to rights to surcharge US Bank’s collateral and requiring the Trustee to attend and participate in the Mediation would be in the best interest of the Estates and creditors.

8. It is my understanding and belief that the Mediator has indicated he is available to mediate additional issues if the Court enters an order expanding the Mediation.

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

⁹ All capitalized terms not defined herein shall have the meaning ascribed in the Motion.

Executed this 15th day of February, 2024, at Woodland Hills, California.

BG LAW LLP
Steven T. Gubner

By: 

STEVEN T GUBNER

Attorneys to Outset Medical, Chair of the Official
Committee of Unsecured Creditors

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:

601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO EXPAND THE SCOPE OF MEDIATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVEN T. GUBNER** 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*) February 15, 2024, 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*) February 15, 2024, 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*) February 15, 2024, 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.

PERSONAL DELIVERY


United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
The Honorable Sandra R. Klein
255 E. Temple Street, Suite 1582
Los Angeles, CA 90012

☒ 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.

01/15/2024
Date

Tania M. Moyron
Printed Name


Signature

CreditorName	Email
Megan M Adeyemo	madeyemo@grsm.com; asoto@grsm.com
David E Ahdoot	dahdoot@bushgottlieb.com; kprestegard@bushgottlieb.com
Joseph M Ammar	ammar@millercanfield.com
Scott E Blakeley	seb@blakeleyllp.com; ecf@blakeleyllp.com
Joseph P Buchman	jbuchman@bwsllaw.com; gmitchell@bwsllaw.com
Adrian Butler	abutler@bushgottlieb.com
Augustus Curtis	augustus.t.curtis@usdoj.gov
David K Eldan	David.Eldan@doj.ca.gov, cynthia.gomez@doj.ca.gov
John-Patrick M Fritz	jpf@lnbyg.com; JPF.LNBYB@ecf.inforuptcy.com
Evelina Gentry	evelina.gentry@akerman.com; rob.diwa@akerman.com
Evan Gershbein	ECFpleadings@kccllc.com
Steven T Grubner	sgubner@bg.law, ecf@bg.law
Melissa Hamill	melissa.hamill@doj.ca.gov
Brian T Harvey	bharvey@buchalter.com
Robert M Hirsh	rhirsh@lowenstein.com
Darryl Jay Horowitt	dhorowitt@ch-law.com; bkasst@ch-law.com
David I Horowitz	david.horowitz@kirkland.com; keith.catuara@kirkland.com; terry.ellis@kirkland.com; elsa.banuelos@kirkland.com; ivon.granados@kirkland.com
Sonja Hourany	sonja.hourany@quinngroup.net; kadele@wgllp.com; lbracken@wgllp.com; shourany@ecf.courtdrive.com
Michael Jones	michael.jones4@usdoj.gov
Quinn Scott Kaye	kaye@millercanfield.com
Gary E Klausner	gek@lnbyg.com
Alexandria Lattner	alattner@sheppardmullin.com; ehwalters@sheppardmullin.com
Marc A Levinson	MALevinson@orrick.com; borozco@orrick.com
Ron Maroko	ron.maroko@usdoj.gov
Kelly L Morrison	kelly.l.morrison@usdoj.gov
Tania M Moyron	tania.moyron@dentons.com; malka.zeefe@dentons.com; kathryn.howard@dentons.com; derry.kalve@dentons.com; glenda.spratt@dentons.com; DOCKET.GENERAL.LIT.LOS@dentons.com
Jennifer L Nassiri	JNassiri@sheppardmullin.com
Neli Nima Palma	neli.palma@doj.ca.gov

CreditorName	Email
Russell W Reynolds	rreynolds@ch-law.com; bkasst@ch-law.com
Mary H Rose	mrose@buchalter.com
Nathan A Schultz	nschultzesq@gmail.com
Olivia Scott	olivia.scott3@bclplaw.com; theresa.macaulay@bclplaw.com
Howard Steinberg	steinbergh@gtlaw.com; pearsallt@gtlaw.com; howard-steinberg-6096@ecf.pacerpro.com
Tamar Terzian	tamar@terzlaw.com; sandra@terzlaw.com
United States Trustee (LA)	ustpregion16.la.ecf@usdoj.gov
Mark J Valencia	mvalencia@vclitigation.com
Emilio Eugene Varanini, IV	emilio.varanini@doj.ca.gov
Kevin Walsh	kevin.walsh@gtlaw.com
Kenneth K Wang	kenneth.wang@doj.ca.gov; Jennifer.Kim@doj.ca.gov; Stacy.McKellar@doj.ca.gov; yesenia.caro@doj.ca.gov; Christine.Murphy@doj.ca.gov
Sharon Z. Weiss	sharon.weiss@bclplaw.com; raul.morales@bclplaw.com; REC_KM_ECF_SMO@bclplaw.com
Roye Zur	rzur@elkinskalt.com; cavila@elkinskalt.com; lwageman@elkinskalt.com; 1648609420@filings.docketbird.com

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
TOP 30	Abbott Laboratories Inc	Nathan Scott	100 Abbot Park Road			Abbot Park	IL	60064
TOP 30	Advantis Medical Staffing	Elayne Goldmane	13155 Noel Road Suite 300			Dallas	TX	75240
Counsel for Advantis Medical Staffing	Akerman LLP	Evelina Gentry and Anthony D. Sbardellati	601 West Fifth Street, Suite 300			Los Angeles	CA	90071
TOP 30	Alhambra Hospital Medical Center	Terry Chu	4619 N. Rosemead Blvd.			Rosemead	CA	91770
TOP 30	Allied Universal Security Services	Moises Rodriguez	161 Washington St Suite 600			Conshohocken	PA	19428
TOP 30	Arthrex, Inc	Carla Pitcher	2825 Airview Boulevard			Kalamazoo	MI	49002
Office of the Attorney General of the United States	Attorney General of the United States	U. S. Department of Justice	950 Pennsylvania Avenue, NW			Washington	DC	20530-0001
TOP 30	Axis Spine Llc	DD Mate	1812 W Burbank Blvd #5384			Burbank	CA	91506
TOP 30	Baxter Healthcare Corp	Yoliet Bazan Matamoros	17511 Armstrong Ave			Irvine	CA	92614
Counsel to Baxter Healthcare Corporation	Blakeley LC	Scott E. Blakeley	530 Technology Drive, Suite 100			Irvine	CA	92618
TOP 30	Boston Scientific Corp	Kathleen Homsab	300 Boston Scientific Way			Marlborough	MA	01752-1234
Counsel for Sodexo	Brown McGarry Nimeroff LLC	Jami B. Nimeroff	Two Penn Center, Suite 610	1500 John F. Kennedy Boulevard		Philadelphia	PA	19102
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Eric S. Prezant	161 North Clark Street, Suite 4300			Chicago	IL	60612
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Vanessa Sunshine and Sharon Weiss	120 Broadway, Suite 300			Santa Monica	CA	90401-2386
Counsel for United Nurses Associations of California/Union of Health Care Professionals	Bush Gottlieb, A Law Corporation	David E. Ahdoot, Kirk M. Prestegard and Adrian R. Butler	801 North Brand Boulevard	Suite 950		Glendale	CA	91203
TOP 30	California Department Of Health Care	Tomas J. Aragon	1501 Capitol Avenue, Suite 4510			Sacramento	CA	95814
California Department of Health Care Services	California Department of Health Care Services	Jennifer Kent, Director	1501 Capitol Avenue, Suite 4510			Sacramento	CA	95814
California Department of Public Health	California Department of Public Health	Stephanie Spich	PO Box 997377 MS 0500			Sacramento	CA	95899-7377
California Secretary of State	California Secretary of State		1500 11th Street			Sacramento	CA	95814
California State Board of Pharmacy	California State Board of Pharmacy		1625 North Market Boulevard			Sacramento	CA	95834
California Statewide Communities Development Authority	California Statewide Communities Development Authority	Chair	1100 K Street, Suite 101			Sacramento	CA	95814
California Statewide Communities Development Authority	California Statewide Communities Development Authority	James Hamill	1700 N. Broadway, Suite 405			Walnut Creek	CA	94596
Center for Medicare and Medicaid Services	Center for Medicare and Medicaid Services	Steven Chickering, the Associate Regional Administrator	90 - 7th Street, Suite 5-300			San Francisco	CA	94103-6706
TOP 30	Cepheid Inc.	Susan Jose	904 E Caribbean Dr			Sunnyvale	CA	94089
TOP 30	Cloudwave	Loraine Sarno	100 Crowley Dr.			Marlborough	MA	01752
TOP 30	Constellation New Energy-Gas	Zachary Keczykecy	9400 Bunsen Parkway Suite 100			Louisville	KY	40220
Proposed Counsel to the Official Committee of Unsecured Creditors	Dentons US LLP	Tania M. Moyron, Samuel R. Maizel and Rebecca M. Wicks	601 South Figueroa Street, Suite 2500			Los Angeles	CA	90017-5704
Department of Health Care Services	Department of Health Care Services	Tanya Homman, Chief of Provider Enrollment Division	MS 4704, P.O. Box 997412			Sacramento	CA	95899-7412
Counsel for Medico Professional Linen Service and American Textile Maintenance	Elkins Kalt Weintraub Reuben Gartside LLP	Roye Zur	10345 W. Olympic Blvd.			Los Angeles	CA	90064
Employment Development Dept.	Employment Development Dept.		722 Capitol Mall, MIC 92E			Sacramento	CA	95814
TOP 30	First Financial Holdings Llc	Ricardo Oseguera	750 The City Drive South, Suite 300			Orange	CA	92868
Counsel to Indenture Trustee	Greenberg Traurig, LLP	Colleen Murphy, Kevin Walsh	One International Place, Suite 2000			Boston	MA	02110
Hanmi Bank	Hanmi Bank	Specialty Lending	2010 Main St. Suite 590			Irvine	CA	92614
Hanmi Bank	Hanmi Bank	Specialty Lending	1920 Main St. Suite 1140	Attn Ben Sottile		Irvine	CA	92614
Hanmi Bank	Hanmi Bank		10180 Reseda Blvd			Northridge	CA	91324
Proposed DIP Lender	Hilco Real Estate	Attn Gary C. Epstein, Ryan Lawlor, Neil Aaronson and Robert Lubin	5 Revere Drive, Suite 206			Northbrook	IL	60062
TOP 30	Huntington Technology Finance	Brent McQueen	2285 Franklin Road			Bloomfield Hills	MI	48302
IRS	Internal Revenue Service	Attn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201
IRS	Internal Revenue Service	Centralized Insolvency Operation	P.O. Box 7346			Philadelphia	PA	19101-7346
IRS	Internal Revenue Service	Centralized Insolvency Operation	2970 Market St			Philadelphia	PA	19104
IRS	Internal Revenue Service		300 North Los Angeles Street			Los Angeles	CA	90012
IRS	Internal Revenue Service		600 Arch Street			Philadelphia	PA	19101

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Stalking Horse Purchaser	Jones Day	Joshua M. Mester and Catherine A. Ehrgott	555 South Flower Street, 50th Floor			Los Angeles	CA	90071
TOP 30	Keenan and Associates	Eric Rodriguez	2355 Crenshaw Blvd., Suite 200			Torrance	CA	90501
Counsel for Portage Point Partners, LLC, Triple P Securities, LLC, and Triple P RTS, LLC	Kirkland & Ellis LLP	David I. Horowitz	2049 Century Park East			Los Angeles	CA	90067
Counsel for Portage Point Partners, LLC, Triple P Securities, LLC, and Triple P RTS, LLC	Kirkland & Ellis LLP	Ryan Blaine Bennett, P.C.	300 North LaSalle			Chicago	IL	60654
Counsel for Hanmi Bank	Law Office of Nathan A. Schultz, P.C.	Nathan A. Schultz, Esq.	10621 Craig Road			Traverse City	MI	49686
Counsel to Medline Industries, LP	Lowenstein Sandler LLP	Robert M. Hirsh and Phillip Khezri	1251 Avenue of the Americas			New York	NY	10020
TOP 30	Medical Information Technology, Inc	Goretti Medeiros	7 Blue Hill River Road			Canton	MA	02021
TOP 30	Medical Solutions LLC	Ruben Ramirez	1010 N 102Nd St Suite 300			Omaha	NE	68114
TOP 30	Medline Industries Inc	Brent Fogel	Three Lakes Drive			Northfield	IL	60093
TOP 30	Medstar Anesthesia Services Inc	Robert Resnick	9251 Wedgewood St			Temple City	CA	91780
National Association of Attorneys General	National Association of Attorneys General		1850 M Street NW, 12th Floor			Washington	DC	20036
TOP 30	Nixon Peabody Lip	Jennifer O'Neal	1300 Clinton Square			Rochester	NY	14604
TOP 30	Noridian Healthcare Solutions, LLC	Theresa Pachel	900 42nd Street S			Fargo	ND	58103
TOP 30	Office of Inspector General (OIG)	Nicole Caucci	405 South Main Street Suite 350			Salt Lake City	UT	84111
Attorney General of California	Office of the Attorney General	Emilio Varanini, Supervising Deputy Attorney General	455 Golden Gate Ave., Suite 11000			San Francisco	CA	94102
Attorney General of California	Office of the Attorney General	Neli Palma and Melissa Hamill	1300 I Street P.O. Box 944255			Sacramento	CA	94244-2550
Attorney General of California	Office of the Attorney General	Roma Patel, Deputy Attorney General	300 South Spring Street, Suite 7505			Los Angeles	CA	90013-1230
Office of the Attorney General of California	Office of the Attorney General of California	Consumer Law Section	Attn Bankruptcy Notices	455 Golden Gate Ave., Suite 11000		San Francisco	CA	94102
Deputy General Counsel to California Department of Health Care Services	Office of the California Attorney General	Department of Justice	Kenneth K. Wang	300 South Spring Street, Suite 1702		Los Angeles	CA	90013
Office of the CA Attorney General	Office of the California Attorney General	Department of Justice	Jennifer Kim	300 South Spring Street, Floor 9		Los Angeles	CA	90013
Counsel to Hanmi Bank	Orrick, Herrington & Sutcliffe LLP	Brendan LaFountain	400 Capitol Hall			Sacramento	CA	95814-4497
TOP 30	Outset Medical Inc	Andy Rabon	3052 Orchard Drive			San Jose	CA	95134
TOP 30	Philips Healthcare	Jose Rivera	222 Jacobs Street			Cambridge	MA	02141
TOP 30	Private Attorney General Act (PAGA)	Jarrod Salinas	1411 North Batavia Street #105			Orange	CA	92867
Counsel for California Statewide Communities Development Corporation dba CSDA	Richards, Watson & Gershon	Stephen D. Lee	350 South Grand Avenue, 37th Floor			Los Angeles	CA	90071
TOP 30	Shiftwise	Jennifer Folds	200 SW Market Street Suite 700			Portland	OR	97201
Counsel to Hanmi Bank	Shulman Hodges & Bastian LLP	Michael J. Petersen	100 Spectrum Center Drive, Suite 600			Irvine	CA	92614
Proposed Counsel to the Official Committee of Unsecured Creditors	Sills Cummis & Gross P.C.	Andrew Sherman and Boris Mankovetskiy	One Riverfront Plaza			Newark	NJ	07102
TOP 30	Sodexo Inc & Affiliates	Luis Lunalluna	9801 Washingtonian Boulevard			Gaithersburg	MD	20878
State of California Employment Development Department	State of California Employment Development Department	Bankruptcy Group MIC 92E	P. O. Box 826880			Sacramento	CA	94280-0001
TOP 30	Stryker Endoscopy	Joe Gallinatti	5900 Optical Ct			San Jose	CA	95138
TOP 30	Stryker Instruments	Donovan Reiley	4100 E. Milham Road			Kalamazoo	MI	49001
TOP 30	Stryker Orthopedics	Trent Zaks	325 Corporate Drive			Mahwah	NJ	07430
U.S. Department of Health & Human Services	U.S. Department of Health & Human Services	Alex M. Azar II, Secretary	200 Independence Avenue, S.W.			Washington	DC	20201
U.S. Department of Health and Human Services	U.S. Department of Health and Human Services	Angela M. Belgrove, Assistant Regional Counsel	Office of the General Counsel, Region IX	90 7th Street, Suite 4-500		San Francisco	CA	94103-6705
United States Attorney Civil Process Clerk	United States Attorney's Office		Federal Building	Room 7516	300 North Los Angeles Street	Los Angeles	CA	90012
United States Attorney's Office	United States Attorneys Office	Central District of California	312 North Spring Street	Suite 1200		Los Angeles	CA	90012
United States Attorney's Office	United States Attorneys Office	Northern District of California	150 Almaden Boulevard	Suite 900		San Jose	CA	95113

SERVICE LIST (via First-Class Mail)

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
U.S. Department of Health and Human Services, among other agencies and departments of the United States	United States Department of Justice	Civil Division	Augustus T. Curtis	P.O. Box 875	Ben Franklin Station	Washington	DC	20044-0875
United States Attorney General	United States Department of Justice	Ben Franklin Station	P. O. Box 683			Washington	DC	20044
Office of the United States Trustee	United States Trustee	Peter C. Anderson	Office of the UST/DOJ	915 Wilshire Blvd., Suite 1850		Los Angeles	CA	90017
Indenture Trustee	US Bank NA	Christopher H. Gehman Vice President, Global Corporate Trust Services	James Center Three	1051 East Cary Street, 6th Floor		Richmond	VA	23219
Indenture Trustee	US Bank NA		Po Box 70870			St Paul	MN	55170-9690
Chambers	USBC Central District of California	Hon. Sandra R. Klein	Edward R. Roybal Federal Building and U.S. Courthouse	255 East Temple Street, Suite 1582		Los Angeles	CA	90012

Description	CreditorName	CreditorNoticeName	Email
TOP 30	Abbott Laboratories Inc	Nathan Scott	nathan.scott@abbott.com
TOP 30	Advantis Medical Staffing	Elayne Goldmane	goldman@advantismed.com
Counsel for Advantis Medical Staffing	Akerman LLP	Evelina Gentry and Anthony D. Sbardellati	evelina.gentry@akerman.com
TOP 30	Alhambra Hospital Medical Center	Terry Chu	terrychu@alhambrahospital.com
TOP 30	Allied Universal Security Services	Moises Rodriguez	moises.rodriguez@aus.com
TOP 30	Arthrex, Inc	Carla Pitcher	Carla.Pitcher@arthrex.com
TOP 30	Axis Spine Llc	DD Mate	dmate@axisspineco.com
TOP 30	Baxter Healthcare Corp	Yolieth Bazan Matamoros	yolieth_bazan@baxter.com
Counsel to Baxter Healthcare Corporation	Blakeley LC	Scott E. Blakeley	SEB@BlakeleyLC.com
TOP 30	Boston Scientific Corp	Kathleen Homsab	Kathleen.homsab@bsci.com
Counsel for Sodexo	Brown McGarry Nimeroff LLC	Jami B. Nimeroff	jnimeroff@bmnlawyers.com
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Eric S. Prezant	eric.prezant@bclplaw.com
Counsel to Proposed DIP Lender	Bryan Cave Leighton Paisner LLP	Vanessa Sunshine and Sharon Weiss	vanessa.sunshine@bclplaw.com; sharon.weiss@bclplaw.com
Counsel for United Nurses Associations of California/Union of Health Care Professionals	Bush Gottlieb, A Law Corporation	David E. Ahdoot, Kirk M. Prestegard and Adrian R. Butler	dahdoot@bushgottlieb.com; kprestegard@bushgottlieb.com; abutler@bushgottlieb.com
TOP 30	California Department Of Health Care	Tomas J. Aragon	D'Andria.Lewis@dhcs.ca.gov; Christine.Oguro@dhcs.ca.gov
California Department of Public Health	California Department of Public Health	Stephanie Spich	stephanie.spich@cdph.ca.gov
California Statewide Communities Development Authority	California Statewide Communities Development Authority	James Hamill	jhamill@cscda.org
TOP 30	Cepheid Inc.	Susan Jose	susan.jose@cepheid.com
TOP 30	Cloudwave	Loraine Sarno	lsarno@insightinvestments.com
TOP 30	Constellation New Energy-Gas	Zachary Keczykecy	ZacharyKeczykecy@spectrum-nrg.com
Proposed Counsel to the Official Committee of Unsecured Creditors	Dentons US LLP	Tania M. Moyron, Samuel R. Maizel and Rebecca M. Wicks	tania.moyron@dentons.com; samuel.maizel@dentons.com; rebecca.wicks@dentons.com
Counsel for Medico Professional Linen Service and American Textile Maintenance	Elkins Kalt Weintraub Reuben Gartside LLP	Roye Zur	rzur@elkinskalt.com
TOP 30	First Financial Holdings Llc	Ricardo Oseguera	roseguera@ffequipmentleasing.com
Counsel to Indenture Trustee	Greenberg Traurig, LLP	Colleen Murphy, Kevin Walsh	Colleen.Murphy@gtlaw.com; Kevin.Walsh@gtlaw.com
Proposed DIP Lender	Hilco Real Estate	Attn Gary C. Epstein, Ryan Lawlor, Neil Aaronson and Robert Lubin	gepstein@hilcoglobal.com; rlawlor@hilcoglobal.com; NAAaronson@hilcoglobal.com; RLubin@hilcoglobal.com
TOP 30	Huntington Technology Finance	Brent McQueen	brent.a.mcqueen@huntington.com
Counsel to Stalking Horse Purchaser	Jones Day	Joshua M. Mester and Catherine A. Ehr Gott	jmmester@jonesday.com; cehrgott@JonesDay.com
TOP 30	Keenan and Associates	Eric Rodriguez	erodriguez@keenan.com
Counsel for Portage Point Partners, LLC, Triple P Securities, LLC, and Triple P RTS, LLC	Kirkland & Ellis LLP	David I. Horowitz	David.Horowitz@kirkland.com
Counsel for Portage Point Partners, LLC, Triple P Securities, LLC, and Triple P RTS, LLC	Kirkland & Ellis LLP	Ryan Blaine Bennett, P.C.	ryan.bennett@kirkland.com
Counsel for Hanmi Bank	Law Office of Nathan A. Schultz, P.C.	Nathan A. Schultz, Esq.	nschultzesq@gmail.com
Counsel to Medline Industries, LP	Lowenstein Sandler LLP	Robert M. Hirsh and Phillip Khezri	mhirsh@lowenstein.com; pkhezri@lowenstein.com
TOP 30	Medical Information Technology, Inc	Goretti Medeiros	gmedeiros@meditech.com
TOP 30	Medical Solutions LLC	Ruben Ramirez	Nick.Rudman@medicalsolutions.com; brian.koenig@kolejessen.com
TOP 30	Medline Industries Inc	Brent Fogel	bfogel@medline.com
TOP 30	Medstar Anesthesia Services Inc	Robert Resnick	robert.amedinc@gmail.com
National Association of Attorneys General	National Association of Attorneys General		support@naag.org
TOP 30	Nixon Peabody Llp	Jennifer O'Neal	joneal@nixonpeabody.com
TOP 30	Noridian Healthcare Solutions, LLC	Theresa Pachel	JE-ERS@noridian.com
TOP 30	Office of Inspector General (OIG)	Nicole Caucci	Nicole.Caucci@oig.hhs.gov
Attorney General of California	Office of the Attorney General	Emilio Varanini, Supervising Deputy Attorney General	Emilio.Varanini@doj.ca.gov
Attorney General of California	Office of the Attorney General	Neli Palma and Melissa Hamill	Neli.Palma@doj.ca.gov; Melissa.Hamill@doj.ca.gov
Attorney General of California	Office of the Attorney General	Roma Patel, Deputy Attorney General	Roma.Patel@doj.ca.gov
Office of the Attorney General of California	Office of the Attorney General of California	Consumer Law Section	Scott.Chan@doj.ca.gov
Deputy General Counsel to California Department of Health Care Services	Office of the California Attorney General	Department of Justice	Kenneth.Wang@doj.ca.gov
TOP 30	Outset Medical Inc	Andy Rabon	arabon@outmedical.com
TOP 30	Philips Healthcare	Jose Rivera	jose.rivera@philips.com
TOP 30	Private Attorney General Act (PAGA)	Jarrod Salinas	jarrod@phoenixclassaction.com

Description	CreditorName	CreditorNoticeName	Email
Counsel for California Statewide Communities Development Corporation dba CSDA	Richards, Watson & Gershon	Stephen D. Lee	slee@rwglaw.com
TOP 30	Shiftwise	Jennifer Folds	jennifer.folds@medefis.com
Proposed Counsel to the Official Committee of Unsecured Creditors	Sills Cummis & Gross P.C.	Andrew Sherman and Boris Mankovetskiy	asherman@sillscummis.com; bmankovetskiy@sillscummis.com
TOP 30	Sodexo Inc & Affiliates	Luis Lunalluna	LuisLunalluna@beverly.org
TOP 30	Stryker Endoscopy	Joe Gallinatti	joe.gallinatti@stryker.com
TOP 30	Stryker Instruments	Donovan Reiley	donovan.reiley@stryker.com
TOP 30	Stryker Orthopedics	Trent Zaks	TrentZaks@stryker.com
U.S. Department of Health and Human Services, among other agencies and departments of the United States	United States Department of Justice	Civil Division	augustus.t.curtis@usdoj.gov
U.S. Department of Health and Human Services, among other agencies and departments of the United States	United States Department of Justice	Civil Division	augustus.t.curtis@usdoj.gov
Office of the United States Trustee	United States Trustee	Peter C. Anderson	hatty.yip@usdoj.gov; Michael.Jones4@usdoj.gov
Indenture Trustee	US Bank NA	Christopher H. Gehman Vice President, Global Corporate Trust Services	christopher.gehman@usbank.com