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15 Attorneys for Cerner Corporation

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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

Lead Case No. 2:18-bk-20151-ER
Chapter 11

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



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☐ 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
Dialysis, LLC

Debtors and Debtors in Possession.

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

Sale Hearing:

Date: April 17, 2019
Time: 10:00 a.m.
Place: 255 E. Temple Street
Los Angeles, CA 90012
Courtroom 1568
Judge: Hon. Ernest M. Robles

**LIMITED OBJECTION OF
CERNER CORPORATION TO
NOTICE TO COUNTERPARTIES
TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF
THE DEBTORS THAT MAY BE
ASSUMED AND ASSIGNED
[DKT. NO 1704]**

COMES NOW Cerner Corporation, on behalf of itself and its affiliates (collectively, “Cerner”), creditors and parties-in-interest of Verity Health System of California, Inc., *et al.* (“Debtors”), by and through undersigned counsel, and files this limited objection (“Objection”) to the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed and Assigned (the “Assumption Notice”) [Docket No. 1704]. In support of its Objection, Cerner states as follows:

BACKGROUND

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a Petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Central District of California.

2. On January 17, 2019, the Debtors filed the Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances (the “Sale Motion”) [Docket No. 1279].

3. In the Sale Motion, the Debtors propose to sell the assets of St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center to stalking horse bidder Strategic Global Management, Inc., or the higher bidder.

4. On February 19, 2019, the Court entered an order (the “Bidding Procedures Order”) [Docket No. 1572] approving, among other things, the Bidding

1 Procedures requested in the Sale Motion.

2 5. In accordance with the Bidding Procedures Order, the Debtors filed the
3 Assumption Notice on March 5, 2019.

4 6. The Assumption Notice included on Exhibit A Part 4 (“System/Multi
5 Facility” Contracts) an agreement between Verity Health System of California, Inc.
6 and Cerner Health Services Inc. formerly Siemens Medical Solutions USA, Inc.
7 The contract is described as “Services – Software Maintenance and Support”, with a
8 termination date of 6/30/2019 (the “Agreement”). The proposed cure amount is
9 listed as \$12,306.17 from St. Francis Medical Center and \$99,912.86 from Verity
10 Health System, for a total of \$112,219.03.

11 7. Services under the Agreement relate to accounts receivable, collection,
12 medical records and reimbursement management, as well as a laboratory
13 information system. See the attached Declaration of Darrell W. Clark in Support of
14 the Limited Objection of Cerner Corporation to the Notice to Counterparties to
15 Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed
16 and Assigned [Dkt. No. 1704] (hereafter “Clark Decl.”), ¶ 4. Although the data is
17 stored separately for each facility, Cerner’s services are provided to the Debtors
18 under the one agreement. Clark Decl., ¶ 5.

19 **LIMITED OBJECTION**

20 8. Cerner does not oppose the proposed sale described in the Sale Motion,
21 nor does Cerner generally oppose assumption and assignment of the Agreement in
22 the sale. Clark Decl., ¶ 6.

23 9. Cerner does object to assumption and assignment of the Agreement to
24 the extent that the proposed cure amounts fail to satisfy all existing defaults in
25 accordance with 11 U.S.C. § 365(b). Clark Decl., ¶ 7.

26 10. 11 U.S.C. § 365(b)(1) states, in pertinent part:

27 (b)(1) If there has been a default in an executory contract or unexpired lease
28 of the debtor, the trustee may not assume such contract or lease unless, at the time of

1 assumption of such contract or lease, the trustee—

2 (A) cures, or provides adequate assurance that the trustee will promptly cure
3 such default . . . ;

4 (B) compensates, or provides adequate assurance that the trustee will
5 promptly compensate, a party other than the debtor to such contract or lease, for any
6 actual pecuniary loss to such party resulting from such default; and

7 (C) provides adequate assurance of future performance under such contract or
8 lease.

9 11 U.S.C. § 365(b)(1).

10 11. A cure under 11 U.S.C. § 365 means that all unpaid amounts due under
11 the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67,
12 76 (Bankr. D. Del. 2005).

13 12. Cerner's records show a total pre-petition balance under the Agreement
14 as \$117,232.94, which is close to the \$112,219.03 total listed in the Assumption
15 Notice, but with a different distribution of amounts owed between the facilities.
16 Clark Decl., ¶ 8.

17 13. Cerner's records indicate that the pre-petition amounts owed by facility
18 are: Seton Medical Center \$25,980.12; O'Connor Hospital \$25,980.12; St. Vincent
19 Medical Center \$35,554.71; St. Francis Medical Center \$27,356.13; and Verity
20 Health System \$2,361.86. Clark Decl., ¶ 9.

21 14. The parties should reconcile the balances, particularly to the extent that
22 the successful bidder under the Sale Motion views the amounts listed for Cerner in
23 the Assumption Notice as separate facility obligations.

24 15. Further, as the case proceeds, Cerner continues to provide post-petition
25 services to the Debtors' estates, and additional amounts become due under the
26 Agreement. In addition to the pre-petition amounts due, any additional post-petition
27 amounts due must also be paid to Cerner in order to cure the existing defaults.

28 16. The Agreement includes licenses for copyrighted software, which are

1 not transferable or assignable pursuant to the terms of the Agreement and applicable
2 non-bankruptcy law, and may not be assumed and assigned without Cerner's
3 consent.¹ Clark Decl., ¶ 10.

4 17. Section 365(c)(1) of the Bankruptcy Code provides that:

5 The trustee may not assume or assign any executory contract or unexpired
6 lease of the debtor, whether or not such contract or lease prohibits or restricts
7 assignment of rights or delegation of duties, if—

8 (1)

9 (A) applicable law excuses a party, other than the debtor, to such
10 contract or lease from accepting performance from or rendering
11 performance to an entity other than the debtor or the debtor in
12 possession, whether or not such contract or lease prohibits or restricts
13 assignment of rights or delegation of duties; and

14 (B) such party does not consent to such assumption or assignment

15 11 U.S.C. § 365(c)(1).

16 18. As a court in the Ninth Circuit, this Court must follow *Perlman v.*
17 *Catapult Entertainment, Inc. (In re Catapult Entertainment, Inc.)*, 165 F.3d 747 (9th
18 Cir. 1999). As established in *Catapult Entertainment*, agreements such as the
19 Agreement between the Debtors and Cerner cannot be assumed or assigned without
20 Cerner's consent. *See Id.* at 754-55 (holding that “where applicable nonbankruptcy
21 law makes an executory contract nonassignable because the identity of the
22 nondebtor party is material, a debtor in possession may not assume the contract
23 absent consent of the nondebtor party”).

24 19. If the successful bidder under the Sale Motion wishes to use the
25

26 ¹ Copyright law is the applicable nonbankruptcy law that would excuse Cerner
27 from accepting performance under the Agreement from an entity other than the
28 Debtors. *See, e.g., In re CFLC, Inc.*, 89 F.3d 673, 679 (9th Cir. 1996); *In re*
Sunterra Corp., 361 F.3d 257, 262 fn. 7 (4th Cir. 2004).

1 licensed services provided by Cerner to the Debtors, Cerner would consent to the
2 assumption and assignment of the Agreement upon payment of the cure described
3 herein. Clark Decl., ¶ 11.

4 20. Cerner looks forward to working with the Debtors as necessary to
5 reconcile the amounts due Cerner in connection with the Agreement. Clark Decl., ¶
6 12.

7 21. Cerner asks that the proposed sale sought in the Sale Motion be
8 approved at the April 17, 2019 hearing, with the matter of the potential
9 assumption/cure and assignment of Cerner's Agreement reserved for another day.
10 Clark Decl., ¶ 13.

11 WHEREFORE, Cerner Corporation respectfully requests that this Court enter
12 an Order conditioning assumption and assignment of the Agreement upon Cerner's
13 consent and payment of the cure amounts demanded herein, and granting such other
14 and further relief as is necessary and proper.

15
16 DATED: March 22, 2019

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18 One LLP

19 By: /s/ Lawrence J. Hilton
20 LAWRENCE J. HILTON
21 Attorneys for Cerner Corporation
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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:

One LLP, 4000 MacArthur Boulevard, East Tower, Suite 500, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **LIMITED OBJECTION OF CERNER CORPORATION TO NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS THAT MAY BE ASSUMED AND ASSIGNED [DKT. NO 1704]** 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 **March 22, 2019**, 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:

- Samuel R Maizel: samuel.maizel@dentons.com;
- John A. Moe, II: john.moe@dentons.com
- Tania M. Moyron: taniamoyron@dentons.com
- Alvin Mar: alvin.mar@usdoj.gov
- Hatty K. Yip: hatty.yip@usdoj.gov
- James Cornell Behrens: jbehrens@milbank.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **March 22, 2019**, 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 **March 22, 2019**, 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.

Hon. Ernest M. Robles

☐ Service information continued on attached page

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

March 22, 2019
Date

Robin Golder
Printed Name

/s/ Robin Golder
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1 Lawrence J. Hilton, Esq., (SBN 156524)
2 One LLP
3 4000 MacArthur Blvd., East Tower, Suite 500
4 Newport Beach, CA 92660
5 Telephone: (949) 502-2870
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8 Darrell W. Clark, Esq.
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14 Email: darrell.clark@stinson.com

15 Attorneys for Cerner Corporation

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
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Debtors and Debtors in Possession.

☒ Affects All Debtors

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Case No. 2:18-bk-20169-ER
Case No. 2:18-bk-20171-ER
Case No. 2:18-bk-20172-ER

DECLARATION OF DARRELL W. CLARK

- 1 ☐ Affects St. Francis Medical Center
2 ☐ Affects St. Vincent Medical Center
3 ☐ Affects Seton Medical Center
4 ☐ Affects O'Connor Hospital
5 Foundation
6 ☐ Affects Saint Louise Regional
7 Hospital
8 Foundation
9 ☐ Affects St. Francis Medical Center of
10 Lynwood Foundation
11 ☐ Affects St. Vincent Foundation
12 ☐ Affects St. Vincent Dialysis Center,
13 Inc.
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15 Foundation
16 ☐ Affects Verity Business Services
17 ☐ Affects Verity Medical Foundation
18 ☐ Affects Verity Holdings, LLC
19 ☐ Affects De Paul Ventures, LLC
20 ☐ Affects De Paul Ventures – San Jose
21 Dialysis, LLC

22 Debtors and Debtors in Possession.

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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

Sale Hearing:

Date: April 17, 2019
Time: 10:00 a.m.
Place: 255 E. Temple Street
Los Angeles, CA 90012
Courtroom 1568
Judge: Hon. Ernest M. Robles

**DECLARATION OF DARRELL
W. CLARK IN SUPPORT OF
LIMITED OBJECTION OF
CERNER CORPORATION TO
NOTICE TO COUNTERPARTIES
TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF
THE DEBTORS THAT MAY BE
ASSUMED AND ASSIGNED
[DKT. NO 1704]**

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28 **DECLARATION OF DARRELL W. CLARK**

1 THE UNDERSIGNED, Darrell W. Clark, a partner at Stinson Leonard Street
2 LLP, states as follows:

3 1. I am a United States citizen over the age of 18 and competent to testify
4 to the matters stated below.

5 2. I am a partner at the law firm of Stinson Leonard Street LLP.

6 3. I am counsel for Cerner Corporation and its affiliates (collectively
7 "Cerner") in connection with the Verity Health System of California, Inc., *et al.*
8 Chapter 11 proceedings.

9 4. Services under the agreement between Verity Health System of
10 California, Inc. and Cerner Health Services Inc. formerly Siemens Medical
11 Solutions USA, Inc. described as a "Services – Software Maintenance and Support"
12 agreement with a termination date of 6/30/2019 (the "Agreement") relate to
13 accounts receivable, collection, medical records and reimbursement management, as
14 well as a laboratory information system.

15 5. Although the data is stored separately for each facility, Cerner's
16 services are provided to the Debtors under the one agreement.

17 6. Cerner does not oppose the proposed sale described in the Debtors'
18 Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of
19 Asset Purchase Agreement for Stalking Horse Bidder and for Prospective
20 Overbidders, (2) Approving Auction Sale Format, Bidding Procedures and Stalking
21 Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested
22 Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the
23 Highest Bidder, and (5) Approving Procedures Related to the Assumption of Certain
24 Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the
25 Sale of Property Free and Clear of All Claims, Liens and Encumbrances (the "Sale
26 Motion") [Docket No. 1279], nor does Cerner generally oppose assumption and

27 -1-

28 **DECLARATION OF DARRELL W. CLARK**

1 assignment of the Agreement in the sale.

2 7. Cerner does object to assumption and assignment of the Agreement to
3 the extent that the proposed cure amounts fail to satisfy all existing defaults in
4 accordance with 11 U.S.C. § 365(b).

5 8. Cerner's records show a total pre-petition balance under the Agreement
6 as \$117,232.94, which is close to the \$112,219.03 total listed in the Notice to
7 Counterparties to Executory Contracts and Unexpired Leases of the Debtors that
8 May Be Assumed and Assigned (the "Assumption Notice") [Docket No. 1704], but
9 with a different distribution of amounts owed between the facilities.

10 9. Cerner's records indicate that the pre-petition amounts owed by facility
11 are: Seton Medical Center \$25,980.12; O'Connor Hospital \$25,980.12; St. Vincent
12 Medical Center \$35,554.71; St. Francis Medical Center \$27,356.13; and Verity
13 Health System \$2,361.86.

14 10. The Agreement includes licenses for copyrighted software, which are
15 not transferable or assignable pursuant to the terms of the Agreement and applicable
16 non-bankruptcy law, and may not be assumed and assigned without Cerner's
17 consent.

18 11. If the successful bidder under the Sale Motion wishes to use the
19 licensed services provided by Cerner to the Debtors, Cerner would consent to the
20 assumption and assignment of the Agreement upon payment of the cure described
21 herein.

22 12. Cerner looks forward to working with the Debtors as necessary to
23 reconcile the amounts due Cerner in connection with the Agreement.

24 13. Cerner asks that the proposed sale sought in the Sale Motion be
25 approved at the April 17, 2019 hearing, with the matter of the potential
26 assumption/cure and assignment of Cerner's Agreement reserved for another day.

27 -2-

28 **DECLARATION OF DARRELL W. CLARK**

1 I, Darrell W. Clark, declare under the penalty of perjury that the foregoing is
2 true and correct.

3 Dated: March 22, 2019

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5 Darrell W. Clark
6 Stinson Leonard Street LLP
7 Counsel for Cerner Corporation
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28 **DECLARATION OF DARRELL W. CLARK**

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One LLP, 4000 MacArthur Boulevard, East Tower, Suite 500, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **DECLARATION OF DARRELL W. CLARK IN SUPPORT OF LIMITED OBJECTION OF CERNER CORPORATION TO NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS THAT MAY BE ASSUMED AND ASSIGNED [DKT. NO 1704]** 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:

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- James Cornell Behrens: jbehrens@millbank.com

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Hon. Ernest M. Robles

☐ 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.

☐

Service information continued on attached page

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

March 22, 2019

Robin Golder

Date

Printed Name

/s/ Robin Golder

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.