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Debtors In Possession

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

In re  
VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,  
Debtors and Debtors In Possession.

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

Jointly Administered With:

Case No. 2:18-bk-20162-ER

Case No. 2:18-bk-20163-ER

Case No. 2:18-bk-20164-ER

Case No. 2:18-bk-20165-ER

Case No. 2:18-bk-20167-ER

Case No. 2:18-bk-20168-ER

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

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

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

Case No. 2:18-bk-20173-ER

Case No. 2:18-bk-20175-ER

Case No. 2:18-bk-20176-ER

Case No. 2:18-bk-20178-ER

Case No. 2:18-bk-20179-ER

Case No. 2:18-bk-20180-ER

Case No. 2:18-bk-20181-ER

☒ Affects All Debtors

☐ Affects Verity Health System of  
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital  
Foundation

☐ Affects St. Francis Medical Center of  
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center,  
Inc.

☐ Affects Seton Medical Center  
Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose  
Dialysis, LLC

Debtors and Debtors In  
Possession.

Hon. Judge Ernest M. Robles  
Chapter 11 Cases

**DEBTORS' NOTICE OF MOTION AND  
SECOND MOTION FOR ENTRY OF AN  
ORDER PURSUANT TO § 365(d)(4) OF THE  
BANKRUPTCY CODE EXTENDING THE  
TIME TO ASSUME OR REJECT UNEXPIRED  
LEASES OF NONRESIDENTIAL REAL  
PROPERTY AND MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF RICHARD ADCOCK IN  
SUPPORT THEREOF**

Hearing:

Date: April 23, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

225 E. Temple Street

Los Angeles, CA 90012

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1           **PLEASE TAKE NOTICE** that, at the above-referenced date, time and location, Verity  
2   Health System of California, Inc., (“VHS”), and the above-referenced affiliated debtors  
3   (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter  
4   11 bankruptcy cases (the “Cases”), will move the Court for entry of an order, pursuant to 11  
5   U.S.C. § 365(d)(4), extending the time within which the Debtors must assume or reject unexpired  
6   leases of nonresidential real property to June 27, 2019 (the “Motion”).

7           **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and  
8   Motion, the attached Memorandum of Points and Authorities, the *Declaration of Richard G.*  
9   *Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the Declaration of Richard  
10   G. Adcock attached hereto, the arguments of counsel, and other admissible evidence properly  
11   brought before the Court at or before the hearing on this Motion, if any.

12           **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-  
13   1(f), any party opposing or responding to the Motion must file a response (the “Response”) with  
14   the Bankruptcy Court and serve a copy of it upon the moving party and the United States Trustee  
15   not later than 14 days before the date designated for the hearing. A Response must be a complete  
16   written statement of all reasons in opposition to the Motion or in support, declarations and copies  
17   of all evidence on which the responding party intends to rely, and any responding memorandum  
18   of points and authorities.

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

22  
23   Dated: March 29, 2019

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SAMUEL R. MAIZEL  
TANIA MOYRON

24  
25  
26   By /s/ Tania M. Moyron  
Tania M. Moyron

27   Attorneys for Verity Health Systems of  
28   California, Inc., et al.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. RELIEF REQUESTED**

By this motion (the “Motion”), Verity Health System of California, Inc. (“VHS”), and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases, request the entry of an order, pursuant to 11 U.S.C. § 365(d)(4),<sup>1</sup> granting the Debtors a 90-day extension to assume or reject unexpired leases from March 29, 2018 to June 27, 2019. Such an extension of time would be without prejudice to the rights of the Debtors to seek further extensions of time to assume or reject the unexpired leases as contemplated by § 365(d)(4)(B)(ii).

**II. JURISDICTION AND VENUE**

The Court has subject matter jurisdiction to consider and determine this Motion, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors consent to entry of final orders and judgments by the bankruptcy judge. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief sought herein are § 365(a) and 365(d)(4) and Rule 6006.

**III. BACKGROUND FACTS**

1. On August 31, 2018, (“Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Cases”). By entry of an order, the Cases are currently being jointly administered before the Bankruptcy Court. [Docket No. 17]. Since the commencement of their Cases, the Debtors have been operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O’Connor Hospital and Saint Louise Regional Hospital and currently operates St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center, including Seton Medical

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<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Rule” references are to the Federal Rules of Bankruptcy Procedure.

Center Coastside Campus (collectively, the “Hospitals”), and other facilities in the state of California.

3. As set forth in other pleadings, the Debtors determined early on that they would maximize value in these Cases through multiple sales of assets, pursuant to under 11 U.S.C. § 363. On December 27, 2018, the Court entered an order [Docket No. 1153] approving Santa Clara County as the purchaser for two of the Debtors’ hospitals in Santa Clara County—Saint Louise Medical Center and O’Connor Medical Center—and related assets at a price of approximately \$235 million, with the sale closing on February 28, 2019 (the “Santa Clara Sale”).<sup>2</sup> The Court has also approved other sales related to Verity Medical Foundation. *See* Docket Nos. 1622; 1915; 1919.

4. Although the Debtors have sold certain assets, the Debtors still have substantial assets and individual Debtors remain parties to multiple unexpired, non-residential leases (the “Leases”) necessary for the operation of the Debtors’ business, including office and operational space. Recently, the Court entered an order approving bidding procedures and a stalking horse bidder for the Debtors remaining four hospitals—St. Vincent Medical Center, St. Francis Medical Center, Seton Medical Center and Seton Medical Center Coastside—and set a sale hearing for April 17, 2019. [Docket Nos. 1279, 1572]. The approved stalking horse asset purchase agreement (the “APA”) [Docket No. 1279, Exhibit 1] entered into between certain Debtors (Verity, Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center) and Strategic Global Management, Inc. (“SGM”) has an outside closing date of December 31, 2019. *See* APA § 9.1.

5. On December 28, 2018, the Debtors filed their *Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1157], pursuant to

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<sup>2</sup> *Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (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; Memorandum Of Points And Authorities In Support Thereof.*

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1 which the Debtors requested the Court to extend their deadline to assume or reject unexpired  
2 leases of nonresidential real property to which a Debtor is the lessee from December 29, 2018 to  
3 March 29, 2019. On February 19, 2019, the Court granted the aforementioned motion by entry of  
4 an the *Order Granting Debtor's Motion For Entry Of An Order Pursuant To Section 365(d)(4) Of*  
5 *The Bankruptcy Code Extending The Time To Assume Or Reject Unexpired Leases Of*  
6 *Nonresidential Real Property* [Docket No. 1579] (the "Initial Extension Order")

7 6. Given the pending sale to SGM (or the winning bidder) and the posture of these  
8 Cases, the Debtors have not yet made a determination regarding assumption or rejection of the  
9 Leases. It is likely that some or all of these Leases will be assumed and assigned in connection  
10 with sales in these Cases. Further, the Debtors continue to utilize the leased space in connection  
11 with their operations and to effectuate the sale process.

12 7. Therefore, the Debtors seek an extension of their current deadline with respect to  
13 these Leases in order to provide the Debtors with sufficient time to make a decision regarding  
14 assumption or rejection and to move forward and close the sales of their assets. The Debtors are  
15 current on postpetition rent under the Leases and will continue to honor their obligations under  
16 the Leases until such time as an order is entered providing for their assumption or rejection.

#### 17 **IV. LEGAL ARGUMENT**

18 Section 365(d)(4)(A) provides that a debtor is automatically deemed to reject  
19 nonresidential real property leases to which it is a party by the earlier of 120 days from the  
20 petition date or the date on which a bankruptcy court confirms a plan of reorganization if it has  
21 not moved for an extension. 11 U.S.C. § 365(d)(4)(A). Section 365(d)(4)(B)(i) provides that a  
22 bankruptcy court may extend the applicable period to assume or reject unexpired nonresidential  
23 real property leases for ninety days on the motion of a debtor "for cause," which the Court did in  
24 the Initial Extension Order. 11 U.S.C. § 365(d)(4)(B)(i). Section 365(d)(4)(B)(ii) provides that a  
25 Court may grant subsequent extensions with the consent of the lessors. 11 U.S.C. §  
26 365(d)(4)(B)(ii).

27 A pending motion (such as this Motion) seeking an extension under § 365(d)(4)(B)  
28 extends the debtor's deadline to assume or reject a nonresidential lease until the Court rules on

1 the motion. *In re Victoria Station Inc.*, 840 F.2d 682, 684 (9th Cir. 1988); *In re Sw. Aircraft*  
2 *Servs., Inc.*, 831 F.2d 848, 853 (9th Cir. 1987).

3 Courts have recognized the benefits to granting additional time under § 365(d)(4). *See In*  
4 *re Channel Home Ctrs., Inc.*, 989 F.2d 682, 687 88 (3d Cir. 1993); *In re GST Telecom Inc.*, 2001  
5 WL 686971 (D. Del. June 8, 2001). As the Third Circuit Court of Appeals stated, “nothing  
6 prevents a bankruptcy court from granting an extension because a particular debtor needs  
7 additional time to determine whether the assumption or rejection of particular leases is called for  
8 by the plan of reorganization that it is attempting to develop.” *Channel Home Ctrs.*, 989 F.2d at  
9 689. The Ninth Circuit Court of Appeals has also noted that bankruptcy courts often grant these  
10 extensions. *See In re Circle K Corp.*, 127 F.3d 904, 909 (9th Cir. 1997).

11 Generally, courts consider the following non-exclusive factors to determine “cause”  
12 (undefined under the Bankruptcy Code) for purposes of § 365(d)(4):

- 13 (1) whether the leases are an important asset of the estate such that the decision to  
14 assume or reject would be central to a plan of reorganization;
- 15 (2) whether the cases are complex and involve large numbers of leases;
- 16 (3) whether the lessor continues to receive postpetition rental payments; and
- 17 (4) whether the debtor has had insufficient time to develop a plan.

18 *South St. Seaport L. P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 760-61 (2d  
19 Cir. 1996); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *Channel Home*  
20 *Ctrs.*, 989 F.2d at 689 (“[I]t is permissible for a bankruptcy court to consider a particular debtor’s  
21 need for more time in order to analyze leases in light of the plan it is formulating.”) (citing  
22 *Wedtech*, 72 B.R. at 471-72).

23 Here, the Debtors submit that sufficient “cause” exists for the requested extension. The  
24 Debtors’ cases are complex and involve multiple hospital systems and over a billion dollars in  
25 likely claims. The Debtors are still amidst a complex sale process (with the outside closing date  
26 of their pending sale on December 31, 2019), which must be consummated so that the Debtors  
27 can formulate and file a plan in these Cases. Further, the Debtors continue to utilize the leased  
28 space in connection with their operations and to effectuate the sale process.

1 The Debtors' requested extension of time to assume or reject the Leases will not prejudice  
2 the Debtors' landlords, who will continue to receive their postpetition rent. As § 365(d)(4)(B)(ii)  
3 provides that a Court may grant subsequent extensions with the consent of the lessors, the  
4 Debtors intend to obtain the consent of the landlords regarding the extension. Additionally, given  
5 the volume in these Cases, the Debtors respectfully submit that it would be appropriate that the  
6 landlords failure to respond to the Motion may be deemed "consent" for purposes of the statute.  
7 Such a result is also consistent with Local Bankruptcy Rule 9013-1(h). Finally, the Debtors are  
8 current and will continue to honor their obligations under the Leases until such time as an order is  
9 entered providing for their assumption or rejection.

10 **V. CONCLUSION**

11 The Debtors respectfully request that this Court enter an order (i) granting the Motion and  
12 extending the time to assume or reject the unexpired leases to June 27, 2019, and (ii) granting  
13 such further relief as the Court deems appropriate.

14  
15 Dated: March 29, 2019

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

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17  
18 By /s/ Tania M. Moyron  
Tania M. Moyron

19 Attorneys for Verity Health Systems of  
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**DECLARATION OF RICHARD G. ADCOCK**

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became the VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of VHS and its above-captioned affiliates who have also filed for bankruptcy protection (collectively the “Debtors,” and each a “Debtor”) as well as those affiliated entities that are not in bankruptcy.

2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of five Debtor California nonprofit public benefit corporations that operated O’Connor Hospital and Saint Louise Regional Hospital and currently operates St. Francis Medical Center, St. Vincent and Seton Medical Center, including Seton Medical Center Coastsides Campus (collectively, the “Hospitals”), and other facilities in the state of California.

3. As set forth in other pleadings, the Debtors determined early on that they would maximize value in these Cases through multiple sales of assets. On December 27, 2018, the Court entered an order [Docket No. 1153] approving Santa Clara County as the purchaser for two of the Debtors’ hospitals in Santa Clara County—Saint Louise Medical Center and O’Connor Medical Center—and related assets at a price of approximately \$235 million, with the sale closing on February 28, 2019 (the “Santa Clara Sale”).<sup>3</sup> The Court has also approved other sales related to Verity Medical Foundation. *See* Docket Nos. 1622; 1915; 1919.

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17         6. Given the pending sale to SGM (or the winning bidder) and the posture of these  
18 Cases, the Debtors have not yet made a determination regarding assumption or rejection of the  
19 Leases. It is likely that some or all of these Leases will be assumed and assigned in connection  
20 with sales in these Cases. Further, the Debtors continue to utilize the leased space in connection  
21 with their operations and to effectuate the sale process.

22         7. Therefore, the Debtors seek an extension of their current deadline with respect to  
23 these Leases in order to provide the Debtors with sufficient time to make a decision regarding  
24 assumption or rejection and to move forward and close the sales of their assets. The Debtors are  
25 current on postpetition rent under the Leases and will continue to honor their obligations under  
26 the Leases until such time as an order is entered providing for their assumption or rejection.

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

Executed on March 29, 2019, in Los Angeles, California.

/s/To Be Submitted

RICHARD G. ADCOCK

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