

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Tuesday, April 23, 2019**

**Hearing Room 1568**

10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#10.00** HearingRE: [1955] Motion to Extend Time 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

Docket 1955

**Matter Notes:**

4/23/2019

The tentative ruling will be the order.  
Party to lodge order: Movant

**POST PDF OF TENTATIVE RULING TO CIAO**

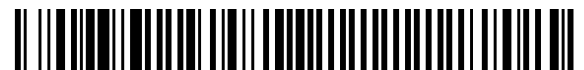
**Tentative Ruling:**

4/22/2019

The Motion was not served upon certain of the affected Lessors. By no later than April 24, 2019, the Debtors shall serve upon the Lessors notice that unless a Lessor objects, the Court intends to extend the Assumption/Rejection Deadline to June 27, 2019. If no Lessor objects, the Court will grant the Motion. In the event an objection is filed, the Court will determine whether a further hearing is required.

**Pleadings Filed and Reviewed:**

- 1) Debtor's 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 [Doc. No. 1955] (the "Motion")
  - a) Executed Declaration of Richard G. Adcock in Support of [Motion] [Doc. No. 2087]



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- b) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1941, 1942, 1950, 1955, 1956, 1958, 1959 and 1960 [Doc. No. 2005]
- 2) Official Committee of Unsecured Creditors' Response to the Debtors' 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 [Doc. No. 1175]

**I. Facts and Summary of Pleadings**

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors' business, including office and operational space (the "Leases"). On February 19, 2019, the Court extended the Debtors' deadline to assume or reject these unexpired leases (such deadline, the "Assumption/Rejection Deadline") by 90 days, to and including March 29, 2019. Doc. No. 1579. Debtors now request that the Assumption/Rejection Deadline be extended an additional 90 days, to and including June 27, 2019. Debtors intend to obtain the consent of the lessors pursuant to § 365(d)(4)(B)(ii)'s requirement that subsequent extensions of the Assumption/Rejection Deadline be granted "only upon prior written consent of the lessor in each instance." However, Debtors request that the failure of the lessors to oppose the Motion be deemed "consent" for purposes of § 365(d)(4)(B)(ii), given the number of leases at issue.

The Official Committee of Unsecured Creditors has no objection to the Motion.

**II. Findings and Conclusions**

Section 365(d)(4) provides:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

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- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

(B)

- (i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
- (ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

"[T]he legislative purpose behind §365(d)(4) was to protect lessors from extended periods where the premises remained vacant and no rental payments made."  
*Willamette Water Front Ltd. v. Victoria Station, Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 237 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989).

**A. Notice of the Motion was Not Sufficient**

As set forth in the *Notice of Executory Contracts and Unexpired Leases Designated by Strategic Global Management, Inc. for Assumption and Assignment* [Doc. No. 2131] (the "Assumption Notice"), the Debtors intend to assume and assign unexpired leases with the following lessors (collectively, the "Lessors"):

- 1) St. Francis Lynwood Medical Plaza, LLC;
- 2) Sunshine Capital Group;
- 3) Nantworks, LLC;
- 4) Bakersfield Land & Cattle Company, LLC;
- 5) Roman Catholic Archbishop of San Francisco;
- 6) Hopevale Properties LP; and
- 7) Huffburt Property LLC.

According to the *Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 1941, 1942, 1950, 1955, 1956, 1958, 1959 and 1960* [Doc. No. 2005], with the exception of Nantworks, LLC, the Lessors were **NOT** provided notice of the Motion. **[Note 1]**

This is the Debtors' second request for an extension of the Assumption/Rejection Deadline. Pursuant to § 365(d)(4)(B)(ii), the requested extension may be granted "only upon prior written consent of the lessor in each instance." The lack of notice to

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the Lessors is of particular concern given the Debtors' request that the Lessors' failure to oppose the Motion be deemed to constitute consent for purposes of § 365(d)(4)(B)(ii).

The fact that the Debtors remain current on rental payments owed to the Lessors does not obviate the notice issue. It is possible that the rent under some of the leases may be at below-market rates. If that is the case, the Lessors could be prejudiced by the relief requested in the Motion. **[Note 2]**

**B. Procedures Governing Adjudication of the Motion**

The Court is prepared to extend the Assumption/Rejection Deadline to June 27, 2019, provided that no Lessors object after having received proper notice of the Motion. The Court will deem a Lessor's non-opposition to constitute "consent" for purposes of § 365(d)(4)(B)(ii). Absent extension of the deadline, the Debtors will lack the ability to assume and assign any of the leases at issue to Strategic Global Management ("SGM"). This would require SGM to renegotiate the leases, making it more difficult for SGM to consummate the sale that was recently approved by the Court.

By no later than **April 24, 2019**, the Debtors shall serve upon the Lessors notice that unless a Lessor objects, the Court intends to extend the Assumption/Rejection Deadline to June 27, 2019. **[Note 3]** The notice shall be accompanied by copies of the Motion and this tentative ruling. The deadline for the Lessors to object shall be **May 8, 2019**. In the event that no objection is filed, the Debtors shall submit a declaration so attesting, accompanied by a proposed order granting the Motion. In the event that an objection is filed, the Court will determine whether a further hearing is required, and will notify the parties accordingly.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1**

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There may be other Lessors not listed in the Assumption Notice affected by the relief requested.

**Note 2**

There is nothing in the record suggesting that the leases are below-market, and the Court makes no findings on this issue. But the possibility that the Lessors could be prejudiced by the relief sought makes proper notice critical.

**Note 3**

All Lessors affected by the relief requested must be provided notice, including Lessors (if any) not listed in the Assumption Notice.

<b>Party Information</b>
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**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn