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Attorneys for the Chapter 11 Debtors and
Debtors In Possession

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

In re

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

Debtors and Debtors In
Possession.

☒ Affects All Debtors

- ☐ Affects Verity Health System of
California, Inc.
☐ Affects O'Connor
☐ 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.

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
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Case No. 2:18-bk-20179-ER
Case No. 2:18-bk-20180-ER
Case No. 2:18-bk-20181-ER

Hon. Ernest M. Robles

Chapter 11 Cases

**NOTICE OF 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 OBJECTION DEADLINE
FOR LESSORS**

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300



1 **PLEASE TAKE NOTICE** that, on February 19, 2019, the Court entered an order
2 extending the Debtors' deadline to assume or reject real-property, non-residential leases to March
3 29, 2019 (the "Assumption/Rejection Deadline") [Docket No. 1579].

4 **PLEASE TAKE NOTICE** that on March 29, 2019, the above-captioned debtors and
5 debtors in possession (the "Debtors"), filed their *Notice of Motion and Second Motion for Entry of*
6 *an Order Pursuant to § 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject*
7 *Unexpired Leases of Nonresidential Real Property* [Docket No. 1955] (together, with the *Executed*
8 *Declaration of Richard Adcock in Support of Motion for Entry of an Order Pursuant to § 365(d)(4)*
9 *of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of*
10 *Nonresidential Real Property* [Docket No. 2087], the "Motion"), which is attached hereto as
11 **Exhibit "A."** In the Motion, the Debtors sought to extend the Assumption/Rejection Deadline to
12 June 27, 2019, and requested that the Court rule that, the lack of an objection to the Motion from
13 any applicable lessor that is a party to a real-property, non-residential lease (a "Lessor") with the
14 Debtors, be deemed "consent" to the Motion and the extension of the Assumption/Rejection
15 Deadline to June 27, 2019.

16 **PLEASE TAKE FURTHER NOTICE** that, on Tuesday April 23, 2019, the Court entered
17 a tentative ruling [Docket No. 2247], attached hereto as **Exhibit "B"** (the "Tentative Ruling"),
18 which ordered that the Debtors serve the Motion, the Tentative Ruling and this Notice upon all
19 Lessors affected by the Motion.

20 **PLEASE TAKE FURTHER NOTICE** that, pursuant to the Tentative Ruling, if a Lessor
21 does not object to the Motion by **May 8, 2019**, that Lessor will be deemed to consent to the relief
22 requested in the Motion.

23 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Rule of Bankruptcy
24 Procedure for the United States Bankruptcy Court for the Central District of California 9013-1(h),
25 failure to file and serve a timely objection may be deemed by the Court to be consent to the relief
26 requested in the Motion.

1 Dated: April 23, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

2
3 By: /s/ Tania Moyron

4 Attorneys for the Chapter 11 Debtors and
5 Debtors In Possession
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EXHIBIT A

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CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

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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

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
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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

DENTONS US LLP
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),¹ 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

¹ 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”).² 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

² *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

16
17
18 By /s/ Tania M. Moyron
Tania M. Moyron

19 Attorneys for Verity Health Systems of
20 California, Inc., et al.

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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”).³ 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

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2 bidder for the Debtors remaining four hospitals—St. Vincent Medical Center, St. Francis Medical
3 Center, Seton Medical Center and Seton Medical Center Coastsides—and set a sale hearing for
4 April 17, 2019. [Docket Nos. 1279, 1572]. The approved stalking horse asset purchase
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12 leases of nonresidential real property to which a Debtor is the lessee from December 29, 2018 to
13 March 29, 2019. On February 19, 2019, the Court granted the aforementioned motion by entry of
14 an the *Order Granting Debtor’s Motion For Entry Of An Order Pursuant To Section 365(d)(4) Of*
15 *The Bankruptcy Code Extending The Time To Assume Or Reject Unexpired Leases Of*
16 *Nonresidential Real Property* [Docket No. 1579] (the “Initial Extension Order”)

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
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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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Hon. Judge Ernest M. Robles
Chapter 11 Cases

**EXECUTED DECLARATION OF RICHARD
G. ADCOCK IN SUPPORT OF 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 [Docket No. 1955]**

Hearing:

Date: April 23, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

225 E. Temple Street

Los Angeles, CA 90012

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 On March 29, 2019, the Debtors filed their *Notice Of Motion And Second Motion For*
2 *Entrt Of An Order Pursuant To § 365(D)(4) Of The Bankruptcy Code Extending The Time To*
3 *Assume Or Reject Unexpired Leases Of Nonresidential Real Property* [Docket No. 1955] (the
4 “Motion”), which included a *Memorandum Of Points And Authorities* and a *Declaration Of*
5 *Richard G. Adcock*.

6 Mr. Adock reviewed his Declaration before it was filed, but Mr. Adock was not in a
7 position to return his signature on March 29th.

8 The executed Declaration Of Richard G. Adock in support of the Motion is attached.

9
10 Dated: April 8, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
JOHN A. MOE, II
TANIA M. MOYRON

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13 By /s/ John A. Moe, II
14 JOHN A. MOE, II

15 Attorneys for Chapter 11 Debtors and Debtors
16 In Possession
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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").¹ 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

¹ 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 space. Recently, the Court entered an order approving bidding procedures and a stalking horse
2 bidder for the Debtors remaining four hospitals—St. Vincent Medical Center, St. Francis Medical
3 Center, Seton Medical Center and Seton Medical Center Coastside—and set a sale hearing for
4 April 17, 2019. [Docket Nos. 1279, 1572]. The approved stalking horse asset purchase
5 agreement (the “APA”) [Docket No. 1279, Exhibit 1] entered into between certain Debtors
6 (Verity, Verity Holdings, LLC St. Francis Medical Center, St. Vincent Medical Center, St.
7 Vincent Dialysis Center and Seton Medical Center) and Strategic Global Management, Inc.
8 (“SGM”) has an outside closing date of December 31, 2019. *See* APA § 9.1.

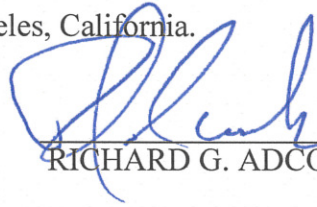
9 5. On December 28, 2018, the Debtors filed their *Motion to Extend Time To Assume*
10 *or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1157], pursuant to
11 which the Debtors requested the Court to extend their deadline to assume or reject unexpired
12 leases of nonresidential real property to which a Debtor is the lessee from December 29, 2018 to
13 March 29, 2019. On February 19, 2019, the Court granted the aforementioned motion by entry of
14 an the *Order Granting Debtor’s Motion For Entry Of An Order Pursuant To Section 365(d)(4) Of*
15 *The Bankruptcy Code Extending The Time To Assume Or Reject Unexpired Leases Of*
16 *Nonresidential Real Property* [Docket No. 1579] (the “Initial Extension Order”)

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.



RICHARD G. ADCOCK

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EXHIBIT B

EXHIBIT B

**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.

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#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.

Party Information

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