

SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
NICHOLAS A. KOFFROTH (Bar No. 287854)
nicholas.koffroth@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924
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.

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

Hearing:

Date: January 15, 2020

Time: 10:00 a.m.

Place: Courtroom 1568

255 E. Temple Street

Los Angeles, CA 90012

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



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

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 March 23, 2020 (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. In addition, the Debtors request
12 that the Court take judicial notice of all documents filed with the Court in the Cases.

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

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

23 Dated: December 23, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

RELIEF REQUESTED

By this motion (the “Motion”), the Debtors request the entry of an order, pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”),¹ granting a 90-day extension to assume or reject unexpired leases from December 24, 2019, to March 23, 2020. Such an extension would be without prejudice to the rights of the Debtors to seek further extensions of the 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 §§ 105, 365(a), and 365(d)(4) and Rule 6006.

III.

BACKGROUND FACTS

A. General Background

1. On August 31, 2018 (“Petition Date”), 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, each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Cases”). 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.

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.

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

2. Debtor VHS, a California nonprofit public benefit corporation, as of the Petition Date, was the sole corporate member of five Debtor California nonprofit public benefit corporations that operate five hospitals—O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center and Seton Medical Center, including Seton Medical Center Coastsides Campus (collectively, the “Hospitals”)—and other facilities in the state of California.

3. On the Petition Date, VHS, the Hospitals, Debtor Verity Medical Foundation and their affiliated entities operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. The Debtors continue to operate their existing health care system during these Cases.

4. 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. The sale closed on February 28, 2019 (the “Santa Clara Sale”).

5. On February 19, 2019, the Court entered an order [Docket No. 1572] approving, among other things, a form stalking horse asset purchase agreement [Docket Nos. 1279 (Exhibit 1) and 2305] (the “APA”) between certain Debtors and Strategic Global Management, Inc. (“SGM”) and bidding procedures for the sale of the Debtors remaining hospitals—St. Vincent Medical Center, St. Francis Medical Center, Seton Medical Center and Seton Coastsides (the “SGM Sale”). On May 2, 2019, the Court entered an order [Docket No. 2306] approving the SGM Sale under the APA. The APA has an outside closing date of December 31, 2019. *See* APA § 9.1. Under the APA, SGM has the right to designate contracts or leases for assumption up to 30 days prior to the SGM Sale closing. *See* APA at § 1.11(a).

6. On September 3, 2019, the Debtors filed the *Debtors’ Chapter 11 Plan of Liquidation* (Dated September 3, 2019) [Docket No. 2993] (the “Plan”) and related *Disclosure Statement Describing Debtors’ Chapter 11 Plan of Liquidation* (Dated September 3, 2019) [Docket No. 2994] (the “Disclosure Statement”). The closing of the SGM Sale is one of the conditions precedent to the “Effective Date” of the Plan. *See* Plan §12.1 at 56.

7. Extenuating factors have delayed the closing of the SGM Sale and these Cases. **First**, the California Attorney General (the “AG”) took the entire time authorized under California law to issue a decision regarding the SGM Sale (September 25, 2019) and imposed conditions on the SGM Sale. On September 30, 2019, the Debtors filed a motion challenging the AG’s decision [Docket No. 3188] (the “Enforcement Motion”). Ultimately, the Court entered an order granting the motion pursuant to terms agreed by the Debtors and the AG. Docket No. 3611 (the “Enforcement Order”).

8. **Second**, SGM has appealed Court orders concerning the SGM Sale. On November 14, 2019, SGM appealed the Enforcement Order. Docket No. 3726. On November 18, 2019, the Court entered the *Order (1) Finding That SGM Is Obligated to Promptly Close the SGM Sale under § 8.6 of the APA, Provided That All Other Conditions to Closing Have Been Satisfied and (2) Granting Debtors’ Motion for A Continuance of the Hearing to Approve the Disclosure Statement* [Docket No. 3633] (the “Section 8.6 Order”). On November 29, 2019, SGM appealed the Section 8.6 Order. Docket No. 3727. On November 27, 2019, the Court entered the *Order (1) Finding That SGM Is Obligated to Close the SGM Sale by No Later Than December 5, 2019 and (2) Setting Continued Hearing on Debtors’ Motion for Approval of Disclosure Statement* [Docket No. 3724] (the “Closing Order”). On December 3, 2019, SGM appealed the Closing Order. Docket No. 3746.

9. SGM did not close the SGM Sale on December 5, 2019, as ordered by the Court. The Debtors have continued the hearing on their Disclosure Statement because of this uncertainty. Docket Nos. 3103, 3238, 3384, 3502, 3589, 3621, 3644, 3788.

10. Certain Debtors are parties to multiple real-property, non-residential leases (the “Leases”) that are necessary for the operation of the Debtors’ remaining hospitals and businesses, including office and operational space. In light of the uncertainties surrounding the sale of the Debtors’ assets, the Debtors have not yet made a final determination regarding assumption or rejection of the specific Leases. In any event, the Debtors will continue to utilize leased space to operate. Adcock Decl. at ¶ 5.

B. Previous Motions To Extend Time To Assume or Reject Leases of Nonresidential Real Property.

15. On December 28, 2018, the Debtors filed a *Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1157], which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from December 29, 2018 to March 29, 2019. On February 19, 2019, the Court entered an order [Docket No. 1579] granting this motion.

16. On March 29, 2019, the Debtors filed a *Second Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1955] (the "Second Motion"), which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from March 29, 2019 to June 27, 2019. On May 15, 2019, the Court entered an order [Docket No. 2383] granting the Second Motion.

17. On June 27, 2019, the Debtors filed their *Third Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 2637] (the "Third Motion"), which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from June 27, 2019 to September 25, 2019. On August 1, 2019, the Court entered an order [Docket No. 2838] granting the Third Motion.

18. On September 27, 2019, the Debtors filed their *Fourth Motion for Entry of an Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property Nunc Pro Tunc* (the "Fourth Motion"), which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from September 25, 2019² to December 24, 2019. On October 22, 2019, the Court issued a tentative ruling on the Fourth Motion (the "Tentative Ruling") and stated that:

² The Fourth Motion sought this relief *nunc pro tunc*.

The Court finds it appropriate to continue to deem the Lessor's non-opposition to constitute consent. Because the Debtors remain current on lease payments, this approach does not prejudice the Lessors. In addition, absent extension of the deadline, the Debtors will lack the ability to assume and assign any of the leases at issue to SGM. This would require SGM to renegotiate the leases, making it more difficult for SGM to consummate the purchase of the Debtors' remaining hospitals

Tentative Ruling at p. 19. On November 8, 2019, the Court entered an order [Docket No. 3566] granting the Fourth Motion, which incorporated the Tentative Ruling.

C. Relief Requested.

19. The Debtors seek another extension of the deadline to assume or reject their unexpired leases of nonresidential real property. An extension is necessary for the Debtors to continue operations. The Debtors are current on postpetition rent under the Leases and will continue to honor their obligations under the Leases until such time as an order is entered providing for their assumption or rejection. Adcock Decl. at ¶ 6.

IV.

LEGAL ARGUMENT

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

The Court has equitable authority to extend the time period set forth in § 365(d)(4)(B) to assume or reject a nonresidential lease. *See In re Victoria Station Inc.*, 840 F.2d 682, 684 (9th Cir. 1988) ("because bankruptcy courts are courts of equity, they are compelled to disfavor lease forfeiture that would imperil the debtor's reorganization and impede rehabilitative goals" accordingly, the time limits in § 365(d)(4) "should be read as a time limit upon the trustee or

debtor rather than upon the bankruptcy court”); *In re Sw. Aircraft Servs., Inc.*, 831 F.2d 848, 853 (9th Cir. 1987).

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

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

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

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

Sufficient cause exists for the Debtors’ requested extension in light of the state of the SGM Sale and the Debtors’ need to maintain operations as they endeavor to sell their assets. During this period, the Debtors continue to utilize the space subject to the Leases for operations. Any disruption during this time would detrimentally impact the Debtors’ ability to operate and consummate a sale transaction. Accordingly, the requested extension is necessary to maximize value for the estates.

1 The requested extension will not prejudice the Debtors' landlords. The Debtors are
2 current and will continue to honor their obligations under the Leases until such time as an order is
3 entered providing for their assumption or rejection. The landlords continue to receive
4 postpetition rent and have previously consented to similar relief. The Debtors believe the
5 landlords (who the Debtors will serve with this Motion) will consent to this Motion, and, as the
6 Court has previously ruled, their consent may be deemed granted by failure to respond to this
7 Motion. Accordingly, the Court should grant the requested extension to March 23, 2020.

8 V.

9 **CONCLUSION**

10 The Debtors respectfully request that this Court (i) grant the Motion, (ii) enter an order,
11 pursuant to § 365(d)(4), granting a 90-day extension to assume or reject the unexpired leases to
12 March 23, 2020, and (iii) grant such further relief as the Court deems appropriate.

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14 Dated: December 23, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
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NICHOLAS A. KOFFROTH

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16
17 By /s/ Tania M. Moyron
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18 Attorneys for Verity Health Systems of
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DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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. I make this Declaration in support of the *Debtors’ Fifth Motion for Entry of an Order Pursuant to § 365(d)(4) of the Bankruptcy Code Extending the Time to Assume or Reject Unexpired Leases* (the “Motion”). All terms not otherwise defined herein shall have the same meaning as in the Motion.

3. Debtor VHS, a California nonprofit public benefit corporation, as of the petition date, was the sole corporate member of five Debtor California nonprofit public benefit corporations that operate five hospitals—O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, the “Hospitals”)—and other facilities in the state of California.

4. On the petition date, VHS, the Hospitals, Debtor Verity Medical Foundation and their affiliated entities operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. The Debtors continue to operate their existing health care system during these Cases.

5. Certain Debtors are parties to multiple real-property, non-residential leases (the “Leases”) that are necessary for the operation of the Debtors’ remaining hospitals and businesses, including office and operational space. In light of the uncertainties surrounding the sale of the Debtors’ assets, the Debtors have not yet made a final determination regarding assumption or

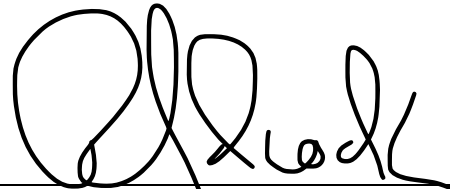
1 rejection of the specific Leases. In any event, the Debtors will continue to utilize leased space to
2 operate.

3 6. The Debtors are current on postpetition rent under the Leases and will continue to
4 honor their obligations under the Leases until such time as an order is entered providing for their
5 assumption or rejection.

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

8 Executed on December 23, 2019, in Los Angeles, California.

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RICHARD G. ADCOCK