

Mark D. Plevin (State Bar No. 146278, mplevin@crowell.com)
CROWELL & MORING LLP
Three Embarcadero Center, 26th Floor
San Francisco, California 94111
Telephone: 415.986.2800
Facsimile: 415.986.2827

Attorneys for MedImpact Healthcare Systems, Inc.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:

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

Debtors and Debtors in Possession.

Relief requested as to:

- ☒ All Debtors
☐ Verity Health System of California, Inc.
☐ O'Connor Hospital
☐ Saint Louise Regional Hospital
☐ St. Francis Medical Center
☐ St. Vincent Medical Center
☐ Seton Medical Center
☐ O'Connor Hospital Foundation
☐ Saint Louise Regional Hospital Foundation
☐ St. Francis Medical Center of Lynwood
Foundation
☐ St. Vincent Foundation
☐ St. Vincent Dialysis Center, Inc.
☐ Seton Medical Center Foundation
☐ Verity Business Services
☐ Verity Medical Foundation
☐ Verity Holdings, LLC
☐ De Paul Ventures, LLC
☐ 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
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

**LIMITED OBJECTION AND
RESERVATION OF RIGHTS OF
MEDIMPACT HEALTHCARE
SYSTEMS, INC. TO "NOTICE TO
COUNTERPARTIES TO
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES OF THE
DEBTORS THAT MAY BE ASSUMED
AND ASSIGNED" (DKT. NO. 4267)**

Chapter 11

Hon. Ernest Robles



1820151200402000000000013

1 MedImpact Healthcare Systems, Inc. (“MedImpact”) hereby objects to the assumption of
2 the *Service Agreement between Verity Health System and MedImpact Healthcare Systems, Inc.* with effective
3 date of January 17, 2017, as amended by that certain *Amendment to the Service Agreement between Verity*
4 *Health System and MedImpact Healthcare Systems, Inc.* with effective date of January 1, 2020 (collectively,
5 the “**Service Agreement**”) as set forth in the *Notice to Counterparties To Executory Contracts and*
6 *Unexpired Leases of the Debtors That May Be Assumed and Assigned* [Dkt. No. 4267] (the “**Assumption**
7 **Notice**”) filed by Verity Health System of California, Inc. (the “**Debtor**”) and other debtors whose
8 Chapter 11 reorganization cases are jointly administered with the Debtor’s.

9 **BACKGROUND**

10 1. The Service Agreement requires, among other things, the Debtor to make certain
11 payments to MedImpact. The Service Agreement also allows Debtor to access MedImpact’s
12 proprietary intellectual property, including providing licenses for use of MedImpact’s software.
13 MedImpact’s proprietary intellectual property is extremely valuable to MedImpact. MedImpact
14 could suffer significant monetary damage if its intellectual property were to be used in an
15 unauthorized manner (whether inadvertently or otherwise), especially if such use was by a
16 competitor of MedImpact, or a customer of a competitor of MedImpact.

17 2. The Debtor filed the Assumption Notice on March 13, 2020. The Assumption
18 Notice lists the Service Agreement on Exhibit A, Part 2, Reference Number 425. [Dkt. No. 4367,
19 p. 33].

20 3. The “Cure Amount” stated in the Assumption Notice for the Service Agreement is
21 \$0.00. [*Id.*]

22 4. MedImpact agrees that the Service Agreement is an unexpired, executory contract.

23 **RESERVATION OF RIGHTS REGARDING CURE AND ASSUMPTION**

24 5. MedImpact objects to assumption of the Service Agreement, and reserves all rights
25 regarding cure and assumption, because it is unaware of the potential assignee’s identity and ability
26 to perform and protect MedImpact’s rights under the Service Agreement. In other words,
27 MedImpact is not adequately assured of future performance.

28 6. Any assumption of the Service Agreement must be subject to MedImpact’s rights

1 under the Service Agreement and the requirements of 11 U.S.C. § 365(d), including a full cure of
2 any delinquent amounts and adequate assurance of future performance. “Among other things,
3 adequate assurance may be given by demonstrating the assignee’s financial health and experience
4 in managing the type of enterprise or property assigned.” *In re Bygaph, Inc.*, 56 B.R. 596, 605-06
5 (Bankr. S.D.N.Y. 1986).

6 7. In Debtors’ Notice Of Motion And Motion For The Entry of (I) An Order (1)
7 Approving Form Of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding
8 Procedures, (3) Approving Process For Discretionary Selection Of Stalking Horse Bidder And Bid
9 Protections; (4) Approving Form Of Notice To Be Provided To Interested Parties; (5) Scheduling
10 A Court Hearing To Consider Approval Of The Sale To The Highest And Best Bidder; And (6)
11 Approving Procedures Related To The Assumption Of Certain Executory Contracts And
12 Unexpired Leases; And (II) An Order Authorizing The Sale Of Property Free And Clear Of All
13 Claims, Liens And Encumbrances [Dkt No. 4069] (the “Sale Motion”), Debtor alleges that contract
14 and lease counterparties are adequately assured of future performance by any buyer because “[t]he
15 Debtors and the Winning Bidder will present evidence at the Sale Hearing to prove the financial
16 credibility, willingness, and ability of the Winning Bidder to perform under the contracts or leases.
17 The Court and other interested parties therefore will have the opportunity to evaluate the ability
18 of any Winning Bidder to provide adequate assurance of future performance under the contracts
19 or leases, as required by § 365(b)(1)(C).” [Dkt. No. 4069, p. 20, lines 24-28.]

20 8. This procedure, however, does not provide counterparties adequate assurance
21 because objections to assumption of contracts and leases are due on April 3, 2020, while the Sale
22 Hearing will not occur until April 9, 2020. MedImpact cannot evaluate the ability of a potential
23 new counterparty to perform until after its objection relating to adequate assurance must be filed.
24 As a result, MedImpact files this limited objection and reservation of rights in order to preserve its
25 ability to request adequate assurance of future performance if necessary, once MedImpact is able
26 to evaluate the eventual purchaser of the Debtor.

27 9. MedImpact further reserves its rights to assert entitlement to any amounts that may
28 become delinquent under the Service Agreement prior to the Sale Hearing, including amounts that

1 may be presently due, but of which MedImpact is presently unaware.

2 DATED: April 2, 2020

Respectfully submitted,

3 CROWELL & MORING LLP

4
5 By: /s/ Mark D. Plevin

Mark D. Plevin

6 Attorneys for MedImpact Healthcare Systems, Inc.
7

8 905592195
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28