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Attorneys for Cerner Corporation

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

Lead Case No. 2:18-bk-20151-ER
Chapter 11

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

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

Debtors and Debtors in Possession.
☒ 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

LIMITED OBJECTION OF CERNER CORPORATION



☐ 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.

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

Sale Hearing:

Date: April 9, 2020
Time: 10:00 a.m.
Place: 255 E. Temple Street
Los Angeles, CA 90012
Courtroom 1568
Judge: Hon. Ernest M. Robles

**LIMITED OBJECTION OF
CERNER CORPORATION TO
NOTICE TO COUNTERPARTIES
TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF
THE DEBTORS THAT MAY BE
ASSUMED AND ASSIGNED
[DKT. NO 4267]**

COMES NOW Cerner Corporation, on behalf of itself and its affiliates (collectively, “Cerner”), creditors and parties-in-interest of Verity Health System of California, Inc., *et al.* (“Debtors”), by and through undersigned counsel, and files this limited objection (“Objection”) to the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed and Assigned (the “Assumption Notice”) [Docket No. 4267]. In support of its Objection, Cerner states as follows:

BACKGROUND

1. On August 31, 2018 (“Petition Date”), the Debtors each filed a Petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Central District of California.

2. On February 10, 2020, the Debtors filed the Debtors’ Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and (6) 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 (the “Sale Motion”) [Docket No. 4069].

3. In the Sale Motion, the Debtors propose to sell the Purchased Assets¹ of St. Francis Medical Center to the Winning Bidder.

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¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

4. On February 26, 2020, the Court entered an order (the “Bidding Procedures Order”) [Docket No. 4165] approving, among other things, the Bidding Procedures requested in the Sale Motion.

5. In accordance with the Bidding Procedures Order, the Debtors filed the Assumption Notice on March 13, 2020.

6. The Assumption Notice included on Exhibit A Part 2 an agreement between Verity Health System and Cerner Health Services Inc. formerly Siemens Medical Solutions USA, Inc. The contract is described as “Services – Software Maintenance and Support”, with a termination date of 6/30/2019 (the “Agreement”). The proposed cure amount is listed as \$112,219.03.

7. Services under the Agreement relate to accounts receivable, collection, medical records and reimbursement management, as well as a laboratory information system. *See* the attached Declaration of Tracey M. Ohm in Support of the Limited Objection of Cerner Corporation to the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed and Assigned [Dkt. No. 4267] (hereafter “Ohm Decl.”), ¶ 4. Although the data is stored separately for each facility, Cerner’s services are provided to the Debtors under the one agreement. Ohm Decl., ¶ 5.

LIMITED OBJECTION

8. Cerner does not oppose the proposed sale described in the Sale Motion, nor does Cerner generally oppose assumption and assignment of the Agreement in the sale. Ohm Decl., ¶ 6.

9. Cerner does object to assumption and assignment of the Agreement to the extent that the proposed cure amounts fail to satisfy all existing defaults in accordance with 11 U.S.C. § 365(b). Ohm Decl., ¶ 7.

10. 11 U.S.C. § 365(b)(1) states, in pertinent part:

/ / /

/ / /

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

11. A cure under 11 U.S.C. § 365 means that all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005).

12. Cerner's records show a total pre-petition balance under the Agreement as \$117,232.94, which is close to the \$112,219.03 total listed in the Assumption Notice. Ohm Decl., ¶ 8.

13. Cerner's records indicate that the pre-petition amounts owed by facility are: Seton Medical Center \$25,980.12; O'Connor Hospital \$25,980.12; St. Vincent Medical Center \$35,554.71; St. Francis Medical Center \$27,356.13; and Verity Health System \$2,361.86. Ohm Decl., ¶ 9.

14. The parties should reconcile the balances, particularly to the extent that the successful bidder under the Sale Motion views the amounts listed for Cerner in the Assumption Notice as separate facility obligations.

15. Further, as the case proceeds, Cerner continues to provide post-petition services to the Debtors' estates, and additional amounts become due under the Agreement. In addition to the pre-petition amounts due, any additional post-petition amounts due must also be paid to Cerner in order to cure the existing defaults.

1 16. The Agreement includes licenses for copyrighted software, which are
2 not transferable or assignable pursuant to the terms of the Agreement and applicable
3 non-bankruptcy law, and may not be assumed and assigned without Cerner's
4 consent.² Ohm Decl., ¶ 10.

5 17. Section 365(c)(1) of the Bankruptcy Code provides that:
6 The trustee may not assume or assign any executory contract or unexpired
7 lease of the debtor, whether or not such contract or lease prohibits or restricts
8 assignment of rights or delegation of duties, if—

9 (1)

10 (A) applicable law excuses a party, other than the debtor, to such
11 contract or lease from accepting performance from or rendering
12 performance to an entity other than the debtor or the debtor in
13 possession, whether or not such contract or lease prohibits or restricts
14 assignment of rights or delegation of duties; and

15 (B) such party does not consent to such assumption or assignment

16 11 U.S.C. § 365(c)(1).

17 18. As a court in the Ninth Circuit, this Court must follow *Perlman v.*
18 *Catapult Entertainment, Inc. (In re Catapult Entertainment, Inc.)*, 165 F.3d 747 (9th
19 Cir. 1999). As established in *Catapult Entertainment*, agreements such as the
20 Agreement between the Debtors and Cerner cannot be assumed or assigned without
21 Cerner's consent. *See Id.* at 754-55 (holding that “where applicable nonbankruptcy
22 law makes an executory contract nonassignable because the identity of the
23 nondebtor party is material, a debtor in possession may not assume the contract
24 absent consent of the nondebtor party”).

25
26 ² Copyright law is the applicable nonbankruptcy law that would excuse Cerner from
27 accepting performance under the Agreement from an entity other than the Debtors.
28 *See, e.g., In re CFLC, Inc.*, 89 F.3d 673, 679 (9th Cir. 1996); *In re Sunterra Corp.*,
361 F.3d 257, 262 fn. 7 (4th Cir. 2004).

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

One LLP, 4000 MacArthur Boulevard, East Tower, Suite 500, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **LIMITED OBJECTION OF CERNER CORPORATION TO NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS THAT MAY BE ASSUMED AND ASSIGNED [DKT. NO 4267]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 2, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On **April 2, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 2, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Email:

Cain Brothers, a division of KeyBanc Capital Markets, Attn: James Moloney (jmoloney@cainbrothers.com); Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Attn: Daniel S. Bleck and Paul Ricotta (dsbleck@mintz.com, pricotta@mintz.com); McDermott Will & Emery LLP, Attn: Nathan F. Coco and Megan Preusker (ncoco@mwe.com, mpreusker@mwe.com); Maslon, LLP, Attn: Clark Whitmore (clark.whitmore@maslon.com); Jones Day, Attn: Benjamin Rosenblum, and Peter Saba (brosenblum@jonesday.com, psaba@jonesday.com).

☐ Service information continued on attached page

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

April 3, 2020

Date

Printed Name

/s/ Robin Golder

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1 Lawrence J. Hilton, Esq., (SBN 156524)
2 One LLP
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15 Attorneys for Cerner Corporation

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF
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DECLARATION OF TRACEY M. OHM

☐ Affects O'Connor Hospital
Foundation
☐ Affects Saint Louise Regional
Hospital
Foundation
☐ Affects St. Francis Medical Center of
Lynwood Foundation
☐ Affects St. Vincent Foundation
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Dialysis, LLC

Debtors and Debtors in Possession.

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Sale Hearing:

Date: April 9, 2020
Time: 10:00 a.m.
Place: 255 E. Temple Street
Los Angeles, CA 90012
Courtroom 1568
Judge: Hon. Ernest M. Robles

**DECLARATION OF TRACEY M.
OHM IN SUPPORT OF
LIMITED OBJECTION OF
CERNER CORPORATION TO
NOTICE TO COUNTERPARTIES
TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF
THE DEBTORS THAT MAY BE
ASSUMED AND ASSIGNED
[DKT. NO 4267]**

DECLARATION OF TRACEY M. OHM

1 THE UNDERSIGNED, Tracey M. Ohm, an attorney at Stinson LLP, states as
2 follows:

3 1. I am a United States citizen over the age of 18 and competent to testify
4 to the matters stated below.

5 2. I am a attorney at the law firm of Stinson LLP.

6 3. I am counsel for Cerner Corporation and its affiliates (collectively
7 “Cerner”) in connection with the Verity Health System of California, Inc., *et al.*
8 Chapter 11 proceedings.

9 4. Services under the agreement between Verity Health System of
10 California, Inc. and Cerner Health Services Inc. formerly Siemens Medical
11 Solutions USA, Inc. described as a “Services – Software Maintenance and Support”
12 agreement with a termination date of 6/30/2019 (the “Agreement”) relate to
13 accounts receivable, collection, medical records and reimbursement management, as
14 well as a laboratory information system.

15 5. Although the data is stored separately for each facility, Cerner’s
16 services are provided to the Debtors under the one agreement.

17 6. Cerner does not oppose the proposed sale described in the Debtors’
18 Notice of Motion and Motion for the Entry of (I) an Order (1) Approving Form of
19 Asset Purchase Agreement; (2) Approving Auction Sale Format and Bidding
20 Procedures; (3) Approving Process for Discretionary Selection of Stalking Horse
21 Bidder and Bid Protections; (4) Approving Form of Notice to be Provided to
22 Interested Parties; (5) Scheduling a Court Hearing to Consider Approval of the Sale
23 to the Highest and Best Bidder; and (6) Approving Procedures Related to the
24 Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an
25 Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and
26 Encumbrances (the “Sale Motion”) [Docket No. 4069], nor does Cerner generally
27 oppose assumption and assignment of the Agreement in the sale.
28

1 7. Cerner does object to assumption and assignment of the Agreement to
2 the extent that the proposed cure amounts fail to satisfy all existing defaults in
3 accordance with 11 U.S.C. § 365(b).

4 8. Cerner's records show a total pre-petition balance under the Agreement
5 as \$117,232.94, which is close to the \$112,219.03 total listed in the Notice to
6 Counterparties to Executory Contracts and Unexpired Leases of the Debtors that
7 May Be Assumed and Assigned (the "Assumption Notice") [Docket No. 4267].

8 9. Cerner's records indicate that the pre-petition amounts owed by facility
9 are: Seton Medical Center \$25,980.12; O'Connor Hospital \$25,980.12; St. Vincent
10 Medical Center \$35,554.71; St. Francis Medical Center \$27,356.13; and Verity
11 Health System \$2,361.86.

12 10. The Agreement includes licenses for copyrighted software, which are
13 not transferable or assignable pursuant to the terms of the Agreement and applicable
14 non-bankruptcy law, and may not be assumed and assigned without Cerner's
15 consent.

16 11. If the Winning Bidder under the Sale Motion wishes to use the licensed
17 services provided by Cerner to the Debtors, Cerner would consent to the assumption
18 and assignment of the Agreement upon payment of the cure described herein.

19 12. Cerner looks forward to working with the Debtors as necessary to
20 reconcile the amounts due Cerner in connection with the Agreement.

21 13. Cerner asks that the proposed sale sought in the Sale Motion be
22 approved at the April 9, 2020 hearing, with the matter of the potential
23 assumption/cure and assignment of Cerner's Agreement reserved for another day.

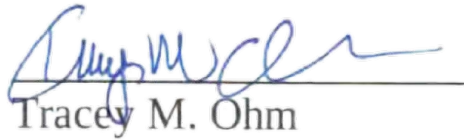
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1 I, Tracey M. Ohm, declare under the penalty of perjury that the foregoing is
2 true and correct.

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4 Dated: April 2, 2020

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7 Tracey M. Ohm
8 Stinson LLP
9 Counsel for Cerner Corporation
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

One LLP, 4000 MacArthur Boulevard, East Tower, Suite 500, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **DECLARATION OF TRACEY M. OHM IN SUPPORT OF LIMITED OBJECTION OF CERNER CORPORATION TO NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS THAT MAY BE ASSUMED AND ASSIGNED [DKT. NO 4267]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

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☐ Service information continued on attached page

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

April 3, 2020

Date

Printed Name

/s/ Robin Golder

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.