

THIS OMNIBUS MOTION SEEKS TO REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AS OF OCTOBER 30, 2020, OR (A) SUCH EARLIER DATE AS THE DEBTORS MAY SPECIFY, OR (B) SUCH LATER DATE AS MAY BE AGREED BY THE DEBTORS AND A COUNTERPARTY. PARTIES RECEIVING THIS MOTION SHOULD LOCATE THEIR NAMES AND AGREEMENTS ON THE EXHIBIT ATTACHED TO THIS MOTION. YOUR RIGHTS MAY BE AFFECTED BY THIS MOTION AND YOU SHOULD THEREFORE READ IT CAREFULLY.

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**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

Hon. Ernest M. Robles

Chapter 11 Cases

DEBTORS' NOTICE OF MOTION AND TENTH OMNIBUS MOTION TO REJECT, PURSUANT TO 11 U.S.C. § 365(A), CERTAIN TRANSITION EXECUTORY CONTRACTS AND UNEXPIRED LEASES; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF RICHARD G. ADCOCK

- 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.

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[Relates to Docket Nos. 4511 + 4873,
4365 + 4530,
4634 + 5266,
5466 + 5504]

Hearing:

Date: October 7, 2020
Time: 10:00 a.m.
Place: Courtroom 1568
225 E. Temple Street
Los Angeles, CA 90012

PLEASE TAKE NOTICE that at the above-referenced date, time and location, Verity Health System of California, Inc., a California nonprofit benefit corporation and the Debtor herein (“VHS”), and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases (collectively, the “Cases”), will move the Court for the entry of an order pursuant to 11 U.S.C. § 365(a) (the “Motion”), authorizing the Debtors to reject the contracts and leases listed on **Exhibit A** to the accompanying Memorandum of Points and Authorities and all ancillary documents thereto, including exhibits, schedules, attachments and amendments (collectively, the “Agreements”), to which Seton Medical Center (“Seton”), St. Francis Medical Center (“SFMC”), St. Vincent Medical Center (“SVMC”), or VHS, as applicable, are a party.¹

The Agreements are needed by the Debtors to fulfill certain transition assistance, interim management or other post-closing duties to the buyers of Seton, SFMC and SVMC following the Effective Date of the Plan (as defined below). The Plan provides for the rejection of any outstanding executory contracts or unexpired leases of the Debtors as of the Effective Date of the Plan *unless* the Debtors separately move to reject specified agreements. *See* Plan § 11.1. This Motion is intended to be such a “separate motion.” The Debtors request that the Agreements be deemed rejected as of (a) October 30, 2020, or (b) (i) such earlier date as may be specified by the Debtors in a notice given to the applicable counterparty, or (ii) such later date as may be agreed by the Debtors and the applicable counterparty (“Rejection Date”). The Motion also requests that the Bankruptcy Court fix a deadline (a) for the applicable counterparty to file a proof of claim arising

¹ Any counter-party to an agreement listed on Exhibit A hereto that is uncertain of the agreement being rejected by the Motion should contact counsel for the Debtors. The Debtors will attach a final exhibit to the order(s) entered on the Motion with any updated information. Pachulski Stang Ziehl & Jones LLP will address any objections or responses to the relief requested in this Motion that is filed by clients of Dentons US LLP.

1 from the rejection of the applicable Agreement under Federal Rule of Bankruptcy Procedure
2 3002(c)(4), and (b) for equipment lessors (to the extent any such lessors do not have a new lease
3 arrangement with the applicable hospital buyer), to retrieve their leased property by no later than
4 November 15, 2020 (to the extent any such lessors have not previously retrieved such property)
5 and coordinate with the Debtors' designee to arrange for such retrieval.²

6 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion
7 and Motion, the accompanying Memorandum of Points and Authorities, the attached Declaration
8 of Richard G. Adcock (the "Adcock Declaration"), the supporting statements, arguments and
9 representations of counsel who will appear at the hearing on the Motion, the record in these Cases,
10 and any other evidence properly brought before the Court in all other matters of which this Court
11 may properly take judicial notice.

12 **PLEASE TAKE FURTHER NOTICE** that the Court confirmed the *Modified Second*
13 *Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition*
14 *Secured Lenders, and the Committee* [Docket No. 5466] (the "Plan") pursuant to that certain *Order*
15 *Confirming Modified Second Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020)*
16 *of the Debtors, the Prepetition Secured Creditors, and the Committee* [Docket. No. 5504].

17 **PLEASE TAKE FURTHER NOTICE** that the sale of SVMC facility closed on April 16,
18 2020, pursuant to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to*
19 *the Chan Soon-Shiong Family Foundation or its Designee(s) Free and Clear of Liens, Claims,*
20 *Encumbrances, and Other Interests; et seq.* [Docket No. 4530] and the operations of SVMC
21 originally closed in January, 2020. *Debtors' Status Report re Closure of St. Vincent Medical Center*
22

23 ² If the buyer of the hospital has entered into a new or restated lease for the leased property, the lessor should not
24 retrieve such property and it will not be deemed abandoned to the Debtors if it is not retrieved. The Motion further
25 requests an order determining that any leased property **that is not subject to a new or restated lease with the**
26 **applicable hospital buyer** and that is not retrieved by November 15, 2020, shall be deemed abandoned to the
27 applicable Debtor pursuant to Bankruptcy Rule 6007. Equipment lessors can contact (i) Terri Pasion
28 (Terripasion@verity.org) to arrange for the pickup of remaining leased equipment located at SFMC, (ii) Mark Feltt
(MarkFeltt@verity.org) to arrange for pickup of remaining leased equipment located at Seton, or (iii) Jon Emerson
(jemerson@thinkbrg.com) to arrange for the pickup of remaining leased equipment located at SVMC or any other
location. The Debtors reserve all rights to assert that any new or restated lease with the applicable buyer constitutes a
novation of the applicable Agreement with the applicable Debtor and, accordingly, has either extinguished or mitigated
any rejection damages claim which may be filed.

1 *dated January 23, 2020* [Docket No. 3982]. None of the Agreements was designated for
2 assignment to the SVMC buyer.

3 **PLEASE TAKE FURTHER NOTICE** that the sale of SFMC closed on August 13, 2020,
4 pursuant to that certain *Order (A) Authorizing the Sale of Certain of the Debtors' Assets to Prime*
5 *Healthcare Services, Inc. Pursuant to the APA Attached Hereto Free and Clear of Liens, Claims,*
6 *Encumbrances, or other Interests; (B) Approving the Assumption and Assignment of Certain*
7 *Assigned Contracts Related Thereto; and (C) Granting Related Relief* [Docket No. 4511]. None
8 of the Agreements was designated for assignment to the buyer of SFMC under that certain *Notice*
9 *of Executory Contracts and Unexpired Leases Designated by Prime Healthcare Services, Inc. for*
10 *Assumption and Assignment Concerning Certain Assets Related to St. Francis Medical Center*
11 [Docket No. 4873].

12 **PLEASE TAKE FURTHER NOTICE** that the sale of Seton closed on August 13, 2020,
13 pursuant to that certain *Order Granting Debtors' Motion to Approve Terms and Conditions of a*
14 *Private Sale of Certain of the Debtors' Assets Related to Seton Medical Center to AHMC*
15 *Healthcare Inc.* [Docket No. 4634]. None of the Agreements was designated for assignment to the
16 buyer of Seton under that certain *Final Notice of (I) Executory Contracts and Unexpired Leases*
17 *Designated by AHMC Healthcare, Inc. for Assumption and Assignment Concerning Certain Assets*
18 *Related to Seton Medical Center; and (II) Deadline of Certain Counterparties to File Renewed*
19 *Objections to Cure or Assumption and Assignment* [Docket No. 5266].

20 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 9013-1(f)(1), any party
21 opposing or responding to the Motion must file a response (the "Response") with the Bankruptcy
22 Court and serve a copy of it upon the moving party and the United States Trustee not later than 14
23 days before the date designated for the hearing on the Motion. A Response must be a complete
24 written statement of all reasons in opposition to the Motion or in support, declarations and copies
25 of all evidence on which the responding party intends to rely, and any responding memorandum of
26 points and authorities.

27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Verity Health System of California, Inc., a California nonprofit benefit corporation and the
5 Debtor herein (“VHS”), and the above-referenced affiliated debtors (collectively, the “Debtors”),
6 by and through their undersigned counsel, hereby file this Memorandum of Points and Authorities
7 in support of the Motion to reject the Agreements listed on **Exhibit A** attached hereto pursuant to
8 § 365(a),¹ effective as of October 30, 2020, or such other (a) earlier date that may be specified by
9 the Debtors in a notice given to the applicable counterparty or (b) later date as may be agreed by
10 the Debtors and the applicable counterparty (“Rejection Date”).²

11 The Agreements were not assigned to the buyers of the Debtors’ hospital facilities or
12 properties formerly located at SFMC, Seton or SVMC but are temporarily needed by the Debtors
13 to fulfill certain transition services, or other post-closing assurances, being provided by the Debtors
14 to the buyer under such sales. Certain of the Agreements, moreover, are with VHS as the parent
15 entity and may apply to multiple hospital facilities, thereby also requiring additional time for the
16 Debtors to engage in a thoughtful and orderly wind down of the parties’ ongoing performance. The
17 extended Rejection Date (*i.e.*, past the otherwise applicable rejection on the Effective Date of the
18 Plan), will provide time for the Debtors and each buyer to complete the transition assistance that is
19 enabled by a particular Agreement, or for a buyer to make alternative arrangements directly with a
20 counterparty for future services or equipment. Notwithstanding the relief requested by the Motion,
21 the Debtors reserve all rights to (a) dispute that any Agreement remains unexpired or executory and
22 (b) assert that any Agreement has been the subject of a novation. Nothing contained in the Motion
23 shall be deemed to waive or impair any of the Debtors’ rights, objections or defenses with respect
24 to any filed claim arising from rejection of the Agreements.

25 _____
26 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, Rules 1001-9037. All “LBR” references
are to the Local Bankruptcy Rules for the United States Bankruptcy Court for the Central District of California.

27 ² Any counter-party to an executory contract or unexpired lease listed on **Exhibit A** hereto that is uncertain of the
28 agreement being rejected by the Motion should contact counsel for the Debtors. The Debtors will attach a final exhibit
to the order(s) entered on the Motion with any updated information.

1 The Agreements will provide no further benefit to the Debtors’ bankruptcy estates, as they
2 may be vested or re-vested under the Plan (the “Estates”), after the applicable transition services or
3 other post-closing duties lapse. Rejecting the Agreements and eliminating the Debtors’ ongoing
4 obligations under them, if any, is therefore in the best interest of the Estates. Consequently, the
5 Debtors are permitted to reject the Agreements as a legitimate exercise of their business judgment
6 pursuant to § 365(a) and the Debtors respectfully request that the Court grant the Motion.

7 **II.**

8 **JURISDICTION**

9 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is
10 a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Cases is proper pursuant to
11 28 U.S.C. §§ 1408 and 1409. The statutory predicate for this Motion is §§ 365(a) and 554 and
12 Rules 3002 and 6007.

13 **III.**

14 **STATEMENT OF FACTS**

15 **A. General Background**

16 1. On August 31, 2018 (“Petition Date”), each of the Debtors filed a voluntary petition
17 for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The
18 Cases are currently being jointly administered before the Bankruptcy Court. [Docket No. 17].
19 Since the commencement of their Cases, the Debtors have been operating their businesses as
20 debtors in possession pursuant to §§ 1107 and 1108.

21 2. VHS is the sole corporate member of the following five Debtor California nonprofit
22 public benefit corporations that formerly operated or currently operate, as applicable, the following
23 acute care hospitals: O’Connor Hospital (“OCH”), St. Louise Regional Hospital (“SLRH”),
24 SVMC, Seton and SFMC.

25 3. On September 14, 2018, the Office of the United States Trustee appointed an
26 Official Committee of Unsecured Creditors in these Cases. [Docket No. 197.]

27 4. On December 27, 2019, the Court entered its *Order (A) Authorizing the Sale of*
28 *Certain of the Debtors’ Assets to Santa Clara County Free and Clear of Liens, Claims and*

1 *Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an*
2 *Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 1153] (the “SCC
3 Sale Order”). Pursuant to the SCC Sale Order, the Debtors sold OCH and SLRH and related assets
4 to the County of Santa Clara, a political subdivision of the State of California. The closing of that
5 sale occurred on February 28, 2019.

6 5. On January 3, 2020, the Debtors filed their *Notice re Termination of Asset Purchase*
7 *Agreement with Strategic Global Management, Inc.* [Docket No. 3899] (“Termination Notice”).
8 As set forth in the Termination Notice, SGM failed to timely close the APA (as defined in the
9 Termination Notice) for the acquisition of SFMC, SVMC, Seton and related assets. Consequently,
10 the Debtors terminated the APA with SGM effective as of December 27, 2019.

11 **B. Confirmation of Chapter 11 Plan**

12 6. The Court confirmed the *Modified Second Amended Joint Chapter 11 Plan of*
13 *Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition Secured Lenders, and the*
14 *Committee* [Docket No. 5466] pursuant to that certain *Order Confirming Modified Second*
15 *Amended Joint Chapter 11 Plan of Liquidation (Dated July 2, 2020) of the Debtors, the Prepetition*
16 *Secured Creditors, and the Committee* [Docket. No. 5504], entered on August 14, 2020.

17 **C. SVMC Closure and Sale**

18 7. The Bankruptcy Court authorized SVMC to cease operations on an expedited basis
19 according to the closure plan approved by the *Order Granting Debtors’ Emergency Motion for*
20 *Authorization to Close St. Vincent Medical Center* [Docket No. 3934]. As more fully described in
21 the *Debtors’ Status Report re Closure of St. Vincent Medical Center dated January 23, 2020*
22 [Docket No. 3982], as supplemented from time to time, the Debtors effectuated a smooth, safe and
23 orderly implementation of the SVMC closure plan. Emergency services at SVMC were
24 discontinued as of January 9, 2020, all SVMC inpatients were either discharged or transferred by
25 January 18, 2020, and all outpatient visits ceased as of January 22, 2020.

26 8. Subsequently, on March 30, 2020, the Debtors’ filed their *Emergency Motion for*
27 *the Entry of: (I) An Order (1) Approving Form of Asset Purchase Agreement, et seq.* [Docket No.
28 4365] which sale was approved pursuant to the *Order (A) Authorizing the Sale of Certain of the*

1 *Debtors' Assets to the Chan Soon-Shiong Family Foundation or its Designee(s) Free and Clear of*
2 *Liens, Claims, Encumbrances, and Other Interests; et seq.* [Docket No. 4530]. None of the
3 Agreements was designated in writing for assignment to the SVMC buyer.

4 **D. SFMC Sale**

5 9. The sale of SFMC closed on August 13, 2020, pursuant to that certain *Order (A)*
6 *Authorizing the Sale of Certain of the Debtors' Assets to Prime Healthcare Services, Inc. Pursuant*
7 *to the APA Attached Hereto Free and Clear of Liens, Claims, Encumbrances, or other Interests;*
8 *(B) Approving the Assumption and Assignment of Certain Assigned Contracts Related Thereto; and*
9 *(C) Granting Related Relief* [Docket No. 4511]. None of the Agreements was designated for
10 assignment to the SFMC buyer under that certain *Notice of Executory Contracts and Unexpired*
11 *Leases Designated by Prime Healthcare Services, Inc. for Assumption and Assignment Concerning*
12 *Certain Assets Related to St. Francis Medical Center* [Docket No. 4873].

13 **E. Seton Sale**

14 10. The sale of Seton closed on August 13, 2020, pursuant to that certain *Order*
15 *Granting Debtors' Motion to Approve Terms and Conditions of a Private Sale of Certain of the*
16 *Debtors' Assets Related to Seton Medical Center to AHMC Healthcare Inc.* [Docket No. 4634].
17 None of the Agreements was designated for assignment to the Seton buyer under that certain *Final*
18 *Notice of (I) Executory Contacts and Unexpired Leases Designated by AHMC Healthcare, Inc. for*
19 *Assumption and Assignment Concerning Certain Assets Related to Seton Medical Center; and (II)*
20 *Deadline of Certain Counterparties to File Renewed Objections to Cure or Assumption and*
21 *Assignment* [Docket No. 5266].

22 **F. Rejection Date**

23 11. As a result of the consummation of the sales of Seton, SFMC and SVMC, the
24 Debtors no longer require continued performance under any of the Agreements once the transition
25 services period, or other post-closing duties, under each sale has expired. The Debtors have
26 therefore moved to reject the Agreements as of the Rejection Date in order to avoid further expense
27 to the Debtors after the fulfillment of their applicable post-closing obligations. The Rejection Date
28 provides further flexibility to the Debtors by enabling them to sooner terminate selected

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1 Agreements as and when warranted, or to extend the termination with the assent of the counterparty
2 if additional time is needed. As noted above, absent the request under this Motion for a separate
3 rejection date applicable to the Agreements, the Plan would otherwise result in the automatic
4 rejection of the Agreements as of the Effective Date of the Plan. *See* Plan § 11.1. That result would
5 impair the Debtors’ ability to fulfill their transition assistance or other post-closing obligations
6 under the SFMC, Seton and SVMC sales. Hence, the Debtors seek to keep the Agreements in place
7 for a limited period of time yet preserve the ability to curtail further cost to the Debtors following
8 the Rejection Date (without waiver of any defenses by the Debtors to the assertion or allowance of
9 any such costs based on the prior novation, termination or expiration of any of the Agreements, or
10 otherwise).

11 12. None of the Agreements was designated for assignment to the applicable buyer. Certain
12 Agreements, moreover, relate to multiple facilities and each buyer will therefore need to negotiate
13 a separate agreement should it seek a longer term arrangement with the counterparty. By keeping
14 these Agreements in effect for a limited period after the Effective Date of the Plan, the Debtors will
15 provide an opportunity for these arrangements to be implemented. Thus, some of the Agreements
16 may become subject of a novation with such buyers. In other cases, the transition or other post-
17 closing services provided by the Debtors related to other Agreements will conclude by the Rejection
18 Date (or shortly thereafter by agreement with a counterparty).

19 **IV.**

20 **DISCUSSION**

21 **A. The Debtors Have the Right to Reject the Agreements Pursuant to § 365(a).**

22 Section 365(a) authorizes a debtor in possession, “subject to the Court’s approval . . . [to]
23 assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a)
24 (made applicable by § 1107(a)). A debtor in possession may assume or reject executory contracts
25 for the benefit of its estate and its creditors. *Agarwal v. Pomona Valley Med. Grp., Inc. (In re*
26 *Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 671 (9th Cir. 2007); *In re Chi-Feng Huang*, 23 B.R.
27 798, 801 (B.A.P. 9th Cir. 1982) (“The primary issue is whether rejection would benefit the general
28 unsecured creditors.”). “The purpose of the power to reject is to augment the estate of the debtor.”

1 *Chi-Feng Huang*, 23 B.R. at 800 (quoting Krasnowiecki, *The Impact of the New Bankruptcy Reform*
2 *Act on Real Estate Development and Financing*, 53 AM. BANKR. L.J. 363, 382 (1979)).

3 Section 365 does not provide a definition of what constitutes an executory contract.
4 However, the Ninth Circuit has adopted the standard *Countryman* definition of an executory
5 contract, which is a contract “under which the obligations of both the bankrupt and the other party
6 to the contract are so far unperformed that the failure of either to complete performance would
7 constitute a material breach excusing the performance of the other.” *See, e.g., In re Robert L. Helms*
8 *Constr. & Dev. Co., Inc.*, 139 F.3d 702, 705 (9th Cir. 1998).

9 Here, the parties to the Agreements may have material unperformed obligations under the
10 applicable contract or lease. The Debtors, therefore, in an abundance of caution, have filed the
11 Motion to reject the Agreements if and to the extent any outstanding obligations remain to be
12 performed by either the applicable Debtor or counterparty. To the extent the Agreements remain
13 unexpired or executory, thus, the Debtors have the right to reject the Agreements pursuant to §
14 365(a).³

15 **B. Rejection of the Agreements Is Within the Debtors’ Sound Business Judgment.**

16 In reviewing a debtor in possession’s decision to assume or reject an executory contract, a
17 bankruptcy court should apply the “business judgment test” to determine whether to approve the
18 assumption or rejection. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523, 104 S. Ct. 1188, 79
19 L. Ed. 2d 482 (1984) (recognizing that the business judgment rule is used in reviewing motions to
20 reject executory contracts); *Pomona Valley Med. Grp.*, 476 F.3d at 670.

21 The business judgment standard requires that the bankruptcy court “presume that the debtor-
22 in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the
23 action taken was in the best interests of the bankruptcy estate.” *Pomona Valley Med. Grp.*, 476
24 F.3d at 670. As a result, the bankruptcy court should approve rejection “unless it finds that the
25 debtor-in-possession’s conclusion that rejection would be ‘advantageous is so manifestly
26 unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim

27 ³ To emphasize, the Debtors reserve all rights to dispute that any Debtor remains obligated under any Agreement that
28 was the subject of a novation with the buyer of a facility, or that any Agreement is otherwise currently unexpired or
executory.

1 or caprice.’’ *Id.* (quoting *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th
2 Cir. 1985)).

3 The Motion should be granted because the Debtors’ decision to reject the Agreements
4 indisputably falls within their sound business judgment. There is no benefit to the Debtors’ Estates
5 to remain obligated on the Agreements (if and to the extent any of them remain executory or
6 unexpired) following the fulfillment of the Debtors’ post-closing obligations to the purchasers of
7 the SFMC. Seton and SVMC properties. The Agreements relate to these now sold facilities, or to
8 multiple facilities, and are no longer needed by the applicable Debtor at the end of the applicable
9 transition period. *See* Adcock Declaration ¶¶ 4-5. Accordingly, rejection of the Agreements as of
10 Rejection Date is in the Estates’ best interests, and such a decision falls squarely within the Debtors’
11 sound business judgment. *Id.* at ¶ 6. Some of the Agreements are or may become subject to a
12 novation agreement (or other new or restated lease) with the applicable hospital buyer and will
13 remain in place pursuant to that substituted arrangement. Establishing a deadline for the retrieval
14 of any remaining leased equipment (or the abandonment to the Estates of such property, if not
15 timely retrieved) is also in the best interest of the Estates as it will also reduce any continuing costs
16 associated with, or damage to, the equipment.

17 CONCLUSION

18 **WHEREFORE**, for the foregoing reasons and such additional reasons as may be advanced
19 at or prior to the hearing on this Motion, the Debtors respectfully request that this Court enter an
20 order (i) authorizing them to reject⁴ the Agreements effective as of the Rejection Date, (ii) fixing
21 the last day for the applicable contract or lease counterparty to file a proof of claim arising from
22 the rejection of its Agreement under Bankruptcy Rule 3002(c)(4), (iii) requiring each equipment
23 lessor (unless such lessor has entered into a substitute arrangement with a buyer) to retrieve its
24 property by no later than November 15, 2020, and to coordinate with the Debtors’ personnel for
25 such retrieval, failing which such property shall be deemed abandoned by the equipment lessor to
26

27 ⁴ Nothing in this Motion precludes or otherwise affects one or more Debtors from asserting (a) any claim it may
28 have against a party to an Agreement, either by affirmative action, by recoupment, setoff or as another defense, or
(b) that it has been released from any further obligations under any Agreement, or (c) that any Agreement is no
longer executory or unexpired.

1 the applicable Debtor, and (iv) granting such other and further relief as is proper under the
2 circumstances.

3 Dated: September 3, 2020

PACHULSKI STANG ZIEHL & JONES LLP

4
5 By /s/ Shirley Cho
Shirley S. Cho

6 Co-Counsel to the Debtors and Debtors In
7 Possession
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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

1
2 I, Richard G. Adcock, declare, that if called as a witness, I would and could competently
3 testify thereto, of my own personal knowledge, as follows:

4 1. I am the Chief Executive Officer of Verity Health System of California, Inc.
5 (“VHS”). I became the Debtors’ Chief Executive Officer effective January 2018. Prior thereto, I
6 served as VHS’s Chief Operating Officer since August 2017.

7 2. Except as otherwise indicated herein, this Declaration is based upon my personal
8 knowledge, my review of relevant documents, information provided to me by employees of the
9 Debtors or the Debtors’ legal and financial advisors, or my opinion based upon my experience,
10 knowledge, and information concerning the Debtors’ operations and the healthcare industry. If
11 called upon to testify, I would testify competently to the facts set forth in this Declaration.

12 3. This Declaration is in support of the *Debtors’ Notice of Motion and Tenth Omnibus*
13 *Motion to Reject, Pursuant to 11 U.S.C. § 365(a), Certain Transition Executory Contracts and*
14 *Unexpired Leases* (“Motion”)¹ and for all other purposes permitted by law.

15 4. St. Francis Medical Center (“SFMC”), Seton Medical Center (“Seton”), St. Vincent
16 Medical Center (“SVMC”), or VHS, are parties to the various contracts and leases (the
17 “Agreements”) listed in **Exhibit A** to the Memorandum of Points and Authorities. None of the
18 Agreements was designated for assumption and assignment to the applicable buyer of SFMC,
19 SVMC or Seton. Moreover, following the fulfillment of the Debtors’ transition assistance or other
20 post-closing duties under the sales of such facilities, none of the Agreements will be further needed
21 by the Debtors or will remain beneficial to the Estates. Certain of the buyers may wish to negotiate
22 new direct arrangements with the contract counterparty or lessor prior to the Rejection Date.

23 5. I have concluded that there is no benefit to the Estates to remain obligated on the
24 Agreements following the completion of the Debtors’ post-closing obligations to buyers, if and to
25 the extent any outstanding obligations remain to be performed under any Agreement.


26 6. Based on the foregoing, I have determined, in my business judgment, that rejection
27 of the Agreements is in the best interest of the Estates.
28

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

Executed this 3rd day of September, 2020, at Los Angeles, California.



Richard G. Adcock

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

EXHIBIT A

Exhibit A: Tenth Omnibus Motion to Reject Executory Contracts

Ref #	Contract Debtor (A)	Vendor	Contract Type
100	VHS	NFS LEASING, INC.	EQUIPMENT-LEASE/RENTAL
101	VHS	NTHRIVE REVENUE SYSTEMS, LLC (FKA MEDASSESTS NET REVENUE SYSTEMS, LLC FKA IMACS / ACCURO)	LICENSE-SOFTWARE SUBSCRIPTION
102	VHS	NTT DATA SERVICES AKA PEROT SYSTEMS	SERVICES-CONSULTING
103	SFMC	NUANCE	DRAGON
104	SFMC	OPSGENIE	LICENSE-SOFTWARE SUBSCRIPTION
105	SMC	OPTILINK	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
106	VHS	OPTUM HEALTH	SERVICES AGREEMENT (CLAIMS REVIEW)
107	VHS	OPTUM360, LLC	LICENSE-SOFTWARE
108	VHS	P SERIES SYSTEMS	INFRASTRUCTURE & TELECOM
109	SFMC	PDC HEALTHCARE	PHARMACY
110	VHS	PFIZER	PHARMACEUTICALS
111	VHS	PHARMACY ONESOURCE	LICENSE-SOFTWARE SUBSCRIPTION
112	VHS	PHILIPS HEALTHCARE	XCELERA - INTELLISPACE CORE MAINTENANCE AGREEMENT
113	VHS	PHILIPS HEALTHCARE INFORMATICS, INC	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
114	VHS	PRAXAIR	SUPPLIES-RESPIRATORY
115	VHS	PRESS GANEY AND ASSOCIATES	SERVICES-SURVEY
116	VHS	PRODATA	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
117	VHS	PURE STORAGE MAINTENANCE RENEWAL	INFRASTRUCTURE & TELECOM
118	VHS	QS/1 DATA SYSTEMS	LICENSE-SOFTWARE SUBSCRIPTION
119	VHS	QUICKBOOK	QUICKBOOK
120	VHS	REDDINET	REDDINET II
121	VHS	RL SOLUTIONS	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
122	VHS	ROCHE DIAGNOSTICS CORPORATION	PHARMACY - ACCUCHECKS AND LAB SUPPLIES
123	VHS	ROPES & GRAY	SERVICE AGREEMENT
124	VHS	SAGE SOFTWARE, INC. (FKA BEST SOFTWARE, INC.)	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
125	VHS	SAGENT	PHARMACY - PHARMACEUTICALS
126	VHS	SEDGWICK CMS COMPANY	MASTER PURCHASING AGREEMENT
127	VHS	SOLARWINDS	INFRASTRUCTURE & TELECOM
128	VHS	SPICO SOLUTIONS	INFRASTRUCTURE & TELECOM
129	VHS	STERICYCLE, INC.	SERVICES-WASTE MANAGEMENT
130	VHS	STEVE CLARK & ASSOCIATES	SERVICES AGREEMENT
131	VHS	STEVE CLARK & ASSOCIATES	SERVICES AGREEMENT
132	VHS	STRYKER SALES CORPORATION	EQUIPMENT PLACEMENT / DISPOSABLE PURCHASE
133	VHS	SUNQUEST INFORMATION SYSTEMS, INC. (FKA MISYS HOSPITAL SYSTEMS, INC.)	MASTER SYSTEM ACQUISITION AGREEMENT
134	VHS	TOYON ASSOCIATES	SERVICES-CONSULTING
135	VHS	TRACELINK	LICENSE-SOFTWARE SUBSCRIPTION
136	VHS	TRACTMANAGER, INC.	LICENSE-SOFTWARE SUBSCRIPTION
137	VHS	TRANSUNION	SERVICES-PROFESSIONAL
138	VHS	VARIAN MEDICAL SYSTEMS, INC.	SERVICES-RADIOLOGY
139	VHS	VISION SOLUTIONS	SERVICES-HARDWARE AND SOFTWARE MAINTENANCE
140	VHS	VITALANT BLOOD SERVICES AGREEMENT	SERVICES
141	VHS	VOICEBROOK, INC.	LICENSE-SOFTWARE
142	VHS	VOICEBROOK, INC.	SERVICES-HARDWARE AND SOFTWARE MAINTENANCE
143	VHS	WELLIGENT, INC.	SERVICES-SOFTWARE MAINTENANCE AND SUPPORT
144	VHS	ZERIVA	EQUIPMENT-WARRANTY
145	SMC	ZONES	BUSINESS ASSOCIATE AGREEMENT
146	VHS	ZOOM	LICENSE AGREEMENT
147	VHS	Century Link	Telecom - Network
148	VHS	ASCOM Mtce	Telecom - Voice
149	VHS	E-FAX Corp	Telecom - Voice
150	VHS	Granite	Telecom - Voice
151	VHS	Language Line	Telecom - Voice
152	VHS	MAP Anserwing Service	Telecom - Voice
153	VHS	Nice In-Contact	Telecom - Voice
154	VHS	VOX PBX Mtce	Telecom - Voice

Exhibit A: Tenth Omnibus Motion to Reject Executory Contracts

Ref #	Contract Debtor (A)	Vendor	Contract Type
155	VHS	Wave Tech	Telecom - Voice
156	VHS	ZAYO	Telecommunications
157	VHS	Answer Quick	Telecommunications
158	VHS	Call Em All	Telecommunications
159	VHS	Global Star	Telecommunications
160	VHS	SPOK	Telecommunications
161	VHS	Verizon	Telecommunications
162	VHS	ATT	Telecommunications

(A) "VHS" = Verity Health System, "SMC" = Seton Medical Center, "SFMC" = St. Francis Medical Center

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:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **DEBTORS' NOTICE OF MOTION AND TENTH OMNIBUS MOTION TO REJECT, PURSUANT TO 11 U.S.C. § 365(A), CERTAIN TRANSITION EXECUTORY CONTRACTS AND UNEXPIRED LEASES; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF RICHARD G. ADCOCK** 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 (*date*) **September 3, 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 (*date*) **September 3, 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.

Honorable Ernest M. Robles
U.S. Bankruptcy Court
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

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 (*date*) _____, 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.

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.

September 3, 2020
Date

Myra Kulick
Printed Name

/s/ Myra Kulick
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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