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7 Debtors In Possession

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

10 In re

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

13 Debtors and Debtors In Possession.

- 14 Affects All Debtors
- 15 Affects Verity Health System of California, Inc.
- 16 Affects O'Connor Hospital
- 17 Affects Saint Louise Regional Hospital
- 18 Affects St. Francis Medical Center
- 19 Affects St. Vincent Medical Center
- 20 Affects Seton Medical Center
- 21 Affects O'Connor Hospital Foundation
- 22 Affects Saint Louise Regional Hospital Foundation
- 23 Affects St. Francis Medical Center of Lynwood Foundation
- 24 Affects St. Vincent Foundation
- 25 Affects St. Vincent Dialysis Center, Inc.
- 26 Affects Seton Medical Center Foundation
- 27 Affects Verity Business Services
- 28 Affects Verity Medical Foundation
- Affects Verity Holdings, LLC
- Affects De Paul Ventures, LLC
- Affects De Paul Ventures - San Jose ASC, 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

Chapter 11 Cases

Hon. Judge Ernest M. Robles

DEBTORS' NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER AGREEMENTS FOR RECORDS RETENTION SUPPORT SERVICES WITH GRM INFORMATION MANAGEMENT SERVICES OF CALIFORNIA, LLC; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RICHARD G. ADCOCK

HEARING:

Date: October 16, 2019

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
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1 **MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Verity Health System Of California, Inc. (“VHS”), and the above-referenced affiliated
5 debtors and debtors in possession in the above captioned chapter 11 bankruptcy cases (collectively,
6 the “Debtors”), respectfully request authority to enter into and perform under a Master Services
7 Agreement (“MSA”) and Business Associates Subcontractor Agreement (“BAS”) with GRM
8 Information Management Services of California, LLC (“GRM”), attached hereto as Exhibits “A”
9 and “B,” pursuant to §§ 105(a) and 363 of the Bankruptcy Code.¹

10 As part of their wind down, the Debtors need (i) to consolidate their remaining paper records
11 at a single location with a single records retention and retrieval provider going forward, and (ii) to
12 have that provider maintain certain electronic records which may be required to respond to patient,
13 regulatory and other inquiries and information needs going forward, as well as for the benefit of any
14 liquidating trustee (the “Liquidating Trustee”) appointed under the Debtors’ proposed plan of
15 liquidation (the “Plan”) [Docket No. 2993]. Pursuant to the MSA, GRM will provide those services
16 at a total cost of approximately \$500,000 for the next seven years (with options to extend), including
17 responding to various requests for access to those records from patients, regulators, the Liquidating
18 Trustee, the Post-Effective Date Committee (as defined in the Plan), the Post-Effective Date Debtors
19 (as defined in the Plan), and others. The MSA will also allow the Debtors (i) to minimize cost of
20 personnel and various other warehouse storage providers currently involved in records retention,
21 and (ii) to consolidate records currently stored at multiple locations at a single location where they
22 will be more readily accessible for future needs. The BAS agreement provides that GRM will
23 comply with HIPAA related requirements for Protected Health Information (as defined in the BAS).

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27 ¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11
28 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.

1 Based on the foregoing, and as set forth in greater detail below, the Debtors respectfully
2 submit that entering into the MSA is an exercise of their sound business judgment and hereby
3 request the Court grant the Motion.

4 **II.**

5 **JURISDICTION AND VENUE**

6 This Court has jurisdiction over this Motion under 28 U.S.C. § 157(b)(2)(A) and (O). Venue
7 of these proceedings and this Motion is proper pursuant to 28 U.S.C. § 1409. The statutory predicate
8 for this Motion is 11 U.S.C. §§ 105(a) and 363.

9 **III.**

10 **BACKGROUND**

11 **A. General Background**

12 1. On August 31, 2018, ("Petition Date"), the Debtors each filed a voluntary petition
13 for relief under chapter 11 of the Bankruptcy Code (the "Cases"). By entry of an order, the Cases
14 are currently being jointly administered before the Bankruptcy Court. [Docket No. 17]. Since the
15 commencement of their Cases, the Debtors have been operating their businesses as debtors in
16 possession pursuant to §§ 1107 and 1108.

17 2. Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate
18 member of five Debtor California nonprofit public benefit corporations that operated O'Connor
19 Hospital and Saint Louise Regional Hospital, and currently operates St. Francis Medical Center, St.
20 Vincent Medical Center and Seton Medical Center, including Seton Medical Center Coastsides
21 Campus (collectively, the "Hospitals").

22 3. On the Petition Date, Cases, VHS, the Hospitals, and their affiliated entities operate
23 as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency
24 rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including
25 tertiary and quaternary care. *Declaration Of Richard G. Adcock In Support of Emergency First Day*
26 *Motions*, at 4, 12 (the "First Day Declaration") [Docket No. 8].

27 4. A detailed description of the Debtors' businesses, capital structure, and the events
28 leading to the commencement of these Cases is contained in the First Day Declaration.

1 5. On September 17, 2018, the U.S. Trustee appointed a statutory creditors' committee
2 pursuant to § 1102.

3 6. No trustee or examiner has been appointed in these Cases.

4 **B. The Debtors' Hospital Sales**

5 7. On December 27, 2018, the Court entered an order [Docket No. 1153] approving
6 Santa Clara County as the purchaser for two of the Debtors' hospitals in Santa Clara County—Saint
7 Louise Regional Hospital and O'Connor Hospital—and related assets at a price of approximately
8 \$235 million, with the sale closing on February 28, 2019 (the "Santa Clara Sale"). The Court has
9 also approved other sales related to Verity Medical Foundation. *See* Docket Nos. 1622, 1915, 1919,
10 2693.

11 8. On February 19, 2019, the Court entered an Order approving bidding procedures and
12 a stalking horse bidder for the Debtors remaining four hospitals—St. Vincent Medical Center, St.
13 Francis Medical Center, Seton Medical Center and Seton Medical Center Coastsides—and set a sale
14 hearing for April 17, 2019. [Docket Nos. 1279, 1572]. The approved stalking horse asset purchase
15 agreement entered into between certain Debtors (Verity, Verity Holdings, St. Francis Medical
16 Center, St. Vincent Medical Center, St. Vincent Dialysis Center and Seton Medical Center) and
17 Strategic Global Management, Inc. (the "APA") [Docket No. 1279, Exhibit 1] has an outside closing
18 date of December 31, 2019. APA § 9.1.

19 9. On May 2, 2019, the Bankruptcy Court entered the *Order (A) Authorizing The Sale*
20 *Of Certain Of The Debtors' Assets To Strategic Global Management, Inc. Free And Clear Of Liens,*
21 *Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of An*
22 *Unexpired Lease Related Thereto; And (C) Granting Related Relief* [Docket No. 2306], approving
23 a sale of the Debtors' remaining Hospitals (St. Francis Medical Center, St. Vincent Medical Center,
24 and Seton Medical Center, including Seton Medical Center Coastsides Campus) to Strategic Global
25 Management, Inc. (the "SGM Sale"). Certain counterparties to executory contracts and leases
26 objected to the cure amounts and some of those objections are still being resolved. The SGM Sale
27 is currently being reviewed by the California Attorney General under applicable non-bankruptcy
28 law. The Debtors anticipate that the SGM Sale will close thereafter

1 10. On September 3, 2019, the Debtors filed the *Debtors' Chapter 11 Plan of Liquidation*
2 (the "Plan") [Docket No. 2993] and the *Disclosure Statement Describing Debtors' Chapter 11 Plan*
3 *of Liquidation* [Docket No. 2994].

4 **C. Facts Relevant to the Motion**

5 11. During the period in which it operated the Hospitals, the Debtors collected and
6 maintained records in the ordinary course of its business. These records fall into the following
7 categories: Charitable Foundation Records, Clinical Records, Medical Staff Records,
8 Financial/Accounting/Statistics/Audit Records, Contracts/Leases, Human Resources Records,
9 Legal/Risk Management/Compliance Audit/Organization Docs/Board Minutes, Revenue Cycle
10 Management/Billing/PFS Records, and Imaging Records.

11 12. Patient and certain other records at Saint Louise Regional Hospital and O'Connor
12 Hospital were transferred to Santa Clara County as part of the SCC Sale.

13 13. The Debtors also intend to transfer patient and certain other records at the Debtors'
14 remaining Hospitals (St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
15 Center, including Seton Medical Center Coastside Campus) to Strategic Global Management, Inc.
16 as part of the SGM Sale.

17 14. Pursuant to a separate motion (to be filed), the Debtors will seek approval of a revised
18 document retention policy, including for patient medical records. In particular, at the request of the
19 Committee, the Debtors are retaining the following types of records for seven (7) years: company
20 financial records, contracts, and board reports. Certain other paper and electronic records will be
21 retained for the periods described in that motion and the related revised document retention policy
22 while other records will be destroyed over time as set forth in that separate motion.

23 15. The Debtors have extensive records which are not being transferred to either of the
24 buyers of the hospitals. Some of these records will be retained for many years and may need to be
25 accessed by patients, regulators, the Liquidating Trustee, the Post-Effective Date Committee, the
26 Post-Effective Date Debtors and others. The records are currently in multiple locations and are
27 accessed and maintained by various personnel at various of the Debtors' locations or by multiple
28 warehouse storage companies.

1 17. GRM provides an efficient single source solution to cover all of the Debtors' storage
2 and document retrieval services at a single location at an attractive cost of approximately \$500,000.
3 The Debtors believe the terms of the MSA and BAS are otherwise reasonable and customary. One
4 of the most influential research and advisory firms² in the relevant industry recently identified GRM
5 as a leading performer in cloud based enterprise content management and content platforms, and
6 GRM is highly regarded in its industry for both physical and electronic content storage.
7 Additionally, GRM presently provides, on a more limited basis, document storage services to the
8 Debtors and is generally familiar with the Debtors' ongoing operations and systems based upon the
9 prior (and ongoing) business relationship which began in 2003.

10 **IV.**

11 **ARGUMENT**

12 Section 363(b) provides that a debtor in possession "after notice and a hearing, may use, sell
13 or lease, other than in the ordinary course of business, property of the estate. To approve a use, sale
14 or lease of property other than in the ordinary course of business, the court must find some
15 articulated business justification." *See, e.g., In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d
16 Cir. 1996) citing *In re Schipper (Fulton State Bank v. Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991);
17 *Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir.
18 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting
19 the "sound business judgment" test of *Lionel Corp.* and requiring good faith); *In re Delaware and*
20 *Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit adopted the "sound
21 business judgment" test in the *Abbotts Dairies* decision). Section 105(a) also provides that the Court
22 may "issue any order, process, or judgment that is necessary or appropriate to carry out the
23 provisions of this title." Here, the Debtors should be authorized to enter into, and perform, the MSA
24 and BSA pursuant to §§ 105(a) and 363(b).

25 Specifically, the business justification for entry into the GRM agreements includes the facts
26 noted above and that the approximate cost of \$500,000 for the seven (7) years of record storage and
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28 _____
² Forrester Research, Inc.

1 document retrieval is very reasonable compared to the Debtors' current costs and other alternatives
2 going forward. Additionally, ready and organized access to these records will be essential for claims
3 processing, future potential adversary proceedings and related discovery and litigation by either the
4 Debtors or the Liquidating Trustee going forward.

5 V.

6 **CONCLUSION**

7 Based on the foregoing, the Debtors respectfully request that this Court enter an Order
8 (i) authorizing the Debtors to enter into, and perform, the MSA and BAS with GRM pursuant to
9 §§ 105(a) and 363(b), and (ii) granting to the Debtors such other relief as the Court deems just and
10 proper under the circumstances.

11 Dated: September 25, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

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14 By /s/ Tania M. Moyron
Tania M. Moyron

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16 Attorneys for the Chapter 11 Debtors and
Debtors In Possession

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1 **SUPPLEMENTAL DECLARATION OF RICHARD G. ADCOCK**

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 And Motion for Order*
13 *Authorizing Debtors to Enter Agreements for Records Retention Support Services with GRM*
14 *Information Management Services of California, LLC (“Motion”)*³ and for all other purposes
15 permitted by law.

16 4. During the period in which it operated the Hospitals, the Debtors collected and
17 maintained records in the ordinary course of its business. These records fall into the following
18 categories: Charitable Foundation Records, Clinical Records, Medical Staff Records,
19 Financial/Accounting/Statistics/Audit Records, Contracts/Leases, Human Resources Records,
20 Legal/Risk Management/Compliance Audit/Organization Docs/Board Minutes, Revenue Cycle
21 Management/Billing/PFS Records, and Imaging Records.

22 5. Patient and certain other records at St. Louise Regional Hospital and O’Connor
23 Hospital were transferred to Santa Clara County as part of the SCC Sale.

24 6. The Debtors also intend to transfer patient and certain other records at the Debtors’
25 remaining Hospitals (St. Francis Medical Center, St. Vincent Medical Center, and Seton Medical
26
27

28 ³ Capitalized terms not otherwise defined in this Declaration have the same definitions set forth in
the Motion.

1 Center, including Seton Medical Center Coastside Campus) to Strategic Global Management, Inc.
2 as part of the SGM Sale.

3 7. Pursuant to a separate motion, the Debtors will seek approval of a revised document
4 retention policy. In particular, at the request of the Committee, the Debtors are retaining the
5 following types of Records for seven (7) years: company financial records, contracts, and board
6 reports. Certain other paper and electronic records will be retained for the periods described in that
7 motion and the related revised document retention policy while other records will be destroyed over
8 time as set forth in that separate motion.

9 8. The Debtors have extensive records which are not being transferred to either of the
10 buyers of the hospitals. Some of these records will be retained for many years and may need to be
11 accessed by patients, regulators, the Liquidating Trustee, the Post-Effective Date Committee, the
12 Post-Effective Date Debtors and others. The records are currently in multiple locations and are
13 accessed and maintained by various personnel at various Verity locations or by multiple warehouse
14 storage companies.

15 9. GRM provides an efficient single source solution to cover all of the Debtors' storage
16 and document retrieval services at a single location at an attractive cost of approximately \$500,000
17 going forward. The Debtors believe the terms of the MSA and BAS are otherwise reasonable and
18 customary. GRM presently provides, on a more limited basis, document storage services to the
19 Debtors and is generally familiar with the Debtors' ongoing operations and systems based upon the
20 prior (and ongoing) business relationship.

21 10. The Debtors believe that the entry into the MSA and BAS with GRM is in the best
22 interests of the Debtors' estates and creditors.

23 I declare under penalty of perjury and of the laws in the United States of America, the
24 foregoing is true and correct.

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Executed this 25th day of September, 2019, at Los Angeles, California.



RICHARD G. ADCOCK

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