United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, April 3, 2019 **Hearing Room 1568**

10:00 AM
2:18-20151 Verity Health System of California, Inc. **Chapter 11**
Adv#: 2:19-01002 ST. VINCENT MEDICAL CENTER, a California nonprofit v. LOCAL

#16.00 Hearing
RE: [20] Motion for Protective Order and Memorandum of Points and Authorities in Support Thereof

fr. 4-2-19

Docket 20

Matter Notes:

4/3/2019

The amended tentative ruling will be the order.
Party to lodge order: Movant

POST PDF OF AMENDED TENTATIVE RULING TO CIAO

Tentative Ruling:

4/03/2019

(Amended after hearing in RED.) For the reasons set forth below, the Court will stay this action pending the completion of arbitration. Because the arbitration clause provides that disclosure and discovery shall be conducted in accordance with the provisions of the California Code of Civil Procedure, LA Care's motion for a protective order excusing compliance with its discovery obligations under the Federal Rules of Civil Procedure is GRANTED.

Pleadings Filed and Reviewed:
1) Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment, Damages for Violation of the Automatic Stay, and Injunctive Relief [Doc. No. 1]

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(the "Complaint")

2) Papers filed in connection with L.A. Care's Motion to Dismiss:
   a) Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding, and Memorandum of Points and Authorities in Support Thereof [Doc. No. 17] (the "Motion")
      i) Notice of [Motion] [Doc. No. 14]
   b) Plaintiffs' Amended Opposition to Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding [Doc. No. 32]
   c) Reply Brief in Support of Motion for Entry of Order Dismissing Complaint or, in the Alternative, Motion for Entry of Order Staying Trial of Adversary Proceeding [Doc. No. 36]
3) Papers filed in connection with LA Care's Motion for Protective Order:
   a) Motion for Entry of Protective Order, and Memorandum of Points and Authorities in Support Thereof [Doc. No. 20]
   b) Plaintiffs' Opposition to Motion for Entry of Protective Order [Doc. No. 26]
   c) Reply Brief in Support of Motion for Entry of Protective Order [Doc. No. 35]
4) Papers filed in connection with Status Conference:
   a) Joint Status Report [Doc. No. 18]
   b) Memorandum of Points and Authorities Regarding Non-Core Designation [filed by LA Care] [Doc. No. 19]
   c) Plaintiffs' Response to Defendant's Memorandum of Points and Authorities Regarding Non-Core Designation [Doc. No. 22]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On January 3, 2019, Debtors St. Vincent Medical Center ("St. Vincent") and St. Francis Medical Center ("St. Francis," and together with St. Vincent, the "Plaintiffs") filed a *Complaint for Breach of Written Contracts, Turnover, Unjust Enrichment,*

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Damages for Violation of the Automatic Stay, and Injunctive Relief [Doc. No. 1] (the "Complaint") against Local Initiative Health Authority for Los Angeles County, d/b/a L.A. Care Health Plan ("L.A. Care").

A. Summary of the Complaint

The allegations of the Complaint may be summarized as follows:

1. Allegations Pertaining to St. Vincent

L.A. Care is an independent local public agency that provides health services to its members under contractual arrangements with hospitals, physicians, and other healthcare providers. Complaint at ¶ 7.

On July 1, 1998, St. Vincent and L.A. Care entered into a *Hospital Per Diem Services Agreement* (the "St. Vincent/L.A. Care Agreement"), under which L.A. Care agreed to compensate St. Vincent for covered medical services rendered by it to L.A. Care's members at agreed upon rates. Complaint at ¶ 13. Under the St. Vincent/L.A. Care Agreement, St. Vincent was required to submit claims for payment (the "St. Vincent Fee for Service Claims") to L.A. Care within six months of the date of service for L.A. Care members, and L.A. Care was required to make payments to St. Vincent within thirty days of receipt of the St. Vincent Fee for Service Claims at rates agreed to between the parties. *Id.* at ¶ 14.

Between November 2, 2017 and December 3, 2018, St. Vincent timely submitted no fewer than 606 St. Vincent Fee for Service Claims to L.A. Care. *Id.* at ¶ 15. L.A. Care has systematically and materially breached the St. Vincent/L.A. Care Agreement by failing and refusing to pay St. Vincent for the services St. Vincent rendered to L.A. Care's members, or by paying St. Vincent amounts less than those owed pursuant to the terms of the St. Vincent/L.A. Care Agreement. *Id.* at ¶ 16. By reason of L.A. Care's breach, St. Vincent has been damaged in the sum of not less than $4,320,335.32, of which $1,895,994.64 constitutes systematic underpayments, plus interest. *Id.* at ¶ 19.

L.A. Care had actual notice of St. Vincent's bankruptcy filing. *Id.* at ¶ 33. Notwithstanding its knowledge of the bankruptcy filing, L.A. Care made deductions from capitation payments owed to St. Vincent, in an amount of not less than $89,589.64 (the "St. Vincent Setoffs"). *Id.* at ¶ 34. The St. Vincent Setoffs were not authorized by St. Vincent and L.A. Care did not obtain approval from the Court prior to effectuating the St. Vincent Setoffs. *Id.* at ¶ 37.

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2. Allegations Pertaining to St. Francis

On March 31, 2003, St. Francis and L.A. Care entered into a *Hospital Services Agreement* (the "St. Francis/L.A. Care Agreement"), under which L.A. Care agreed to compensate St. Francis for covered medical services rendered by it to L.A. Care's members at agreed upon rates. *Id.* at ¶ 40. Under the St. Francis/L.A. Care Agreement, St. Francis was required to submit claims for payment (the "St. Francis Fee for Services Claims") to L.A. Care within six months of the date of service for L.A. Care members, and L.A. Care was required to make payments to St. Francis within thirty days of receipt of the St. Francis Fee for Services Claims at the rates agreed to between the parties. *Id.* at ¶ 41.

Between November 2, 2017 and December 3, 2018, St. Francis submitted no fewer than 2,134 St. Francis Fee for Service Claims to L.A. Care. *Id.* at ¶ 42. LA Care has systematically and materially breached the St. Francis/L.A. Care Agreement by failing and refusing to pay St. Francis for the services St. Francis rendered to L.A. Care's members, or by paying St. Francis amounts less than those owed pursuant to the terms of the St. Francis/L.A. Care Agreement. *Id.* at ¶ 43. By reason of L.A. Care's breach, St. Francis has been damaged in the sum of not less than $21,054,689.63, of which $12,502,651.97 constitutes systematic underpayments, plus interest. *Id.* at ¶ 46.

L.A. Care had actual knowledge of St. Francis' bankruptcy filing. *Id.* at ¶ 60. Notwithstanding its knowledge of the bankruptcy filing, L.A. Care made deductions from capitation payments owed to St. Francis, in an amount of not less than $269,570.43 (the "St. Francis Setoffs"). The St. Francis Setoffs were not authorized by St. Francis and L.A. Care did not obtain approval from the Court prior to effectuating the St. Francis Setoffs. *Id.* at ¶ 61.

3. Claims for Relief

Based upon the foregoing allegations, Plaintiffs assert claims for breach of contract (first and fifth claims), turnover pursuant to § 542(b) (second and sixth claims), unjust enrichment (third and seventh claims), damages for violation of the automatic stay for the St. Vincent and St. Francis Setoffs (fourth and eighth claims), and an order enjoining L.A. Care from engaging in any further setoffs (ninth claim).

B. Summary of LA Care's Motion to Dismiss, or, in the Alternative, Stay Trial and Motion for a Protective Order

L.A. Care moves to dismiss the Complaint, for failure to state a claim upon which

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relief can be granted pursuant to Civil Rule 12(b)(6). In the alternative, L.A. Care asserts that Plaintiffs' claims are subject to mandatory arbitration, and moves for an order staying trial until such arbitration has been conducted. L.A. Care moves for a protective order staying discovery, based on the fact that the arbitration clauses in the underlying contracts provide that discovery shall be conducted in accordance with the California Code of Civil Procedure, rather than the Federal Rules of Civil Procedure. L.A. Care makes the following arguments in support of the Motions:

Plaintiffs' Claims Must be Dismissed Because they are Subject to Mandatory Arbitration; in the Alternative, the Action Must be Stayed Until Arbitration Has Been Completed

Both the St. Vincent/L.A. Care Agreement and the St. Francis/L.A. Care Agreement provide that "all claims and controversies arising out of or in connection with this Agreement shall be subject to binding arbitration …." St. Vincent/L.A. Care Agreement at ¶ 2.6; St. Francis/L.A. Care Agreement at ¶ 3.6. The Court does not have discretion to decline to enforce the arbitration clause because this action is not a core proceeding. *See Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) ("In non-core proceedings, the bankruptcy court generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement").

Plaintiffs' claims for breach of contract are clearly non-core, as these claims do not depend upon the Bankruptcy Code for their existence. Plaintiffs' turnover claim under Bankruptcy Code § 542 is also non-core, because Plaintiffs have attempted to manufacture core jurisdiction by repackaging what is in reality a state-law-based breach of contract claim into a purported turnover claim. In *MCI Telecommunications Corp. v. Gurga (In re Gurga)*, the Ninth Circuit Bankruptcy Appellate Panel rejected a similar attempt to cast what was in reality a non-core breach of contract claim as a core turnover claim:

> Despite Source's attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by Source entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes claims for relief for only one potential core issue—turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. Here, the amounts, if

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any, owed to Source by MCI are in dispute and this dispute rests on breach of contract issues. In fact, Source made a prepetition demand for arbitration of the dispute, described at that time as breach of contract and accounting causes of action. Breach of contract actions are noncore claims. *See* 28 U.S.C. § 157.

MCI Telecommunications Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) (internal citations omitted).

The amounts that L.A. Care allegedly failed to pay Plaintiffs are all disputed amounts that Plaintiffs can claim as damages for L.A. Care's purported breach of contract. Plaintiffs cannot rely upon the turnover provision with respect to these amounts. "It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute." *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991). Turnover claims can be core proceedings only if their "purpose is the collection rather than the creation, recognition, or liquidation of a matured debt…. When a bona fide dispute exists as to liability involving state law, then the proceeding cannot be core under § 157(b)(2)(E)." *Acolyte Elect. Corp. v. City of New York*, 69 B.R. 155, 172 (Bankr. E.D.N.Y. 1986).

The Court should dismiss the non-core claims that are subject to mandatory arbitration. *See Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1060 (9th Cir. 2004) ("Nor did the district court err in dismissing the plaintiffs' claims that were subject to arbitration pursuant to Fed.R.Civ.P. 12(b)(6)"). In the alternative, the Court should stay the proceeding until the parties have engaged in arbitration.

The Complaint Fails to State a Claim Because Plaintiffs Did Not Allege Compliance with the Government Claims Act

L.A. Care is an independent local public agency established to provide health coverage to low-income residents of Los Angeles County. Under the Government Claims Act, Plaintiffs must present L.A. Care with a claim for monetary damages prior to bringing suit. Cal. Gov't Code § 945.4. Once an aggrieved party has properly presented a Government Claim, the governmental agency has at least 45 days to respond to that claim. *Id.* at § 912.4.

The Complaint does not allege that Plaintiffs complied with the Government Claims Act. Thus, the first through eighth claims for relief—all of which are claims for monetary damages—must be dismissed.

The Complaint does allege that Plaintiffs made a "[d]emand for payment of the

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unpaid and underpaid" St. Vincent Fee for Service Claims and St. Francis Fee for Service Claims. *See* Complaint at ¶¶ 18 and 45. These allegations are insufficient because the Complaint does not allege any facts demonstrating that the contents of these purported demands met the statutory definition of a Government Claim. Among other things, a Government Claim must include (1) the name and address of the claimant and the person to whom notices are to be sent; (2) a statement of the "date, place, and other circumstances of the occurrence or transaction"; (3) a description of the indebtedness, obligation, injury, damage, or loss incurred, as far as they are known when the claim is presented; (4) the name and public employee who caused the injury, if known; and (5) the amount claimed, if less than $10,000, or if more than $10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case. *See* Cal. Gov't Code § 910.

Each Claim for Relief Fails to Allege Facts Sufficient to State a Claim

Even overlooking the failure to plead compliance with the Government Claims Act, each of Plaintiffs' claims is deficient. The claims for breach of contract are inadequately pleaded because Plaintiffs do not allege that the medical services which L.A. Care allegedly failed to provide were "covered medical services" within the meaning of the underlying contracts. Further, Plaintiffs do not plead facts showing that they complied with the contractual requirements to obtain prior authorization before performing the medical services, or that the claims Plaintiffs submitted were "Clean Claims" within the meaning of the contracts.

The claims for unjust enrichment must be dismissed because LA Care and Plaintiffs entered into enforceable written contracts, and "[a]s a matter of law, an unjust enrichment claim does not lie where the parties have an enforceable express contract." *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (Cal. 2010).

The claims for violation of the automatic stay fail because the deductions made by L.A. Care were recoupments, not setoffs, and L.A. Care was not required to obtain stay-relief before exercising the equitable remedy of recoupment. *See Sims v. U.S. Dep't of Health and Hum. Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008, 1011 (9th Cir. 2000) ("[R]ecoupment is an equitable doctrine that 'exempts a debt from the automatic stay when the debt is inextricably tied up in the post-petition claim'") (internal citation omitted).

The claim for injunctive relief fails because "injunctive relief is a remedy and not, in itself, a cause of action." *Marcus v. ABC Signature Studios, Inc.*, 279 F.Supp.3d 1056, 1073 (C.D. Cal. 2017). A request for injunctive relief should be included, if at

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all, in Plaintiffs' prayer for relief. *Hafiz v. Greenpoint Mortg. Funding, Inc.*, 652 F.Supp.2d 1039, 1049 (N.D. Cal. 2009).

C. Summary of Plaintiffs' Opposition

Plaintiffs make the following arguments in Opposition to the Motion.

The Arbitration Clause is Unenforceable Because it Conflicts with Bankruptcy Policies

Contrary to L.A. Care's argument, the turnover claims are core. Under § 542(b), debts that are "matured, payable on demand, or payable on order" are subject to turnover. In *Process Am., Inc. v. Cynergy Holdings, LLC (In re Process Am., Inc.)*, 588 B.R. 82, 100 (Bankr. C.D. Cal. 2018), the court rejected the argument that a "turnover action cannot involve the return of disputed funds," holding instead that "§ 542(b) makes no requirement that the debt be undisputed." Thus, the fact that L.A. Care disputes liability does not take this action outside the scope of turnover.

"In core proceedings …. the bankruptcy court, at least when it sees a conflict with bankruptcy law, has discretion to deny enforcement of an arbitration agreement." *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) (internal citations omitted). Arbitration would conflict with essential bankruptcy policies. Determination of what constitutes property of the estate subject to immediate turnover and what constitutes an improper setoff in violation of the automatic stay are critical bankruptcy issues that should be determined by this Court.

The Debtors are in Compliance with the Government Claims Act to the Extent it Applies

The Government Claims Act does not apply to "claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance." Cal. Gov't Code § 905(e). By its own admission, L.A. Care is a commission established "to provide health coverage to low-income Los Angeles County residents." Motion at p. 5 fn. 1. By its terms, § 905(e) excepts from the claim requirements any claims for goods and services rendered "for or on behalf of" any public assistance recipient. Therefore, claims for direct medical services provided to L.A. Care members (that is, the individuals receiving the "public assistance" of health care coverage through L.A. Care) may be submitted directly to litigation.

Even if the § 905(e) exception does not apply to Plaintiffs' claims, Plaintiffs have

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substantially complied with the Government Claims Act. On September 26, 2018, Plaintiffs submitted a letter to L.A. Care demanding payment for services provided to LA Care's members (the "Demand Letter"). On November 2, 2018, Plaintiffs sent L.A. Care a letter stating that L.A. Care had violated the automatic stay by engaging in the Setoffs (the "Stay Violation Letter"). The Demand and Stay Violation Letters put L.A. Care on notice of Plaintiffs' claims against it. Pursuant to Cal. Gov't Code § 910.8, if a claim that is presented fails to contain the information required by Gov't Code § 910, the public entity may give notice of the deficiencies within twenty days. A public entity that fails to provide such notice waives any defense as to the sufficiency of the claim. By failing to respond to the Demand Letter or the Stay Violation Letter, L.A. Care has waived its ability to assert that Plaintiffs' claims do not comply with the Government Claims Act.

Plaintiffs' Claims are Adequately Pleaded

Plaintiffs' claims for breach of contract are adequately pleaded. The Complaint alleges that "L.A. Care has systematically and materially breached" the underlying contracts, and that Plaintiffs have "performed all terms and conditions required" under the contracts. Plaintiffs are required to present only a short and plain statement of the claim under Civil Rule 8(a).

With respect to Plaintiffs' claims for violation of the automatic stay, LA Care's contention that its actions were in the nature of recoupment rather than setoff is a defense, not a basis for dismissal of the claims. Whether L.A. Care's withholdings qualify as a setoff or as recoupment is an issue of fact that cannot be determined in the context of a motion to dismiss.

L.A. Care argues that the claims for unjust enrichment must be dismissed because the Complaint alleges that the parties entered enforceable written contracts. LA Care ignores the fact that Plaintiffs are entitled to assert alternative theories of recovery under Civil Rule 8(d)(2).

L.A. Care attacks Plaintiffs' claim for injunctive relief on the grounds that injunctive relief is a remedy, not an independent claim. The claim is properly grounded in the Bankruptcy Code, and could alternatively be stated as a claim for declaratory relief in light of L.A. Care's allegations of recoupment. Pursuant to Civil Rule 8(d), pleadings are to be construed "so as to do justice." Plaintiffs have properly stated a claim for injunctive relief.

Summary of L.A. Care's Reply

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L.A. Care makes the following arguments in Reply to Plaintiffs' Opposition:

Plaintiffs were required to satisfy the Government Claims Act's claims presentation requirements before filing this action and were required to plead specific facts demonstrating that they did so. Plaintiffs attach to their Opposition 16 pages of documents not mentioned in the Complaint in an attempt to show that they presented L.A. Care with a Government Claim. These documents are not properly before the Court and should not be considered.

Even if the Court were to consider the documents attached to Plaintiffs' Opposition, Plaintiffs have not substantially complied with the Government Claims Act. Neither the Demand Letter or the Stay Violation Letter mention a Government Claim or the Government Claims Act. Plaintiffs sent the letters to L.A. Care's Chief Operating Officer, not to L.A. Care's clerk, secretary, auditor, or board, as required by Cal. Gov't Code § 915(a). If a claimant fails to deliver or mail the claim to one of the recipients specified in § 915(a), the claim does not "substantially comply with the act" even "if it is given to a person or department whose functions include the management or defense of claims against the defendant entity." *DiCampli-Mintz v. County of Santa Clara*, 55 Cal. 4th 983, 987 (2012). The reason is that "[m]isdirected claims may be received by various departments or employees and forwarded to multiple people and places, making it difficult to determine whether the claims were actually delivered to, or received by, a department or employee charged with the overall management of claims against the county"; such a result would be "contrary to the Government Claims Act's goal of eliminating uncertainty in the claims-presentation requirements." *Id.* at 997.

L.A. Care's failure to respond to the Demand Letter or the Stay Violation Letter did not waive L.A. Care's ability to challenge Plaintiffs' compliance with the Government Claims Act. Documents that do not substantially comply with the Government Claims Act, but which are still sufficiently cognizable as claims so as to require the public entity to comply with the statute's waiver provisions, are called "claims as presented." *See Phillips v. Desert Hospital Dist.*, 49 Cal.3d 699, 709 (Cal. 1989). To constitute a claim as presented, "the content of the correspondence to the recipient entity must at least be of such nature as to make it readily discernible by the entity that the intended purpose thereof is to convey the assertion of a compensable claim against the entity which, if not otherwise satisfied, will result in litigation." *Green v. State Ctr. Cmty. Coll. Dist.*, 34 Cal. App. 4th 1348, 1358 (Cal. 1995). Nothing in the Demand Letter or Stay Violation Letter stated that litigation would

result if the dispute was not resolved. Consequently, neither letter amounts to a claim as presented, and L.A. Care was not required to respond to the letters to avoid waiving its defenses under the Government Claims Act.

II. Findings and Conclusions

The Federal Arbitration Act (the "Arbitration Act") provides that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract …" 9 U.S.C. §§ 2–3. The Arbitration Act further provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Id. at § 3.

"In non-core proceedings, the bankruptcy court generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement. In core proceedings, by contrast, the bankruptcy court, at least when it sees a conflict with bankruptcy law, has discretion to deny enforcement of an arbitration agreement." *Continental Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1021 (9th Cir. 2012) (internal citations omitted). The reason for the core/non-core distinction is "that non-core proceedings are unlikely to present a conflict sufficient to override by implication the presumption in favor of arbitration, whereas core proceedings implicate more pressing bankruptcy concerns." *Id.* (internal citations and quotations omitted). However, because "not all core bankruptcy proceedings are premised on provisions of the [Bankruptcy] Code that 'inherently conflict' with the Federal Arbitration Act," a bankruptcy court "has discretion to decline to enforce an otherwise applicable arbitration provision only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." *Thorpe*, 671 F.3d at 1021.

The Complaint alleges that L.A. Care breached the terms of the St. Vincent/L.A. Care Agreement and the St. Francis/L.A. Care Agreement (collectively, the

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"Agreements"). Both Agreements provide that any disputes arising thereunder "shall be subject to binding arbitration …." St. Vincent/L.A. Care Agreement at ¶ 2.6; St. Francis/L.A. Care Agreement at ¶ 3.6.

To determine whether the arbitration provision is enforceable, the Court must first determine whether the claims asserted in the Complaint are core. Plaintiffs do not contest that the claims for breach of contract and unjust enrichment are, standing alone, non-core. The parties dispute whether the claims for turnover, violation of the automatic stay, and injunctive relief are core.

The Court finds that the turnover claims are not core. "An action is outside the scope of section 542(b) unless there is a debt that is 'matured, payable on demand, or payable on order.' 11 U.S.C. § 542(b). Most courts require that the debt be undisputed for the action to be core." *DHP Holdings II Corp. v. Home Depot, Inc. (In re DHP Holdings II Corp.)*, 435 B.R. 264, 271 (Bankr. D. Del. 2010). In *DHP Holdings*, the court found that a claim seeking turnover of accounts receivable was non-core because the defendant disputed that it owed the debt. Rejecting plaintiff's argument that defendant's dispute was merely a general denial that was too vague to defeat core jurisdiction, the court held that defendant's "answer disputing the account receivable and asserting entitlement to setoff and recoupment is sufficient to render the debt disputed." *Id.*

Along similar lines, the court in *MCI Telecommunications Corp. v. Gurga (In re Gurga)*, 176 B.R. 196, 199 (B.A.P. 9th Cir. 1994) found that a turnover claim predicated upon a breach of contract claim was non-core:

> Despite Source's attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by Source entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes claims for relief for only one potential core issue—turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. Here, the amounts, if any, owed to Source by MCI are in dispute and this dispute rests on breach of contract issues. In fact, Source made a prepetition demand for arbitration of the dispute, described at that time as breach of contract and accounting causes of action. Breach of contract actions are noncore claims. *See* 28 U.S.C. § 157.

MCI Telecommunications Corp. v. Gurga (In re Gurga), 176 B.R. 196, 199 (B.A.P.

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9th Cir. 1994) (internal citations omitted).

Here, L.A. Care disputes its liability based on Plaintiffs' alleged failure to comply with the claims presentation requirements of the Government Claims Act. The Court makes no findings with respect to whether Plaintiffs complied with the Government Claims Act or were required to do so. ~~[Note 1]~~ The issues raised by L.A. Care as to Plaintiffs' compliance are sufficiently serious to render the alleged indebtedness subject to dispute. For example, L.A. Care asserts that the Demand and Stay Violation Letters did not contain all the requisite information required in a Government Claim, that the letters were not properly served, and that the letters did not sufficiently advise LA Care of the possibility of litigation. These issues are legitimate; L.A. Care cannot fairly be accused of asserting mere technicalities to defeat the Bankruptcy Court's jurisdiction.

Plaintiffs' allegations that L.A. Care setoff funds in violation of the automatic stay are core. However, the approximately $360,000 sought on account of the alleged setoffs is dwarfed by the approximately $25 million sought on account of the claims for breach of contract, unjust enrichment, and turnover.

Because the claims for breach of contract, unjust enrichment, and turnover are non-core, the Court lacks jurisdiction to decline to enforce the arbitration provision with respect to those claims. *Thorpe*, 671 F.3d at 1021. With respect to the core claims for violation of the automatic stay and injunctive relief, the Court may decline to enforce the arbitration provision "only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." *Id*. Given the comparatively small amount at issue in connection with the stay-violation and injunctive relief claims, the Court cannot find that arbitration would conflict with the underlying purpose of the Bankruptcy Code. **[Note 2]**

The facts here are easily distinguished from those of *Thorpe*, in which the court found that arbitration would conflict with bankruptcy policies. In *Thorpe*, Continental Insurance Company ("Continental") alleged that certain actions taken by the Debtor in its attempts to confirm a plan of reorganization violated a prepetition settlement agreement between Continental and the Debtor. *Thorpe*, 671 F.3d at 1022. Continental filed a proof of claim asserting damages for breach of the settlement, and argued that its claim should be subject to arbitration. *Id.* at 1017. Rejecting Continental's motion to enforce the settlement's arbitration clause, the *Thorpe* court held that the determination of whether Thorpe's actions in negotiating and propounding a plan of reorganization violated a settlement agreement was a matter of bankruptcy policy. *Id.* at 1022. The court reasoned that permitting an arbitrator to

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Courtroom 1568 Calendar

Wednesday, April 3, 2019 **Hearing Room 1568**

10:00 AM

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decide such an issue would conflict with the objectives of the Bankruptcy Code. *Id.*

Here, adjudication of the Complaint will determine whether the Plaintiffs/Debtors are entitled to receive damages from L.A. Care on account of an alleged breach of contract. If Plaintiffs/Debtors prevail, the estate will receive an infusion of cash. Allowing an arbitrator to decide whether the contract was breached, and therefore whether Plaintiffs/Debtors are entitled to damages, will not conflict with the Bankruptcy Code. Unlike the situation in *Thorpe*, having this matter heard by an arbitrator will not interfere with the Court's ability to oversee any plan of liquidation the Debtors may propose.

The Court will stay this action pending the completion of arbitration. Because the arbitration clause provides that disclosure and discovery shall be conducted in accordance with the provisions of the California Code of Civil Procedure, L.A. Care's motion for a protective order excusing compliance with its discovery obligations under the Federal Rules of Civil Procedure is GRANTED. A Status Conference shall be held on **June 19, 2019, at 10:00 a.m.** By no later than fourteen days prior to the hearing, the parties shall file a Status Report discussing the status of arbitration.

L.A. Care shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

~~**Note 1**~~

~~The Court rejects Plaintiffs' argument that it was not required to comply with the Government Claims Act. It is true that the Government Claims Act does not apply to "claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance." Cal. Gov't Code § 905(e). Here, Plaintiffs are suing LA Care for money damages on account of breach of contract. While there is some ambiguity in the statute, the Court does not believe that a claim for money damages in the millions of dollars falls within the ambit of the § 905(e)~~

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~~exception. In reaching this conclusion, the Court notes that under California law, the "ultimate task" in statutory interpretation "is to ascertain the Legislature's intent." *People v. Massie*, 19 Cal.4th 550, 569, 79 Cal.Rptr.2d 816, 967 P.2d 29 (1998). Cal. Welf. & Inst. Code § 14087.9685(c) provides that "[a]ll claims for money damages" against a commission such as LA Care shall be governed by the Government Claims Act. This provision would be rendered superfluous if claims for money damages against LA Care were construed to fall within the § 905(e) exception.~~

Note 2

This Court has final authority to determine the appropriate relief with respect to the stay-violation and injunctive relief claims. Because these claims appear to arise from the same set of operative facts as the non-core claims, the Court nonetheless finds it appropriate to delegate determination of these claims to an arbitrator. However, any determination made by the arbitrator with respect to these claims shall be subject to the review and approval of this Court. Upon completion of the arbitration, the parties herein may seek such review by way of motion, at which time the parties may challenge the arbitrator's findings regarding these claims.

Party Information

Debtor(s):

Verity Health System of California,	Represented By Samuel R Maizel John A Moe II Tania M Moyron Claude D Montgomery Sam J Alberts Shirley Cho Patrick Maxcy

Defendant(s):

LOCAL INITIATIVE HEALTH	Represented By Neal L Wolf Anthony Dutra

Plaintiff(s):

ST. VINCENT MEDICAL	Represented By

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Steven J Kahn

ST. FRANCIS MEDICAL

Represented By
Steven J Kahn