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Debtors In Possession

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

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

- 13  Affects All Debtors
- 14  Affects Verity Health System of California,  
15 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

Chapter 11 Cases  
Hon. Judge Ernest M. Robles

Adversary No. 2:20-ap-01001-ER

**DEBTORS' OPPOSITION TO STRATEGIC GLOBAL  
MANAGEMENT, INC.'S EMERGENCY MOTION TO  
STAY ADVERSARY PROCEEDING**

**[RELATED TO DOCKET NO. 19]**

Hearing Date and Time:  
Date: February 11, 2020  
Time: 10:00 a.m.  
Place: Courtroom 1568  
255 E. Temple St.  
Los Angeles, CA 90012

Debtors and Debtors In Possession.

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182015120013000000000001

1 VERITY HEALTH SYSTEM OF CALIFORNIA,  
2 INC., a California nonprofit public benefit corporation,  
3 ST. VINCENT MEDICAL CENTER, a California  
4 nonprofit public benefit corporation, ST. VINCENT  
5 DIALYSIS CENTER, INC., a California nonprofit  
6 public benefit corporation, and ST. FRANCIS  
7 MEDICAL CENTER, a California nonprofit public  
8 benefit corporation, SETON MEDICAL CENTER, a  
9 California nonprofit public benefit corporation, and  
10 VERITY HOLDINGS, LLC, a California limited  
11 liability company; and

12 Plaintiffs,

13 v.

14 KALI P. CHAUDHURI, M.D., an individual,  
15 STRATEGIC GLOBAL MANAGEMENT, INC., a  
16 California corporation, KPC HEALTHCARE  
17 HOLDINGS, INC. a California Corporation KPC  
18 HEALTH PLAN HOLDINGS, INC. a California  
19 Corporation, KPC HEALTHCARE, INC. a Nevada  
20 Corporation, KPC GLOBAL MANAGEMENT, LLC, a  
21 California Limited Liability Company, and DOES 1  
22 through 500,

23 Defendants.

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1 Verity Health System of California, Inc. and the affiliated debtors, the debtors and debtors  
2 in possession (collectively, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases  
3 (the “Cases”), hereby file this opposition (the “Opposition”) to Strategic Global Management,  
4 Inc.’s (“SGM”) emergency motion (the “Motion”) to stay Adversary Proceeding No. 2:20-ap-  
5 01001-ER (the “Adversary Proceeding”), while SGM prosecutes its three appeals (the “Appeals”)   
6 pending in the United States District Court for the Central District of California (the “District  
7 Court”).<sup>1</sup> In support of the Opposition, the Debtors respectfully request that the Court take  
8 judicial notice of the pleadings and filings in these Cases concerning the sale (the “Sale”) of  
9 certain of the Debtors’ assets to SGM, and respectfully state as follows:

10 **I.**

11 **INTRODUCTION**

12 SGM ignores recent Supreme Court precedent to assert its sweeping conclusions that this  
13 Court lacks jurisdiction to adjudicate the Adversary Proceeding until final resolution of each of  
14 the three orders currently on appeal. A careful review of SGM’s arguments, however,  
15 demonstrates its flawed conclusions are a transparent and continuing attempt to deny the Debtors’  
16 their day in court and avoid a timely reckoning as to SGM’s conduct. Significantly, SGM cites  
17 the now-superseded view of appellate divestiture as a strictly-construed jurisdictional concept,  
18 and argues that this Court is prohibited from hearing the Adversary Proceeding in its entirety and  
19 without exception. The Supreme Court’s recently restated “pragmatic approach” to application of  
20 the divestiture rule leads inevitably to the conclusion that this Court is not divested of jurisdiction  
21 to hear the Adversary Proceeding.

22 The divestiture rule provides that the filing of a notice of appeal “confers jurisdiction on the  
23 court of appeals and divests the district court of those aspects of the case involved in the appeal.”  
24 *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Recent Supreme Court  
25 precedent holds that prudential rules, like the divestiture rule, are more accurately classified as  
26 mandatory claims processing rules than jurisdictional. *See Hamer v. Neighborhood Hous. Servs.*

27 \_\_\_\_\_  
28 <sup>1</sup> The Appeals are consolidated under *Strategic Global Management, Inc. v. Verity Health Sys. of Cal. (In re Verity Health Sys. of Cal.)*, No. 2:19-cv-10352-DSF (C.D. Cal.).

1 *of Chi.*, — U.S. —, 138 S. Ct. 13, 17 (2017). “[P]revailing precedent makes the distinction  
2 critical.” *Id.* As a prudential rule, divestiture is flexible and “may be applied in a ‘less stern’  
3 manner than true jurisdictional rules.” *Rodriguez v. County of Los Angeles*, 891 F.3d 776, 790  
4 (9th Cir. 2018). SGM misses this critical distinction by applying divestiture as a strict  
5 jurisdictional rule. Further, SGM overstates the divestiture rule’s application to unstayed orders  
6 and exaggerates the breadth of the Court’s holdings. SGM incorrectly claims that a bankruptcy  
7 court cannot hear matters if they hypothetically and tangentially “cover the same ground as the  
8 matters pending appeal.” The modern divestiture rule applicable in this context, however, does not  
9 operate in such a strict fashion.

10 As a pragmatic rule, divestiture (i) does not preclude the Court from exercising jurisdiction  
11 “over all other matters that it must undertake to implement or enforce the judgment or order,”  
12 and, (ii) in the absence of a stay pending appeal, only prohibits modification of the order on  
13 appeal. SGM’s assertion that the Orders broadly implicate the claims raised in the Adversary  
14 Proceeding is both inaccurate and irrelevant. The Court may rely on the Orders<sup>2</sup> for whatever  
15 collateral value they might have in the Adversary Proceeding because SGM failed to stay the  
16 Orders pending appeal. Further, the Adversary Proceeding does not attempt to alter or expand the  
17 Orders. SGM’s stated desire to preserve the “status quo” may have been appropriate for a timely  
18 motion to stay the Orders—a time that has, now, come and gone—but it is not a compelling  
19 reason for divestiture under these facts.

20 Additionally, the Court is not divested of jurisdiction of the Adversary Proceeding given  
21 the limited scope and flexibility of the modern claims processing standard. First, the scope of the  
22 divestiture rule, as applied to unstayed orders, only applies as to “those aspects of the case  
23 involved in the appeal” and allows the Court to enforce and implement the unstayed Orders. The  
24 Court is not precluded from hearing the Adversary Proceeding and relying upon the narrow  
25 holdings in the Orders. Second, the divestiture doctrine does not apply to “non-appealable”  
26 orders such as the Scheduling Order and MAE Order, which are interlocutory orders from which

27 \_\_\_\_\_  
28 <sup>2</sup> Capitalized terms not otherwise defined in the Introduction have the definitions set forth  
elsewhere in this Opposition.

1 SGM has not sought leave to appeal. Third, the Appeals are subject to recognized exceptions to  
2 the divestiture rule because the Appeals are now moot and the application of divestiture would  
3 create a jurisdictional morass aimed solely at delaying disposition of the Adversary Proceeding.  
4 Fourth, in the APA, SGM expressly waived its right to appeal (and, thus, invoke the divestiture  
5 rule) the Court’s determinations set forth in the Scheduling Order and the MAE Order.

6 Based on the foregoing, and for the reasons fully described below, the Debtors  
7 respectfully request that the Court deny the Motion.

8 **II.**

9 **BACKGROUND FACTS**

10 **A. General Background**

11 1. On August 31, 2018, (“Petition Date”), the Debtors each filed a voluntary petition  
12 for relief under chapter 11 of the Bankruptcy Code (the “Cases”). The Cases are currently jointly  
13 administered before the Court. [Docket No. 17]. Since the Petition Date, the Debtors have been  
14 operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.<sup>3</sup>

15 **B. The Sale**

16 2. The sale of St. Francis Medical Center (“SFMC”), St. Vincent Medical Center  
17 (“SVMC”), and Seton Medical Center, including Seton Medical Center Coastside Campus  
18 (collectively, “Seton” and, together with SFMC and SVMC, the “Hospitals”) as going-concerns  
19 was one of the central objectives of the Debtors’ Bankruptcy Cases. Such a sale would have  
20 preserved patient care in the Hospital’s communities, protected thousands of jobs for the  
21 Hospitals’ employees, allowed trade creditors to maintain going-forward business relationships  
22 with the Hospitals, and (with a \$610 million purchase price) presented the most significant  
23 potential recovery to unsecured creditors in these Bankruptcy Cases.

24 3. On January 17, 2019, the Debtors filed a motion [Docket No. 1279] (the “Sale and  
25 Bidding Procedures Motion”) to approve the form of an asset purchase agreement and related

26 <sup>3</sup> Unless otherwise noted, all references to “§” and “section” herein are to sections of the  
27 Bankruptcy Code; all references to “Rules” are to provisions of the Federal Rules of Bankruptcy  
28 Practice; all references to “LBR” are to provisions of the Local Bankruptcy Rules of the United  
States Bankruptcy Court for the Central District of California.

1 “stalking horse” bidding procedures for the sale of the Hospitals, *see* Sale and Bidding Procedures  
2 Mot. at 1, which the Court approved [Docket No. 1572] (the “Bidding Procedures Order”). SGM  
3 served as the Stalking Horse Bidder under the terms of the Bidding Procedures Order. *See*  
4 Bidding Procedures Order at 7.

5 4. The Bidding Procedures Order also approved that certain amended asset purchase  
6 agreement between certain of the Debtors and SGM [Docket No. 2305-1] (“APA”). Specifically,  
7 the parties heavily negotiated a provision in the amended APA addressing the California Attorney  
8 General’s (the “Attorney General”) right to review and approve the proposed Sale—Section 8.6  
9 of the APA—which revised terms were incorporated in the Bidding Procedures Order. *See*  
10 Bidding Procedures Order at 7-9. SGM agreed to continue to operate the Hospitals and abide by  
11 the vast majority of the conditions imposed by the Attorney General in 2015, as set forth in  
12 Schedule 8.6 to the APA. Specifically, Section 8.6 of the APA is titled: “Attorney General  
13 Provisions” and provides, in part, as follows:

14 Purchaser recognizes that *the transactions contemplated by this*  
15 *Agreement* may be subject to review and approval of the CA AG. Purchaser agrees to close *the transactions contemplated by this*  
16 *Agreement* so long as any conditions imposed by the CA AG are substantially consistent with the conditions set forth, as Purchaser  
17 Approved Conditions, in Schedule 8.6. In the event the CA AG imposes conditions on *the transactions contemplated by this*  
18 *Agreement*, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set  
19 forth on Schedule 8.6 (the “Additional Conditions”), Sellers shall have the opportunity to file a motion with the Bankruptcy Court  
20 seeking the entry of an order (“Supplemental Sale Order”) finding that the Additional Conditions are an “interest in property” for  
21 purposes of 11 U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of  
22 any other conditions, which would adversely affect the Purchaser. For purposes of this Section 8.6, Additional Conditions which  
23 individually or collectively impose a direct or indirect cost to Purchaser of \$5 million, or more, shall be conclusively deemed to  
24 be “materially different.”  
25

26 APA at 32-34 (emphasis added); *see also* Bidding Procedures Order at 7-9.

27 5. There was no “Qualified Full Bid” for all four Hospitals, accordingly no auction  
28 was held and the Debtors declared SGM as the “winning bidder” of the Hospitals. *See* Docket

1 No. 2053. On May 2, 2019, the Bankruptcy Court entered an order granting the Sale Motion and  
2 approving the sale [Docket No. 2306] (the “Sale Order”) of the Hospitals and related assets to  
3 SGM.

4 **C. Attorney General Review and the AG Conditions Motion**

5 6. On September 25, 2019, the Attorney General consented to the Sale subject to  
6 certain conditions (the “2019 Conditions”). The 2019 Conditions included numerous Additional  
7 Conditions that were materially different than those SGM contractually agreed to in Schedule 8.6.  
8 SGM’s Chief Executive Officer confirmed that SGM would not close the Sale if the Additional  
9 Conditions remained extant. *See* Docket No. 3188.

10 7. On September 30, 2019, the Debtors filed a motion [Docket No. 3188] (the “AG  
11 Conditions Motion”), which sought (i) entry of an order enforcing the Sale Order, (ii) a finding  
12 that the Sale was free and clear of certain additional conditions imposed by the Attorney General,  
13 and (iii) a finding limiting the Sale to only those conditions to which SGM contractually agreed to  
14 assume in Schedule 8.6 of the APA. On October 10, 2019, SGM filed a statement in support of  
15 the AG Conditions Motion [Docket No. 3356] expressly requesting that the Court enter an order  
16 granting the AG Conditions Motion. On October 23, 2019, the Court entered a memorandum of  
17 decision (the “AG Conditions Memorandum Decision”) setting forth the Court’s ruling to grant  
18 the AG Conditions Motion and requesting that the Debtors lodge an order consistent with the  
19 ruling.

20 **D. The AG Conditions Order**

21 8. After entry of the AG Conditions Memorandum Decision, the Attorney General,  
22 the Debtors, and SGM engaged in discussions concerning a proposed form of order. *See* Docket  
23 No. 3573 at 3. The Debtors and the Attorney General worked diligently for ten days to satisfy  
24 SGM’s concerns with the wording of the proposed order granting the AG Conditions Motion (the  
25 “Proposed Order”). *See id.* Despite their efforts, the Debtors were unable to obtain SGM’s  
26 joinder in the Stipulation; however, after careful consideration, the Debtors and their constituents  
27 determined that entry of the Proposed Order was in the best interests of the Debtors’ estates. *See*  
28 *id.*

1 9. On November 8, 2019, the Debtors and the Attorney General filed a stipulation  
2 [Docket No. 3572] (the “Stipulation”) and lodged a proposed order granting the AG Conditions  
3 Motion [Docket No. 3574] (the “Proposed Order”). Pursuant to the Stipulation, (i) the Attorney  
4 General agreed to the Proposed Order authorizing the Sale free and clear of “Additional  
5 Conditions,” (ii) the Debtors agreed to obtain a withdrawal of the Memorandum Decision, and  
6 (iii) the Attorney General agreed not to appeal the Proposed Order. *See* Stipulation at 3. The  
7 Proposed Order adopted the language required by Section 8.6 of the APA nearly verbatim:

8 **Proposed Order**

9 Solely and exclusively for purposes of the  
10 APA (as defined below) and the Motion, the  
11 Additional Conditions (as defined in section  
12 8.6 of that certain asset purchase agreement  
13 [Docket No. 2305-1] (the “APA”)) are an  
14 “interest in property” for purposes of 11  
15 U.S.C. § 363(f). The Assets (as defined in  
16 the APA) are being sold free and clear of the  
17 Additional Conditions without the  
18 imposition of any other conditions which  
19 would adversely affect the Purchaser (as  
20 defined in the APA)

21 Proposed Order at 3; APA § 8.6 at 33.

8 **Section 8.6 Requirements**

9 Sellers shall have the opportunity to file a  
10 motion with the Bankruptcy Court seeking  
11 the entry of an order (“Supplemental Sale  
12 Order”) finding that the Additional  
13 Conditions are an “interest in property” for  
14 purposes of 11 U.S.C. § 363(f), and that the  
15 Assets can be sold free and clear of the  
16 Additional Conditions without the  
17 imposition of any other conditions, which  
18 would adversely affect the Purchaser.

19 10. On November 11, 2019, SGM filed an objection [Docket No. 3582] to the  
20 Proposed Order and lodged a competing order [Docket No. 3583]. SGM’s objection sought  
21 revisions to the Proposed Order to rectify purported ambiguities “that may actually result in  
22 litigation between the AG and SGM.” Docket No. 3582 at 4. The proposed revisions were  
23 expansive and went beyond the relief the Debtors were required to obtain pursuant to Section 8.6  
24 of the APA:

24 **SGM’s Proposed Language**

25 The Debtors’ transfer to SGM of the  
26 Debtors’ assets (the “SGM Sale”) pursuant  
27 to that certain asset purchase agreement  
28 [Docket No. 2305-1] (the “SGM APA”) is  
free and clear of, *and shall not be subject to  
or conditioned upon SGM’s performance  
of, compliance with, or adherence to, any  
and all* Additional Conditions (as defined in

24 **Section 8.6 Requirements**

25 Sellers shall have the opportunity to file a  
26 motion with the Bankruptcy Court seeking  
27 the entry of an order (“Supplemental Sale  
28 Order”) finding that the Additional  
Conditions are an “interest in property” for  
purposes of 11 U.S.C. § 363(f), and that the  
Assets can be sold free and clear of the  
Additional Conditions without the imposition

1 the SGM APA and in the Motion), pursuant of any other conditions, which would  
2 to Bankruptcy Code §§ 363(b), (f)(1), (f)(4), adversely affect the Purchaser.  
3 and (f)(5) *and otherwise provided in the*  
4 *Sale Order.*

5 Docket No. 3583 at 3 (emphasis added); APA § 8.6 at 33. The Debtors and the Official  
6 Committee of Unsecured Creditors (the “Committee”) filed responses. See Docket Nos. 3586,  
7 3590.

8 11. On November 13, 2019, the Court held a hearing on the Stipulation, at which the  
9 Court overruled SGM’s objection to the Proposed Order. At the hearing, the Debtors and  
10 Attorney General agreed to certain modifications to the Proposed Order to address SGM’s  
11 objection. On November 14, 2019, the Court entered the Proposed Order, as modified on the  
12 record at the November 13 hearing, granting the AG Conditions Motion [Docket No. 3611] (the  
13 “AG Conditions Order”). The AG Conditions Order provides, in part, that:

14 *Solely and exclusively for purposes of the APA* (as defined below)  
15 *and the Motion*, the Additional Conditions (as defined in section  
16 8.6 of that certain asset purchase agreement [Docket No. 2305-1]  
17 (the “APA”)) are an “interest in property” for purposes of 11 U.S.C.  
18 § 363(f). The Assets (as defined in the APA) are being sold free and  
19 clear of the Additional Conditions without the imposition of any  
20 other conditions which would adversely affect the Purchaser (as  
21 defined in the APA)

22 AG Conditions Order at 1 (emphasis added).

23 12. On November 29, 2019, despite the modifications to the Proposed Order, SGM  
24 filed a notice of appeal [Docket No. 3726] related to the AG Conditions Order. In its statement of  
25 issues on appeal [Docket No. 3810], SGM asserts two issues on appeal: (i) whether the Court  
26 erred in entering the AG Conditions Order where (a) SGM was not a party to the Stipulation and  
27 (b) the Stipulation was not approved pursuant to Rule 9019; and (ii) whether the Court erred in  
28 entering the AG Conditions Order and overruling SGM’s objections thereto. As of the date of  
this Opposition, SGM has not sought a stay pending appeal of the AG Conditions Order in this  
Court or the District Court.

**E. The Scheduling Order**

13. On November 15, 2019, the Debtors filed a motion [Docket No. 3621] to continue

1 upcoming deadlines related to a motion to approve the Debtors’ disclosure statement [Docket No.  
2 2995]. In the motion, the Debtors requested the continuance based on “formal correspondence  
3 material to the sale transaction” that the Debtors anticipated receiving from SGM. *See* Docket  
4 No. 3621 at 2.

5 14. On November 18, 2019, the Court entered an order on the Debtors’ request to  
6 continue the disclosure statement deadlines [Docket No. 3633] (the “Scheduling Order”). The  
7 Scheduling Order granted the Debtors’ request to continue the deadlines and further provided that  
8 SGM was obligated to promptly close the sale under Section 8.6 of the APA. The Scheduling  
9 Order provides, in relevant part, that:

10 The Debtors have complied with their obligation under the APA to  
11 obtain a final, non-appealable Supplemental Sale Order.  
12 Consequently, SGM is now obligated to promptly close the SGM  
13 Sale, *provided that all other conditions to closing have been  
satisfied.*

14 *See* Sched. Order at 2.

15 15. In conjunction with the Scheduling Order, the Court issued a memorandum of  
16 decision [Docket No. 3632] (the “Scheduling Memorandum Decision”). The Court further set  
17 forth findings and conclusions concerning Section 8.6 of the APA “[t]o facilitate an expeditious  
18 and successful resolution of these cases.” Sched. Mem. Decision at 2. On November 29, 2019,  
19 SGM appealed the Scheduling Order. *See* Docket No. 3727. As of the date of this Opposition,  
20 SGM has not sought a stay pending appeal of the Scheduling Order in this Court or the District  
21 Court.

22 16. The appeals of the AG Conditions Order and Scheduling Order were an  
23 unexpected maneuver by SGM. As noted, above, SGM had carefully negotiated Section 8.6 of  
24 the APA, and the “Evaluation Period” therein, “to prevent it from being required to close the sale  
25 if there was a risk that the Supplemental Sale Order could be overturned on appeal.” *See* Sched.  
26 Mem. Decision at 4. Indeed, SGM agreed in Section 8.6 to help the Debtors avoid any appeal by  
27 “reasonably cooperat[ing] in any efforts to render the Supplemental Sale Order a final, non-  
28 appealable order.” *See* APA § 8.6 at 33. The Debtors did not anticipate that SGM would treat

1 Section 8.6 of the APA or the Evaluation Period as an illusory closing condition to be frustrated  
2 at SGM's discretion by the simple filing of a notice of appeal.

3 **F. The MAE Order**

4 17. On November 26, 2019, the Court held a status conference (the "Status  
5 Conference") in light of mounting uncertainties surrounding SGM's intention to close the Sale.  
6 At the Status Conference, the Court interpreted the "Material Adverse Effect" provisions of the  
7 APA, found that the Debtors had satisfied all conditions to closing because no Material Adverse  
8 Effects had occurred, and surmised, "I suspect that this [Sale] will close and if not, then [SGM]  
9 will pay damages pursuant to this agreement." Nov. 26, 2019 Hr'g Tr. at 14.

10 18. On November 27, 2019, the Bankruptcy Court entered an order [Docket No. 3724]  
11 (the "MAE Order" and, together with the AG Conditions Order and the Scheduling Order, the  
12 "Orders") and memorandum of decision [Docket No. 3723] (the "MAE Memorandum Decision")  
13 finding SGM was obligated to close the Sale by no later than December 5, 2019. Specifically, the  
14 Court found that (i) Section 9.1(c) of the APA authorized the Court to exclusively determine  
15 Material Adverse Effect issues without the right of appeal and (ii) no Material Adverse Effects  
16 had occurred under the APA. *See* MAE Mem. Dec. at 4, 6. As a result, "SGM *would not* be  
17 excused from closing the sale under Article 8.4 of the APA." *Id.* at 6.

18 19. On December 3, 2019, SGM appealed the MAE Order. *See* Docket No. 3746. As  
19 of the date of this Opposition, SGM has not sought a stay pending appeal of the MAE Order in  
20 this Court or the District Court.

21 **G. Termination of the APA and the Alternative Transactions**

22 20. SGM did not close the Sale on December 5, 2019. On December 6, 2019, the  
23 Debtors filed an emergency motion [Docket No. 3773] for issuance order to show cause why  
24 SGM failed to close the Sale by December 5, 2019. On December 9, 2019, the Court entered an  
25 order [Docket No. 3784] denying the emergency motion and providing that "[a]ny efforts  
26 undertaken by the Debtors with respect to the alternative disposition of the Hospitals" would not  
27 violate the APA. Docket No. 3784 at 2. In the accompanying memorandum of decision [Docket  
28 No. 3783], the Court recognized that

1 By failing to close, SGM *risks* the loss of its \$30 million good-faith  
2 deposit as well as the *possibility* of damages for breach of contract  
3 in an amount of up to \$60 million. . . . *In the future*, the Debtors  
4 will have an opportunity to litigate the issues of whether SGM has  
breached the APA and whether the Debtors are entitled to retain  
SGM's good-faith deposit.

5 Docket No. 3783 at 2 (emphasis added). SGM did not appeal the order authorizing the Debtors to  
6 undertake alternative transactions. On December 27, 2019, the APA terminated as a result of  
7 SGM's failure to timely close the sale. *See* Docket No. 3899.

8 21. On December 28, 2019, the Debtors filed a stipulation [Docket No. 3871] for the  
9 consensual use of cash collateral through January 31, 2020. Pursuant to the stipulation, use of  
10 cash collateral is conditioned on the Debtors' compliance with certain disposition milestones  
11 related to alternative transactions concerning the disposition of the Hospitals. *See* Docket No.  
12 3871 at 6. On December 30, 2019, the Court entered a final order [Docket No. 3883] approving  
13 the cash collateral stipulation. SGM did not appeal the final cash collateral order.

14 22. The Debtors have undertaken efforts to explore alternative transactions with  
15 respect to the Hospitals. On January 6, 2020, the Debtors filed a motion [Docket No. 3906] to  
16 close SVMC because, among other things, there was no buyer who presented a feasible offer to  
17 purchase SVMC as a going concern. On January 9, 2020, the Court entered an order [Docket No.  
18 3934] granting the emergency motion, which SGM did not oppose nor appeal. As of January 23,  
19 2020, the Debtors, among other things, had closed the SVMC emergency department and  
20 discharged and transferred all hospital inpatients. *See* Docket No. 3982 at 2.

21 **H. The Adversary Proceeding Against SGM and Its Alter Egos**

22 23. On January 3, 2020, the Debtors filed the Complaint against SGM and its alter  
23 egos, which commenced the Adversary Proceeding. The Complaint asserts claims arising from  
24 SGM's conduct with respect to the APA and the SGM Sale, including breach of contract,  
25 promissory fraud, and tortious breach of contract based on SGM's and the other defendants'  
26 breaches of the implied covenant of good faith and fair dealing.

27 24. The Court has set the Adversary Proceeding for trial during the week of November  
28 30, 2020, and has required all dispositive motions be heard not later than October 27, 2020. *See*

1 Adv. Docket No. 4. The deadline for the defendants to file a responsive pleading is February 19,  
2 2020. *See* Adv. Docket No. 13.

3 25. SGM now seeks a stay of the Adversary Proceeding based on its claim that the  
4 Court does not have jurisdiction to address the issues raised in the Complaint while the Appeals  
5 are pending.

6 **III.**

7 **ARGUMENT**

8 **A. SGM’s Overstated Descriptions of the Orders and the Appeals Should Be Rejected**

9 The divestiture rule, as discussed below, requires that the Court to consider, in detail, the  
10 breadth and impact of the Orders, the Appeals, and the Adversary Proceeding. *United States v.*  
11 *Hickey*, 580 F.3d 922, 927 (9th Cir. 2009) (“We decline to apply the divestiture rule in a slavish  
12 manner that ignores the reality of what happened in the trial court.”). SGM’s broad-strokes  
13 characterization of the Orders runs contrary to this mandate. SGM’s goal is transparent—  
14 indefinitely halt the Adversary Proceeding by manufacturing an overlap between the findings in  
15 the Orders and the claims asserted in the Complaint. However, a careful reading of the Orders  
16 and Complaint belies SGM’s characterizations.

17 The Orders on Appeal cover three discrete issues concerning the Debtors’ efforts to close  
18 the now-terminated Sale. Specifically:

- 19 • SGM’s AG Conditions Order appeal seeks editorial changes to the AG Conditions  
20 Order. The appeal is now moot given that the stipulated order applied “[s]olely  
21 and exclusively for purposes of the APA,” which was terminated effective  
22 December 27, 2019. AG Conditions Order at 1. Putting aside mootness  
23 (discussed in greater detail below), the Complaint does not seek to alter or modify  
24 the findings of the unstayed AG Conditions Order. The AG Conditions Order is  
25 only relevant to the narrow issue of whether SGM breached the APA by failing to  
26 close notwithstanding satisfaction of Section 8.6 of the APA—one of a number of  
27 conditions to closing and far from an all-encompassing issue in the Adversary  
28 Proceeding.

- 1 • The Scheduling Order makes an extremely narrow finding that entry of the AG  
2 Conditions Order satisfied one of the conditions to closing set forth in Section 8.6  
3 of the APA.
- 4 • The MAE Order finds that SGM is obligated to close the Sale pursuant to Section  
5 1.3 of the APA because (i) the Debtors had satisfied all conditions to closing, and  
6 (ii) SGM did not demonstrate that a Material Adverse Effect occurred under the  
7 Court’s interpretation of the APA.

8 Importantly, as discussed below, the Court emphasized that it had not yet decided any issues of  
9 breach. *See* Docket No. 3783 at 2 (“In the future, the Debtors will have an opportunity to litigate  
10 the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain  
11 SGM’s good-faith deposit.”). The limited scope and effect of these Orders is consistent with  
12 (i) the prospective nature of the Court’s findings in the Scheduling Order and MAE Order, and  
13 (ii) the APA’s express waiver of the specific performance remedy. Further, the facts giving rise  
14 to the Orders are indisputably pled in the Complaint independently of the existence of the Orders  
15 themselves.

16 The foregoing analysis reflects the “reality of what happened at the trial court” and  
17 demonstrates that SGM’s invocation of the divestiture rule to the Adversary Proceeding is mere  
18 overreach. *Hickey*, 580 F.3d at 927. As importantly, and as discussed below, SGM cannot use its  
19 Motion to side-step its failure to stay the effect of the Orders, which the Court may continue to  
20 enforce and implement to the extent they are relevant to certain narrow issues raised in the  
21 Debtors’ Complaint. Noteworthy is SGM’s failure to offer any alternative—bifurcation of issues,  
22 reserving discrete issues for later determination, etc.—to move the Adversary Proceedings  
23 forward. SGM’s effort to stall the Adversary Proceedings by appealing the narrow holdings of  
24 the Orders is wholly inconsistent with the pragmatic approach to divestiture as discussed below.

25 **B. SGM Mischaracterizes the Divestiture Rule as Jurisdictional and Ignores Recent**  
26 **Supreme Court Precedent**

27 Divestiture is a flexible prudential doctrine—rather than a strict jurisdictional rule—  
28 intended “to avoid confusion or waste of time resulting from having the same issues before two

1 courts at the same time.” *Rodriguez*, 891 F.3d at 790 (quotation omitted). Recently, the Supreme  
2 Court made clear that “[o]nly Congress may determine a lower federal court’s subject-matter  
3 jurisdiction.” *Id.* (quoting *Hamer*, 138 S. Ct. at 17). Thus, because the divestiture rule is  
4 prudential rather than statutory, it is “more accurately characterized as [a] ‘mandatory claim-  
5 processing rule[]’ that may be applied in a ‘less stern’ manner than true jurisdictional rules.” *Id.*;  
6 *see also Ashker v. Cate*, No. 09-cv-05796-CW, 2019 WL 1558932, at \*2 (N.D. Cal. Apr. 10,  
7 2019) (“while the divestiture rule was previously referred to as ‘jurisdictional’ – the Supreme  
8 Court has more recently clarified that because only Congress may establish or modify the subject-  
9 matter jurisdiction of district courts, judicially-made jurisdictional rules are now more accurately  
10 described as ‘mandatory claim processing rules’ that may be applied with greater flexibility than  
11 truly jurisdictional rules”) (citation omitted). Indeed, unlike strictly applied jurisdictional rules,  
12 appellate courts pay deference to a trial court’s determination concerning whether divestiture is  
13 appropriate. *See Rodriguez*, 891 F.3d at 791 (“Under this pragmatic approach, we have in other  
14 contexts applied harmless error analysis to district courts’ errors in following our divestiture  
15 procedures.”).

16 SGM’s selective citation to a forty-year old case, *Griggs v. Provident Consumer Discount*  
17 *Co.*, and its progeny, is misleading because it ignores the more recent Supreme Court precedent  
18 clarifying that the divestiture rule is prudential rather than jurisdictional. *See Hamer*, 138 S. Ct.  
19 at 17; *see also Rodriguez*, 891 F.3d at 790. Specifically, SGM cites *Griggs* for the proposition  
20 that the “filing of a notice of appeal is an event of jurisdictional significance—it confers  
21 jurisdiction on the court of appeals and divests the district court of its control over those aspects  
22 of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58  
23 (1982); *see also In re Combined Metals Reduction Co.*, 557 F.2d 179, 200 (9th Cir. 1977). The  
24 distinction is material and critical to the resolution of SGM’s Motion. *See Hamer*, 138 S. Ct. at  
25 15 (noting that “[t]his Court and other forums have sometimes overlooked this critical  
26 distinction” between jurisdictional and claims processing rules).

27 The pragmatic approach to the prudential divestiture rule differs from Constitutional and  
28 statutory jurisdictional rules in two ways. **First**, unlike jurisdictional rules, mandatory claim

1 processing rules “must be enforced” only if they are “properly invoked” and “may be waived or  
2 forfeited.” *Hamer*, 138 S. Ct. at 17; *see also Manrique v. United States*, — U.S. —, 137 S. Ct.  
3 1266, 1271-72 (2017) (“[C]laim-processing rules . . . [ensure] relief to a party properly raising  
4 them, but do not compel the same result if the party forfeits them.”). *Second*, in light of the  
5 greater flexibility afforded to issues of prudential jurisdiction, the courts have identified several  
6 exceptions to the divestiture rule. *United States v. Phelps*, 283 F.3d 1176, 1181 n.5 (9th Cir.  
7 2002) (“[t]his is a judge-made rule and the principle of divestiture is not absolute; there are  
8 exceptions”) (citing *Nat’l Res. Def. Council v. Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th  
9 Cir. 2001)); *see also Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997) (“There are a number of  
10 exceptions to the general rule that a district court loses jurisdiction upon the filing of a notice of  
11 appeal.”). As explained by the United States District Court for the Northern District of  
12 California:

13 there are generally three situations where a notice of appeal does  
14 not divest the district court of jurisdiction: (1) where the issue  
15 before the district court is separate from, or collateral to, the matter  
16 involved in the appeal; (2) where application of the divestiture of  
17 jurisdiction rule would wholly undermine its purpose; and (3) where  
the appeal is clearly defective or frivolous, usually by reason of  
untimeliness, lack of essential recitals, or reference to a non-  
appealable order.

18 *Ashker v. Cate*, No. 09-cv-05796-CW, 2019 WL 1558932, at \*3 (N.D. Cal. Apr. 10, 2019)  
19 (quotations omitted). The exceptions to divestiture should be applied with a pragmatic view of  
20 the realities of the extent and impact of the trial court’s rulings. *See Hickey*, 580 F.3d at 927  
21 (“We decline to apply the divestiture rule in a slavish manner that ignores the reality of what  
22 happened in the trial court.”). Here, the distinction between jurisdictional rules and claims  
23 processing rules is not academic—the narrow scope of the rule, the application of waiver and  
24 forfeiture principles, and exceptions to the rule all support denial of the Motion.

25 **C. The Divestiture Rule Does Not Preclude the Court from Hearing the Adversary**  
26 **Proceeding**

27 The divestiture rule does not prevent the Court from hearing the Adversary Proceeding for  
28 at least four reasons. *First*, the Court can continue to enforce and implement the unstayed Orders

1 even assuming, *arguendo*, that the divestiture rule applies. The divestiture rule only prohibits the  
2 Court from altering or amending the Orders, and the Complaint does not seek such relief.  
3 Accordingly, the divestiture rule does not prohibit the Court from relying on the narrow holdings  
4 of the unstayed Orders to the extent they are implicated in the Adversary Proceeding. **Second**,  
5 under the prudential approach, SGM cannot apply the divestiture rule to the Scheduling Order and  
6 MAE Order because the orders are interlocutory and SGM has not sought leave to appeal. **Third**,  
7 the Appeals are subject to recognized exceptions to the divestiture rule because the Appeals are  
8 now moot and the application of divestiture would create a jurisdictional morass aimed solely at  
9 delaying disposition of the Adversary Proceeding. **Fourth**, SGM expressly waived its appellate  
10 rights in the APA, including with respect to the Court’s Material Adverse Effect findings.  
11 Accordingly, as discussed in turn below, the Adversary Proceeding may proceed notwithstanding  
12 the divestiture rule.

13 **1. The Divestiture Rule Is Limited in Scope and Does Not Apply to**  
14 **Implementation or Enforcement of the Unstayed Orders**

15 SGM offers an overbroad reading of the divestiture rule and the Orders that is inconsistent  
16 with the limited scope of the rule as applied to unstayed orders. SGM claims, without citation,  
17 that “this Court may not take any action on the Plaintiffs’ Adversary Complaint, because it covers  
18 the same ground as the matters pending appeal and any action, including pre-trial action, may  
19 *displace the status quo*.” Mot. at 8 (emphasis added). SGM’s argument is based on its  
20 hypothetical that a finding that SGM materially breached the APA by failing to close the Sale by  
21 December 5, 2019 “would usurp SGM’s right to appellate review.” *Id.* SGM’s effort to maintain  
22 the “status quo” without moving to stay the Orders exceeds limited scope of the divestiture rule as  
23 applied to unstayed orders and should be denied for the reasons set forth below.

24 The divestiture rule is limited in scope and applies only to “those aspects of the case  
25 involved in the appeal.” *Rodriguez*, 891 F.3d at 790 (quotation omitted). Even when properly  
26 invoked, the bankruptcy court retains jurisdiction “over all other matters that it must undertake ‘to  
27 implement or enforce the judgment or order,’ although it ‘may not alter or expand upon the  
28 judgment.’” *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007) (quoting *In re Padilla*, 222 F.3d

1 1184, 1190 (9th Cir. 2000)); *In re G-I Hldgs., Inc.*, 568 B.R. 731, 763 (Bankr. D.N.J. 2017)  
2 (Divestiture only limits (i) modifications to the Orders currently subject to the Appeals, and  
3 (ii) entry of orders that would “so impact the appeal as to interfere with or effectively circumvent  
4 the appeal process.”). Further, with respect to interlocutory orders, the appellant may stay all  
5 proceedings only if it obtains a stay pending appeal. *See Sherman*, 491 F.3d at 967; *see also In re*  
6 *Roberts Farms, Inc.*, 652 F.2d 793, 798 (9th Cir. 1981) (trustee was “free to implement the plan  
7 in accordance with its terms” where appellant failed to obtain a stay pending appeal of the  
8 confirmation order). By way of example, in *Sherman*, the bankruptcy court denied the SEC’s  
9 motion to dismiss a chapter 7 bankruptcy case. *See id.* The SEC appealed the order, but did not  
10 seek a stay pending appeal. *See id.* While the appeal was pending, the bankruptcy court entered a  
11 discharge order. *See id.* The Ninth Circuit Court of Appeals found that, because the SEC did not  
12 seek a stay pending appeal, “the bankruptcy court retained jurisdiction to enter the discharge  
13 order; the only matter over which it lacked jurisdiction was the motion to dismiss—the very order  
14 being appealed.” *Id.*

15 The limited scope of the divestiture rule does not affect the Adversary Proceeding under  
16 the facts of these Cases. SGM did not seek a stay of the Orders and any effort by SGM to move  
17 for a stay pending appeal at this late date would be untimely.<sup>4</sup> Thus, even if SGM is correct that  
18 the Orders “cover the same ground” as the Adversary Proceeding, the Court is still free to rely on  
19 the unstayed Orders.<sup>5</sup> *Padilla*, 222 F.3d at 1190 (“Absent a stay or supersedeas, the trial court  
20

21 <sup>4</sup> SGM filed its notices of appeal nearly two months ago, on November 29, 2019 [Docket Nos.  
22 3726, 3727] and December 3, 2019 [Docket No. 3746]. *See In re Kaplan*, 373 B.R. 213, 215  
23 (B.A.P. 1st Cir. 2007) (“The Appellant sat on his hands for two months. It appears that he now  
24 seeks an emergency stay only because he is confronted with the order to show cause. It is too  
25 late. As the Appellant has cited no just cause for his delay, the Panel will not entertain the motion  
26 at this late date.”); *accord In re Stage Coach Venture, LLC*, No. 1:15-bk-13471-VK, 2017 WL  
27 664015, at \*3 (Bankr. C.D. Cal. Feb. 17, 2017).

28 <sup>5</sup> The Debtors note that SGM’s concerns are overblown. In addition to being interlocutory and  
narrow (as discussed above), the Scheduling Order and MAE Order were not entered by the Court  
to finally adjudicate issues. Instead the orders were intended “[t]o facilitate an expeditious and  
successful resolution of these cases.” Sched. Mem. Decision at 2. Further, the Court noted on  
several occasions that it would reserve final adjudication of breach claims for later litigation. *See,*  
*e.g.*, Docket No. 3783 at 2 (“*In the future*, the Debtors will have an opportunity to litigate the

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1 also retains jurisdiction to implement or enforce the judgment or order but may not alter or  
2 expand upon the judgment.”). Indeed, reliance on the Orders preserves the status quo because  
3 reliance necessarily requires the Court to interpret the Orders as-entered and without  
4 modification. *See Mayweathers v. Newland*, 258 F.3d 930, 935-936 (9th Cir. 2001) (“[T]he  
5 renewed injunction was identical to the original one. In addition, both injunctions have already  
6 expired, so the district court in no way introduced issues that could not be addressed by this court  
7 on appeal.”). Further, the Complaint does not request that the Court “alter or expand” the narrow  
8 holdings of the Orders, and, instead, seeks adjudication of the Debtors’ breach and tort claims  
9 against SGM. The Court is entitled to rely upon the narrow findings of the unstayed Orders in the  
10 Adversary Proceeding to the extent they have any collateral value to those claims asserted in the  
11 Complaint. SGM does not identify how continued litigation concerning breach and fraud claims  
12 will “effectively circumvent” the Appeals of the discrete issues addressed by the Orders. SGM’s  
13 attempt to broaden the divestiture rule to preserve the “status quo” in lieu of obtaining stays of the  
14 Orders should be denied.

15 **2. The Divestiture Rule Is Not Properly Invoked with Respect to the**  
16 **Interlocutory Scheduling Order and MAE Order Because SGM Has Not**  
17 **Sought Leave to Appeal**

18 The appeals of the Scheduling Order and MAE Order are not subject to the divestiture rule  
19 because SGM did not seek leave to appeal these interlocutory orders.<sup>6</sup> “Filing an appeal from an  
20 unappealable decision does not divest the district court of jurisdiction.” *Hickey*, 580 F.3d at 928

21 \_\_\_\_\_  
22 issues of whether SGM has breached the APA and whether the Debtors are entitled to retain  
23 SGM’s good-faith deposit.”) (emphasis added).

24 <sup>6</sup> The Debtors previously filed emergency motions to dismiss the Appeals, in part, on the ground  
25 that SGM failed to seek leave to appeal interlocutory orders. *See Strategic Global Management,*  
26 *Inc. v. Verity Health Sys. of Cal., Inc.*, Nos. 2:19-cv-10354-DSF, Docket No. 13 (C.D. Cal. Dec.  
27 19, 2019); *Strategic Global Management, Inc. v. Verity Health Sys. of Cal., Inc.*, Nos. 2:19-cv-  
28 10356-DSF, Docket No. 11 (C.D. Cal. Dec. 19, 2019). On December 20, 2019, the District Court  
denied the motions on the basis that the Debtors did not demonstrate that emergency relief was  
appropriate. Given that the motions were denied on narrow procedural grounds, the Debtors are  
preparing motions to dismiss the Appeals as interlocutory and moot. That said, as set forth  
herein, the Court may hear the Adversary Proceeding now notwithstanding the Appeals.

1 (citing *Estate of Conners v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993)); *see also Ruby v. Sec’y of*  
2 *the U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (“Where the deficiency in a notice of appeal, by  
3 reason of untimeliness, lack of essential recitals, or reference to a non-appealable order, is clear to  
4 the district court, it may disregard the purported notice of appeal and proceed with the case,  
5 knowing that it has not been deprived of jurisdiction.”). Thus, an appeal from a non-final,  
6 interlocutory order does not implicate the divestiture rule. *See, e.g., Ruby*, 365 at 388 (noting that  
7 an appeal from an order vacating judgment is invalid “because the order appealed from is  
8 interlocutory and not final”) (citation omitted); *Hickey*, 580 F.3d at 927-928 (finding that  
9 appellant’s “effort to supplant the district court’s jurisdiction through his second interlocutory  
10 appeal fares no better”).

11 A final order is one that ends the litigation or disposes of a complete claim for relief,  
12 leaving nothing for the court to do but execute the judgment. *In re Kashani*, 190 B.R. 875, 882  
13 (B.A.P. 9th Cir. 1995) (“To become final, the decision, order, or decree must end the litigation, or  
14 dispose of a complete claim for relief, and leave nothing for the court to do but execute the  
15 judgment.”) (citation omitted); *see also In re Travers*, 202 B.R. 624, 625 (B.A.P. 9th Cir. 1996).  
16 In contrast, an interlocutory order is “one which does not finally determine a cause of action but  
17 only decides some intervening matter pertaining to the cause, and which requires further steps to  
18 be taken to enable the court to adjudicate the cause on the merits.” *In re Kashani*, 190 B.R. at  
19 882. The Ninth Circuit has adopted a “pragmatic approach” to finality because

20 “certain proceedings in a bankruptcy case are so distinctive and  
21 conclusive either to the rights of individual parties or the ultimate  
22 outcome of the case that final decisions as to them should be  
23 appealable as of right.” . . . Under our pragmatic approach, a  
24 bankruptcy court order is considered to be final and thus appealable  
“where it 1) resolves and seriously affects substantive rights and 2)  
finally determines the discrete issue to which it is addressed.”

25 *In re Bonham*, 229 F.3d 750, 761 (9th Cir. 2000) (citations omitted).

26 Here, the Scheduling Order and MAE Order are clearly interlocutory because they do not  
27 make a final, enforceable determination as to the Debtors’ claims against SGM. *First*, the  
28 Scheduling Order expressly limits its findings to the Debtors’ satisfaction of Section 8.6 of the

1 APA—one of a number of conditions to closing the Sale. *See* Sched. Order at 2 (finding that  
2 “SGM is now obligated to promptly close the SGM Sale, **provided that** all other conditions to  
3 closing are satisfied”) (emphasis added). **Second**, the MAE Order found that all other conditions  
4 to closing were satisfied and that SGM was obligated to close the Sale. *See* MAE Order at 2.  
5 The MAE Order **did not** compel SGM to close. Rather, it interpreted the Material Adverse Effect  
6 and closing conditions in the APA, determined that those provisions were satisfied, and, in light  
7 of those findings and the Debtors’ outstanding contractual demand, determined that December 5,  
8 2019 was the closing date under Section 1.3 of the APA. *See* MAE Order at 2 (“Pursuant to § 1.3  
9 of the APA, SGM is obligated to close the SGM Sale by no later than December 5, 2019.”). The  
10 Court did not (and could not) order that SGM must close the Sale because the APA did not  
11 provide for specific performance as a remedy. *See* APA § 11.1 at 39 (“For the avoidance of  
12 doubt, Sellers shall have no right to sue for specific performance under this Agreement.”).  
13 Indeed, the Court later found that it had not decided issues of breach, rights upon termination, and  
14 damages. *See* Docket No. 3783 at 2 (“**In the future**, the Debtors will have an opportunity to  
15 litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to  
16 retain SGM’s good-faith deposit.”) (emphasis added). As such, although the Scheduling Order  
17 and MAE Order interpreted the APA with respect to the conditions to closing, the orders did not  
18 “finally determine a cause of action” raised in the Adversary Proceeding particularly given that  
19 the APA did not provide for specific performance as a remedy. *Kashani*, 190 B.R. at 882.  
20 Accordingly, the Scheduling Order and MAE Order are “unappealable decision[s]” that do not  
21 divest the Court of jurisdiction. *Hickey*, 580 F.3d at 928.

22 The interlocutory orders are “non-appealable” for purposes of the divestiture analysis  
23 because SGM failed to seek leave to appeal the interlocutory orders and cannot satisfy the  
24 standards for leave to appeal. The bankruptcy court must grant leave for an appellate court to  
25 have jurisdiction over an interlocutory order. 28 U.S.C. § 158(a)(1) and (3) (“The district court  
26 has jurisdiction to hear appeals: “(1) from final judgments, orders, and decrees [...] and, with  
27 leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases  
28 and proceedings referred to the bankruptcy judges under section 157 of this title.”). SGM did not

1 file a motion for leave to appeal and has not sought leave to appeal in the District Court. *In re*  
2 *Kashani*, 190 B.R. at 882 (“[i]n order for an interlocutory appeal to be heard, a motion for leave  
3 to appeal must be filed”). Further, SGM cannot meet the standard for leave to appeal in any event  
4 because the Scheduling Order and MAE Order do not involve “a controlling question of law  
5 where there is substantial ground for difference of opinion.” *In re Sperna*, 173 B.R. 654, 658  
6 (B.A.P. 9th Cir. 1994). Rather, they involve the Court’s interpretation of the APA—factual  
7 determinations. As evidenced by the claims raised in the Adversary Proceeding, the immediate  
8 appeal of the Scheduling Order and MAE Order were insufficient to “materially advance” the  
9 dispute concerning SGM’s liability for failing to close the Sale. *See In re Sperna*, 173 B.R. at  
10 658. Accordingly, the appeals of the Scheduling Order and MAE Order are not subject to the  
11 divestiture rule because the orders are “non-appealable.” *Ruby*, 365 F.2d at 389.

12 **3. The Appeals Are Subject to Exceptions to the Divestiture Rule Because They**  
13 **Are Mooted by the Termination of the APA**

14 The divestiture rule is subject to exceptions. *See, e.g., Phelps*, 283 F.3d at 1181 n.5  
15 (“[t]his is a judge-made rule and the principle of divestiture is not absolute; there are exceptions”)  
16 (citation omitted). Among the recognized exceptions to the divestiture rule are circumstances  
17 “where application of the divestiture of jurisdiction rule would wholly undermine its purpose” or  
18 where “the appeal is clearly defective.” *Ashker*, 2019 WL 1558932, at \*3. These exceptions are  
19 “focused on avoiding uncertainty and waste, and concerned with the possibility that the appeals  
20 process might be abused to cause delay or increase costs.” *See id.* (citing *Rodriguez*, 891 F.3d at  
21 791). Here, the Adversary Proceeding is subject to exceptions from the divestiture rule, *inter*  
22 *alia*, because the Appeals are constitutionally (Article III) and equitably moot given the  
23 December 27, 2019 termination of the APA.

24 An appeal from a bankruptcy court’s order is deemed constitutionally moot when an event  
25 occurs while a case is pending appeal that makes it impossible for the court to grant “any  
26 effectual relief”. This doctrine arises from Article III of the Constitution, which limits the  
27 jurisdiction of all federal courts to actual cases or controversies. *Motor Vehicle Cas. Co. v.*  
28 *Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 880 (9th Cir. 2012); *Trone v.*

1 *Robert Farms, Inc. (In re Roberts Farms, Inc.)*, 652 F.2d 793, 797 (9th Cir. 1981). Additionally,  
2 courts may also dismiss an appeal on the grounds of equitable mootness when the equities weigh  
3 in favor of dismissal. *S.S. Retail Stores Corp. v. Ekstrom (In re S.S. Retail Stores Corp.)*, 216  
4 F.3d 882, 885 (9th Cir. 2000) (reasoning that “other equitable considerations center on whether it  
5 would be unfair to grant the requested relief”); *In re Barbour*, No. CV 17-02857 SJO, 2017 WL  
6 8791902 (C.D. Cal. Nov. 15, 2017).

7 The distinction between constitutional and equitable mootness is that under the equitable  
8 mootness doctrine, some type of relief may be possible or even legally warranted but principles of  
9 equity bar such relief. *In re Cont’l Airlines*, 91 F.3d 553, 558-559 (3d Cir. 1996) (citing to  
10 *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)). For example, an appeal could be  
11 “equitably moot” when appellants fail to pursue diligently their available remedies to obtain a  
12 stay of the objectionable orders of a bankruptcy court, thus permitting such a “comprehensive  
13 change of circumstances” that renders it “inequitable for this court to consider the merits of the  
14 appeal.” *In re Robert Farms*, 652 F.2d at 798). As noted in *In re Barbour*, No. CV 17-02857  
15 SJO, 2017 WL 8791902 (C.D. Cal. Nov.15, 2017), other jurisdictions also employ the concept of  
16 equitable mootness in addition to constitutional mootness. For example, the Seventh Circuit  
17 emphasizes the difference between inability to alter the outcome (real mootness) and  
18 unwillingness to alter the outcome (“equitable mootness”) and advises courts to “leave  
19 bankruptcy decisions alone once they have been implemented for the “plain and compelling”  
20 purpose of “preserving interests bought and paid for in reliance on judicial decisions, and  
21 avoiding the pains that attend any effort to unscramble an egg.” *Id.* (citing to *In re UNR Indus.*,  
22 20 F.3d 766 (7th Cir. 1994)). Overall, when deciding whether a bankruptcy appeal is equitably  
23 moot, the Ninth Circuit has endorsed the following test that considers a number of factors,  
24 including but not depending on the availability of effective relief (i.e., constitutional mootness):

25 We will look first at whether a stay was sought, for absent that a  
26 party has not fully pursued its rights. If a stay was sought and not  
27 gained, we then will look to whether substantial consummation of  
28 the plan has occurred. Next, we will look to the effect a remedy  
may have on third parties not before the court. Finally, we will look  
at whether the bankruptcy court can fashion effective and equitable

1 relief without completely knocking the props out from under the  
2 plan and thereby creating an uncontrollable situation for the  
bankruptcy court.

3 *In re Thorpe Insulation Co.*, 677 F.3d at 880-881. Application of these standards evidences that  
4 the Appeals are now moot.

5 The relief set forth in each of the Orders contemplates the effectiveness and closing of the  
6 Sale pursuant to the APA. Each Order references rights and obligations derived from the APA  
7 and in furtherance of closing the Sale:

- 8 • ***“Solely and exclusively for purposes of the APA*** (as defined below) ***and the***  
9 ***Motion***, the Additional Conditions (as defined in section 8.6 of that certain asset  
10 purchase agreement [Docket No. 2305-1] (the “APA”)) are an “interest in  
11 property” for purposes of 11 U.S.C. § 363(f).” AG Conditions Order at 1  
12 (emphasis added).
- 13 • “The Debtors have complied with their obligation under the APA to obtain a final,  
14 non-appealable Supplemental Sale Order. Consequently, SGM is now obligated to  
15 promptly close the SGM Sale, provided that all other conditions to closing have  
16 been satisfied.” Sched. Order at 2.
- 17 • “Pursuant to § 1.3 of the APA, SGM is obligated to close the SGM Sale by no  
18 later than December 5, 2019.” MAE Order at 2.

19 The Court cannot grant relief with respect to closing the Sale given the dramatic change in  
20 circumstances since SGM refused to close. The MAE Order found that the closing date under the  
21 APA was December 5, 2019 given the Debtors’ satisfaction of the conditions to close and the  
22 absence of Material Adverse Effects. SGM did not seek a stay of that order, SGM did not close  
23 by that date, and, subsequently, the Debtors terminated the APA effective as of December 27,  
24 2019. *See* Docket No. 3899. In addition as noted above, the Debtors obtained orders  
25 (i) authorizing the Debtors to undertake alternative transactions [Docket No. 3784]; (ii) approving  
26 the disposition milestones in connection with continued use of cash collateral [Docket No. 3883];  
27 and (iii) authorizing the closure of SVMC [Docket No. 3934]. SGM did not object to, nor appeal,  
28

1 these now-final orders, which have foreclosed the Debtors’ ability to close on the transaction  
2 formerly contemplated by the APA.

3 The Appeals are equitably moot based on these facts because the Orders are no longer of  
4 any practical force or effect. SGM will not be a purchaser subject to Attorney General Conditions  
5 and SGM cannot close the now-terminated Sale. Given the material change of circumstances, it  
6 is no longer equitable or possible to grant any effective relief from the merits of the Appeals. *See,*  
7 *e.g., Tate v. Univ. Med. Ctr. of S. Nev.,* 606 F.3d 631 (9th Cir. 2010) (dismissing appeal as moot  
8 when doctor’s agreement with hospital terminated); *see also Fultz v. Rose,* 833 F.2d 1380, 1380  
9 (9th Cir. 1987) (dismissing an appeal as moot when appellees sold the property in dispute to a  
10 non-party, in compliance with another court order, rendering the Ninth Circuit “no longer able to  
11 grant any effective relief from that order or to reach the merits of this appeal”); *Int’l*  
12 *Longshoremen’s & Warehousemen’s Union, Local 21 v. Reynolds Metals Co.,* 487 F.2d 696 (9th  
13 Cir. 1973) (appeal rendered moot because contract underlying lawsuit was terminated). Further,  
14 any attempt to reincarnate the *status quo ante* will interfere in the Debtors’ efforts to negotiate  
15 alternative transactions intended to preserve patient care, community access to going concern  
16 hospitals, and jobs notwithstanding the Debtors’ delicate financial circumstances. *See In re*  
17 *Mortgs. Ltd.,* 771 F.3rd 1211, 1218 (9th Cir. 2014) (dismissing appeal as moot and noting that an  
18 appellate court must consider whether the remedy sought would bear unduly on the innocent and  
19 that turns on whether it is possible for the bankruptcy court on remand to fashion equitable relief  
20 in a way that does not inequitably affect third party interests).

21 Holding the Adversary Proceeding in abeyance while SGM continues to prosecute its now  
22 moot Appeals will serve only to delay the Debtors’ efforts to recover against SGM on behalf of  
23 its estates as the administrative costs of these Cases mount. The divestiture rule is undermined  
24 where, as here, application of the rule to these defective Appeals would achieve only pointless  
25 delay and increased litigation costs for the Debtors’ estates.



1 SGM’s agreement that “any dispute between [SGM] and [the Debtors] as to whether an  
2 MAE has occurred for any purpose under this Agreement shall be exclusively settled by a  
3 determination made by the Bankruptcy Court” constitutes an enforceable contractual appeal  
4 waiver, which requires it to accept the contractual determinations made by the Bankruptcy Court.  
5 See APA at 34-35. The provision is sufficiently express because it authorized the Bankruptcy  
6 Court to make an “exclusive” determination as to the existence of any MAE. See, e.g., *In re*  
7 *Odyssey Contracting Corp.*, No. 19-1150, 2019 WL 6766985, at \*2-\*3 (3d Cir. Dec. 12, 2019)  
8 (finding waiver sufficiently express where stipulation “indicate[s] an intent to waive” the appeal  
9 right by authorizing bankruptcy court to determine issue of breach “in all respects” and “with  
10 prejudice”). Further, the parties’ agreement embodied in the APA constitutes “valid and legal  
11 consideration” in exchange for the express waiver. *Chaddock & Co.*, 173 F. at 579. Specifically,  
12 in interpreting Section 9.1(c) of the APA, the Bankruptcy Court found that “SGM received  
13 substantial benefits under the APA [...]. In exchange for receiving those benefits, SGM waived  
14 certain rights, including its right to appeal any determination made by the Bankruptcy Court with  
15 respect to the occurrence of a Material Adverse Effect.” MAE Mem. Dec. at 4. While SGM did  
16 not waive appeal rights generally, it did so with respect to Material Adverse Effect determinations  
17 by the Court and any related determinations that exclusively hinge upon such determination.  
18 Appropriately, the Court correctly determined that only it, “and no other court (including any  
19 appellate court), is entitled to determine Material Adverse Effect issues.” *Id.* Accordingly, SGM  
20 waived its appellate rights with respect to Material Adverse Effect determinations and, in so  
21 doing, cannot invoke the divestiture rule.

22 Further, with respect to both the Scheduling Order and MAE Order, the APA provides for  
23 a contractual waiver of determinations made by the Court arising from the APA. Specifically,  
24 Section 12.3 of the APA provides, in part, that “the parties irrevocably elect, as the sole judicial  
25 forum for the adjudication of any matters arising under or in connection with the Agreement, and  
26 consent to the exclusive jurisdiction of, the Bankruptcy Court.” See APA § 12.3 at 41. As with  
27 Section 9.1(c) of the APA, such express concession that the Court will be the sole forum to  
28 determine matters arising under the APA constitutes an express appellate waiver. See e.g.



### 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:  
601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): **DEBTORS' OPPOSITION TO STRATEGIC  
GLOBAL MANAGEMENT, INC.'S EMERGENCY MOTION TO STAY ADVERSARY PROCEEDING**

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*) **January 29, 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:

- James Cornell Behrens jbehrens@milbank.com,  
gbray@milbank.com;mshinderman@milbank.com;dodonnell@milbank.com;jbrewster@milbank.com;JWeber@milbank.com
- Gary E Klausner gek@lnbyb.com
- Jeffrey S Kwong jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- Samuel R Maizel samuel.maizel@dentons.com,  
alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
- Tania M Moyron tania.moyron@dentons.com,  
chris.omeara@dentons.com;nick.koffroth@dentons.com;Sonia.martin@dentons.com;lsabella.hsu@dentons.com;  
lee.whidden@dentons.com;Jacqueline.whipple@dentons.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **January 29, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **January 29, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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

USBC Central District of California  
Hon. Ernest M. Robles  
Edward R. Roybal Federal Building and US Courthouse  
255 East Temple Street, Suite 1560  
Los Angeles, CA 90012

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.

January 29, 2020  
*Date*

Christina O'Meara  
*Printed Name*

/s/Christina O'Meara  
*Signature*

---

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

**2. SERVED BY UNITED STATES MAIL:**

<p>Gary E. Klausner Strategic Global Management, Inc. c/o Levene, Neale, Bender, Yoo &amp; Brill 10250 Constellation Blvd. Suite 1700 Los Angeles, CA 90067</p>	<p>Chief Executive Officer KPC Healthcare Holdings, Inc. 9 KPC Pkwy, Suite 301 Corona, CA 92879</p>
<p>William E. Thomas KPC Health Plan Holdings, Inc. 9 KPC Parkway, Suite 301 Corona, CA 92509</p>	<p>Chief Executive Officer KPC Health Plan Holdings, Inc. 9 KPC Parkway, Suite 301 Corona, CA 92879</p>
<p>Corporation Service Company KPC Healthcare, Inc. 112 North Curry Street Carson City, NV 89703</p>	<p>KPC Healthcare Holdings, Inc. ATTN: Corporation Service Co. DBA CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive Suite 150N Sacramento, CA 95833</p>
<p>Chief Executive Officer KPC Healthcare, Inc. 1301 North Tustin Avenue Santa Ana, CA 92705</p>	<p>KPC Global Management, LLC ATTN: Corporation Service Company DBA CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive Suite 150N Sacramento, CA 95833</p>
<p>Managing Member KPC Global Management, LLC 890 W. Stetson Ave., Suite B Hemet, CA 92543</p>	<p>Kali P. Chaudhuri, MD 9 KPC Pkwy, Suite 301 Corona, CA 92879</p>
<p>Kali P. Chaudhuri, MD 42830 Chaudhuri Circle Hemet, CA 92544</p>	

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