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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA -
WESTERN DIVISION - LOS ANGELES

In re

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

Debtors and Debtors In Possession.

☒ Affects All Debtors

☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC
☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose ASC, LLC

Debtors and Debtors In Possession.

District Court Case No. 2:20-cv-00613-DOC
Hon. Dale O. Carter

Lead Bankruptcy 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

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

DEBTORS' OPPOSITION TO MOTION TO WITHDRAW THE REFERENCE [RELATED TO DOCKET NO. 1]

Hearing Date and Time:
Date: February 10, 2020
Time: 8:30 a.m.
Place: Courtroom 9D
411 West Fourth Street
Santa Ana, CA, 92701

1820151200302000000000026

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., a California nonprofit public benefit corporation, ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation, ST. VINCENT DIALYSIS CENTER, INC., a California nonprofit public benefit corporation, and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation, SETON MEDICAL CENTER, a California nonprofit public benefit corporation, and VERITY HOLDINGS, LLC, a California limited liability company; and

Plaintiffs,

v.

KALI P. CHAUDHURI, M.D., an individual, STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation, KPC HEALTHCARE HOLDINGS, INC. a California Corporation KPC HEALTH PLAN HOLDINGS, INC. a California Corporation, KPC HEALTHCARE, INC. a Nevada Corporation, KPC GLOBAL MANAGEMENT, LLC, a California Limited Liability Company, and DOES 1 through 500,

Defendants.

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Cases

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Verity Health System of California, Inc. and the affiliated debtors, the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Bankruptcy Cases"), and the plaintiffs in the above-captioned adversary proceeding, hereby file this opposition (the "Opposition") to the motion (the "Motion") to withdraw the reference of Adversary Proceeding No. 2:20-ap-01001-ER (the "Adversary Proceeding") from the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). In support of this Opposition, the Debtors submit the Request for Judicial Notice (the "RJN") filed concurrently herewith, and respectfully state as follows:

I. INTRODUCTION

The Motion should be denied for several reasons that fall under two basic principles.

First, SGM[1] seeks to invoke this Court's jurisdiction for an improper purpose: to forum shop on behalf of itself and its alter ago Co-Defendants to sidestep the Bankruptcy Court, which is familiar with their misconduct. The Bankruptcy Court has overseen every aspect of the Sale of the Debtors' Hospitals to Defendants' acquisition entity (SGM), including the collapse of the Sale caused by Defendants to the detriment of the Debtors' estates, patients, employees and stakeholders. The subject Adversary Proceeding seeks damages to address that harm. By requesting withdrawal of the reference, SGM effectively seeks a second (or even third) bite at the apple on multiple matters and in support thereof requests that this Court (i) engage in a pseudo-appellate analysis of Orders already on appeal that have not been stayed, and (ii) rule on jurisdictional issues currently pending and properly before the Bankruptcy Court. If the Defendants' flawed logic were adopted, withdrawal of the reference would become the norm rather than the rare

[1] Capitalized terms not otherwise defined in this Introduction have the definitions set forth elsewhere in the Motion.

exception, thereby burdening District Courts any time a party wished to attack a bankruptcy court's jurisdiction.

Second, SGM does not and cannot satisfy the heightened "cause" standard to warrant permissive withdrawal of the reference by this Court. Among other things, the Bankruptcy Court has and should retain jurisdiction to adjudicate the Adversary Proceeding because (i) it is a "core proceeding" under 28 U.S.C. § 157(b), and (ii) SGM expressly consented to Bankruptcy Court exclusive jurisdiction in the APA, the Co-Defendants consented through their alter ego status, and all Defendants consented by their actual conduct in the Bankruptcy sale process. Further, SGM's due process arguments predicated on "fairness" fail because (i) the underlying orders on appeal have no bearing on the issue of withdrawal, and (ii) the Defendants' disappointment over the Bankruptcy Court's earlier rulings are not a valid basis to warrant withdrawal. Finally, the Defendants' alleged right to a jury trial is neither ripe nor a basis to justify withdrawal of the reference under the circumstances herein.

Based on the foregoing, and for the reasons fully set forth below, the Debtors respectfully request that the Court deny the Motion.

II. FACTS

A. General Background

1. On August 31, 2018, ("Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").[2] The Bankruptcy Cases are jointly administered before the Bankruptcy Court.

B. The SGM Bid and the Sale

2. The sale of St. Francis Medical Center ("SFMC"), St. Vincent Medical

[2] Unless otherwise noted, all references to "§" herein are to sections of the Bankruptcy Code.

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Center ("SVMC"), and Seton Medical Center, including Seton Medical Center Coastside Campus (collectively, "Seton" and, together with SFMC and SVMC, the "Hospitals") as going-concerns was a central objective of the Debtors and would have resulted in the successful conclusion of the Bankruptcy Cases.

3. As set forth in the Complaint and as further detailed, below, the Defendants were materially involved in procuring Strategic Global Management, Inc.'s ("SGM") ultimately successful bid to purchase the Hospitals and actions related toward its closing of the Sale. *See id.*, Ex. A at 12-35; *infra* at Section III.B.3.

4. On January 17, 2019, the Debtors filed a motion (the "Sale and Bidding Procedures Motion") to approve the form of an asset purchase agreement and related "stalking horse" bidding procedures for the sale of the Hospitals (the "Sale"), *see* RJN, Ex. B at 1, which the Bankruptcy Court approved (the "Bidding Procedures Order"), *see id.* Ex. C. The Defendants advanced SGM to serve as the Stalking Horse Bidder under the terms of the Bidding Procedures Order, pursuant to that certain asset purchase agreement (the "APA"). *See id.* Ex. D at 7.

5. Among its features, the APA contained closing conditions, operational requirements and, perhaps of greatest relevance to the instant Motion, Bankruptcy Court exclusive jurisdiction to hear and resolve disputes.[3] By way of example, the APA provides that "any dispute between Purchaser and Sellers as to whether a Material Adverse Effect has occurred for any purpose under this Agreement shall be exclusively settled by a determination made by the Bankruptcy Court." *Id.* Ex.

[3] For example, the APA addressed the California Attorney General's (the "Attorney General") right to review and approve the proposed Sale—Section 8.6 of the APA ("Section 8.6"). Revised terms of the Attorney General conditions were incorporated in the Bidding Procedures Order. *See id.*, Ex. C at 7-9. The APA also provided that after the Sale closing, Defendant SGM would operate the Hospitals and abide by the vast majority of the conditions imposed by the Attorney General in 2015, as set forth in Schedule 8.6 to the APA ("Schedule 8.6"). *Id.* Ex. D, § 8.6 at 32-34; *see also id.* Ex. C at 7-9.

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D, § 9.1(c) at 34-35. The APA also included a broad forum selection and jurisdictional waiver clause. Specifically, the Parties agreed that,

> [f]or so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. The parties hereby consent to the jurisdiction of such court and waive their right to challenge any proceeding involving or relating to this Agreement on the basis of lack of jurisdiction over the Person or forum non conveniens.

Id. § 12.3 at 41.

6. Defendants' bid, through SGM and in the amount of $610 million, was significant, public, and, once revealed, no other party sought to compete. In fact, no other party submitted an alternative "Qualified Full Bid" for all four Hospitals. Accordingly, no auction was held and the Defendants' acquisition entity, Defendant SGM, was declared the "winning bidder" of the Hospitals. *See id.*, Ex. E at 2.

7. On February 6, 2019, the Bankruptcy Court held a hearing on approval of the Sale. *See id.*, Ex. F. At the hearing, counsel for the Defendants' "winning bidder" described SGM's affiliate relationship with "a larger organization called The KPC Group," which he claimed had previously "turned around" other distressed hospitals. *See id.* at 13:2-14:22. On May 2, 2019, the Bankruptcy Court entered an order granting the Sale Motion and approving the Sale (the "Sale Order"). *See id.*, Ex. G.

C. Attorney General Review and the AG Conditions Order

8. On September 25, 2019, after more than four months of discussion and negotiation, the Attorney General consented to the Sale subject to a series of conditions that materially differed from those contained in the APA. To address that issue, the Debtors filed a motion (the "AG Conditions Motion"), which sought (i) entry of an order enforcing the Sale Order, (ii) a finding that the Sale was free

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and clear of certain additional conditions imposed by the Attorney General, and (iii) a finding limiting the Sale to only those conditions to which the parties contractually agreed to in Schedule 8.6. *See id.*, Ex. H. Defendants, through SGM, filed a statement in support of the AG Conditions Motion, expressly requesting that the Bankruptcy Court enter an order granting the AG Conditions Motion. *See id.*, Ex. I. On October 23, 2019, the Bankruptcy Court entered a memorandum of decision (the "AG Conditions Memorandum Decision") granting the AG Conditions Motion and requesting a proposed order. *See id.*, Ex. J.

9. Thereupon, the Attorney General, the Debtors, and Defendants engaged in discussions concerning a simple proposed form of order. *See id.* Ex. K at 3. The Debtors and the Attorney General worked for ten days to satisfy Defendants' concerns with the wording of the proposed order granting the AG Conditions Motion (the "Proposed Order"), despite the fact that the Proposed Order contained the exact findings required by the APA. *See id*. The Debtors and the Attorney General entered into a stipulation (the "Stipulation"), which SGM refused to join and ultimately opposed. *See id.* Exs L, M, N.

10. On November 13, 2019, the Bankruptcy Court held a hearing and approved the Stipulation over SGM's objection. On November 14, 2019, the Bankruptcy Court entered the Proposed Order with modifications provided on the record (the "AG Conditions Order"). *See* Ex. O.

11. On November 29, 2019, despite the modifications on the record, SGM filed a notice of appeal related to the AG Conditions Order. *See id.* Ex. P. The appeal is currently pending before the District Court under Case No. 2:19-cv-10532-DSF, which is consolidated with the appeals of the Scheduling Order (defined below) and MAE Order (defined below) (collectively, the "Appeals"). SGM has not sought a stay pending appeal of the AG Conditions Order.

D. The Scheduling Order

12. On November 18, 2019, the Bankruptcy Court entered an order on the

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Debtors' motion to continue the disclosure statement deadlines (the "Scheduling Order"). *See id.* Exs. Q, R. The Scheduling Order granted the Debtors' request to continue the deadlines and further provided that SGM was obligated to promptly close the Sale under Section 8.6, provided that all other conditions to closing were satisfied. *See id.* Ex. R at 2. On November 29, 2019, SGM appealed the Scheduling Order, but has not sought a stay of the Scheduling Order. *See id.*, Ex. S.

E. The MAE Order

13. On November 26, 2019, the Bankruptcy Court held a status conference (the "Status Conference") in light of mounting uncertainties concerning closing the Sale caused by Defendants, and found, among other things, that, if the Sale did not close "they will pay damages pursuant to this agreement." *Id.* Ex. T at 14. On November 27, 2019, the Bankruptcy Court entered an order (the "MAE Order" and, together with the AG Conditions Order and the Scheduling Order, the "Orders") and memorandum of decision finding Defendant SGM was obligated to close the Sale by no later than December 5, 2019. *See id.* Exs. U, V. Specifically, the Bankruptcy Court found that (i) Section 9.1(c) of the APA authorized the Bankruptcy Court to exclusively determine Material Adverse Effect issues without the right of appeal and (ii) no Material Adverse Effects had occurred under the APA. *See id.*, Ex. V at 4, 6. As a result, "SGM ***would not*** be excused from closing the sale under Article 8.4 of the APA." *Id.* at 6. On December 3, 2019, SGM appealed the MAE Order. *See id.*, Ex. W. SGM has not sought a stay pending appeal of the MAE Order.

F. Termination of the APA and the Alternative Transactions

14. Notwithstanding the Orders, the Sale did not close on December 5, 2019, or at any point thereafter. On December 6, 2019, the Debtors filed an emergency motion for issuance of an order to show cause why SGM failed to close the Sale. *See id.*, Ex. X. On December 9, 2019, the Bankruptcy Court entered an order denying the emergency motion and providing that "[a]ny efforts undertaken

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by the Debtors with respect to the alternative disposition of the Hospitals" would not violate the APA. *See id.*, Ex. Y at 2. Further, the Court noted that, "[i]n the future, the Debtors 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." *See id.*, Ex. Z at 2. SGM did not appeal the aforementioned order. SGM's delay in notifying the Debtors of its inability or unwillingness to close the Sale deferred the Debtors' efforts to pivot to alternative transactions. Ultimately. on December 27, 2019, the APA terminated as a result of SGM's failure to timely close the Sale. *See id.*, Ex. AA.

15. Following the termination of the APA, the Debtors have undertaken efforts to explore alternative transactions with respect to the Hospitals. On January 6, 2020, the Debtors filed a motion to close SVMC because, among other things, there was no buyer who presented a feasible offer to purchase SVMC as a going concern. *See id.*, Ex. BB. On January 9, 2020, the Bankruptcy Court entered an order granting the emergency motion, which SGM did not oppose or appeal. *See id.*, Ex. CC. As of January 23, 2020, the Debtors, among other things, had closed the SVMC emergency department and discharged and transferred all hospital inpatients. *See id.*, Ex. DD at 2.

G. <u>The Adversary Proceeding and Appeals</u>

16. On January 3, 2020, the Debtors filed the Complaint against the Defendants, which commenced the Adversary Proceeding. *See id.*, Ex. A. The Complaint asserts claims arising from the Defendants' conduct with respect to the APA and the Sale, including breach of contract, promissory fraud, and tortious breach of contract based on the Defendants' breaches of the implied covenant of good faith and fair dealing. *See id.*

17. The Bankruptcy Court has set the Adversary Proceeding for trial during the week of November 30, 2020, and has required all dispositive motions be heard not later than October 27, 2020. *See id.*, Ex. EE. The deadline for the

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Defendants to file a responsive pleading is February 19, 2020. *See id.*, Ex. FF. Aside from SGM, the other Defendants (the "Co-Defendants") have not yet appeared in the Adversary Proceeding, have not submitted responsive pleading, or sought to make a valid jury trial election. Rather, SGM has appealed the Orders without seeking stay of their effect and filed this Motion.

18. SGM has filed a motion in the Bankruptcy Court to stay the Adversary Proceeding, which is scheduled to be heard on February 11, 2020. *See id.*, Ex. GG. In the Appeals, SGM has filed a motion requiring the parties to submit to mediation, which remains pending. SGM also filed a motion requesting that the District Court allow SGM to review a document filed under seal with the Bankruptcy Court and extend briefing deadlines, which the District Court denied on February 3, 2020.

III. ARGUMENT

A. SGM Fails to Address and Satisfy the Applicable Standard for Permissive Withdrawal of the Reference.

A request that a district court withdraw a proceeding may be predicated on (i) mandatory and/or (ii) permissive withdrawal. 28 U.S.C. § 157(d); *see also Sec. Farms v. Int'l Bhd. of Teamsters,* 124 F.3d 999, 1008 (9th Cir. 1997). While a district court must "withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce," permissive withdrawal is both discretionary and disfavored. 28 U.S.C. § 157(d); *see also In re KSL Media, Inc.,* No. 15-01212, 2016 WL 74385, at *2 (C.D. Cal. Jan. 6, 2016) (citations omitted) (providing that the standard for demonstrating cause for permissive withdrawal is high and must be demonstrated by the party seeking withdrawal).

Here, the Defendants indisputably base their Motion on permissive withdrawal. *See* Mot. at 6 ("By this Motion, SGM asks this Court to exercise ***its***

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discretion under 28 U.S.C. § 157(d) to withdraw the reference of the Adversary Proceeding[.]") (emphasis added).

To determine whether cause exists for permissive withdrawal, "a district court should consider the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors." *Sec. Farms v. Int'l Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir. 1993)); *see also In re Canter*, 299 F.3d 1150, 1154 (9th Cir. 2002) (finding the district court's withdrawal of reference to be "an inefficient allocation of judicial resources"); *In re Woodside Group*, Case No. CV 10-222-VBF(x), 2010 WL 11596179, at *4 (C.D. Cal. May 21, 2010) (denying motion to withdraw reference based on, among other things, forum-shopping concerns, that it "would not conserve judicial resources," and that it would "hinder bankruptcy administration").

While not dispositive, a district court considering whether to withdraw the reference "should first evaluate whether the claim is core or non-core, since it is upon this issue that questions of efficiency and uniformity will turn." *One Longhorn Land I, L.P. v. Presley*, 529 B.R. 755, 762, 763 (C.D. Cal. 2015) (quoting *Orion*; citing *Hawaiian Airlines, Inc. v. Mesa Air Grp., Inc.*, 355 B.R. 214, 223 (D. Haw. 2006)); *In re Temecula Valley Bancorp, Inc.*, 523 B.R. 210, 215 (C.D. Cal. 2014) (quoting *Orion*); *see also In re Daewoo Motor Am.*, 302 B.R. 308, 310-11 (C.D. Cal. 2003) ("Whether the claim is core or non-core is not dispositive of the motion to withdraw, but is merely a factor to consider. . . . Nonetheless, it is helpful to make the core/non-core determination before considering the other factors because this determination implicates the efficiency and uniformity factors."). Defendants have not addressed these requirements or otherwise provided a compelling case that relief is warranted. Indeed, each factor weighs in favor denying the Motion.

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B. The Bankruptcy Court Has Jurisdiction to Adjudicate This Adversary Proceeding, Which Should Not Be Withdrawn.

The Bankruptcy Court has jurisdiction to adjudicate the Adversary Proceeding because (i) the Adversary Proceeding is a "core proceeding" under 28 U.S.C. § 157(b) as it is predicated on actions that arose in the Bankruptcy Case itself, and (ii) there is requisite consent to Bankruptcy Court jurisdiction concerning the matters raised in the Adversary Proceeding

1. The Complaint Raises "Core" Claims Arising Under the Bankruptcy Code.

Bankruptcy Courts may hear and issue final rulings regarding core proceedings (i) arising under the Bankruptcy Code, or (ii) arising in a case under the Bankruptcy Code. 28 U.S.C. § 157(b)(1). Indeed, a matter is "core" not only when it is created or determined by the Bankruptcy Code, but also when it would have no existence outside of a bankruptcy case. *In re Harris,* 590 F.3d 730, 737 (9th Cir. 2009) (citing *In re Harris Pine Mills,* 44 F.3d 1431, 1435 (9th Cir. 1995)). The Ninth Circuit held in *Harris* that, although the underlying dispute centered on a state law cause of action for breach of a settlement agreement, the relevant claim was core because the underlying settlement agreement and corresponding breach arose in the Bankruptcy Cases and could not exist independently of the Bankruptcy Cases. The same is true here.

Additionally, the Bankruptcy Court has core jurisdiction to adjudicate the Adversary Proceeding because it is predicated on allegations that the Defendants acted tortuously in connection with the bankruptcy bidding and Sale process and, ultimately, breached the APA by failing to close the Bankruptcy Court-approved Sale. *Cf. In re E. Orange Gen. Hosp., Inc.*, 587 B.R. 53, 73 (D.N.J. 2018) ("The Bankruptcy Court possessed jurisdiction over proceedings to enforce the Sale Order; indeed, the motion to enforce the Sale Order was a 'core' proceeding."); *In re Allegheny Health Educ. & Research Found.*, 383 F.3d 169, 176 (3d Cir. 2004);

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("This motion to enforce required [the bankruptcy judge] to interpret and give effect to his prior Sale Order, and was itself a core proceeding[.]"); *In re Gawker Media LLC*, 581 B.R. 754, 760 (Bankr. S.D.N.Y. 2017) ("Finally, the jurisdiction is core, because the sale itself was a core proceeding, 28 U.S.C. § 157(b)(2)(N), and the '[e]nforcement and interpretation of orders issued in core proceedings are also considered core proceedings within the bankruptcy court's jurisdiction.'") (citations omitted).

None of the events set forth in the Complaint would exist but for the Bankruptcy Cases, specifically the § 363 sale order. Thus, the claims are directly and "inextricably intertwined with the sale of estate assets—the literal administration of the bankruptcy estate." *Harris*, 590 F.3d at 737. Moreover, the Bankruptcy Court approved the Sale and APA pursuant to § 363, and, as a result, "arose in" the Bankruptcy Cases under 28 U.S.C. § 157(b)(1). Any dispute concerning the interpretation of the APA is, therefore, core and subject to the Bankruptcy Court adjudication. *See* 28 U.S.C. § 157(b)(1); *see also Hawaiian Airlines, Inc. v. Mesa Air Group, Inc.,* 355 B.R. 214, 224-226 (D. Hawaii 2006) (denying permissive withdrawal where the underlying adversary proceeding regarded a post-petition confidentiality agreement entered into pursuant to a Bankruptcy Court-issued plan procedures order). As such, a withdrawal of the reference to this Court would be improper.

2. The Parties Expressly Consented to Bankruptcy Court Jurisdiction and Waived Any Right to Contest Such Jurisdiction.

Consent to bankruptcy court jurisdiction may occur expressly or by conduct. *See Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 135 S. Ct. 1932, 1948 (2015) (consent to bankruptcy court adjudication of non-core claims may be express or implied). Here, the parties both expressly and impliedly consented to Bankruptcy Court jurisdiction over the claims raised in the Adversary Proceeding.

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SGM expressly consented to exclusive Bankruptcy Court jurisdiction for the determination of "any matters arising under the" APA. RJN, Ex. D § 12.3 at 41 (quoted *supra* at Section II.B.). A party's knowing and voluntary consent to final adjudication of issues by a bankruptcy court is enforceable even if the claims raised are non-core. *See, e.g.*, *Wellness Int'l Network, Ltd.*, 135 S. Ct. at 1949 ("The Court holds that Article III permits bankruptcy courts to decide *Stern* claims submitted to them by consent."). A litigant need not expressly consent to bankruptcy court jurisdiction to demonstrate consent for purposes 28 U.S.C. § 157. *See id.* at 1947 ("Nothing in the Constitution requires that consent to adjudication by a bankruptcy court be express."). However, express consent will, without question, grant the bankruptcy court final adjudicatory authority over non-core claims. *See In re Zuercher Trust of 1999*, No. 14-1372, 2016 WL 3753162, at *2 n.3 (B.A.P. 9th Cir. July 7, 2016) ("[T]here is no question here that the bankruptcy court will have authority to enter a final judgment in the underlying adversary proceeding because both parties expressly consented to the bankruptcy court entering a final judgment in this matter."); *In re Willett*, No. 15-01001, 2015 WL 8975218, at *4 (Bankr. C.D. Cal. Dec. 14, 2015) ("To the extent that the claims that form the basis of Mosher's Complaint and Mouderres' counterclaim are either non-core or constitute '*Stern* claims,' Mosher, Willett and Mouderres expressly consent to the entry of a final judgment by the bankruptcy court.") (Bankr. C.D. Cal. Dec. 14, 2015); *accord In re Newton Enters.*, No. 14-1127, 2015 WL 3524603, at *2 (Bankr. C.D. Cal. June 3, 2015).

Despite its admission that the Adversary Proceeding relates to the Debtors' claims arising under the APA, *see* Mot. at 19-20, SGM purposefully fails to reference the APA's jurisdictional consent language or distinguish its scope concerning "any matters arising under or in connection with the" APA. RJN Ex. D § 12.3 at 41.

The APA language also renders inapposite SGM's reliance on *Orion Pictures*

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Corporation ("Orion"). *See* Mot. at 18-19 (citing *Orion Pictures Corp.*, 4 F.3d at 1097). The holding in *Orion* is limited to *prepetition contracts*, rather than a contract entered into *post-bankruptcy* with a debtor. *Compare* 4 F.3d at 1102 ("The Adversary Proceeding *remains a pre-petition contract action* that the Supreme Court held in *Marathon* may not be finally adjudicated by a non-Article III judge.") (emphasis added) *with Friedman Corp. v. Universal Molding Co.*, No. 11-10361, 2011 WL 6817756, at *2–3 (C.D. Cal. Dec. 28, 2011) ("[C]ore proceedings include all matters concerning the administration of a bankruptcy estate, including 'contract claims under state law when the contract was entered into postpetition.'") (quoting *Harris Pine Mills*, 44 F.3d at 1436).

Additionally, the prepetition contract at issue in *Orion* did not include any language concerning consent to bankruptcy court jurisdiction, let alone the sweeping language contained in Section 12.3 of the APA. Courts in the Second Circuit have also rejected the core/non-core withdrawal factor discussed in *Orion* given significant Supreme Court jurisprudence on the topic in the intervening years—instead considering whether the bankruptcy court could finally adjudicate the claim. *See In re FKF 3, LLC*, No. 13-3601, 2016 WL 4540842, at *5 (S.D.N.Y. Aug. 30, 2016) ("Following the Supreme Court's holding in *Stern*, courts in this district have taken different approaches in adapting the *Orion* factors to *Stern*'s holding."); *see also In re Lyondell Chem. Co.*, 467 B.R. 712, 719 (S.D.N.Y. 2012) ("Under *Stern*, it is not the core/non-core distinction but Article III that determines the bankruptcy court's adjudicative authority. [. . .] To the extent the core/non-core distinction held a privileged position among the *Orion* factors before *Stern*, this is no longer the case."). Simply put, *Orion* bears no similarity to the factual and legal issues raised here, which fit easily within the Supreme Court's more recent consent standard set forth in *Wellness*. Thus, SGM's voluntary submission to Bankruptcy Court jurisdiction to fully adjudicate the claims raised in the APA answers the Article II question assuming, *arguendo*, that the claims are non-core.

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3. The Actions of the Defendants in the Bankruptcy Case Further Support Bankruptcy Jurisdiction.

Consent is evidenced further by Defendants' participation in the Sale and related Court proceedings. Although SGM seeks to shelter and otherwise minimize the participation of the Co-Defendants, the record demonstrates that all Defendants participated in the improper conduct the Debtors seek to address. As such, permissive withdrawal of the reference is not warranted because the Co-Defendants are directly implicated in core claims raised in the litigation. *See Northwest Territorial Mint, LLC v. Calvert (In re Northwest Territorial Mint, LLC),* No. 16-01895, 2017 WL 568821, at *3 (W.D. Wash. Feb. 13, 2017) (denying permissive withdrawal and providing, "Defendant asks the bankruptcy court to determine that Plaintiff is the alter-ego of Mint. [. . .] This is a core proceeding because it goes directly to identifying property of the estate, which is key to administering it."); *see also In re Don's Making Money*, LLP, 2007 WL 1302748, at *6 (D. AZ. May 1, 2007) (denying withdrawal of the reference and noting that "it is possible that Plaintiff's alter ego/piercing the corporate veil claim is a core claim as well."); *In re Buildings by Jamie, Inc.,* 220 B.R. 36, 44 (Bankr. D.N.J. 1998) ("The Second Circuit has held that alter ego claims to recover property of the estate are core proceedings.") (citing *St. Paul Fire and Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 668, 701 (2d Cir. 1989)).

While discovery in the Adversary Proceeding will reveal the full extent of Defendants' alter ego status,[4] the allegations asserted in the Complaint establish that the Co-Defendants are alter egos of SGM and that they participated in the Sale process as follows:

- Defendants shared corporate headquarters and/or common officers and

[4] If the Court harbors any doubts regarding the sufficiency of the alter ego allegations for jurisdictional purposes, discovery should be permitted in the event that the Co-Defendants appear and raise the issues.

directors, *see, e.g.*, RJN, Ex. A, ¶¶ 12-17;

- The SGM offer was issued on letterhead that included the KPC logo and described the Defendants as a set of "affiliate companies," *see id.* at ¶ 41;
- One of the Co-Defendants provided a proof of funds in support of the SGM bid, which was a material inducement to the Debtors' ultimate decision to request that the Court approve SGM as the successful bidder, *see id.* at ¶ 42;
- On December 14, 2018, a meeting was held between numerous representatives of the Defendants and the Debtors to discuss the Hospitals and Defendants' proposal to acquire them, *see id.* at ¶ 43;
- On February 6, 2019, the Bankruptcy Court held a hearing on the approval of the APA, during which counsel for SGM described SGM's affiliate relationship with "a larger organization called The KPC Group," *see* RJN, Ex. F at 13:2-14:22;
- On March 11, 2019, SGM's General Counsel emailed the Debtors' investment banker requesting permission to populate "KPC's dataroom with Verity's confidential information" in order to provide access to "KPC's potential financing partners" *see id.*, Ex. A at ¶ 51;
- On May 17, 2019, Dr. Chaudhuri filed an Early Termination Notice with the Federal Trade Commission regarding the Sale, which lists the "Acquiring Party" as "Kali P. Chaudhuri, trustee" and the "Acquired Party" as "Verity Health System of California, Inc.", *see id.* at ¶ 55. The Defendants thereafter described the Sale on their websites as an acquisition by KPC and Chaudhuri, *see id.* at ¶¶ 56-57;
- Employees of KPC oversaw approximately 20 different workstreams to effectuate the Sale and met weekly with the Debtors to ensure a smooth transition of operations, *see id.* at ¶ 60;
- In August 2019, the Attorney General held public hearings at each Hospital to solicit comments regarding the Sale. A representative of the Defendants repeatedly made public statements that, while SGM is the acquisition arm of KPC, KPC and SGM are one and the same business entity led by Dr. Chaudhuri, *see id.* at ¶¶ 66-69; and
- Defendants secured a proposed term sheet stating, in part, that Co-

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> Defendants would guarantee some or all of SGM's purchase of the Hospitals, *see id.* at ¶ 82.

The Co-Defendants were instrumentalities of SGM's wrongful conduct, both pre and post approval of the SGM Sale. As such, an appropriate remedy for such wrongful conduct is a determination that SGM's contractual consent and misconduct are attributable to the Co-Defendants as its instrumentalities and with shared responsibility. *See, e.g.*, *Prompt Staffing, Inc. v. United States*, 321 F. Supp. 3d 1157, 1178 (C.D. Cal. 2018) (alter ego liability existed where individual owner asserted control over corporations, commingled funds and assets, treated corporate assets as his own, and concealed ownership to evade creditors); *Toho-Towa Co. v. Morgan Creek Prods., Inc.*, 217 Cal. App. 4th 1096 (2013) (business entities constituted a "single business enterprise" for purposes of alter ego liability where they had common ownership, exploited the same assets, had the same employees, and an affiliate entity would not have sufficient funds to pay its debts).

Moreover, SGM's repeated efforts to raise claims and arguments on behalf of the Co-Defendants in this and other motions adds further support to the alter ego theory. A dispute as to the alter-ego status of the Co-Defendants goes directly toward identifying property of the estate, as funds flowing from the liabilities of the Co-Defendants stand to become estate assets, depending on the outcome of the Adversary Proceeding. As such, any dispute as to the alter-ego status of the Co-Defendants belongs under the purview of the Bankruptcy Court.

C. SGM's Hollow Due Process Argument Is Disingenuous and Further Demonstrates the Defendants' Attempt at Forum Shopping.

SGM raises an alleged due process argument that is neither relevant nor meritorious. In fact, SGM does not identify the specific basis or type of due process right it seeks to protect on behalf of itself and the Co-Defendants. However, it appears that this due process argument is premised on summary allegations of fundamental fairness in light of the Bankruptcy Court's prior

unfavorable rulings against it. *See* Mot. at 22 (claiming that, in light of the Bankruptcy Court's prior "case determinative rulings," "requiring the Defendants to participate in pretrial proceedings in the Bankruptcy Court would be unfair and lead to more controversy and additional appeals").

SGM's displeasure with the Bankruptcy Court's Orders is irrelevant when determining whether "cause" exists for permissive withdrawal. SGM cites no authority for its inappropriate and unfounded suggestion that the Bankruptcy Court is biased or incapable of rendering fair decisions. To the contrary, courts regularly find that withdrawal of the reference is inappropriate when based on a party's disappointment over the bankruptcy court's earlier rulings. *See, e.g., In re Benham*, No. CV13-00205-VBF, 2013 WL 3872185, at *3 (C.D. Cal. May 29, 2013) ("[I]t remains the law that adverse rulings alone are insufficient to demonstrate judicial bias."); *Manion v. American Airlines, Inc*., 251 F. Supp. 2d 171, 174 (D.D.C. 2003) ("[P]rior rulings, even if they would consistently be in favor of one party over the other, do not constitute 'good cause.'"). Similarly, in the context of recusal, the Ninth Circuit Court of Appeals has found that "[i]nsofar as [the accuser] points to . . . [a judge's] judicial rulings as evidence of bias, such rulings alone almost never constitute a valid basis for a bias or partiality motion." *In re Marshall*, 721 F.3d 1032, 1041 (9th Cir. 2013) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Furthermore, "the judge's conduct during the proceedings should not, except in the 'rarest of circumstances' form the sole basis for recusal under § 455(a)." *United States v. Holland*, 519 F.3d 909, 913-14 (9th Cir. 2008) (quotation omitted). Defendants' citation to the Court's well-reasoned Orders are insufficient to support withdrawal of the reference for judicial bias, even if Defendants disagree with the outcome.

Bias cannot be imputed simply from the Bankruptcy Court's exposure or reaction to the Defendants' own bad conduct. *Liteky*, 510 U.S. at 561-62 ("[L]itigants . . . often seek disqualification based upon a judge's prior

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participation, in a judicial capacity, in some related litigation. Those allegations are meritless in most instances, and their prompt rejection is important so the case can proceed.") (internal citations omitted); *Khan v. Yusufji (In re M. Ibrahim Khan, P.S.C.)*, 751 F.2d 162, 165 (6th Cir. 1984) (bias is cannot be demonstrated where a court "express[es] outrage based solely on the facts before it when the court finds that a party has abused legal process"). The Bankruptcy Court's adverse rulings against SGM—the only facts cited by SGM in its due process argument—are insufficient to demonstrate cause to withdraw the reference.

Rather, it is SGM that wishes to deprive the Debtors of their due process rights. As the record demonstrates, SGM's goal has been to delay and obfuscate by any means possible since refusing to close the Sale. Indeed, SGM has already launched myriad attacks by filing the three Appeals and multiple motions, which are being heard by another District Court in this District sitting in an appellate capacity under 28 U.S.C. § 158(a). Now, SGM wishes to undermine the process further by having a different District Court judge serve as a trial court on the claims related to its behavior. This demonstrates SGM's transparent attempt to forum shop and to deprive the Debtors of due process. *See, e.g.*, *Facebook v. Vachani,* 577 B.R. 838, 850 (N.D. Cal. 2017) (denying withdrawal of the reference premised on "belief that [. . .] this Court would respond more favorably to Facebook's argument than the Bankruptcy Court.") (citation omitted); *Rodriguez v. Countrywide Home Loans, Inc.,* 421 B.R. 341, 352 (S.D. Tex. 2009) (denying "motion for withdrawal of the reference [that] could be viewed as an attempt to appeal these decisions without taking the formal step of seeking interlocutory review (or final appellate review) of these holdings").

Additionally, the Defendants seek to improperly utilize permissive withdrawal as a mechanism to re-litigate the issues decided in the Orders, despite the fact that such issues are narrow and discrete, and the Complaint stands on its own. In so doing, the Defendants ask this Court to engage in a pseudo-appellate

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analysis of the Orders, when the Defendants have already filed appeals regarding the Orders. Effectively, the Defendants ask this Court to grant them a third bite at the apple regarding the issues decided in the Orders. Following the Defendants' logic, any time a party wished to levy an attack on a Bankruptcy Court's order, it need only file a motion to withdraw the reference. Such an outcome would provide for an impermissible end-run around the proper appellate process. The Defendants should not be allowed to attack the Orders in front of a now, third judge. As such, permissive withdrawal should be denied.

D. The Asserted Jury Trial Rights Do Not Warrant Withdrawal of the Reference.

SGM asserts that it, and the Co-Defendants, are entitled to a jury trial to which they have not consented. This argument is without merit for several reasons.

First, as demonstrated above, the Defendants have already consented to the Bankruptcy Court's exclusive jurisdiction to resolve all disputes "involving or relating to" the APA. *See supra* at Section III.B.2. By consenting to such exclusive jurisdiction, Defendants have either waived their right to a jury or consented to the Bankruptcy Court conducting a jury trial (assuming one is permissible). SGM's argument that it may now nullify its consent to the Bankruptcy Court's exclusive jurisdiction on the pretext of a jury trial right is disingenuous and should be rejected.

Second, in contrast to cases finding that a bankruptcy court cannot hold a jury trial on non-core matters, the Adversary Proceeding involves a "core" matter.[5] In addition, as noted above, the parties have consented to Bankruptcy Court exclusive jurisdiction.

Third, SGM's citation to *Palomar Electric Supply, Inc.* is neither binding nor persuasive. *See* Mot. at 23 (citing *In re Palomar Elec. Supply, Inc.*, 138 B.R. 959,

[5] *One Longhorn Land I, L.P. v. Presley*, 529 B.R. 755, 764 (C.D. Cal. 2015).

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961 (S.D. Cal. 1992)). As the District Court held in *Great American Manufacturing and Sales*, the court held that a bankruptcy court retains jurisdiction to conduct jury trials over core matters. *See In re Great Am. Mfg. & Sales, Inc.*, 129 B.R. 633 (C.D. Cal. 1991). The court held:

> Jury trials are one of many methods or techniques that a court has to resolve factual disputes and there appears no reason in logic or policy why this or other Article III courts should assume that there is something suspicious about a Bankruptcy Court using that technique or to presume that Congress could not have intended such a thing.

Id. at 637.

Fourth, a jury trial is not appropriate to resolve alter ego issues and the suggestion does not warrant permissive withdrawal. In California, alter ego liability is generally regarded as an "equitable remedy" designed to avoid manifest injustice and not an independent legal claim. *See, e.g.*, *Leek v. Cooper*, 194 Cal. App. 4th 399, 418-419 (3rd App. 2011) (alter ego is not an independent "claim for substantive relief " but an equitable remedy that can be pled as part of the complaint, added after entry of judgment or pursued by separate action). It is also reasonably well-established that equitable remedies are not protected by the Seventh Amendment right to a jury trial. *See Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1075 (9th Cir. 2015) (holding disgorgement of profits remedy was equitable in nature and without a right to a jury determination); *American Express Travel Related Servs. Co. v. Hashemi (In re Hashemi),* 104 F.3d 1122, 1124 (9th Cir. 1996) (holding non-dischargeability proceedings to be equitable and without jury trial right); *Granite States Ins. Co. v. Smart Modular Techs*., 76 F.3d 1023, 1027 (9th Cir. 1996) (holding defense of equitable estoppel to be determined by court not jury); *see also Siegel v. Warner Bros. Entm't, Inc.,* 581 F. Supp. 2d 1067 (C.D. Cal. 2008) (holding co-owner profits accounting and alter ego claims against corporate siblings would be tried to the bench).

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Fifth, assuming, *arguendo*, that the Adversary Proceeding raises non-core claims, withdrawal of the reference is premature at this stage. Local Bankruptcy Rule 9015-2(g) confirms that all pretrial matters are appropriate before the Bankruptcy Court. This Circuit and District have recognized that all pre-trial proceedings are more appropriately conducted before a bankruptcy court. *See In re Healthcentral.com*, 504 F.3d 775, 787 (9th Cir. 2007) ("[A] Seventh Amendment jury trial right does not mean the bankruptcy court must instantly give up jurisdiction and that the case must be transferred to the district court. . . . Instead, the bankruptcy court is permitted to retain jurisdiction over the action for pre-trial matters.") (citations omitted); *In re City of San Bernardino, Cal.*, No. 5:15-CV-00815-ODW, 2015 WL 6957998, at *7 (C.D. Cal. Nov. 10, 2015) ("The bankruptcy court shall fully control all pre-trial proceedings" and the district court "shall conduct the Pre-Trial Conference, hear and determine all Motions in Limine, and conduct trial."); *In re New Meatco Provisions, LLC*, No. LA CV13-06637 JAK, 2013 WL 12185777, at *7 (C.D. Cal. Dec. 13, 2013) ("A balancing of the applicable factors shows that the more efficient means of proceeding is to have the underlying claims addressed initially by the bankruptcy court."); *see also re Woodside Grp.*, 2010 WL 11596179, at *4.

SGM's reliance on *Bell v. Lehr* is not inapposite. *See* Mot. at 23 (citing *Bell v. Lehr*, No. 13-02483, 2015 WL 4602895, at *2 (E.D. Cal. July 28, 2015)). In fact, in *Bell*, the motion granted by the court was defendants' ***second*** attempt to withdraw the reference after the first motion was denied as "premature because the pretrial proceedings should be handled by the bankruptcy court." *See* 2015 WL 4602895, at *1. Specifically, the district court held "that the pretrial matters should be decided by the bankruptcy court because that court was already familiar with the case, and because two of Plaintiff's claims were 'quintessential bankruptcy matters.'" *Id.* The district court only found the motion to withdraw the reference timely ***after*** pretrial proceedings concluded in the bankruptcy court. *Id.* The same

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is true of SGM's citation to *EPD Inv. Co., LLC*, which also granted withdrawal of the reference after "finding this case is ready for trial." 594 B.R. 423, 426 (C.D. Cal. 2018). And, as discussed above, consent has been provided.

As a result, SGM waived its right to a jury trial through its consent to the Bankruptcy Court's exclusive Article I jurisdiction, and the Co-Defendants are not entitled to a jury trial on whether they are subject to liability as alter egos of SGM.

E. SGM's Divestiture Argument Is Meritless and Raises Issues Already Pending in the Adversary Proceeding and Appeals.

SGM paradoxically and incorrectly argues that withdrawal of the reference of the Adversary Proceeding is appropriate because the Bankruptcy Court has been divested of jurisdiction to adjudicate the Adversary Proceeding while the Appeals remain pending. The divestiture rule provides that the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982).

SGM's divestiture arguments were already made to, and are properly before, the Bankruptcy Court on a motion brought by SGM. *See* RJN, Ex. GG. SGM does not contend that divestiture is a relevant determination under the permissive withdrawal factor analysis or otherwise relevant to the Motion. *See, e.g.*, *EPD Inv. Co., LLC*, 594 B.R. at 425 (finding, among the permissive withdrawal considerations, "the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration"); *In re Pruitt*, 910 F.2d 1160, 1166 n.6 (3d Cir. 1990) (finding that a withdrawal of the reference order "merely determines the forum of the litigation"). Thus, this Court should not consider the divestiture arguments in connection with the Motion. Further, assuming, *arguendo*, SGM is correct that the Appeals divested the Bankruptcy Court of jurisdiction over the Adversary Proceeding, then the Adversary Proceeding would simply remain stayed until resolution of the Appeals.

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In the Debtors' argument currently pending before the Bankruptcy Court, the Debtors demonstrate that divestiture does not apply to the Adversary Proceeding under the modern approach to the rule. As here, SGM fails to acknowledge recent Supreme Court precedent holding that prudential rules, like the divestiture rule, are more accurately classified as mandatory claims processing rules than jurisdictional. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, — U.S. —, 138 S. Ct. 13, 17 (2017). "[P]revailing precedent makes the distinction critical." *Id.* As a prudential rule, divestiture is flexible and "may be applied in a 'less stern' manner than true jurisdictional rules." *Rodriguez v. County of Los Angeles*, 891 F.3d 776, 790 (9th Cir. 2018). SGM misses this critical distinction by applying divestiture as a strict jurisdictional rule without regard to the holdings of the Orders. *See United States v. Hickey*, 580 F.3d 922, 927 (9th Cir. 2009) ("We decline to apply the divestiture rule in a slavish manner that ignores the reality of what happened in the trial court.").

Under the pragmatic approach to the divestiture rule, divestiture does not apply to the Adversary Proceeding for at least four reasons. ***First***, the divestiture rule applies only to "those aspects of the case involved in the appeal" and allows the Bankruptcy Court to enforce and implement the unstayed Orders. Thus, even if SGM is correct that the Orders "cover the same ground" as the Adversary Proceeding, the Court is still free to rely on the unstayed Orders. *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000) ("Absent a stay or supersedeas, the trial court also retains jurisdiction to implement or enforce the judgment or order but may not alter or expand upon the judgment."). ***Second***, the divestiture doctrine does not apply to unstayed interlocutory orders such as the Scheduling Order and MAE Order.[6] *See Hickey*, 580 F.3d at 928 (citing *Estate of Conners v. O'Connor*, 6 F.3d 656, 658 (9th Cir. 1993)) ("Filing an appeal from an unappealable decision does not divest

[6] The Debtors are preparing motions to dismiss the Appeals as interlocutory and moot.

the district court of jurisdiction."); *In re Kashani*, 190 B.R. 875, 882 (B.A.P. 9th Cir. 1995) ("To become final, the decision, order, or decree must end the litigation, or dispose of a complete claim for relief, and leave nothing for the court to do but execute the judgment."). ***Third***, the Appeals are moot in light of the termination of the APA, and, therefore, the Appeals are subject to exception from the divestiture rule. *See Ashker v. Cate*, No. 09-cv-05796-CW, 2019 WL 1558932, at *3 (N.D. Cal. Apr. 10, 2019) (recognizing exceptions to the divestiture rule where "the appeal is clearly defective"). ***Fourth***, SGM expressly waived the application of the divestiture doctrine when it waived its rights to appeal the Orders in the APA. *See Hamer*, 138 S. Ct. at 15 (finding that divestiture "is a mandatory claim-processing rule that may be waived or forfeited").

Importantly, although set forth here in summary fashion, these jurisdictional issues are before the Bankruptcy Court and the District Court considering the Appeals.[7] *See* RJN, Ex. GG. The presence of these arguments simultaneously before three judges (the Bankruptcy Court and two District Court judges) exposes the fundamental shortcoming of the Motion. SGM's insistence that multiple courts address these issues does not promote the efficient use of judicial resources, significantly increases the cost of adjudicating the Debtors' valid claims, and offers the clear opportunity for SGM to forum shop. *See Sec. Farms,* 124 F.3d at 1008 ("In determining whether cause exists, a district court should consider the efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors."). Indeed, SGM does not address the jurisdictional quagmire that would result from the District Court acting simultaneously as an appellate court and trial court over

[7] The Debtors discuss these arguments here briefly because they were raised by SGM in the Motion. The Debtors reserve all rights with respect to arguments related to the jurisdiction of the Bankruptcy Court with respect to the Adversary Proceeding and the District Court with respect to the Appeals.

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what SGM insists are interrelated issues. *See Pruitt*, 910 F.2d at 1166 n.6 (noting "this knotty jurisdictional issue" raised by a district court's withdrawal of the reference while deciding an order on appeal from the same case). Accordingly, the Motion should be denied for failure to demonstrate "cause" for permissive withdrawal.

IV. CONCLUSION

Based upon the foregoing, the Debtors respectfully request that this Court enter an order (i) denying the Motion, and (ii) granting such other relief as the Court deems just and proper under the circumstances.

Dated: February 4, 2020

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Notice of Interested Parties

Pursuant to Rule 9 of Chapter IV of the Local Rules of the United States District Court for the Central District of California, the undersigned, counsel of record for Verity Health System of California, Inc. and the affiliated debtors, the debtors and debtors in possession, certifies that the following listed party (or parties) may have a pecuniary interest in the outcome of this case:

- Verity Health System of California, Inc., a California nonprofit public benefit corporation;
- St. Vincent Medical Center, a California nonprofit public benefit corporation;
- St. Vincent Dialysis Center, Inc., a California nonprofit public benefit corporation;
- St. Francis Medical Center, a California nonprofit public benefit corporation;
- Seton Medical Center, a California nonprofit public benefit corporation; and,
- Verity Holdings, LLC, a California limited liability company.

These representations are made to enable the Court to evaluate possible disqualification or recusal.

Dated: February 4, 2020

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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is 601 South Figueroa Street, Suite 2500, Los Angeles, CA 90017.

On February 4, 2020, I served the foregoing *Debtors' Opposition to Motion to Withdraw the Reference* on each interested party in this action, as follows:

SEE ATTACHED SERVICE LIST

[X] **(VIA MAIL)** I placed a true copy of the foregoing document in a sealed envelope addressed to each party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Los Angeles, California 90017. I am readily familiar with 's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day in the ordinary course of business.

[ ] **(VIA FEDERAL EXPRESS)** I deposited in a box or other facility maintained by Federal Express, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

[ ] **(VIA PDF FORMAT)** I caused each such document to be transmitted by PDF Format via e-mail to the parties listed on the attached service list.

[ ] **(VIA FACSIMILE)** I caused a true copy of the foregoing document to be served by facsimile transmission to each interested party at the respective facsimile numbers listed. A transmission report was properly issued by the sending facsimile machine for each interested party.

I declare that I have been retained by a member of the bar of this Court at whose direction this service was made.

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

Executed on February 4, 2020, at Los Angeles, California.

_/s/Chris O'Meara_____
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