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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

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,	Case No.: 2:20-cv-00613 (Related to District Court Appeals: Case Nos.: 2:19-cv-10352-DSF; 2:19-cv-10354-DSF; and 2:19-cv-10356-DSF) Lead Chapter 11 Bankr. 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

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.

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.

Adv. Case No.: 2:20-ap-01001-ER

REPLY TO DEBTORS' OPPOSITION TO MOTION TO WITHDRAW THE REFERENCE

Date: February 24, 2020
Time: 8:30 a.m.
Judge: Dale S. Fischer
Place: Courtroom 7D
350 W. First Street
Los Angeles, CA 90012

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Defendant Strategic Global Management, Inc. ("SGM") hereby submits this reply to the opposition [Doc. No. 11] (the "Opposition") filed by Plaintiffs Verity Health Systems of California, Inc., *et al.* ("Plaintiffs" or "Verity") to SGM's motion to withdraw the reference of the Adversary Proceeding [Doc. No. 1] (the "Motion")[1], and respectfully represents as follows:

I. INTRODUCTION

Given the jurisdictional mandate of *Stern v. Marshall*, 131 S. Ct. 2594 (2011), only this Court has the jurisdictional authority to ensure that the Adversary Proceeding is tried only once and that a judgment will not be subject to constitutional challenge.

In the Opposition, the Debtors put forth a variety of "red herring" and "strawman" arguments that either mischaracterize SGM's position or extensively address something that is not in dispute. For example, SGM has never disputed that it consented to Bankruptcy Court jurisdiction to adjudicate the breach of contract claims arising from the Court approved Asset Purchase Agreement ("APA"). However, none of the Non-SGM Defendants has consented to Bankruptcy Court jurisdiction, either expressly or impliedly. And, as will be demonstrated below, their non-consent deprives the Bankruptcy Court of jurisdiction to render a final judgement because (1) the claims in the Adversary Proceeding are non-core, and (2) even if they could be characterized as core claims, the limitation on a bankruptcy court's jurisdiction

[1] Unless indicated otherwise, all capitalized but undefined terms shall have the same meanings ascribed to them in the Motion.

to adjudicate core claims (as articulated by the Supreme Court in *Stern*) restricts the Bankruptcy Court's constitutional authority over the Adversary Proceeding.[2]

In addition to the jurisdictional impediments to allowing the Bankruptcy Court to adjudicate the claims in the Adversary proceeding, there is another compelling reason – one that is unique to this case – for immediately withdrawing the reference. Prior to the commencement of this case, the Bankruptcy Court entered three orders, two of which were entered *sua sponte* and without any due process, in which the court ruled that: (1) the Debtors has satisfied all conditions prerequisite to requiring SGM to close the sale, (2) SGM was "obligated" to close the sale on December 5, 2019, (3) SGM's failure to close the sale on December 5 would subject it to damages, (4) SGM had no right to appeal from the court's orders, and (5) if SGM filed a lawsuit to claim that the Debtors had failed to satisfy certain conditions in the APA, the court would dismiss it under Rule 12(b)(6). *See* (Opp. RJN, Exs. O, R, U & V). These orders are currently on appeal to this Court

Neither SGM nor the other defendants should be required to have a multimillion dollar lawsuit litigated in a court that has already prejudged the outcome. Contrary to Plaintiffs' assertions, SGM is not seeking "recusal," nor is SGM claiming that the Bankruptcy Court has a "bias." Accordingly, the authorities cited by the Debtors regarding those issues are irrelevant. Rather, Congress has given the District Court the authority to withdraw the reference "for cause," which exists in this case

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[2] Recognizing that by adding third parties as defendants to their lawsuit, the Debtors have: (1) jeopardized the Bankruptcy Court's jurisdiction, and (2) invited constitutional challenges to the Bankruptcy Court's authority. The Debtors use the term "Defendants" throughout the Opposition's Statement of Facts, as if all of the "Defendants" (not just SGM) actually participated in the transactions and in the wrong-doing alleged in the Complaint. On the contrary, there are no facts pled in the Complaint which support Plaintiffs' cavalier disregard of the separateness of SGM from the Non-SGM Defendants. Indeed, Plaintiffs misstate that "Defendants" have filed this Motion, which is factually incorrect. Only SGM and none of the Non-SGM Defendants have filed the Motion.

because, independent of the jurisdictional infirmities discussed below, the Bankruptcy Court has improperly, prematurely and without due process made case determinative decisions.

The Debtors' objections to the Motion should also be overruled for the following reasons: (1) all of the relevant factors (*e.g.*, efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping) favor withdrawal; (2) the Non-SGM Defendants did not submit to the jurisdiction of the Bankruptcy Court, nor have they waived their right to a jury trial; and (3) splitting the case between this Court and the Bankruptcy Court for trial and pre-trial management would not be an efficient use of judicial party resources, and would duplicate efforts and potentially deprive the Defendants of their constitutional rights. The reference should be withdrawn immediately.

II. ARGUMENT

A. The Bankruptcy Court's Lack Of Constitutional/Article III Authority To Decide "Private Right" Matters.

In *Stern v. Marshall*, 564 U.S. 462 (2011), the Supreme Court held that a bankruptcy estate's claim against a third party, which could be classified as a "core" claim under 28 U.S.C § 157, could not be adjudicated to final judgment consistent with the constitutional limitations on the Bankruptcy Court's jurisdiction. In that case, a Chapter 11 debtor filed a counter-claim against an individual who had filed a proof of claim against the estate. While that counter-claim was a core matter under 28 U.S.C. § 157(b)(2)(C), the Supreme Court nevertheless held it could not be adjudicated to final judgment by the Bankruptcy Court because of constitutional limitations on the Bankruptcy Court's jurisdiction to finally adjudicate "private right" (as opposed to "public right") matters. Thus, even if the claims in the Adversary Proceeding are statutorily "core" matters (which they are not), they are "*Stern* claims" involving "private" (as opposed to "public") rights that the Bankruptcy Court cannot constitutionally adjudicate on a final basis.

In re Lyondell Chem. Co, 457 B.R. 712, 719 (S.D.N.Y. 2012), cited by the Debtors, instructs that "[u]nder *Stern* . . . Article III . . . determines the bankruptcy court's adjudicative authority" and actually supports SGM's argument as to why withdrawal of the reference is necessary; this is because the Bankruptcy Court lacks constitutional authority to adjudicate the "private right" claims in the Complaint. *See* (Opp. 13:20-24). As described in the often-cited published case of *Dev. Specialist, Inc. v. Akin Gump*, 462 B.R. 457 (S.D.N.Y. 2011) ("DSI"):

> "[O]n a motion to withdraw a bankruptcy reference, the *Orion* test looks first to the core/non-core distinction in order to determine the advantage and disadvantage of leaving a matter before the Article I court or moving it to an Article III Court . . . . But, as a practical matter, those advantages and disadvantages depend first on the Bankruptcy Court's power to enter final adjudication, and ***after Stern, that power depends, not on whether the matters are core or non-core, but on whether the rights being adjudicated (1) are public rights, or (2) will necessarily be resolved in ruling on a creditor's proof of claim – or, of course, on the parties unanimously consenting to bankruptcy court adjudication.*** So, after *Stern*, one can still apply the *Orion* [test] but not looking at whether the matter can be classified as "core" under 28 U.S.C. § 157, but rather and whether, under *Stern*, the Bankruptcy Court has the final power to adjudicate it. ***If it does not have that power, there will be no advantage to allowing the matter to be heard in Bankruptcy Court***, because this Court will eventually need to review the Article I Court's determinations *de novo* review . . . ."

Id. at 467 (emphasis added).

Here, even assuming arguendo the claims in the Adversary Proceeding are "core" claims, absent unambiguous consent by all of the parties, the Bankruptcy Court lacks the authority to enter final judgment because none of the claims in the Complaint (consisting of Breach of Contract, Promissory Fraud, and Tortious Breach of Contract, *see* (Opp. RJN, Ex. A, 1), invoke any bankruptcy law or "public" rights, so the Bankruptcy Court does not have authority to adjudicate them on a final basis. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56 (1989); *N. Pipeline Constr. Co. v. Marathon Pipe Line Co*., 458 U.S. 50, 71-72 (1982) (a debtor's "right to

recover contract damages to augment its estate is 'one of private right, that is, of the liability of one individual to another under the law as defined.'"); *Stern*, 564 U.S. at 487 (finding no "public right" exception existed where the "claim is a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of claim in bankruptcy.").

Instead, these claims, which (1) are all creatures of state law that, but for the bankruptcy filing, could be brought outside of bankruptcy; and (2) primarily concern the parties' contractual obligations, and the Debtors' contention that the Defendants breached the APA and participated in tortious wrongdoing, invoke "private" rights that should be adjudicated by an Article III court. *See Granfinanciera*, 492 U.S. at 56 (" . . . fraudulent conveyance actions . . . are quintessentially suits at common law that ***more nearly resemble state-law contract claims brought by a bankrupt corporation to augment the bankruptcy estate*** than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res. They therefore appear matters of private rather than public right.") (emphasis added).

Evaluation of the Debtors' claims, on the one hand, and the Defendants' defenses and counterclaims, on the other, will require substantial and material considerations of state contract law in determining the conditions, nature, and scope of the APA. *See* (Opp. RJN Exs. D & V) (APA & November 27 Memorandum Decision evidencing that the APA is governed by California law). *DSI*, 462 B.R. at 468 ("Following *Stern*, however, the flaw in the Firms' statutory argument for withdrawal became irrelevant in light of the strength of their constitutional argument."). Because the Bankruptcy Court lacks constitutional authority over the Adversary Proceeding absent all parties' consent, "there will be no advantage to allowing the matter to be heard in Bankruptcy Court. *DSI*, 462 B.R. at 467.

The Debtors' argument that the Bankruptcy Court has final authority to adjudicate the Adversary Proceeding because of that court's ability to "interpret and enforce" its order approving the Sale (the "Sale Order") ignores what is at issue in

the Adversary Proceeding. The Sale Order does not need to be interpreted; nor does it need to be enforced. Indeed, when the Debtors filed an emergency motion for an Order to Show Cause, in an ill-conceived attempt to "enforce" the Sale Order by way of a contempt proceeding, the Bankruptcy Court denied the motion. What will be adjudicated in the Adversary Proceeding are the breach of contract and tort claims. While the trial court will need to interpret and enforce the terms of the APA, the Sale Order is not at issue.

B. The "Non-Core" Nature Of The Adversary Proceeding, And The *Orion* Factors Favor Withdrawal Of The Reference.

Citing to several distinguishable cases, the Debtors also argue that the "Complaint Raises 'Core' Claim Arising Under the Bankruptcy Code." (Oppos. 10:8-9).

For purposes of the Motion, the fact that the APA was entered into post-petition does not render the related breach claims in the Complaint to be "core," which they are not. The Ninth Circuit in *Eastport Associates v. City of Los Angeles (In re Eastport Associates)*, 935, F.2d 1071, 1076 (9th Cir. 1991) quoted favorably and at length from a widely-cited decision of the Fifth Circuit in *Wood, III v. Wood (In re the Matter of James P. Wood, M.D.),* 825 F.2d 90 (5th Cir. 1987). *Eastport*, 935 F.2d at 1076-77. In *Wood*, the complaint concerned claims brought against the debtors alleging that ***post-petition*** the debtors had wrongfully issued stock to themselves in violation of an agreement that they were to be equal partners with the plaintiff in a medical clinic. *Id*. at 91. The bankruptcy court "denied the defendants' motion to dismiss for lack of subject-matter jurisdiction and held that the matter was a core proceeding"; on appeal, the district court found that the "matter was neither a 'core' proceeding, over which the bankruptcy judge had full judicial power, nor an 'otherwise related' or 'non-core' proceeding, over the bankruptcy judge has limited judicial power," and dismissed the complaint. *Id*. at 91-92. The Fifth Circuit held that "subject-matter jurisdiction exists over [that] proceeding," vacated the judgment

of the district court, and remanded proceedings to the district court. *Id*. at 94 & 98. In doing so, it held that the suit was not a "core" proceeding because the "essential issue in the proceeding is whether the defendants are liable to the plaintiff under state law. The suit does not raise as primary issues matters as dischargeability, allowance of the claim, or other bankruptcy matters." *Id*. at 98.

In *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 567 F.3d 1010, 1014 (8th Cir. 2009), the plaintiff filed suit three years after the bankruptcy court approved the sale of certain assets to another party. The lawsuit alleged that the defendants "intentionally interfered with GAF's business expectancy in purchasing the Coffeyville Assets" from a bankruptcy estate, and participated in a civil conspiracy to conceal the real value of those assets, depriving the bankruptcy estate of over one billion dollars. *Id*. Because these claims invoked Missouri state law, the Eight Circuit held, among other things, that the bankruptcy court lacked "arising under" jurisdiction over the interference claims. *See id.* at 1018 (" . . . tort claims do not fit into the narrow category of administrative matters which 'have no existence outside of the bankruptcy,' . . . or 'could only arise in the context of a bankruptcy,' . . . or 'could only arise in the context of a bankruptcy'") (citation omitted). Importantly, although the bankruptcy court had "related to" jurisdiction because if GAF prevailed, there would be a significant impact on the administration of the estate and the ultimate distribution for creditors, the post-petition claims were found to be "non-core." *Id*. at 1018-19

At its base, the Complaint's claims: (1) do not ask the Bankruptcy Court to clarify, interpret, or enforce the Sale Order (even assuming that this can be done with the sale Enforcement Order on appeal); and (2) all arise under California state law (and do not invoke or reference any federal bankruptcy law, including Section 363 of the Bankruptcy Code regarding the sale of bankruptcy estate property), and are inherently non-core.

Both the *Harris v. Wittman (In re Matter of Harris)*, 590 F.3d 730 (9th Cir 2009) ("Harris") and *In re Harris Pine Mills*, 44 F.3d 1431 (9th Cir. 1995) ("Harris Pine") cases are distinguishable, because both involved lawsuits filed ***against the bankruptcy trustee*** for alleged misconduct in the administration of estate assets. In *Harris*, the debtor sued the bankruptcy trustee as well as other estate representatives for breach of contract allegedly arising from the trustee's administration of a settlement agreement. In acknowledging that ordinary breach of contract claims generally do not "arise under" nor "arise in" a bankruptcy case, the Ninth Circuit held that "[a] state law contract claim could exist independent of a bankruptcy case, but '***an action against a bankruptcy trustee for the trustee's administration of the bankruptcy estate could not.***'" *Harris*, 590 F.3d at 737. *Harris Pine* likewise found that a suit against the trustee for his conduct administering estate assets is a "core" claim. *Harris Pine Mills*, 44 F.3d at 1437. In contrast, in this Adversary Proceeding, no party has asserted a claim against the Debtors for their administration of the estate. Put simply, the Adversary Proceeding primarily concerns the Debtors attempt to recover money damages on account of the Complaint's claims arising under state law.[3]

Just as, if not more, inapposite are the cases cited by the Debtors regarding the Bankruptcy Court's authority to interpret and enforce its own orders – ***where, in this case, there is no dispute regarding the Sale Order, and the Complaint does request that the Bankruptcy Court interpret, clarify, or enforce the Sale Order***. *See E. Orange Ge. Hosp. Inc.*, 587 B.R. 53, 73-74 (D.N.J. 2018) (regarding jurisdiction to enforce a sale order "authorized by the [bankruptcy] code," and the "related Motion to Enforce the Sale Order"); *In re Allegheny Health Educ. And Research Found.*, 383

[3] The *Friedman Corp. v. Universal Molding Co.*, No. 11-10361, 2011 WL 6817756 (C.D. Cal. Dec. 28, 2011) case does not compel a different conclusion. The Debtors quote to dicta in *Friedman*, because that case did not make a "core" or "non-core" finding, and "refer[ed] th[e] action to [the bankruptcy judge] to determine whether it is a matter that falls within the jurisdiction of the bankruptcy court." *Id*. at *4.

F.3d 169, 178 (3d Cir. 2004) (primarily involving a "motion to enforce," and interpretation of the assets and "liabilities" assume under the asset purchase agreement); *In re Gawker Media, LLC*, 581 B.R. 754, 760 (Bankr. S.D.N.Y. 2017) (interpreting sale order; "jurisdiction extends to . . . disputes between creditors and the purchasers . . . where those disputes implicate the ***interpretation of a bankruptcy sale order***.") (emphasis added); *Hawaiian Airlines, Inc. v. Mesa Air Group*, 355 B.R. 214 (D. Hawaii 2006) (alleged actionable conduct was undertaken in connection with the "Plan Procedures Order" entered by the bankruptcy court as part of the debtor's plan of reorganization," and was core because it involved "a bankruptcy court's enforcement of its own order.").[4]

The Complaint's claims are non-core, and the withdrawal of the reference factors (*e.g.*, efficient use of judicial resources, delay and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping) favor granting the Motion. For example, the Ninth Circuit has recognized that efficiency is enhanced by withdrawing the reference where non-core issues predominate, and unnecessary costs can be avoided by a single proceeding in the district court. *Security Farms v. International Broth. Of Teamsters*, 124 F.3d 999, 1008-09 (9th Cir. 1997); *see also DSI*, 462 B.R. at 467 ("If it does not have that power there will be no advantage to allowing the matter to be heard in Bankruptcy Court, because this Court will eventually need to review the Article I Court's determinations *de novo* review – i.e., as the statute would have them treated if they were 'non-core.' Thus, where the

[4] The Debtors' attempt to argue that the "alter ego" remedy is "core" should also be rejected. The cases cited by the Debtors in Section III.B.3 of the Opposition are distinguishable, and all deal with attempts by debtors to pierce their own corporate veils to, among other things, bring assets back to their bankruptcy estates under Section 541 of the Bankruptcy Code. This is different from what the Debtors are trying to do here, *i.e.*, to apply California state law to pierce the corporate veil of SGM in order to sue SGM's alleged affiliates and agents. There is no attempt by the Debtors to pierce their own corporate veils, and the "alter ego" remedies/claims do not belong to their estates.

Bankruptcy Court lacks final adjudicative authority, the remaining *Orion* considerations will often tend to point toward withdrawal, for the same reasons they did when the question was whether or not the actions were core[.]").

Although uniformity of administration is typically not a consideration where the matter is non-core, *see Flemer v. Newell (In re Village Concepts)*, 2014 WL 1266205, *3 (E.D. Cal. March 23, 2014), withdrawal of the reference would allow this Court to consistently decide the three Appeals of the Orders (involving the Sale, which are currently before it), and the Adversary Proceeding (involving the alleged breach of the APA). Relatedly, there are concerns and disputes over whether the Bankruptcy Court even has jurisdiction to continue with the Adversary Proceeding, given the pending Appeals and the "divestiture rule."[5] Lastly, forum shopping is not a concern here because the matter will eventually reach the District Court. *See Everett v. Art Brand Studios, LLC*, 556 B.R. 437, 445 (N.D. Cal. 2016) ("In addition, the prevention of forum *shopping is not a concern here* as only this Court has the power to enter final judgment on the fourth and fifth causes of action."); *Green v. FDIC (In re Tamalpais Bancorp.)*, 451 B.R. 6, 11 (N.D. Cal. 2011). Finally, the right to a jury trial – applicable here (and as described more fully in Section III.C *infra*) – can be sufficient cause for discretionary withdrawal of the reference. *Hasset v. BancOhio Nat'l Bank (In re CIS Corp.)*, 172 B.R. 748, 755 (S.D.N.Y. 1994).

C. Not All Of The Parties Have Consented To The Bankruptcy Court's Jurisdiction, And Its Ability To Conduct Trial.

[5] For the sake of brevity and the fact that this issue should, and will likely, be determined by this Court in the Appeals, SGM will not address it at length. In any event, divestiture is mandatory in nature, regardless of whether the rule is characterized as jurisdictional per se or as prudential. *See Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S.Ct. 13, 17 (2017); *Mercado-Guillen v. McAleenan*, 2019 WL 1995331, at *2 (N.D. Cal. May 6, 2019) (divestiture rule applies when, as here, the issues in the lower court "involve aspects of the case that are the subject of the pending appeal.").

The Debtors devote a significant portion of the Opposition arguing that SGM "expressly" consented to the Bankruptcy Court's jurisdiction – ***which is not in dispute, and set forth in the APA***. *See* (Opp. RJN, Ex. D). However, the Non-SGM Defendants (five out of the six Defendants): (1) are not parties to the APA; (2) never consented to the jurisdiction of the Bankruptcy Court, or its ability to try the Adversary Proceeding; and (3) never waived their right to a jury trial.

There is no "unanimous" consent to Bankruptcy Court jurisdiction, regarding the "private right" breach-related claims among the parties to the lawsuit. *See DSI*, 462 B.R. at 467 (" . . . the parties' ***unanimously consenting to bankruptcy court adjudication***") (emphasis added); *Lyondell*, 467 B.R. at 720 (although express consent is no longer required, court opined that "consent of the parties' is required."). Further, as the Supreme Court in *Wellness* instructs, any consent must be "knowing and voluntary" such that "the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case' before the non-Article III adjudicator." *Wellness*, 575 U.S. at 1948. Consent from the Non-SGM Defendants was neither sought, nor was it given by the Non-SGM Defendants.

Moreover, even if the proceeding is somehow determined to be "core" in nature, if a jury trial is demanded, a bankruptcy court may only conduct a jury trial if "specifically designated to exercise such jurisdiction by the district court and with the express consent of all parties." *See In re Extended Stay*, 466 B.R. 188, 197 (S.D.N.Y. 2011). Regarding waiver, "because the right to a jury trial is fundamental, 'courts must indulge every reasonable presumption against waiver.'" *Burns*, 53 F.3d at 1240.

Although concepts of "waiver" and consent" are factually-intensive inquiries that should not be prematurely decided in the context of the Motion, it is undisputed that there was no "express" consent or waiver of the right to a jury trial in the Adversary Proceeding by the Non-SGM Defendants. Further, the Debtors' breach of contract cause of action primarily requests monetary damages (and, thereby, is necessarily legal in nature) such that there is a right to a jury. *Id.* ("There is no

dispute that Appellant's Eighth Amendment *Bivens* ***claim for damages*** is a legal dispute, entitling either party to a fact-finder under the Seventh Amendment."). The allegation that the alleged "equitable" remedies or claims in the Complaint somehow eviscerate the Defendants' constitutional right to a jury trial is wrong. *Id*. at 1242 ("When ***legal and equitable claims*** are joined in the same action, the right to jury trial on the legal claim, including all issues common to both claims, remains intact.'") (emphasis added).

D. Fundamental Fairness Dictates That SGM Be Given A Full And Fair Opportunity To Litigate The Adversary Proceeding Disputes.

The circumstances of this case are unique, in that the Bankruptcy Court has already effectively adjudicated SGM's breach of the APA for not closing the Sale on December 5, 2020 without any, much less effective, due process and an opportunity to be heard on those issues (which are now on appeal). The Bankruptcy Court's November 27, 2019 Order states that SGM was obligated to close on December 5, 2019 or be in breach – an unequivocal pronouncement of the merits of this lawsuit before it had been filed. Specifically, both the November 18 and November 27 Orders were entered *sua sponte*: (1) in response to the Debtors' motion to continue the hearing on their Chapter 11 disclosure statement (a matter unrelated to the APA, and which did not directly involve SGM); and (2) after a status conference on the Debtors' Chapter 11 disclosure statement, respectively. *See* (Opp. RJN, Exs. R & U) (November 18 and 27 Orders). With regard to the November 27 Order, the Court entered such order without formal briefing by the parties, despite the Debtors' request that an expedited briefing schedule be set.[6]

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[6] The cases cited by the Debtors regarding recusal and bias are inapplicable. SGM: has never requested that (1) the Bankruptcy Court's Orders be vacated or reconsidered (in fact, they are now properly on appeal before this Court; and (2) the Bankruptcy Court recuse itself.

III. CONCLUSION

For all of the foregoing reasons, the Motion should be granted and the reference of the Adversary Proceeding withdrawn immediately.

Dated: February11, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
By: */s/ Gary E. Klausner*
Gary E. Klausner
Jeffrey S. Kwong

CERTIFICATE OF SERVICE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Verity Health Systems of California, Inc., et al. v. Strategic Global Management, Inc., et al.

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 10250 Constellation Blvd., Suite 1700, Los Angeles 90067.

On February 11, 2020, I served the foregoing document on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☒ **(BY MAIL)**
I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of such business.

☐ **(BY OVERNIGHT DELIVERY)**
I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 11, 2020, at Los Angeles, California.

/s/ Lisa Masse
LISA MASSE

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